

CHAPTER ONE

THE BACKGROUND TO THE CONVENTION

The Hague Conference on Private International Law has always taken a keen interest in the international aspects of civil procedure. Conventions dealing with such questions were prepared in 1896 and 1904, and when the Conference resumed its work after the Second World War a new Convention on Civil Procedure was concluded in 1954.

The 1954 Convention dealt with five matters: 1) the service of documents abroad; 2) the taking of evidence abroad; 3) security for costs; 4) the provision of legal aid; and 5) the question of imprisonment for debt. The first topic was again examined by the Hague Conference in 1964 and a Convention on the Service Abroad of Judicial and Extra-judicial Documents in Civil and Commercial Matters was signed in 1965. In 1968 there was a similar re-examination of the evidence provisions of the 1954 Convention, which led to the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters of 1970. These two new Conventions, together with the related Convention Abolishing the Requirement of Legalisation for Foreign Public Documents 1961, were the subject of explanatory documentation published by the Commonwealth Secretariat in 1979. Currently (November 1981) thirteen Commonwealth countries are parties to one or other of these Conventions.

The fourteenth Session of the Hague Conference held in October 1980 turned its attention to the revision of the remaining chapters of the 1954 Convention on Civil Procedure. A number of reasons can be identified. The most obvious was a desire to complete the task of overhauling the 1954 text, but that statement obscures some more fundamental developments which made that task pressing. The whole question of international civil procedure is seen as of growing importance, not least because of the ending of the colonial period and the opening up of new trading relationships. The Hague Conference itself has a much greater awareness of, and contribution from, common law countries than in earlier decades; it can no longer rely on concepts, notably that of nationality, traditionally favoured by the European civil law states.

It was, however, the European members of the Hague Conference which had taken a series of initiatives - through the Council of Europe - on the topic of legal aid, which formed the most important chapter of the unrevised portion of the 1954 Hague Convention. The Council of Europe prepared its own European Agreement on the Transmission of Applications for Legal Aid, which was ratified by the United Kingdom in 1977, and which dealt, as its name suggests, with specifically procedural questions. The Committee of Ministers of the Council of Europe in 1976 and again in 1978 made recommendations on the more substantial question of the granting of legal aid or advice to those involved in international

litigation. These developments were influential, and were fully taken into account, at the Hague Conference's Fourteenth Session.

As a result that Session produced the Convention on International Access to Justice which forms the subject-matter of the present paper. It is suggested that the Convention deserves favourable attention from Commonwealth governments, for the following reasons:

- (i) extensive trade and other links across international boundaries inevitably generate some litigation, and the retention of unnecessary obstacles to the just settlement of disputes cannot be defended;
- (ii) the common law tradition already adopts most of the principles enshrined in this Convention by refusing to discriminate on grounds of nationality or residence where procedural matters are concerned;
- (iii) by becoming parties to the Convention, common law countries can secure for their own people benefits which might otherwise be denied to them should they be involved in litigation in certain civil-law countries; and
- (iv) in many cases, the Convention could be implemented without the need for legislation.

The remainder of this paper examines the provisions of the Convention, reproduces its text (in the English version; an equally authentic French text is also available), and offers some suggestions as to accession procedures.