

CHAPTER FIVE

ACCESSION AND IMPLEMENTATION

Signature or accession. States which are Member States of The Hague Conference may sign the Convention, and subsequently deposit an instrument of ratification with the Ministry of Foreign Affairs of the Kingdom of the Netherlands. Any other State may accede, the instrument of accession being deposited with the same Ministry. The detailed procedures and the periods of time after which ratification and accession become effective are specified in the Final Clauses of the Convention (Articles 31 to 36), which are self-explanatory.

Reservations. Before ratification or accession can be considered, important questions as to the permitted Reservations arise. Five Reservations are permitted:

- (a) to exclude Article 1 insofar as it extends beyond the case of persons who are nationals of Contracting States. Such a Reservation would detract considerably from the value of the Convention, and although some civil law countries may feel the need to avail themselves of this right, Commonwealth countries are unlikely to do so;
- (b) to exclude the use of English or French or both under Article 7, second paragraph. If such a Reservation is made by a State, other Contracting States can reciprocate. So although some Commonwealth jurisdictions might be tempted to exclude French, English being more to their convenience, this would prevent them from being able to make use of the French option in outgoing documents. Unless special factors apply, this Reservation will therefore not commend itself;
- (c) to exclude the application of Article 13, second paragraph, which deals with the automatic right to legal aid for the purpose of obtaining recognition or enforcement of a judgment obtained with the help of legal aid provided under the Convention. Reasons have already been given why such a Reservation is desirable.
- (d) to exclude the application of Chapter II (Security for Costs, etc.). Again, reasons have already been given why Commonwealth jurisdictions might be expected to make a Reservation of this type; and
- (e) to exclude the application of Article 20 (safe-conduct); this also is a Reservation which many Commonwealth countries would wish to, or would be required by constitutional provisions, to make.

Notifications and declarations. Before ratifying or acceding to the Convention, Governments need to take a number of decisions as to the various notifications and declarations which may or must be made:

(a) as to Central Authorities and transmitting authorities

The Netherlands Foreign Ministry must be informed as to

- (i) the Central Authority or Authorities designated under Article 3 to receive applications for legal aid;
- (ii) the transmitting authorities designated under Article 4 to forward such applications;
- (iii) unless Chapter II of the Convention (Security for Costs, etc.) is excluded by Reservation, the Central Authority or Authorities and the transmitting authorities designated for the purpose of processing orders for the payment of costs;

(b) as to modes of transmitting and receiving documents

The Netherlands Foreign Ministry must be informed if it is desired to make a declaration

- (i) that a Central Authority will receive applications for legal aid by channels or methods other than those established under the Convention; it has already been suggested that such a declaration will seldom be advantageous (Article 5);
- (ii) a similar declaration, to which similar considerations apply, in respect of applicants not residing in a Contracting State (Article 9);
- (iii) unless Chapter II of the Convention (Security for Costs, etc.) is excluded by Reservation, a declaration that a Central Authority would not receive an application for enforcement of an order for costs directly from the person in whose favour the order was made (see Article 16, last paragraph): this is unlikely to be relevant to Commonwealth jurisdictions;

(c) as to acceptable languages

The Netherlands Foreign Ministry must be informed if it is desired to make a declaration

- (i) that some language or languages other than those referred to in Article 7 (and Article 17 if Chapter II (Security for Costs, etc.) is not excluded by Reservation) is acceptable to its Central Authority (Article 24); or
- (ii) in the case of States with more than one official language, each language being the official language of a part of the State, that a particular language should be used in addressing a Central Authority established for the relevant part of the State (Article 25);

(d) as to territorial extent

The Netherlands Foreign Ministry must be informed if it is desired to make a declaration

- (i) limiting the effect of ratification or accession to only one or more of the units comprising a Federal or composite State (Article 26); or
- (ii) extending the Convention to any territory for the international relations of which the ratifying or acceding State is responsible (Article 33).

Implementation. Provided that reservations are made excluding the operation of Article 13, second paragraph, Chapter II, and Article 20, it is believed that the Convention can be ratified or acceded to by most Commonwealth countries without legislation. In some countries it would be normal practice to pass legislation to give the Convention legal force, even if no change in substantive law were required; this could be done in simple form, with the English text of the Convention in a Schedule. The only other clause in such a Bill might be one extending any existing powers to make Rules of Court, though this will seldom be necessary. It should be noted that if the Reservations just mentioned are regarded as essential, that might need to be reflected in the form of any legislation; and is therefore an additional argument for avoiding legislation if that is not required.

Conclusion. In Chapter One of this paper the case for acceding to this Convention is developed, though this is subject to the desirability of several Reservations. In those Commonwealth countries which have not yet acceded to the Service of Process and Evidence Conventions (which an earlier paper reviewed), there would be clear advantages in considering the three conventions together, although the second would require legislation in most countries.