

CHAPTER ONE

THE HAGUE ENFORCEMENT CONVENTION

Introduction. The Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations was drafted at the Twelfth Session of The Hague Conference on Private International Law in October 1972 and formally signed on 2 October 1973. By 1980 it was in force as between seven member States of the Conference:

Czechoslovakia
France
Norway
Portugal
Sweden
Switzerland
United Kingdom

In addition, Belgium, Finland, the German Federal Republic, Italy, Luxembourg, the Netherlands, and Turkey had signed but not yet ratified the Convention. At the 1980 Session of the Conference it was indicated that Denmark, Japan and Spain were also taking active steps with a view to becoming parties to the Convention.

Scope: maintenance obligations. The Convention applies to a broad category of maintenance obligations, specified in article 1. They are those "arising from a family relationship, parentage, marriage or affinity, including a maintenance obligation towards an infant who is not legitimate, between - (1) a maintenance creditor and a maintenance debtor; or (2) a maintenance debtor and a public body which claims reimbursement of benefits given to a maintenance creditor."

The Convention follows the example of Commonwealth legislation in avoiding a direct definition of maintenance, in terms of the content of the concept. Plainly the basic idea of maintenance is provision by one person of the means whereby some other person may be supported, and it is the relationship between the parties which is central. Although the Convention does not actually say so, the payment of money is envisaged, and indeed article 22 contains a reference to the "transfer of funds payable as maintenance."

Scope: categories of persons. The Convention speaks of "a family relationship" including parentage, marriage or affinity, and specifically includes obligations towards an illegitimate child. It is now widely excepted in Commonwealth jurisdictions that discrimination against those who are born out of wedlock should be removed; in some jurisdictions the status of illegitimacy has been abolished, and in many more the disadvantages once attaching to the status have been overridden. So far as enforcement of maintenance orders is concerned, the original 1920 Commonwealth scheme excluded affiliation orders from its scope, but all the more recent models reverse this policy; affiliation orders providing for periodical payments are included, as are such orders requiring payment of specific sums for medical, nursing or funeral expenses.

Other types of family relationship exist which give rise to maintenance obligations in only a small number of legal systems. So in some European states there may in certain circumstances be an obligation to maintain a collateral or a relative by marriage or a grand-parent. An order to enforce such an obligation would fall within the scope of the Hague Convention in principle; but article 26(2) (a) (b) enables a Contracting State to make a reservation, reserving the right not to enforce maintenance obligations between persons related collaterally or between persons related by affinity. Common law countries will probably wish to make such a reservation; as they will not themselves make such orders they will be in no way disadvantaged by the provision of article 26, final paragraph, that a state making a reservation in respect of certain classes of order cannot insist on orders which it may make itself and which fall in the prescribed classes being enforced in other Contracting States.

It is interesting to note that the United Kingdom made a qualified reservation on this point, something not expressly envisaged in the Convention but which seems to be within its spirit. The United Kingdom reserved the right not to recognise or enforce a decision or settlement in respect of maintenance obligations between persons related collaterally or by affinity "unless that decision or settlement requires the maintenance debtor to make payments to a person who is a child of the family" for the purposes of the law of the relevant part of the United Kingdom. This ensures that the United Kingdom will enforce orders made abroad in cases where its own courts would be prepared to make orders even though the child in question might fall within the specified categories (collaterals and relatives by affinity) and would not be entitled by virtue of being in those categories to maintenance under U.K. law.

The United Kingdom legislation expressly refers to the reservation and applies it only as against other Hague Convention countries. So far as other countries, almost exclusively Commonwealth countries, are concerned, the legislation retains the traditional Commonwealth formula which defines a maintenance order in terms which speak of "a person whom the person liable to make payments under the order is, according to the law applied in the place where the order was made, liable to maintain." This ensures that a country which is within the Commonwealth scheme as it applies in the United Kingdom, and which is prepared to order the payment of maintenance to a wider range of persons than is the United Kingdom, can nonetheless be sure that its orders will be recognised and enforced in the U.K.

Scope: forms of payment. The Convention is not limited to cases in which periodical payments are ordered, although this must be the practice in the great majority of cases in almost all jurisdictions. There is however provision on this point also for a Contracting State to make a reservation excluding cases in which the relevant order does not provide for the periodical payment of maintenance. Here again the United Kingdom legislation applies the reservation only as against Hague Convention countries. So far as the Commonwealth scheme is concerned, it is primarily concerned with periodical payments but, as has already been noted, lump sums ordered in affiliation proceedings in respect of medical or funeral expenses are within the scheme. There was discussion at the Commonwealth Regional Meetings of the possibility of including lump sums ordered in matrimonial proceedings within the maintenance

order enforcement scheme but there was no general agreement on the limits which should be set to any such extension, and it was not included in the Model Bill prepared as a result of those Meetings.

Scope: orders in favour of public bodies. The Convention applies to orders for the reimbursement by the maintenance debtor to a "public body" of benefits given to a maintenance creditor. An illustration familiar in some Commonwealth jurisdiction is the ability of a state or local government agency which finds itself providing for the support of an illegitimate child to obtain on its own application an affiliation order against the putative father. A clear majority of those consulted on this point at the Commonwealth Regional Meetings were content to see the Commonwealth scheme for the enforcement of maintenance orders amended to make express reference to these types of order, although there were some from countries with a less well-developed social security system which did express some unease.

Scope: "decisions" and "settlements" included. The familiar case is that of a maintenance order made by a foreign court, but the Hague Convention is rather wider in its scope. It applies (article 1, first paragraph) to "decisions" - a term which is not defined, though the Convention makes it clear (in article 2, first paragraph) that the actual description of the decision as a judgment, order, arrêt, or whatever is immaterial - rendered by judicial or administrative authorities. It does not matter, therefore, whether the authority concerned is a court, a tribunal, or a government agency. This accords with the position in recent versions of the Commonwealth scheme (e.g. the U.K. Act of 1972, s.21(1), definition of "court"). Other provisions of the Convention, notably article 6 considered below, make it clear that the proceedings giving rise to the decision must comply with the basic rules of natural justice and to that extent must be at least quasi-judicial.

Article 1, final paragraph, indicates that the Convention also applies to certain "settlements". The text of the Convention betrays the awkwardness of this concept in terms of traditional common law categories; the English text actually quotes the French word "transaction" as a gloss. The "settlement" must be made "by or before" a judicial or administrative authority (cf. the French text: devant ces autorités). What is intended is an agreement between the parties settling the dispute between them and in some way approved or noted or registered in or before the court or other authority so that it becomes enforceable in the country in which it is made. Some common law jurisdictions have the practice of making certain types of maintenance agreement, especially those made at the time of a divorce, "rules of court"; this seems to be an example of what is meant by "settlement" for the purposes of the Convention.

Decisions or settlements the sole effect of which is to amend or vary an earlier decision or settlement are included (article 2, second paragraph: see further below); a decision or settlement which covers other matters as well as maintenance is within the Convention so far as it does deal with maintenance (article 3).

Scope: limits of applicability. The Convention is based on reciprocity (see its first preambular clause), and so it only extends to decisions and settlements originating in other Contracting States (article 1, first paragraph). If however a decision (or settlement) is given

in a non-Contracting State but is subsequently varied in a Contracting State, the decision (or settlement) effecting the variation will be entitled to recognition and enforcement under the Convention. Strictly speaking that is all that the Convention requires, but the United Kingdom legislation giving effect to the Convention provides that when an order (from whatever country) is varied by a competent court in a Hague Convention country, the order as varied is enforceable, so giving effect to what was probably the intention of the draftsmen of the Convention.

Conditions for recognition and enforcement. Chapter II of the Convention, which consists of articles 4 to 12 inclusive, sets out rules for the recognition and enforcement of "decisions". Article 21 deals with "settlements" and provides that a settlement enforceable in the State of origin will be recognised and enforced subject to the same conditions as a decision, so far as such conditions are applicable to it. This is in effect a drafting device, enabling the draftsmen of the Convention to avoid frequent repetition of the phrase "decisions or settlements". The same device will be used here, so that in the following discussion "decision" will include "settlement" so far as the context allows.

The basic rule is that a decision rendered in another Contracting State will be recognised if two conditions are satisfied. One is that it is no longer subject to "ordinary forms of review" in the State of origin; the other that the authority rendering the decision is treated as having jurisdiction with the terms of the Convention (article 4, first paragraph).

"Ordinary forms of review". The requirement that the foreign decision should be no longer subject to the ordinary forms of review in the country of origin corresponds to certain aspects of the requirement, familiar in Commonwealth money-judgment practice, that the order be "final and conclusive". However it does not operate, as that formula does, to prevent the enforcement of orders subject to later variation: variability is an important feature of maintenance orders, and is one of the factors which dictates their treatment in separation from ordinary money-judgments.

The notion of "ordinary forms of review" is not one on which there is international uniformity. In some countries a second appeal, to a Cour de Cassation or Supreme Court on a point of law, is regarded as "ordinary", in others as "extra-ordinary". The relevant question under the Convention is how the law of the State of origin views the matter, and the party seeking enforcement must produce the relevant documents establishing that the condition is indeed satisfied in that country (see article 17, item 2).

No express provision on this point is included in the United Kingdom legislation giving effect to the Hague Convention, nor in the Model Bill printed in this paper. It is very unlikely that an order not complying with this requirement would be transmitted for enforcement.

Jurisdiction. Four bases of jurisdiction are established by the Convention. The first is that either the maintenance debtor or the maintenance creditor had his habitual residence in the State of origin at the time when proceedings were instituted. No definition is given of "habitual residence"; this accords with the traditions

of The Hague Conference and with practice in common law countries which have passed legislation to give effect to Hague Conventions. Habitual residence is intended to be a factual matter, not one subject to the sort of technical legal rules which have come to surround the concept of domicile. It will be noted that it is sufficient if one party is habitually resident in the State of origin. So far as the maintenance creditor is concerned, that is the claimant, jurisdiction on this basis was a novelty and controversial from the point of view of some civil law countries; it does of course present no difficulties to one brought up in the common law tradition. Although the Convention is drafted with the needs of unitary states in mind, article 28 contains provisions applicable to federal or other composite states. Article 28(4) provides that in such cases references to habitual residence are to habitual residence in the relevant territorial unit. This point was not reflected in the United Kingdom legislation but is in the Model Bill in this present paper.

The second basis is that both parties were nationals of the State of origin at the time when proceedings were instituted. The Convention does not attempt to resolve the various questions of dual nationality that could arise; but it would seem to be sufficient to show that each party did possess the relevant nationality in accordance with the law of that State, other possible nationalities being irrelevant.

The third basis is that the defendant had submitted to the jurisdiction of the authority, either expressly or by defending on the merits of the case without objecting to the jurisdiction. It is to be noted that this basis is drafted by reference to "the defendant", who may be in some cases the maintenance creditor. An example would be where the debtor is seeking to have recognised an order varying, in his favour, an earlier order.

The fourth basis is set out in article 8. This applies "if the maintenance is due by reason of a divorce or a legal separation, or a declaration that a marriage is void or annulled." It is not essential that maintenance should be ordered in the same proceedings only that it is due by reason of those proceedings. To a common law practitioner, the reference to a "declaration" might suggest some special type of order distinct from a nullity "decree"; but in the context of an international convention no such distinction can have been intended. In these cases the jurisdiction of the authority ordering maintenance is recognised if the divorce or other decree was granted in the same Contracting State and the jurisdiction exercised in the divorce or other proceedings would be recognised in the State addressed, i.e. that in which recognition or enforcement was sought.

An example might make this last basis clearer. The enforcement of a maintenance order is sought in State A. The order was made in State B, in which the husband and wife were both domiciled (as that concept is understood in State A) but in which they were neither habitually resident nor had citizenship. Prima facie, the order is not entitled to recognition under the Convention. If however the maintenance was ordered as a result of a divorce in State B, and if State A applies the common law rule that divorce decrees of the common domicile of the parties are entitled to recognition, the order will be enforceable by virtue of article 8.

The United Kingdom legislation giving effect to The Hague Convention does not follow the text of the Convention very closely at this point. It speaks of this basis of jurisdiction in these

terms: "in the case of an order made by reason of a divorce . . . , the court is recognised by the law of the part of the United Kingdom in which enforcement is sought as having jurisdiction to make the order". Given that jurisdiction to make the maintenance order will in fact follow jurisdiction in the matrimonial proceedings themselves, the result will be that envisaged by the Convention. An alternative draft, closer to the text of the Convention, is to be found in the Model Bill printed in this paper.

Findings as to jurisdiction. Article 9 provides that the authority of the State addressed is bound by the findings of fact on which the authority of the State of origin based its jurisdiction. This provision corresponds to one in The Hague Convention on the Recognition of Divorces and Legal Separations. The point is clear enough, though the drafting is not very clear. What is intended is that a decision in the State of origin that a party was habitually resident, or was a national or (presumably) had submitted, may not be re-opened (except in the case of fraud: article 5,2) in the State in which recognition and enforcement is sought. The phrase "findings of fact" is doubly ambiguous: it is not clear whether the "finding" has to be expressed in the decision itself or whether it can be proved in some other way; and the description of some of these matters as "findings of fact" is presumably not meant in any restrictive sense, as excluding any finding regarded for some purposes as a decision on a point of law.

Provisionally enforceable decisions and provisional measures. In some countries, especially perhaps in those in which delays in litigation are a major problem, there is provision for decisions which are "provisionally enforceable". Such decisions are by definition interim in nature; further proceedings, which may include the ordinary forms of review, are contemplated; but the decision so far reached can be enforced. Article 4, final paragraph, provides for the enforcement of such provisional decisions under the Convention, but only in Contracting States which themselves use the device of provisionally enforceable decisions. This is thought not to be the case in Commonwealth jurisdictions.

It must be emphasised that the "provisional (maintenance) order" which is one of the most distinctive features of the Commonwealth scheme in this area, does not fall within article 4, final paragraph. Such an order is one which has "no effect unless and until confirmed"; it is not enforceable as it stands, and does not therefore meet the conditions set by article 4.

Severance. The decision presented for recognition or enforcement may deal with a number of different matters. Article 10 allows the authority of the State addressed to sever the decision, requiring it to enforce that part of the decision which is entitled to enforcement under the Convention.

Refusal of recognition or enforcement. As in all international conventions on the recognition and enforcement of foreign judgments, the cardinal principle is that there may be no review of the merits of the decision. This is affirmed in article 12, which adds "unless this Convention otherwise provides."

M. Verwilghen, the rapporteur of The Hague Convention says in this connection: "It is most important to remember that the authority addressed qualitate qua can, in no case, modify the contents of the foreign decision. For example, it is not for it to reduce the amount of the maintenance allowance, to change the periodicity of payments or to allow days of grace. Its role is restricted to the granting or refusal of the recognition or enforcement of a maintenance decision, and nothing more."

It is therefore surprising to observe, in the United Kingdom legislation giving effect to the Convention, provision for the variation of orders registered in the U.K. under The Hague Convention. The U.K. Government has taken the view that The Hague Convention is silent on the question of variation, and therefore does not forbid it; i.e. variation in subsequent proceedings is permissible, even though the initial decision must be to recognise and enforce the order in the form in which it is presented. The Model Bill printed in this paper does not adopt the U.K. provisions, partly because of the doubts which remain as to the appropriateness of their inclusion but also because of difficulties over the service of process aspects. This does mean that any variation proceedings would have to be taken in the country of origin, or in some third state having jurisdiction.

The qualification in article 12 ("unless this Convention otherwise provides") is not, it is thought, a real exception to the prohibition of a review of the merits. All that appears to be intended is that the receiving court may check that the Convention is applicable, and may rely upon articles 5 and 6 which set out certain grounds for refusing recognition or enforcement.

Grounds for refusing recognition or enforcement. Articles 5 and 6 set out five grounds upon which recognition or enforcement may be refused.

The first is that recognition or enforcement would be "manifestly incompatible with the public policy (ordre public) of the State addressed". The English text contains the reference to the French expression ordre public; this, and the word "manifestly" points to a restricted use of this ground.

The second is that the decision was obtained by fraud "in connection with a matter of procedure". This does not involve the merits of the case, so that it would not be possible to re-open in the court of the State addressed the question of the means of either party, even if it were argued that the court in the State of origin had been misinformed. But if the pleadings or other documents had been forged, or if a false certificate of service, for example, had been relied upon, then "fraud unravels all".

The third ground for refusing recognition or enforcement is that proceedings between the same parties and having the same purpose are pending before an authority of the State addressed and those proceedings were the first to be instituted. This is the case of lis alibi pendens, although M. Verwilghen has suggested in his Report that technically it is not quite that case for there is no requirement as in the classic case, that the same "cause of action" should be relied upon in each litigation. Nothing seems to turn on this: if maintenance claims are pending in two States, the courts in which the first claim was made may (not must) refuse to recognise and enforce the order made in the other State.

The fourth ground deals with a related problem. If there are in existence two incompatible decisions, both entitled to enforcement, the State addressed must be able to choose between them. This applies to decisions which are between the same parties and having the same purpose (in the sense just discussed), and in cases where either one decision was made in the State addressed itself or where both decisions were made elsewhere, each being entitled to recognition and enforcement in the State addressed. The latter case is not limited to cases in which both decisions are from Contracting States; and the entitlement of a decision to recognition and enforcement is a matter for the law of the State addressed whether based on the Convention or not.

The fifth case deals with default judgments. Article 6 provides that a decision rendered by default is to be recognised and enforced only if two conditions are both satisfied. One is that notice of the proceedings (including notice of the substance of the claim) has been served in accordance with the law of the State of origin. The other is that, having regard to the circumstances, the defendant had sufficient time to enable him to defend the proceedings. It will be noted that article 6 is limited to default decisions: a defendant who does actually appear and take part in the proceedings in the State of origin cannot resist recognition and enforcement by alleging that he had insufficient time to prepare a defence - to allow that would be to permit a review of the merits.

The time factor. Articles 11 and 24 each contain provisions relating to the operation of the Convention in point of time. In principle the Convention applies to all decisions rendered in Contracting States irrespective of their date (article 24, first paragraph). Similarly, in the case of a decision providing for the periodical payment of maintenance, enforcement relates to arrears, that is in respect of payments already due, as well as to future payments (article 11). However, article 24, second paragraph provides that where a decision has been rendered before the date upon which the Convention entered into force as between the State of origin and the State addressed, it is to be enforced in the latter state only for payments falling due after that date.

Procedure for recognition or enforcement. Chapter III of the Convention, which consists of articles 13 to 17 inclusive, deals with procedure. The general rule is that procedure for recognition or enforcement is governed by the lex fori, that is the law of the State addressed (article 13). However this is subject to the later provisions of the Chapter which establish some points of principle and also provide a minimal outline of the procedure to be followed.

Procedural principles. Three matters are dealt with in this Convention which reflect principles developed and protected by other Hague Conventions. They concern legal aid, security for costs, and legalisation.

Article 15 provides that where the maintenance creditor received legal aid in the State of origin, and this includes "complete or partial legal aid or exemption from costs or expenses", he shall be entitled in the State addressed "to benefit from the most favourable legal aid or the most extensive exemption from costs or expenses provided for by the law of the State addressed." This means that in the latter State the maintenance creditor does not have to comply

with local rules as to his means in order to qualify for a particular level of assistance; if he has the status of a legally-aided person in the State of origin the maximum assistance provided to any litigant in the appropriate jurisdiction of the State addressed must be furnished to him.

Articles 16 and 17, final paragraph, forbid the requirement of any form of security for costs in relation to enforcement proceedings and the requirement of legalisation or other like formality in relation to foreign documents. Both these rules follow well-established principles.

Partial recognition or enforcement. Article 14 does contain a provision which may override the usual rules of the lex fori. It provides that partial recognition or enforcement of a decision can always be applied for. This is not the same thing as the severance of the enforceable from the un-enforceable (noted above). To use the language of the Explanatory Report prepared when the Convention was in a draft form, this provision enables the creditor to "tone down" the application, perhaps to minimise the risk of the application of the public policy provision.

Documentation. Article 17 lists the documents which the party seeking recognition or enforcement must furnish. The list is largely self-explanatory, but attention is drawn to item 5, a translation (presumably into the language of the State addressed) of the required documents; however, the authority of the State addressed may dispense with the need for such a translation.

If the documentation is incomplete or insufficient for the purpose of enabling a check to be made that the decision does come within the scope of the Convention, article 17, second paragraph, provides that the authority must allow a specified period of time for the production of the necessary documents. The purpose of this provision is to prevent a creditor, with limited resources, being wholly non-suited on a technical ground. In most common law jurisdictions, the provision is almost certainly unnecessary, as the application would be adjourned rather than dismissed, or if dismissed would be readily renewable.

Additional provisions relating to public bodies. These provisions are contained in articles 18 to 20 which form Chapter IV of the Convention. Two different situations are covered. One is that in which the original decision (in the State of origin) was in favour of a public body; the other is that in which a public body seeks to obtain recognition or, more likely in practice, enforcement for its own benefit of a decision originally given in favour of an individual maintenance creditor.

In the first case, a public body - a term not given any formal definition - claiming reimbursement of benefits provided for a maintenance creditor may obtain recognition and enforcement of a decision awarding such reimbursement if both reimbursement can be obtained by the public body under the law to which it is subject and the existence of a maintenance obligation between the creditor and debtor is provided for by the internal law applicable under the rules of private international law of the State addressed. This requires some further commentary.

By definition, the public body's claim for reimbursement will have been successful in the State of origin; in most cases the court or other authority in that State will have applied its own law to test the claim, and that law will be the law to which the body is subject. However, article 18 by referring to that latter law enables the State addressed to review the matter independently, to insist on being satisfied that whatever law it regards, under its own rules of private international law, as being the law to which the body is subject, does in fact enable the body to make its claim. Similarly, in this context the State addressed is enabled to apply its own rules of private international law to determine the existence of the primary obligation between maintenance debtor and maintenance creditor, to which obligation that asserted by the public body is in a sense ancillary.

Article 19 deals with the case where the parties to the original decision were the individual maintenance creditor and maintenance debtor themselves. In accordance with the basic principles of the Convention that decision cannot be re-examined on the merits. But if a public body now seeks to have that decision recognised or enforced the question of its entitlement so to act can be examined. Article 19 provides that the body will succeed only if it is entitled to seek recognition or claim enforcement in place of the creditor "ipso jure, under the law to which it is subject" - a law identified in accordance with the rules of private international law of the State addressed.

It is thought that in the great majority of cases these, apparently complex, provisions will give rise to no difficulty at all. It is only in rare cases, where perhaps a public body in one State claims the reimbursement of payments made to a person who has since changed his residence or nationality, that close attention will have to be paid to the issues raised in these articles.

Actes authentiques. Article 25 enables Contracting States to make declarations extending the scope of the Convention, so far as dealings with other Contracting States which have made the same declaration are concerned, to "official deeds"; these deeds are also referred to in the English text by reference to the French term "actes authentiques". In certain civil law systems certain notarial acts or documents executed by court bailiffs can be directly enforceable; such countries may wish to make use of article 25, but it will be of no interest to common law jurisdictions.

Administration. A practical difficulty often experienced by maintenance creditors is that of delay caused by exchange control and similar procedures. Article 22 (based on a similar provision in the United Nations Convention) requires Contracting States which have such restrictions on the transfer of funds to "accord the highest priority to" the transfer of funds payable as maintenance or in respect of costs or expenses of claims made under the Convention.

Relation to other Conventions. The Convention replaces an earlier Hague Convention of 15 April 1958, which was limited to maintenance obligations in respect of children (article 29). Of much greater interest to Commonwealth member countries is article 23 which declares that the Convention does not restrict the application of other rules of law, derived from an international instrument or not, as to the recognition and enforcement of maintenance orders. Accession is, therefore, without prejudice to the existing Commonwealth scheme.

APPENDIX: TEXT OF THE CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF DECISIONS RELATING TO MAINTENANCE OBLIGATIONS, 1973

The States signatory to this Convention,
Desiring to establish common provisions to govern the reciprocal recognition and enforcement of decisions relating to maintenance obligations in respect of adults,
Desiring to coordinate these provisions and those of the Convention of the 15th of April 1958 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations in Respect of Children,
Have resolved to conclude a Convention for this purpose and have agreed upon the following provisions:

CHAPTER I — SCOPE OF THE CONVENTION

Article 1

This Convention shall apply to a decision rendered by a judicial or administrative authority in a Contracting State in respect of a maintenance obligation arising from a family relationship, parentage, marriage or affinity, including a maintenance obligation towards an infant who is not legitimate, between —

- (1) a maintenance creditor and a maintenance debtor; or
- (2) a maintenance debtor and a public body which claims reimbursement of benefits given to a maintenance creditor.

It shall also apply to a settlement made by or before such an authority ('transaction') in respect of the said obligations and between the same parties (hereafter referred to as a 'settlement').

Article 2

This Convention shall apply to a decision or settlement however described.

It shall also apply to a decision or settlement modifying a previous decision or settlement, even in the case where this originates from a non-Contracting State.

It shall apply irrespective of the international or internal character of the maintenance claim and whatever may be the nationality or habitual residence of the parties.

Article 3

If a decision or settlement does not relate solely to a maintenance obligation, the effect of the Convention is limited to the parts of the decision or settlement which concern maintenance obligations.

CHAPTER II — CONDITIONS FOR RECOGNITION AND ENFORCEMENT OF DECISIONS

Article 4

A decision rendered in a Contracting State shall be recognised or enforced in another Contracting State —

- (1) if it was rendered by an authority considered to have jurisdiction under Article 7 or 8; and
- (2) if it is no longer subject to ordinary forms of review in the State of origin.

Provisionally enforceable decisions and provisional measures shall, although subject to ordinary forms of review, be recognised or enforced in the State addressed if similar decisions may be rendered and enforced in that State.

Article 5

Recognition or enforcement of a decision may, however, be refused –

- (1) if recognition or enforcement of the decision is manifestly incompatible with the public policy ('ordre public') of the State addressed; or
- (2) if the decision was obtained by fraud in connection with a matter of procedure; or
- (3) if proceedings between the same parties and having the same purpose are pending before an authority of the State addressed and those proceedings were the first to be instituted; or
- (4) if the decision is incompatible with a decision rendered between the same parties and having the same purpose, either in the State addressed or in another State, provided that this latter decision fulfils the conditions necessary for its recognition and enforcement in the State addressed.

Article 6

Without prejudice to the provisions of Article 5, a decision rendered by default shall be recognised or enforced only if notice of the institution of the proceedings, including notice of the substance of the claim, has been served on the defaulting party in accordance with the law of the State of origin and if, having regard to the circumstances, that party has had sufficient time to enable him to defend the proceedings.

Article 7

An authority in the State of origin shall be considered to have jurisdiction for the purposes of this Convention –

- (1) if either the maintenance debtor or the maintenance creditor had his habitual residence in the State of origin at the time when the proceedings were instituted; or
- (2) if the maintenance debtor and the maintenance creditor were nationals of the State of origin at the time when the proceedings were instituted; or
- (3) if the defendant had submitted to the jurisdiction of the authority, either expressly or by defending on the merits of the case without objecting to the jurisdiction.

Article 8

Without prejudice to the provisions of Article 7, the authority of a Contracting State which has given judgment on a maintenance claim shall be considered to have jurisdiction for the purposes of this Convention if the maintenance is due by reason of a divorce or a legal separation, or a declaration that a marriage is void or annulled, obtained from an authority of that State recognised as having jurisdiction in that matter, according to the law of the State addressed.

Article 9

The authority of the State addressed shall be bound by the findings of fact on which the authority of the State of origin based its jurisdiction.

Article 10

If a decision deals with several issues in an application for maintenance and if recognition or enforcement cannot be granted for the whole of the decision, the authority of the State addressed shall apply this Convention to that part of the decision which can be recognised or enforced.

Article 11

If a decision provided for the periodical payment of maintenance, enforcement shall be granted in respect of payments already due and in respect of future payments.

Article 12

There shall be no review by the authority of the State addressed of the merits of a decision, unless this Convention otherwise provides.

CHAPTER III — PROCEDURE FOR RECOGNITION AND ENFORCEMENT OF DECISIONS

Article 13

The procedure for the recognition or enforcement of a decision shall be governed by the law of the State addressed, unless this Convention otherwise provides.

Article 14

Partial recognition or enforcement of a decision can always be applied for.

Article 15

A maintenance creditor, who, in the State of origin, has benefited from complete or partial legal aid or exemption from costs or expenses, shall be entitled, in any proceedings for recognition or enforcement, to benefit from the most favourable legal aid or the most extensive exemption from costs or expenses provided for by the law of the State addressed.

Article 16

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the proceedings to which the Convention refers.

Article 17

The party seeking recognition or applying for enforcement of a decision shall furnish –

- (1) a complete and true copy of the decision;
- (2) any document necessary to prove that the decision is no longer subject to the ordinary forms of review in the State of origin and, where necessary, that it is enforceable;
- (3) if the decision was rendered by default, the original or a certified true copy of any document required to prove that the notice of the institution of proceedings, including notice of the substance of claim, has been properly served on the defaulting party according to the law of the State of origin;

- (4) where appropriate, any document necessary to prove that he obtained legal aid or exemption from costs or expenses in the State of origin;
- (5) a translation, certified as true, of the above-mentioned documents unless the authority of the State addressed dispenses with such translation.

If there is a failure to produce the documents mentioned above or if the contents of the decision do not permit the authority of the State addressed to verify whether the conditions of this Convention have been fulfilled, the authority shall allow a specified period of time for the production of the necessary documents.

No legalisation or other like formality may be required.

CHAPTER IV — ADDITIONAL PROVISIONS RELATING TO PUBLIC BODIES

Article 18

A decision rendered against a maintenance debtor on the application of a public body which claims reimbursement of benefits provided for a maintenance creditor shall be recognised and enforced in accordance with this Convention —

- (1) if reimbursement can be obtained by the public body under the law to which it is subject; and
- (2) if the existence of a maintenance obligation between the creditor and the debtor is provided for by the internal law applicable under the rules of private international law of the State addressed.

Article 19

A public body may seek recognition or claim enforcement of a decision rendered between a maintenance creditor and maintenance debtor to the extent of the benefits provided for the creditor if it is entitled *ipso jure*, under the law to which it is subject, to seek recognition or claim enforcement of the decision in place of the creditor.

Article 20

Without prejudice to the provisions of Article 17, the public body seeking recognition or claiming enforcement of a decision shall furnish any document necessary to prove that it fulfils the conditions of sub-paragraph 1, of Article 18 or Article 19, and that benefits have been provided for the maintenance creditor.

CHAPTER V — SETTLEMENTS

Article 21

A settlement which is enforceable in the State of origin shall be recognised and enforced subject to the same conditions as a decision so far as such conditions are applicable to it.

CHAPTER VI — MISCELLANEOUS PROVISIONS

Article 22

A Contracting State, under whose law the transfer of funds is restricted, shall accord the highest priority to the transfer of funds payable as maintenance or to cover costs and expenses in respect of any claim under this Convention.

Article 23

This Convention shall not restrict the application of an international instrument in force between the State of origin and the State addressed or other law of the State addressed for the purposes of obtaining recognition or enforcement of a decision or settlement.

Article 24

This Convention shall apply irrespective of the date on which a decision was rendered.

Where a decision has been rendered prior to the entry into force of the Convention between the State of origin and the State addressed, it shall be enforced in the latter State only for payments falling due after such entry into force.

Article 25

Any Contracting State may, at any time, declare that the provisions of this Convention will be extended, in relation to other States making a declaration under this Article, to an official deed ('acte authentique') drawn up by or before an authority or public official and directly enforceable in the State of origin insofar as these provisions can be applied to such deeds.

Article 26

Any Contracting State may, in accordance with Article 34, reserve the right not to recognise or enforce –

- (1) a decision or settlement insofar as it relates to a period of time after a maintenance creditor attains the age of twenty-one years or marries, except when the creditor is or was the spouse of the maintenance debtor;
- (2) a decision or settlement in respect of maintenance obligations
 - a) between persons related collaterally;
 - b) between persons related by affinity;
- (3) a decision or settlement unless it provides for the periodical payment of maintenance.

A Contracting State which has made a reservation shall not be entitled to claim the application of this Convention to such decisions or settlements as are excluded by its reservation.

Article 27

If a Contracting State has, in matters of maintenance obligations, two or more legal systems applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system which its law designates as applicable to a particular category of persons.

Article 28

If a Contracting State has two or more territorial units in which different systems of law apply in relation to the recognition and enforcement of maintenance decisions –

- (1) any reference to the law or procedure or authority of the State of origin shall be construed as referring to the law or procedure or authority of the territorial unit in which the decision was rendered;

- (2) any reference to the law or procedure or authority of the State addressed shall be construed as referring to the law or procedure or authority of the territorial unit in which recognition or enforcement is sought;
- (3) any reference made in the application of sub-paragraph 1 or 2 to the law or procedure of the State of origin or to the law or procedure of the State addressed shall be construed as including any relevant legal rules and principles of the Contracting State which apply to the territorial units comprising it;
- (4) any reference to the habitual residence of the maintenance creditor or the maintenance debtor in the State of origin shall be construed as referring to his habitual residence in the territorial unit in which the decision was rendered.

Any Contracting State may, at any time, declare that it will not apply any one or more of the foregoing rules to one or more of the provisions of this Convention.

Article 29

This Convention shall replace, as regards the States who are Parties to it, the Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations in Respect of Children, concluded at The Hague on the 15th of April 1958.

CHAPTER VII — FINAL CLAUSES

Article 30

This Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Twelfth Session.

It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Article 31

Any State which has become a Member of the Hague Conference on Private International Law after the date of its Twelfth Session, or which is a Member of the United Nations or of a specialised agency of that Organisation, or a Party to the Statute of the International Court of Justice may accede to this Convention after it has entered into force in accordance with the first paragraph of Article 35.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the twelve months after the receipt of the notification referred to in sub-paragraph 3 of Article 37. Such an objection may also be raised by Member States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the Ministry of Foreign Affairs of the Netherlands.

Article 32

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect on the

date of entry into force of the Convention for the State concerned.

At any time thereafter, such extensions shall be notified to the Ministry of Foreign Affairs of the Netherlands.

The extension shall have effect as regards the relations between the Contracting States which have not raised an objection to the extension in the twelve months after the receipt of the notification referred to in sub-paragraph 4 of Article 37 and the territory or territories for the international relations of which the State in question is responsible and in respect of which the notification was made.

Such an objection may also be raised by Member States when they ratify, accept or approve the Convention after an extension.

Any such objection shall be notified to the Ministry of Foreign Affairs of the Netherlands.

Article 33

If a Contracting State has two or more territorial units in which different systems of law apply in relation to the recognition and enforcement of maintenance decisions, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention shall extend to all its territorial units or only to one or more of them, and may modify its declaration by submitting another declaration at any time thereafter.

These declarations shall be notified to the Ministry of Foreign Affairs of the Netherlands, and shall state expressly the territorial unit to which the Convention applies.

Other Contracting States may decline to recognise a maintenance decision if, at the date on which recognition is sought, the Convention is not applicable to the territorial unit in which the decision was rendered.

Article 34

Any State may, not later than the moment of its ratification, acceptance, approval or accession, make one or more of the reservations referred to in Article 26. No other reservation shall be permitted.

Any State may also, when notifying an extension of the Convention in accordance with Article 32, make one or more of the said reservations applicable to all or some of the territories mentioned in the extension.

Any Contracting State may at any time withdraw a reservation it has made. Such a withdrawal shall be notified to the Ministry of Foreign Affairs of the Netherlands.

Such a reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

Article 35

This Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 30.

Thereafter the Convention shall enter into force
– for each State ratifying, accepting or approving it subsequently, on the first day of the third calendar month after the deposit of its

instrument of ratification, acceptance or approval;

- for each acceding State, on the first day of the third calendar month after the expiry of the period referred to in Article 31;
- for a territory to which the Convention has been extended in conformity with Article 32, on the first day of the third calendar month after the expiry of the period referred to in that Article.

Article 36

This Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 35, even for States which have ratified, accepted, approved or acceded to it subsequently.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Netherlands, at least six months before the expiry of the five year period. It may be limited to certain of the territories to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 37

The Ministry of Foreign Affairs of the Netherlands shall notify the States Members of the Conference, and the States which have acceded in accordance with Article 31, of the following -

- (1) the signatures and ratifications, acceptances and approvals referred to in Article 30;
- (2) the date on which this Convention enters into force in accordance with Article 35;
- (3) the accessions referred to in Article 31 and the dates on which they take effect;
- (4) the extensions referred to in Article 32 and the dates on which they take effect;
- (5) the objections raised to accessions and extensions referred to in Articles 31 and 32;
- (6) the declarations referred to in Articles 25 and 32;
- (7) the denunciations referred to in Article 36;
- (8) the reservations referred to in Articles 26 and 34 and the withdrawals referred to in Article 34.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at The Hague, on the 2nd day of October, 1973, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Netherlands, and of which a certified copy shall be sent, through the diplomatic channel to each of the States Members of the Hague Conference on Private International Law at the date of its Twelfth Session.