

## CHAPTER FOUR

### ACCESSION TO THE CONVENTIONS

#### A. The Hague Enforcement Convention

This Convention is now open for accession by any State which is not a Member of the Hague Conference, but which is

- (a) a member of the United Nations; or
- (b) a member of a specialised agency of the United Nations; or
- (c) a Party to the Statute of the International Court of Justice.

States which were Members of the Hague Conference at the time of the Twelfth Session may sign the Convention; those which became Members at a later date must accede.

Instruments of accession or ratification are deposited with the Ministry of Foreign Affairs of the Netherlands. When a State deposits an instrument of accession, Contracting States have twelve months in which to raise objection to the accession; the Convention does not affect the relations between the acceding State and any Contracting State objecting within that time limit. The Convention enters into force in respect of the acceding State on the first day of the third calendar month thereafter.

Various decisions have to be taken before accession, and are the subject of possible declarations or reservations.

(a) Under article 25, it is possible to make a declaration extending the Convention to cover actes authentiques. Common law jurisdictions are unlikely to wish to take this course.

(b) Under article 26, a State may 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 21 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.

The effect of the first possible Reservation is unclear; even the official Rapporteur describes it as "mysterious". Commonwealth jurisdictions may well wish to take advantage of the second and third Reservations, the latter of which was inserted at the express wish of the United Kingdom. The actual text of the U.K. Reservation was as follows. It will be seen that it is in a qualified form:

"The United Kingdom ...

a) reserves the right provided for in article 26(2) not to recognise or enforce a decision or settlement in respect of maintenance obligations between persons related collaterally

and between persons related 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 England and Wales and Northern Ireland) or who is a child of the maintenance creditor who has been accepted as a child of the family by the maintenance debtor (for the purposes of the law of Scotland) b) reserves the right provided for in article 26(3) not to recognise or enforce a decision or settlement unless it provides for the periodical payment of maintenance."

(c) Under article 28 which allows a State to declare that it will not apply certain rules of interpretation contained in that article. The rules concern the interpretation of certain references to a State when that State contains two or more territorial units in which different systems of law apply in relation to the recognition and enforcement of maintenance decisions. As the rules appear essential to the clear working of the Convention, it is suggested that no declaration be made.

(d) Under article 32, a State may extend the Convention to territories for the international relations of which it is responsible.

(e) Under article 33, a State with two or more territorial units in which different systems of law apply in relation to the recognition and enforcement of maintenance decisions may, in effect, accede in respect of some or all the units, and may modify its declaration at a later date (e.g. to add units which could not be included in the initial list, perhaps because of a failure of one unit to pass draft uniform legislation).

The Model Bill in Chapter 5 contains the necessary provisions to give effect to the Convention in the law of a country contemplating accession.

Although this Convention does not use the device of designated Central Authorities, it is helpful if the Permanent Bureau of the Hague Conference is notified of the appropriate office in the acceding State which will receive requests for enforcement and recognition so that formalities can be kept as simple as possible.

## B. The United Nations Convention

This Convention is now open for accession by

- (a) any Member of the United Nations;
- (b) any non-member State which is a Party to the Statute of the International Court of Justice or a member of a specialized agency of the United Nations; or
- (c) any other non-member State which has been invited by the Economic and Social Council to become a Party to the Convention.

Instruments of accession are to be deposited with the U.N. Secretary-General, and the Convention enters into force for an acceding State on the thirtieth day following deposit of the instrument of accession.

Although there are no provisions in the Convention specifying possible Reservations, article 17 contains a general Reservations clause enabling an acceding State to submit a Reservation to any of the articles of the Convention. In such a case, however, the Convention will not bind other Contracting States which object to the Reservation within ninety days of being notified of it by the Secretary-General. There are in fact no specific matters which appear to call for a Reservation.

At the time of depositing an instrument of accession, a State must

(a) designate one or more judicial or administrative authorities (e.g. the Ministry for Foreign Affairs or the Registrar of the Supreme Court) as Transmitting Agencies;

(b) designate a public or private body as a Receiving Agency;

(c) inform the Secretary-General as to the evidence normally required under its law for proof of maintenance claims, of the manner in which such evidence should be submitted, and of other requirements to be complied with under that law.

Accession extends the Convention to all territories for the international relations of which a Contracting State is responsible, unless notice is given to the U.N. Secretary-General at the time of accession that the Convention is not to apply to any one or more such territories. Amending declarations, extending the application of the Convention, can be made subsequently.

The Model Bill in Chapter 5 contains the necessary provisions to give effect to this Convention in the laws of a country contemplating accession.