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HAGUE CONVENTION ON INTERNATIONAL RECOVERY OF CHILD SUPPORT AND FAMILY MAINTENANCE

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

HAGUE CONVENTION ON THE INTERNATIONAL RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE, ADOPTED AT THE HAGUE ON NOVEMBER 23, 2007, AND SIGNED BY THE UNITED STATES ON THAT SAME DATE

SEPTEMBER 8, 2008.—Treaty was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *September 8, 2008.*

To the Senate of the United States:

I transmit herewith the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, adopted at The Hague on November 23, 2007, and signed by the United States on that same date, with a view to receiving the advice and consent of the Senate to ratification, subject to the reservations and declaration set forth in the report of the Secretary of State. The report of the Secretary of State, which includes an overview of the Convention, is enclosed for the information of the Senate.

The United States supported the development of the Convention as a means of promoting the establishment and enforcement of child support obligations in cases where the custodial parent and child are in one country and the non-custodial parent is in another. The Convention provides for a comprehensive system of cooperation between the child support authorities of contracting states, establishes procedures for the recognition and enforcement of foreign child support decisions, and requires effective measures for the enforcement of maintenance decisions. It is estimated that there are over 15 million child support cases in the United States and that an increasing number of these cases will involve parties who live in different nations. United States courts already enforce foreign child support orders, while many countries do not do so in the absence of a treaty obligation. Ratification of the Convention will thus mean that more U.S. children will receive the financial support they need from both their parents.

The Department of State and the Department of Health and Human Services, which leads the Federal child support program, support the early ratification of this Convention. The American Bar Association and the National Child Support Enforcement Association have also expressed support for the Convention. Although some new implementing legislation will be required, the proposed Convention is largely consistent with current U.S. Federal and State law. Cases under the Convention will be handled through our existing comprehensive child support system, which involves both Federal and State law. The Departments of State and Health and Human Services have been working on preparation of the necessary amendments to Federal law to ensure compliance with the Convention, and that legislation will soon be ready for submission to the Congress for its consideration. The National Conference of Commissioners on Uniform State Laws has worked closely with the Departments of State and Health and Human Services to develop

the necessary amendments to uniform State child support legislation.

The Convention requires only two contracting states for entry into force. No state has yet ratified the Convention. Early U.S. ratification would therefore likely hasten the Convention's entry into force. This would be in the interests of U.S. families, as it would enable them to receive child support owed by debtors abroad more quickly and reliably. I therefore recommend that the Senate give prompt and favorable consideration to the Convention and give its advice and consent to ratification, subject to the reservations and declaration described in the accompanying report of the Secretary of State, at the earliest possible date.

GEORGE W. BUSH.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, June 27, 2008.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmittal to the Senate for advice and consent to ratification, the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, subject to the reservations and declaration set forth in the enclosed overview of the Convention. The Convention was adopted at The Hague on November 23, 2007, and signed by the United States on that same date.

The United States supported the development of the Convention to promote the establishment and enforcement of child support obligations in international cases. The Department of State and the Department of Health and Human Services, which leads the federal child support program, support the early ratification of this Convention by the United States. All relevant interests have expressed support for the Convention. The Convention will require implementing legislation, which is being drafted and will soon be ready for submission to the Congress for its consideration.

I recommend, therefore, that you transmit the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance to the Senate for advice and consent to ratification with the reservations and declaration described in the enclosed overview.

Respectfully submitted.

CONDOLEEZZA RICE.

Enclosures: As stated.

OVERVIEW OF THE HAGUE CONVENTION ON THE INTERNATIONAL RECOVERY OF CHILD SUPPORT AND FAMILY MAINTENANCE

This Convention contains numerous groundbreaking provisions that will, for the first time on a worldwide scale, establish uniform, simple, fast, and inexpensive procedures for the processing of international child support cases. While similar procedures already are the norm in the United States, establishing them as the internationally agreed global standard represents a considerable advance on prior child support conventions, which leave many of these procedures to be regulated largely by each country's national law. The United States is not a party to any of these prior conventions.

A major benefit of ratification for the United States will be reciprocity: U. S. courts and child support agencies already recognize and enforce foreign child support obligations in many cases whether or not the United States has a child support agreement with the foreign country. Many foreign countries will not process foreign child support requests in the absence of a treaty obligation. Thus, ratification of the Convention will mean that more children residing in the United States will receive the financial support they need from their parents, whether the parents reside in the United States or in a foreign country that is a party to the Convention.

The Convention will not affect intrastate or interstate child support cases in the United States. It will only apply to cases where the custodial parent and child live in one country and the non-custodial parent in another. International child support cases within the scope of the Convention are already processed under existing federal and state law and practice. The Convention will be implemented through a combination of existing law and practice and certain necessary conforming amendments to federal legislation and relevant uniform state law (the Uniform Interstate Family Support Act (UIFSA)). It is expected that the United States would not deposit its instrument of ratification until such changes to federal law have been enacted and the UIFSA amendments have been adopted by all states. The Convention is considered to be non-self-executing. It will not impose additional financial or administrative burdens.

ARTICLE-BY-ARTICLE ANALYSIS [1]

Chapter I (Articles 1–3) of the Convention addresses the object and scope of the Convention and key definitions. Article 1 identifies the main object of the Convention, which is to ensure the effective international recovery of child support and other forms of family maintenance. The Article then lists four main measures by which the Convention is to achieve the Convention's objective: (a) establishing a comprehensive system of cooperation between Central Authorities of Contracting States;[2] (b) making available applications for the establishment of maintenance decisions; (c) providing for the recognition and enforcement of maintenance decisions; and (d) requiring effective measures for the prompt enforcement of maintenance decisions.

Article 2 defines the scope of the Convention. The Convention applies to maintenance obligations arising from a parent-child relationship towards a child under the age of 21. This does not mean that a Contracting State must change its internal law if the duration of support under that law is below age 21; nor does it require a State to establish a support obligation for a child who is under 21 years of age. Article 2(1) merely requires a State to recognize and enforce a foreign child support decision in favor of a child under the age of 21. Pursuant to Article 2(2), a Contracting State may reserve the right to limit the application of the Convention

[1] A Protocol on the Law Applicable to Maintenance Obligations was adopted at The Hague on November 23, 2007, the same day as the Convention. There is no support within the United States for the Protocol and there is thus no plan for the United States to become a party to the Protocol.

[2] In this Analysis, "Contracting State" or "State" refers to a country. Lower case "state" refers to an individual United States state.

with regard to child support to persons who have not reached the age of 18. It is not recommended that the United States make such a reservation because in many U.S. states a support obligation continues until age 21, and all U.S. states (even those in which a support obligation ends at age 18) will recognize and enforce a decision from another state or State for a child up to the age of 21. The Convention also applies to the recognition and enforcement of spousal support when the application is made in conjunction with a claim for child support. This is consistent with the scope of the U.S. Title IV–D program,[3] which requires state child support agencies (which will perform most of the Central Authority responsibilities in cases under the Convention, and which are often referred to as the "IV–D agencies") also to provide services to applicants seeking spousal support if there is also a request for child support from the same applicant involving the same debtor. In addition, with the exceptions of Chapters II and III (which require certain services by Central Authorities), the Convention applies to the establishment and modification of spousal support even in cases where there is not a related request for child support. This is also consistent with Title IV–D, as the Title IV–D agencies are not required to provide services for applicants requesting spousal support in cases where there is not also a request for child support by the same applicant against the same debtor. Thus, a foreign applicant seeking establishment or modification of spousal support (with no related request for child support) in the United States will need to do so through a direct request to the competent authority,[4] rather than by an application to the IV–D agency.

Under Article 2(3), a Contracting State may declare that it will extend the entire Convention, or any part of it, to any maintenance obligation arising from other types of family relationships, including obligations in respect to vulnerable persons. Any such declaration gives rise to obligations between two Contracting States only to the extent that each State's declarations cover the same maintenance obligations and parts of the Convention. It is not recommended that the United States make a declaration under this provision, given that there is no uniform federal or state program with regard to support obligations for other types of family relationships. In the absence of a declaration, state courts will continue to have discretion to accept such applications if permitted under the law of the individual state.

Finally, Article 2(4) makes clear that the Convention applies to children regardless of the marital status of their parents.

Article 3 contains definitions. A particularly important definition is the one of "legal assistance" (Article 3(c)). This term is defined to mean the assistance necessary to enable applicants to know and assert their rights and to ensure that applications are fully and effectively processed in the requested State. It is broader than the

[3] The existing federal child support program, included in Title IV–D of the Social Security Act (42 U.S.C. § 651 *et seq.*), establishes a comprehensive set of requirements with which states must comply as a condition for receiving federal funds for a state's child support program. This program is administered by the Office of Child Support Enforcement in the Department of Health and Human Services (HHS/OCSE). All 50 states, plus the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam, participate in the Title IV–D program and comply with its requirements.

[4] In this Analysis, "competent authority" refers to the judicial or administrative body that makes the relevant decision.

concept of legal representation in that it also includes legal advice, assistance in bringing a case before an authority, and exemption from costs of proceedings. The definition of legal assistance is critically important in terms of understanding Articles 14–17, which require free legal assistance in most cases covered by the Convention.

Chapter II (Articles 4–8) contains the provisions outlining the administrative cooperation requirements of the Convention. Article 4 addresses the designation of Central Authorities. Each Contracting State must designate a Central Authority to discharge the duties imposed on it by the Convention. Federal States and States with more than one system of law, or having autonomous territorial units, may appoint more than one Central Authority, but must designate one as the Central Authority to which communications may be addressed for onward transmission to the other Central Authorities. In order to ensure more effective implementation of the Convention, Contracting States are required to inform the Hague Conference Permanent Bureau of their Central Authority or Authorities, their contact details, and, where appropriate, the extent of their functions. The United States intends to designate the Secretary of the Department of Health and Human Services as the Central Authority under this Convention, although most of the Central Authority responsibilities for individual cases will be delegated to the state child support agencies.

Article 5 lists the general, non-delegable functions of Central Authorities (*i.e.*, those functions which HHS, as the U.S. Central Authority, may not delegate to individual U.S. state child support agencies), which are to (1) cooperate with each other and promote cooperation among their State competent authorities to achieve the Convention's purposes; and (2) seek as far as possible solutions to difficulties arising in the application of the Convention.

Article 6 lists specific functions that Central Authorities must perform with respect to applications under Chapter III of the Convention. These functions are essential to ensure that children receive the support contemplated under the Convention. In particular, under Article 6(1), Central Authorities are responsible for transmitting and receiving applications under Chapter III (applications made through Central Authorities), and initiating or facilitating the institution of proceedings relative to such applications. With regard to such applications, Article 6(2) provides that Central Authorities must also take all appropriate measures to: (a) where circumstances require, provide or facilitate the provision of legal assistance; (b) help locate the debtor or creditor; (c) help obtain relevant income and, if necessary, other financial information of the debtor or creditor, including the location of assets; (d) encourage amicable solutions, such as mediation; (e) facilitate the ongoing enforcement of maintenance decisions including any arrears; (f) facilitate the collection and expeditious transfer of maintenance payments; (g) facilitate the obtaining of documentary or other evidence; (h) provide assistance in establishing parentage where necessary for the recovery of maintenance; (i) initiate or facilitate the institution of proceedings to obtain any necessary provisional measures that are territorial in nature and the purpose of which is to secure the outcome of a pending maintenance application; and (j) facilitate the service of documents.

Article 6(3) provides that the Article 6 Central Authority functions may be performed by other public bodies or certain other bodies. A Contracting State must inform the Permanent Bureau of the Hague Conference on Private International Law of its designation of any such bodies, as well as their contact details and the extent of their functions. The Department of Health and Human Services intends to delegate most of its Article 6 responsibilities to individual U.S. state child support agencies, which have day-to-day responsibility for managing the Title IV–D child support caseload in the United States.

Article 7 authorizes requests for specific measures made by one Central Authority to another when no application under Article 10 of the Convention is pending, *i.e.*, when there is no application for the recovery of maintenance pending before the Central Authority in the requested State. Such requests must be supported by reasons, and the specific measure(s) requested must be certain ones listed in Article 6, *i.e.*, assistance with location, the obtaining of income and other financial information, the obtaining of documentary information, parentage establishment, taking provisional measures, and service of documents. Under Article 7(1), the requested Central Authority is directed to take such measures if satisfied that they are necessary to assist a potential applicant in making an Article 10 application or in determining whether such an application should be initiated. An example would be where a U.S. creditor is not certain where the debtor resides, but has reason to believe that he or she resides in the requested State. Under Article 7(1), the Central Authority of the requested State would be required to take appropriate measures to determine whether the debtor was in the State so that the creditor could then make an application in the requested State for the recovery of maintenance. Under Article 7(2), a requested Central Authority may, but is not required to, take specific measures on the request of another Central Authority in relation to a maintenance case having an international element that is pending in the requesting State. An example would be a United States proceeding where the court has personal jurisdiction over the debtor, who lives or derives income in the requested State. If the U.S. Central Authority asked the requested Central Authority for assistance in obtaining income information about the debtor, Article 7 would authorize the requested Central Authority to provide such assistance.

Article 8 makes clear that each Central Authority must bear its own administrative costs in applying the Convention, and that a Central Authority may not impose any charge on an applicant for the provision of its services under the Convention. The one exception where costs may be imposed by a Central Authority is for exceptional costs or expenses arising from a request for a specific measure under Article 7. In such a case, the requested Central Authority must first obtain the prior consent of the applicant before providing the services for a cost.

Chapter III (Articles 9–17) sets out the rules governing applications made under the Convention through Central Authorities. Chapter III applications would be those made through the Title IV–D child support agencies in the United States. Article 9 provides that an applicant wishing to use the Central Authority serv-

ices of the requested State must make the application through the Central Authority of the Contracting State in which the applicant resides.

Article 10(1) lists the types of applications available to a creditor seeking to recover maintenance under the Convention: (a) recognition or recognition and enforcement of an existing decision; (b) enforcement of a decision made or recognized in the requested State; (c) establishment of a decision in the requested State where there is no existing decision, including where necessary the establishment of parentage; (d) establishment of a decision in the requested State where recognition and enforcement of a decision is not possible or is refused because of the lack of a basis for recognition and enforcement; (e) modification of a decision made in the requested State; and (f) modification of a decision made in a State other than the requested State. Pursuant to Article 10(2), the types of applications under the Convention that are available to a debtor in a requesting State, against whom there is an existing maintenance decision, are: (a) recognition of a decision that suspends, or limits the enforcement of, a previous decision in the requested State; (b) modification of a decision made in the requested State; and (c) modification of a decision made in a State other than the requested State. Except as otherwise provided in the Convention, the law of the requested State governs applications under the Convention.

Article 11 details the minimum contents of applications under the Convention. Pursuant to Article 11(1), all applications, at a minimum, must include: (a) a statement of the nature of the application(s); (b) contact information and date of birth of the applicant; (c) the name and, if known, address and date of birth of the respondent; (d) the name and date of birth of any person for whom maintenance is sought; (e) the grounds upon which the application is based; (f) where the creditor is the applicant, information on where payments should be sent; (g) with the exception of applications for recognition and enforcement, any information or document specified by the requested State in a declaration made pursuant to Article 63; and (h) the name and contact details of the Central Authority person or entity in the requesting State who is responsible for processing the application. It is not recommended that the United States make a declaration under Article 11(1)(g) requiring other information or documentation in applications to the United States.

In addition, Article 11(2) provides that, as appropriate and to the extent known, the application must also include the financial circumstances of the creditor and debtor, the name and address of the debtor's employer, the nature and location of assets of the debtor, and any information that would help locate the respondent. The application must be accompanied by any necessary supporting information, including documentation concerning the entitlement of the applicant to free legal assistance However, if the application is for recognition and enforcement of a decision, a requested State cannot require any documents other than those listed in Article 25. This is an important provision, as a limited and uniform number of required documents will speed up the processing of these applications.

The Hague Conference will publish recommended forms for applications and other supporting documents which States may use. These forms have been developed by a working group composed of various country representatives, including representatives from the United States. While only two of these forms will be mandatory,[5] all of the forms will likely be used in nearly all cases and should result in faster, more efficient, and more accurate processing of applications.

Article 12 describes the process Central Authorities must use in transmitting, receiving, and processing applications and cases. The Central Authority in the requesting State has three main responsibilities. First, under Article 12(1), it must assist the applicant in ensuring that the application is accompanied by all the information and documents known to be needed for the application's consideration. Second, under Article 12(2), when satisfied that the application complies with the Convention requirements, the requesting Central Authority must transmit the application on behalf of and with the consent of the applicant to the Central Authority in the requested State. The application must include the transmittal form set out in Annex 1 to the Convention. Third, Article 12(2) also provides that the Central Authority of the requesting State must—upon request—provide the Central Authority in the requested State with a complete certified copy of certain documents specified in Articles 16, 25, and 30 (documents that have to be submitted with applications under various circumstances). This last provision is important because it establishes as the default rule that documentation under the Convention does not need to be certified, which will reduce the cost and time required to process most cases.

In order to ensure timely processing of applications, Article 12 also contains several timeframes for status reports. Article 12(3) provides that within six weeks from receipt of the application, the requested Central Authority must acknowledge receipt using the form set forth in Annex 2 to the Convention, inform the requesting Central Authority of the initial steps that have been or will be taken, request any additional documents or information needed, and provide contact information for future inquiries about the application. Article 12(4) provides that within three months of the acknowledgment, the requested Central Authority must inform the requesting Central Authority of the status of the application. Both the requested and requesting Central Authorities are required to keep each other informed of the person or unit responsible for a particular case, and of the progress of the case. They must also provide timely responses to communication. Article 12(6) and (7) address the importance of speedy processing of cases, requiring that Central Authorities process a case quickly and that they use the most rapid and efficient means of communication at their disposal. A requested Central Authority may refuse to process an application only if it is manifest (*i.e.,* clear on the face of the documents received) that the requirements of the Convention are not fulfilled. In such a case, it must promptly inform the requesting Central Authority of its reasons for refusal. A requested Central Authority

[5] Under Article 12(2) and (3), the transmittal and acknowledgment forms annexed to the Convention are mandatory.

cannot reject an application solely because additional information is needed. However, if the requested Central Authority requests additional information and the requesting Central Authority does not produce the needed information within three months of the request (or a longer time period if specified by the requested Central Authority), the requested Central Authority may inform the requesting Central Authority that it will no longer process the application.

Article 13 provides that the admissibility of documents cannot be challenged solely on the basis of the medium or means of communication used between the Central Authorities.

Articles 14 through 17 address the key issue of the cost of services, including legal assistance. Most child support applicants who use government child support programs are people of modest means, who would simply be unable to pursue recovery of child support if they had to pay high fees, including for legal services. This is especially true in international cases where the costs for court and attorney fees and enforcement actions can often be greater than the amounts collected. Enabling creditors to collect child support is in the interest of many governments worldwide as in many countries the government (ultimately the taxpayer) will support a child if the parents do not. Cost-free services in child support cases, in particular free legal assistance, is therefore a key to the success of the Convention.

Article 14 establishes the general standard for access to services under the Convention: a requested State must provide applicants with effective access to procedures, including enforcement and appeal procedures, arising from applications processed by Central Authorities. Where necessary, such access to procedures must include free legal assistance in accordance with Articles 14 through 17, unless legal assistance is not required because the State has simple procedures designed to allow an applicant to make a case without the need for such assistance, and the Central Authority provides whatever services are necessary for free. (An example would be a requested State that uses administrative procedures to establish and enforce maintenance decisions, thus making legal assistance unnecessary.)

Article 15(1) goes on to state that legal assistance with respect to child support applications made through Central Authorities, as opposed to applications for other forms of family maintenance that may be covered by the Convention, must be provided free of charge. Notwithstanding Article 15(1), Article 15(2) provides that free legal assistance may be refused in requests to establish a child support decision (but not requests for recognition and enforcement of a foreign decision) if the application is on the merits manifestly unfounded.

Article 16 provides that, as an exception to Article 15(1), a State may declare that it will make the provision of free legal assistance in applications for establishment and modification of a child support decision subject to a means test based on the means of the child. The requested State may not look behind the applicant's statement that the child meets that State's means test unless it reasonably believes that statement is inaccurate. It is not rec-

ommended that the United States make a declaration under Article 16.[6]

Article 17 provides that for all other applications (*i.e.*, applications for forms of family maintenance other than child support, or applications by a debtor) processed through Central Authorities, the provision of free legal assistance may be made subject to a means or merits test.

Note that Articles 14 through 17 govern applications under Chapter III, which are applications processed through Central Authorities. There is no requirement for free legal assistance in cases where the petitioner makes a request directly to a competent authority, either through a private attorney or *pro se*.

Chapter IV (Article 18) deals with modification of existing orders. While it is impossible to eliminate completely the possibility of multiple support orders in the same case, the Convention, and in particular Article 18, should reduce to the greatest extent possible the number of such conflicting, multiple support orders. Where a Contracting State has made a decision and the creditor is habitually resident in that State, Article 18 requires that the debtor initiate, in that State of origin, any proceeding to modify the decision or establish a new decision, as long as the creditor continues to reside in the State. This provision is similar to UIFSA, which is in effect in all states. Article 18 sets forth four exceptions: (1) where, except in child support cases, the parties have agreed in writing to the jurisdiction of another Contracting State; (2) where the creditor submits to the jurisdiction of the other Contracting State; (3) where the competent authority in the State of origin cannot, or refuses to, exercise jurisdiction to modify the decision or make a new decision; or (4) where the decision made in the State of origin cannot be recognized in the Contracting State where proceedings to modify the decision or make a new decision are contemplated.

Chapter V (Articles 19–31) deals with the recognition and enforcement of maintenance decisions, providing an efficient procedure for the widest recognition of existing decisions. Along with the rules for effective (*i.e.*, cost-free) access to procedures, the recognition and enforcement rules are key to the success of the Convention. Currently, in many countries international cases can take many months, if not years, to resolve because of the cumbersome recognition and enforcement procedures. The Convention provides for a streamlined, transparent process that is very similar to the process under UIFSA.

Article 19 provides that Chapter V applies to applications transmitted between Central Authorities, as well as to requests sent directly to a competent authority, such as requests for recognition and enforcement filed by private attorneys directly with a court. It

[6] Many States would have preferred that all requests for free legal assistance be made subject to a means test based on the means of the creditor (*i.e.*, the custodial parent). This is the test many States apply to requests for free legal assistance in domestic cases, and they argued that it would be discriminatory to have a different standard in international cases. The response is that treating foreign applicants differently than domestic applicants is justified because the two are in fact different: foreign applicants face many more difficulties than domestic applicants. Many States, including the United States, objected to a means test based on the means of the creditor because the likely result would have been that virtually all of their applicants would have been denied free legal assistance. The child-centered means test was agreed to as a compromise in order to encourage the widest possible ratification. The result should be the same (*i.e.*, free legal assistance) in virtually all child support cases.

further provides that the Chapter applies to both judicial and administrative decisions, so long as the administrative decision is subject to review by a judicial authority and has similar force and effect as a judicial decision. The term "decision" also includes settlements or agreements approved by a judicial or an administrative authority. In addition to current support, the decision may include automatic adjustment by indexation; a requirement to pay arrears, retroactive maintenance, or interest; and a determination of costs or expenses. The Chapter also applies to maintenance arrangements (*i.e.*, a certain form of private agreements) in accordance with Article 30. Although such maintenance arrangements are common in many States, they are not used in the United States.

Article 20(1) requires the recognition and enforcement of a decision made by a Contracting State if it is enforceable in the State of origin and if one of the following listed bases for jurisdiction is present: (a) the respondent was habitually resident[7] in the State of origin at the time proceedings were instituted; (b) the respondent has submitted to jurisdiction; (c) the creditor was habitually resident in the State of origin at the time proceedings were instituted; (d) the child for whom maintenance was ordered was habitually resident in the State of origin, provided that the respondent has lived with the child in that State or has resided in that State and provided support for the child there; (e) except in child maintenance matters, the parties have made a written agreement to jurisdiction; or (f) the decision was made by an authority exercising jurisdiction on a matter of personal status or parental responsibility, unless that jurisdiction was based solely on the nationality of one of the parties.

Under Article 20(2), a State may make a reservation with respect to three of the bases of jurisdiction set forth under Article 20(1): creditor-based jurisdiction, jurisdiction based on a written agreement, or jurisdiction based on a matter of personal status or parental responsibility. If a State makes such a reservation, it must nevertheless, pursuant to Article 20(3), recognize and enforce a decision if its law would, in similar factual circumstances, confer jurisdiction on its authorities to make a decision in that case. If a Contracting State cannot recognize a decision because of a reservation, and the debtor is habitually resident in that State, Article 20(4) provides that the State must, with rare exceptions, take all appropriate measures to establish a new decision in favor of the creditor. If a maintenance decision for a child under the age of 18 cannot be recognized solely because of a reservation under this Article, Article 20(5) provides that the decision must be accepted as estab-

[7] The term "habitually resident" is used in a number of private international law conventions, and is not defined in any of them. Its meaning is determined on a case-by-case basis by the practice and case law of each country. In the United States and elsewhere there is no consistent interpretation of the term by the courts considering it in the context of the 1980 Hague Convention on the Civil Aspects of International Child Abduction. The negotiators of the 2007 Child Support Convention made it clear that case law on the meaning of "habitually resident" in the child abduction context should not automatically be applied to child support cases. That is because the effect of the use of "habitual residence" in the 1980 Convention is to restrict the ability of a person to obtain a new custody order shortly after going to another country. In fact, one of the objects of the 1980 Convention is to limit the ability of a parent unhappy with the custody order of one court to "forum shop" by moving to another country and seeking a new order. In the 2007 Convention, on the other hand, the object is to make it easier for a person to recover maintenance in international cases, not to restrict the ability of a person to apply for maintenance.

lishing the eligibility of that child for maintenance in the requested State. The term "eligibility" does not refer to the amount of maintenance, which will be determined pursuant to the law of the requested State. In this context, the United States interprets "eligibility" to refer to the child's entitlement to initiate a maintenance proceeding in the requested State.

It is recommended that the United States make a reservation in respect of Article 20(1)(c), (e), and (f) because those provisions are not consistent with U.S. law on the minimum contacts required for jurisdiction in order to satisfy constitutional due process requirements. The 20(1)(c) basis for jurisdiction—the fact that the creditor resides in the forum State—is a common one in nearly all countries, but not the United States. In the United States, under current Supreme Court jurisprudence, the mere fact that the creditor resides in the forum does not give the forum jurisdiction over the debtor in a child support case. In order to satisfy our due process standards, there must be a nexus between the debtor and the forum in order to give the forum jurisdiction over the debtor. In other words, it is the respondent's (debtor's) contacts with the forum, not the petitioner's (creditor's), that are determinative. *Kulko* v. *Superior Court*, 436 U.S. 84 (1978).

Article 20(1)(e) requires a competent authority to recognize and enforce a support decision, other than one for child support, if the parties have agreed in writing to the issuing State's jurisdiction. In the United States, the general state-law rule is that forum selection clauses in divorce, spousal support and child support cases are unenforceable if the chosen forum has no nexus with either party. Finally, Article 20(f) requires a competent authority to recognize and enforce a support decision where the issuing authority exercised jurisdiction on a matter of personal status or parental responsibility. In the United States, a competent authority must have personal jurisdiction over the parties. The fact that a court has *in rem* jurisdiction over a marriage, for example, does not mean that the court has personal jurisdiction over the parties. Without the requisite minimum contacts for personal jurisdiction, a U.S. court cannot issue a valid order.

Article 21 allows partial recognition or enforcement of a decision, which is consistent with U.S. law.

Article 22 lists the limited grounds for refusing recognition and enforcement of a maintenance decision: (a) recognition and enforcement is manifestly incompatible with the public policy of the requested State; (b) the decision was obtained by fraud in connection with a matter of procedure; (c) proceedings between the same parties with the same purpose are pending before an authority in the requested State and those other proceedings were begun first; (d) the decision is incompatible with a decision between the same parties for the same purpose, provided that this latter decision fulfils the conditions necessary for its recognition and enforcement in the requested State; (e) in a case where the respondent neither appeared nor was represented in the proceeding in the State or origin: (1) when the law of the State of origin provides for advance notice of the proceedings, the respondent did not have proper notice and an opportunity to be heard; or (2) when the law of the State of origin does not require advance notice of the proceedings, the re-

spondent did not have proper notice of the decision and an opportunity to challenge it; or (f) the decision was made in violation of Article 18 regarding the limitations on a modification proceeding. These grounds are consistent with current U.S. law.

Pursuant to Article 22(a), the public policy exception, a U.S. competent authority could decline to recognize and enforce a decision against a left-behind U.S. parent in an abduction case where the child had been wrongfully taken or retained, on the grounds that recognition and enforcement of such a decision would be manifestly incompatible with the U.S. public policy of discouraging international parental child abduction.

Article 23 sets forth the procedural steps involved in an application for recognition and enforcement of a maintenance decision. This process minimizes *ex officio* review and for the most part places the burden of raising objections to recognition and enforcement on the respondent (usually the debtor). Given that most applications for recognition and enforcement are likely to be uncontested, this leads to a much expedited procedure. This process is similar to the process used in the United States under UIFSA. One of the problems with the prior child support conventions (to which the United States is not a party) is that none of them provides a uniform set of procedures for recognition and enforcement. The result has been lengthy delays in the enforcement of the foreign decision in the many countries that do not have a streamlined system such as that established by UIFSA. Article 23 should result in much quicker enforcement in those countries. Pursuant to Article 23(2), where the application has been made through Central Authorities, the requested Central Authority must promptly either refer the application to the competent authority, which must, without delay, declare the decision enforceable or register the decision for enforcement; or take such steps itself where the Central Authority is the competent authority. In the United States, upon receipt of an application for recognition and enforcement, a state child support agency would comply with Article 23 by promptly referring the application to the competent authority for registration for enforcement. Article 23(3) provides that where the request is made directly to a competent authority, rather than an application through Central Authorities, the competent authority must, without delay, declare the decision enforceable or register the decision for enforcement.

Article 23(4) specifies the very limited ground on which a competent authority in the requested State may review *ex officio* the application for recognition and enforcement of a decision. It provides that a declaration of enforceability or registration for enforcement may be refused only for the reason listed in Article 22(a), *i.e.,* recognition and enforcement of the decision is manifestly incompatible with the public policy of the requested State. At this stage, neither the applicant nor the respondent may submit evidence. Under Article 23(5), the applicant and respondent must be promptly notified of the decision regarding recognition and enforcement, and have the right to challenge or appeal the decision. Article 23(6) provides that such challenge or appeal must be made within 30 days of notification of the decision. That time period is extended to 60

days if the contesting party is a nonresident of the Contracting State in which the authority made the decision.

Article 23(7) lists the only permissible bases for an applicant or respondent to challenge or appeal the decision by the competent authority: (a) the grounds for refusing recognition and enforcement set out in Article 22; (b) the bases for recognition and enforcement under Article 20; and (c) the authenticity or integrity of any document transmitted in accordance with Article 25(1)(a), (b), or (d), or Article 25(3)(b). Under Article 23(8), if the application for recognition and enforcement relates to payments that are past-due, a challenge or appeal may also be founded on the fulfillment of the maintenance debt. Article 23(9) provides that the applicant and respondent must be promptly notified of the decision on any appeal or challenge. Further appeal is governed by the law of the requested State. However, under Article 23(10), any such further appeal cannot stay the enforcement of the decision unless there are exceptional circumstances. The rule that further appeal should not have the effect of staying enforcement will correct an unfortunate situation in many countries where appeals often take many years and the creditor receives no support during all those years. Finally, Article 23(11) provides that the competent authority must act expeditiously in making any decision on recognition and enforcement, including any appeal.

The procedures set forth in Article 23 are familiar to the United States, Canada, Australia, New Zealand, and many western European countries. However, they are not known in some other countries, in particular China, where applications for recognition and enforcement go directly to the court for decision (rather than having almost automatic recognition and enforcement if the respondent raises no objections). In order to achieve wide ratification of the new Convention, Article 24 provides an alternative procedure on an application for recognition and enforcement, which Contracting States may opt for by declaration. Article 24 skips the registration for enforcement or declaration of enforceability procedures. Instead, the application must be promptly referred to the competent authority which must decide on the request. Article 24(4) provides broader bases for *ex officio* review than what is allowed under Article 23(4). However, as with the Article 23 procedures, appeals cannot stay the enforcement of the decision unless there are exceptional circumstances; and the competent authority must act expeditiously in making its decision. It is not recommended that the United States make a declaration with respect to Article 24.

Article 25 seeks to simplify the process for an application for recognition and enforcement by addressing the number and type of documents needed. Currently, this is left to national law, and practices vary widely. In some States, the document requirements are quite onerous and costly. Article 25(1) lists the only documents that are required to accompany an application for recognition and enforcement. One such document applies only with respect to decisions of administrative tribunals. Article 25(1)(b) provides that in the case of such a decision, the application must include a document stating that the requirements of Article 19(3) (the administrative decision is subject to judicial review and has the same force and effect as a judicial decision) are met, unless the requesting

State has specified in accordance with Article 57 that its administrative decisions always meet these requirements. It is recommended that the United States make this specification in accordance with Article 57(1)(e), as all child support decisions in the United States made by administrative tribunals are subject to judicial review and have the same force and effect as a court decision.

Pursuant to Article 25(2), certified documents are not initially required. However, upon a challenge, an appeal under Article 23(7)(c), or a request by the competent authority in the requested State, a complete copy of the document concerned, certified by the competent authority in the State of origin, must be promptly provided. This provision will result in more rapid and less costly case processing, as there is unlikely to be a need for certified documents in uncontested cases, which constitute the majority of recognition and enforcement cases.

Article 25(3) provides several additional, optional mechanisms for simplifying the documentation process. Because even States that accept uncertified copies of other documents may require a certified copy of the decision, Article 25(3)(a) provides that a Contracting State may specify that it always requires a certified copy of the decision. As child support decisions are often only a few paragraphs of a lengthy divorce decision, Article 25(3)(b) provides that a State may specify the circumstances in which it will accept, in lieu of a complete text of the decision, an abstract or extract of the decision. As many States are very comfortable with treating administrative decisions the same as judicial decisions, Article 25(3)(c) provides that a State may specify that it does not require a document in each case stating that the requirements of Article 19(3) concerning administrative decisions are met. As UIFSA, which all U.S. states have adopted as a condition for continued receipt of federal funding, treats administrative child support decisions the same as judicial orders, it is recommended that the United States make the Article 25(3)(c) specification, in accordance with Article 57(1)(e).

It is not recommended that the United States make the other specification, as practices regarding the need for a certified copy of a decision may vary from state to state.

Article 26 provides that the entire Chapter also applies to an application for recognition (rather than recognition and enforcement) of a decision, save that the requirement of enforceability is replaced with a requirement that the decision has effect in the State of origin. An application for recognition only would be unusual. An example would be an application for recognition by a debtor of an order that has terminated because the child has passed the age specified for termination in the order.

Under Article 27 a competent authority in the requested State is bound by the findings of fact on which the authority of the State of origin based its jurisdiction.

Article 28 prohibits the competent authority in the requested State from reviewing the merits of a decision that it has been asked to recognize and enforce. This is a standard provision in conventions on recognition and enforcement of decisions.

Article 29 states that the physical presence of the child or applicant may not be required in any recognition and enforcement proceedings in the requested State. Some States currently do require

such physical presence; obviously the entire purpose of the Convention would be frustrated if the child or custodial parent had to travel to the requested State.

Article 30(1) and (2) provide that maintenance arrangements, which are defined in Article 3(e), are entitled to recognition and enforcement under Chapter V so long as they are enforceable as decisions in the State of origin. Maintenance arrangements are not decisions because they are not rendered by a competent authority; but nor are they merely private agreements because they are registered or filed by or with such an authority and are subject to review. Such arrangements, which are sometimes known as "authentic instruments," are not used in the United States but they are very common in many States, including States, such as Canada, Norway, and Sweden, with which the United States has many child support cases.

As not all of Chapter V's rules for recognition and enforcement of a decision would make sense when applied to maintenance arrangements, Article 30(3)–(8) sets forth some special rules for such arrangements, including bases for recognition and enforcement, grounds for refusing recognition and enforcement, bases for a challenge or appeal, and required documentation. Because maintenance arrangements are not initially reviewed by a competent authority, Article 30(6) provides an important safeguard. It states that proceedings for recognition and enforcement of a maintenance arrangement must be suspended if a challenge to the arrangement is pending before a competent authority of a Contracting State. This means that if a creditor from State A wishes to enforce a maintenance arrangement in the United States and the debtor wants to contest the validity of the arrangement, the proceeding in the United States will be suspended while the debtor challenges the arrangement in State A or any other Contracting State with jurisdiction to consider the arrangement. Article 30(7) provides that a Contracting State may declare that applications for recognition and enforcement of maintenance arrangements cannot be made directly to a competent authority, but must be made through Central Authorities. Article 30(8) permits a Contracting State to reserve the right not to recognize and enforce a maintenance arrangement. As many States with which the United States has had successful bilateral child support agreements for years use maintenance arrangements and U.S. states have been recognizing and enforcing these arrangements without any problems, it is not recommended that the United States make the declaration or reservation.

Article 31 addresses provisional and confirmation orders that some States, such as members of the British Commonwealth, produce. Where a decision is produced by the combined effect of a provisional order made in one State and a confirming order made in another State, each of those States are considered States of origin for the purpose of Chapter V. The requirements of Article 22(e) (notice and opportunity to be heard) are deemed met if the respondent had proper notice of the proceedings in the confirming State and an opportunity to oppose the confirmation of the provisional order. The requirement of Article 20(6) that a decision be enforceable in the State of origin is met if the decision is enforceable in the confirming State. Article 31 further provides that Article 18

does not prevent proceedings for the modification of the decision being commenced in either State.

Chapter VI (Articles 32–35) addresses the enforcement of a decision by the requested State. Article 32 provides that, subject to the provisions of Chapter VI, enforcement takes place in accordance with the law of the requested State. Enforcement must be prompt. Where an application was filed through Central Authorities, once a decision is declared enforceable or registered for enforcement, enforcement is to proceed without further action by the applicant. This is important because in some States recognition and enforcement, and actual enforcement (*i.e.,* efforts by the State to collect the debt) are two separate proceedings, and an applicant who has succeeded in getting a tribunal to declare that his or her decision is recognized and is enforceable, must initiate, at considerable expense, a separate action in order to get actual enforcement (*i.e.,* payment of the amount ordered). Duration of the maintenance obligation is governed by the law of the State of origin. Any limitation on the period for which arrears may be enforced is determined by the law of the State of origin of the decision or the law of the requested State, whichever has the longer limitation period. This choice of law provision is identical to one in UIFSA.

Article 33 directs a requested State to provide at least the same range of enforcement methods for cases under the Convention as are available in domestic cases.

Article 34 requires States to have effective measures for prompt enforcement of decisions under the Convention. While the practice in other child support conventions (to which the United States is not a party) has been to leave enforcement to national law, the importance of the topic, and the serious problems that exist currently in obtaining prompt and effective enforcement, prompted the negotiators to address the topic in the Convention. While no specific measures are required, Article 34 lists examples of effective measures, such as wage withholding; garnishment of bank accounts; deductions from social security payments; liens on or forced sales of property; tax refund withholding; withholding or attachment of pension benefits; credit bureau reporting; denial, suspension or revocation of various licenses; arid the use of mediation, conciliation, or similar processes to bring about voluntary compliance. U.S. states employ all of these enforcement measures. It is hoped that these provisions will serve an educational purpose.

Consistent with the Convention goal of making the recovery of maintenance easier, Article 35 focuses on the prompt transfer of funds. Article 35 encourages Contracting States to promote the most cost-effective and efficient methods for transferring maintenance payments. If a Contracting State has a law restricting the transfer of funds, Article 35(2) directs the State to accord the highest priority to the transfer of funds under the Convention.

Chapter VII (Article 36) governs public bodies as applicants under the Convention. It places some limits on the situations in which a public body can be an applicant. The first limitation is the type of application. Public bodies may only act as creditors for the purpose of applications for recognition and enforcement of a decision and for cases covered by Article 20(4). The second limitation is that the public body can only be a creditor for such applications

so long as the public body is acting in place of an individual to whom maintenance is owed or the body is one to which reimbursement is owed for benefits provided in lieu of maintenance. The third limitation is the type of decision for which the public body can seek recognition and/or enforcement. Pursuant to Article 36(3), a public body may seek recognition or claim enforcement of (a) a decision rendered against a debtor on the application of a public body which claims payment of benefits provided in place of maintenance; and (b) a decision rendered between a creditor and debtor to the extent of the benefits provided to the creditor in place of maintenance. The consequence of Article 36(3) is that, within the United States, a state child support agency may be an applicant for the purpose of recognition and enforcement of a decision in cases where the custodial party is currently receiving public assistance, or has received public assistance in the past, and the benefits were provided in lieu of maintenance.

Chapter VIII (Articles 37–57) contains general provisions. Article 37 recognizes that, while most cases under the Convention will be processed through Central Authorities, an individual may also seek relief directly from a competent authority of a Contracting State under the internal law of that State. The Article specifies which provisions of the Convention apply to such direct requests.

Articles 38 through 40 set forth rules on protection of personal information, confidentiality, and disclosure of information.

Article 41 provides that no legalization or similar formality may be required in the context of the Convention.

Article 42 restricts the authority of the requested State to require a power of attorney from the applicant to situations where its Central Authority acts on the applicant's behalf. In the United States, state child support agencies usually do not represent the applicant in the technical legal sense and thus do not require a power of attorney.

Article 43 authorizes the recovery of costs from an unsuccessful party, as long as the recovery of costs does not take precedence over the recovery of maintenance. In other words, the requested Central Authority may not deduct from the debtor's child support payments funds to cover the costs incurred in handling the case.

Articles 44 and 45 address language requirements and translation costs. Pursuant to Article 44, the general rule is that all documentation must be in the original language, accompanied by a translation into the official language of the requested State or into another language that it has declared is acceptable, unless the competent authority in the requested State dispenses with translation. Unless otherwise agreed by the Central Authorities, any other communications (*e.g.,* e-mails) between Central Authorities must be in an official language of the requested State or in either English or French. (These are the two official languages of the Hague Conference.) However, a Contracting State may, by making a reservation, object to the use of either French or English. It is recommended that the United States make a reservation objecting to the use of French. Under Article 45, the general rule is that the cost of translation is borne by the requesting State. Article 45 also provides circumstances in which the translation may actually be

done by the requested State, although the requesting State still bears the cost.

Articles 46 and 47 address non-unified legal systems. Under Article 46, if a State has two or more systems of law, that apply in different territorial units, any reference to a law, procedure, decision, or judicial or an administrative authority in that State shall be construed as referring, where appropriate, to the same thing in the relevant territorial unit. Similarly, any reference to competent authorities, public bodies, other bodies of that State other than Central Authorities, residence or habitual residence in that State, the location of assets in that State, reciprocity arrangements in force in the State, free legal assistance, a maintenance arrangement made in the State, or recovery of costs by the State shall be construed as referring, where appropriate, to the same thing in the relevant territorial unit.

Under Article 47, a State, with more than one territorial unit in which different systems of law apply, is not required to apply the Convention to situations solely between such different territorial units; a competent authority in one territorial unit is not bound to recognize or enforce a decision solely because another territorial unit of the same State has recognized or enforced the decision.

Articles 48 and 49 provide that in relations between Contracting States to this Convention, this Convention replaces three prior child support conventions in so far as their scope of application coincides with this Convention's scope of application.[8] The United States is not a party to any of the three prior conventions.

Article 50 states that this Convention does not affect the Hague Convention of 11 March 1954 on civil procedure, the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters and the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters. The United States is a party to the 1965 and 1970 Service and Evidence Conventions, but is not a party to the 1954 Convention.

Article 51 discusses coordination of the Convention with other international instruments and supplementary agreements. Article 51(1) declares that the Convention does not affect any international instrument concluded before the Convention to which Contracting States are Parties and which contain provisions on matters governed by this Convention. Therefore, existing bilateral child support agreements between the United States and other countries will continue in force. Article 51(2) provides that a Contracting State may enter into agreements with other Contracting States, which contain provisions on matters governed by the Convention, with a view toward improving the application of the Convention between such States, provided such agreements are consistent with the objects and purpose of the Convention and do not affect the application of the Convention to Contracting States not party to such agreements. Therefore, the United States may continue to enter

[8] The three conventions are the Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations, the Hague Convention of 15 April 1958 Concerning the Recognition and Enforcement of Decisions Relating to Maintenance Obligations Towards Children, and the United Nations Convention on the Recovery Abroad of Maintenance of 20 June 1956.

into bilateral agreements that may provide for even closer cooperation than does the Convention. Article 51(4) addresses child support instruments (*e.g.,* mandatory regulations) of a Regional Economic Integration Organization (REIO) as applied between members of that Organization. Currently, the term REIO as defined in Article 59(1) only applies to the European Community.

Article 52(1) clarifies that the Convention permits the application of a bilateral or multilateral instrument that provides for more effective enforcement of maintenance obligations to the extent that such an instrument provides: broader bases for recognition of maintenance decisions; simplified, more expeditious procedures for recognition or enforcement of maintenance decisions; more beneficial legal assistance than that provided under Articles 14 through 17; or procedures permitting an applicant from a requesting State to make an application directly to the Central Authority of the requested State. Article 52(2) provides that the Convention does not prevent a State from unilaterally applying to proceedings in its territory a law that provides for more effective enforcement under the same circumstances as described in Article 52(1), provided that any simplified and more expeditious recognition and enforcement procedures must be compatible with the protection offered to parties under Articles 23 and 24, in particular, the rights of the parties to notice of the proceedings and an adequate opportunity to be heard, and with regards to the effects of any challenge or appeal.

Article 53 provides that in the interpretation of the Convention, regard shall be had to the importance of uniform application of this international Convention.

Article 54 requires the Secretary General of the Hague Conference on Private International Law to convene at regular intervals a Special Commission to review the practical operation of the Convention and to encourage the development of good practices. States must cooperate with the Permanent Bureau in the gathering of statistics and case law concerning the practical operation of the Convention.

Article 55 provides a special amendment process for the mandatory forms annexed to the Convention. (There are two mandatory forms, the Transmittal form required under Article 12(2) and the Acknowledgement form required under Article 12(3). All other forms related to the Convention will be recommended, but not required.)

Article 56 contains transitional provisions. Article 56(1) provides that the Convention applies to requests received after entry into force of the Convention between the requesting State and the requested State, even where the request is for recognition and enforcement of a decision that was handed down in the requesting State before entry into force of the Convention. Article 56(2) provides that, with regard to the recognition and enforcement of decisions between Contracting States that are also Parties to either of the Hague Maintenance Conventions mentioned in Article 48, if a decision was given prior to entry into force of this Convention and cannot be recognized under this Convention but can be recognized under one of those other Conventions, then that other Convention shall apply. Article 56(3) provides that, in cases other than child support cases, the Convention does not require the enforcement of

a decision for payments falling due prior to entry into force of the Convention between the State of origin and the State addressed.

Article 57(1) is an important provision to help ensure transparency and effective implementation of the Convention. It requires a Contracting State to provide the Permanent Bureau with key information, including a description of its laws and procedures concerning maintenance obligations; a description of the measures it will take to meet the obligations under Article 6 (Specific functions of Central Authorities); a description of how it will provide applicants with effective access to procedures as required under Article 14; a description of its enforcement rules and procedures, and any specification referred to in Article 25(1)(b) and (3).

Under Article 57(2), States may use a Country Profile form, as may be recommended and published by the Hague Conference, to provide this information. (The Country Profile was developed by a group of States, including the United States, that participated in the negotiation of the Convention. It is designed to allow a State to check appropriate tick boxes describing its laws and procedures, as well as provide narrative explanations.

Chapter IX (Articles 58–65) sets out the usual types of provisions concerning signature and ratification of the Convention, accession to the Convention, when the Convention shall enter into force, how a Contracting State may make declarations and reservations, how the Convention may be denounced, and the notification requirements to be met by the depositary—the Ministry of Foreign Affairs of the Kingdom of the Netherlands. The Chapter also addresses ratification of the Convention and accession to the Convention by REIOs, *i.e.,* by the European Community.

According to Article 58, the Convention is open for signature and ratification, acceptance, or approval by States that were members of the Hague Conference on Private International Law at the time of its Twenty-First (2007) Session and by the other States that participated in that Session. Any other State or REIO may accede to the Convention after it has entered into force. Such accessions will have effect only as regards the relations between the acceding State and such Contracting States that have not objected to its accession within 12 months of notification of such accession. An objection to accession may also be raised by States at the time when they ratify, accept, or approve the Convention after such an accession.

Article 59 provides that a REIO, which is constituted solely by sovereign States and has competence over some or all of the matters governed by the Convention, may similarly sign, accept, approve, or accede to this Convention. Currently, only the European Community qualifies as a REIO. Such an REIO will have the rights and obligations of a Contracting State, to the extent of its competence over matters governed by the Convention. The REIO must notify the depositary in writing of the matters governed by the Convention in respect of which competence has been transferred to the REIO by its member States. The REIO must promptly notify the depositary of any changes to its competence. At the time of signature, acceptance, approval, or accession, a REIO may—pursuant to Article 59(3)—declare that it exercises competence over all the matters governed by the Convention, and that its members

that have transferred competence to it, shall be bound by the Convention by virtue of the REIO's signature, acceptance, accession, or approval. Article 59(4) provides that, for the purposes of the entry into force of the Convention, any instrument deposited by a REIO shall not be counted unless the REIO declares in accordance with Article 59(3) that its members will be bound by the Convention. Article 59(5) states that, where appropriate, any reference to a "Contracting State" or "State" in the Convention applies equally to a REIO that is a party to it. In the event that a declaration is made by the REIO pursuant to Article 59(3), any reference to a "Contracting State" or "State" in the Convention applies equally to the member States of the REIO, where appropriate.

Article 60 provides that the Convention will enter into force on the first day of the month following the expiration of three months after the deposit of the second instrument of ratification, acceptance, or approval. For each State or REIO subsequently ratifying, accepting, or approving the Convention, the Convention enters into force on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, or approval. The Convention will enter into force for each State or REIO that accedes to the Convention after it has entered into force on the day after the end of the period during which objections may be raised in accordance with Article 58(5). Article 60(2)(c) details when the Convention shall enter into force for a territorial unit to which the Convention has been extended in accordance with Article 61.

Article 61 establishes that if a State has two or more territorial units in which different systems of law are applicable in relation to maintenance matters under the Convention, it may declare that the Convention will extend to all of its territorial units, or only to one or more of those units. The declaration may be modified at any time. Article 61(3) further directs that if a State makes no declaration under this Article, the Convention shall presumptively extend to all territorial units of the State. Article 61(4) clarifies that this Article does not apply to a REIO. It is recommended that the United States declare that the Convention will extend to the jurisdictions participating in Title IV–D of the Social Security Act (*i.e.*, all 50 states, the District of Columbia, Guam, Puerto Rico, and the United States Virgin Islands). The Convention would therefore not extend to American Samoa, the Northern Marianas or any other U.S. territory that does not participate in Title IV–D.

Article 62 governs reservations. A State may make one or more reservations provided for in Articles 2(2) (limiting the application of the Convention to children under the age of 18); 20(2) (excluding certain bases of mandatory jurisdiction for recognition and enforcement, such as creditor's residence and private agreement); 30(8) (reserving the right not to recognize and enforce maintenance arrangements); 44(3) (objecting to the use of either French or English in certain communications between Central Authorities; and 55(3) (objecting to the amendment of a mandatory form). No other reservation is permitted. Article 62(4) provides that reservations have no reciprocal effect with the exception of the reservation provided for in Article 2(2) (limitation of Central Authority cooperation to persons under the age of 18).

It is recommended that the United States ratify the Convention subject to the following reservations:

> "Pursuant to Articles 20(2) and 62, the United States makes a reservation to Article 20(1)(c), (e), and (f)."
>
> "Pursuant to Article 44(3), the United States makes a reservation objecting to the use of French."

Article 63 governs declarations. A State may make a declaration referred to in Articles 2(3) (extending of the Convention to maintenance obligations other than child support); 11(1)(g) (specifying additional information or documentation to be included with an application); 16(1) (declaring that it will subject the provision of free legal assistance to a means test based on the means of the child); 24(1) (declaring that it will apply Article 24's alternative procedure for recognition and enforcement); 30(7) (declaring that applications for recognition and enforcement must be made through Central Authorities); 44(1) (stating that no translation of documents is required), and (2) (declaring, for States with more than one official language, which language must be used for which parts of its territory); 59(3) (a REIO declaring that it exercises sole competence over all matters governed by the Convention and that the REIO speaks for all of its Members that have transferred competency with respect to the matter in question); and 61(1) (a non-unified State specifying the territorial units to which the Convention applies).

It is recommended that the United States ratify the Convention subject to the following declaration:

> "Pursuant to Articles 61 and 63, the United States declares that the Convention shall extend to all 50 U.S. states, the District of Columbia, Guam, Puerto Rico, and the United States Virgin Islands."

Article 64 provides that a Contracting State may denounce the Convention by a notification in writing to the depositary. Such denunciation shall take effect on the first day of the month following the expiration of 12 months after the notification is received by the depositary, unless the denunciation specifies a longer period of time.

Article 65 explains that the depositary must notify the members of the Hague Conference on Private International Law, and other Contracting States of the following: (a) the signatures, ratifications, acceptances, and approvals referred to in Articles 58 and 59; (b) the accessions and objections raised to accessions referred to in Article 58(5); (c) the date on which the Convention enters into force in accordance with Article 60; (d) the declarations referred to in Articles 2(3), 11(1)(g), 16(1), 24(1), 44(1) and (2), 58(5), 59(3), and 61(1); (e) the agreements referred to in Article 51(2); (f) the reservations referred to in Articles 2(2), 20(2), 30(8), 44(3), and 55(3), and the withdrawals referred to in Article 62(2); and (g) the denunciations referred to in Article 64.

CONVENTION ON THE INTERNATIONAL RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE

PREAMBLE

The States signatory to the present Convention,

Desiring to improve co-operation among States for the international recovery of child support and other forms of family maintenance,

Aware of the need for procedures which produce results and are accessible, prompt, efficient, cost-effective, responsive and fair

Wishing to build upon the best features of existing Hague Conventions and other international instruments, in particular the United Nations *Convention on the Recovery Abroad of Maintenance* of 20 June 1956,

Seeking to take advantage of advances in technologies and to create a flexible system which can continue to evolve as needs change and further advances in technology create new opportunities,

Recalling that, in accordance with Articles 3 and 27 of the United Nations *Convention on the Rights of the Child* of 20 November 1989,

- in all actions concerning children the best interests of the child shall be a primary consideration,
- every child has a right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development,

- the parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development, and
- States Parties should take all appropriate measures, including the conclusion of international agreements, to secure the recovery of maintenance for the child from the parent(s) or other responsible persons, in particular where such persons live in a State different from that of the child,

Have resolved to conclude this Convention and have agreed upon the following provisions –

CHAPTER I

OBJECT, SCOPE AND DEFINITIONS

Article 1

Object

The object of the present Convention is to ensure the effective international recovery of child support and other forms of family maintenance, in particular by –

a) establishing a comprehensive system of co-operation between the authorities of the Contracting States;

b) making available applications for the establishment of maintenance decisions;

c) providing for the recognition and enforcement of maintenance decisions; and

d) requiring effective measures for the prompt enforcement of maintenance decisions.

Article 2

Scope

1. This Convention shall apply –

a) to maintenance obligations arising from a parent-child relationship towards a person under the age of 21 years;

b) to recognition and enforcement or enforcement of a decision for spousal support when the application is made with a claim within the scope of sub-paragraph a); and

c) with the exception of Chapters II and III, to spousal support.

2. Any Contracting State may reserve, in accordance with Article 62, the right to limit the application of the Convention under sub-paragraph 1 a), to persons who have not attained the age of 18 years. A Contracting State which makes this reservation shall not be entitled to claim the application of the Convention to persons of the age excluded by its reservation.

3. Any Contracting State may declare in accordance with Article 63 that it will extend the application of the whole or any part of the Convention to any maintenance obligation arising from a family relationship, parentage, marriage or affinity, including in particular obligations in respect of vulnerable persons. Any such declaration shall give rise to obligations between two Contracting States only in so far as their declarations cover the same maintenance obligations and parts of the Convention.

4. The provisions of this Convention shall apply to children regardless of the marital status of the parents.

Article 3

Definitions

For the purposes of this Convention –

a) "creditor" means an individual to whom maintenance is owed or is alleged to be owed;

b) "debtor" means an individual who owes or who is alleged to owe maintenance;

c) "legal assistance" means the assistance necessary to enable applicants to know and assert their rights and to ensure that applications are fully and effectively dealt with in the requested State. The means of providing such assistance may include as necessary legal advice, assistance in bringing a case before an authority, legal representation and exemption from costs of proceedings;

d) "agreement in writing" means an agreement recorded in any medium, the information contained in which is accessible so as to be usable for subsequent reference;

e) "maintenance arrangement" means an agreement in writing relating to the payment of maintenance which –

   i) has been formally drawn up or registered as an authentic instrument by a competent authority; or

   ii) has been authenticated by, or concluded, registered or filed with a competent authority,

   and may be the subject of review and modification by a competent authority;

f) "vulnerable person" means a person who, by reason of an impairment or insufficiency of his or her personal faculties, is not able to support him or herself.

CHAPTER II

ADMINISTRATIVE CO-OPERATION

Article 4

Designation of Central Authorities

1. A Contracting State shall designate a Central Authority to discharge the duties that are imposed by the Convention on such an authority.

2. Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and shall specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for

transmission to the appropriate Central Authority within that State.

3. The designation of the Central Authority or Central Authorities, their contact details, and where appropriate the extent of their functions as specified in paragraph 2, shall be communicated by a Contracting State to the Permanent Bureau of the Hague Conference on Private International Law at the time when the instrument of ratification or accession is deposited or when a declaration is submitted in accordance with Article 61. Contracting States shall promptly inform the Permanent Bureau of any changes.

Article 5

General functions of Central Authorities

Central Authorities shall –

a) co-operate with each other and promote co-operation amongst the competent authorities in their States to achieve the purposes of the Convention;

b) seek as far as possible solutions to difficulties which arise in the application of the Convention.

Article 6

Specific functions of Central Authorities

1. Central Authorities shall provide assistance in relation to applications under Chapter III. In particular they shall –

a) transmit and receive such applications;

b) initiate or facilitate the institution of proceedings in respect of such applications.

2. In relation to such applications they shall take all appropriate measures

a) where the circumstances require, to provide or facilitate the provision of legal assistance;

b) to help locate the debtor or the creditor;

c) to help obtain relevant information concerning the income and, if necessary, other financial circumstances of the debtor or creditor, including the location of assets;

d) to encourage amicable solutions with a view to obtaining voluntary payment of maintenance, where suitable by use of mediation, conciliation or similar processes;

e) to facilitate the ongoing enforcement of maintenance decisions, including any arrears;

f) to facilitate the collection and expeditious transfer of maintenance payments;

g) to facilitate the obtaining of documentary or other evidence;

h) to provide assistance in establishing parentage where necessary for the recovery of maintenance;

i) to initiate or facilitate the institution of proceedings to obtain any necessary provisional measures that are territorial in nature and the purpose of which is to secure the outcome of a pending maintenance application;

j) to facilitate service of documents.

3. The functions of the Central Authority under this Article may, to the extent permitted under the law of its State, be performed by public bodies, or other bodies subject to the supervision of the competent authorities of that State.

The designation of any such public bodies or other bodies, as well as their contact details and the extent of their functions, shall be communicated by a Contracting State to the Permanent Bureau of the Hague Conference on Private International Law. Contracting States shall promptly inform the Permanent.

4. Nothing in this Article or Article 7 shall be interpreted as imposing an obligation on a Central Authority to exercise powers that can be exercised only by judicial authorities under the law of the requested State

Article 7

Requests for specific measures

1. A Central Authority may make a request, supported by reasons, to another Central Authority to take appropriate specific measures under Article 6(2) b), c), g), h), i) and j) when no application under Article 10 is pending. The requested Central Authority shall take such measures as are appropriate if satisfied that they are necessary to assist a potential applicant in making an application under Article 10 or in determining whether such an application should be initiated.

2. A Central Authority may also take specific measures on the request of another Central Authority in relation to a case having an international element concerning the recovery of maintenance pending in the requesting State.

Article 8

Central Authority costs

1. Each Central Authority shall bear its own costs in applying this Convention.

2. Central Authorities may not impose any charge on an applicant for the provision of their services under the Convention save for exceptional costs arising from a request for a specific measure under Article 7.

3. The requested Central Authority may not recover the costs of the services referred to in paragraph 2 without the prior consent of the applicant to the provision of those services at such cost.

CHAPTER III

APPLICATIONS THROUGH CENTRAL AUTHORITIES

Article 9

Application through Central Authorities

An application under this Chapter shall be made through the Central Authority of the Contracting State in which the applicant resides to the Central Authority of the requested State. For the purpose of this provision, residence excludes mere presence.

Article 10

Available applications

1. The following categories of application shall be available to a creditor in a requesting State seeking to recover maintenance under this Convention –

a) recognition or recognition and enforcement of a decision;

b) enforcement of a decision made or recognised in the requested State;

c) establishment of a decision in the requested State where there is no existing decision, including where necessary the establishment of parentage;

d) establishment of a decision in the requested State where recognition and enforcement of a decision is not possible, or is refused, because of the lack of a basis for recognition and enforcement under Article 20, or on the grounds specified in Article 22 *b)* or *e)*;

e) modification of a decision made in the requested State;

f) modification of a decision made in a State other than the requested State.

2. The following categories of application shall be available to a debtor in a requesting State against whom there is an existing maintenance decision –

a) recognition of a decision, or an equivalent procedure leading to the suspension, or limiting the enforcement, of a previous decision in the requested State;

b) modification of a decision made in the requested State;

c) modification of a decision made in a State other than the requested State.

3. Save as otherwise provided in this Convention, the applications in paragraphs 1 and 2 shall be determined under the law of the requested State, and applications in paragraphs 1 c) to f) and 2 b) and c) shall be subject to the jurisdictional rules applicable in the requested State.

Article 11

Application contents

1. All applications under Article 10 shall as a minimum include –

a) a statement of the nature of the application or applications;

b) the name and contact details, including the address and date of birth of the applicant;

c) the name and, if known, address and date of birth of the respondent;

d) the name and date of birth of any person for whom maintenance is sought;

e) the grounds upon which the application is based;

f) in an application by a creditor, information concerning where the maintenance payment should be sent or electronically transmitted;

g) save in an application under Article 10(1) *a)* and (2) *a)*, any information or document specified by declaration in accordance with Article 63 by the requested State;

h) the name and contact details of the person or unit from the Central Authority of the requesting State responsible for processing the application.

2. As appropriate, and to the extent known, the application shall in addition in particular include –

a) the financial circumstances of the creditor;

b) the financial circumstances of the debtor, including the name and address of the employer of the debtor and the nature and location of the assets of the debtor;

c) any other information that may assist with the location of the respondent.

3. The application shall be accompanied by any necessary supporting information or documentation including documentation concerning the entitlement of the applicant to free legal assistance. In the case of applications under Article 10(1) *a)* and (2) *a)*, the application shall be accompanied only by the documents listed in Article 25.

4. An application under Article 10 may be made in the form recommended and published by the Hague Conference on Private International Law.

Article 12

Transmission, receipt and processing of applications and cases through Central Authorities

1. The Central Authority of the requesting State shall assist the applicant in ensuring that the application is accompanied by all the information and documents known by it to be necessary for consideration of the application.

2. The Central Authority of the requesting State shall, when satisfied that the application complies with the requirements of the Convention, transmit the application on behalf of and with the consent of the applicant to the Central Authority of the requested State. The application shall be accompanied by the transmittal form set out in Annex 1. The Central Authority of the requesting State shall, when requested by the Central Authority of the requested State, provide a complete copy certified by the competent authority in the State of origin of any

document specified under Articles 16(3), 25(1) *a), b),* and *d),* (3) *b)* and 30(3).

3. The requested Central Authority shall, within six weeks from the date of receipt of the application, acknowledge receipt in the form set out in Annex 2, and inform the Central Authority of the requesting State what initial steps have been or will be taken to deal with the application, and may request any further necessary documents and information. Within the same six-week period, the requested Central Authority shall provide to the requesting Central Authority the name and contact details of the person or unit responsible for responding to inquiries regarding the progress of the application.

4. Within three months after the acknowledgement, the requested Central Authority shall inform the requesting Central Authority of the status of the application.

5. Requesting and requested Central Authorities shall keep each other informed of –

a) the person or unit responsible for a particular case;

b) the progress of the case,

and shall provide timely responses to enquiries.

6. Central Authorities shall process a case as quickly as a proper consideration of the issues will allow.

7. Central Authorities shall employ the most rapid and efficient means of communication at their disposal.

8. A requested Central Authority may refuse to process an application only if it is manifest that the requirements of the Convention are not fulfilled. In such case, that Central Authority shall promptly inform the requesting Central Authority of its reasons for refusal.

9. The requested Central Authority may not reject an application solely on the basis that additional documents or information are needed. However, the requested Central Authority may ask the requesting Central Authority to provide these additional documents or information. If the requesting Central Authority does not do so within three months or a longer period specified by the requested Central Authority, the requested Central Authority may decide that it will no longer process the application. In this case, it shall inform the requesting Central Authority of this decision.

Article 13

Means of communication

Any application made through Central Authorities of the Contracting States in accordance with this Chapter, and any document or information appended thereto or provided by a Central Authority, may not be challenged by the respondent by reason only of the medium or means of communication employed between the Central Authorities concerned.

Article 14

Effective access to procedures

1. The requested State shall provide applicants with effective access to procedures, including enforcement and appeal procedures, arising from applications under this Chapter.

2. To provide such effective access, the requested State shall provide free legal assistance in accordance with Articles 14 to 17 unless paragraph 3 applies.

3. The requested State shall not be obliged to provide such free legal assistance if and to the extent that the procedures of that State enable the applicant to make the case without the need for such assistance, and the Central Authority provides such services as are necessary free of charge.

4. Entitlements to free legal assistance shall not be less than those available in equivalent domestic cases.

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

Article 15

Free legal assistance for child support applications

1. The requested State shall provide free legal assistance in respect of all applications by a creditor under this Chapter concerning maintenance obligations arising from a parent-child relationship towards a person under the age of 21 years.

2. Notwithstanding paragraph 1, the requested State may, in relation to applications other than those under Article 10(1) *a)* and *b)* and the cases covered by Article 20(4), refuse free legal assistance if it considers that, on the merits, the application or any appeal is manifestly unfounded.

Article 16

Declaration to permit use of child-centred means test

1. Notwithstanding Article 15(1), a State may declare, in accordance with Article 63, that it will provide free legal assistance in respect of applications other than under Article 10(1) *a)* and *b)* and the cases covered by Article 20(4), subject to a test based on an assessment of the means of the child.

2. A State shall, at the time of making such a declaration, provide information to the Permanent Bureau of the Hague Conference on Private International Law concerning the manner in which the assessment of the child's means will be carried out, including the financial criteria which would need to be met to satisfy the test.

3. An application referred to in paragraph 1, addressed to a State which has made the declaration referred to in that paragraph, shall include a formal attestation by the applicant stating that the child's means meet the criteria referred to in paragraph 2. The requested State may only request further evidence of the child's means if it has reasonable grounds to believe that the information provided by the applicant is inaccurate.

4. If the most favourable legal assistance provided for by the law of the requested State in respect of applications under this Chapter concerning maintenance obligations arising from a parent-child relationship towards a child is more favourable than that provided for under paragraphs 1 to 3, the most favourable legal assistance shall be provided.

Article 17

Applications not qualifying under Article 15 or Article 16

In the case of all applications under this Convention other than those under Article 15 or Article 16 –

a) the provision of free legal assistance may be made subject to a means or a merits test;

b) an applicant, who in the State of origin has benefited from free legal assistance, shall be entitled, in any proceedings for recognition or enforcement, to benefit, at least to the same extent, from free legal assistance as provided for by the law of the State addressed under the same circumstances.

CHAPTER IV

RESTRICTIONS ON BRINGING PROCEEDINGS

Article 18

Limit on proceedings

1. Where a decision is made in a Contracting State where the creditor is habitually resident, proceedings to modify the decision or to make a new decision cannot be brought by the debtor in any other Contracting State as long as the creditor remains habitually resident in the State where the decision was made.

2. Paragraph 1 shall not apply –

a) where, except in disputes relating to maintenance obligations in respect of children, there is agreement in writing between the parties to the jurisdiction of that other Contracting State;

b) where the creditor submits to the jurisdiction of that other Contracting State either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity;

c) where the competent authority in the State of origin cannot, or refuses to, exercise jurisdiction to modify the decision or make a new decision; or

d) where the decision made in the State of origin cannot be recognised or declared enforceable in the Contracting State where proceedings to modify the decision or make a new decision are contemplated.

CHAPTER V

RECOGNITION AND ENFORCEMENT

Article 19

Scope of the Chapter

1. This Chapter shall apply to a decision rendered by a judicial or administrative authority in respect of a maintenance obligation. The term "decision" also includes a settlement or agreement concluded before or approved by such an authority. A decision may include automatic adjustment by indexation and a requirement to pay arrears, retroactive maintenance or interest and a determination of costs or expenses.

2. If a decision does not relate solely to a maintenance obligation, the effect of this Chapter is limited to the parts of the decision which concern maintenance obligations.

3. For the purpose of paragraph 1, "administrative authority" means a public body whose decisions, under the law of the State where it is established –

a) may be made the subject of an appeal to or review by a judicial authority; and

b) have a similar force and effect to a decision of a judicial authority on the same matter.

4. This Chapter also applies to maintenance arrangements in accordance with Article 30.

5. The provisions of this Chapter shall apply to a request for recognition and enforcement made directly to a competent authority of the State addressed in accordance with Article 37.

Article 20

Bases for recognition and enforcement

1. A decision made in one Contracting State ("the State of origin") shall be recognised and enforced in other Contracting States if –

a) the respondent was habitually resident in the State of origin at the time proceedings were instituted;

b) the respondent has submitted to the jurisdiction either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity;

c) the creditor was habitually resident in the State of origin at the time proceedings were instituted;

d) the child for whom maintenance was ordered was habitually resident in the State of origin at the time proceedings were instituted, provided that the respondent has lived with the child in that State or has resided in that State and provided support for the child there;

e) except in disputes relating to maintenance obligations in respect of children, there has been agreement to the jurisdiction in writing by the parties; or

f) the decision was made by an authority exercising jurisdiction on a matter of personal status or parental responsibility, unless that jurisdiction was based solely on the nationality of one of the parties.

2. A Contracting State may make a reservation, in accordance with Article 62, in respect of paragraph 1 c), e) or f).

3. A Contracting State making a reservation under paragraph 2 shall recognise and enforce a decision if its law would in similar factual circumstances confer or would have conferred jurisdiction on its authorities to make such a decision.

4. A Contracting State shall, if recognition of a decision is not possible as a result of a reservation under paragraph 2, and if the debtor is habitually resident in that State, take all appropriate measures to establish a decision for the benefit of the creditor. The preceding sentence shall not apply to direct requests for recognition and enforcement under Article 19(5) or to claims for support referred to in Article 2(1) b).

5. A decision in favour of a child under the age of 18 years which cannot be recognised by virtue only of a reservation in respect of paragraph 1 c), e) or f) shall be accepted as establishing the eligibility of that child for maintenance in the State addressed.

6. A decision shall be recognised only if it has effect in the State of origin, and shall be enforced only if it is enforceable in the State of origin.

Article 21

Severability and partial recognition and enforcement

1. If the State addressed is unable to recognise or enforce the whole of the decision, it shall recognise or enforce any severable part of the decision which can be so recognised or enforced.

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

Article 22

Grounds for refusing recognition and enforcement

Recognition and enforcement of a decision may be refused if –

a) recognition and enforcement of the decision is manifestly incompatible with the public policy ("*ordre public*") of the State addressed;

b) the decision was obtained by fraud in connection with a matter of procedure;

c) 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;

d) 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;

e) in a case where the respondent has neither appeared nor was represented in proceedings in the State of origin –

i) when the law of the State of origin provides for notice of proceedings, the respondent did not have proper notice of the proceedings and an opportunity to be heard; or

ii) when the law of the State of origin does not provide for notice of the proceedings, the respondent did not have proper notice of the decision and an opportunity to challenge or appeal it on fact and law; or

f) the decision was made in violation of Article 18.

Article 23

Procedure on an application for recognition and enforcement

1. Subject to the provisions of the Convention, the procedures for recognition and enforcement shall be governed by the law of the State addressed.

2. Where an application for recognition and enforcement of a decision has been made through Central Authorities in accordance with Chapter III, the requested Central Authority shall promptly either –

a) refer the application to the competent authority which shall without delay declare the decision enforceable or register the decision for enforcement; or

b) if it is the competent authority take such steps itself.

3. Where the request is made directly to a competent authority in the State addressed in accordance with Article 19(5), that authority shall without delay declare the decision enforceable or register the decision for enforcement.

4. A declaration or registration may be refused only on the ground set out in Article 22 a). At this stage neither the applicant nor the respondent is entitled to make any submissions.

5. The applicant and the respondent shall be promptly notified of the declaration or registration, made under paragraphs 2 and 3, or the refusal thereof in accordance with paragraph 4, and may bring a challenge or appeal on fact and on a point of law.

6. A challenge or an appeal is to be lodged within 30 days of notification under paragraph 5. If the contesting party is not resident in the Contracting State in which the declaration or registration was made or refused, the challenge or appeal shall be lodged within 60 days of notification.

7. A challenge or appeal may be founded only on the following –

a) the grounds for refusing recognition and enforcement set out in Article 22;

b) the bases for recognition and enforcement under Article 20;

c) the authenticity or integrity of any document transmitted in accordance with Article 25(1) a), b) or d) or (3) b).

8. A challenge or an appeal by a respondent may also be founded on the fulfilment of the debt to the extent that the recognition and enforcement relates to payments that fell due in the past.

9. The applicant and the respondent shall be promptly notified of the decision following the challenge or the appeal.

10. A further appeal, if permitted by the law of the State addressed, shall not have the effect of staying the enforcement of the decision unless there are exceptional circumstances.

11. In taking any decision on recognition and enforcement, including any appeal, the competent authority shall act expeditiously.

Article 24

Alternative procedure on an application for recognition and enforcement

1. Notwithstanding Article 23(2) to (11), a State may declare, in accordance with Article 63, that it will apply the procedure for recognition and enforcement set out in this Article.

2. Where an application for recognition and enforcement of a decision has been made through Central Authorities in accordance with Chapter III, the requested Central Authority shall promptly either –

a) refer the application to the competent authority which shall decide on the application for recognition and enforcement; or

b) if it is the competent authority, take such a decision itself.

3. A decision on recognition and enforcement shall be given by the competent authority after the respondent has been duly and promptly notified of the proceedings and both parties have been given an adequate opportunity to be heard.

4. The competent authority may review the grounds for refusing recognition and enforcement set out in Article 22 a), c) and d) of its own motion. It may review any grounds listed in Articles 20, 22 and 23(7) ***c)*** if raised by the respondent or if concerns relating to those grounds arise from the face of the documents submitted in accordance with Article 25.

5. A refusal of recognition and enforcement may also be founded on the fulfilment of the debt to the extent that the recognition and enforcement relates to payments that fell due in the past.

6. Any appeal, if permitted by the law of the State addressed, shall not have the effect of staying the enforcement of the decision unless there are exceptional circumstances.

7. In taking any decision on recognition and enforcement, including any appeal, the competent authority shall act expeditiously.

Article 25

Documents

1. An application for recognition and enforcement under Article 23 or Article 24 shall be accompanied by the following –

a) a complete text of the decision;

b) a document stating that the decision is enforceable in the State of origin and, in the case of a decision by an administrative authority, a document stating that the requirements of Article 19(3) are met unless that State has specified in accordance with Article 57 that decisions of its administrative authorities always meet those requirements;

c) if the respondent did not appear and was not represented in the proceedings in the State of origin, a document or documents attesting, as appropriate, either that the respondent had proper notice of the proceedings and an opportunity to be heard, or that the respondent had proper notice of the decision and the opportunity to challenge or appeal it on fact and law;

d) where necessary, a document showing the amount of any arrears and the date such amount was calculated;

e) where necessary, in the case of a decision providing for automatic adjustment by indexation, a document providing the information necessary to make the appropriate calculations;

f) where necessary, documentation showing the extent to which the applicant received free legal assistance in the State of origin.

2. Upon a challenge or appeal under Article 23(7) *c)* or upon request by the competent authority in the State addressed, a complete copy of the document concerned, certified by the competent authority in the State of origin, shall be provided promptly –

a) by the Central Authority of the requesting State, where the application has been made in accordance with Chapter III;

b) by the applicant, where the request has been made directly to a competent authority of the State addressed.

3. A Contracting State may specify in accordance with Article 57 –

a) that a complete copy of the decision certified by the competent authority in the State of origin must accompany the application;

b) circumstances in which it will accept, in lieu of a complete text of the decision, an abstract or extract of the decision drawn up by the competent authority of the State of origin, which may be made in the form recommended and published by the Hague Conference on Private International Law; or

c) that it does not require a document stating that the requirements of Article 19(3) are met.

Article 26

Procedure on an application for recognition

This Chapter shall apply *mutatis mutandis* to an application for recognition of a decision, save that the requirement of enforceability is replaced by the requirement that the decision has effect in the State of origin.

Article 27

Findings of fact

Any competent 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 28

No review of the merits

There shall be no review by any competent authority of the State addressed of the merits of a decision.

Article 29

Physical presence of the child or the applicant not required

The physical presence of the child or the applicant shall not be required in any proceedings in the State addressed under this Chapter.

Article 30

Maintenance arrangements

1. A maintenance arrangement made in a Contracting State shall be entitled to recognition and enforcement as a decision under this Chapter provided that it is enforceable as a decision in the State of origin.

2. For the purpose of Article 10(1) a) *and* b) *and* (2) a), the term "decision" includes a maintenance arrangement.

3. An application for recognition and enforcement of a maintenance arrangement shall be accompanied by the following –

a) a complete text of the maintenance arrangement; and

b) a document stating that the particular maintenance arrangement is enforceable as a decision in the State of origin.

4. Recognition and enforcement of a maintenance arrangement may be refused if –

a) the recognition and enforcement is manifestly incompatible with the public policy of the State addressed;

b) the maintenance arrangement was obtained by fraud or falsification;

c) the maintenance arrangement 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.

5. The provisions of this Chapter, with the exception of Articles 20, 22, 23(7) and 25(1) and (3), shall apply *mutatis mutandis* to the recognition and enforcement of a maintenance arrangement save that –

a) a declaration or registration in accordance with Article 23(2) and (3) may be refused only on the ground set out in paragraph 4 a);

b) a challenge or appeal as referred to in Article 23(6) may be founded only on the following –

   i) the grounds for refusing recognition and enforcement set out in paragraph 4;

   ii) the authenticity or integrity of any document transmitted in accordance with paragraph 3;

c) as regards the procedure under Article 24(4), the competent authority may review of its own motion the ground for refusing recognition and enforcement set out in paragraph 4 a) of this Article. It may review all grounds listed in paragraph 4 of this Article and the authenticity or integrity of any document transmitted in accordance with paragraph 3 if raised by the respondent or if concerns relating to those grounds arise from the face of those documents.

6. Proceedings for recognition and enforcement of a maintenance arrangement shall be suspended if a challenge concerning the arrangement is pending before a competent authority of a Contracting State.

7. A State may declare, in accordance with Article 63, that applications for recognition and enforcement of a maintenance arrangement shall only be made through Central Authorities.

8. A Contracting State may, in accordance with Article 62, reserve the right not to recognise and enforce a maintenance arrangement.

Article 31

Decisions produced by the combined effect of provisional and confirmation orders

Where a decision is produced by the combined effect of a provisional order made in one State and an order by an authority in another State ("the confirming State") confirming the provisional order –

a) each of those States shall be deemed for the purposes of this Chapter to be a State of origin;

b) the requirements of Article 22 e) shall be met if the respondent had proper notice of the proceedings in the confirming State and an opportunity to oppose the confirmation of the provisional order;

c) the requirement of Article 20(6) that a decision be enforceable in the State of origin shall be met if the decision is enforceable in the confirming State; and

d) Article 18 shall not prevent proceedings for the modification of the decision being commenced in either State.

CHAPTER VI

ENFORCEMENT BY THE STATE ADDRESSED

Article 32

Enforcement under internal law

1. Subject to the provisions of this Chapter, enforcement shall take place in accordance with the law of the State addressed.

2. Enforcement shall be prompt.

3. In the case of applications through Central Authorities, where a decision has been declared enforceable or registered for enforcement under Chapter V, enforcement shall proceed without the need for further action by the applicant.

4. Effect shall be given to any rules applicable in the State of origin of the decision relating to the duration of the maintenance obligation.

5. Any limitation on the period for which arrears may be enforced shall be determined either by the law of the State of origin of the decision or by the law of the State addressed, whichever provides for the longer limitation period.

Article 33

Non-discrimination

The State addressed shall provide at least the same range of enforcement methods for cases under the Convention as are available in domestic cases.

Article 34

Enforcement measures

1. Contracting States shall make available in internal law effective measures to enforce decisions under this Convention.

2. Such measures may include –

a) wage withholding;

b) garnishment from bank accounts and other sources;

c) deductions from social security payments;

d) lien on or forced sale of property;

e) tax refund withholding;

f) withholding or attachment of pension benefits;

g) credit bureau reporting;

h) denial, suspension or revocation of various licenses (for example, driving licenses);

i) the use of mediation, conciliation or similar processes to bring about voluntary compliance.

Article 35

Transfer of funds

1. Contracting States are encouraged to promote, including by means of international agreements, the use of the most cost-effective and efficient methods available to transfer funds payable as maintenance.

2. A Contracting State, under whose law the transfer of funds is restricted, shall accord the highest priority to the transfer of funds payable under this Convention.

CHAPTER VII

PUBLIC BODIES

Article 36

Public bodies as applicants

1. For the purposes of applications for recognition and enforcement under Article 10(1) a) and b) and cases covered by Article 20(4), "creditor" includes a public body acting in place of an individual to whom maintenance is owed or one to which reimbursement is owed for benefits provided in place of maintenance.

2. The right of a public body to act in place of an individual to whom maintenance is owed or to seek reimbursement of benefits provided to the creditor in place of maintenance shall be governed by the law to which the body is subject.

3. A public body may seek recognition or claim enforcement of –

a) a decision rendered against a debtor on the application of a public body which claims payment of benefits provided in place of maintenance;

b) a decision rendered between a creditor and debtor to the extent of the benefits provided to the creditor in place of maintenance.

4. The public body seeking recognition or claiming enforcement of a decision shall upon request furnish any document necessary to establish its right under paragraph 2 and that benefits have been provided to the creditor.

CHAPTER VIII

GENERAL PROVISIONS

Article 37

Direct requests to competent authorities

1. The Convention shall not exclude the possibility of recourse to such procedures as may be available under the internal law of a Contracting State allowing a person (an applicant) to seize directly a competent authority of that State in a matter governed by the Convention including, subject to Article 18, for the purpose of having a maintenance decision established or modified.

2. Articles 14(5) and 17 b) and the provisions of Chapters V, VI, VII and this Chapter, with the exception of Articles 40(2), 42, 43(3), 44(3), 45 and 55, shall apply in relation to a request for recognition and enforcement made directly to a competent authority in a Contracting State.

3. For the purpose of paragraph 2, Article 2(1) a) shall apply to a decision granting maintenance to a vulnerable person over the age specified in that sub-paragraph where such decision was rendered before the person reached that age and provided for maintenance beyond that age by reason of the impairment.

Article 38

Protection of personal data

Personal data gathered or transmitted under the Convention shall be used only for the purposes for which they were gathered or transmitted.

Article 39

Confidentiality

Any authority processing information shall ensure its confidentiality in accordance with the law of its State.

Article 40

Non-disclosure of information

1. An authority shall not disclose or confirm information gathered or transmitted in application of this Convention if it determines that to do so could jeopardise the health, safety or liberty of a person.

2. A determination to this effect made by one Central Authority shall be taken into account by another Central Authority, in particular in cases of family violence.

3. Nothing in this Article shall impede the gathering and transmitting of information by and between authorities in so far as necessary to carry out the obligations under the Convention.

Article 41

No legalisation

No legalisation or similar formality may be required in the context of this Convention.

Article 42

Power of attorney

The Central Authority of the requested State may require a power of attorney from the applicant only if it acts on his or her behalf in judicial proceedings or before other authorities, or in order to designate a representative so to act.

Article 43

Recovery of costs

1. Recovery of any costs incurred in the application of this Convention shall not take precedence over the recovery of maintenance.

2. A State may recover costs from an unsuccessful party.

3. For the purposes of an application under Article 10(1) b) to recover costs from an unsuccessful party in accordance with paragraph 2, the term "creditor" in Article 10(1) shall include a State.

4. This Article shall be without prejudice to Article 8.

Article 44

Language requirements

1. Any application and related documents shall be in the original

language, and shall be accompanied by a translation into an official language of the requested State or another language which the requested State has indicated, by way of declaration in accordance with Article 63, it will accept, unless the competent authority of that State dispenses with translation.

2. A Contracting State which has more than one official language and cannot, for reasons of internal law, accept for the whole of its territory documents in one of those languages shall, by declaration in accordance with Article 63, specify the language in which such documents or translations thereof shall be drawn up for submission in the specified parts of its territory.

3. Unless otherwise agreed by the Central Authorities, any other communications between such Authorities shall be in an official language of the requested State or in either English or French. However, a Contracting State may, by making a reservation in accordance with Article 62, object to the use of either English or French.

Article 45

Means and costs of translation

1. In the case of applications under Chapter III, the Central Authorities may agree in an individual case or generally that the translation into an official language of the requested State may be made in the requested State from the original language or from any other agreed language. If there is no agreement and it is not possible for the requesting Central Authority to comply with the requirements of Article 44(1) and (2), then the application and related documents may be transmitted with translation into English or French for further translation in to an official language of the requested State.

2. The cost of translation arising from the application of paragraph 1 shall be borne by the requesting State unless otherwise agreed by Central Authorities of the States concerned.

3. Notwithstanding Article 8, the requesting Central Authority may charge an applicant for the costs of translation of an application and related documents, except in so far as those costs may be covered by its system of legal assistance.

Article 46

Non-unified legal systems – interpretation

1. In relation to a State in which two or more systems of law or sets of rules of law with regard to any matter dealt with in this Convention apply in different territorial units –

a) any reference to the law or procedure of a State shall be construed as referring, where appropriate, to the law or procedure in force in the relevant territorial unit;

b) any reference to a decision established, recognised, recognised and enforced, enforced or modified in that State shall be construed as referring, where appropriate, to a decision established, recognised, recognised and enforced, enforced or modified in the relevant territorial unit;

c) any reference to a judicial or administrative authority in that State shall be construed as referring, where appropriate, to a judicial or administrative authority in the relevant territorial unit;

d) any reference to competent authorities, public bodies, and other bodies of that State, other than Central Authorities, shall be construed as referring, where appropriate, to those authorised to act in the relevant territorial unit;

e) any reference to residence or habitual residence in that State shall be construed as referring, where appropriate, to residence or habitual residence in the relevant territorial unit;

f) any reference to location of assets in that State shall be construed as referring, where appropriate, to the location of assets in the relevant territorial unit;

g) any reference to a reciprocity arrangement in force in a State shall be construed as referring, where appropriate, to a reciprocity arrangement in force in the relevant territorial unit;

h) any reference to free legal assistance in that State shall be construed as referring, where appropriate, to free legal assistance in the relevant territorial unit;

i) any reference to a maintenance arrangement made in a State shall be construed as referring, where appropriate, to a maintenance arrangement made in the relevant territorial unit;

j) any reference to recovery of costs by a State shall be construed as referring, where appropriate, to the recovery of costs by the relevant territorial unit.

2. This Article shall not apply to a Regional Economic Integration Organisation.

Article 47

Non-unified legal systems – substantive rules

1. A Contracting State with two or more territorial units in which different systems of law apply shall not be bound to apply this Convention to situations which involve solely such different territorial units.

2. A competent authority in a territorial unit of a Contracting State with two or more territorial units in which different systems of law apply shall not be bound to recognise or enforce a decision from another Contracting State solely because the decision has been recognised or enforced in another territorial unit of the same Contracting State under this Convention.

3. This Article shall not apply to a Regional Economic Integration Organisation.

Article 48

Co-ordination with prior Hague Maintenance Conventions

In relations between the Contracting States, this Convention replaces, subject to Article 56(2), the *Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations* and the Hague Convention of 15 April 1958 concerning the recognition and enforcement of decisions relating to maintenance obligations towards children in so far as their scope of application as between such States coincides with the scope of application of this Convention.

Article 49

Co-ordination with the 1956 New York Convention

In relations between the Contracting States, this Convention replaces the United Nations Convention on the Recovery Abroad of Maintenance of 20 June 1956, in so far as its scope of application as between such States coincides with the scope of application of this Convention.

Article 50

Relationship with prior Hague Conventions on service of documents and taking of evidence

This Convention does not affect the *Hague Convention of 1 March 1954 on civil procedure*, the *Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* and the *Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters.*

Article 51

Co-ordination of instruments and supplementary agreements

1. This Convention does not affect any international instrument concluded before this Convention to which Contracting States are Parties and which contains provisions on matters governed by this Convention.

2. Any Contracting State may conclude with one or more Contracting States agreements, which contain provisions on matters governed by the Convention, with a view to improving the application of the Convention between or among themselves, provided that such agreements are consistent with the objects and purpose of the Convention and do not affect, in the relationship of such States with other Contracting States, the application of the provisions of the Convention. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

3. Paragraphs 1 and 2 shall also apply to reciprocity arrangements and to uniform laws based on special ties between the States concerned.

4. This Convention shall not affect the application of instruments of a Regional Economic Integration Organisation that is a Party to this Convention, adopted after the conclusion of the Convention, on matters governed by the Convention provided that such instruments do not affect, in the relationship of Member States of the Regional Economic Integration Organisation with other Contracting States, the application of the provisions of the Convention. As concerns the recognition or enforcement of decisions as between Member States of the Regional Economic Integration Organisation, the Convention shall not affect the rules of the Regional Economic Integration Organisation, whether adopted before or after the conclusion of the Convention.

Article 52

Most effective rule

1. This Convention shall not prevent the application of an agreement, arrangement or international instrument in force between the requesting State and the requested State, or a reciprocity arrangement in force in the requested State that provides for –

a) broader bases for recognition of maintenance decisions, without prejudice to Article 22 f) of the Convention;

b) simplified, more expeditious procedures on an application for recognition or recognition and enforcement of maintenance decisions;

c) more beneficial legal assistance than that provided for under Articles 14 to 17; or

d) procedures permitting an applicant from a requesting State to make a request directly to the Central Authority of the requested State.

2. This Convention shall not prevent the application of a law in force in the requested State that provides for more effective rules as referred to in paragraph 1 a) to c). However, as regards simplified, more expeditious procedures referred to in paragraph 1 b), they must be compatible with the protection offered to the

parties under Articles 23 and 24, in particular as regards the rights of the parties to be duly notified of the proceedings and be given adequate opportunity to be heard and as regards the effects of any challenge or appeal.

Article 53

Uniform interpretation

In the interpretation of this Convention, regard shall be had to its international character and to the need to promote uniformity in its application.

Article 54

Review of practical operation of the Convention

1. The Secretary General of the Hague Conference on Private International Law shall at regular intervals convene a Special Commission in order to review the practicaloperation of the Convention and to encourage the development of good practices under the Convention.

2. For the purpose of such review, Contracting States shall co-operate with the Permanent Bureau of the Hague Conference on Private International Law in the gathering of information, including statistics and case law, concerning the practical operation of the Convention.

Article 55

Amendment of forms

1. The forms annexed to this Convention may be amended by a decision

of a Special Commission convened by the Secretary General of the Hague Conference on Private International Law to which all Contracting States and all Members shall be invited. Notice of the proposal to amend the forms shall be included in the agenda for the meeting.

2. Amendments adopted by the Contracting States present at the Special Commission shall come into force for all Contracting States on the first day of the seventh calendar month after the date of their communication by the depositary to all Contracting States.

3. During the period provided for in paragraph 2 any Contracting State may by notification in writing to the depositary make a reservation, in accordance with Article 62, with respect to the amendment. The State making such reservation shall, until the reservation is withdrawn, be treated as a State not Party to the present Convention with respect to that amendment.

Article 56

Transitional provisions

1. The Convention shall apply in every case where –

a) a request pursuant to Article 7 or an application pursuant to Chapter III has been received by the Central Authority of the requested State after the Convention has entered into force between the requesting State and the requested State;

b) a direct request for recognition and enforcement has been received by the competent authority of the State addressed after the Convention has entered into force between the State of origin and the State addressed.

2. With regard to the recognition and enforcement of decisions between Contracting States to this Convention that are also Parties to either of the Hague Maintenance Conventions mentioned in Article 48, if the conditions for the recognition and enforcement under this Convention prevent the recognition and enforcement of a decision given in the State of origin before the entry into force of this Convention for that State, that would otherwise have been recognised and enforced under the terms of the Convention that was in effect at the time the decision was rendered, the conditions of that Convention shall apply.

3. The State addressed shall not be bound under this Convention to enforce a decision or a maintenance arrangement, in respect of payments falling due prior to the entry into force of the Convention between the State of origin and the State addressed, except for maintenance obligations arising from a parent-child relationship towards a person under the age of 21 years.

Article 57

Provision of information concerning laws, procedures and services

1. A Contracting State, by the time its instrument of ratification or accession is deposited or a declaration is submitted in accordance with Article 61 of the Convention, shall provide the Permanent Bureau of the Hague Conference on Private International Law with –

a) a description of its laws and procedures concerning maintenance obligations;

b) a description of the measures it will take to meet the obligations under Article 6;

c) a description of how it will provide applicants with effective access to procedures, as required under Article 14;

d) a description of its enforcement rules and procedures, including any limitations on enforcement, in particular debtor protection rules and limitation periods;

e) any specification referred to in Article 25(1) b) and (3).

2. Contracting States may, in fulfilling their obligations under paragraph 1, utilise a country profile form recommended and published by the Hague Conference on Private International Law.

3. Information shall be kept up to date by the Contracting States.

CHAPTER IX

FINAL PROVISIONS

Article 58

Signature, ratification and accession

1. The 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 Twenty-First Session and by the other States which participated in that Session.

2. 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 Kingdom of the Netherlands, depositary of the Convention.

3. Any other State or Regional Economic Integration Organisation may accede to the Convention after it has entered into force in accordance with Article 60(1).

4. The instrument of accession shall be deposited with the depositary.

5. 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 12 months after the date of the notification referred to in Article 65. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

Article 59

Regional Economic Integration Organisations

1. A Regional Economic Integration Organisation which is constituted solely by sovereign States and has competence over some or all of the matters governed by this Convention may similarly sign, accept, approve or accede to this Convention. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that the Organisation has competence over matters governed by the Convention.

2. The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, notify the depositary in writing of the matters governed by this Convention in respect of which competence has been transferred to that Organisation by its Member States. The Organisation shall promptly notify the depositary in writing of any changes to its competence as specified in the most recent notice given under this paragraph.

3. At the time of signature, acceptance, approval or accession, a Regional Economic Integration Organisation may declare in accordance with Article 63 that it exercises competence over all the matters governed by this Convention and that the Member States which have transferred competence to the Regional Economic Integration Organisation in respect of the matter in question shall be bound by this

Convention by virtue of the signature, acceptance, approval or accession of the Organisation.

4. For the purposes of the entry into force of this Convention, any instrument deposited by a Regional Economic Integration Organisation shall not be counted unless the Regional Economic Integration Organisation makes a declaration in accordance with paragraph 3.

5. Any reference to a "Contracting State" or "State" in this Convention shall apply equally to a Regional Economic Integration Organisation that is a Party to it, where appropriate. In the event that a declaration is made by a Regional Economic Integration Organisation in accordance with paragraph 3, any reference to a "Contracting State" or "State" in this Convention shall apply equally to the relevant Member States of the Organisation, where appropriate.

Article 60

Entry into force

1. The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the second instrument of ratification, acceptance or approval referred to in Article 58.

2. Thereafter the Convention shall enter into force –

a) for each State or Regional Economic Integration Organisation referred to in Article 59(1) subsequently ratifying, accepting or approving it, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance or approval;

b) for each State or Regional Economic Integration Organisation referred to in Article 58(3) on the day after the end of the period during which objections may be raised in accordance with Article 58(5);

c) for a territorial unit to which the Convention has been extended in accordance with Article 61, on the first day of the month following the expiration of three months after the notification referred to in that Article.

Article 61

Declarations with respect to non-unified legal systems

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in the Convention, it may at the time of signature, ratification, acceptance, approval or accession declare in accordance with Article 63 that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2. Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

3. If a State makes no declaration under this Article, the Convention shall extend to all territorial units of that State.

4. This Article shall not apply to a Regional Economic Integration Organisation.

Article 62

Reservations

1. Any Contracting State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in

terms of Article 61, make one or more of the reservations provided for in Articles 2(2), 20(2), 30(8), 44(3) and 55(3). No other reservation shall be permitted.

2. Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the depositary.

3. The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in paragraph 2.

4. Reservations under this Article shall have no reciprocal effect with the exception of the reservation provided for in Article 2(2).

Article 63

Declarations

1. Declarations referred to in Articles 2(3), 11(1) *g)*, 16(1), 24(1), 30(7), 44(1) and (2), 59(3) and 61(1), may be made upon signature, ratification, acceptance, approval or accession or at any time thereafter, and may be modified or withdrawn at any time.

2. Declarations, modifications and withdrawals shall be notified to the depositary.

3. A declaration made at the time of signature, ratification, acceptance, approval or accession shall take effect simultaneously with the entry into force of this Convention for the State concerned.

4. A declaration made at a subsequent time, and any modification or withdrawal of a declaration, shall take effect on the first day of the month following the expiration of three months after the date on which the notification is received by the depositary.

Article 64

Denunciation

1. A Contracting State to the Convention may denounce it by a notification in writing addressed to the depositary. The denunciation may be limited to certain territorial units of a multi-unit State to which the Convention applies.

2. The denunciation shall take effect on the first day of the month following the expiration of 12 months after the date on which the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation shall take effect upon the expiration of such longer period after the date on which the notification is received by the depositary.

Article 65

Notification

The depositary shall notify the Members of the Hague Conference on Private International Law, and other States and Regional Economic Integration Organisations which have signed, ratified, accepted, approved or acceded in accordance with Articles 58 and 59 of the following –

a) the signatures, ratifications, acceptances and approvals referred to in Articles 58 and 59;

b) the accessions and objections raised to accessions referred to in Articles 58(3) and (5) and 59;

c) the date on which the Convention enters into force in accordance with Article 60;

d) the declarations referred to in Articles 2(3), 11(1) g), 16(1), 24(1), 30(7), 44(1) and (2), 59(3) and 61(1);

e) the agreements referred to in Article 51(2);

f) the reservations referred to in Articles 2(2), 20(2), 30(8), 44(3) and 55(3), and the withdrawals referred to in Article 62(2);

g) the denunciations referred to in Article 64.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Convention.

DONE at The Hague, on the 23rd day of November 2007, 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 Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the Members of the Hague Conference on Private International Law at the date of its Twenty-First Session and to each of the other States which have participated in that Session.

ANNEX 1

Transmittal form under Article 12(2)

CONFIDENTIALITY AND PERSONAL DATA PROTECTION NOTICE

Personal data gathered or transmitted under the Convention shall be used only for the purposes for which it was gathered or transmitted. Any authority processing such data shall ensure its confidentiality, in accordance with the law of its State.

An authority shall not disclose or confirm information gathered or transmitted in application of this Convention if it determines that to do so could jeopardise the health, safety or liberty of a person in accordance with Article 40.

☐ *A determination of non-disclosure has been made by a Central Authority in accordance with Article 40.*

1. Requesting Central Authority	2. Contact person in requesting State
a. Address	a. Address (if different)
b. Telephone number	b. Telephone number (if different)
c. Fax number	c. Fax number (if different)
d. E-mail	d. E-mail (if different)
e. Reference number	e. Language(s)

3. **Requested Central Authority** _____

   Address _____

   _____

4. **Particulars of the applicant**

   a. **Family name(s):** _____

   b. **Given name(s):** _____

   c. **Date of birth:** _____ **(dd/mm/yyyy)**

   or

   a. **Name of the public body:** _____

   _____

5. **Particulars of the person(s) for whom maintenance is sought or payable**

a. ☐ **The person is the same as the applicant named in point 4**

b. i. **Family name(s):** _____

Given name(s): _____

Date of birth: _____ **(dd/mm/yyyy)**

ii. **Family name(s):** _____

Given name(s): _____

Date of birth: _____ **(dd/mm/yyyy)**

iii. **Family name(s):** _____

Given name(s): _____

Date of birth: _____ **(dd/mm/yyyy)**

6. **Particulars of the debtor**[1]

a. ☐ **The person is the same as the applicant named in point 4**

b. **Family name(s):** _____

c. **Given name(s):** _____

d. **Date of birth:** _____ **(dd/mm/yyyy)**

7. **This transmittal form concerns and is accompanied by an application under:**

☐ **Article 10(1) *a)***
☐ **Article 10(1) *b)***
☐ **Article 10(1) *c)***
☐ **Article 10(1) *d)***
☐ **Article 10(1) *e)***
☐ **Article 10(1) *f)***
☐ **Article 10(2) *a)***
☐ **Article 10(2) *b)***
☐ **Article 10(2) *c)***

8. **The following documents are appended to the application:**

a. **For the purpose of an application under Article 10(1) *a)* and:**

In accordance with Article 25:

☐ **Complete text of the decision (Art. 25(1) *a)*)**
☐ **Abstract or extract of the decision drawn up by the competent authority of the State of origin (Art. 25(3) *b)*) (if applicable)**

---

[1] According to Art. 3 of the Convention "'debtor' means an individual who owes or who is alleged to owe maintenance".

- ☐ Document stating that the decision is enforceable in the State of origin and, in the case of a decision by an administrative authority, a document stating that the requirements of Article 19(3) are met unless that State has specified in accordance with Article 57 that decisions of its administrative authorities always meet those requirements (Art. 25(1) *b)*) or if Article 25(3) *c)* is applicable
- ☐ If the respondent did not appear and was not represented in the proceedings in the State of origin, a document or documents attesting, as appropriate, either that the respondent had proper notice of the proceedings and an opportunity to be heard, or that the respondent had proper notice of the decision and the opportunity to challenge or appeal it on fact and law (Art. 25(1) *c)*)
- ☐ Where necessary, a document showing the amount of any arrears and the date such amount was calculated (Art. 25(1) *d)*)
- ☐ Where necessary, a document providing the information necessary to make appropriate calculations in case of a decision providing for automatic adjustment by indexation (Art. 25(1) *e)*)
- ☐ Where necessary, documentation showing the extent to which the applicant received free legal assistance in the State of origin (Art. 25(1) *f)*)

In accordance with Article 30(3):

- ☐ Complete text of the maintenance arrangement (Art. 30(3) *a)*)
- ☐ A document stating that the particular maintenance arrangement is enforceable as a decision in the State of origin (Art. 30(3) *b)*)

- ☐ Any other documents accompanying the application (*e.g.*, if required, a document for the purpose of Art. 36(4)):

_____

_____

b. For the purpose of an application under Article 10(1) *b), c), d), e), f)* and (2) *a), b)* or *c)*, the following number of supporting documents (excluding the transmittal form and the application itself) in accordance with Article 11(3):

- ☐ Article 10(1) *b)* _____
- ☐ Article 10(1) *c)* _____
- ☐ Article 10(1) *d)* _____
- ☐ Article 10(1) *e)* _____
- ☐ Article 10(1) *f)* _____
- ☐ Article 10(2) *a)* _____
- ☐ Article 10(2) *b)* _____
- ☐ Article 10(2) *c)* _____

Name: _____ (in block letters) Date: _____

Authorised representative of the Central Authority (dd/mm/yyyy)

ANNEX 2

Acknowledgement form under Article 12(3)

CONFIDENTIALITY AND PERSONAL DATA PROTECTION NOTICE

Personal data gathered or transmitted under the Convention shall be used only for the purposes for which it was gathered or transmitted. Any authority processing such data shall ensure its confidentiality, in accordance with the law of its State.

An authority shall not disclose or confirm information gathered or transmitted in application of this Convention if it determines that to do so could jeopardise the health, safety or liberty of a person in accordance with Article 40.

☐ *A determination of non-disclosure has been made by a Central Authority in accordance with Article 40.*

1. Requested Central Authority	2. Contact person in requested State
a. Address	a. Address (if different)
b. Telephone number	b. Telephone number (if different)
c. Fax number	c. Fax number (if different)
d. E-mail	d. E-mail (if different)
e. Reference number	e. Language(s)

3. **Requesting Central Authority** _____

   Contact person _____

   Address _____

   _____

4. **The requested Central Authority acknowledges receipt on _____ (dd/mm/yyyy) of the transmittal form from the requesting Central Authority (reference number _____; dated _____ (dd/mm/yyyy)) concerning the following application under:**

   ☐ Article 10(1) *a)*
   ☐ Article 10(1) *b)*
   ☐ Article 10(1) *c)*
   ☐ Article 10(1) *d)*
   ☐ Article 10(1) *e)*
   ☐ Article 10(1) *f)*
   ☐ Article 10(2) *a)*
   ☐ Article 10(2) *b)*
   ☐ Article 10(2) *c)*

Family name(s) of applicant: _____

Family name(s) of the person(s) for whom maintenance is sought or payable: _____

_____

_____

Family name(s) of debtor: _____

5. **Initial steps taken by the requested Central Authority:**

   ☐ **The file is complete and is under consideration**

   ☐ **See attached status of application report**

   ☐ **Status of application report will follow**

   ☐ **Please provide the following additional information and / or documentation:**

   _____

   _____

   ☐ **The requested Central Authority refuses to process this application as it is manifest that the requirements of the Convention are not fulfilled (Art. 12(8)). The reasons:**

   ☐ **are set out in an attached document**

   ☐ **will be set out in a document to follow**

The requested Central Authority requests that the requesting Central Authority inform it of any change in the status of the application.

Name: _____ **(in block letters)** **Date:** _____

Authorised representative of the Central Authority **(dd/mm/yyyy)**

○