

### Council on General Affairs and Policy of the Conference – March 2019

<b>Document</b>	Preliminary Document <input checked="" type="checkbox"/> Information Document <input type="checkbox"/>	No 1 of October 2018
<b>Title</b>	Judgments Project: Report on the Special Commission meeting of May 2018 and next steps	
<b>Author</b>	Permanent Bureau	
<b>Agenda item</b>	Item III.1	
<b>Mandate(s)</b>	C&R Nos 3-5, in particular No 4, of the 2018 Council on General Affairs and Policy C&R Nos 5-7, in particular No 5, of the 2017 Council on General Affairs and Policy C&R Nos 11-14, in particular No 12, of the 2016 Council on General Affairs and Policy	
<b>Objective</b>	To report on the progress of the Special Commission on the Judgments Project, and to request decisions for the next steps of the Judgments Project, including convening a Diplomatic Session in mid-2019 and holding a further meeting of Experts' Group in late 2019	
<b>Action to be taken</b>	For Approval <input type="checkbox"/> For Decision <input checked="" type="checkbox"/> For Information <input type="checkbox"/>	
<b>Annexes</b>	2018 draft Convention on the recognition and enforcement of foreign judgments in civil or commercial matters	
<b>Related documents</b>	n.a.	

1. At its March 2018 meeting, the Council on General Affairs and Policy (the Council) instructed the Secretary General (SG) "to continue preparations for a Fourth and final Special Commission in May 2018".<sup>1</sup> In line with this mandate, the Special Commission (SC) on the Recognition and Enforcement of Foreign Judgments met for the Fourth and final time from 24 to 29 May 2018 in The Hague to prepare a draft Convention on the recognition and enforcement of foreign judgments in civil or commercial matters.

2. The SC made very good progress and prepared the 2018 draft Convention, which is annexed to this document. The SC adopted the following Conclusions and Recommendations for the Council for decision:

"In accordance with the mandate given by the Council on General Affairs and Policy of the Conference ("the Council") at its meeting in March 2016,<sup>2</sup> March 2017<sup>3</sup> and March 2018,<sup>4</sup> the Special Commission on the Recognition and Enforcement of Foreign Judgments ("the Special Commission") met in June 2016, February 2017, November 2017 and May 2018 in The Hague to prepare a draft Convention on the recognition and enforcement of judgments in civil and commercial matters. The draft Convention appears as an annex to this report.

The Special Commission considers that it has completed the mandate conferred on it by the Council and that, as contemplated by the Council, work on the draft Convention has reached the point where a Diplomatic Session can be convened in mid-2019. The Special Commission notes the desirability of consultation and informal collaboration between Members in preparing for the Diplomatic Session. The Special Commission understands that the Academy Building would be available for a Diplomatic Session from 17 June to 2 July 2019."

3. In preparation for the Diplomatic Session (DS) in mid-2019 and in consultation with the Chair of the SC, Mr David Goddard QC (New Zealand), the Permanent Bureau (PB) has organised and supported five informal working group discussions on (1) the treatment of decisions of competent authorities on validity issues of intellectual property rights and the treatment of intellectual property related judgments in general; (2) common courts; (3) the relationship with other international instruments; (4) the treatment of judgments pertaining to governments; and (5) the possible exclusion of anti-trust (competition) matters, respectively. The informal working groups discussions are organised in a relatively structured way and are expected to submit their reports and, if possible, any proposals developed by the relevant group, three to four months in advance of the DS.

4. Together with the Chair of the SC, the PB has identified a number of topics that require further attention, and since then, the PB has carried out relevant research with a view to facilitating the discussions at the DS. The research papers will be circulated throughout the following months as part of the preparations for the DS. Similarly, the draft Explanatory Report, drafted by Professor Francisco J. Garcimartín Alférez, *Universidad Autónoma de Madrid*, Spain, and Professor Geneviève Saumier, McGill University, Canada, will be circulated in due course.

#### Arrangements for a DS

5. In light of the progress made at the May 2018 SC and in line with the 2018 Council's Conclusions and Recommendations,<sup>5</sup> the PB is preparing for a DS in mid-2019. In accordance

<sup>1</sup> See "Conclusions and Recommendations of the Council on General Affairs and Policy of the Conference (13-15 March 2018)", C&R No 3.

<sup>2</sup> Conclusions and Recommendations adopted by the Council of 15 to 17 March 2016, paras 11-14. In particular para. 12: "*The Council decided to set up a Special Commission to prepare a draft Convention and instructed the Secretary General to convene the first meeting in June 2016 (and tentatively a second meeting in February 2017).*"

<sup>3</sup> Conclusions and Recommendations adopted by the Council of 14 to 16 March 2017, paras 5-7. In particular, para. 5: "*The Council instructed the Secretary General to convene a third meeting of the Special Commission, tentatively scheduled from 13 to 17 November 2017.*"

<sup>4</sup> Conclusions and Recommendations adopted by the Council of 13 to 15 March 2018, paras 3-5. In particular para. 3: "*The Council mandated the Permanent Bureau to continue preparations for a Fourth and final Special Commission Meeting in May 2018.*"

<sup>5</sup> See "Conclusions and Recommendations of the Council on General Affairs and Policy of the Conference (13-15 March 2018)", C&R No 4.

with Article 4(4) of the Statute of the HCCH, and after consultation with the Members of the HCCH, the Netherlands Standing Government Committee on Private International Law has informed the Ministry of Foreign Affairs of the Kingdom of the Netherlands that the DS will take place from 18 June to 2 July 2019 in The Hague.

#### Arrangements for a further Experts' Group meeting

6. At its 2016 meeting, the Council endorsed the recommendation of the Working Group that matters relating to direct jurisdiction (incl. exorbitant grounds and *lis pendens* / declining jurisdiction) should be put for consideration to the Experts' Group of the Judgments Project with a view to preparing an additional instrument.<sup>6</sup> This mandate was reiterated at its 2017<sup>7</sup> and 2018 meetings, and at the latter meeting, the Council instructed the PB to make arrangements for a further meeting of the Experts' Group, which is to be held shortly after the conclusion of the DS.<sup>8</sup>

7. In line with this mandate, the PB is making arrangements to hold such a further meeting of the Experts' Group in October / November 2019. More information regarding the meeting will be provided after the conclusion of the DS in 2019.

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<sup>6</sup> See "Conclusions and Recommendations of the Council on General Affairs and Policy of the Conference (15-17 March 2016)", C&R No 13.

<sup>7</sup> See "Conclusions and Recommendations of the Council on General Affairs and Policy of the Conference (14-16 March 2017)", C&R No 7.

<sup>8</sup> See "Conclusions and Recommendations of the Council on General Affairs and Policy of the Conference (13-15 March 2018)", C&R No 5.

**ANNEX**

**Special Commission on the Recognition  
and Enforcement of Foreign Judgments  
(24-29 May 2018)**



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**2018 DRAFT CONVENTION\***

\*This document reproduces the text set out in Working Document No 262 REV

## CHAPTER I – SCOPE AND DEFINITIONS

## Article 1

*Scope*

1. This Convention shall apply to the recognition and enforcement of judgments relating to civil or commercial matters. It shall not extend in particular to revenue, customs or administrative matters.
2. This Convention shall apply to the recognition and enforcement in one Contracting State of a judgment given by a court of another Contracting State.

## Article 2

*Exclusions from scope*

1. This Convention shall not apply to the following matters –
  - (a) the status and legal capacity of natural persons;
  - (b) maintenance obligations;
  - (c) other family law matters, including matrimonial property regimes and other rights or obligations arising out of marriage or similar relationships;
  - (d) wills and succession;
  - (e) insolvency, composition, resolution of financial institutions, and analogous matters;
  - (f) the carriage of passengers and goods;
  - (g) marine pollution, limitation of liability for maritime claims, general average, and emergency towage and salvage;
  - (h) liability for nuclear damage;
  - (i) the validity, nullity, or dissolution of legal persons or associations of natural or legal persons, and the validity of decisions of their organs;
  - (j) the validity of entries in public registers;
  - (k) defamation;
  - [(l) privacy[, except where the proceedings were brought for breach of contract between the parties];]
  - [(m) intellectual property [and analogous matters];]
  - [(n) activities of armed forces, including the activities of their personnel in the exercise of their official duties;]
  - [(o) law enforcement activities, including the activities of law enforcement personnel in the exercise of official duties;]
  - [(p) anti-trust (competition) matters].
2. A judgment is not excluded from the scope of this Convention where a matter to which this Convention does not apply arose merely as a preliminary question in the proceedings in which the judgment was given, and not as an object of the proceedings. In particular, the mere fact that such a matter arose by way of defence does not exclude a judgment from the Convention, if that matter was not an object of the proceedings.
3. This Convention shall not apply to arbitration and related proceedings.
4. A judgment is not excluded from the scope of this Convention by the mere fact that a State, including a government, a governmental agency or any person acting for a State, was a party to the proceedings.

5. Nothing in this Convention shall affect privileges and immunities of States or of international organisations, in respect of themselves and of their property.

Article 3  
*Definitions*

1. In this Convention –

- (a) “defendant” means a person against whom the claim or counterclaim was brought in the State of origin;
- (b) “judgment” means any decision on the merits given by a court, whatever that decision may be called, including a decree or order, and a determination of costs or expenses by the court (including an officer of the court), provided that the determination relates to a decision on the merits which may be recognised or enforced under this Convention. An interim measure of protection is not a judgment.

2. An entity or person other than a natural person shall be considered to be habitually resident in the State –

- (a) where it has its statutory seat;
- (b) under whose law it was incorporated or formed;
- (c) where it has its central administration; or
- (d) where it has its principal place of business.

CHAPTER II – RECOGNITION AND ENFORCEMENT

Article 4  
*General provisions*

1. A judgment given by a court of a Contracting State (State of origin) shall be recognised and enforced in another Contracting State (requested State) in accordance with the provisions of this Chapter. Recognition or enforcement may be refused only on the grounds specified in this Convention.

2. There shall be no review of the merits of the judgment in the requested State.[ This does not preclude such examination as is necessary for the application of this Convention.]

3. A judgment 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.

4. If a judgment referred to in paragraph 3 is the subject of review in the State of origin or if the time limit for seeking ordinary review has not expired, the court addressed may –

- (a) grant recognition or enforcement, which enforcement may be made subject to the provision of such security as it shall determine;
- (b) postpone the decision on recognition or enforcement; or
- (c) refuse recognition or enforcement.

A refusal under sub-paragraph (c) does not prevent a subsequent application for recognition or enforcement of the judgment.

[[5. For purposes of paragraph 1, a judgment given by a court common to two or more States shall be deemed to be a judgment given by a court of a Contracting State if the Contracting State has identified the common court in a declaration to that effect, and either of the following conditions are met –

- (a) all members of the common court are Contracting States whose judicial functions in relation to the relevant matter are exercised by the common court, and the judgment is eligible for recognition and enforcement under Article 5(1)(c), (e), (f), (l), or (m); or
- (b) the judgment is eligible for recognition and enforcement under another sub-paragraph of Article 5(1)[, Article 5(3),] or under Article 6, and those eligibility requirements are met in a Contracting State whose judicial functions in relation to the relevant matter are exercised by the common court.]

OR

[5. For purposes of paragraph 1, a judgment given by a court common to two or more States shall be deemed to be a judgment given by a court of a Contracting State if the Contracting State has identified the common court in a declaration to that effect, and either of the following conditions are met –

- (a) all members of the common court are Contracting States whose judicial functions in relation to the relevant matter are exercised by the common court, and the judgment is eligible for recognition and enforcement under Article 5(1)(c), (e), (f), (l), or (m); or
- (b) the judgment is eligible for recognition and enforcement under another sub-paragraph of Article 5(1)[, Article 5(3),] or under Article 6, and those eligibility requirements are met in a Contracting State whose judicial functions in relation to the relevant matter are exercised by the common court.

6. A Contracting State may declare that it shall not recognise or enforce judgments of a common court that is the object of a declaration under paragraph 5 in respect of any of the matters covered by that declaration.

or

6. The declaration referred to in paragraph 5 shall have effect only between the Contracting State that made the declaration and other Contracting States that have declared their acceptance of the declaration. Such declarations shall be deposited at the Ministry of Foreign Affairs of the Netherlands, which will forward, through diplomatic channels, a certified copy to each of the Contracting States.]]

## Article 5

### *Bases for recognition and enforcement*

1. A judgment is eligible for recognition and enforcement if one of the following requirements is met –

- (a) the person against whom recognition or enforcement is sought was habitually resident in the State of origin at the time that person became a party to the proceedings in the court of origin;
- (b) the natural person against whom recognition or enforcement is sought had his or her principal place of business in the State of origin at the time that person became a party to the proceedings in the court of origin and the claim on which the judgment is based arose out of the activities of that business;
- (c) the person against whom recognition or enforcement is sought is the person that brought the claim, other than a counterclaim, on which the judgment is based;
- (d) the defendant maintained a branch, agency, or other establishment without separate legal personality in the State of origin at the time that person became a party to the proceedings in the court of origin, and the claim on which the judgment is based arose out of the activities of that branch, agency, or establishment;



- (e) the defendant expressly consented to the jurisdiction of the court of origin in the course of the proceedings in which the judgment was given;
- (f) the defendant argued on the merits before the court of origin without contesting jurisdiction within the timeframe provided in the law of the State of origin, unless it is evident that an objection to jurisdiction or to the exercise of jurisdiction would not have succeeded under that law;
- (g) the judgment ruled on a contractual obligation and it was given in the State in which performance of that obligation took place, or should have taken place, in accordance with
  - (i) the parties' agreement, or
  - (ii) the law applicable to the contract, in the absence of an agreed place of performance, unless the defendant's activities in relation to the transaction clearly did not constitute a purposeful and substantial connection to that State;
- (h) the judgment ruled on a tenancy of immovable property and it was given in the State in which the property is situated;
- (i) the judgment ruled against the defendant on a contractual obligation secured by a right *in rem* in immovable property located in the State of origin, if the contractual claim was brought together with a claim against the same defendant relating to that right *in rem*;
- (j) the judgment ruled on a non-contractual obligation arising from death, physical injury, damage to or loss of tangible property, and the act or omission directly causing such harm occurred in the State of origin, irrespective of where that harm occurred;
- (k) the judgment concerns the validity, construction, effects, administration or variation of a trust created voluntarily and evidenced in writing, and –
  - (i) at the time the proceedings were instituted, the State of origin was designated in the trust instrument as a State in which disputes about such matters are to be determined; or
  - (ii) at the time the proceedings were instituted, the State of origin was expressly or impliedly designated in the trust instrument as the State in which the principal place of administration of the trust is situated.

This sub-paragraph only applies to judgments regarding internal aspects of a trust between persons who are or were within the trust relationship;

- (l) the judgment ruled on a counterclaim –
  - (i) to the extent that it was in favour of the counterclaimant, provided that the counterclaim arose out of the same transaction or occurrence as the claim;
  - (ii) to the extent that it was against the counterclaimant, unless the law of the State of origin required the counterclaim to be filed in order to avoid preclusion;
- (m) the judgment was given by a court designated in an agreement concluded or documented in writing or by any other means of communication which renders information accessible so as to be usable for subsequent reference, other than an exclusive choice of court agreement.

For the purposes of this sub-paragraph, an "exclusive choice of court agreement" means an agreement concluded by two or more parties that designates, for the purpose of deciding disputes which have arisen or may arise in connection with a particular legal relationship, the courts of one State or one or more specific courts of one State to the exclusion of the jurisdiction of any other courts.

2. If recognition or enforcement is sought against a natural person acting primarily for personal, family or household purposes (a consumer) in matters relating to a consumer contract, or against an employee in matters relating to the employee's contract of employment –

- (a) paragraph 1(e) applies only if the consent was addressed to the court, orally or in writing;
- (b) paragraph 1(f), (g) and (m) do not apply.

[3. Paragraph 1 does not apply to a judgment that ruled on an intellectual property right or an analogous right. Such a judgment is eligible for recognition and enforcement if one of the following requirements is met –

- (a) the judgment ruled on an infringement in the State of origin of an intellectual property right required to be granted or registered and it was given by a court in the State in which the grant or registration of the right concerned has taken place or, under the terms of an international or regional instrument, is deemed to have taken place[, unless the defendant has not acted in that State to initiate or further the infringement, or their activity cannot reasonably be seen as having been targeted at that State];
- (b) the judgment ruled on an infringement in the State of origin of a copyright or related right, an unregistered trademark or unregistered industrial design, and it was given by a court in the State for which protection was claimed[, unless the defendant has not acted in that State to initiate or further the infringement, or their activity cannot reasonably be seen as having been targeted at that State];
- (c) the judgment ruled on the validity[, subsistence or ownership] in the State of origin of a copyright or related right, an unregistered trademark or unregistered industrial design, and it was given by a court in the State for which protection was claimed.]

#### Article 6

##### *Exclusive bases for recognition and enforcement*

Notwithstanding Article 5 –

- [(a) a judgment that ruled on the [registration or] validity of an intellectual property right required to be granted or registered shall be recognised and enforced if and only if the State of origin is the State in which grant or registration has taken place, or, under the terms of an international or regional instrument, is deemed to have taken place;]
- (b) a judgment that ruled on rights *in rem* in immovable property shall be recognised and enforced if and only if the property is situated in the State of origin;
- (c) a judgment that ruled on a tenancy of immovable property for a period of more than six months shall not be recognised and enforced if the property is not situated in the State of origin and the courts of the Contracting State in which it is situated have exclusive jurisdiction under the law of that State.

#### Article 7

##### *Refusal of recognition or enforcement*

1. Recognition or enforcement may be refused if –

- (a) the document which instituted the proceedings or an equivalent document, including a statement of the essential elements of the claim –
  - (i) was not notified to the defendant in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant entered an appearance and presented his case without contesting notification in the court of origin, provided that the law of the State of origin permitted notification to be contested; or
  - (ii) was notified to the defendant in the requested State in a manner that is incompatible with fundamental principles of the requested State concerning service of documents;
- (b) the judgment was obtained by fraud;

- (c) recognition or enforcement would be manifestly incompatible with the public policy of the requested State, including situations where the specific proceedings leading to the judgment were incompatible with fundamental principles of procedural fairness of that State and situations involving infringements of security or sovereignty of that State;
- (d) the proceedings in the court of origin were contrary to an agreement, or a designation in a trust instrument, under which the dispute in question was to be determined in a court other than the court of origin;
- (e) the judgment is inconsistent with a judgment given in the requested State in a dispute between the same parties; or
- (f) the judgment is inconsistent with an earlier judgment given in another State between the same parties on the same subject matter, provided that the earlier judgment fulfills the conditions necessary for its recognition in the requested State;

[(g) the judgment ruled on an infringement of an intellectual property right, applying to that [right / infringement] a law other than the internal law of the State of origin.]

2. Recognition or enforcement may be postponed or refused if proceedings between the same parties on the same subject matter are pending before a court of the requested State, where –

- (a) the court of the requested State was seised before the court of origin; and
- (b) there is a close connection between the dispute and the requested State.

A refusal under this paragraph does not prevent a subsequent application for recognition or enforcement of the judgment.

#### Article 8 *Preliminary questions*

1. A ruling on a preliminary question shall not be recognised or enforced under this Convention if the ruling is on a matter to which this Convention does not apply or on a matter referred to in Article 6 on which a court other than the court referred to in that Article ruled.

2. Recognition or enforcement of a judgment may be refused if, and to the extent that, the judgment was based on a ruling on a matter to which this Convention does not apply, or on a matter referred to in Article 6 on which a court other than the court referred to in that Article ruled.

[3. However, in the case of a ruling on the validity of a right referred to in Article 6, paragraph (a), recognition or enforcement of a judgment may be postponed, or refused under the preceding paragraph, only where –

- (a) that ruling is inconsistent with a judgment or a decision of a competent authority on that matter given in the State referred to in Article 6, paragraph (a); or
- (b) proceedings concerning the validity of that right are pending in that State.

A refusal under sub-paragraph (b) does not prevent a subsequent application for recognition or enforcement of the judgment.]

#### Article 9 *Severability*

Recognition or enforcement of a severable part of a judgment shall be granted where recognition or enforcement of that part is applied for, or only part of the judgment is capable of being recognised or enforced under this Convention.

Article 10  
*Damages*

1. Recognition or enforcement of a judgment may be refused if, and to the extent that, the judgment awards damages, including exemplary or punitive damages, that do not compensate a party for actual loss or harm suffered.
2. The court addressed shall take into account whether and to what extent the damages awarded by the court of origin serve to cover costs and expenses relating to the proceedings.

[Article 11  
*Non-monetary remedies in intellectual property matters*

In intellectual property matters, a judgment ruling on an infringement shall be [recognised and] enforced only to the extent that it rules on a monetary remedy in relation to harm suffered in the State of origin.]

Article 12  
*Judicial settlements (transactions judiciaires)*

Judicial settlements (*transactions judiciaires*) which a court of a Contracting State has approved, or which have been concluded in the course of proceedings before a court of a Contracting State, and which are enforceable in the same manner as a judgment in the State of origin, shall be enforced under this Convention in the same manner as a judgment.

Article 13  
*Documents to be produced*

1. The party seeking recognition or applying for enforcement shall produce –
  - (a) a complete and certified copy of the judgment;
  - (b) if the judgment was given by default, the original or a certified copy of a document establishing that the document which instituted the proceedings or an equivalent document was notified to the defaulting party;
  - (c) any documents necessary to establish that the judgment has effect or, where applicable, is enforceable in the State of origin;
  - (d) in the case referred to in Article 12, a certificate of a court of the State of origin that the judicial settlement or a part of it is enforceable in the same manner as a judgment in the State of origin.
2. If the terms of the judgment do not permit the court addressed to verify whether the conditions of this Chapter have been complied with, that court may require any necessary documents.
3. An application for recognition or enforcement may be accompanied by a document relating to the judgment, issued by a court (including an officer of the court) of the State of origin, in the form recommended and published by the Hague Conference on Private International Law.
4. If the documents referred to in this Article are not in an official language of the requested State, they shall be accompanied by a certified translation into an official language, unless the law of the requested State provides otherwise.

Article 14  
*Procedure*

1. The procedure for recognition, declaration of enforceability or registration for enforcement, and the enforcement of the judgment, are governed by the law of the requested State unless this Convention provides otherwise. The court addressed shall act expeditiously.
2. The court of the requested State shall not refuse the recognition or enforcement of a judgment under this Convention on the ground that recognition or enforcement should be sought in another State.

Article 15  
*Costs of proceedings*

1. No security, bond or deposit, however described, shall be required from a party who in one Contracting State applies for enforcement of a judgment given in another Contracting State on the sole ground that such party is a foreign national or is not domiciled or resident in the State in which enforcement is sought.
2. An order for payment of costs or expenses of proceedings, made in a Contracting State against any person exempt from requirements as to security, bond, or deposit by virtue of paragraph 1 shall, on the application of the person entitled to the benefit of the order, be rendered enforceable in any other Contracting State.
3. A State may declare that it shall not apply paragraph 1 or designate by a declaration which of its courts shall not apply paragraph 1.

Article 16  
*Recognition or enforcement under national law*

Subject to Article 6, this Convention does not prevent the recognition or enforcement of judgments under national law.

CHAPTER III – GENERAL CLAUSES

Article 17  
*Transitional provision*

This Convention shall apply to the recognition and enforcement of judgments if, at the time the proceedings were instituted in the State of origin, the Convention was in force in that State and in the requested State.

Article 18  
*Declarations limiting recognition and enforcement*

A State may declare that its courts may refuse to recognise or enforce a judgment given by a court of another Contracting State if the parties were resident in the requested State, and the relationship of the parties and all other elements relevant to the dispute, other than the location of the court of origin, were connected only with the requested State.

Article 19  
*Declarations with respect to specific matters*

1. Where a State has a strong interest in not applying this Convention to a specific matter, that State may declare that it will not apply the Convention to that matter. The State making such a declaration shall ensure that the declaration is no broader than necessary and that the specific matter excluded is clearly and precisely defined.

2. With regard to that matter, the Convention shall not apply –
  - (a) in the Contracting State that made the declaration;
  - (b) in other Contracting States, where recognition or enforcement of a judgment given in a Contracting State that made the declaration is sought.

[Article 20

*Declarations with respect to judgments pertaining to governments*

1. A State may declare that it shall not apply this Convention to judgments arising from proceedings to which any of the following is a party –
  - (a) that State, or a person acting on behalf of that State, or
  - (b) a government agency of that State, or a person acting on behalf of such a government agency.

The declaration shall be no broader than necessary and the exclusion from scope shall be clearly and precisely defined.

2. A declaration pursuant to paragraph 1 shall not exclude from the application of this Convention judgments arising from proceedings to which an enterprise owned by a State is a party.

3. If a State has made a declaration pursuant to paragraph 1, recognition or enforcement of a judgment originating from that State may be refused by another Contracting State if the judgment arose from proceedings to which that other Contracting State, one of its government agencies, or equivalent persons to those referred to in paragraph 1 is a party, to the same extent as specified in the declaration.]

Article 21

*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 22

*Review of operation of the Convention*

The Secretary General of the Hague Conference on Private International Law shall at regular intervals make arrangements for –

- (a) review of the operation of this Convention, including any declarations; and
- (b) consideration of whether any amendments to this Convention are desirable.

Article 23

*Non-unified legal systems*

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

- (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 habitual residence in a State shall be construed as referring, where appropriate, to habitual residence in the relevant territorial unit;
  - (c) any reference to the court or courts of a State shall be construed as referring, where appropriate, to the court or courts in the relevant territorial unit;
  - (d) any reference to a connection with a State shall be construed as referring, where appropriate, to a connection with the relevant territorial unit.
2. Notwithstanding the preceding paragraph, 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.
3. A court 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 judgment from another Contracting State solely because the judgment has been recognised or enforced in another territorial unit of the same Contracting State under this Convention.
4. This Article shall not apply to a Regional Economic Integration Organisation.

#### Article 24

##### *Relationship with other international instruments*

1. This Convention shall be interpreted so far as possible to be compatible with other treaties in force for Contracting States, whether concluded before or after this Convention.
2. This Convention shall not affect the application by a Contracting State of a treaty [or other international instrument] that was concluded before this Convention entered into force for that Contracting State [as between Parties to that instrument].
3. This Convention shall not affect the application by a Contracting State of a treaty [or other international instrument] concluded after this Convention entered into force for that Contracting State for the purposes of obtaining recognition or enforcement of a judgment given by a court of a Contracting State that is also a Party to that instrument. [Nothing in the other instrument shall affect the obligations under Article 6 towards Contracting States that are not Parties to that instrument.]
4. This Convention shall not affect the application of the rules of a Regional Economic Integration Organisation that is a Party to this Convention, whether adopted before or after this Convention as concerns the recognition or enforcement of judgments as between Member States of the Regional Economic Integration Organisation.
- [5. A Contracting State may declare that other international instruments listed in the declaration shall remain unaffected by this Convention.]

### CHAPTER IV – FINAL CLAUSES

#### Article 25

##### *Signature, ratification, acceptance, approval or accession*

- 1. This Convention is open for signature by all States.
- 2. This Convention is subject to ratification, acceptance or approval by the signatory States.
- 3. This Convention is open for accession by all States.

4. Instruments of ratification, acceptance, approval or accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

#### Article 26

##### *Declarations with respect to non-unified legal systems*

1. If a State has two or more territorial units in which different systems of law apply in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that the 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. A 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 27

##### *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 this 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. 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 declares in accordance with Article 28, paragraph 1, that its Member States will not be Parties to this Convention.
4. Any reference to a "Contracting State" or "State" in this Convention shall apply equally, where appropriate, to a Regional Economic Integration Organisation that is a Party to it.

#### Article 28

##### *Accession by a Regional Economic Integration Organisation without its Member States*

1. At the time of signature, acceptance, approval or accession, a Regional Economic Integration Organisation may declare that it exercises competence over all the matters governed by this Convention and that its Member States will not be Parties to this Convention but shall be bound by virtue of the signature, acceptance, approval or accession of the Organisation.



2. In the event that a declaration is made by a Regional Economic Integration Organisation in accordance with paragraph 1, any reference to a "Contracting State" or "State" in this Convention shall apply equally, where appropriate, to the Member States of the Organisation.

Article 29  
*Entry into force*

1. This Convention shall enter into force on the first day of the month following the expiration of [three] [six] months after the deposit of the second instrument of ratification, acceptance, approval or accession referred to in Article 25.

2. Thereafter this Convention shall enter into force –

- (a) for each State or Regional Economic Integration Organisation subsequently ratifying, accepting, approving or acceding to it, on the first day of the month following the expiration of [three][six] months after the deposit of its instrument of ratification, acceptance, approval or accession;
- (b) for a territorial unit to which this Convention has been extended in accordance with Article 26 on the first day of the month following the expiration of [three] [six] months after the notification of the declaration referred to in that Article.

Article 30  
*Declarations*

1. Declarations referred to in Articles [4, ]15, 18, 19, [20,] [24,] 26 and 28 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 six months following the date on which the notification is received by the depositary.

5. A declaration made at a subsequent time, and any modification or withdrawal of a declaration, shall not apply to judgments resulting from proceedings that have already been instituted before the court of origin when the declaration takes effect.

Article 31  
*Denunciation*

1. This Convention may be denounced by notification in writing to the depositary. The denunciation may be limited to certain territorial units of a non-unified legal system to which this Convention applies.

2. The denunciation shall take effect on the first day of the month following the expiration of twelve 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 32  
*Notifications by the depositary*

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 [...] of the following –

- (a) the signatures, ratifications, acceptances, approvals and accessions referred to in Article 25;
- (b) the date on which this Convention enters into force in accordance with Article 29;
- (c) the notifications, declarations, modifications and withdrawals of declarations referred to in Article 30; and
- (d) the denunciations referred to in Article 31.

