AFFAIRES GÉNÉRALES ET POLITIQUE
GENERAL AFFAIRS AND POLICY

Doc. prél. No 24
Prel. Doc. No 24

Février / February 2005

HccH
HAGUE CONFERENCE ON
PRIVATE INTERNATIONAL LAW
CONFÉRENCE DE LA HAYE
DE DROIT INTERNATIONAL PRIVÉ

LE PROJET DE LA HAYE SUR LES JUGEMENTS :

AVANCEMENT DES TRAVAUX DEPUIS LA COMMISSION SPECIALE SUR LES AFFAIRES GENERALES ET LA POLITIQUE DE LA CONFERENCE

D'AVRIL 2004

Rapport établi par le Bureau Permanent

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THE HAGUE PROJECT ON JUDGMENTS:

PROGRESS MADE SINCE THE MEETING OF THE SPECIAL COMMISSION ON GENERAL AFFAIRS AND POLICY OF THE CONFERENCE

OF APRIL 2004

Report drawn up by the Permanent Bureau

Document préliminaire No 24 de février 2005
à l'intention de la Commission spéciale de mars / avril 2005
sur les affaires générales et la politique de la Conférence

Preliminary Document No 24 of February 2005
for the attention of the Special Commission of March / April 2005
on General Affairs and Policy of the Conference

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NOTE BY THE PERMANENT BUREAU

At its meeting on 6–8 April 2004, the Special Commission on General Affairs and Policy of the Hague Conference adopted the following conclusion:

> **"2. Jurisdiction and Recognition and Enforcement of Judgments in Civil and Commercial Matters**
>
> The meeting welcomed the progress made during the Special Commission on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, which was held from 1-9 December 2003 with a view to elaborating a preliminary draft Convention on Exclusive Choice of Court Clauses. It noted with great appreciation that a draft Explanatory Report has been prepared by the *Co-Rapporteurs* Trevor Hartley and Masato Dogauchi with a view to facilitating consultation as well as further discussions during the forthcoming Special Commission on this project, to be held from 21-27 April 2004. The meeting further took note of the fact that, depending on progress made during that Special Commission, a Diplomatic Session could take place from 31 January to 16 February 2005. The offer of the Organisation for the Prohibition of Chemical Weapons in The Hague to host this meeting – pending the closure for purposes of reconstruction of the Academy Building - is highly appreciated. The Special Commission expressed the wish that the draft Explanatory Report be amended and completed after the April Special Commission in order to reflect the additional results achieved."

Following that decision, the Special Commission on Jurisdiction, Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, which had already met from 1 to 9 December 2003 and made substantial progress, reconvened from 21 to 27 April 2004 in order to complete its work. This additional meeting, which had not been foreseen, required additional funding which was generously provided by the following eight Member States: Australia, Austria, China (Hong Kong Special Administrative Region), Croatia, Ireland, the Netherlands, Norway and the United Kingdom. The Permanent Bureau wishes to express its gratitude and appreciation for this support.

The Special Commission was chaired by Allan Philip from Denmark. Andreas Bucher from Switzerland was elected Vice-Chairman. Trevor Hartley from the United Kingdom and Masato Dogauchi from Japan were elected *Co-Rapporteurs*. The meeting, using as a basis for discussion a text prepared by the Permanent Bureau with the assistance of an informal working group in 2002 / 2003, adopted a preliminary draft Convention on Exclusive Choice of Court Agreements in B2B Cases, which is contained in Working Document No 110 – Revised (see Annex). The Explanatory Report on the preliminary draft Convention by Trevor C. Hartley and Masato Dogauchi has been published as Preliminary Document No 25 and is available on the Hague Conference website.

The main principles of the preliminary draft Convention are –

- that the court designated in an exclusive choice of court agreement which is valid according to the rules set out in the Convention has jurisdiction to hear the case once it is seized, and may not exercise any discretion that may exist under national law to decline jurisdiction in favour of a more appropriate forum in another State;

- that a court seized but not chosen must suspend proceedings or dismiss the case if the court or courts of another Contracting State have been designated in an exclusive choice of court agreement which is valid according to the rules set out in the Convention, and

- that a judgment rendered by the court of a Contracting State that was designated in a valid exclusive choice of court agreement is entitled to be recognized and enforced in all other Contracting States.

The Chairman of the Special Commission, Allan Philip from Denmark, sadly and unexpectedly passed away on 10 September 2004. It was then decided to hold the Diplomatic Session not in January / February 2005, as put before the Commission on General Affairs and Policy in 2004, but at a later date. From 14 to 30 June 2005, a Diplomatic Session will be convened with a view to the adoption of a draft Convention on Exclusive Choice of Court Agreements. This change of dates also had an impact on the venue; the meeting will now take place at the Chamber of Commerce in The Hague where most Hague Conference meetings are likely to be held during the closure and reconstruction of the Academy Building on the grounds of the Peace Palace.

The Permanent Bureau meanwhile continues its preparations with a view to facilitating the deliberations during the Diplomatic Session. To this end, an informal meeting of the members of the Drafting Committee plus some *ad hoc* participants took place on 1 and 2 February 2005 in Brussels. It is further envisaged to hold a meeting of the Drafting Committee, assisted by some *ad hoc* attendants, from 18 to 20 April at the Permanent Bureau in The Hague. The purpose of this meeting will be to draft alternative language proposals corresponding to the different policy choices, which remain to be made by the Diplomatic Session. The issues concerned have been identified in the text of the preliminary draft Convention itself as well as in the Explanatory Report. They may also result from the comments Member States may make in their written observations on the Report and the preliminary draft Convention which they were invited to submit to the Permanent Bureau by 15 April 2005, and which will be circulated to all delegations.

The following procedure is envisaged for the drawing up of the Explanatory Report on the Convention by the *Co-Rapporteurs*, Trevor Hartley and Masato Dogauchi:

After the Diplomatic Session, the *Co-Rapporteurs* will draw up a first draft of the Report on the Convention. In doing so, they will consult as necessary with those who attended the Session. The first draft, when completed, will be circulated by the Permanent Bureau to all delegations. They will be invited to comment by a specified date. Comments received will be circulated to all other delegations.

The *Co-Rapporteurs* will then draw up a second draft on the basis of the comments received. This second draft will also be circulated to all delegations. They will be invited to comment on the changes by a specified date.

In drawing up the Report, the *Co-Rapporteurs* may at any stage consult with anyone involved in the negotiations in order to further clarify matters relating to the Convention.

If, after the second set of consultations, there appear still to be outstanding issues, the Bureau to be formed at the Session will at that point be consulted for their views on how best to proceed.

A N N E X

WORK. DOC. No 110 E

Revised*

Commission spéciale sur la compétence, la reconnaissance et l'exécution des jugements étrangers en matière civile et commerciale (du 21 au 27 avril 2004)

Special Commission on Jurisdiction, Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters (21 to 27 April 2004)

Distribution: May 2004

Proposal by the Drafting Committee

DRAFT ON EXCLUSIVE CHOICE OF COURT AGREEMENTS

The States signatory to the present Convention,

Desiring to promote international trade and investment through enhanced judicial cooperation,

Believing that such enhanced cooperation requires a secure international legal regime that ensures the effectiveness of exclusive choice of court agreements by parties to commercial transactions and that governs the recognition and enforcement of judgments resulting from proceedings based on such agreements,

Have resolved to conclude the following *Convention on Exclusive Choice of Court Agreements* and have agreed upon the following provisions -

CHAPTER I SCOPE AND DEFINITIONS

Article 1 Scope

1. The present Convention shall apply in international cases to exclusive choice of court agreements concluded in civil or commercial matters.

2. For the purposes of Chapter II, a case is international unless[at the time the agreement is concluded][and][at the time of commencement of the proceedings] the parties are resident in the Contracting State of the court seised and the relationship of the parties and all other elements relevant to the dispute, regardless of the location of the chosen court, are connected only with that State.

3. For the purposes of Chapter III, a case is international where recognition or enforcement of a foreign judgment is sought.

* This document reflects the changes made by the Drafting Committee at its meeting on 27 April 2004. Moreover, upon request of the Special Commission, the Permanent Bureau has aligned the English and French versions of this Document with the terminology traditionally used in Hague Conventions. Changes were made in agreement with the Chairman of the Drafting Committee.

Article 2 *Exclusions from scope*

1. The Convention shall not apply to exclusive choice of court agreements -

   a) to which a natural person acting primarily for personal, family or household purposes (a consumer) is a party; or

   b) relating to contracts of employment, including collective agreements.

2. The 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 and analogous matters;

   f) contracts for the carriage of passengers or goods by sea[, and other admiralty or maritime matters];

   g) anti-trust (competition) matters;

   h) liability for nuclear damage;

   i) rights *in rem* in immovable property[and tenancies of immovable property];

   j) the validity, nullity, or dissolution of legal persons, and the validity of decisions of their organs;

   k) [intellectual property rights other than copyright or related rights, except in proceedings pursuant to a contract which licenses or assigns such intellectual property rights[including proceedings for infringement of the right to which the contract relates]];[1] or

   l) the validity of entries in public registers.

3. Notwithstanding paragraph 2, proceedings are not excluded from the scope of the Convention where a matter referred to in that paragraph arises merely as an incidental question and not as an object of the proceedings.

4. The Convention shall not apply to arbitration and related proceedings.

5. Proceedings are not excluded from the scope of the Convention by the mere fact that a government, a governmental agency or any person acting for a State is a party thereto.

6. Nothing in this Convention affects the privileges and immunities of sovereign States or of entities of sovereign States, or of international organisations.

Article 3 *Exclusive choice of court agreements*

For the purposes of this Convention,

   a) “exclusive choice of court agreement” means an agreement concluded by two or more parties that meets the requirements of paragraph c) and designates, for the purpose of deciding disputes which have arisen or may arise in connection with a particular legal relationship, the courts of one Contracting State or one or more specific courts in one Contracting State to the exclusion of the jurisdiction of any other courts;

[1] According to this draft, validity as a principal issue is excluded from the scope of the Convention.

b) a choice of court agreement which designates the courts of one Contracting State or one or more specific courts in one Contracting State shall be deemed to be exclusive unless the parties have expressly provided otherwise;

c) an exclusive choice of court agreement must be entered into or evidenced –

i) in writing; or

ii) by any other means of communication which renders information accessible so as to be usable for subsequent reference;

d) an exclusive choice of court agreement that forms part of a contract shall be treated as an agreement independent of the other terms of the contract. The validity of the exclusive choice of court agreement cannot be contested solely on the ground that the contract is not valid.

Article 4 Other definitions

1. In this Convention "judgment" means any decision on the merits given by a court, whatever it 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 such 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. For the purposes of this Convention, an entity or person other than a natural person shall be considered to be 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 JURISDICTION

Article 5 Jurisdiction of the chosen court

1. The court or courts of a Contracting State designated in an exclusive choice of court agreement shall have jurisdiction to decide a dispute to which the agreement applies, unless the agreement is null and void under the law of that State.

2. A court that has jurisdiction under paragraph 1 shall not decline to exercise jurisdiction on the ground that the dispute should be decided in a court of another State.

3. The preceding paragraphs shall not affect rules -

a) on jurisdiction related to subject matter or to the value of the claim; or

b) on the internal allocation of jurisdiction among the courts of a Contracting State[unless the parties designated a specific court].[2]

[Article 6 Stay of proceedings in the chosen court

Nothing in this Convention shall prevent the chosen court from suspending or dismissing the proceedings before it, in particular in order to allow the courts of the State under the law of which an intellectual property right arose, to give a judgment on its validity, provided that such dismissal does not prevent the proceedings from being recommenced.]

[2] If the bracketed language in Article 5, paragraph 3 b) is not retained, the question of whether Articles 7 and 9 should apply where a case has been transferred by the chosen court to another court in the same Contracting State remains to be considered. See the bracketed language in Articles 7 e) and 9, paragraph 1 *bis*.

Article 7 Obligations of a court not chosen

If the parties have entered into an exclusive choice of court agreement, any court in a Contracting State other than that of the chosen court shall suspend or dismiss the proceedings unless –

a) the agreement is null and void under the law of the State of the chosen court;[3]

b) a party lacked the capacity to enter into the agreement under the law of the State of the court seised;

c) giving effect to the agreement would lead to a very serious injustice or would be manifestly contrary to fundamental principles of public policy of the State of the court seised;[4]

d) for exceptional reasons, the agreement cannot reasonably be performed;[5] or

e) the chosen court has decided not to hear the case[, except where it has transferred the case to another court of the same State as permitted by Article 5, paragraph 3 b)][6].

Article 8 Interim measures of protection

Interim measures of protection are not governed by this Convention. This Convention neither requires nor precludes the grant of interim measures of protection by a Court of a Contracting State and does not affect whether or not a party may request or a court should grant such measures.

CHAPTER III RECOGNITION AND ENFORCEMENT

Article 9 Recognition and enforcement

1. A judgment given by a court of a Contracting State designated in an exclusive choice of court agreement shall be recognised and enforced in other Contracting States in accordance with this Chapter. Recognition or enforcement may be refused only on the following grounds[7] -

a) the agreement was null and void under the law of the State of the chosen court[8], unless the chosen court has determined that the agreement is valid;

b) a party lacked the capacity to enter into the agreement under the law of the requested State;

c) the document which instituted the proceedings or an equivalent document, including the essential elements of the claim,

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[3] The policy issues related to this matter need further consideration. It has been proposed to delete the words "under the law of the State of the chosen court". It has also been proposed to add the words "on any ground, including incapacity".

[4] The policy issues related to this matter need further consideration. The various options proposed are reflected in the following proposals:

i) giving effect to the agreement would lead to a very [delete: very] serious injustice or would[otherwise] be manifestly contrary to fundamental principles of public policy of the State of the court seised;

ii) under the mandatory rules on jurisdiction of the State of the court seised, the parties were unable to agree to exclude the jurisdiction of the courts of this State;

iii) giving effect to the agreement would be manifestly contrary to public policy of the State of the court seised.

[5] It has been proposed to delete this provision; a decision on this proposal is linked to the final wording of paragraph (c).

[6] This provision is linked to the policy decision to be taken on the bracketed part of Article 5, paragraph 3 and to the language in square brackets in Article 9, paragraph 1 *bis*.

[7] Further consideration is required as to whether the matters covered by Article 7 c) and d) are adequately reflected in this paragraph.

[8] It has been proposed to add the words "on any ground, including incapacity".

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 violated the public policy of that State;

d) the judgment was obtained by fraud in connection with a matter of procedure;

e) 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; or

f) the judgment is inconsistent with a judgment given in a dispute between the same parties in the requested State, or it is inconsistent with an earlier judgment given in another State between the same parties and involving the same cause of action, provided that the earlier judgment fulfils the conditions necessary for its recognition in the requested State[under an international agreement], and provided that the inconsistent judgment was not given in contravention of this Convention.

[1bis. Paragraph 1 shall also apply to a judgment given by a court of a Contracting State pursuant to a transfer of the case from the chosen court in that Contracting State as permitted by Article 5, paragraph 3 b).][9]

2. Without prejudice to such review as is necessary for the application of the provisions of this Chapter, there shall be no review of the merits of the judgment rendered by the court of origin. The court addressed shall be bound by the findings of fact on which the court of origin based its jurisdiction, unless the judgment was given by default.

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. Recognition or enforcement may be postponed or refused if the judgment is the subject of review in the State of origin or if the time limit for seeking ordinary review has not expired. A refusal does not prevent a subsequent application for recognition or enforcement of the judgment.

Article 10 Incidental questions[10]

1. Where a matter referred to in Article 2, paragraph 2, arose as an incidental question, the ruling on that question shall not be recognised and enforced under this Convention.

[2. Where an incidental ruling on the validity of an intellectual property right other than copyright or related rights was necessary for the judgment of the court of origin, recognition or enforcement of the judgment may be refused to the extent that it is inconsistent with a judgment[11] on the validity of the intellectual property right rendered in the State under the law of which the intellectual property right arose.[12]]

[9] This provision is linked to the policy decision to be taken on the bracketed part of Article 5, paragraph 3 and to the language in square brackets in Article 7 e).

[10] It was proposed to add a new paragraph 4 as follows: "The preceding paragraphs 2 and 3 shall apply *mutatis mutandis* to the matters provided for in Article 2, paragraph 2 to the extent that a judgment on such matters has effect not only as between the parties but also as regards all other persons."

[11] It is recalled that the definition of "judgment" in Article 4, paragraph 1 includes a decision of a patent office or other authority exercising functions of a court.

[12] The relationship of this provision with Article 9, paragraph 1 f) requires further consideration.

[3. Where an incidental ruling on the validity of an intellectual property right other than copyright or related rights was necessary for the judgment of the court of origin, recognition or enforcement of the judgment may be postponed or refused at the request of one of the parties if proceedings on validity are pending in the State under the law of which the intellectual property right arose. A refusal does not prevent a subsequent application for recognition or enforcement of the judgment.]

[Article 11 Judgments in contravention of exclusive choice of court agreements

The provisions of Article 7 shall also apply to proceedings for recognition or enforcement of a judgment rendered in contravention of an exclusive choice of court agreement.[13]]

Article 12 Settlements

Settlements which a court of a Contracting State designated in an exclusive choice of court agreement has approved, or which have been concluded before that court in the course of proceedings, 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) the exclusive choice of court agreement, or evidence of its existence;

   c) if the judgment was rendered 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;

   d) all documents necessary to establish that the judgment has effect or, where applicable, is enforceable in the State of origin;

   e) in the case referred to in Article 12, a certificate of the court of origin that the 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 form recommended and published by the Hague Conference on Private International Law.

4. The court addressed may require a translation of any document referred to in this Article.

Article 14 Procedure

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.

Article 15 Damages

1. A judgment which awards non-compensatory damages, including exemplary or punitive damages, shall be recognised and enforced to the extent that a court in the requested State could have awarded similar or comparable damages. Nothing in this paragraph shall preclude the court addressed from recognising and enforcing the judgment under its law for an amount

[13] The intention of this provision is to prevent recognition or enforcement of judgments given in either Contracting or non-Contracting States in contravention of an exclusive choice of court agreement, save where the exceptions in Article 7 apply. The policy and the drafting require further consideration.

up to the full amount of the damages awarded by the court of origin.

2. a) Where the debtor, after proceedings in which the creditor has the opportunity to be heard, satisfies the court addressed that in the circumstances, including those existing in the State of origin, grossly excessive damages have been awarded, recognition and enforcement may be limited to a lesser amount.

b) In no event shall the court addressed recognise or enforce the judgment for an amount less than that which could have been awarded in the requested State in the same circumstances, including those existing in the State of origin.[14]

3. In applying the preceding paragraphs, 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 16 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.

CHAPTER IV GENERAL CLAUSES

Article 17 No legalisation

All documents forwarded or delivered under this Convention shall be exempt from legalisation[or *apostille*][or any analogous formality].

Article 18 Limitation of jurisdiction

Upon ratification, acceptance, approval or accession, a State may declare that its courts may refuse to determine disputes covered by an exclusive choice of court agreement if, except for the location of the chosen court, there is no connection between that State and the parties or the dispute.

Article 19 Limitation of recognition and enforcement

Upon ratification, acceptance, approval or accession, a State may declare that its courts may refuse to recognise or enforce a judgment of a court in another Contracting State if the parties are 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 chosen court, are connected only with the requested State, at the time the agreement is concluded.

Article 20 Limitation with respect to asbestos related matters

Upon ratification, acceptance, approval or accession, a State may declare that it will not apply the provisions of the Convention to exclusive choice of court agreements in asbestos related matters.[15]

[14] It was proposed that paragraph 2 be deleted.

[15] Some delegations have proposed that further specific subject matters should be referred to in this provision, such as natural resources and joint ventures. These proposals are linked to issues that arise in relation to Articles 7 and 9.

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 Non-unified legal system

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 residence in a State shall be construed as referring, where appropriate, to 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, including the location of the chosen court,[16] 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 by a court in another territorial unit of the same Contracting State under this Convention.

Article 23 Relationship with other international instruments

1. For the purposes of this Article, "international instrument" means an international treaty or rules made by an international organisation under an international treaty.

2. Subject to paragraphs 4 and 5, this Convention does not affect any international instrument to which Contracting States are parties and which contains provisions on matters governed by this Convention, unless a contrary declaration is made by the Contracting States bound by such instrument.

3. This Convention does not affect the ability of one or more Contracting States to enter into international instruments which contain provisions on matters governed by this Convention, provided that these instruments do not affect, in the relationship of such Contracting States with other Contracting States, the application of the provisions of this Convention.

4. Where a Contracting State is also a party to an international instrument which contains provisions on matters governed by this Convention, this Convention shall prevail in matters relating to jurisdiction except where -

a) the chosen court is situated in a State in which the instrument is applicable; and

b) all the parties are resident[only] either in a State in which the instrument is applicable or in a non-Contracting State.[17]

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[16] Where the chosen court is located in another Contracting State, Article 19 applies.

[17] The policy and drafting of this paragraph requires further discussion. One result of the present draft is that the Convention prevails where the chosen court is in a Contracting State in which the instrument is applicable, one party is resident in a Contracting State in which the instrument is not applicable, and the other party is resident in a non-Contracting State in which the instrument is applicable. It was proposed that the Convention should not seek to prevail over other instruments binding a Contracting State in its relations with non-Contracting States. An alternative approach would be to replace paragraph 4 b) with the following: "b) a party

5. This Convention shall not restrict the application of an international instrument in force between the State of origin and the requested State for the purposes of obtaining recognition or enforcement of a judgment. [However the judgment shall not be recognised or enforced to a lesser extent than under this Convention.]

6. [Notwithstanding] [Subject to] paragraphs 4 and 5, this Convention does not affect the ability of one or more Contracting States to continue to apply or to enter into international instruments which, in relation to specific subject matters, govern jurisdiction or the recognition or enforcement of judgments, even if all States concerned are parties to this Convention.

CHAPTER V FINAL CLAUSES

Article 24 Signature, ratification, acceptance, approval or accession

1. The Convention is open for signature by all States.

2. The Convention is subject to ratification, acceptance or approval by the signatory States.

3. The Convention is open for accession by all States which are not signatory States as from the date it is open for signature.

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

Article 25 Non-unified legal system

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. 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 is to extend to all territorial units of that State.

Article 26 Regional Economic Integration Organisations

1. A Regional Economic Integration Organisation which is constituted by sovereign States and has competence over some or all of the matters governed by this Convention may equally 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.

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is resident in a non-Contracting State in which the instrument is applicable, or there is some other relevant connection between the parties or the dispute and such a State."

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 as additional to any instruments deposited by its Member States.

4. At the time of signature, acceptance, approval or accession, a Regional Economic Integration Organisation may declare that its Member States, by virtue of the law of the Organisation, are bound by this Convention. In this case, a reference to a Contracting State includes, where appropriate, a reference to the Member States of the Organisation[in accordance with Article 22].

5. A reference to a Contracting State in this Convention includes, where appropriate, a reference to a Regional Economic Integration Organisation that is a party to this Convention, with all necessary modifications. In particular, references to a Contracting State in Articles 1, paragraph 2, 18 and 19 shall be read as references to the Regional Economic Integration Organisation.

6. Article 9 shall not apply to the recognition and enforcement of judgments in cases where the State of origin and the requested State are Member States of a Regional Economic Integration Organisation that is a party to this Convention and has made a declaration under paragraph 4. [However the judgment shall not be recognised or enforced to a lesser extent than under this Convention.]

Article 27 Entry into force

1. This Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the [third][18] instrument of ratification, acceptance, approval or accession referred to in Article 24.

2. Thereafter this Convention shall enter into force –

a) for each State or Regional Economic Integration Organisation referred to in Article 26 subsequently ratifying, accepting, approving or acceding to it, on the first day of the month following the expiration of three 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 25, paragraph 1, on the first day of the month following the expiration of three months after the notification of the declaration referred to in that Article.

Article 28 Reservations

Article 29 Declarations

Article 30 Denunciation

1. A Contracting State may denounce this Convention by a 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.

[18] The required number of instruments deposited remains to be discussed, in particular with regard to Regional Economic Integration Organisations and their Member States.

Article 31 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 24 and 26, of the following –

a) the signatures and ratifications, acceptances, approvals and accessions referred to in Articles 24 and 26;

b) the date on which this Convention enters into force in accordance with Article 27;

c) the notifications, declarations and withdrawals of declarations referred to in Articles 18, 19, 20, 23, paragraph 2, 25, paragraph 1, and 26, paragraphs 2 and 4;

d) the denunciations referred to in Article 30.

RECOMMENDED FORM

(Sample form confirming the issuance and content of a judgment by the Court of Origin for the purposes of recognition and enforcement under the Convention on Exclusive Choice of Court Agreements (the "Convention"))

(THE COURT OF ORIGIN) .....

(ADDRESS OF THE COURT OF ORIGIN) .....

(CONTACT PERSON AT THE COURT OF ORIGIN) .....

(TEL./FAX/EMAIL OF THE COURT OF ORIGIN) .....

CASE / DOCKET NUMBER: .....

_____(PLAINTIFF)

v.

_____(DEFENDANT)

(THE COURT OF ORIGIN) hereby confirms that it rendered a judgment in the above captioned matter on (DATE) in (CITY, STATE), which is a Contracting State to the Convention. Attached to this form is a complete and certified copy of the judgment rendered by (THE COURT OF ORIGIN).

1. This Court based its jurisdiction on an exclusive choice of court agreement:

YES_____ NO_____

If so, the agreement was found in or evidenced by the following document(s):

2. This Court awarded the following payment of money *(Please indicate any relevant categories of damages included):*

3. This Court awarded interest as follows (*Please specify the rate of interest, the portion(s) of the award to which interest applies, and the date from which interest is computed*):

4. This Court included within the judgment the following court costs and expenses (including lawyers' fees) related to the proceedings *(Please specify the amounts of any such awards, including where applicable, any amount(s) within a monetary award intended to cover costs and expenses relating to the proceedings)*:

5. This Court awarded, in whole or in part, the following non-monetary remedy *(Please describe the nature of the remedy)*:

6. This judgment was rendered by default:

YES_____ NO_____

(If this judgment was rendered by default, please attach the original or a certified copy of the document verifying notice to the defendant of the proceedings.)

7. This judgment (or a part thereof) is currently the subject of review in (STATE OF THE COURT OF ORIGIN):

YES_____ NO_____

8. **This judgment (or a part thereof) is enforceable in (STATE OF THE COURT OF ORIGIN):**

YES_____ NO_____

List of documents annexed:

Dated this _____ day of _____, 20__.

Signature and/or stamp by an officer of the Court