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

RAPPORT SUR LES PROGRES RELATIFS A L'ELABORATION D'UN NOUVEL INSTRUMENT MONDIAL SUR LE RECOUVREMENT INTERNATIONAL DES ALIMENTS ENVERS LES ENFANTS ET AUTRES MEMBRES DE LA FAMILLE

établi par le Bureau Permanent

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PROGRESS REPORT ON THE DEVELOPMENT OF A NEW INTERNATIONAL INSTRUMENT ON THE INTERNATIONAL RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE

drawn up by the Permanent Bureau

Document préliminaire No 25 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 25 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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A second meeting of the Special Commission on the International Recovery of Child Support and other Forms of Family Maintenance took place in The Hague, under the chairmanship of Mr Fausto Pocar (Italy), from 7-18 June 2004 to continue the discussions on a new global instrument which had begun in May 2003 in accordance with the mandate reaffirmed by Commission I on General Affairs and Policy of the Nineteenth Diplomatic Session in April 2002. The meeting was attended by experts from 55 States and 13 interested governmental and non-governmental organisations. Non-Member States in attendance as observers were Costa Rica, Dominican Republic, El Salvador, Ecuador, Guatemala, Holy See, India, Mongolia, Pakistan, Paraguay, Philippines, Uganda and Zimbabwe. Attendance of experts from six of these States was made possible through an assistance fund made up of contributions from China, Denmark, Luxembourg and Sweden.

The Special Commission had before it a Working draft of a Convention on the International Recovery of Child Support and other Forms of Family Maintenance prepared by the Drafting Committee in January 2004, as well as the following preliminary documents prepared by the Permanent Bureau:

– Application of an instrument on the international recovery of child support and other forms of family maintenance irrespective of the international or internal character of the maintenance claim, Preliminary Document No 11 of May 2004;

– Administrative and legal costs and expenses under the new Convention on the international recovery of child support and other forms of family maintenance, including legal aid and assistance, Preliminary Document No 10 of May 2004;

– Transfer of funds and the use of information technology in relation to the international recovery of child support and other forms of family maintenance, Preliminary Document No 9 of May 2004;

– Annex to Preliminary Document No 9;

– Procedures for recognition and enforcement abroad of decisions concerning child support and other forms of family maintenance, Preliminary Document No 8 of May 2004.

Also available in the form of working document was a report (Work. Doc. No 4) on the work of the informal Working Group on International Administrative Co-operation, as well as reports of its sub-committees on country profiles, forms and time-lines. A proposal (Work. Doc. No 13) of the formal Working Group on the Law Applicable to Maintenance Obligations was also considered.

The meeting concluded with a renewed mandate being given to the Drafting Committee based on the discussions and progress within the Special Commission. The Working Group on Applicable Law, chaired by Mr Bonomi (Switzerland), was mandated to consider the question of possible specific rules on applicable law to be included in the future Convention, and to develop a general regime on applicable law as a possible optional part of the Convention. The Working Group on Administrative Co-operation was established as an official Working Group, with a duty to report back to the Special Commission. The Working Group has four Co-Conveners Ms Carlson (United States of America), Mr Aguilar (Costa Rica), Ms Degeling (Australia and *Co-Rapporteur*) and Mrs Kurucz (Hungary).

The Drafting Committee, chaired by Ms Doogue (New Zealand), subsequently met in The Hague from 11-22 October 2004 and prepared a second Working draft of a Convention on the International Recovery of Child Support and other Forms of Family Maintenance to be considered at the Third meeting of the Special Commission which is to take place in The Hague from 4-15 April 2005. The others members of the Drafting Committee are: Ms Bariatti (Italy), Mr Beaumont (United Kingdom), Ms Borrás (Spain), Mr Buchet (European Commission), Ms Carlson (United States of America), Ms Degeling (Australia), Mr Deroulez (France), Ms Fresnedo de Aguirre (Uruguay), Ms Gervais (Canada), Mr Hatapka (European Commission), Mr Keith (United States of America), Ms Kurucz (Hungary), Mrs Mansilla y Mejia (Mexico), Ms Negm (Egypt) and Mr Sun Jin (China). The second Working Draft is appended.

The Administrative Co-operation Working Group met on several occasions (22 November 2004, 24 January, 28 February and 14 March 2005 (planned)) through Conference calls, facilitated by the Office for Child Support Enforcement of the United States of America. The Group's three sub-committees on forms (co-ordinated by the Permanent Bureau), country profiles and monitoring and review have also worked through conference calls and list serves. The Permanent Bureau has assisted at all such meetings. Membership of the Administrative Co-operation Working Group is open to all States and organisations invited to participate in the work of the Special Commission.

The Working Group on Applicable Law devised a Questionnaire, circulated in September 2004, which explored in particular opinions on possible amendments to the *Hague Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations*. The Group met in The Hague on 7 and 8 February 2005 to consider the responses and to prepare a report for the meeting of the Special Commission in April 2005. The members of the Working Group are Ms de Araujo (Brazil), Ms Bird (Australia), Mr Bonomi (Switzerland), Ms Correia (Portugal), Mr Deroulez (France), Ms Dubrocard (France), Mr Hayakawa (Japan), Ms van Iterson (Netherlands), Ms Kristensen (Norway), Mr McClean (United Kingdom), Ms Morrow (Canada), Mr Spector (United States of America) and Mr Wagner (Germany).

Work has continued to encourage participation in the Special Commission by a wide range of States. Invitations to the meeting of the Special Commission in April 2005 have been extended to the following non-Member States: Algeria, Andorra, Antigua and Barbuda, Bahamas, Barbados, Belize, Bolivia, Burkina Faso, Burundi, Cape Verde, Central African Republic, Colombia, Costa Rica, Dominican Republic, El Salvador, Ecuador, Fiji, Guatemala, Guyana, Haiti, Holy See, Honduras, India, Jamaica, Kazakhstan, Kyrgyzstan, Malawi, Mauritius, Moldova, Mongolia, Niger, Nicaragua, Nigeria, Pakistan, Paraguay, Philippines, Saint Kitts and Nevis, Saint Lucia, Seychelles, Thailand, Trinidad and Tobago, Tunisia, Turkmenistan, Uganda, Uzbekistan, Vietnam, Zambia and Zimbabwe. Offers of financial support to enable attendance at the Special Commission have been made to Costa Rica, El Salvador, Nicaragua, Paraguay, Philippines and Zimbabwe.

A N N E X

Annex

OBLIGATIONS ALIMENTAIRES
MAINTENANCE OBLIGATIONS

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Prel. Doc. No 13

Janvier / January 2005

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

ESQUISSE D'UNE CONVENTION SUR LE RECOUVREMENT INTERNATIONAL DES ALIMENTS ENVERS LES ENFANTS ET D'AUTRES MEMBRES DE LA FAMILLE

préparée par le Comité de rédaction
qui s'est réuni à La Haye du 19 au 22 octobre 2004

* * *

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

prepared by the Drafting Committee
which met at The Hague from 19-22 October 2004

Document préliminaire No 13 de janvier 2005
à l'intention de la Commission spéciale d'avril 2005
sur le recouvrement international des aliments
envers les enfants et d'autres membres de la famille

Preliminary Document No 13 of January 2005
for the attention of the Special Commission of April 2005
on the International Recovery of Child Support
and other Forms of Family Maintenance

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Annex

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

[Note: Except where otherwise indicated, square brackets are used to signify text which is tentative or which deals with a matter which has not yet been fully considered by the Special Commission.]

PREAMBLE

The States signatory to the present Convention,

[Emphasising the importance of international administrative co-operation for the international recovery of child support and other forms of family maintenance,

Taking into account the *United Nations Convention on the Rights of the Child of 20 November 1989*, in particular Article 27,

Considering that every child should have a standard of living adequate for the child's physical, mental, spiritual, moral and social development,

Considering that both parents 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,

Recalling that States should take all appropriate measures, including the conclusion of international agreements, to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, in particular, where the person having financial responsibility for the child lives in a State different from that of the child,

[Recognising the importance of other forms of family maintenance,]

[Recognising the importance of accountability,]

Desiring to build upon the best features of existing Conventions,

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

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CHAPTER I – SCOPE AND DEFINITIONS

Article 1 Objects

The objects of the present Convention are –

a) to establish a comprehensive system of co-operation between the authorities of the Contracting States for the international recovery of child support and other forms of family maintenance[, including the establishment of parentage when required for such purpose];

b) to provide for the recognition and enforcement of maintenance decisions.

Article 2 Scope

1. This Convention shall apply to maintenance obligations arising from a family relationship, parentage, marriage or affinity[, including a maintenance obligation in respect of a child regardless of the marital status of the parents].

2. The Convention shall also apply to claims by a public body for reimbursement of benefits provided in lieu of maintenance.

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

Article 3 Definitions

For the purposes of this Convention –

[*a)* 'child' includes as a minimum every person below the age of 18.][1]

[*b)* 'creditor' means

i) an individual to whom maintenance is owed or is alleged to be owed; or

ii) a public body to which reimbursement is owed for benefits provided in lieu of maintenance.][2]

[*c)* 'debtor' means an individual who owes or who is alleged to owe maintenance.]

[1] If this definition of 'child' is accepted it may not be necessary to include the definition in Article 41(2).
[2] See footnote No 19 in relation to Chapter VI.

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CHAPTER II – ADMINISTRATIVE CO-OPERATION

Article 4 Designation of Central Authorities

1. A Contracting State shall, at the time when the instrument of ratification or accession is deposited, 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 each Contracting State to the Permanent Bureau of the Hague Conference on Private International Law. Contracting States shall promptly inform the Permanent Bureau of any changes.

Article 5 Direct 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) provide information to the Permanent Bureau as to the laws and procedures concerning maintenance obligations in their States;

c) seek as far as possible solutions to difficulties which arise in the application of the Convention, in particular Chapters II and III;

d) transmit and receive applications under Chapter III;

e) initiate, or facilitate the institution of, proceedings in respect of applications under Chapter III.

Article 6 Other functions of Central Authorities

1. Central Authorities shall provide assistance in relation to applications under Chapter III, and in particular shall take all appropriate measures –

a) where the circumstances require, to provide, or facilitate the provision of, legal [advice,] assistance and representation;

b) to help locate the debtor;

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

d) to encourage voluntary payment of maintenance;

[*e)* to facilitate the ongoing enforcement of maintenance decisions, including the monitoring of payments;]

f) to facilitate the expeditious transfer of maintenance payments;

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

h) to encourage the use of mediation, conciliation or similar processes;

[*i)* to provide assistance in establishing parentage for the purpose of recovery of maintenance;]

Annex

[*j)* 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 or anticipated maintenance application.]

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

Article 7 Requests for specific measures

[1. A Central Authority shall, upon a well-founded request by another Central Authority, take such specific measures under Article 6(1) as are appropriate even when no application under Article 10 is pending before that Authority [provided that the request relates to the recovery of maintenance abroad].][4]

[2. A Central Authority may also take such specific measures on the request of another Central Authority in relation to an internal case in the requesting State.]

Article 8 Administrative costs

1. Central authorities and other authorities mentioned in Article 6(2) shall not impose any charge on an applicant for the provision of services, including the processing of applications under the Convention.

2. The principle set out in paragraph 1 shall be without prejudice to the possibility of imposing reasonable charges for –

a) services supplementary to those listed under Article 6;

[*b)* services in relation to genetic testing for the purpose of establishing parentage;]

[*c)* the provision of translation services;]

d) ...[5]

3. The provision of assistance under the Convention by one Central Authority shall be without cost to any other Central Authority.

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[3] A view was expressed in the Special Commission that this principle should apply also to Article 5(*d*) and (*e*).

[4] The issue of costs under, and the appropriate Chapter for, this Article remain to be considered. An appropriate measure might include for example referring the request to a competent authority within the requested State.

[5] The Drafting Committee had insufficient mandate to draft any further exceptions to the general principle.

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CHAPTER III – APPLICATIONS

Article 9 Application through Central Authority

Where the assistance of a Central Authority is requested in relation to an application under this Chapter, that request shall be made through the Central Authority of the requesting State to the Central Authority of the requested State.

A requesting State is one in which the applicant has his or her [habitual] residence.

Article 10 Available applications

1. A person [habitually] resident in one Contracting State seeking to recover maintenance in another Contracting State may make application for any of the following –

a) recognition or recognition and enforcement of a decision made in a Contracting State;

b) enforcement of a decision made in the requested State;[6] and,

subject to the jurisdictional rules applicable in the requested State –

[*c)* establishment of a decision in the requested State where there is no existing decision;]

[*d)* establishment of a decision in the requested State where recognition and enforcement of a decision is not possible or is refused;]

[*e)* modification of a decision made in a requested State to the extent permissible under the law of that State;]

[*f)* modification of a decision made in a State other than the requested State to the extent permissible under the law of the requested State;]

g) recovery of arrears.

2. A person [habitually] resident in one Contracting State against whom there is an existing maintenance decision may make an application to another Contracting State[, subject to the jurisdictional rules applicable in that State and Article 40,] for any of the following –

[*a)* modification of a decision made in a requested State to the extent permissible under the law of that State;]

[*b)* modification of a decision made in a State other than the requested State to the extent permissible under the law of the requested State.]

[3. A person [habitually] resident in one Contracting State who needs assistance in another Contracting State for the purpose of seeking to recover maintenance[, subject to the jurisdictional rules applicable in that State,] may make application for any of the following –

a) recognition of a decision establishing parentage[, including a registered or authenticated voluntary agreement,] made in a Contracting State;

b) establishment of parentage in the requested State [where it can not be established in the requesting State.]]

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[6] The Drafting Committee would like to draw the attention of the Plenary to a question not so far addressed. May an application to enforce a decision in a requested State extend also to the enforcement of a decision made in a non-Contracting State which is entitled to recognition [or has been recognised] in the requested State?

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Article 11 Application contents

Option 1 (if no mandatory forms exist)

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

a) the nature of the application or applications;

b) the name and address of the applicant;[7]

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

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

e) the grounds upon which the application is based;

[*f)* save in an application made under Article 10(1)(a), any information or document specified by declaration under Article ??? by the requested State].

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

a) the financial circumstances of both the creditor and the debtor;

b) the name and address of the employer of the debtor;

c) the location and nature of the assets of the debtor.

3. The application shall be accompanied by any necessary supporting information or documentation. In the case of applications under Article 10(1)(a), the application shall be accompanied only by documents listed under Article 18(3).

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

Option 2 (if mandatory forms exist)

1. Applications under Article 10 shall be in accordance with the forms annexed to this Convention and shall be accompanied by any necessary documents, without prejudice, save in relation to an application under Article 10(1)(a), to the right of the requested State to require further information or documents in appropriate cases.

2. The forms annexed to this Convention may be amended by a decision of a Special Commission convoked by the Secretary General of the Hague Conference to which all Contracting States and all Member States shall be invited. Notice of the proposal to amend the forms shall be included in the agenda for the meeting.

3. Amendments adopted by a majority of the Contracting States present and voting 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 Secretary General to all Contracting States.

4. During the period provided for by paragraph 3 any Contracting State may by notification in writing to the Ministry of Foreign Affairs of the Kingdom of the Netherlands make a reservation with respect to the amendment. A Party making such reservation shall until the reservation is withdrawn be treated as a State not a Party to the present Convention with respect to that amendment.[8]

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[7] It may be appropriate to provide for confidentiality in relation to the address in certain exceptional cases.

[8] This option is inspired by Articles 5 and 28 of the *Convention of 25 October 1980 on International Access to Justice*. It is put forward by the Drafting Committee as an example of a provision which might be used if a decision is taken in favour of mandatory forms.

Annex

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.][9]

2. The Central Authority of the requesting State shall, if satisfied that the application complies with the requirements of the Convention, transmit the application to the Central Authority of the requested State.[10]

3. The requested Central Authority shall [acknowledge receipt of the application promptly and,] within six weeks from the date of receipt of the application, 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. When it is manifest that the requirements of this Convention are not fulfilled [or that the application is otherwise not well founded,] a Central Authority is not bound to accept the application. In that case, the requested Central Authority shall forthwith inform the requesting Central Authority of its reasons.]

5. Requesting and requested Central Authorities shall –

a) keep each other informed of the person or unit responsible for a particular case;

b) keep each other informed of the progress of the case and 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 means of communication at their disposal.

Article 13 Effective access to procedures[11]

1. The requested State shall provide applicants with effective access to the procedures, including appeal procedures, arising from applications under Chapter III, where necessary by the provision of free legal [advice,][12] assistance and representation.

2. The requested State shall not be obliged to provide the legal assistance or representation referred to in paragraph 1 where the procedures are designed to enable the applicant to make the case without the need for such assistance or representation, and where the Central Authority or other body referred to in Article 6(2) provides such help as is necessary.

3. The provision of free legal assistance or representation may be made subject to a means or a merits test. [In the case of applications concerning child support, the means assessed shall be those of the child.]

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[9] This provision is inspired by Article 6 of the *Convention of 25 October 1980 on International Access to Justice*.

[10] It should be considered whether a provision is needed allowing the requesting Central Authority to refuse to transmit an application for example where there is a vexatious applicant. See for example Article 4(1) of the New York Convention of 1956:
"*Article 4 - Transmission of documents*
1. The Transmitting Agency shall transmit the documents to the Receiving Agency of the State of the respondent, unless satisfied that the application is not made in good faith."

[11] Consideration should be given to whether these provisions should apply (in whole or in part) to direct applications, *i.e.* applications not made through a Central Authority.

[12] If the decision is made to retain the term “advice” consideration should be given to its inclusion also in paragraphs 2, 3 and 4.

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

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

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

Annex

CHAPTER IV – RECOGNITION AND ENFORCEMENT

Article 14 Definition of 'decision'

For the purposes of this Chapter –

a) 'decision' means –

i) a decision rendered by a judicial or administrative authority;

ii) a settlement or agreement concluded before or approved by such authority;

b) a decision may include automatic adjustment by indexation and a requirement to pay arrears, [retroactive maintenance] or interest;

c) 'administrative authority' means a public body whose decisions, under the law of the State where it is established –

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

ii) have the same force and effect as a decision of a judicial authority on the same matter.

Article 15 Bases for recognition and enforcement

1. A maintenance 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 law of the State addressed would in similar [factual] circumstances confer or would have conferred jurisdiction on its authorities to make such a decision;

[*e)* there has been agreement to the jurisdiction by the parties in writing or evidenced by writing;

f) the maintenance decision was made by an authority exercising jurisdiction on a matter of personal status;[13] or

g) the child for whom the maintenance was ordered was [habitually] resident in the State of origin at the time proceedings were instituted].

2. A Contracting State may make a reservation in respect of paragraph 1 c)[, e), f) or g)].

3. 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.

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[13] Consideration might be given to additional wording to reduce the risk of including cases where the originating authority has exercised an exorbitant jurisdiction on a matter of personal status, for example where jurisdiction has been exercised solely on the basis of nationality. Another possibility would be a provision similar to Article 8 of the *Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations*.
"*Article 8*
Without prejudice to the provisions of Article 7, the authority of a Contracting State which has given judgment on a maintenance claim shall be considered to have jurisdiction for the purposes of this Convention if the maintenance is due by reason of a divorce or a legal separation, or a declaration that a marriage is void or annulled, obtained from an authority of that State recognised as having jurisdiction in that matter, according to the law of the State addressed."

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Article 16 Severability and partial recognition and enforcement

1. If recognition or enforcement of a decision which deals with several issues is applied for, the State addressed, if unable to recognise or enforce the whole of the decision, 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 17 Grounds for refusing recognition and enforcement

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

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

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

c) if proceedings between the same parties and having the same purpose are pending before an authority of the State addressed and those proceedings were the first to be instituted;

d) if the decision is incompatible with a decision rendered between the same parties and having the same purpose, either in the State addressed or in another State, provided that this latter decision fulfils the conditions necessary for its recognition and enforcement in the State addressed; or

e) if the respondent did not have proper notice of the proceedings and an opportunity to be heard, or did not have proper notice of the decision and the opportunity to challenge it.

Article 18 Procedure on an application for recognition and enforcement[14]

1. Subject to the provisions of this Article, the procedure on an application for recognition and enforcement shall be governed by the law of the State addressed.

2. A decision made in a Contracting State shall be recognised and enforced in another Contracting State when, on the application of a party, it has been declared enforceable or registered for enforcement in the latter State.

3. An application under paragraph 1 shall be accompanied by the following –

a) an original of the maintenance decision or a copy certified[15] by the competent authority in the State of origin;

[Alternative proposal:

a) an abstract of the decision certified by the competent authority in the State of origin in the form set out in Annex …;]

b) a certificate from the competent authority in the State of origin that the decision is enforceable [and, in the case of a decision by an administrative authority, that the requirements of Article 14(3) are met];

c) if the respondent was not involved in the proceedings in the State of origin, a document establishing that the conditions of Article 17(5) were met;

[*d)* 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].

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[14] The Drafting Committee recognises that this Article as presently drafted applies largely to procedures for enforcement. Modifications will be required to ensure that the conditions for recognition are also made clear, as for example where a debtor applies to have an existing maintenance decision recognised.

[15] The French equivalent of "certified" raised the question whether the certification should be by the originating authority or by some other competent authority.

4. The application may be refused only for the reasons specified in [Articles 15 and 17][Article 17(1)]. At this stage of proceedings neither the applicant nor the respondent is entitled to make any submissions on the application. The competent authority of the Contracting State addressed shall give its decision on the application without delay.

5. Upon notification of the decision given in application of paragraph 4, the applicant and the respondent shall have the right to appeal [on fact and law] against the decision. An appeal shall be dealt with in accordance with the rules governing procedure in adversarial matters. The only matters that may be considered on appeal shall be the following –

a) the grounds for refusing recognition and enforcement set out in Article 17;

b) the bases for recognition and enforcement under Article 15;

c) the fulfilment of the debt if the recognition and enforcement was only applied for in respect of payments that fell due in the past.

6. An appeal against a declaration of enforceability or registration for enforcement is to be lodged within [twenty] days of notification of the decision. If the party against whom enforcement is sought is [habitually] resident in a Contracting State other than that in which the declaration of enforceability was given, the time for appealing shall be [sixty] days from notification.[16]

Article 19 Procedure on an application for recognition

Article 18 shall apply *mutatis mutandis* to an application for recognition of a maintenance decision, save that the requirement of enforceability is replaced by the requirement that the decision has effect in the State of origin.

Article 20 More expeditious and effective system

Any Contracting State may enter into agreements with one or more other Contracting States, with a view to creating a more expeditious and effective system for recognition and enforcement of maintenance decisions under this Convention, provided that such agreements are consistent with the objects and purpose of this Convention. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

Article 21 Findings of fact

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

Article 22 No review of the merits

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

Article 23 Physical presence of the child or applicant

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

[16] Note that the rules concerning the time limits within which an appeal must be lodged apply only to the party against whom enforcement is sought.

Annex

[*Article 24 Authentic instruments and private agreements*][17]

[*Article 25 Costs*][18]

Article 26 Direct applications

The provisions of this Chapter[, with the exception of Articles 18 and 19,] shall also apply when the application for recognition or for recognition and enforcement was not made through the Central Authority in accordance with Article 9.

[17] If this category is included a distinct system for enforcement will need to be drafted. The requirements for enforcement should at least include: (a) that the instrument or agreement is enforceable in the country of origin; and, (b) the possibility of review on public policy grounds.

[18] Consideration may be given to including a provision relating to the enforcement of an order for costs. See for example, the proposal of the European Community in Working Document No 40: "An order for payment of costs based on a maintenance decision which is enforceable according to this Convention shall be rendered enforceable in any other Contracting State."

Annex

CHAPTER V – ENFORCEMENT BY THE REQUESTED STATE

[*Article 27 Enforcement measures*

Contracting States shall take effective measures to enforce decisions under the Convention, by means such as –

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).]

Article 28 Enforcement under national law

Enforcement shall take place in accordance with the law of the requested State.

Article 29 Non-discrimination

Where a foreign decision is entitled to be recognised and enforced under the Convention, the requested State shall provide at least the same range of enforcement methods as are available in domestic cases.

Article 30 Information concerning enforcement rules and procedures

Contracting States, at the time of ratification or accession, shall provide the Permanent Bureau of the Hague Conference with a description of their enforcement rules and procedures, including any debtor protection rules. Such information shall be kept up-to-date by the Contracting States.

Article 31 Transfer of funds

1. States are encouraged to promote, including by means of bilateral or regional 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 as maintenance or to cover costs and expenses in respect of any claim under this Convention.

Annex

CHAPTER VI – ADDITIONAL PROVISIONS RELATING TO PUBLIC BODIES[19]

Article 32

A decision rendered against a debtor on the application of a public body which claims reimbursement of benefits paid in lieu of maintenance shall be recognised and enforced in accordance with this Convention if reimbursement can be obtained by the public body under the law to which it is subject.

Article 33

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

[19] Further provisions may need to be considered defining the scope of the Convention in relation to public bodies.

Annex

CHAPTER VII – GENERAL PROVISIONS

Article 34 Language requirements

Option 1 – Pre-existing text

1. Any application and related documents shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State [or, where that is not feasible, a translation into French or English,][20] unless the competent authority of that State dispenses with translation.

2. A Contracting State may, by way of declaration in accordance with Article ???, indicate one or more additional languages in which it will accept applications and related documents.

3. Unless otherwise agreed by the Central Authorities, any other communications between such Authorities shall be in the official language or one of the official languages of the requested State or, where that is not feasible, in French or English.

[4. However, in relation to paragraphs 1 and 3, a Contracting State may, by making a reservation in accordance with Article ???, object to the use of either French or English.]

5. ...[21]

6. ...[22]

Option 2 – Alternative proposal

[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 in another language which the requested State has indicated, by way of Declaration in accordance with Article ???, it will accept, unless the competent authority of that State dispenses with translation.[23]

2. By agreement between the competent authorities of the States concerned the translation into an official language of the requested State may be made in the requested State.

3. Unless otherwise agreed by competent authorities of the States concerned, the cost of translation arising from the application of the preceding paragraphs shall be borne by the requesting State.

4. 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 ???, object to the use of either French or English.]

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[20] In some circumstances it may be very difficult for the requesting State to arrange for a translation into the language of the requested State. In those situations under this Article the requesting State could send the documents translated into either English or French. The issue of whether or not the requested State should then receive reimbursement for the translation into its language remains to be considered.

[21] The general issue of translation costs remains to be considered.

[22] A provision allowing for bilateral or regional arrangements remains to be drafted.

[23] Note that this rule should also apply to direct applications, for example applications for recognition and enforcement not made through Central Authorities.

Annex

Article 35 Costs recovery

1. Recovery of any costs incurred in the application of this Convention shall not take precedence over the obligation to pay maintenance.[24]

2. ...[25]

Article 36 Legalisation

All documents transmitted under this Convention shall be exempt from legalisation or any analogous formality.

[*Article 37 Power of attorney*

A power of attorney authorising the Central Authority of the requested State to act on behalf of the applicant shall not be required.]

Article 38 Review of practical operation of the Convention

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

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

Article 39 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 40[26] ***Limit on proceedings by debtor***

1. Where a decision is made in a Contracting State where the creditor is [habitually] resident, the debtor may not bring proceedings for a new or modified decision in any other Contracting State as long as the creditor remains [habitually] resident in that State.

2. The previous paragraph shall not apply –

a) where there is agreement between the parties as to the jurisdiction of that other Contracting State;

b) where the creditor submits to the jurisdiction of that other Contracting State; or,

c) where the State of origin cannot or will not exercise jurisdiction to modify the decision or make a new decision.

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[24] Consideration should be given to the question whether this principle should apply only in respect of child support.

[25] Consideration should be given to the inclusion of a provision along the following lines "nothing in this Convention shall prevent the recovery of costs from an unsuccessful party".

[26] Several issues in relation to modification remain to be discussed (see, Prel. Doc. No 3, paragraphs 126-133).

Annex

Article 41 Reservation[27]

1. Any Contracting State may in accordance with Article ???, reserve the right not to apply [the Convention, or] any specified part of the Convention,[28] to maintenance obligations in respect of any specified family relationships or relationships based on affinity, other than maintenance obligations in respect of children.

[2. For the purpose of this Article the term 'child' includes as a minimum every person below the age of 18.]

[or]

[2. For the purpose of this Article a child is a person below the age of 18 [or in continuing education up to [...] years old or otherwise unable to support him or herself.]]

Article 42 Bilateral / Regional arrangements[29]

[27] A provision on reciprocity remains to be drafted.
[28] A view was expressed in the Special Commission that no reservation should be permitted in relation to spousal support under Chapter IV.
[29] This would include the possibility of agreements for the provision of an advanced level of services.