

**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 12 au 16 janvier 2004*

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**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 12-16 January 2004*

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à l'intention de la Commission spéciale de juin 2004  
sur le recouvrement international des aliments  
envers les enfants et d'autres membres de la famille*

*Preliminary Document No 7 of April 2004  
for the attention of the Special Commission of June 2004  
on the International Recovery of Child Support  
and other Forms of Family Maintenance*

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## **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**<sup>1</sup>

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,<sup>2</sup>

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

Recognising that every child should have a standard of living adequate for the child's physical, mental, spiritual, moral and social development,<sup>3</sup>

Recognising 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,<sup>4</sup>

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,<sup>5</sup>

[Recognising the importance of other forms of family maintenance,]<sup>6</sup>

[Recognising the importance of accountability,]<sup>7</sup>

Desiring to build upon the best features of existing Conventions,<sup>8</sup>

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<sup>1</sup> This tentative wording for the Preamble is put forward by the Drafting Committee to assist discussion within the Special Commission, which has not yet considered this matter in detail. Hence the use of square brackets.

<sup>2</sup> The reference to "the importance of international administrative co-operation" derives from Working Document No 1, "Proposal by the Working Group, from the Special Commission of May 2003", distributed on 13 May 2003, paragraph 3 a) (hereinafter Working Document No 1). The Preamble may be an appropriate location for this type of statement.

<sup>3</sup> The language is drawn from *United Nations Convention on the Rights of the Child* of 20 November 1989, Article 27(1).

<sup>4</sup> *Ibid.*, Article 27(2).

<sup>5</sup> *Ibid.*, Article 27(4).

<sup>6</sup> The Drafting Committee had no time to consider precise language for the idea expressed in this recital.

<sup>7</sup> See previous footnote.

<sup>8</sup> The wording here is drawn from the original recommendation to commence work on the elaboration of a new worldwide international instrument, made by the Special Commission on Maintenance Obligations of April 1999. See "Report on and Conclusions of the Special Commission on Maintenance Obligations of April 1999", paragraph 46, drawn up by the Permanent Bureau in December 1999.

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.]<sup>9</sup>

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<sup>9</sup> *Ibid.* The wording is inspired in part by the original mandate.

## CHAPTER I – SCOPE AND DEFINITIONS<sup>10</sup>

### **Article 1**     **Objects**

The objects of the present Convention are –

1. to establish a comprehensive system of co-operation between the authorities of the Contracting States<sup>11</sup> for the international recovery of child support and other forms of family maintenance[, including the establishment of parentage for such purposes];<sup>12</sup>
2. to provide for the recognition and enforcement of maintenance decisions.

### **Article 2**     **Scope**<sup>13</sup>

1. This Convention shall apply to maintenance obligations<sup>14</sup> 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].<sup>15</sup>
2. The Convention shall also apply to claims by a public body for reimbursement of benefits provided in lieu of maintenance.

### **[Article 3**     **International character of the maintenance claim ]**<sup>16</sup>

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<sup>10</sup> The possibility and extent of any reservations or declarations concerning scope, including the possibility of limiting the scope of the Convention to child support, will be revisited at a later stage (see Working Document No 1, paragraph 2, and "Report of the Special Commission on the International Recovery of Child Support and other Forms of Family Maintenance of 5-16 May 2003", drawn up by the Permanent Bureau, Preliminary Document No 5 of October 2003, paragraph 142 (hereinafter Preliminary Document No 5 of October 2003)).

<sup>11</sup> The reference in the "objects" clause to "co-operation between the authorities of Contracting States" derives from Working Document No 1, paragraph 3 a). The formulation is similar to that of Article 1 b) of the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*, (hereinafter the Hague Convention of 1993).

<sup>12</sup> The degree to which the Convention will provide for co-operation in establishing parentage for the purposes of maintenance recovery has yet to be decided.

<sup>13</sup> The formula is based on Article 1 of the *Hague Convention of 2 October 1973 on Recognition and Enforcement of Decisions Relating to Maintenance Obligations* (hereinafter the Hague Convention of 1973 on Recognition and Enforcement) which was the agreed starting point, as expressed in Working Document No 1, paragraph 2.

<sup>14</sup> The reference to "a decision rendered by a judicial or administrative authority in a Contracting State" has been omitted. This reference, while appropriate to a Convention dealing solely with recognition and enforcement, may be seen to be unduly narrow for a Convention which will cover also administrative co-operation, possibly applicable law (see the *Hague Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations*, Article 1) and perhaps other matters.

<sup>15</sup> The use of the word "legitimate" in Article 1 of the Hague Convention of 1973 on Recognition and Enforcement seems outdated. Alternative wording is suggested in the draft.

It may yet be considered whether the clause beginning "including a maintenance obligation towards a child ..." is any longer necessary. A principle of non-discrimination concerning children could possibly appear in the Preamble.

<sup>16</sup> It may be considered whether a provision is needed defining the territorial / personal scope of different chapters within the Convention. See for example Article 2(3) of the 1973 Convention on Recognition and Enforcement, which is geared to the context of recognition and enforcement. The Permanent Bureau is preparing a note on the issues.

**[Article 4**

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.]<sup>17</sup>

**Article 5 Definitions**<sup>18</sup>

For the purposes of this Convention –

1. ‘decision’<sup>19</sup> includes –
  - a) a decision rendered by a judicial or administrative authority;
  - b) a settlement concluded before or approved by such authority;<sup>20</sup>
  - c) an agreement registered or filed with such authority;
  - d) a decision or settlement modifying a previous decision or settlement;
  - [e) a decision which requires maintenance to be paid retroactively;
  - f) an authentic instrument;
  - g) a private agreement which is enforceable but has not been registered.]<sup>21</sup>
2. ‘maintenance obligation’ includes any obligation to pay arrears or interest.<sup>22</sup>
3. ...<sup>23</sup>

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<sup>17</sup> See Hague Convention of 1973 on Recognition and Enforcement, Article 3. Whether this principle should be included has yet to be considered by the Special Commission. The Article has been discussed by the Special Commission in the context of the recognition of a maintenance decision which is predicated on a determination of parentage.

<sup>18</sup> The Drafting Committee is uncertain at this stage whether it is necessary to include an Article on “definitions” for the Convention as a whole, particularly in view of the fact that a definition of “decision” appears at Article 26 for the purposes of Chapter IV (Recognition and Enforcement). The Article is included at this point to assist discussion.

<sup>19</sup> It is possible that the definition of “decision” for the purposes of Chapter III (Applications), where the context is broader (covering establishment and modification of decisions, as well as recognition and enforcement), may need to be wider than that in Chapter IV. For the moment, a definition is included here to assist discussion of this matter. Ultimately it will be important, as a drafting matter, to avoid unnecessary overlap between Article 5 and Article 26.

The definition set out here is based, with modifications, on the concept of “decision” as set out in Working Document No 1, paragraph 2.

<sup>20</sup> The wording here is borrowed from Article 12 of the “Hague Draft on Exclusive Choice of Court Agreements”, Working Document No 49 E revised, Special Commission on Jurisdiction, Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters (1 to 9 December 2003), (hereinafter the Hague Draft on Exclusive Choice of Court Agreements).

<sup>21</sup> Sub-headings e), f) and g) refer to matters on which further discussion will be needed.

<sup>22</sup> This clarification of the concept of “maintenance obligation” in effect ensures that payment of arrears and interest on maintenance fall within the scope of the Convention (see Working Document No 1, paragraph 2).

<sup>23</sup> Further definitions may be required.

## CHAPTER II – ADMINISTRATIVE COOPERATION

### **Article 6      *Designation of Central Authorities***<sup>24</sup>

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 to 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. A Contracting State may modify the designation of a Central Authority in accordance with Article 10.]<sup>25</sup>

### **Article 7      *General functions of Central Authorities***

1. Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to achieve the purposes of the Convention.<sup>26</sup>

2. They shall take directly all appropriate measures<sup>27</sup> –

a) to provide information to the Permanent Bureau as to the laws and procedures of their States concerning maintenance obligations;

b) to eliminate as far as possible any obstacles to the application of the Convention.

### **Article 8      *Specific functions of Central Authorities***

Central Authorities shall provide assistance with applications brought under the Convention and in particular shall take all appropriate measures<sup>28</sup> –

a) to transmit and receive applications under Chapter III;<sup>29</sup>

b) to initiate or facilitate the institution of judicial or administrative proceedings with a view to [the establishment,] the recognition, the enforcement, [or the modification] of a maintenance decision, in accordance with the procedures set out in Chapter III;

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<sup>24</sup> See Working Document No 1, paragraph 4 a), b) and c). The wording is drawn from various Hague Conventions, for example, Article 29 of the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children* (hereinafter the Hague Convention of 1996), and Article 28 of the *Hague Convention of 13 January 2000 on the International Protection of Adults* (hereinafter the Hague Convention of 2000).

<sup>25</sup> The Drafting Committee recommends the inclusion of an express power to modify the designation of a Central Authority, linked to the obligation to inform the Permanent Bureau of any changes under Article 10.

<sup>26</sup> See Working Document No 1, paragraph 4 f)(iv). See the Hague Convention of 1996, Article 30(1), and the Hague Convention of 2000, Article 29(1).

<sup>27</sup> *Ibid.*, paragraph 4 f)(v). See the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, Article 7(i) (hereinafter the Hague Convention of 1980).

<sup>28</sup> The phrase “all appropriate measures” is taken from Article 7(2) of the Hague Convention of 1980. The phrase “all appropriate steps” is used in Articles 30 and 31 of the Hague Convention of 1996.

<sup>29</sup> See Working Document No 1, paragraph 4 f)(i).

- c) to provide or facilitate, where the circumstances so require, the provision of legal aid and advice, [including the participation of legal counsel and advisers];<sup>30</sup>
- d) to discover the whereabouts of the debtor;<sup>31</sup>
- e) to seek out relevant information concerning the income and other financial circumstances of the debtor [or creditor], including the location of assets;<sup>32</sup>
- f) to encourage voluntary payment of maintenance obligations [but not at the expense of delaying recovery of maintenance];<sup>33</sup>
- [g) to facilitate the ongoing enforcement of maintenance decisions, including the monitoring of payments;]<sup>34</sup>
- h) to facilitate the expeditious transfer of maintenance payments to the creditor;<sup>35</sup>
- i) to provide, in accordance with Article 15(5), progress reports on particular cases;<sup>36</sup>
- j) to facilitate the obtaining of documentary or other evidence;<sup>37</sup>
- k) to provide information about laws and procedures relevant to a particular case;
- l) to encourage the use of mediation, conciliation or similar processes;<sup>38</sup>
- [m) to provide assistance in establishing the parentage of a child for the purpose of recovery of maintenance;]<sup>39</sup>
- [n) to initiate or facilitate the institution of judicial or administrative 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.]<sup>40</sup>

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<sup>30</sup> *Ibid.*, paragraph 4 e)(iv). This language is drawn from Article 7(g) of the Hague Convention of 1980. The formula is modified by omitting the first phrase and adding a reference to "including the participation of legal counsel and advisers". It is recognised that issues of legal aid and advice, as well as costs more generally, have not yet been fully addressed. A paper on this subject is being prepared by the Permanent Bureau.

<sup>31</sup> *Ibid.*, paragraph 4 e)(i).

<sup>32</sup> *Ibid.*, paragraph 4 g)(i).

<sup>33</sup> *Ibid.*, paragraph 4 e)(ii). The words in brackets express an idea which has yet to be properly drafted.

<sup>34</sup> *Ibid.*, paragraph 4 e)(iii). The words "which are entitled to recognition" after "maintenance decisions" are not used, because the Central Authority may be asked to process an application for recognition.

<sup>35</sup> *Ibid.*, paragraph 4 f)(viii).

<sup>36</sup> *Ibid.*, paragraph 4 f)(ii).

<sup>37</sup> *Ibid.*, paragraph 4 f)(vi). See the *New York Convention of 20 June 1956 on the Recovery Abroad of Maintenance*, Article 7 (hereinafter the New York Convention). The wording has been expanded. Debates in the Special Commission concerning the obligations of Central Authorities in relation to the obtaining of evidence, particularly in the context of establishing parentage, were inconclusive.

<sup>38</sup> *Ibid.*, paragraph 4 f)(vii). There is some concern that the word "facilitate" may create an obligation which is not realisable in many countries. The word "encourage" is suggested for consideration.

<sup>39</sup> *Ibid.*, paragraph 4 g)(iii). See also Preliminary Document No 5 of October 2003, paragraphs 114 and 123. There may be some overlap between Article 8 j) and m).

<sup>40</sup> *Ibid.*, paragraph 4 g)(iv). See the *Inter-American / Montevideo Convention of 15 July 1989 on Support Obligations*, Article 15(1) (hereinafter the Montevideo Convention). See also Preliminary Document No 5 of October 2003, paragraph 19.

A provisional measure, e.g. to prevent the dissipation of assets, might be sought in the State to which an application for the recovery of maintenance has been made, or in another Contracting State in which assets of the debtor are located.



**[Article 9 Intermediaries**

The functions of the Central Authority under Article 8 may be performed by intermediaries to the extent permitted by the law of that State and subject to the supervision of the competent authorities of that State.]<sup>41</sup>

**Article 10 Notifications to Permanent Bureau**

The designation of the Central Authorities and, where appropriate, the extent of their functions, as well as the names and addresses of any intermediaries which are designated to transmit and receive applications under Article 8(a) of the Convention, shall be communicated by each Contracting State to the Permanent Bureau of the Hague Conference on Private International Law.<sup>42</sup> Contracting States shall promptly inform the Permanent Bureau of any changes.

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<sup>41</sup> The purpose of this Article, the subject matter of which has not been discussed fully by the Special Commission, is twofold: (a) to establish that the Central Authority functions under Article 8 may be performed by intermediaries, and (b) to indicate that the performance of such delegated functions should be subject to supervision by competent authorities. The formula is inspired by Article 22(2) of the Hague Convention of 1993.

<sup>42</sup> This language is drawn from Article 13 of the Hague Convention of 1993.

**CHAPTER III - APPLICATIONS**<sup>43</sup>**Article 11 Available applications**<sup>44</sup>

1. A person resident in one Contracting State seeking to recover maintenance in another Contracting State may[, subject to the jurisdictional rules applicable in that State,]<sup>45</sup> make application under the Convention for any of the following<sup>46</sup> -

- a) recognition and enforcement of a decision made in a Contracting State;<sup>47</sup>
- b) enforcement of a decision made in the requested State;<sup>48</sup>
- [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;]
- [f) modification of a decision not made in a requested State;]
- g) recovery of arrears;
- [h) limited assistance.]<sup>49</sup>

2. A person resident in one Contracting State against whom there is an existing maintenance decision may[, subject to the jurisdictional rules applicable in that State,] make application under the Convention for any of the following -

- [a) modification of a decision made in a requested State;]
- [b) modification of a decision not made in a requested State;]
- [c) limited assistance.]

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<sup>43</sup> This Chapter describes the different types of application which may be processed under the Convention (see Working Document No 1, paragraph 5 d)). See also the Model Form for a Request for Judicial and / or Administrative Assistance for the Recovery Abroad of Maintenance, section 1 (see "Towards a new global Instrument on the Recovery of Child Support and other Forms of Family Maintenance", Report drawn up by William Duncan, Deputy Secretary General, Preliminary Document No 3 of April 2003 for the attention of the Special Commission of May 2003 on the Recovery of Child Support and other Forms of Family Maintenance, (hereinafter Preliminary Document No 3 of April 2003), appendices 5 and 6).

The different types of application are separated out in this and the subsequent Articles at this stage in order to assist discussion and help clarify any differences in the procedures applying to each of them. Eventually, it may be appropriate to amalgamate some of the different forms of application. The Drafting Committee also wishes to note that it did not have time to consider in full the procedural requirements for all forms of application. Consequently several of the Articles in this Chapter are incomplete.

<sup>44</sup> It is assumed that, where appropriate, different forms of application under this Article may be made in combination or in the alternative.

<sup>45</sup> Depending on decisions yet to be taken, the applicable jurisdictional rules may be either (a) uniform rules set out in the Convention or (b) the rules otherwise operating in that State.

<sup>46</sup> The wording of the chapeau indicates that subsection 1 applies only to applications made by maintenance creditors. Subsection 2 refers to maintenance debtors. The position of public authorities may be dealt with in Chapter VI (see footnote 117 below).

<sup>47</sup> Further consideration will need to be given to the status, in this Article, of decisions made in non-Contracting States.

<sup>48</sup> For example, where the creditor no longer resides in the jurisdiction where the decision was made and where the debtor resides.

<sup>49</sup> Specific forms of limited assistance will need to be enumerated, for example, those forms of assistance set out in Article 8 d) and e) (see also footnote 66 below).

[3. A person resident in one Contracting State who needs assistance in another Contracting State in establishing the parentage of a child for the purpose of seeking to recover maintenance[, subject to the jurisdictional rules applicable in that State,] may make application under the Convention 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;
- c) limited assistance<sup>50</sup>.]<sup>51</sup>

**Article 12 Application for recognition and enforcement of an existing decision**

1. The application [shall be in the standard form provided for in ??? and] shall include<sup>52</sup> –

- [a) the name of the creditor;
- b) the name and the date of birth of any child for whom support is sought;
- c) the name of the debtor and, if known, the address of the debtor, the name and address of the employer of the debtor and a description of the movable and immovable property of the debtor;
- d) the amount of, and the conditions attached to the maintenance payments, and where relevant the applicable basis of indexation.<sup>53</sup>

2. The application shall be accompanied by a synopsis / copy of the decision certified in accordance with the forms set out at ???, including certification that the decision is no longer subject to ordinary forms of review in the State of origin and, when necessary, that it is enforceable.<sup>54</sup>

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<sup>50</sup> Specific forms of limited assistance will need to be enumerated, for example, those forms of assistance set out in Article 8 d) and j), to contact the putative father to obtain a voluntary admission of paternity or co-operation to conduct DNA testing.

<sup>51</sup> It remains to be decided whether the Convention will provide for applications for assistance for establishing parentage for the purpose of the recovery of maintenance. This paragraph is drafted to illustrate different forms which such applications might take.

<sup>52</sup> The reference to the use of a standard form, which also appears in subsequent Articles, follows one of the options considered by the Special Commission (see Working Document No 1, paragraph 5 g)(i)). Experts at the Special Commission endorsed the use of standard forms (see Preliminary Document No 5 of October 2003, paragraph 26), but it remains to be decided whether their use will be mandatory or optional.

The question has also been raised of the possibility of establishing under the Convention a procedure for reviewing and up-dating mandatory or standard forms. The Permanent Bureau is examining the feasibility of this suggestion.

The matters which, under paragraph 1, must be included with the application (see Working Document No 1, paragraph 5 c)) are inspired by the wording of the Model Form for a Request for Judicial and / or Administrative Assistance for the Recovery Abroad of Maintenance, by Section 24 of *Bill 2, an Act Respecting the reciprocal issue and enforcement of support orders (Quebec)* of 2003 (hereinafter Bill 2 (Quebec) of 2003), and by Section 311 of the Uniform Interstate Family Support Act (USA) of 1996 (hereinafter UIFSA).

If a mandatory form is eventually accepted, it may not be necessary to describe the contents of an application in such detail in the text of the Convention.

<sup>53</sup> The “applicable basis of indexation” is an item taken from Section 24(3) of Bill 2 (Quebec) of 2003. It has not been considered by the Special Commission.

<sup>54</sup> The precise wording of this provision will depend on the view eventually taken by the Special Commission as to the definition of a “decision” which is entitled to be recognised and enforced. The wording is in part inspired by Article 4 of the Hague Convention of 1973 on Recognition and Enforcement.

What exactly is meant by “certified” and whether there will be a standard certificate for this purpose, has yet to be determined.

3. ...<sup>55]</sup>

**Article 13 Application to enforce a decision made in the requested State**

The application [shall be in the standard form provided for in ??? and] shall include –

...

**Article 14 Application to establish a maintenance decision in the requested State where there is no existing decision<sup>56</sup>**

The application [shall be in the standard form provided for in ??? and] shall include –

- [a) the name of the claimant;
- b) the name of the defendant and any other information known to the claimant that can be used to locate or identify the defendant;
- c) the financial circumstances of the defendant, to the extent known by the claimant;
- d) the name of the person for whom maintenance is or was claimed, the date of birth of the person and details of the relationship of the person with the claimant and the defendant;
- e) the grounds on which the application is based, including the needs of the person for whom maintenance is claimed and financial and other circumstances of the person; and,
- f) any other information or document required by the Requested State.<sup>57]</sup>

**Article 15 Application to establish a maintenance decision in the requested State where recognition and / or enforcement of an existing order is not possible or is refused<sup>58</sup>**

The application [shall be in the standard form provided for in ??? and] shall include –

- a) ...<sup>59</sup>

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<sup>55</sup> Consideration will need to be given to any additional documentary requirements in the case of a decision given by default. See, for example, the Hague Convention of 1973 on Recognition and Enforcement, Article 17(3):

“(3) if the decision was rendered by default, the original or a certified true copy of any document required to prove that the notice of the institution of proceedings, including notice of the substance of claim, has been properly served on the defaulting party according to the law of the State of origin;”

<sup>56</sup> The idea that the Convention should cover applications to establish a maintenance order in the requested State received support at the Special Commission, though some reservations were expressed (see Preliminary Document No 5 of October 2003, paragraph 26.)

The matters to be included in the application are inspired by Section 5 of Bill 2 (Quebec) of 2003.

<sup>57</sup> Examples are a written authorisation empowering the Central Authorities to act on behalf of the applicant (see, for example, the Hague Convention of 1980, Article 28) or information concerning the financial circumstances of the claimant.

<sup>58</sup> See Working Document No 1, paragraph 5 d)(ii). See also Preliminary Document No 5 of October 2003, paragraph 26.

<sup>59</sup> It may be that a separate Article to deal with cases where recognition / enforcement of an existing order is not possible is not necessary. An alternative could be to include a provision to the effect that the requested State may not refuse to establish a maintenance decision solely for the reason that an existing decision cannot be enforced.

**Article 16 Application to modify an existing maintenance decision made in the requested State**<sup>60</sup>

The application [shall be in the standard form provided for in ??? and] shall include -

- a) a statement of the grounds on which modification is sought;
- b) any other information or document required by the requested State;
- c) ...<sup>61</sup>

**Article 17 Application to modify an existing maintenance decision not made in the requested State**

The application [shall be in the standard form provided for in ??? and] shall include -<sup>62</sup>

- a) a statement of the grounds on which modification is sought;
- b) any other information or document required by the requested State;
- c) ...<sup>63</sup>

**Article 18 Application for recovery of arrears**

The application [shall be in the standard form provided for in ??? and] shall include -<sup>64</sup>

...

**Article 19 Application for limited assistance**<sup>65</sup>

The application for limited assistance [shall be made in the standard form provided for in ??? and] shall include -<sup>66</sup>

...

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<sup>60</sup> See Working Document No 1, paragraph 5 d)(iii). See also Preliminary Document No 5 of October 2003, paragraph 26.

<sup>61</sup> The matters to be included in the application are not expressed comprehensively.

<sup>62</sup> See Working Document No 1, paragraph 5 d)(iii). See also Preliminary Document No 5 of October 2003, paragraph 26.

<sup>63</sup> The matters to be included in the application are not expressed comprehensively.

<sup>64</sup> It is doubtful whether a separate article is needed for application for the recovery of arrears. Usually such applications will accompany an application for recognition and enforcement of an existing order made in the requesting State. However, an application for recovery of arrears under an order made in the requested State is also possible. The application may be for the recovery of arrears: (a) accruing under a decision made in the requested State, or (b) accruing under a decision made in the requesting State. Different documentary requirements may apply to each case.

<sup>65</sup> See Working Document No 1, paragraph 5 d)(iv). See also Preliminary Document No 5 of October 2003, paragraph 30.

<sup>66</sup> Examples of limited assistance applications might include a request to discover the whereabouts of the debtor, to locate the assets of the debtor, to provide assistance in establishing parentage (e.g., voluntary admission of parentage, co-operation to conduct DNA testing) or to facilitate enforcement. This last form of request might be made when the creditor has moved away from the country where the decision was made, but meets resistance with enforcement in that country.

**[Article 20 Application for the establishment or recognition of parentage**

The application [shall be in the standard form provided for in ??? and] shall include –  
...] <sup>67</sup>

**Article 21 Application through Central Authority**

Where the assistance of a Central Authority is requested in relation to an application under this Chapter, that request must be made through the Central Authority of the requesting State to the Central Authority of the requested State. <sup>68</sup>

A requesting State is one in which the applicant has his or her [habitual] residence. <sup>69</sup>

**Article 22 Transmission, receipt and processing of applications and cases** <sup>70</sup>

1. 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. <sup>71</sup>

2. The requested Central Authority shall acknowledge receipt of the application within [ten] working days. <sup>72</sup>

3. The requested Central Authority if satisfied that the application is complete shall within [twenty] working days so inform the Requesting Central Authority. <sup>73</sup> If the application is not complete, the requested Central Authority shall, within the same time limit, inform the requesting Central Authority of any additional information or documentation required. <sup>74</sup> At the same time, the requested Central Authority shall provide to the requesting Central Authority the name and contact details of the person responsible for the application. <sup>75</sup>

[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.] <sup>76</sup>

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<sup>67</sup> See Preliminary Document No 5 of October 2003, paragraph 126.

<sup>68</sup> See Working Document No 1, paragraph 5 f)(i).

<sup>69</sup> The Drafting Committee suggests that it is necessary to define a minimum connection between the applicant and the State in which an application may be initiated. The preference within the Committee is for the connecting factor to be the simple "residence" of the applicant in that State. Simple "residence" is to be contrasted with, on the one hand, the mere "presence" of the applicant which is too fragile a connexion, and, on the other hand, "habitual residence", which sets too high a standard and carries the "baggage" of a complex case-law.

<sup>70</sup> The word "application" is used to describe the initial stages of a claim up to the point where the application is regarded as complete. Thereafter the word "case" is employed.

<sup>71</sup> See Working Document No 1, paragraph 5 h)(i) and (ii). Compare with Article 4 of the New York Convention.

<sup>72</sup> See Working Document No 1, paragraph 5 h)(iii), and paragraph 7 a). A strict time-line may be appropriate for the bare acknowledgement of receipt of the application. See Preliminary Document No 5 of October 2003, paragraph 41.

<sup>73</sup> See Working Document No 1, paragraph 5 h)(iii). The set time-line requires further consideration.

<sup>74</sup> The set time-line requires further consideration.

<sup>75</sup> See Working Document No 1, paragraph 5 h)(iv).

<sup>76</sup> The wording derives from Article 27 of the Hague Convention of 1980.

It has yet to be considered whether to include such a provision. The Drafting Committee is of the opinion that it is wise to give the requested Central Authority a limited power to reject an application, but not on the uncertain ground that the application is "not well founded".

5. Requesting and requested Central Authorities shall -
  - a) keep each other informed of the person responsible for a particular case;<sup>77</sup>
  - b) keep each other informed of the progress of the case<sup>78</sup> and provide timely responses to mutual enquiries;<sup>79</sup>
6. Central Authorities shall process a case as quickly as a proper consideration of the issues will allow.<sup>80</sup>
7. Central Authorities shall employ the most rapid means of communication at their disposal.<sup>81</sup>

### **Article 23 Language requirements**<sup>82</sup>

1. Any communication sent to the Central Authority or to another authority of a Contracting State 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 other State or, where that is not feasible, a translation into French or English, unless the authority of the Requested State dispenses with translation.<sup>83</sup>
2. However, a Contracting State may, by making a reservation in accordance with Article ???, object to the use of either French or English, but not both.<sup>84</sup>
3. A Contracting State may, by way of Declaration in accordance with Article ???, indicate one or more additional languages in which it will accept communications or translations or both.
4. ...<sup>85</sup>
5. ...<sup>86</sup>

### **Article 24 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.<sup>87</sup>

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<sup>77</sup> See Working Document No 1, paragraph 5 h)(iv).

<sup>78</sup> *Ibid.*, paragraph 5 h)(v). Compare with Article 6(2) of the New York Convention.

<sup>79</sup> *Ibid.*, paragraph 5 h)(v).

<sup>80</sup> *Ibid.*, paragraph 7 b).

<sup>81</sup> *Ibid.*, paragraph 5 g)(iv).

<sup>82</sup> The form of words in paragraphs 1 and 2 is that used in Article 54 of the Hague Convention of 1996 and Article 51 of the Hague Convention of 2000. It may be necessary to consider specifically the question of translation of the decision for purposes of recognition and enforcement. It will also be necessary to consider whether this Article would be better placed in the Chapter on "General Provisions".

<sup>83</sup> The final clause in paragraph (1) "unless the authority of the State addressed dispenses with such translation" is taken from Article 17(5) of the Hague Convention of 1973 on Recognition and Enforcement. It may be considered whether the strict language requirements should apply to less formal communications between Central Authorities.

<sup>84</sup> The Article concerning reservations in the Chapter on General Provisions has yet to be drafted.

<sup>85</sup> The issue of translation costs remains to be considered in the context of a more general future discussion of costs and legal aid (see Preliminary Document No 5 of October 2003, paragraphs 52-54).

<sup>86</sup> The possibility of bilateral or regional arrangements should also be noted (see also below, footnote 91).

<sup>87</sup> See Working Document No 1, paragraph 8 b) and c). See the Montevideo Convention, Article 20.

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.<sup>88</sup>

**Article 25 Administrative costs<sup>89</sup>**

[The provision of assistance under the Convention shall be without cost to the applicant, except as provided in Articles ???.<sup>90</sup>]

The provision of assistance under the Convention by one Central Authority shall be without cost to any other Central Authority, except as provided in Articles ???.<sup>91</sup>

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<sup>88</sup> See Working Document No 1, paragraph 8 a). The wording is taken from Article 22 of the Hague Convention of 1973 on Recognition and Enforcement.

<sup>89</sup> This does not concern the issue of legal aid which remains to be considered.

<sup>90</sup> This is a statement of a general principle (see Working Document No 1, paragraph 9 a)(i)) to which there are likely to be several exceptions. Possible exceptions include:

- Recovery of costs from the maintenance debtor
- Charges in respect of public authorities seeking reimbursement
- Charges for cases other than child-support
- Charges for specific services such as assistance in establishing parentage
- Special arrangements on a bilateral or regional basis

See Working Document No 1, paragraph 9 a) and c).

Among the questions of principle which remain outstanding are:

- Should the services be provided free of charge in all cases?
- Should services be provided free of charge at least in child support cases?
- Should provision of services be mandatory in all cases, but subject to the possibility of charges being made?
- Should provision of services be mandatory in child support cases, but subject to the possibility of charges being made?
- Should a differentiation be made between the debtor and the creditor as an applicant?
- Should any means test be based on the means of the parent or the child?
- Should any means test be based on the law of the requested State or of the requesting State?

See Working Document No 1, paragraph 9.

<sup>91</sup> See Working Document No 1, paragraph 9 a). There may be a need to provide for bilateral or regional arrangements.



## CHAPTER IV - RECOGNITION AND ENFORCEMENT

### Article 26 Definitions

For the purposes of this Chapter –

1. 'decision'<sup>92</sup> means –
  - a) a decision rendered by a judicial or administrative authority;
  - b) a settlement concluded before or approved by such authority;
  - [c) an agreement registered or filed with such authority;
  - d) an authentic instrument;
  - e) a private agreement which is enforceable but has not been registered.]<sup>93</sup>
2. a decision may include a requirement to pay arrears, [retroactive maintenance] or interest.

### Article 27 Bases for recognition<sup>94</sup>

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 debtor 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;<sup>95</sup>
  - c) the creditor was [habitually] resident in the State of origin at the time proceedings were instituted;
  - d) the facts in the case would, *mutatis mutandis*, have supported jurisdiction under the rules of the requested State;<sup>96</sup>
  - [e) the jurisdiction has been agreed between the parties;
  - f) the maintenance decision was made by an authority having jurisdiction on a matter of personal status; or
  - g) the child was habitually resident in the jurisdiction<sup>97</sup>].<sup>98</sup>

<sup>92</sup> See Article 5 and footnote 19 above. See also Working Document No 1, paragraph 2.

<sup>93</sup> There is no agreement that sub-paragraphs c), d) and e) should be included. Further discussion will be needed. In the view of the Drafting Committee the underlying test should be whether the instrument or agreement is enforceable as if it were an order of the court rather than simply as a contract.

<sup>94</sup> As agreed by the Special Commission (See Preliminary Document No 5 of October 2003, paragraph 70, and Working Document No 2, Proposal by the Working Group, from the Special Commission of May 2003, distributed on 15 May 2003, paragraph 1) (hereinafter Working Document No 2), this Article uses as its starting point the formula proposed in Preliminary Document No 3 of April 2003, paragraph 87.

<sup>95</sup> This formula is taken in part from Article 7(3) of the Hague Convention of 1973 on Recognition and Enforcement with the addition of words which ensure that any later objection to the jurisdiction will not negate submission and will not therefore prevent recognition.

It is recognised that in practice there may be some overlap between the submission basis and the basis set out in sub-paragraph e).

<sup>96</sup> In Working Document No 2, paragraph 2, there is a reference to the possibility that a reservation might be permitted in sub-paragraph 1 d). Many experts opposed this possibility (see Preliminary Document No 5 of October 2003, paragraph 81).

<sup>97</sup> Recognition based on the habitual residence of the child in the State of origin should only be relevant to the extent that the decision concerns child support. This basis for recognition is relevant

2. A Contracting State<sup>99</sup> 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.<sup>100</sup>

### **Article 28 Severability**

If a decision deals with several issues in an application for maintenance and if recognition or enforcement cannot be granted for the whole of the decision, the authority of the State addressed shall apply this Convention to that part of the decision, which can be recognised or enforced.<sup>101</sup>

### **Article 29 Grounds for refusing recognition and enforcement<sup>102</sup>**

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

1. if recognition or enforcement of the decision is manifestly incompatible with the public policy ("ordre public") of the State addressed;<sup>103</sup>
2. if the decision was obtained by fraud in connection with a matter of procedure;<sup>104</sup>
3. 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; or
4. 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

in circumstances where the applicant for child support (usually a parent) and the child are habitually resident in different States.

<sup>98</sup> The last three bases for recognition are placed in square brackets, not having been given full consideration by the Special Commission. See Working Document No 2, and Preliminary Document No 5 of October 2003, paragraph 82. The possibility of including some reference to "nationality" is mentioned in Working Document No 2, paragraph 4. See also Preliminary Document No 5 of October 2003, paragraphs 74 and 82, referring to opposing views on this subject.

<sup>99</sup> The words "whose own authorities or courts are not permitted to make a maintenance decision based solely on the residence of the creditor within the jurisdiction", which were included after "A Contracting State" in the original draft, are regarded as unnecessary. Even if a State, whose own laws permit jurisdiction based on creditor's residence, were to make a reservation in respect of paragraph 2, foreign decisions based on creditor's residence would still be recognised under paragraph 1 c).

<sup>100</sup> The wording here is taken from Article 7(3) of the Hague Draft on Exclusive Choice of Court Agreements. Further consideration will need to be given to the meaning of "enforceable". Under Article 4 of the Hague Convention of 1973 on Recognition and Enforcement "provisionally enforceable decisions and provisional measures" may be recognised and enforced if similar decisions may be rendered and enforced in the State addressed.

<sup>101</sup> The words are taken from Article 10 of the Hague Convention of 1973 on Recognition and Enforcement. Compare with Article 11 of the Hague Draft on Exclusive Choice of Court Agreements which reads: "Recognition or enforcement of a severable part of a judgement shall be granted where recognition or enforcement of that part is applied for, or only part of the judgement is capable of being recognised or enforced under this Convention".

<sup>102</sup> See Working Document No 2, paragraphs 5, 6 and 7.

<sup>103</sup> This is a standard formula. See, for example, the Hague Convention of 1973 on Recognition and Enforcement, Article 5(1).

<sup>104</sup> See the Hague Convention of 1973 on Recognition and Enforcement, Article 5(3). This is the formula used in Article 5(2) of the Hague Convention of 1973 on Recognition and Enforcement. See also Preliminary Document No 5 of October 2003, paragraph 83, concerning the definition of "fraud".

that this latter decision fulfils the conditions necessary for its recognition and enforcement in the State addressed.<sup>105</sup>

[5. Provision regarding lack of notice of the proceedings and/or opportunity to be heard].<sup>106</sup>

**Article 30 Procedure for recognition and enforcement**

[See Prel. Doc. No ?? to be prepared by the Permanent Bureau.]<sup>107</sup>

**Article 31 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.<sup>108</sup>

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<sup>105</sup> See the Hague Convention of 1973 on Recognition and Enforcement, Article 5(4). Note the suggestion made in the Special Commission of the possibility of addressing certain problems surrounding modification jurisdiction under the heading "conflicting decisions".

<sup>106</sup> Working Document No 2, paragraph 5 c) mentions a Provision regarding "lack of notice of the proceedings and/or opportunity to be heard" as a possible basis for refusal of recognition. The following possibilities might be considered:

- (a) Where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so (see the Brussels Regulation of 22 December 2000 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, Article 34(2)).

OR

Stand-alone provision:

- (b) Without prejudice to the provisions of Article 5, a decision rendered by default shall be recognised or enforced only if notice of the institution of the proceedings, including notice of the substance of the claim, has been served on the defaulting party in accordance with the law of the State of origin and if, having regard to the circumstances, that party has had sufficient time to enable him to defend the proceedings (see the Hague Convention of 1973 on Recognition and Enforcement, Article 7).

OR

- (c) Maintenance decisions made after the failure of the respondent to appear shall be considered as decisions under paragraph 1 if it demonstrated that notice had been given and the opportunity to be heard had been satisfied in a way to satisfy the standards of the Requested Party (see the United States Model Agreement for the Enforcement of Maintenance (Support), Article 7(2)).

Whatever formula is chosen, it will be important to bear in mind the procedures operating within certain administrative systems of child support, in which the protection for the debtor consists not in a requirement of prior notice, but rather in the opportunity to request review of a maintenance decision or assessment. These matters will be discussed further in the note to be prepared by the Permanent Bureau concerning procedures for recognition and enforcement (see next footnote).

<sup>107</sup> The Permanent Bureau will prepare a separate note outlining some of the possible approaches including those in Brussels I, Brussels II and Brussels Ibis Regulations, the system operating under UIFSA and Bill 2 (Quebec) of 2003. Included among the possible models are:

- (a) a system under which, following notice of enforcement proceedings, the debtor is given a specified period within which to raise any objections to recognition and enforcement (see also Preliminary Document No 5 of October 2003, paragraph 84).  
 (b) a system allowing *ex officio* control by the authority of the State addressed (see also Preliminary Document No 5 of October 2003, paragraph 85).

If there is to be a provision concerning registration or a declaration of enforceability, rapid procedures should be applied (see Working Document No 2, paragraph 12).

<sup>108</sup> See Working Document No 2, paragraph 8. The formula is that used in Article 9 of the Hague Convention of 1973 on Recognition and Enforcement.

**Article 32 No review of the merits**

There shall be no review by the authority of the State addressed of the merits of a decision.<sup>109</sup>

**Article 33 Partial recognition or enforcement**

Partial recognition or enforcement of a decision can always be applied for.<sup>110</sup>

**Article 34 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.]<sup>111</sup>

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<sup>109</sup> *Ibid.*, paragraph 9. The formula is based on Article 12 of the Hague Convention of 1973 on Recognition and Enforcement. The words “unless the Convention otherwise provides” in that Article are thought by the Drafting Committee to be unnecessary. Compare with Article 27 of the Hague Convention of 1996 where a different formula is used.

<sup>110</sup> The words are those of Article 14 of the Hague Convention of 1973 on Recognition and Enforcement.

<sup>111</sup> This rule has been discussed in the context of enforcement procedures (see also Preliminary Document No 5 of October 2003, paragraph 84). Consideration might be given to the idea of including a more general rule.

## CHAPTER V - ENFORCEMENT BY THE REQUESTED STATE<sup>112</sup>

### **[Article 35 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).]<sup>113</sup>

### **Article 36 Enforcement under national law**

Enforcement shall take place in accordance with the law of the requested State.<sup>114</sup>

### **Article 37 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.<sup>115</sup>

### **Article 38 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.<sup>116</sup>

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<sup>112</sup> Consideration is to be given later to the idea of annexing to the Convention non-binding recommendations concerning national procedures for enforcement (see Working Document No 2, paragraph 17).

<sup>113</sup> This Article is put forward by the Drafting Committee to illustrate a possible approach to a provision on enforcement under national law. This possible approach has not yet been discussed by the Special Commission. More precise drafting would be needed if this idea is considered worthy of further consideration.

<sup>114</sup> The formula is that used in Article 27 of the Hague Convention of 2000.

<sup>115</sup> See Working Document No 2, paragraph 15. See also Preliminary Document No 3 of April 2003, paragraph 101, and Preliminary Document No 5 of October 2003, paragraph 78.

<sup>116</sup> See Working Document No 2, paragraph 16.

**CHAPTER VI - ADDITIONAL PROVISIONS RELATING TO PUBLIC BODIES<sup>117</sup>****Article 39**

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 40**

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.

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<sup>117</sup> See the Hague Convention of 1973 on Recognition and Enforcement, Articles 18-20. Two further matters call for consideration:

- (a) whether public bodies should be subject to a separate regime of costs and charges, and
- (b) which of the forms of application set out in Chapter III should be available to public bodies.

**CHAPTER VII - GENERAL PROVISIONS**<sup>118</sup>**Article 41 General applicability of rules on recognition**<sup>119</sup>

The provisions of Chapter IV[, with the exception of Article 30], of this Convention shall apply whether or not the application for recognition and enforcement was made through the Central Authority in accordance with Article 21.<sup>120</sup>

**Article 42 Legalisation**

All documents transmitted under this Convention shall be exempt from legalisation or any analogous formality.<sup>121</sup>

**Article 43 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<sup>122</sup> and to encourage the development of good practices under the Convention.<sup>123</sup>

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<sup>118</sup> Other matters may need to be considered under this chapter. These include:

- the possibility of a streamlined procedure for modifying standard forms
- obligations of States to give notice of documentary requirements at the time of ratification/accession and to notify any subsequent changes
- a general requirement on States to take all appropriate measures to secure within their territories the implementation of the objects of the Convention, and for this purpose to apply rapid procedures (see, for example, the Hague Convention of 1980, Article 2).

<sup>119</sup> The Drafting Committee considered the possibility of including in the text (as suggested in Working Document No 1, paragraph 5 f)(i)) a more general principle similar to that which appears in Article 29 of the Hague Convention of 1980, which reads:

"This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention."

On balance, a general rule of this nature was thought to require further consideration. It was felt that the Special Commission may wish to discuss whether certain forms of application and special procedures set out in the Convention should only be available if an application is processed through Central Authorities.

The wish of the Special Commission to preserve existing rights of direct access to the courts or administrative bodies which make maintenance decisions could be accommodated by using a formula based on Article 103 of UIFSA, which states that the remedies afforded by the Act are cumulative and do not affect the availability of remedies under other laws.

It has also to be considered whether it should be specified that "direct" applications should be permitted only when allowed under the law of the requested State.

<sup>120</sup> The Drafting Committee has proceeded on the basis that the grounds for recognition and enforcement of foreign maintenance decisions will be of general application and will apply whether or not an application for recognition and enforcement is made through Central Authorities. The same is true for certain other general principles. On the other hand, it remains to be considered whether any special procedures governing recognition and enforcement (which have yet to be considered) should apply only where application is made through Central Authorities.

<sup>121</sup> Working Document No 2, paragraph 13 e). The formula is that used in Article 43 of the Hague Convention of 1996.

<sup>122</sup> The power of the Secretary General to convene Special Commission meetings to review the practical operation of Conventions has now become standard in relation to Hague Conventions which involves systems of administrative or judicial co-operation. See, for example, the Hague Convention of 1993, Article 42, the Hague Convention of 1996, Article 56 and the Hague Convention of 2000, Article 52.

<sup>123</sup> The eventual development of a Guide to Good Practice under the new Convention (see, for example, the Guide on Implementing Measures and Central Authority Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Hague

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.<sup>124</sup>

**Article 44 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.<sup>125</sup>

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Conference on Private International Law, published in 2003 by Family Law) has already been envisaged by the Special Commission. See Preliminary Document No 5 of October 2003, paragraph 131.

<sup>124</sup> Discussion in the Special Commission (see Preliminary Document No 5 of October 2003, paragraph 132) suggested the need to maintain a balance between effective monitoring of the operation of the Convention and protecting Central Authorities from excessive reporting obligations. The duty to co-operate with the Permanent Bureau in relation to the gathering of certain types of information reflects the practice which has developed under the Hague Conventions of 1980 and 1993.

<sup>125</sup> The words are taken from Article 13 of the *Hague Convention on the Law Applicable to Certain Rights in respect of Securities held with an Intermediary*.