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18. CONVENTION ON THE RECOGNITION OF DIVORCES AND LEGAL SEPARATIONS¹

(Concluded 1 June 1970)

The States signatory to the present Convention,
Desiring to facilitate the recognition of divorces and legal separations obtained in their respective territories,
Have resolved to conclude a Convention to this effect, and have agreed on the following provisions –

Article 1

The present Convention shall apply to the recognition in one Contracting State of divorces and legal separations obtained in another Contracting State which follow judicial or other proceedings officially recognised in that State and which are legally effective there.

The Convention does not apply to findings of fault or to ancillary orders pronounced on the making of a decree of divorce or legal separation; in particular, it does not apply to orders relating to pecuniary obligations or to the custody of children.

Article 2

Such divorces and legal separations shall be recognised in all other Contracting States, subject to the remaining terms of this Convention, if, at the date of the institution of the proceedings in the State of the divorce or legal separation (hereinafter called "the State of origin") –

- (1) the respondent had his habitual residence there; or
- (2) the petitioner had his habitual residence there and one of the following further conditions was fulfilled –
 - a) such habitual residence had continued for not less than one year immediately prior to the institution of proceedings;
 - b) the spouses last habitually resided there together; or
- (3) both spouses were nationals of that State; or
- (4) the petitioner was a national of that State and one of the following further conditions was fulfilled –
 - a) the petitioner had his habitual residence there; or
 - b) he had habitually resided there for a continuous period of one year falling, at least in part, within the two years preceding the institution of the proceedings; or

¹ Dieses Übereinkommen, sowie diesbezügliche Dokumente sind auf der Internetseite der Haager Konferenz für Internationales Privatrecht (www.hcch.net) in der Rubrik „Übereinkommen“ verfügbar. Weitere Informationen zur Geschichte des Übereinkommens finden Sie in Conférence de La Haye de droit international privé, *Actes et documents de la Onzième session (1968)*, Tome II, *Divorce* (229 pp.).

- (5) the petitioner for divorce was a national of that State and both the following further conditions were fulfilled –
- a) the petitioner was present in that State at the date of institution of the proceedings and
 - b) the spouses last habitually resided together in a State whose law, at the date of institution of the proceedings, did not provide for divorce.

Article 3

Where the State of origin uses the concept of domicile as a test of jurisdiction in matters of divorce or legal separation, the expression "habitual residence" in Article 2 shall be deemed to include domicile as the term is used in that State.

Nevertheless, the preceding paragraph shall not apply to the domicile of dependence of a wife.

Article 4

Where there has been a cross-petition, a divorce or legal separation following upon the petition or cross-petition shall be recognised if either falls within the terms of Articles 2 or 3.

Article 5

Where a legal separation complying with the terms of this Convention has been converted into a divorce in the State of origin, the recognition of the divorce shall not be refused for the reason that the conditions stated in Articles 2 or 3 were no longer fulfilled at the time of the institution of the divorce proceedings.

Article 6

Where the respondent has appeared in the proceedings, the authorities of the State in which recognition of a divorce or legal separation is sought shall be bound by the findings of fact on which jurisdiction was assumed.

The recognition of a divorce or legal separation shall not be refused –

- a) because the internal law of the State in which such recognition is sought would not allow divorce or, as the case may be, legal separation upon the same facts, or,
- b) because a law was applied other than that applicable under the rules of private international law of that State.

Without prejudice to such review as may be necessary for the application of other provisions of this Convention, the authorities of the State in which recognition of a divorce or legal separation is sought shall not examine the merits of the decision.

Article 7

Contracting States may refuse to recognise a divorce when, at the time it was obtained, both the parties were nationals of States which did not provide for divorce and of no other State.

Article 8

If, in the light of all the circumstances, adequate steps were not taken to give notice of the proceedings for a divorce or legal separation to the respondent, or if he was not afforded a sufficient opportunity to present his case, the divorce or legal separation may be refused recognition.

Article 9

Contracting States may refuse to recognise a divorce or legal separation if it is incompatible with a previous decision determining the matrimonial status of the spouses and that decision either was rendered in the State in which recognition is sought, or is recognised, or fulfils the conditions required for recognition, in that State.

Article 10

Contracting States may refuse to recognise a divorce or legal separation if such recognition is manifestly incompatible with their public policy ("*ordre public*").

Article 11

A State which is obliged to recognise a divorce under this Convention may not preclude either spouse from remarrying on the ground that the law of another State does not recognise that divorce.

Article 12

Proceedings for divorce or legal separation in any Contracting State may be suspended when proceedings relating to the matrimonial status of either party to the marriage are pending in another Contracting State.

Article 13

In the application of this Convention to divorces or legal separations obtained or sought to be recognised in Contracting States having, in matters of divorce or legal separation, two or more legal systems applying in different territorial units –

- (1) any reference to the law of the State of origin shall be construed as referring to the law of the territory in which the divorce or separation was obtained;
- (2) any reference to the law of the State in which recognition is sought shall be construed as referring to the law of the forum; and
- (3) any reference to domicile or residence in the State of origin shall be construed as referring to domicile or residence in the territory in which the divorce or separation was obtained.

Article 14

For the purposes of Articles 2 and 3 where the State of origin has in matters of divorce or legal separation, two or more legal systems applying in different territorial units –

- (1) Article 2, sub-paragraph (3), shall apply where both spouses were nationals of the State of which the territorial unit where the divorce or legal separation was obtained forms a part, and that regardless of the habitual residence of the spouses;
- (2) Article 2, sub-paragraphs (4) and (5), shall apply where the petitioner was a national of the State of which the territorial unit where the divorce or legal separation was obtained forms a part.

Article 15

In relation to a Contracting State having, in matters of divorce or legal separation, two or more legal systems applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

Article 16

When, for the purposes of this Convention, it is necessary to refer to the law of a State, whether or not it is a Contracting State, other than the State of origin or the State in which recognition is sought, and having in matters of divorce or legal separation two or more legal systems of territorial or personal application, reference shall be made to the system specified by the law of that State.

Article 17

This Convention shall not prevent the application in a Contracting State of rules of law more favourable to the recognition of foreign divorces and legal separations.

Article 18

This Convention shall not affect the operation of other conventions to which one or several Contracting States are or may in the future become Parties and which contain provisions relating to the subject-matter of this Convention.

Contracting States, however, should refrain from concluding other conventions on the same matters incompatible with the terms of this Convention, unless for special reasons based on regional or other ties; and, notwithstanding the terms of such conventions, they undertake to recognise in accordance with this Convention divorces and legal separations granted in Contracting States which are not Parties to such other conventions.

Article 19

Contracting States may, not later than the time of ratification or accession, reserve the right –

- (1) to refuse to recognise a divorce or legal separation between two spouses who, at the time of the divorce or legal separation, were nationals of the State in which recognition is sought, and of no other State, and a law other than that indicated by the rules of private international law of the State of recognition was applied, unless the result reached is the same as that which would have been reached by applying the law indicated by those rules;
- (2) to refuse to recognise a divorce when, at the time it was obtained, both parties habitually resided in States which did not provide for divorce. A State which utilises the reservation stated in this paragraph may not refuse recognition by the application of Article 7.

Article 20

Contracting States whose law does not provide for divorce may, not later than the time of ratification or accession, reserve the right not to recognise a divorce if, at the date it was obtained, one of the spouses was a national of a State whose law did not provide for divorce.

This reservation shall have effect only so long as the law of the State utilising it does not provide for divorce.

Article 21

Contracting States whose law does not provide for legal separation may, not later than the time of ratification or accession, reserve the right to refuse to recognise a legal separation when, at the time it was obtained, one of the spouses was a national of a Contracting State whose law did not provide for legal separation.

Article 22

Contracting States may, from time to time, declare that certain categories of persons having their nationality need not be considered their nationals for the purposes of this Convention.

Article 23

If a Contracting State has more than one legal system in matters of divorce or legal separation, it may, at the time of signature, ratification or accession, declare that this Convention shall extend to all its legal systems or only to one or more of them, and may modify its declaration by submitting another declaration at anytime thereafter.

These declarations shall be notified to the Ministry of Foreign Affairs of the Netherlands, and shall state expressly the legal systems to which the Convention applies.

Contracting States may decline to recognise a divorce or legal separation if, at the date on which recognition is sought, the Convention is not applicable to the legal system under which the divorce or legal separation was obtained.

Article 24

This Convention applies regardless of the date on which the divorce or legal separation was obtained. Nevertheless a Contracting State may, not later than the time of ratification or accession, reserve the right not to apply this Convention to a divorce or to a legal separation obtained before the date on which, in relation to that State, the Convention comes into force.

Article 25

Any State may, not later than the moment of its ratification or accession, make one or more of the reservations mentioned in Articles 19, 20, 21 and 24 of the present Convention. No other reservation shall be permitted.

Each Contracting State may also, when notifying an extension of the Convention in accordance with Article 29, make one or more of the said reservations, with its effect limited to all or some of the territories mentioned in the extension.

Each Contracting State may at any time withdraw a reservation it has made. Such a withdrawal shall be notified to the Ministry of Foreign Affairs of the Netherlands.

Such a reservation shall cease to have effect on the sixtieth day after the notification referred to in the preceding paragraph.

Article 26

The present Convention shall be open for signature by the States represented at the Eleventh Session of the Hague Conference on Private International Law.

It shall be ratified, and the instruments of ratification shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Article 27

The present Convention shall enter into force on the sixtieth day after the deposit of the third instrument of ratification referred to in the second paragraph of Article 26.

The Convention shall enter into force for each signatory State which ratifies subsequently on the sixtieth day after the deposit of its instrument of ratification.

Article 28

Any State not represented at the Eleventh Session of the Hague Conference on Private International Law which is a Member of this Conference or of the United Nations or of a specialised agency of that Organisation, or a Party to the Statute of the International Court of Justice may accede to the present Convention after it has entered into force in accordance with the first paragraph of Article 27.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force for a State acceding to it on the sixtieth day after the deposit of its instrument of accession.

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession. Such a declaration shall be deposited at the Ministry of Foreign Affairs of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.

The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the sixtieth day after the deposit of the declaration of acceptance.

Article 29

Any State may, at the time of signature, ratification or accession, declare that the present Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect on the date of entry into force of the Convention for the State concerned.

At any time thereafter, such extensions shall be notified to the Ministry of Foreign Affairs of the Netherlands.

The extension will have effect only as regards the relations with such Contracting States as will have declared their acceptance of the extensions. Such a declaration shall be deposited at the Ministry of Foreign Affairs of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.

The extension will take effect in each case sixty days after the deposit of the declaration of acceptance.

Article 30

The present Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 27, even for States which have ratified it or acceded to it subsequently.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Netherlands, at least six months before the end of the five year period.

It may be limited to certain of the territories to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 31

The Ministry of Foreign Affairs of the Netherlands shall give notice to the States referred to in Article 26, and to the States which have acceded in accordance with Article 28, of the following –

- a) the signatures and ratifications referred to in Article 26;
- b) the date on which the present Convention enters into force in accordance with the first paragraph of Article 27;
- c) the accessions referred to in Article 28 and the dates on which they take effect;
- d) the extensions referred to in Article 29 and the dates on which they take effect;
- e) the denunciations referred to in Article 30;
- f) the reservations and withdrawals referred to in Articles 19, 20, 21, 24 and 25;
- g) the declarations referred to in Articles 22, 23, 28 and 29.

In witness whereof the undersigned, being duly authorised thereto, have signed the present Convention.

Done at The Hague, on the first day of June, 1970, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Netherlands, and of which a certified copy shall be sent, through the diplomatic channel to each of the States represented at the Eleventh Session of the Hague Conference on Private International Law.