

**RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS
AND ARBITRAL AWARDS**

(Presented by Dr. Ruth Stella Correa Palacio)

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I. Introduction

The purpose of this paper is steered by the intention of ascertaining the validity of the fundamental law of access to justice and its natural consequence, effective protection through the Courts, in proceedings addressing the recognition of foreign decisions taken by the States and, if appropriate, proposing the implementation of suitable mechanisms able to ensure the full efficacy of this right, acknowledged in Article 8 of the Universal Declaration of the Rights and Duties of Man¹ and Article 25 of the American Convention on Human Rights².

This study is grounded on the understanding that the right of access to justice is not limited to freedom and the possibility of turning to judges and courts through lawsuits seeking the definition of a juridical situation; of being represented in court and with the proceedings culminating in a well-founded judgment; it is furthermore a matter of concern to all “means through which rights become effective”,³ thus ensuring efficacious protection through the Courts, whose achievement is viewed as one of the barriers or obstacles hampering the recognition and enforcement of judgments outside the State in which they are rendered.

On the grounds that this issue involves the validity of two principles – *pacta sunt servanda* and the autonomy of the States – the Committee will focus on establishing the mechanisms for deploying the international standards in domestic

¹ UDHR, Article 8: Everyone has the right to an effective appeal to the competent Courts, offering protection against acts breaching their fundamental rights as acknowledged by the Constitution or by the Law.

² ACHR, Article 25: Protection through the Courts. 1. Everyone has the right to a fast and simple appeal or any other effective appeal to the competent judges or Courts, protecting them against acts breaching their fundamental rights acknowledged through the Constitution, the Law of this Convention, even if such violations committed by persons engaged in the performance of their official functions. 2. The States Party agree to: a. Ensure that the competent authority established by the State legal system will decide on the rights of each person lodging such an appeal; b. Develop the possibilities of appeals through the courts; and c. Ensure compliance by the competent authorities with all decisions in which the appeal is deemed to be well-founded.

³ CAPELLETI and GARTH, *Accès a la Justice et Etat-Providencia*, Institut Universitaire Européen, Economica. Paris, 1984.

regulations, in order to determine the need to proposals intended to underpin the efficacy of foreign decisions.

II. Background

During the 90th Regular Session period held in Rio de Janeiro in March 2017, the Committee decided at its own initiative (Article 12-C of its By-Laws), to undertake a study of the situation the States in terms of “The Application of Foreign Judgments and Arbitral Awards”, basically under the aegis of the Convention of New York (1958) and the Inter-American Convention on the Extraterritorial Efficacy of Foreign Judgments and Arbitral Awards (1979), known as the Montevideo Convention.

During the 92nd Regular Session period held in Mexico City in February 2018, the first report was presented, with an analysis of the scope of international instruments regulating this issue, namely: the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the New York Convention (1958), applicable to decisions handed down by arbitrators appointed to specific cases, and judgments rendered by the permanent arbitration entities to which they were submitted by the parties involved; EU Registration No. 1215/12 dated December 12, 2012, “on court jurisdiction, the recognition and enforcement of court decisions on civil and commercial matters” issued by the European Parliament and Council; the Inter-American Convention on International Commercial Arbitration signed in Panamá on January 30, 1975 and the “Montevideo Convention” dated May 8, 1979.

This report also included the content of some domestic legislation in the American States, intended to establish the procedural structure for the recognition and enforcement of foreign awards, namely: the Civil and Commercial Procedural Law Code (Argentina); the Civil Procedural Law Code (Bolivia); the Organic General Procedural Law Code (Ecuador); the Civil Procedural Law Code (Paraguay); the Civil Law Code (Peru); the General Procedural Law Code (Uruguay); the General Procedural Law Code and National and International Arbitration Statute (Colombia).

The preliminary conclusions on the status of this matter in the compiled domestic law were synthesized as follows:

As a general rule, with a few exceptions, the requirement was identified for court recognition prior to the enforcement of a foreign decision, which is the *exequatur* proceeding.

It was thus noted that domestic legislations distinguish between recognition procedures and those required for the enforcement of foreign awards.

Also proven was the ease with which domestic legislators regulate the procedures for the recognition and enforcement of foreign arbitral awards, in contrast to stringent procedures for the recognition of judgments rendered by court entities in other States.

Finally, lighter treatment was noted in some legislations, addressing only the recognition of the evidentiary effects of foreign awards, in opposition to the recognition procedure for enforcement.

This report also presented the results of the session with international law experts, who mentioned the need to eliminate the specter of forms, as well as distinctions between judgments rendered in commercial terms, and others that are not; between international and domestic business agreements; the principle of reciprocity underpinning the recognition of judgments handed down by a Court in another State. The experts also underscored the benefits of using technology to replace authentications.

The rapporteur proposed that a good practices guide or legislative handbook be drawn up, in order to facilitate the recognition and enforcement of foreign decisions.

Before deciding on the focus and shape of the paper, the Committee suggested that the issue be examined with the legal advisers of the Chancelleries at a meeting

scheduled at this level, as well as defining the progress of the work of The Hague Conference on this matter.

During the 93rd Regular Session period held in Rio de Janeiro in August 2018, a status report was presented on the Draft Convention drawn up by The Hague Conference, which did not establish procedural guidelines for the recognition and enforcement of foreign awards by States, although laying down acknowledgement and enforcement criteria (Article 5), as well as events leaving room for the denial of recognition and enforcement, among which the international public order clause remains valid.

The conclusions presented in this Report were the following:

1. International regulations addressing the recognition and enforcement of arbitration awards handed down in another State is more streamlined and efficacious than those related to judgments rendered by the Courts in another State. As a result, it is suggested that the study should not encompass matters related to arbitration.

2. International regulations currently in place on the recognition and enforcement of judgments rendered by Courts in another State do not guarantee the fundamental right of access to justice and effective protection through the Courts, in terms of the domestic legislation of the respondent State the regulation of the proceedings for this purpose, establishing no parameters at all.

3. The Proposed Draft Text on the Recognition and Enforcement of Foreign Judgments prepared by The Hague Conference on Private International Law does not address the aspect related to procedures within the States, with steps that are once again left to domestic regulation, with the only variation of requiring speedy processing.

4. Current international regulations require a modification in terms of domestic recognition and enforcement proceedings, which clusters the identified difficulties, with important effects on the fundamental right of access to justice, and consequently effective protection through the Courts.

5. The required modification must review at least the following aspects:

5.1 The need to maintain the duality of recognition and enforcement procedures, or else abolish it and reduce it to the enforcement proceeding.

5.2 Whenever the recognition procedure is eliminated, this allows a claim to be raised as an exception in the enforcement proceeding, of circumstances enshrined as grounds for denial of recognition.

5.3 Urge that domestic proceedings should progress with the fewest number of stages and as quickly as possible.

5.4 Include procedural advances accepting the use of new technologies in matters relating to document authentication and legalization.

5.5 Embody the use of information technologies and their impacts on hearing court decisions.

5.6 Examine the ways in which recognition and enforcement proceedings are handled.

5.7 Block the possibility of reviewing the grounds for a decision.

5.8 Different parameters for acknowledging the evidentiary effects of the judgment.

6. The existence of work undertaken by the Special Commission on the Recognition and Enforcement of Foreign Judgments at The Hague Conference does not result in the replication of work undertaken by this Committee.

In the course of the discussion of the report during the 93rd Regular Session period, the Committee suggested supplementing it through including the civil law and customary law systems, as well as reviewing the work on this matter undertaken by ASADIP. It also

suggested discussing this issue at a meeting with the legal advisers of the Chancelleries, which was held during this same session period.

Several proposals on the work to be done arose during the discussions of the draft by the Committee, without selecting any of them, namely: (i) drawing up a loose guide or document that would be of use to the States, in order to facilitate domestic regulation with very specific recommendations guiding the States on the minimal elements allowing the future application of the Convention; (ii) drafting a model law; (iii) forwarding a notification to The Hague Conference with recommendations to be borne in mind when preparing the draft. The scope and form of this work is still awaiting definition.

Questions were also raised over the need to modify the Montevideo Convention, and in exchange it was suggested that a solution to the problem could be provided by a soft law tool.

III. Recognition and Enforcement of Foreign Court Decisions in the USA

Article IV of the US Constitution is known as the “full faith and credit clause”, through which a judgment originating in one State must be acknowledged and enforced in another State.⁴

Judgments rendered outside the USA are not encompassed by this clause.

The starting point is customary law doctrine dating back to a decision handed down in 1895 by the US Supreme Court.⁵ The Court explained that the concepts of courtesy derived from international law generally favor the recognition by US Courts of decisions rendered by foreign Courts but, due to the specific facts in this case, recognition was denied on the grounds of a lack of reciprocity.⁶ This decision formed the grounds for a juridical *corpus* that extended well into the XX century, but then crumbled as Court viewpoints varied: some of them analyzed the courtesy element, but rejected the reciprocity requirement, while others did not.

Except for federal matters, this seems to be consensus on the recognition and enforcement of foreign Court decisions being subject to State laws, while the Federal Courts will apply the law of the State in which they are located. However, the US Supreme Court has never issued a statement on this matter.⁷

The customary law criterion was followed by the progress of laws. In 1962, the Uniform Law Commission⁸ drew up the Uniform Foreign Money-Judgments Recognition Act (1962 Recognition Act), that was subsequently updated as the Uniform Foreign-Country Money Judgments Recognition Act (2005 Recognition Act). By August 2018, 35 States (together with the District of Columbia and the US Virgin Islands) had promulgated a similar decree.⁹ In the remaining fifteen States, this issue is basically ruled by customary law. Consequently, although the basic concepts

⁴. The interpretation of this clause was confirmed by the US Supreme Court in *Underwriters National Assurance Co. v. N.C. Guaranty Assn.* 455 U.S. 691 (1982) and has been supplemented by federal legislation specifically addressing its enforcement. The Uniform Law Commission drew up the Revised Uniform Enforcement of Foreign Judgments Act; the original decree promulgated in 1948 was amended in 1964. This constitutes "a simplified way of enforcing decisions originally handed down in another State, endowing them with full faith and credit", and has been promulgated in 48 States.

⁵. *Hilton v. Guyot*, 159 U.S. 113 (1895).

⁶. A US citizen (Hilton) living in New York State was taken to Court in France by a French company. The French Court handed down a decision against Hilton, which Guyot attempted to enforce in New York. The Court refused to recognize the French decision, on the grounds of the absence of reciprocity with France on this issue.

⁷. Restatement (Second) Conflict of Laws and following. (1988).

⁸. The ULC is a non-profit professional association set up to foster legislative uniformity in the States. www.uniformlaws.org

⁹. Until August 2018, the ULC website indicated that 23 States (plus the District of Columbia) had promulgated the 2005 model, while 31 States (plus the District of Columbia and the US Virgin Islands) had promulgated the 1962 model. Some States have promulgated both models.

of the same, there are important differences that vary from one State to another; some States have promulgated the 1962 version, others have done the same with the 2005 version; others are jurisdictions under customary law, and some of them include the requirement of reciprocity, while others do not.

However, most of the States present similarities in the structure of their analyses of foreign court decisions that are taken into consideration for their recognition and enforcement. Both the Restatement Act¹⁰ and the Uniform Act start with the rule that a judgment that is definitive and enforceable in the place where it was rendered must be recognized, if there is no reason for refusing such recognition. Next, they list mandatory and discretionary reasons for not recognizing a foreign court decision. The list of mandatory reasons begins by requiring non-recognition when the original Court system in which the judgment originates does not include impartial courts and due process of law, or lack individual jurisdiction. In each case, evidence of individual jurisdiction yields to the application of US jurisdictional concepts for issuing a decision, rather than simply examining whether the court of origin holds jurisdiction under its own laws. The lack of jurisdiction for the matter is a mandatory reason for non-recognition under both the Uniform Acts, but is a discretionary reason under the Restatement Act. The discretionary reasons for non-recognition are generally similar in both Acts and the Restatement Act, but have important differences.¹¹

In 2005, the American Law Institute suggested that the recognition of decisions be unified into a Federal statute, although no steps have been taken in this direction so far.

IV. Conclusions of the Meeting with the Legal Advisers of the Chancelleries

In general terms, the speakers qualified domestic procedures on *exequatur* as a type of trap for parties engaged in litigation, doomed to face all types of difficulties when attempting to enforce legal decisions abroad.

On the other hand, there was warm acceptance of the fact that the Committee was working on this issue, to the extent that it could render massive services to the law in the region, as well as the administration of justice for private parties in the region, by addressing a model law that would allow domestic proceedings to be more efficient and less costly.

Similarly, the option was aired of the Juridical Committee establishing interpretive criteria on the Usual Convention (1958) and the Inter-American Convention on the Extraterritorial Efficacy of Foreign Judgments and Arbitral Awards (1979), known as the Montevideo Convention.

A warning is sounded that this work must bear in mind constructions related to international public order.

V. Studies on the Topic by the ASADIP and the IIDP

In view of its relevance in the academic environment, we are submitting below the list of studies drafted on the topic by two relevant academic forums: The American Association of International Private Law—ASADIP— and the Ibero-American Institute of Procedural Law—IIDP.

The ASADIP, through a complete work has compiled the principles on Transnational Access to Justice, which “seek to improve the Access to Justice of natural and legal persons in private disputes of transnational nature ...” that is: of

¹⁰. The Restatements are prepared by the American Law Institute, which is an organization of eminent US jurists that organizes, summarizes and "interprets" prevailing trends in case law. Although similar in appearance to the house in the civil jurisdiction law codes, these Restatements are not endowed with the same legal status of the USA. They are intended to summarize the law in compliance with Court decisions and reconcile varying interpretations of assorted decisions.

¹¹. These may be set forth in greater detail subsequently, if necessary.

“maximum respect to human rights and the Access to justice”; of “favoring amicable solutions”; of “jurisdictional equivalent”; “transposition of procedural warranties to the transnational sphere”; of “international legal cooperation”; of “transnational judicial activism”; of “procedural celerity”, of “procedural adaptation”; of “protection of collective rights”.

This study is proposing a regulation for the efficacy of foreign judgments, therefore expanding the area of enforcement beyond judgments.

“Chapter 7. Efficacy of foreign judgments

“Article 7.1. The extraterritorial efficacy of judgments is a fundamental right, closely related to the right of Access to justice and with the fundamental rights of the due process. Therefore, judges and other State authorities will always seek to favor the efficacy of foreign judgments and enforce the requirements that those decisions must follow.

Article 7.2. The right to secure extraterritorial efficacy of the foreign judgment will not be considered infringed if the judgment whose efficacy is sought has been ruled in transgression of fundamental rights related to the procedure, or when the real effects of its recognition or enforcement are clearly infringing the fundamental rights of the core issue.

Article 7.3. The required State may also deny extraterritorial efficacy to a prior foreign and final judgment in the same case, ruled by a foreign court able to be recognized in the required State.

Article 7.4. Denial of the recognition or enforcement of a foreign ruling due to indirect jurisdiction reasons will solely be justified in the following cases:

- a. When the jurisdiction of the authority that ruled such a judgment is based on an exorbitant criterion.
- b. When the jurisdiction of the authority that ruled such a judgment is based on an agreement related to the election of a venue that has not been freely consented by the impacted party or when it has ignored a prior validly accepted agreement.
- c. When the jurisdiction of the authority that ruled such a judgment has ignored a case of plea of pends (litispendence) in another procedure, infringing Article 3.7 of these Principles.

Article 7.5. The revision of the main issue of a foreign judgment infringes the right of Access to justice, without prejudice of the legal authority of the required State to carry out the necessary control to avoid infringement of fundamental rights.

Article 7.6. The demand of reciprocity in the efficacy of judgments and acts of foreign authorities is presumed to be against the law.

Article 7.7. To ensure extraterritorial efficacy of foreign judgments, these will be assimilated to the corresponding analogue decisions of the required State, if and when those decisions, whatever their denomination is, produce final and unappealable effect in the State of origin. This rule is also applicable irrespective of those decisions being ruled by authorities of public powers that are not those that would be competent in the required State.

7.9. A foreign decision takes effect in the required State from the moment it gains efficacy in the State of origin.

7.10 When the efficacy of a foreign decision is claimed during a procedure, the required State will admit its incidental acknowledgement, without prejudice of the ratification process or *exequatur* that the legislation of the required State may establish for its recognition or enforcement.

7.11 The ratification or *exequatur* of foreign judgments shall be filed and adjudicated in summary proceedings, limited to attesting the basic requirements for its recognition or enforcement in the required State. The effective enforcement of those judgments shall be guaranteed through an expedite processing, seeking to maintain the precautionary measures ruled until the enforcement has been completed.

In turn, the Ibero-American Institute of Procedural Law —IIDP—, approved the Model Code for Inter-Jurisdictional Cooperation for Ibero-American Countries during the Assembly session of October 17, 2008. The main purpose of the Code is to achieve transnational judicial protection. Sections V and VI on the Efficacy and Enforcement of foreign judgments, proposes the automatic enforcement of the foreign decision. This means that the efficacy does not depend on the previous recognition of the judgment, without prejudice of the acceptance of grounds for challenge of the efficacy by whoever opposes to it:

“Section V. Efficacy of foreign judgments.

“Article 10. Automatic effect of foreign judgments.

The effects of the foreign judgments will automatically occur and do not depend on prior judicial recognition.

Article 11. Requirements for the efficacy of a foreign judgment.

The efficacy of the foreign decision in the required State will depend on the compliance of the following requirements:

I - to be compatible with the fundamental principles of the required State;

II - to have been given in a process in which the guarantees of the due legal process are in place;

III - to have been given by a competent international court according to the rules of the required State or to the norms established in Section IV above;

IV - not be dependent on a decision about an appeal accepted with suspensive effect;

V - to be compatible with another decision ruled in the required State, in an identical case, or in other State, in an identical process having the necessary conditions to gain efficacy in the required State.

Sole paragraph. The efficacy of the foreign decision may be controlled *ex officio*, by the judge, in an ongoing process, with due respect for the controversial procedure, or by challenging it in the terms of articles 42 to 47.

“Section VI

“Enforcement of a foreign judgment

Article 12. Enforcement.

“The enforcement of a foreign judgment is subject to the compliance of the requirements established in the previous article ...”

“Challenge procedure of the efficacy of the foreign judgment

“Section III

Action and ancillary challenging procedure of the efficacy of the foreign judgment

Article 42. Active legal standing for filing a challenging ancillary action

The action for challenging the efficacy of a foreign judgment shall be filed by the person having a legal interest in the rejection of its effects in the required States.

Sole paragraph. The competent court to deal with the challenging procedure will be that which, according to the procedural norms of the required State, is the one competent to address the main issue of the case.

Article 43. Guarantees for the due process

Procedures for the current action, of a controversial jurisdiction, will ensure the parties the guarantees of the due legal procedure.

Article 44. Reasons for filing a challenging action.

The challenge shall be restricted to the compliance of the requirements established in Article 11, and the foreign judgment will revise the merits of same under any circumstances.

Article 45. Retroactive effects on the judgment of the action.

The effects of the judgment accepting the challenging procedure shall be retroactive to the date on which the efficacy in the required State started.

Article 46. Ancillary procedure on foreign *res judicata*.

Pursuant to the provisions contained in Articles 42 to 44, the challenging procedure against the efficacy of the foreign judgment will be accepted if and when one of the parties claims the efficacy of the foreign *res judicata* decision, and the other party, or a legally interested third party, intends to discuss the enforcement of the requirements established in Article 11.

Sole paragraph. The court competent to address the main action will be the one to judge the challenging ancillary procedure.

Article 47. Challenging ancillary process on plea of lis pendence (litispendence)

The challenging ancillary procedure may be filed against the party that has been successful in the international litispendence.

VI. La propuesta

La información recopilada sobre el estado del tema y presentada al Comité a través de los diferentes informes, éste incluido, permite identificar un problema jurídico existente en los países del hemisferio, en relación con el reconocimiento de decisiones extranjeras, derivado fundamentalmente de la variedad y diferencia de procedimientos internos dictados para dar cumplimiento a la Convención.

En la solución de ese problema, el Comité puede hacer una contribución importante. Con ese propósito la relatora propone la continuación del trabajo, sobre la base del contenido de la convención Interamericana sobre Eficacia Extraterritorial de las Sentencias y Laudos Arbitrales Extranjeros de 1979 —Convención de Montevideo—, que en lo pertinente, dispone:

Artículo 1

La presente Convención se aplicará a las sentencias judiciales y laudos arbitrales dictados en procesos civiles, comerciales o laborales en uno de los Estados Partes, a menos que al momento de la ratificación alguno de estos haga expresa reserva de limitarla a las sentencias de condena en materia patrimonial. Asimismo, cualquiera de ellos podrá declarar al momento de ratificarla que se aplica también a las resoluciones que terminen el proceso, a las dictadas por autoridades que ejerzan alguna función jurisdicciones y las sentencias penales en cuanto se refieran a la indemnización de perjuicios derivados del delito.

Las normas de la presente Convención se aplicarán en lo relativo a laudos arbitrales en todo lo no previsto en la Convención Interamericana sobre Arbitraje Comercial Internacional suscrita en Panamá el 30 de enero de 1975

Artículo 2

Las sentencias, laudos arbitrales y resoluciones jurisdiccionales extranjeros a que se refiere el artículo 1, tendrán eficacia extraterritorial en los Estados Partes si reúnen las condiciones siguientes:

- a. Que vengan revestidos de las formalidades externas necesarias para que sean considerados auténticos en el Estado de donde proceden;
- b. Que la sentencia, laudo y resolución jurisdiccional y los documentos anexos que fueren necesarios según la presente Convención, estén debidamente traducidos al idioma oficial del Estado donde deban surtir efecto;
- c. Que se presenten debidamente legalizados de acuerdo con la ley del Estado en donde deban surtir efecto;
- d. Que el juez o tribunal sentenciador tenga competencia en la esfera internacional para conocer y juzgar del asunto de acuerdo con la ley del Estado donde deban surtir efecto;
- e. Que el demandado haya sido notificado o emplazado en debida forma legal de modo sustancialmente equivalente a la aceptada por la ley del Estado donde la sentencia, laudo y resolución jurisdiccional deban surtir efecto;
- f. Que se haya asegurado la defensa de las partes;
- g. Que tengan el carácter de ejecutoriados o, en su caso, fuerza de cosa juzgada en el Estado en que fueron dictados;
- h. Que no contraríen manifiestamente los principios y las leyes de orden público del Estado en que se pida el reconocimiento o la ejecución.

Artículo 3

Los documentos de comprobación indispensables para solicitar el cumplimiento de las sentencias, laudos y resoluciones jurisdiccionales son los siguientes:

- a. Copia auténtica de la sentencia o del laudo y resolución jurisdiccional;
- b. Copia auténtica de las piezas necesarias para acreditar que se ha dado cumplimiento a los incisos e) y f) del artículo anterior;
- c. Copia auténtica del auto que declare que la sentencia o el laudo tiene el carácter de ejecutoriado o fuerza de cosa juzgada.

Artículo 4

Si una sentencia, laudo y resolución jurisdiccional extranjeros no pueden tener eficacia en su totalidad, el juez o tribunal podrá admitir su eficacia parcial mediante petición de parte interesada.

Artículo 5

El beneficio de pobreza reconocido en el Estado de origen de la sentencia será mantenido en el de su presentación.

Artículo 6

Los procedimientos, incluso la competencia de los respectivos órganos judiciales, para asegurar la eficacia a las sentencias, laudos arbitrales y resoluciones jurisdiccionales extranjeros serán regulados por la ley del Estado en que se solicita su cumplimiento.

De acuerdo a los debates que se han dado en el seno del Comité, el trabajo puede concretarse en cualquiera o varios de los siguientes instrumentos:

- 1) Una guía con recomendaciones muy precisas para orientar a los Estados sobre elementos mínimos que permitan la futura aplicación de la Convención.

2) Una ley modelo para la aplicación de la Convención.

3) Enviar comunicación a la Conferencia de La Haya con recomendaciones para que sean tenidas en cuenta en la elaboración del proyecto de modificación de la Convención que viene trabajando.

Se anexa copia del trabajo adelantado por la Conferencia de La Haya.

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Council on General Affairs and Policy of the Conference – March 2018

Document	Preliminary Document <input checked="" type="checkbox"/> Information Document <input type="checkbox"/>	No 1 of December 2017
Title	Judgments Project: Report on the Special Commission meeting of November 2017 and next steps	
Author	Permanent Bureau	
Agenda item	[To be determined]	
Mandate(s)	C&R Nos 11 - 14, in particular No 12, of the 2016 Council on General Affairs and Policy C&R Nos 5 - 7, in particular No 5, of the 2017 Council on General Affairs and Policy	
Objective	To report on the progress of the Special Commission on the Judgments Project	
Action to be taken	For Approval <input type="checkbox"/> For Decision <input type="checkbox"/> For Information <input checked="" type="checkbox"/> (see para. 4 of the Prel. Doc.)	
Annexes	November 2017 draft Convention	
Related documents	n.a.	

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1. At its March 2017 meeting, the Council on General Affairs and Policy (the Council) instructed the Secretary General (SG) “to convene a third meeting of the Special Commission”.¹ In line with this mandate, the Special Commission (SC) on the Recognition and Enforcement of Foreign Judgments met for the third time from 13 to 17 November 2017 in The Hague to prepare a draft Convention on the recognition and enforcement of judgments in civil or commercial matters.
2. The SC made very good progress towards the preparation of a draft Convention, and adopted the following report for the Council for decision:

“In accordance with the mandate given by the Council on General Affairs and Policy of the Conference (“the Council”) at its meeting in March 2016² and March 2017³ the Special Commission on the Recognition and Enforcement of Foreign Judgments (“the Special Commission”) met in June 2016, February 2017 and November 2017 in The Hague to prepare a draft Convention on the recognition and enforcement of judgments in civil or commercial matters. The draft Convention appears as an annex to this report.

The Special Commission considers that it would benefit from a further meeting focused on a limited number of issues that would benefit from further discussion at a plenary meeting prior to the draft Convention being submitted to a Diplomatic Session. In order to maintain the momentum of the Project, it recommends that it meet again in mid-2018, and that a Diplomatic Session be convened in mid-2019, provided that those timeframes are possible having regard to budgetary and logistical considerations. Further intersessional work on certain issues would also be desirable.”

3. As the Council will not meet until mid-March 2018, and given the need to commence preparations for a possible SC meeting in mid-2018 immediately, the SG launched a written voting procedure on 15 December 2017 (see L.c. ON No 85(17)) to seek Council’s approval with regard to convening a Fourth Meeting of the SC in mid-2108; in the event that the Members vote favourably, the SG also presented two options in relation to the venue of the possible SC meeting. Members were requested to cast their vote by Friday 19 January 2018, 5.00 p.m. CET.
4. Members will be informed of the outcome of the votes as soon as possible after the deadline of the voting procedure. Accordingly, when the Council will meet in March 2018, it will be invited to take note of the results of the written voting procedure but it will not reopen the discussion on whether or not to hold a fourth SC meeting, and where such meeting should take place if the Members indeed endorse the proposal of such a fourth meeting.

¹ See “Conclusions and Recommendations of the Council on General Affairs and Policy of the Conference (14-16 March 2017)”, C&R No 5.

² See “Conclusions and Recommendations of the Council on General Affairs and Policy of the Conference (15-17 March 2016)”, C&R Nos 11-14. In particular C&R No 12: “The Council decided to set up a Special Commission to prepare a draft Convention and instructed the Secretary General to convene the first meeting in June 2016 (and tentatively a second meeting in February 2017).”

³ See “Conclusions and Recommendations of the Council on General Affairs and Policy of the Conference (14-16 March 2017)”, C&R Nos 5-7. In particular, C&R No 5: “The Council instructed the Secretary General to convene a third meeting of the Special Commission, tentatively scheduled from 13 to 17 November 2017.”

ANNEX

ANNEX

**Special Commission on the Recognition and Enforcement of Foreign
Judgments
(13-17 November 2017)**



NOVEMBER 2017 DRAFT CONVENTION

* This document reproduces the text set out in Working Document No 236 E revised

CHAPTER I – SCOPE AND DEFINITIONS

Article 1

Scope

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

Article 2

Exclusions from scope

1. This Convention shall not apply to the following matters –
 - (a) the status and legal capacity of natural persons;
 - (b) maintenance obligations;
 - (c) other family law matters, including matrimonial property regimes and other rights or obligations arising out of marriage or similar relationships;
 - (d) wills and succession;
 - (e) insolvency, composition, resolution of financial institutions, and analogous matters;
 - (f) the carriage of passengers and goods;
 - (g) marine pollution, limitation of liability for maritime claims, general average, and emergency towage and salvage;
 - (h) liability for nuclear damage;
 - (i) the validity, nullity, or dissolution of legal persons or associations of natural or legal persons, and the validity of decisions of their organs;
 - (j) the validity of entries in public registers;
 - (k) defamation;
 - [(l) privacy / unauthorised public disclosure of information relating to private life];
 - [(m) intellectual property [and analogous matters]].
2. A judgment is not excluded from the scope of this Convention where a matter to which this Convention does not apply arose merely as a preliminary question in the proceedings in which the judgment was given, and not as an object of the proceedings. In particular, the mere fact that such a matter arose by way of defence does not exclude a judgment from the Convention, if that matter was not an object of the proceedings.
3. This Convention shall not apply to arbitration and related proceedings.
4. A judgment is not excluded from the scope of this Convention by the mere fact that a State, including a government, a governmental agency or any person acting for a State, was a party to the proceedings.
5. Nothing in this Convention shall affect privileges and immunities of States or of international organisations, in respect of themselves and of their property.

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Article 3

Definitions

1. In this Convention –
 - (a) “defendant” means a person against whom the claim or counterclaim was brought in the State of origin;
 - (b) “judgment” means any decision on the merits given by a court, whatever that decision may be called, including a decree or order, and a determination of costs or expenses by the court (including an officer of the court), provided that the determination relates to a decision on the merits which may be recognised or enforced under this Convention. An interim measure of protection is not a judgment.
2. An entity or person other than a natural person shall be considered to be habitually resident in the State –
 - (a) where it has its statutory seat;
 - (b) under whose law it was incorporated or formed;
 - (c) where it has its central administration; or
 - (d) where it has its principal place of business.

CHAPTER II – RECOGNITION AND ENFORCEMENT

Article 4

General provisions

1. A judgment given by a court of a Contracting State (State of origin) shall be recognised and enforced in another Contracting State (requested State) in accordance with the provisions of this Chapter. Recognition or enforcement may be refused only on the grounds specified in this Convention.
2. Without prejudice to such review as is necessary for the application of the provisions of this Chapter, there shall be no review of the merits of the judgment given by the court of origin.
3. A judgment shall be recognised only if it has effect in the State of origin, and shall be enforced only if it is enforceable in the State of origin.
4. If a judgment referred to in paragraph 3 is the subject of review in the State of origin or if the time limit for seeking ordinary review has not expired, the court addressed may –
 - (a) grant recognition or enforcement, which enforcement may be made subject to the provision of such security as it shall determine;
 - (b) postpone the decision on recognition or enforcement; or
 - (c) refuse recognition or enforcement.

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

Article 5

Bases for recognition and enforcement

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

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

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- (ii) at the time the proceedings were instituted, the State of origin was expressly or impliedly designated in the trust instrument as the State in which the principal place of administration of the trust is situated.

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

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

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

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

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

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

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

Article 6

Exclusive bases for recognition and enforcement

Notwithstanding Article 5 –

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

Article 7

Refusal of recognition or enforcement

1. Recognition or enforcement may be refused if –
 - (a) the document which instituted the proceedings or an equivalent document, including a statement of the essential elements of the claim –
 - (i) was not notified to the defendant in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant entered an appearance and presented his case without contesting notification in the court of origin, provided that the law of the State of origin permitted notification to be contested; or
 - (ii) was notified to the defendant in the requested State in a manner that is incompatible with fundamental principles of the requested State concerning service of documents;
 - (b) the judgment was obtained by fraud;
 - (c) recognition or enforcement would be manifestly incompatible with the public policy of the requested State, including situations where the specific proceedings leading to the judgment were incompatible with fundamental principles of procedural fairness of that State and situations involving infringements of security or sovereignty of that State;
 - (d) the proceedings in the court of origin were contrary to an agreement, or a designation in a trust instrument, under which the dispute in question was to be determined in a court other than the court of origin;
 - (e) the judgment is inconsistent with a judgment given in the requested State in a dispute between the same parties; or
 - (f) the judgment is inconsistent with an earlier judgment given in another State between the same parties on the same subject matter, provided that the earlier judgment fulfills the conditions necessary for its recognition in the requested State;
- [(g) the judgment ruled on an infringement of an intellectual property right, applying to that [right / infringement] a law other than the internal law of the State of origin.]

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

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

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

Article 8

Preliminary questions

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

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

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

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

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

Article 9

Severability

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

Article 10

Damages

1. Recognition or enforcement of a judgment may be refused if, and to the extent that, the judgment awards damages, including exemplary or punitive damages, that do not compensate a party for actual loss or harm suffered.

2. The court addressed shall take into account whether and to what extent the damages awarded by the court of origin serve to cover costs and expenses relating to the proceedings.

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[Article 11

Non-monetary remedies in intellectual property matters

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

Article 12

Judicial settlements (transactions judiciaires)

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

Article 13

Documents to be produced

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

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Article 14

Procedure

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

[Article 15

Costs of proceedings

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

Article 16

Recognition or enforcement under national law

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

CHAPTER III – GENERAL CLAUSES

Article 17

Transitional provision

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

Article 18

Declarations limiting recognition and enforcement

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

Article 19

Declarations with respect to specific matters

1. Where a State has a strong interest in not applying this Convention to a specific matter, that State may declare that it will not apply the Convention to that matter. The State making such a declaration shall ensure that the declaration is no broader than necessary and that the specific matter excluded is clearly and precisely defined.
2. With regard to that matter, the Convention shall not apply –
 - (a) in the Contracting State that made the declaration;
 - (b) in other Contracting States, where recognition or enforcement of a judgment given in a Contracting State that made the declaration is sought.

[Article 20

Declarations with respect to judgments pertaining to governments

1. A State may declare that it shall not apply this Convention to judgments which arose from a proceeding to which it is a party, or to which any of its governmental agencies or any person acting on behalf of such governmental agency is a party, only to the extent specified in the declaration. The State making such a declaration shall ensure that the declaration is no broader than necessary and that the exclusion from scope is clearly and precisely defined.
2. With regard to a declaration made pursuant to paragraph (1), the Convention shall not apply to the excluded proceedings as specified and defined in the declaration –
 - (a) in the Contracting State that made the declaration;
 - (b) in other Contracting States, where recognition or enforcement of a judgment given in a Contracting State that made the declaration is sought.]

[Article 21

Declarations with respect to common courts

1. A Contracting State may declare that –
 - (a) a court common to two or more States exercises jurisdiction over matters that come within the scope of this Convention; and
 - (b) such a court –
 - (i) has only an appellate function; or
 - (ii) has first instance and appellate functions.
2. Judgments of a Contracting State include –
 - (a) judgments given by a court referred to in paragraph 1(b)(i);
 - (b) judgments given by a court referred to in paragraph 1(b)(ii) if all States referred to in paragraph 1(a) are Parties to this Convention.

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3. If a court referred to in paragraph 1(b)(i) serves as a common court for States some of which are Contracting States and some of which are non-Contracting States to this Convention, judgments given by such a court shall only be considered as judgments of a Contracting State if the proceedings at first instance were instituted in a Contracting State.

4. In case of a judgment given by a court referred to in paragraph 1(b)(ii) the reference to the State of origin in Articles 5 and 6 shall be deemed to refer to the entire territory over which that court had jurisdiction in relation to that judgment.]

Article 22

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 23

Review of operation of the Convention

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

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

Article 24

Non-unified legal systems

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

- (a) any reference to the law or procedure of a State shall be construed as referring, where appropriate, to the law or procedure in force in the relevant territorial unit;
- (b) any reference to habitual residence in a State shall be construed as referring, where appropriate, to habitual residence in the relevant territorial unit;
- (c) any reference to the court or courts of a State shall be construed as referring, where appropriate, to the court or courts in the relevant territorial unit;
- (d) any reference to a connection with a State shall be construed as referring, where appropriate, to a connection with the relevant territorial unit.

2. Notwithstanding the preceding paragraph, a Contracting State with two or more territorial units in which different systems of law apply shall not be bound to apply this Convention to situations which involve solely such different territorial units.

3. A court in a territorial unit of a Contracting State with two or more territorial units in which different systems of law apply shall not be bound to recognise or enforce a judgment from

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another Contracting State solely because the judgment has been recognised or enforced in another territorial unit of the same Contracting State under this Convention.

4. This Article shall not apply to a Regional Economic Integration Organisation.

Article 25

Relationship with other international instruments

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

CHAPTER IV – FINAL CLAUSES

Article 26

Signature, ratification, acceptance, approval or accession

1. This Convention is open for signature by all States.
2. This Convention is subject to ratification, acceptance or approval by the signatory States.
3. This Convention is open for accession by all States.
4. Instruments of ratification, acceptance, approval or accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

Article 27

Declarations with respect to non-unified legal systems

1. If a State has two or more territorial units in which different systems of law apply in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that the Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.
2. A declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.
3. If a State makes no declaration under this Article, the Convention shall extend to all territorial units of that State.
4. This Article shall not apply to a Regional Economic Integration Organisation.

Article 28

Regional Economic Integration Organisations

1. A Regional Economic Integration Organisation which is constituted solely by sovereign States and has competence over some or all of the matters governed by this Convention may similarly sign, accept, approve or accede to this Convention. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that the Organisation has competence over matters governed by this Convention.
2. The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, notify the depositary in writing of the matters governed by this Convention in respect of which competence has been transferred to that Organisation by its Member States. The Organisation shall promptly notify the depositary in writing of any changes to its competence as specified in the most recent notice given under this paragraph.
3. For the purposes of the entry into force of this Convention, any instrument deposited by a Regional Economic Integration Organisation shall not be counted unless the Regional Economic Integration Organisation declares in accordance with Article 29, paragraph 1, that its Member States will not be Parties to this Convention.
4. Any reference to a "Contracting State" or "State" in this Convention shall apply equally, where appropriate, to a Regional Economic Integration Organisation that is a Party to it.

Article 29

Accession by a Regional Economic Integration Organisation without its Member States

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

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

Article 30

Entry into force

1. This Convention shall enter into force on the first day of the month following the expiration of [three] [six] months after the deposit of the second instrument of ratification, acceptance, approval or accession referred to in Article 26.
2. Thereafter this Convention shall enter into force –
 - (a) for each State or Regional Economic Integration Organisation subsequently ratifying, accepting, approving or acceding to it, on the first day of the month following the expiration of [three][six] months after the deposit of its instrument of ratification, acceptance, approval or accession;
 - (b) for a territorial unit to which this Convention has been extended in accordance with Article 27 on the first day of the month following the expiration of [three] [six] months after the notification of the declaration referred to in that Article.

Article 31

Declarations

1. Declarations referred to in Articles 18, 19, [20,] [21,] [25(5),] 27 and 29 may be made upon signature, ratification, acceptance, approval or accession or at any time thereafter, and may be modified or withdrawn at any time.
2. Declarations, modifications and withdrawals shall be notified to the depositary.
3. A declaration made at the time of signature, ratification, acceptance, approval or accession shall take effect simultaneously with the entry into force of this Convention for the State concerned.
4. A declaration made at a subsequent time, and any modification or withdrawal of a declaration, shall take effect on the first day of the month following the expiration of [three] [six] months following the date on which the notification is received by the depositary.
5. A declaration made at a subsequent time, and any modification or withdrawal of a declaration, shall not apply to judgments resulting from proceedings that have already been instituted before the court of origin when the declaration takes effect.

Article 32

Denunciation

1. This Convention may be denounced by notification in writing to the depositary. The denunciation may be limited to certain territorial units of a non-unified legal system to which this Convention applies.
2. The denunciation shall take effect on the first day of the month following the expiration of twelve months after the date on which the notification is received by the depositary. Where a

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longer period for the denunciation to take effect is specified in the notification, the denunciation shall take effect upon the expiration of such longer period after the date on which the notification is received by the depositary.

Article 33

Notifications by the depositary

The depositary shall notify the Members of The Hague Conference on Private International Law, and other States and Regional Economic Integration Organisations which have signed, ratified, accepted, approved or acceded in accordance with Articles [...] of the following –

- (a) the signatures, ratifications, acceptances, approvals and accessions referred to in Article 26;
- (b) the date on which this Convention enters into force in accordance with Article 30;
- (c) the notifications, declarations, modifications and withdrawals of declarations referred to in Article 31; and
- (d) the denunciations referred to in Article 32.