

**Special Commission on the International
Recovery of Child Support and other
Forms of Family Maintenance
(7-18 June 2004)**

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Proposal by the Drafting Committee

Working Draft - Revision No 2

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

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

PREAMBLE

The States signatory to the present Convention,

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

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

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

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,

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

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

[Recognising the importance of accountability,]

Desiring to build upon the best features of existing Conventions,

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

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 for the international recovery of child support and other forms of family maintenance[, including the establishment of parentage for such purposes];
2. to provide for the recognition and enforcement of maintenance decisions.

Article 2 Scope

1. This Convention shall apply to maintenance obligations arising from a family relationship, parentage, marriage or affinity[, including a maintenance obligation in respect of a child regardless of the marital status of the parents].
2. The Convention shall also apply to claims by a public body for reimbursement of benefits provided in lieu of maintenance.

[Article 3 Character of the maintenance claim

[The Convention] [Chapter IV] shall apply irrespective of the international or internal character of the [original] maintenance claim [and whatever may be [the nationality or] habitual residence of the parties].]

[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.]

Article 5 Definitions¹

For the purposes of this Convention –

1. 'decision' includes –
 - 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) 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.]
2. 'maintenance obligation' includes any obligation to pay arrears or interest.

¹ Further consideration is needed of whether there should be a definition of 'child' for the purposes of the Convention as a whole (see Art. 46 for a definition in the context of a possible reservation clause). One possibility that may be considered is as follows: "For the purpose of this Convention a child is every human being who has not reached the age of 18. However, the benefits of this Convention shall also apply to those who, having attained that age, continue to be entitled to support under the law applicable to the maintenance obligation".

Article 6 *Designation of Central Authorities*

1. A Contracting State shall, at the time when the instrument of ratification or accession is deposited, designate a Central Authority to discharge the duties that are imposed by the Convention on such an authority.

2. Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and shall specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

3. The designation of the Central Authority or Central Authorities, their contact details, and where appropriate the extent of their functions as specified in paragraph 2, shall be communicated by each Contracting State to the Permanent Bureau of the Hague Conference on Private International Law. Contracting States shall promptly inform the Permanent Bureau of any changes.

Article 7 *Direct functions of Central Authorities*

Central Authorities shall -

a) co-operate with each other and promote co-operation amongst the competent authorities in their States to achieve the purposes of the Convention;

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

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

d) transmit and receive applications under Chapter III;

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

Article 8 *Other functions of Central Authorities*

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

a) where the circumstances require, to provide, or facilitate the provision of, legal aid and advice, [including the participation of legal counsel and advisers];

b) to help locate the debtor;

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

d) to encourage voluntary payment of maintenance;

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

f) to facilitate the expeditious transfer of maintenance payments;

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

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

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

[j) to initiate or facilitate the institution of proceedings to obtain any necessary provisional measures that are territorial in nature and the purpose of which is to secure the outcome of a pending or anticipated maintenance application.]

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

Article 9 Requests for specific measures

[A Central Authority shall, upon a well-founded request by another Central Authority, take such specific measures as are appropriate under Article 8(1) irrespective of whether an application under Article 11 is pending before that Authority [provided that the request relates to the recovery of maintenance abroad].]³

CHAPTER III - APPLICATIONS

Article 10 *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.

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

Article 11 *Available applications*

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,] make application under the Convention for any of the following -

- a) recognition and enforcement of a decision made in a Contracting State;
- b) enforcement of a decision made in the requested State;
- [c) establishment of a decision in the requested State where there is no existing decision;]
- [d) establishment of a decision in the requested State where recognition and enforcement of a decision is not possible or is refused;]
- [e) modification of a decision made in a requested State;]
- [f) modification of a decision not made in a requested State;]
- g) recovery of arrears.

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.]

[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.]

² A view was expressed in the Special Commission that this principle should apply also to Article 7(d) and (e).

³ The issue of costs under, and the appropriate Chapter for, this Article remain to be considered.

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 -
 - 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.
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.
3. ...]

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

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.]

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

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

- a) ...

Article 16 Application to modify an existing maintenance decision made in the requested State

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) ...

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 -

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

Article 18 Application for recovery of arrears

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

...

[Article 20 Application for the establishment or recognition of parentage

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

...]

[Article 21 Application through Central Authority]

[Note: See new Article 10 above]

Article 22 Transmission, receipt and processing of applications and cases

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.

2. The requested Central Authority shall [acknowledge receipt of the application promptly and,] within six weeks from the date of receipt of the application, inform the Central Authority of the requesting State what initial steps will be taken to deal with the application or request any further documents and information which may be required. Within the same six-week period, the requested Central Authority shall provide to the requesting Central Authority the name and contact details of the person responsible for the application.

[3. 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.]

4. Requesting and requested Central Authorities shall -

- a) keep each other informed of the person responsible for a particular case;
- b) keep each other informed of the progress of the case and provide timely responses to mutual enquiries.

5. Central Authorities shall process a case as quickly as a proper consideration of the issues will allow.

6. Central Authorities shall employ the most rapid means of communication at their disposal.

Article 23 Language requirements

1. Any application and related documents shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State [or, where that is not feasible, a translation into French or English,]⁴ unless the competent authority of that State dispenses with translation.

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

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

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

5. ...⁵

6. ...⁶

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.

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.

Article 25 Administrative costs

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

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 ???.

Article 25bis Effective access to procedures⁷

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

2. The requested State shall not be obliged to provide such legal assistance or representation where the procedures are designed to enable the applicant to make the case without the need for such assistance or representation, and where the Central Authority provides such help as is necessary.

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

⁴ In some circumstances it may be very difficult for the requesting State to arrange for a translation into the language of the requested State. In those situations under this Article the requesting State could send the documents translated into either English or French. The issue of whether or not the requested State should then receive reimbursement for the translation into its language remains to be considered.

⁵ The general issue of translation costs remains to be considered.

⁶ A provision allowing for bilateral or regional arrangements remains to be drafted.

⁷ The Drafting Committee recognises that further refinement will be needed to explain the relationship between the paragraphs in this Article.

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

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

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

CHAPTER IV - RECOGNITION AND ENFORCEMENT

Article 26 Definitions

For the purposes of this Chapter –

1. 'decision' means –

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

b) a [settlement or] agreement concluded before, approved by or registered with such authority;

[c) an authentic instrument;

d) a private agreement which is enforceable but has not been registered.]⁸

2. A decision may include a requirement to pay arrears, [retroactive maintenance] or interest.

3. 'administrative authority' means an authority whose decisions, under the law of the State where it is established –

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

b) have the same force and effect as a decision of a judicial authority on the same matter.⁹

Article 27 Bases for recognition

1. A maintenance decision made in one Contracting State (the State of origin) shall be recognised and enforced in other Contracting States if –

a) the respondent was [habitually] resident in the State of origin at the time proceedings were instituted;

b) the respondent has submitted to the jurisdiction either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity;

c) the creditor was [habitually] resident in the State of origin at the time proceedings were instituted;

d) the law of the State addressed would in similar [factual] circumstances confer jurisdiction on its authorities to take such a decision;

[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

⁸ The Drafting Committee suggests that if both or either of these concepts are to remain in the Convention they should be dealt with in separate provisions. Consideration would have to be given to special rules concerning recognition and enforcement adapted to these concepts.

⁹ The issue was raised in the Special Commission whether paragraph 3 should be a subject for certification under Article 30(3)b).

g) the child was [habitually] resident in the jurisdiction].

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

3. A decision shall be recognised only if it has effect in the State of origin, and shall be enforced only if it is enforceable in the State of origin.

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.

Article 29 Grounds for refusing recognition and enforcement

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;

[2. if the decision was obtained by fraud in connection with a matter of procedure;]

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;

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 that this latter decision fulfils the conditions necessary for its recognition and enforcement in the State addressed; or

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

Article 30 Procedure for recognition and enforcement¹⁰

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

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

3. An application under paragraph 2 shall be accompanied by the following documents -

a) an original of the maintenance decision or a copy certified¹¹ by the competent authority in the State of origin;

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

b) a certificate from the competent authority in the State of origin that the decision is enforceable and, in the case of a decision referred to in Article 26(...), where it is not clear from the decision itself, that it is enforceable in the same manner as a judgment in the State of origin;

c) if the respondent was not involved in the proceedings in the State of origin, a document establishing that the conditions of Article 29(5) were met.

4. The application may be refused only for the reasons specified in [Articles 27 and 29][Article 29(1)]. At this stage of proceedings neither the maintenance creditor, nor the maintenance debtor is entitled to make any submissions on the application. The competent authority of the Contracting State addressed shall give its decision on the application without delay.

¹⁰ The Drafting Committee recognises that this Article as presently drafted applies largely to procedures for enforcement. Modifications will be required to ensure that the conditions for recognition are also made clear, as for example where a debtor applies to have an existing maintenance decision recognised.

¹¹ The French equivalent of "certified" raised the question whether the certification should be by the originating authority or by some other competent authority.

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

a) any of the grounds set out in Article 29;

b) absence of a basis for recognition under Article 27;

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

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

Article 30bis Derogation

Any Contracting State may enter into agreements with one or more other Contracting States, with a view to providing for a more expeditious system for recognition and enforcement of maintenance decisions under this Convention. These agreements may derogate only from the provisions of Article [30(3), (4) and (6)]. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.¹²

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.

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.

Article 33 Partial recognition or enforcement

Partial recognition or enforcement of a decision can always be applied for.

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.]

CHAPTER V - ENFORCEMENT BY THE REQUESTED STATE

[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;

¹² Whether this provision should be applied to other Articles (e.g. Art. 35) remains to be discussed.

- e) tax refund withholding;
- f) withholding or attachment of pension benefits;
- g) credit bureau reporting;
- h) denial, suspension or revocation of various licenses (for example, driving licenses).]

Article 36 *Enforcement under national law*

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

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.

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.

CHAPTER VI - ADDITIONAL PROVISIONS RELATING TO PUBLIC BODIES

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.

CHAPTER VII - GENERAL PROVISIONS

Article 41 *General applicability of rules on recognition*

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.

Article 42 Legalisation

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

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 and to encourage the development of good practices under the Convention.

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

Article 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.

Article 45¹³

Where a decision is made in a Contracting State where the creditor is habitually resident, the debtor may not bring proceedings for a new or modified decision in any other Contracting State as long as the creditor remains habitually resident in that State and in the absence of agreement between the parties, or submission, to the jurisdiction by the creditor.

Article 46 - Reservation¹⁴

1. Any Contracting State may in accordance with Article ???, reserve the right not to apply [the Convention, or] any specified part of the Convention,¹⁵ to maintenance obligations in respect of any specified family relationships or relationships based on affinity, other than maintenance obligations in respect of children.

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

¹³ Several issues in relation to modification remain to be discussed (see, Prel. Doc. No 3, paragraphs 126-133).

¹⁴ A provision on reciprocity remains to be drafted.

¹⁵ A view was expressed in the Special Commission that no reservation should be permitted in relation to spousal support under Chapter IV.