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***663** THE DEVELOPMENT OF THE NEW HAGUE CONVENTION ON THE INTERNATIONAL RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE

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I. Introduction

Work in The Hague on the new global Convention on the International Recovery of Child Support and Other Forms of Family Maintenance is well underway. [FN1] After the first round of negotiations, which took place in May 2003, [FN2] a second meeting of the Special Commission, attended by experts from 55 States [FN3] and 13 International Organisations, [FN4] was held in ***664** The Hague from 7-18 June 2004. Considerable progress has already been made by the Drafting Committee in developing a text, the latest version of which was presented in the form of a Working Draft to the Special Commission on 17 June 2004. [FN5] It is expected that a third meeting of the Special Commission will be held in the Spring of 2005 and, if all goes well, there are hopes that the process of negotiation may be concluded by the end of 2006.

This Article explains the background to the negotiations, the objectives of the new Convention, and some of its likely or possible contents. It draws on a number of Reports and Preliminary Documents drawn up by the author preliminary to or in preparation for the negotiations. [FN6]

II. The Background

A Special Commission was held in April 1999 to examine the practical operation of the four existing Hague Conventions of 1956, 1958 and 1973, [FN7] as well as the New York Convention of 1956 on the Recovery Abroad of Maintenance. [FN8] A variety of problems were identified ranging from, on the one hand, a complete failure by certain States to fulfill their Convention obligations, particularly under the New York Convention, to, on the other hand, differences in interpretation and practice under the various Conventions. These differences related to such matters as the establishment ***665** of paternity, locating the defendant, approaches to the grant of legal aid and the payment of costs, the status of public authorities and of maintenance debtors under the New York Convention, enforcement of index-linked judgments, the question of the cumulative application of the Conventions and detailed matters, such as mechanisms for transferring funds across international frontiers.

There was clearly disappointment at the 1999 Special Commission that many of the problems identified appeared to have remained unresolved despite the attention that had already been drawn to them by the previous Special Commission of 1995. That earlier Special Commission had taken the view that there was no need to

consider major reforms of the relevant Conventions. The emphasis was placed on improving practice under the existing Conventions. [FN9] This approach was advocated again during the 1999 Special Commission. There was a natural reluctance among delegates to consider further international instruments in an area in which so many instruments already exist. Apart from the four Hague Conventions and the New York Convention, there are various regional conventions and arrangements, including the Brussels Regulations [FN10], the Montevideo Convention [FN11] and the system that operates among Commonwealth countries, as well as a proliferation of bilateral treaties and less formal agreements.

Despite this natural reluctance, the Special Commission of 1999 in the end came down in favor of a radical approach, namely that the Hague Conference should commence work on the elaboration of a new worldwide instrument. The reasons for this conclusion may be summarised as follows:

• disquiet at the chronic nature of many of the problems associated with some of the existing Conventions;

• a perception that the number of cases being processed through the international machinery was very small in comparison with real needs;

• a growing acceptance that the New York Convention of 1956, though an important advance in its day, had become somewhat obsolete, that the open texture of some of its provisions was ***666** contributing to inconsistent interpretation and practice, and that its operation had not been effectively monitored;

• an acceptance of the need to take account of the many changes that have occurred in national (especially child support) systems for determining and collecting maintenance payments, as well as the opportunities presented by advances in information technology;

• a realization that the proliferation of instruments (multilateral, regional and bilateral), with their varying provisions and different degrees of formality, were complicating the tasks of national authorities, as well as legal advisers.

The mandate to begin work on a new worldwide international instrument adopted by the 1999 Special Commission included the following directions:

The new instrument should:

• contain as an essential element provisions relating to administrative co-operation;

• be comprehensive in nature, building upon the best features of the existing Conventions, including in particular those concerning the recognition and enforcement of maintenance obligations;

• take account of future needs, the developments occurring in national and international systems of maintenance recovery and the opportunities provided by advances in information technology;

• be structured to combine the maximum efficiency with the flexibility necessary to achieve widespread ratification.

The work should be carried out in co-operation with other relevant international organizations, in particular the United Nations. The Hague Conference, while accomplishing this task, should continue to assist in promoting the effective operation of the existing Conventions and the ratification of the New York Convention and the two Hague Conventions of 1973.

III. Administrative Co-operation

The system established by the New York Convention of 1956, which provides the only global framework for administrative co-operation in the international recovery of maintenance, suffers from major operational problems. A large number of States Parties do not fulfil even their most basic obligations under the Convention. The system of co-operation set out in the Convention lacks specifics in areas such as documentation and translation requirements, timelines, progress reports, information exchange and paternity establishment. At the same time, other instruments, such as the Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations, suffer from the absence of an integrated system of administrative co-operation. ***667** It was always obvious, both from the Conclusions and recommendations of the Special Commission of April 1999, as well more recently from the responses to the 2002 Questionnaire, [FN12] that the establishment of an effective system of administrative co-operation would be an essential, and perhaps the most important, element in the new instrument on the international recovery of maintenance. Consultations carried out by the Hague Conference have suggested that, in devising a modern system of administrative co-operation, the following objectives should be considered:

• the system should be capable of processing requests swiftly, in particular making full use of the new communication technologies;

• the system should be cost effective. The costs involved should not be disproportionate, having regard to the relatively modest level of most maintenance orders. It should be seen to give good value for money when comparing administrative costs against the amounts of maintenance recovered;

• the obligations imposed on co-operating States should not be too burdensome and should take into account differing levels of development and resource capacities. On the other hand, it has to be recognized that an efficient structure must involve some outlay of resources. No purpose is served by devising a cheap but ineffective system;

• the system should be flexible enough to provide effective links between very different national systems, administrative or judicial, for the collection, assessment and enforcement of maintenance;

• the system should be efficient in the sense of avoiding unnecessary or over complex formalities and procedures;

• the system should be user-friendly--easy to understand and transparent.

From an early stage in the negotiations, it was agreed that co-operation should be structured through "Central Authorities" designated in each Contracting State. The precise functions to be performed by each Central Authority, the question of whether particular functions may be performed by bodies other than Central Authorities, and the issue of who should bear the costs of administrative services have been central themes in the debates in the Special Commission. These matters are further complicated by the question whether differentiations should be made between (a) a creditor seeking to establish or enforce a maintenance decision, or (b) a ***668** debtor applying for modification of a decision, or (c) a public authority seeking to recover maintenance on behalf of the creditor or to recover maintenance already paid to the creditor. In addition, a few States have indicated their willingness to provide a much wider range of free services in child support cases than in relation, for example, to spousal support.

With regard to the structural questions, there seems at this point to be a preference for a relatively centralized system in which one Central Authority in each country (there may be several in multi-unit States) is responsible for transmitting or receiving and processing the different forms of application under the Convention. This is similar to the model which in practice operates under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. Whether, given the likely (and desired) increase in the rate of international applications, it is practicable to insist on this model may need some further consideration. In any case, there is already agreement that most of the functions of Central Authorities other than the processing of applications (e.g., help in locating the debtor or in obtaining information concerning his/her financial circumstances) may be performed by other public or private bodies subject to supervision.

Concerning the services to be provided, there remain some areas of disagreement. The extent to which assistance should be provided in establishing parentage is not yet agreed. [FN13] Several States have taken the view that this assistance should only be provided in the context of an international application to establish a child support order, and that in any case the new Convention should not replicate the already existing instruments which provide for judicial assistance, such as the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters. Other States take a more liberal approach, and would require assistance to be provided by Central Authorities (e.g., in obtaining a voluntary admission of paternity or in facilitating the obtaining of genetic material) on a "limited service" basis (i.e., not necessarily in the context of pending proceedings).

Further discussion will also be needed concerning the role of Central Authorities in facilitating and monitoring enforcement of maintenance decisions and in assisting in the obtaining of provisional measures (e.g. freezing a bank account) to secure the outcome of a pending or anticipated application.

***669 IV. Applications, Costs and Legal Aid**

The Convention is likely to contain a separate Chapter setting out the different forms which applications may take. [FN14] At this point, it seems that the application process will be available to debtors seeking modification and to public authorities seeking reimbursement of monies paid to a creditor. Practice on these matters has not been uniform under the New York Convention.

Consideration is still being given to the use of model forms. Their value in promoting uniform procedures and in reducing costs is widely recognized, but there is a division of opinion as to whether their use should be mandatory or simply recommended. With regard to the question of administrative and legal costs and expenses, the two general considerations being taking into account are the following: [FN15]

Applicants for maintenance generally have very limited resources, and even small financial barriers may inhibit use by them of the opportunities otherwise provided by the new Convention. The costs for the applicant should not be such as to inhibit the use of, or prevent effective access to, the services and procedures provided for in the Convention.

***670** At the same time the Convention, if it is to be attractive to a wide range of Contracting Parties, should not be seen to impose excessive

financial burdens on them. This does not mean that the provision of services under the Convention will be free of cost to Contracting Parties, but rather that the costs of providing services should not be disproportionate to the benefits in terms of achieving support for more children and other family dependants and in consequence reducing welfare budgets.

The two general principles concerning the cost of services provided by a Central Authority under the Convention, as set out in the current draft, are that provision of assistance should be without cost to the applicant, [FN16] and that assistance provided by one Central Authority should not give rise to costs for another Central Authority. [FN17] However, it remains probable that exceptions will be made, particularly in relation to the first principle. There are at the moment two different approaches being advocated. The first approach suggests a more limited list of services--all to be provided free. The second would prefer a more extensive range of services, but with the possibility of charges in certain cases in respect of certain applicants. It also remains to be decided whether the Convention will contain special rules concerning translation costs, a matter which is linked to the documentation requirements for each type of application. With regard to legal advice, assistance and representation, the general factors being taken into account include the following:

(i) ensuring that applicants have effective access to the services and procedures provided for in the Convention;

(ii) ensuring that the burdens on Contracting Parties, as well as the levels of access to services, are equivalent whether procedures are administrative or judicial in nature;

(iii) whether special rules should apply where the applicant is a public body or a debtor;

(iv) the application of means or merits tests;

(v) avoidance of discrimination against overseas applicants;

(vi) consideration of any special needs of overseas applicants arising from distance, language, etc.

Although work remains to be done in drafting a precise formula, the general principle accepted by the Special Commission is that of "effective access" to Convention procedures. Where this requires the provision of legal assistance or representation, there will be an obligation to provide it, but not where procedures are set up in a way to enable the application to proceed without legal assistance or representation.

*671 V. Recognition and Enforcement

Almost all States, responding to the 2002 Questionnaire, [FN18] were of the view that provisions for recognition and enforcement of foreign maintenance decisions should be a key and a compulsory element in the new instrument. It soon became clear, during discussions in the first Special Commission meeting in May 2003, that a large majority of States want a system which maximizes the possibility of international recognition for existing orders. In devising an appropriate regime, the following general factors have been taken into account:

• the system adopted should be one which is capable of attracting universal support;

• the procedures for recognition and enforcement need to be simple and cost effective. Again, it has to be borne in mind that maintenance decisions generally involve relatively modest sums which do not justify the use of cumbersome and expensive procedures;

• the need for speed in a system whose purpose is to provide for the support of needy dependents is obvious;

• the risks involved in adopting a rapid system

of enforcement which places the burden of raising defenses on the debtor are relatively low, given that maintenance payments are mostly modest and periodic in nature. The risk that the debtor may be reduced to a below-subsistence income is low; within many national systems of enforcement devices (e.g. protected earnings rates) exist to prevent this. Provided that there remains a right of subsequent challenge for the debtor, irregularities or injustices should generally be remediable before any serious injustice is done;

• For Contracting States to have full confidence in the new system, there should be some understanding or assurance that the methods of enforcement available in reciprocating States are effective and that they do not place excessive burdens on the creditor. While it is unrealistic and perhaps inappropriate to expect the new instrument to stipulate precise methods of enforcement which should be used in national systems, experience with other Hague Conventions has demonstrated that any serious failing in domestic systems of enforcement can undermine the effectiveness of an otherwise satisfactory system of international co-operation. [FN19] ***672** It is also important that there be no discrimination against foreign creditors as regards access to enforcement procedures.

Responses to the 1998 Questionnaire had suggested that the regimes established by the Hague Conventions of 1958 and 1973 were working reasonably well. [FN20] The 1973 Convention [FN21] in particular has many robust features which have stood the test of time (for example, the definition of a maintenance decision given in Article 1) and many features which were forward-looking (for example, the Convention's application to decisions rendered by administrative authorities, [FN22] and its special provisions relating to public bodies which claim reimbursement of benefits provided for a maintenance creditor). [FN23] Although the number of States Parties to the 1973 Convention remains relatively small, [FN24] the Convention continues to attract active attention from a number of other States. [FN25]

One substantive feature of the 1973 Convention which has inhibited more widespread ratification is the principle, well known and well accepted in many European and other jurisdictions, that a maintenance decision will be entitled to recognition where it has been made by the authorities of the State where the creditor had his or her habitual residence at the time when proceedings were instituted. [FN26] The principle of a "creditor's jurisdiction" is, as will be seen, included in the Council of the European Community Regulation on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, [FN27] and the Montevideo Convention. [FN28]

***673** The Brussels/Lugano regimes [FN29] and the Montevideo Convention [FN30] differ from the Hague Conventions in that they provide rules of direct jurisdiction. The rules provided for in the Brussels/Lugano regimes favor the maintenance creditor by giving him or her a choice of proceeding against the debtor either in the State of the debtor's domicile or habitual residence, or in the State where the creditor is himself or herself domiciled or habitually resident. The maintenance debtor, on the other hand, for example, if modification of the original order is being sought, may only bring proceedings (under the principal rule in Article 2) [FN31] in the State of the defendant's (i.e., the creditor's) domicile or habitual residence. [FN32] The Montevideo Convention goes further by offering the claimant three choices of

forum. These consist of the two provided for under the Brussels/Lugano Conventions, and in addition jurisdiction is given to the authorities of the State with which the "support debtor" has personal links, such as property or income.

These direct rules of jurisdiction also condition the circumstances in which maintenance decisions may be recognized and enforced under the two instruments, though the two instruments, as will be seen, adopt different approaches to the possibility of authorities in the State addressed ***674** reviewing the jurisdiction of the originating court or authority. [FN33]

The United States is not Party to the Hague or to the New York Conventions nor to any regional Convention concerning maintenance obligations. Prior to 1996, most individual states within the United States had reciprocal enforcement arrangements with some twenty countries (and, in the case of Canada, with individual provinces), but not all states had arrangements with all of these countries. Since 1996, bilateral arrangements have been negotiated at the federal level. The background to this federal involvement is explained as follows in the United States response to the 2002 Questionnaire:

The U.S. Congress established the national Child Support Enforcement Program in 1975 under Title IV-D of the Social Security Act (title IV-D), 42 U.S.C. § § 651-669a. The Child Support Enforcement Program is a joint federal, state and local partnership designed to ensure that parents provide support to their children.

Federal law requires states, as a condition for receiving certain federal funds, to adopt a variety of specified laws or procedures to accomplish the objectives of the Child Support Enforcement Program. One of the required laws, the Uniform Interstate Family Support Act (UIFSA) of 1996, was developed by the National Conference of Commissioners on Uniform State Laws (NCCUSL) to provide for a uniform reciprocal process for the establishment and enforcement of child support obligations across state lines.

The nationwide adoption of UIFSA brings uniformity among states in the processing of interstate cases; it provides for the recognition and enforcement of sister state orders; it establishes rules so that there is only one outstanding child support order between the parties; and it establishes rules among states for establishing and modifying support orders.

Title IV-D and UIFSA have special provisions for international cases. In general, if a foreign country is determined under either federal or state law to be a "reciprocating" country, it is treated as if it were a state of the United States for purposes of child support enforcement, and all of the procedures and enforcement mechanisms available under title IV-D and UIFSA for interstate cases are available for cases from that foreign country.

The relevant 1996 federal legislation [FN34] authorizes the Secretary of State to declare any foreign country a reciprocating country provided that country establishes procedures for the establishment and enforcement of support owed to United States residents which are substantially in conformity with the following standards:

- there must be a procedure for establishment of paternity and for the establishment and enforcement of orders of support for children ***675** and custodial parents, including procedures for collection and appropriate distribution of support payments under such orders;
- such procedures, including legal and administrative assistance, must be provided to United States residents at no cost;

• a Central Authority must be designated with responsibility for facilitating support enforcement and ensuring compliance with the mandatory requirements.

Reciprocal obligations are assumed by the United States, including the provision of cost-free support enforcement services in the United States to persons resident abroad. The existing bilateral arrangements made by the United States under these provisions take various legal forms ranging from parallel unilateral policy declarations [FN35] to more formal agreements (e.g., with the Netherlands, Australia, Portugal and Norway). [FN36]

The most noticeable feature of the United States approach in its bilateral arrangements is that recognition and enforcement of a foreign maintenance decision is not conditioned on specific indirect rules of jurisdiction. Either State is, in effect, permitted to apply its own standards. In other words, a decision given in the originating State will be recognized and enforced if, on the same facts, the exercise of jurisdiction would have been possible in the requested State. [FN37] "Under this principle, it would not matter what jurisdictional bases the requesting State's court articulated when it rendered the judgment. The crucial question is whether, regardless of the reason stated by the court of the requesting State, the facts of the case would support jurisdiction under the rules of the requested State. If so, the judgment should be recognized." [FN38] If not, the requested State should take appropriate steps to establish a new decision.

It has been argued in favor of this approach that, quite apart from its flexibility which accommodates varying approaches to jurisdiction in different ***676** countries, it works well in practice and results in the recognition of most maintenance decisions. The United States proposed in its response to the 2002 Questionnaire that this "fact-based" approach to recognition and enforcement should be embodied in the new instrument and that its adoption "would avoid a prolonged and futile effort to develop uniform jurisdictional standards." [FN39]

The Special Commission has, in fact, opted for a compromise between the United States "fact-based" approach and the "creditor's jurisdiction" favored by many other States. This compromise, which was suggested in outline in Preliminary Document No 3, [FN40] takes the following form in the current Draft:

Article 27 Bases for recognition:

1. A maintenance decision made in one Contracting State (the State of origin) shall be recognized 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

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 recognized only if it has effect in the State of origin, and shall be enforced only if it is enforceable in the State of origin. [FN41]

The advantages of this approach are that:

• it includes recognition of decisions based on creditor's jurisdiction for those States that favor this principle and wish to have it ***677** expressed explicitly in the new instrument, and it ensures mutual recognition and enforcement of such decisions among such States;

• it accommodates States which would find it impossible to recognize and enforce a decision based solely on the creditor's residence within the jurisdiction of the originating court or authority;

• no State is obliged to recognize or enforce a foreign decision in circumstances where mutatis mutandis its own authorities/courts would not be able to exercise jurisdiction;

• for those States currently Parties to the Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations, this approach would not (leaving aside for the moment the question of nationality jurisdiction under Article 7(2) of the 1973 Convention) result in any reduction in the range of circumstances in which recognition and enforcement of foreign decisions may at present be afforded. This assumes, of course, that those States would not wish to enter the reservation.

VI. Procedures for Recognition and Enforcement [FN42]

The procedure for recognition and enforcement likely to be adopted [FN43] ***678** is one in which (a) ex officio control by the "registering" authority is limited (b) a full inter partes hearing at the stage of registration is ruled out, and (c) the burden of raising a limited number of defences to recognition in effect falls on the person against whom enforcement is sought. It happens that these features are shared by three important existing instruments.

The Brussels Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [FN44] which has maintenance obligations within its scope, [FN45] contains the familiar formula that the procedures by which a judgment is declared enforceable (or registered for enforcement) in another State are governed by the law of the Member State in which enforcement is sought. [FN46] However, the declaration of enforceability must be given immediately on the completion of certain formalities. [FN47] These consist of a production of a copy of the judgment and a standard form certificate, including a statement that the judgment is enforceable in the State of origin. [FN48] At this point, there can be no review of the possible grounds for refusing recognition, which are set out in Article 34, nor of the basis upon which the originating court assumed jurisdiction. Also, the party against whom enforcement is sought is not entitled at this stage to make submissions on the application. An appeal against the declaration of enforceability may be lodged within one month of service thereof (two months where the appellant is resident in another Member State). [FN49] Only limited defences may be raised [FN50] in the appeal and the decision on the appeal must be taken without delay. [FN51] The rationale for this system is described thus in paragraphs 17 and 18 of the Preamble to the Regulation:

***679** (17) By virtue of the [same] principle of mutual trust, the procedure for making enforceable in one Member State a judgment given in another must be efficient and rapid. To that end, the declaration that a judgment is enforceable should be issued virtually automatically after purely formal checks of the documents supplied, without there being any possibility for the court to raise of its own motion any of the grounds for non-enforcement provided for by this Regulation.

(18) However, respect for the rights of the defence means that the defendant should be able to appeal in an adversarial procedure against the declaration of enforceability, if he considers one of the grounds for non-enforcement to be present. Redress procedures should also be available to the claimant where his application for a declaration of enforceability has been rejected.

A similar system, with certain exceptions, applies to the recognition and enforcement of judgments on the exercise of parental responsibility under the Brussels Regulation concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility. [FN52]

Under the Uniform Interstate Family Support Act (2001 revision) (USA), [FN53] registration is the primary method for interstate enforcement of a child support order by a tribunal in a responding state. The process is triggered by the sending of specified records and information (including a certified copy of the order) to the state addressed. Registration occurs when the order is filed in the registering tribunal of the state addressed. The order is then enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal in the state addressed. [FN54]

The non-registering party is then notified (including full information about the effects of registration) and told that a request for a hearing to contest the validity of enforcement must be made within twenty days after notice. [FN55] The burden falls on the non-registering party to assert narrowly defined defenses, for example that the originating authority lacked jurisdiction, that payment has already been made, or that the order was obtained by fraud.

The Canadian Inter-jurisdictional Support Orders Act [FN56] adopts a similar approach. That Act was adopted in Manitoba in July 2001, [FN57] and it is that adaptation of the Act that is referred to here. On receipt of a certified copy of an extra-provincial or a foreign order, the Manitoba court must register ***680** the order as an order of the court. [FN58] It then has the same effect as if it were a support order made by the court addressed, and may be enforced in the same manner as a support order made by that court. Notice of registration must then be sent to any party to the order resident in Manitoba. That party may apply, within thirty days after notice, to have registration set aside. The grounds for challenge are limited as follows:

1) that in the proceeding in which the foreign order was made, a party to the order did not have proper notice or a reasonable opportunity to be heard,

2) that the foreign order is contrary to the public policy of Manitoba, and

3) that the court that made the foreign order did not have jurisdiction to make the order. [FN59]

VII. Enforcement Under National Law

The responses to the 2002 Questionnaire [FN60] revealed a very wide range of

enforcement methods and procedures operating at the national level. With regard to methods of enforcement, wage withholding, garnishment from bank accounts and other sources, deductions from social security payments, forced sale of property and committal to prison as a last resort are now fairly widespread. Other less common mechanisms include tax refund intercepts; division of pension benefits; credit bureau reporting; denial, suspension or revocation of various licenses (for example, driving licenses); attachment of lottery earnings; and passport denial. National procedures concerning enforcement also differ in the degree to which the burden of pursuing enforcement is taken from the shoulders of the creditor and assumed by the authorities.

It is usual for an international instrument dealing with recognition and enforcement of foreign decisions to provide that the procedures for enforcement should be governed by the law of the State addressed. [FN61] Nevertheless, difficulties, or markedly different levels of performance, in relation to enforcement at national level can sometimes undermine otherwise satisfactory international co-operation, as well as the sense of fairness necessary to underpin mutual confidence. If any form of bilateralization is eventually built into the structure of the new instrument, there is little doubt that the adequacy, effectiveness or equivalence of another country's enforcement methods and procedures will be taken into account when decisions are ***681** being made about whether or not to enter into binding treaty relationships.

Although it would be difficult to impose on Contracting States an obligation to introduce at the international level methods of enforcement which do not exist for domestic cases, some more general requirements may be acceptable. The current Draft illustrates what may be possible. (The square brackets around Article 35 indicate its tentative nature.

[Article 35--Contracting States shall take effective measures to enforce decisions under the Convention, by means such as:

a) wage withholding;

b) garnishment from bank accounts and other sources;

c) deductions from social security payments;

d) lien on or forced sale of property;

e) tax refund withholding;

f) withholding or attachment of pension benefits;

g) credit bureau reporting;

h) denial, suspension or revocation of various licenses (for example, driving licenses)].

Article 36--Enforcement shall take place in accordance with the law of the requested State.

Article 37--Where a foreign decision is entitled to be recognized 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--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.

VIII. Jurisdiction to Make and Modify Maintenance Decisions

One of the most difficult issues confronted by the Special Commission has been that of direct jurisdiction. On the one hand, several advantages would flow from a uniform international approach to jurisdiction, including the avoidance of multiple decisions especially

where modification has occurred. On the other hand, the difficulty of achieving consensus on agreed jurisdictional standards, combined with doubts as to whether the absence of such rules constitutes at present an important stumbling block to international maintenance recovery, have convinced most States participating in the Special Commission, that it is better to concentrate the resources of the Special Commission on the principal concerns, namely establishing an effective system of administrative co-operation combined with broad-based and simple procedures for recognition and enforcement.

There are two principal areas of divergence in current approaches to jurisdiction. First, in the case of jurisdiction to make original maintenance ***682** orders or decisions, there is the divergence between on the one hand those systems which accepted creditor's residence/domicile without more as a basis for exercising jurisdiction (typified by the Brussels/Lugano and Montevideo regimes), and, on the other hand, systems which insist upon some minimum nexus between the court or authority exercising jurisdiction and the debtor (typified by the system operating within the United States). Second, in the case of jurisdiction to modify an existing maintenance order or decision, there is the divergence between systems which adopt the general concept of "continuing jurisdiction" in the State where the original order or decision was made (see United States model), and those which on the other hand accept that jurisdiction to modify an existing order may shift to the courts or authorities of another State, in particular one in which the creditor has established a new residence or domicile (see the Brussels/Lugano model as an example).

At the time of writing, it appears unlikely that the new Convention will contain uniform jurisdictional standards. On the other hand, discussion is continuing on the possibility of developing specific rules to diminish the likelihood of multiple orders. The one case where agreement seems possible is that embodied in the current draft Article 45. [FN62] The Brussels, Montevideo and UIFSA regimes all require the debtor to return to the originating jurisdiction to obtain modification if that is were the creditor was and still is habitually resident.

A. Applicable Law

Those European States, as well as Japan, that are Party to one or both of the two Hague Conventions of 1956 and 1973 on applicable law, [FN63] are familiar with the concept of applying foreign law, even to the issue of quantification, in maintenance cases. On the other hand, to many common law jurisdictions, the idea of applying foreign law is unthinkable. Slow and expensive procedures for proof of foreign law, as well as the introduction in many jurisdictions of complex mathematical formulae for the assessment of maintenance, combine (it is argued) to make the application ***683** of foreign law to generally modest claims for maintenance neither practical nor cost-effective.

A special Working Group on the Law Applicable to Maintenance Obligations was established during the first meeting of the Special Commission in May 2003. That Working Group reported to the second meeting of the Special Commission [FN64] concluding that none of the compromise solutions considered by it seemed to be acceptable to the common law States.

If the new Convention does include a Chapter embodying a general applicable law regime, it

seems now to be accepted that this would be optional. On the other hand, it remains possible that there may be included within the main body of the Convention certain very specific applicable law rules. For example, there is some support for the inclusion of a rule specifying the law applicable to the question of limitations on enforcement proceedings. There is also likely to be further discussion of the approach adopted in the common law Provinces and Territories of Canada according to which the eligibility of a child to receive maintenance is determined in the first instance by the law of the State where the child is ordinarily resident and, if the child is not entitled to support under that law, then the law of the forum. [FN65]

The Working Group on applicable law has been mandated to continue its work, and will bring forward to the next meeting of the Special Commission suggestions for specific rules, as well as its ideas for a general regime (essentially a revision of the Hague Convention of 1973) which may become an optional chapter in the new Convention.

B. Securing Co-operation and Effective Implementation

The new instrument will be a practical working tool, setting out procedures to be observed in particular cases and containing detailed provisions for co-operation between authorities in the different Contracting States. Its provisions will be applied and interpreted in countries all around the world which have different legal and administrative cultures. At the same time, there will probably be no executive or judicial body to which Contracting States may turn to remove blockages or to enforce obligations on recalcitrant partner States or to provide binding interpretations of the Convention's text. The Special Commission is considering what can be done to ensure:

- that the instrument is effectively implemented in Contracting States;

***684** • that practice and interpretation under the Convention is kept reasonably consistent in Contracting States;

- that operational problems and blockages are confronted and resolved in a timely fashion;
- that the mutual confidence among Contracting States, which is necessary for effective co-operation, is developed and maintained.

These same challenges have confronted those already existing Hague Conventions which establish systems of administrative and judicial co-operation in the areas of child protection and legal co-operation. The Hague Conference has indeed been in the forefront in developing post-Convention services to support the effective operation of its instruments. The Permanent Bureau now spends 50% of its time on post-Convention activities. [FN66] It is the Permanent Bureau's view that this type of activity is absolutely essential to maintain the health and vitality of workable international systems of co-operation, and that even more intensified post-Convention work will be needed if the new instrument on maintenance obligations is to be a success. [FN67]

A number of measures to ensure effective implementation are being considered by the Special Commission. Already the Draft contains provisions on the periodic review of the operation of the Convention, the gathering of information (including statistics), [FN68] and the uniform interpretation of the Convention. [FN69] The development of a Guide to Good Practice on implementing measures and perhaps Central Authority Practices [FN70] is already being discussed. Various other measures taken

by the Permanent Bureau in respect of the Hague Conventions are described in Preliminary Document No 3, paragraphs 159-163. [FN71]

The question also arises whether there should be any "point of entry requirements" for States envisaging ratification or accession. For example, should there be a requirement to provide information concerning the assistance ***685** and facilities which are available to foreign applicants within national systems, including enforcement procedures?

The matter of bilateralization, though not yet the subject of detailed discussion within the Special Commission, is likely to raise its head during the later phases of the negotiations. Several Hague Conventions, including the Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations, adopt a middle path (partial bilateralisation), whereby Member States of the Hague Conference qualify for automatic entry into the Convention club, while non-Member States are subject to the possibility that individual existing Contracting States may not do business with them. For example, under the Hague Convention of 1973 all Member States of the Hague Conference at the time of the Conference's Twelfth Session (when the treaty was being negotiated) are entitled to ratify the Convention which enters into effect automatically among all such ratifying States. Other States may accede to the Convention, but the accession is effective only in relation to those Contracting States which have not raised an objection within a twelve-month period. [FN72] The Hague Convention of 1980 makes the same distinction between States which were Member States of the Conference at the time of the negotiations and other States. [FN73] However, in this case a positive declaration is required before an accession becomes effective between the acceding State and any existing Contracting State. [FN74] The result in practice is that there may be some delay before an acceding State to the 1980 Convention enjoys relations with the full, or even a wide, range of other Contracting States. [FN75]

The system adopted under the 1980 Convention has advantages and disadvantages. One disadvantage is the frustration that a newly acceding State may experience while it waits for other Contracting States to address the matter of acceptance of its accession. One advantage is that the system gives existing Contracting States the opportunity to consider whether the newly acceding State has put into place the basic structures necessary to be able to undertake Convention obligations. However, it is clear that different States have different views about the value of the system operating under the 1980 Convention, and different policies towards the acceptance ***686** of accessions, some being cautious and others accepting new accessions readily.

For those States which are concerned to ensure that there is a fair exchange or a substantial equivalence in the provision of services offered by themselves and other States with whom they co-operate, a bilateralization process does seem to offer a form of protection. However, question 33(i) of the 2002 Questionnaire [FN76] which asked whether the new instrument should contain provisions enabling Contracting Parties to avoid providing services to applicants from abroad where they are not available on a reciprocal basis, prompted mixed responses. Most respondents were either opposed to the idea or did not regard it as a priority issue. Some were strongly opposed, regarding such provisions as a retrograde step. Although

question 33(i) was not asked in the context of possible bilateralisation, the responses do suggest that there may be considerable opposition to the idea of total bilateralization.

IX. Conclusions

It has been possible in the course of this short paper to give only a flavor of the broad-ranging discussions carried on within the Special Commission. Some important matters have not been commented upon, for example, questions of scope [FN77] including the possibility that Contracting States may be given the option of limiting the scope of the Convention to child support cases only. [FN78] There are also a variety of important issues surrounding establishment of parentage in the context of child support. [FN79]

The negotiations so far have been characterised by a strong sense of common purpose--the need to offer children and other dependants a simpler, swifter, more cost-effective international system for the recovery of maintenance. The present international system is under-utilised and needs to be made much more accessible. It needs to make more use of the savings in cost and time made possible by the new information technologies, [FN80] and it needs to take better account of the many important developments that have occurred in national systems, particularly child-support systems, which are designed to improve the efficiency with which liability is established and payments are calculated and then enforced.

***687** Achieving an instrument which is clear and coherent will be only the beginning of a continuing process. Experience with other Hague Conventions which set out systems of administrative or judicial co-operation has demonstrated the importance of continuing "post-Convention" work to ensure widespread ratification, effective and consistent implementation at the national level, monitoring and review of the operation of the instrument, and more generally work to build up the networks and the mutual confidence on which the successful operation of the Convention will depend. If the negotiations are successful, tens of thousands of children and other dependants worldwide stand to benefit from the new Hague Convention. It may also indirectly assist national exchequers by reducing dependency on state welfare payments.

[FNa1]. Professor Duncan serves as the Deputy Secretary General of the Hague Conference on Private International Law.

[FN1]. Note that all the documentation relating to the process is available on the Hague Conference website available at http://www.hcch.net. >Work in progress >Maintenance Obligations.

[FN2]. Preliminary Document No 5 of October 2003, Report on the first meeting of the Special Commission on the International Recovery of Child Support and other Forms of Family Maintenance may be viewed on the Hague Conference website available at http://www.hcch.net/doc/maint_pd05e.pdf.

[FN3]. Member States: Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Chile, China, Czech Republic, Denmark, Egypt, Finland, France, Germany, Hungary, Ireland, Israel, Italy, Japan, Republic of Korea, Luxembourg, Mexico, Morocco, Netherlands, New Zealand, Norway, Peru, Poland, Portugal, Russian Federation, Slovakia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay and Venezuela. Observer Non-Member States: Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Holy See, India, Mongolia, Pakistan, Paraguay, Philippines, Uganda and Zimbabwe.

[FN4]. Organisations: United Nations Committee on the Rights of the Child (UNCRC), Inter-American Children's Institute (IACI), European Commission, Council of the European Union, European Parliament, Commonwealth Secretariat, International Academy of Matrimonial Lawyers (IAML), International Bar Association (IBA), International Association of Juvenile and Family Court Magistrates, Defence for Children International (DCI), International Association of Women Judges (IAWJ), National Child Support Enforcement Association (NCSEA) and the German Institute for Youth, Human Services and Family Law.

[FN5]. Proposal by the Drafting Committee, "Working Draft of a Convention on the International Recovery of Child Support and Other Forms of Family Maintenance," Working Document No 34, on the Hague Conference website available at http://www.hcch.net/doc/maint_wd34e.pdf.

[FN6]. In particular, Preliminary Document No 3 of April 2003, Towards a New Global Instrument on the International Recovery of Child Support and other Forms of Family Maintenance; Preliminary Document No 8 of May 2004, Procedures for Recognition and Enforcement Abroad of Decisions concerning Child Support and other Forms of Family Maintenance; and Preliminary Document No 10 of May 2004, Administrative and Legal Costs and Expenses under the new Convention on the International Recovery of Child Support and other Forms of Family Maintenance, including Legal Aid and Assistance. Available at http:// www.hcch.net >Work in progress >Maintenance Obligations.

[FN7]. The Hague Convention of 24 October 1956 on the law applicable to maintenance obligations towards children; the Hague Convention of 15 April 1958 concerning the recognition and enforcement of decisions relating to maintenance obligations towards children; the Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decisions relating to Maintenance Obligations; and the Hague Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations.

[FN8]. See Report on and Conclusions of the Special Commission on Maintenance Obligations of April 1999, drawn up by the Permanent Bureau, Hague Conference on Private International Law, December 1999, and "Note on the Desirability of Revising the Hague Conventions on Maintenance Obligations and including in a New Instrument Rules on Judicial and Administrative Co-operation," drawn up by William Duncan, Preliminary Document No 2 of January 1999 for the attention of the Special Commission. Available at http:// www.hcch.net >Work in progress >Maintenance Obligations.

[FN9]. See "General Conclusions of the Special Commission of November 1995 on the operation of the Hague Conventions Relating to Maintenance Obligations and of the New York Convention of 20 June 1956 on the Recovery Abroad of Maintenance," drawn up by the Permanent Bureau, Preliminary Document No 10 of May 1996 for the attention of the Eighteenth Session. Available at http:// www.hcch.net >Work in progress >Maintenance Obligations.

[FN10]. See footnote 29.

[FN11]. The Inter-American Convention on Support Obligations, adopted at Montevideo 15 July 1989.

[FN12]. Preliminary Document No 1 of June 2002, Information Note and Questionnaire concerning a New Global Instrument on the International Recovery of Child Support and other Forms of Family Maintenance. Available at http:// www.hcch.net >Work in progress >Maintenance Obligations.

[FN13]. See Preliminary Document No 4 of April 2003, Parentage and International Child Support Responses to the 2002 Questionnaire and an Analysis of the Issues. Available at http://www.hcch.net >Work in progress >Maintenance Obligations.

[FN14]. Draft Article 11 of Working Document No 34: 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].

Note: Text in square brackets is tentative or has not been fully considered by the Special Commission.

[FN15]. Paragraphs 39 and 40 of Preliminary Document No 10 of May 2004, Administrative and Legal Costs and Expenses under the new Convention on the International Recovery of Child Support and other Forms of Family Maintenance, including Legal Aid and Assistance.

[FN16]. Draft Article 25, paragraph 1.

[FN17]. Draft Article 25, paragraph 2.

[FN18]. See supra note 12.

[FN19]. See "Transfrontier Access / Contact and the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Preliminary Report," drawn up by William Duncan, Deputy Secretary General, Preliminary Document No 4 of March 2001 for the attention of the Special Commission of March 2001 at paragraph 41. Available at http://www.hcch.net >Work in progress >Maintenance Obligations.

[FN20]. See "Report on and Conclusions of the Special Commission on Maintenance Obligations of April 1999." See also Preliminary Document No 2 of January 1999. Available at http://www.hcch.net >Work in progress >Maintenance Obligations.

[FN21]. The Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decision-making for Maintenance Obligations.

[FN22]. Article 1.

[FN23]. Chapter IV.

[FN24]. The 1973 Convention has been ratified by Australia, Czech Republic, Denmark, Finland, France, Germany, Italy, Luxembourg, the Netherlands, Norway, Portugal, Slovakia, Spain, Sweden, Switzerland, Turkey and the United Kingdom and acceded to by Estonia, Lithuania and Poland. The relationship between the status of the 1958 and the 1973 Conventions is described in the 1999 Note at paragraph 11. The current States Parties to the 1958 Convention are Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Hungary, Italy, Liechtenstein, Netherlands, Norway, Portugal, Slovakia, Spain, Suriname, Sweden, Switzerland and Turkey.

[FN25]. See, e.g., the recent accession by Australia on 1 February 2002. Lithuania also acceded to the Convention

on 5 June 2002 with entry into force on 1 July 2003. Canada is known to be giving some consideration to ratification of the 1973 Convention.

[FN26]. Article 7.1.

[FN27]. Council Regulation (EC) No 44/2001 of 22 December 2000, Article 5.2. The same principle is contained in the Lugano Convention, as well as in the original Brussels Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters of 27 September 1968.

[FN28]. Article 8(a).

[FN29]. The original Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, of 27 September 1968, as amended by 3 Accession Conventions, has now been replaced for EU Member States by Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters now operates. This is a revision of the 1968 Brussels Convention, but the basic approach to jurisdiction in respect of maintenance claims has been retained. On 16 September 1988 EU Member States and EFTA States concluded the Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, which is a parallel Convention to the 1968 Brussels Convention but open to third States. Work on the revision of the Lugano Convention, which should bring that Convention into approximate alignment with the Council Regulation, is not yet complete. The States Parties to the Lugano Convention, along with the then EU States, are Switzerland, Norway, Poland and Iceland.

[FN30]. The Convention has been ratified by Belize, Bolivia, Brazil, Costa Rica, Ecuador, Guatemala, Mexico, Panama, Paraguay and Uruguay, and has been acceded to by Argentina. The Convention has been signed by Colombia, Haiti, Peru and Venezuela.

[FN31]. References, except where otherwise indicated, are to the Articles of the Council Regulation.

[FN32]. A court having jurisdiction, according to its own law, to entertain proceedings concerning the status of a person (e.g., divorce proceedings) also has jurisdiction to deal with ancillary matters of maintenance, unless its jurisdiction is based solely on the nationality of one of the parties. See Brussels Regulation Article 5.2. There is a proposal to add a further ground of jurisdiction under the Brussels Regulation. Where maintenance matters are ancillary to proceedings concerning parental responsibility, the court having jurisdiction to entertain those proceedings will also have jurisdiction to deal with maintenance. See Article 7 of Council Regulation (EC) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility, repeating Regulation (EC) No 1347/2000 and amending Regulation (EC) No 44/2001 in matters relating to maintenance.

[FN33]. See, in particular, Brussels Regulation, Article 35.3 and the Montevideo Convention, Article 11(a).

[FN34]. 42 U.S.C. ¶ 659A.

[FN35]. With various Canadian Provinces, the Czech Republic, Ireland, Poland and the Slovak Republic. Many more arrangements are currently under negotiation.

[FN36]. See, e.g., agreement between the Government of the Kingdom of the Netherlands and the Government of the USA for the Enforcement of Maintenance (Support) Obligations of May 2001, XL VIII NETHERLANDS INT'L LAW REVIEW (2001).

[FN37]. See Article 7.1 of the U.S. Model Agreement and the further explanations provided in Robert G. Spector's essay "Towards an accommodation of divergent jurisdictional standards for the determination of maintenance obligations in private international law," Annex 3 to the United States response to the 2002 Questionnaire, where it is explained at page 11, footnote 16, that this approach was originally used in the Uniform Child Custody Jurisdiction Act, paragraph 14, which provided that the courts of this State shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions

substantially in accordance with this Act or which was made under factual circumstances meeting the jurisdictional standards of the Act, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of this Act.

[FN38]. See Robert G. Spector's Essay in NETHERLANDS INT'L L. REV., supra note 33, at. 11-12.

[FN39]. See United States response to question 33(b).

[FN40]. See paragraph Nos 85-88.

[FN41]. Note: Text in square brackets is tentative or has not been fully considered by the Special Commission.

[FN42]. See general Preliminary Document No 8 of May 2004, Procedures for Recognition and Enforcement Abroad of Decisions concerning Child Support and other Forms of Family Maintenance. Available at http://www.hcch.net >Work in progress >Maintenance Obligations.

[FN43]. See Article 30 of the Working Draft:

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 certified 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.

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 fulfillment 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.

[FN44]. No 44/2001 of 22 December 2000.

[FN45]. The Regulation excludes from its scope matters of status and property arising out of a matrimonial relationship (Art. 1(2)(a)).

[FN46]. Article 40, paragraph 1.

[FN47]. Article 41.

[FN48]. Article 53.

[FN49]. Article 43, paragraph 5.

[FN50]. These include the grounds for refusing recognition set out in Art. 34 as well as lack of jurisdiction in the originating court, but only in very limited cases. See art. 35(1).

[FN51]. Article 45.

[FN52]. No 2201/2003 of 27 November 2003.

[FN53]. All United States jurisdictions had by 1998 enacted UIFSA. The latest revision is that of 2001.

[FN54]. Section 603.

[FN55]. Section 605.

[FN56]. The Act, which applies to maintenance obligations in respect of children and adults, has been enacted in all the thirteen Canadian Provinces and Territories with the exception of Quebec, the Northwest Territories and the Yukon.

[FN57]. C.C.S.M. c.160.

[FN58]. Section 18.

[FN59]. Section 19, sub-section 3.

[FN60]. Id. at note 12.

[FN61]. See, e.g., the 1993 Hague Convention, Article 13.

[FN62]. See Proposal by the Drafting Committee of the Working Draft (Work. Doc. No 34) dated 17 June 2004 (Article 45. 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).

[FN63]. The following are Contracting States to or have signed the Hague Convention of 24 October 1956 on the law applicable to maintenance obligations towards children: Austria, Belgium, China, Macao Special Administrative Region only, France, Germany, Greece, Italy, Japan, Liechtenstein, Luxembourg, Netherlands, Norway, Portugal, Spain, Switzerland and Turkey.

[FN64]. See Working Document No 13 of 10 June 2004.

[FN65]. See, e.g., the Inter-Jurisdictional Support Orders Act (Manitoba) § 12(1).

[FN66]. See "The Hague Conference on Private International Law: Resources Deficiencies and Strategic Positioning," Pricewaterhouse Coopers Report, Preliminary Document No 19 of March 2002 for the attention of Commission I (General Affairs and Policy of the Conference) of the XIXth Diplomatic Session-April 2002.

[FN67]. For a description of work undertaken by the Permanent Bureau in support of the 1980 Hague Convention, see William Duncan, Action in Support of the Hague Child Abduction Convention: A View from the Permanent Bureau, 33 N.Y.U. J. INT'L L. & POL'Y, 103 (2000).

[FN68]. Draft Article 43.

[FN69]. Draft Article 44.

[FN70]. See, e.g., the Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Part I-- Central Authority Practice and Part II--Implementing Measures. Available at http://www.hcch.net >Child Abduction Homepage >Guide to Good Practice.

[FN71]. See id. at note 6.

[FN72]. Article 31. Cf. the Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations, Article 44; and the 1996 Hague Convention, Article 58, where the time for objection is six months. In the case of the 1993 Convention, automatic entry to the club is also available to States which took part in the session during which the Convention was negotiated.

[FN73]. Article 37.

[FN74]. Article 38.

[FN75]. See the chart of accessions and acceptances of accessions to the 1980 Convention available at http://www.hcch.net >Child Abduction Homepage > Status of the Convention.

[FN76]. Id. at note 12.

[FN77]. See Preliminary Document No 3, Chapter VII. See id. at note 6.

[FN78]. See Draft Article 46.

[FN79]. See, in particular, Preliminary Document No 4 of April 2003, Parentage and International Child Support Responses to the 2002 Questionnaire and an Analysis of the Issues, drawn up by Philippe Lortie, First Secretary. Available at http://www.hcch.net >Work in Progress >Maintenance Obligations.

[FN80]. See, in particular, id. at note 79. Parentage and International Child Support Responses to the 2002 Questionnaire and an Analysis of the Issues, drawn up by Philippe Lortie, First Secretary.

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