



I COMMITTEE

THE CRISIS OF MULTILATERALISM

The XXXI Congress of the IHLADI,

Reaffirming its commitment to multilateralism in international society in order to help strengthen cooperation among States and bearing in mind that it has been a great step forward in facing common challenges at the global and regional levels;

Affirming that multilateralism also implies the participation of peoples and other actors, and bearing in mind that its development and strengthening is determined by the sovereign will of States and that its stimulation or weakening depends on the decisions they take;

Bearing in mind that, if members of the international community favour a unilateral, autarchic behaviour and distance themselves from international cooperation, this leads to its weakening;

Considering that we are facing challenges that can only be met effectively if there is cooperation between States in a wide range of areas, including economic, health, defence, environmental, human security, migration and mass population movements, energy, cybersecurity and food;

Bearing in mind that international law has benefited from the contribution of multilateralism, through the creation of an international institutional level materialised in international organisations and the contribution to the progressive development of this legal discipline and its codification in various fields, such as the law of treaties, human rights, humanitarian law, the law of the sea, environmental law and cultural heritage, among others;

Noting that, despite the significant contributions mentioned above, the post-war institutional framework was created with asymmetries that made it clear that not all members of the international community are on an equal footing in the international legal system, which is reflected in the privileged situation of the permanent members of the United Nations Security Council, which has resulted, at particularly sensitive times, in the paralysis of this main body, weakening its action;

Noting the lack of commitment of some states to multilateralism as a result of conduct that is determined only by short-term interests and not by a permanent principle of foreign policy, marginalising them from stable obligations and generating uncertainty for the future;

Noting that the crisis of the nation-state is one of the basic elements of the transformation of the concept of multilateralism and reiterating the need for a detailed analysis of the options that have emerged in different areas;

Noting that international peace and security are affected not only by the use of armed force, but also by other increasingly frequent threats, such as pandemics, climate change and global warming, and that the current international institutional framework has difficulties in addressing these challenges;

Considering that the concept of international peace and security is not limited to the use of armed force, but also includes multidimensional security;

Considering that citizens and non-governmental actors in states must participate and be sensitised to take action to help make international cooperation and development objectives effective;

Bearing in mind that academic activity plays a significant role in promoting civic values and principles of solidarity and good neighbourliness,

Adopts the following

CONCLUSIONS

1. Calls upon States, their various organs and other international actors to reaffirm their commitment to multilateralism, which should be promoted in international relations and as a permanent principle of external relations and a stimulus to cooperation among members of the international community.
2. The challenges facing the planet and the international community as a whole, including economic, health, defence, environmental, migration and mass population movements, energy, organised crime, cybersecurity and food security, cannot be effectively addressed and tackled with unilateral policies, but require collective action, which depends on the sovereign will of States through multilateralism.
3. States are called upon to comply with the timetable for the achievement of the United Nations Sustainable Development Goals (SDGs), as global goals, to tackle poverty, protect the planet and ensure that, by 2030, people will achieve greater levels of peace, solidarity and prosperity.
4. The contribution of multilateralism to international law is valued, particularly with regard to the progressive development of this legal discipline and its codification. It is urged to continue on this path by supporting the work of the International Law Commission of the United Nations and other regional legal development bodies. In this respect, the results achieved in some areas, such as, for example, the draft articles on international responsibility of States for wrongful acts of the International Law Commission of the United Nations Organisation, should be approved.
5. The importance and contribution of international organisations and their stable existence over time, as demonstrated by the 77 years of existence of the United Nations Organisation, the 74 years of the Organisation of American States, the 73 years of the Council of Europe and the more than 100 years of the International Labour Organisation.
6. Without prejudice to the above conclusion, the international institutional framework requires prompt evaluation and reform. The asymmetries that have existed since the end of the Second World War must be overcome. Among them, it is necessary to review the composition of the Security Council and the special powers granted to its permanent members, which have repeatedly paralysed the adoption of urgent resolutions aimed at guaranteeing international peace and security, preventing the fulfilment of the essential responsibility of this body and affecting the effective action of the UN.

7. The concept of international peace and security must be reviewed, since it is not only affected by the use of armed force. It has been demonstrated that international peace and security are also clearly affected by other threats, such as health emergencies, for instance, so far this century, the serious and widespread COVID-19. To this must be added other phenomena that clearly affect security, such as climate change and its effects, among others.

8. Multilateralism has empirically demonstrated its usefulness in resolving international conflicts, as well as in promoting cooperation in the common interests of states and the international community as a whole. In addition to the State, as the primary subject of the international order, other sub-state entities and bodies, such as courts of justice, parliaments, town councils, universities, as well as social agents in general, must be called upon to contribute to this multilateralism, within the framework of the cooperation which is inherent to it.

9. The IHLADI, bearing in mind that it is necessary to reinforce the analysis and the consequent legal proposals, as well as the awareness of citizens and non-governmental actors of the various States, commits its action to support multilateralism as an effective way of strengthening cooperation among the members of the international community.

II COMMITTEE

CHALLENGES OF INTERNATIONAL LAW IN THE FACE OF THE PHENOMENON OF MASS MIGRATIONS

The XXXIth Congress of the IHLADI,

Considering that throughout the 21st century, migratory movements have increased considerably;

Considering that this phenomenon has its origin in multiple interrelated factors, such as economic, security, environmental, among others;

Whereas the human rights of all persons must be guaranteed and protected;

Considering that, given the lack of acceptance by the host States and the increasing difficulties faced by migrants, which put their lives, human rights and other rights guaranteed in different treaties at risk;

Taking into account that human rights instruments such as the Universal Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights guarantee human rights, including those of the migrant population;

Taking into account that instruments relating to migrants, such as the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families guarantee the rights of the migrant population;

Adopts the following

CONCLUSIONS

1^a. The States have the obligation to respect the human rights of all individuals, as well as to guarantee the full respect of their international commitments.

2^a. States must guarantee the rights of migrant children and adolescents, which includes in particular the right to health and education.

3^a. States must promote world stability in order to guarantee decent living conditions that do not force the population of the different regions of the world to migrate.

4^a. The States must promote the labor insertion, health and education of immigrants, in order to guarantee a dignified life, as well as promote the negotiation and ratification of treaties that allow and facilitate the recognition of the provisional contributions of migrant workers so that they can have access to a dignified pension.

5^a. States should promote the negotiation and ratification of treaties of universal and regional scope on migration issues that allow access to a minimum standard of rights that facilitate access to labor insertion, health and education of the migrant population.

6^a. States must consider the conditions of forced migration derived from climate change.

7^o. IHLADI invites States to take into account both the recitals and the conclusions of this resolution in order to promote the defense of the rights of immigrants and the ratification, by those States that have not yet done so, of the existing international instruments on immigration.

III COMMITTEE

HUMAN RIGHTS AND NON-DISCRIMINATION ON THE BASIS OF GENDER

The XXXIth Congress of the IHLADI,

Whereas the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women; whereas the Universal Declaration of Human Rights reaffirms the principle of non-discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone may claim all the rights and freedoms set forth therein, without distinction of any kind, and therefore without distinction as to sex; that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal right of men and women to the enjoyment of all economic, social, cultural, civil and political rights;

Recalling that the United Nations Convention on the Elimination of All Forms of Discrimination against Women, the Inter-American Convention on the Prevention and Punishment of Violence against Women (Convention of Belém do Pará), the European Convention on preventing and combating violence against women and domestic violence of the Council of Europe (Istanbul Convention) and the Convention against Violence and Harassment of the International Labour Organization condemn discrimination against women in all its forms and agree to pursue, by all appropriate means and without delay, a policy of eliminating discrimination against women;

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity; hinders the participation of women on equal terms with men in the political, social, economic and cultural life of their country; constitutes an obstacle to the improvement of the welfare of society and of the family; and hinders the full development of the potential of women to serve their country and humanity;

Concerned to note that, despite the existing international legal framework, women continue to be victims of serious discrimination, and by the fact that in situations of poverty women have minimal access to food, health, education, training and employment opportunities, as well as to the satisfaction of other needs and are particularly affected by the consequences of climate change;

Emphasizing that the elimination of apartheid, all forms of racism, racial discrimination, colonialism, aggression, foreign occupation and domination is indispensable for the full enjoyment and exercise of the rights of men and women;

Affirming that violence against women constitutes a violation of human rights and fundamental freedoms, totally or partially limits women's recognition, enjoyment and exercise of such rights and freedoms, and can even be used as a weapon of war, which constitutes a war crime and a crime against humanity;

Emphasizing the principles and norms that underpin equality among human beings in the acquisition and enjoyment of human rights and fundamental freedoms, together with the obligations to adopt effective measures to prevent and act against violations that violate those rights and freedoms;

Noting that, in order to achieve full equality between men and women, it is necessary to modify and correct social behaviors, roles and patterns of behavior that result in unequal treatment of both men and women in society and in the family;

Convinced that the maximum participation of women, on equal terms with men in all fields, including the economic field, is indispensable for the full and complete development of a country, the well-being of the world and the cause of peace;

Convinced that the elimination of violence against women is an indispensable condition for their individual and social development and their full and equal participation in all spheres of life, as recognized in the framework of the United Nations, the European Union, the Council of Europe and the Organization of American States, which mark a milestone in the fight against gender violence;

Adopts the following

CONCLUSIONS

1. States should condemn all forms of violence against women and continue to adopt, by all appropriate means and without delay, policies aimed at preventing, punishing and eradicating such violence, particularly through the following actions:

- i. Refrain from any action or practice of violence against women and ensure that institutions and agents behave in accordance with this obligation;
- ii. To act with due diligence to prevent, investigate and punish violence against women;
- iii. Include in its domestic legislation criminal, civil, labor, and administrative norms, as well as those necessary to prevent, punish, and eradicate violence against women and adopt appropriate administrative measures as appropriate;
- iv. Adopt legal measures to compel the aggressor to refrain from harassing, intimidating, threatening, harming, or endangering the life of the woman in any way that threatens her personal integrity or property;
- v. Take all appropriate measures, including legislative measures, to modify or abolish existing laws and regulations, or to modify legal or customary practices that support the persistence or tolerance of violence against women, considering the adoption of educational measures aimed at eradicating discrimination in all its forms;
- vi. Establish fair and effective legal procedures for women who have been subjected to violence, including, among others, protection measures, a timely trial and effective access to such procedures;
- vii. Guarantee the necessary judicial and administrative mechanisms to ensure that women subjected to violence have effective access to redress, reparations or other just and effective means of compensation;
- viii. Adopt such legislative or other provisions as may be necessary to give effect to all of these proposals, including the use of language.

2. Civil society, through private institutions, entities and societies, as well as non-governmental organizations, should consider the obligation to integrate gender criteria and non-discrimination of women in their tasks and operation, through appropriate actions to this end, such as, for example:

- i. Ensure that their activities are in line with international human rights standards, fully implementing international human rights instruments related to violence against women;
- ii. Condemning violence against women in their activities and not relying on any custom, tradition, or practice based on religious or cultural grounds to avoid such condemnation;
- iii. Rely on national legislation relating to criminal, civil, labor and administrative sanctions, with the task of influencing the application of sanctions that punish and redress the grievances of women and girls who are subjected to any form of violence, whether in the home, workplace, community or society, under custody, or in situations of armed conflict, to ensure that they are consistent with relevant international human rights instruments and humanitarian law, and to contribute to measures to investigate and punish those who commit acts of violence against women;
- iv. Support initiatives by women's organizations and non-governmental organizations to eliminate violence against women, including awareness-raising campaigns, and establish or strengthen partnerships at the national level with relevant non-governmental and community-based organizations and public and private sector institutions aimed at the development and effective implementation of provisions and policies related to violence against women, particularly in the area of support services to respond to the needs of women and girls who are survivors of violence, and to assist them in their full recovery and reintegration into society;

v. Consider conducting comprehensive, objective and easily accessible information campaigns on violence against women;

vi. Create, improve, develop and finance training programs, taking into account the causes and effects of violence against women, in order to prevent abuses of power that lead to violence against women and to sensitize society to the nature of sexist acts and threats of violence, with a view to achieving fair treatment of women victims;

vii. Raise awareness among all people, men and women, of the causes and effects of violence against women and emphasize the role of men in its prevention and elimination; encourage and support men's initiatives aimed at complementing the related actions of women's organizations and behavioral change of perpetrators of violence against women.

3. The IHLADI assumes the commitments adopted within the framework of the United Nations, the Organization of American States, the Council of Europe and the European Union, among other international organizations, in defense and guarantee of women's rights and non-discrimination in gender issues. Therefore, it is committed to contribute to raising awareness in society in general to fight against stereotypes, including those of a sexist nature and male chauvinism, which have generated so much pain and discrimination against women; to undertake a process of mainstreaming the gender perspective; to contribute to help achieve real equality; and to support other human rights movements that fight against all forms of discrimination. In this context, IHLADI expresses its support for the United Nations Document, "Towards a Planet 50-50 by 2030: UN Women Global Civil Society Dialogue: Galvanizing action for accountability and impact", committing all our members and partners to strive for gender equality.

IV COMMITTEE

MODEL BILATERAL CONVENTION FOR THE MUTUAL RECOGNITION AND ENFORCEMENT OF JUDGMENTS, COURT SETTLEMENTS AND AUTHENTIC INSTRUMENTS BETWEEN STATES OF THE HISPANIC-PORTUGUESE-AMERICAN COMMUNITY AND THE PHILIPPINES

I

EXPLANATORY MEMORANDUM

1. Suitability of the Model Convention

Mutual recognition of judgments, court transactions and authentic instruments is a fundamental pillar of international legal cooperation in civil and commercial matters. It has a direct impact on substantially improving legal certainty for citizens, facilitating the dynamisation of trade and promoting good neighbourly relations between States.

In the IHLADI community of international law, theregulatory gaps in this area are a serious obstacle to cooperation. The vast majority of States do not have modern special laws of private international law that provide an adequate response to these questions, or they contain rules scattered in codes of civil procedure that are often old and unsuited to the requirements of today's foreign trade.

Nor do the existing multilateral conventions provide a satisfactory solution, either because of their small number of States Party, the existence of major limitations on their material scope of application, or the reservations introduced by some States Party. The possibility of signing a bilateral convention makes it possible to avoid many of the disadvantages of drafting and adopting a multilateral text, which is always subject to greater transactional requirements. As will be pointed out in due course, a bilateral convention can, moreover, be perfectly compatible with the validity of existing multilateral conventions.

The membership of States such as Spain and Portugal to the European Union, an international organization with exclusive competences in matters of international judicial cooperation in civil matters, conditions but does not prevent the possibility of concluding bilateral conventions on the recognition and enforcement of decisions, although in these cases the Member States of the European Union must follow a European authorization procedure for the ratification of such conventions.

2. Scope of application

A) Material

Article 1 of the Convention delimits the material scope of application of the Convention in a twofold sense. First, it refers to decisions that are generally recognizable and enforceable: judgments, court settlements and authentic instruments. Secondly, it refers to the civil and commercial matters that are the subject of such decisions and acts. The first paragraph makes it clear that the matters are defined by reference to the subject-matter of the decisions and not by reference to the nature of the body issuing them. Thus, it is perfectly possible to recognize a civil or commercial ruling contained in a judgment handed down by a criminal court when, for example, it establishes civil liability for damages arising from a criminal offence.

The second paragraph of Article 1 lists several matters to which the Convention does not apply, meant to be indicative only. Firstly, points (a) and (c) delimit certain public law matters (tax, customs, administrative and social security matters) traditionally excluded from this area of international legal cooperation. The exclusion of bankruptcy and insolvency matters, which is also common, has to do not only with a certain public-legal dimension, but also with the particularity of the subject matter. Finally, the exclusion of arbitration contains a compatibility clause with the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards done in New York on 10 June 1958 and the Inter-American Convention on International Commercial

Arbitration done in Panama on 30 January 1975, in conjunction with the Inter-American Convention on the Extraterritorial Effectiveness of Judgments and Arbitral Awards done in Montevideo on 8 May 1979. Most of the States of the Hispanic-Portuguese-American community and the Philippines have ratified one or more of the above-mentioned conventions, which respond better than a bilateral convention to the particularity of the recognition of foreign arbitral awards. Moreover, the introduction of a bilateral regime on the subject would undermine the harmonizing and universal value, in particular, of the 1958 New York Convention.

The list of exclusions could, of course, be extended by the signatory States of a bilateral Convention inspired by the Model Convention. Such additions will depend to a large extent on States' own participation in specific international conventions. Thus, the exclusion of resolutions on liability for nuclear damage is common, by virtue of the existence of various international conventions on the subject. Thus, Spain and Portugal are party to the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy, Article 13 of which contains specific rules on international jurisdiction and the recognition and enforcement of decisions, so that exclusion would be indicated in the case of a multilateral convention between both countries. However, the Convention has not been signed by non-European countries, so the exclusion would not be equally justified if one of the parties were a State of the Latin American community.

Other characteristic areas that may be excluded because of compatibility with special regimes are, for example, maintenance obligations or the protection of children and adolescents. Some States represented in the IHLADI have specific bilateral conventions on these matters or have participated in international conventions on such matters adopted at the Hague Conference (Spain and Portugal will be bound as of 1 September 2023 by the 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters). However, the grounds for exclusion are less important in these cases, insofar as the conventions adopted at the Hague Conference generally include compatibility with any other recognition and enforcement regime (*ad ex* Article 23 of the 2019 Hague Convention).

Similarly, a State may have reservations about including a system of recognition of decisions on particularly sensitive matters in its international relations, in particular in certain areas related to the rights of the individual or the family, in which case it will have to weigh the exclusion of certain matters against its political and strategic interests.

B) Temporary

Article 20 of the Convention delimits the temporal scope of application, establishing as the critical date the date of the pronouncement of the court decision or the granting of the court settlement or the authentic instrument after the entry into force of the Convention in accordance with Article 22.

The rule takes over the traditional criterion used not only in treaty regimes but also in the case of succession in time of rules of domestic law. However, the fact that the Convention is based on the principle of *favor recognitionis* allows States Party, if they deem it appropriate, to modify Article 20 of the Model Convention to extend retroactively the application of the Convention to applications for recognition made after its entry into force, even in the case of judgments given or court settlements and authentic instruments granted before its entry into force. The wording of amended Article 20 could be as follows:

“This Convention shall apply to the applications for recognition and enforcement of judgments, court settlements and authentic instruments made after its entry into force, even in the case that the judgments, court settlements and authentic instruments object of the application have been rendered or granted in a State Party before the entry into force of the Convention”.

C) Compatibility clauses

As a matter of international cooperation, the recognition and enforcement of decisions is based on the principle of *favor recognitionis*. It makes no sense to establish a bilateral regime in this area that would entail greater obstacles and conditions than other conventional regimes already in force or even than the rules of recognition already provided for in the domestic law of the States Party. Consequently, Articles 18 and 19 provide for the compatibility of the bilateral regime with any

other conventional or domestic regime which, in the specific case, might be more favorable to recognition.

The bilateral convention does not prejudice the application of other international conventions that may be in force between the Contracting States, such as the Bustamante Code, the Inter-American Convention on the Enforcement of Interim Measures made in Montevideo on 8 May 1979, the Inter-American Convention on the Extraterritorial Effectiveness of Judgments and Arbitral Awards made in Montevideo on 8 May 1979, the Inter-American Convention on Jurisdiction in the International Sphere for the Extraterritorial Efficacy of Foreign Judgments done at La Paz on 24 May 1984, or the Conventions of the Hague Conference on the recognition and enforcement of decisions relating, for example, to maintenance, minors or choice of forum agreements, which bind some States of the Hispanic-Portuguese-American and Philippines community.

In principle, the compatibility rule does not permit a patchwork application of different treaty texts. The applicant must choose the treaty system that best suits his or her claim for recognition, but he or she would not be entitled to make a patchwork of provisions taken from the different regimes. On the other hand, it would be possible to apply a multilateral treaty regime or the domestic regime to the conditions for recognition, while at the same time making use of the recognition procedure laid down in the bilateral Convention. Most multilateral conventions do not provide for a specific regulation of incidental recognition, nor of the procedure for declaration of enforceability or exequatur, so that the applicant could rely on the procedural regulation of the bilateral convention, even if he or she opted for the substantive regime of another international text or of domestic law, if this were more favorable to his or her claim.

3. Recognition and declaration of enforceability

The effectiveness of foreign judgments, court settlements and authentic instruments requires a distinction between three concepts: recognition, declaration of enforceability and enforcement, which are defined according to the intended effect. The declaration of enforceability is necessary if the enforceability of a judicial decision or settlement or of an authentic instrument of the State of origin is sought. It consists of a specific declaratory procedure of homologation or exequatur. Once this procedure has been concluded with a decision of recognition or exequatur, the foreign instrument is recognized and it will serve to initiate enforcement proceedings under the procedural law of the addressed State. If the effect sought is other than executory (e.g. constitutive effect, registration effect or the effect of *res judicata*) it is not necessary, although it is admissible, to follow the declaratory procedure of recognition or exequatur. Recognition of the constitutive, registry or *res judicata* effects can be invoked directly before the authority of the addressed State where such effects are sought to be enforced (incidental recognition).

A) Incidental recognition

The Convention aims to facilitate mutual recognition of judgments, court settlements and authentic instruments efficiently, quickly, and as inexpensively as possible. To this end, it has made use of the distinction between recognition and declaration of enforceability, on the one hand, and between incidental and principal or main recognition, on the other. A declaration of enforceability (exequatur) is only necessary if the enforcement in the addressed State of a judgment, settlement or authentic instrument issued or authenticated in the other Party is sought. In many cases, however, the person concerned does not seek to obtain enforceability, but merely recognition of the constitutive, *res judicata* or registry effect. Thus, it may simply be a matter of having a judgment establishing parentage recognized in the State addressed, of having a divorce decree registered in the register of civil status, or of not succeeding in a claim for non-performance of a contract that has already been settled in the State of origin. In such cases, a declaration of enforceability is not necessary, and recognition is sufficient. However, if it is intended to use the decision, settlement, or authentic instrument as a basis for substantive enforcement proceedings in the addressed State, for example for the surrender of a child to the custodial parent or the enforcement against the debtor's assets of a pecuniary judgment, a declaration of enforceability is required.

If a declaration of enforceability is not necessary because a non-enforceable effect is sought, recognition is sufficient and may be incidental, i.e. without the need for a special recognition

procedure (Article 3 of the Convention). Accordingly, the application for recognition will be made to the authority before which the non- executory effect of the foreign decision or document is sought. Thus, if an action is brought in the addressed State on a matter that has already been tried in the other State, the defendant may apply for recognition of the decision in order to assert the plea of *res judicata* in the new proceedings, and it will be for the judge in the addressed State who is hearing those proceedings to grant the incidental recognition at trial. Similarly, if a decision or a public document is intended to be used as a title for registration in a public land, commercial or civil status register, the authority responsible for the register may recognize the decision or document. In either case, incidental recognition is not immediate, as the authority before which recognition is sought must verify *ex officio* that all the conditions necessary for recognition are fulfilled.

Incidental recognition has the disadvantage that it is not binding on any authority of the addressed State other than the one that pronounces on the matter. It is a recognition without *res judicata* effect, limited to the effect for which it is sought. Thus, if a land registry official recognizes a judgment of the State of origin to amend a registration, his decision does not affect the decision of a court of first instance before which the *res judicata* effect of the same decision is invoked. Incidental recognition thus creates a risk of contradictory recognition decisions in the State addressed. Moreover, the party against whom incidental recognition is sought may oppose it and seek a principal judgment.

B) Main or principal recognition

For greater legal certainty, the parties concerned can always have recourse to a final recognition, with the effects of *res judicata*, referred to in Article 4 of the Convention as "recognition on a principal basis ". In this case, recognition does require a special recognition procedure, which will be precisely the one provided for in Chapter III of the Convention for the declaration of enforceability. In other words, the *exequatur* procedure serves both for the declaration of enforceability and for a definitive or principal recognition. Thus, once the procedure for principal recognition has been concluded by a final judgment, this recognition decision, whether positive or negative, will be effective in the legal system of the addressed State before any authorities.

Recognition on a principal basis is also open to the party against whom recognition is sought, either because it opposes an incidental recognition or because it is merely interested in a judgment refusing recognition with *res judicata* effect. In the event that the party against whom recognition is sought brings an application for non-recognition on a principal basis to oppose an ongoing application for incidental recognition, the States Party may add a rule in their domestic law, or in the Convention itself, providing for the suspension of incidental recognition until the recognition on a principal basis is resolved.

C) Declaration of enforceability: the enforceability procedure

Both the recognition by principal title and the declaration of enforceability therefore require a special procedure of homologation or *exequatur*, regulated in Chapter III of the Convention (Articles 9 to 12).

A clear distinction must be made between the procedure for declaration of enforceability or *exequatur* and the procedure for enforcement or execution. The former is a declaratory procedure whereby the courts of the addressed State declare that a particular judgment, court settlement or authentic instrument issued or authenticated in the other State is or is not an enforceable title. If it is declared enforceable, it may serve as a basis for initiating enforcement proceedings in the addressed State.

The Convention does not affect the enforcement procedures established in the procedural codes and legislation of the Contracting States, which will be governed by their own law, provided that this does not prejudice the effectiveness of the Convention (Article 9.3 of the Convention). On the other hand, it does lay down some rules directly applicable to the declaratory procedure of enforceability or *exequatur*, although the internal rules of each State Party on the common procedure of *exequatur* will be applied where not provided for in the Convention (Article 9.2 of the Convention). Article 12.1 of the Convention merely states that it must be a rapid, simple and

adversarial procedure. Within this framework, the domestic legislation of the Member States will indicate, for example, the time limits and procedural acts, the possibility for the applicant to file interim measures, the possible intervention of the Public Prosecutor's Office in certain matters, etc.

The Convention, however, sets out rules directly applicable to the application or request for exequatur (Article 10), jurisdiction (Article 11.1) and the system of remedies (Article 11.2), as well as some other procedural issues (Article 12).

With regard to the application for exequatur, the Convention proposes two options to the Contracting States in Article 10. Option I, the most traditional, lists the documents required for the application. In addition to the certified true copy of the judgment, documents proving its enforceability, its service on the other party, the service of the original application if the judgment was given without the defendant's appearance, as well as the possible granting of legal aid, if any, must be attached. The competent authority of the State addressed may relax some of these requirements if it considers that it has been duly informed. Formal irregularities may also be remedied within the time limit set by the competent authority.

Option II facilitates the documentation that must accompany the application, since it is sufficient to incorporate, together with the certified true copy of the judgment, court settlement or authentic instrument, respectively, the certifications contained in Annexes I, II and III which are incorporated into the Convention. These certificates issued by the authorities of the State of origin serve to certify in a single document all the necessary points relating to the finality and enforceability of the judgment, the corresponding notifications, the benefits of legal aid granted in the original proceedings, etc. Likewise, in this case, the competent body of the State addressed may relax the requirement to present the corresponding annex if it considers itself duly informed, and the formal irregularities can be remedied within the time limit it establishes.

Article 11 of the Convention provides for a two-tier procedure. In the first instance, decisions are to be taken by the courts of each State. Although the Convention does not interfere with internal organization of court's jurisdiction, it has introduced criteria of internal territorial jurisdiction, so that the competent courts of first instance correspond to those of the domicile of the party against whom recognition or declaration of enforceability is sought and, failing that, of the place where the judgment is to be enforced. An appeal against a positive or negative decision on recognition at first instance may be lodged with the courts designated by each Contracting State. It has been considered that a two-instance procedure is a sufficient guarantee and will not cause undue delay in the procedure, so that the decision on appeal will not be subject to any recourse and will be final (Option I). However, an Option II involving a single-tier procedure has also been envisaged, which may be more efficient and sufficiently safeguarding, in particular if the court designated for each State is a high court. It will be for the Contracting States to decide whether these formulas suit them or whether they prefer to provide for a recourse against the decision rendered on appeal or to refer the recourses system to their respective national law.

The Convention, following a criterion that is also found in the conventions of the Inter-American Conference on Private International Law, the Bustamante Code and the European regulations on the subject, admits the possibility of declaring the enforceability of non-final judgments, lacking the effect of *res judicata* in so far as they are still subject to appeal in the State of origin, provided that they are provisionally enforceable in the State of origin. Admittedly, the recognition and enforcement of these decisions in the addressed State entails a certain uncertainty if the decision is finally modified in the State of origin. Hence, Article 12.2 of the Convention provides in this case for the possibility for the body competent to declare enforceability in the addressed State to decide, *ex officio* or at the request of a party, to stay the proceedings until a final judgment is delivered in the State of origin or, alternatively, to take protective measures, which may consist of requiring the applicant to provide security.

The applicant for enforcement may not be required to provide a surety as to his or her place of residence (*cautio iudicatum solvi*) or any security on account of his or her nationality or residence (Article 12(6)), and he or she will be granted legal aid in the proceedings for a declaration of enforceability or exequatur if he or she enjoyed that benefit in the original proceedings which gave rise to the judgment to be recognized (Article 12.5). In exequatur proceedings it is possible, as a

general rule, to apply for such protective measures as are allowed under the law of the State addressed (Article 12.7).

Finally, the Convention requires that the authority of the addressed State competent for the declaration of enforceability or principal recognition to verify ex officio that the judgment, court settlement or authentic instrument fulfils the conditions for recognition provided for in the Convention (Article 12.3).

D) Partial recognition

If the judgment of the State of origin contains several severable claims, not only a partial application for recognition is possible, but also partial recognition if some of the judgments are not eligible for recognition (Article 8). Thus, it is possible to apply for recognition and enforcement of an award of civil liability for damages contained in a criminal judgment, without the need to recognize the penalty. Similarly, in the case of a divorce judgment, it may be possible to recognize the dissolution of the marriage and the liquidation of the matrimonial property regime and refuse to recognize the award of custody of a child to one of the parents on the ground that it is contrary to the international public policy of the addressed State and the best interests of the child.

4. Conditions for recognition

A) Substantive public policy

Respect for the overriding mandatory rules and basic principles of the law of the addressed State (international public policy) is an indispensable condition for recognition, which is included as a reservation in any system of recognition and enforcement of decisions. Article 5.1 of the Convention highlights the principle of a restrictive interpretation of this substantive condition, insofar as the violation must be "manifest". Moreover, international public policy is a narrow concept in itself, as it does not refer to rules that are simply mandatory or unavailable under the law of the addressed State, but only to those whose overriding mandatory scope responds to an essential public interest that justifies their extraterritoriality.

On the one hand, international public order has a substantive scope, linked to human rights and fundamental freedoms, and to the essential principles of the socio-economic order, from private property, non-discrimination on the grounds of gender or the protection of children, to cite some examples. But it also extends to rights linked to due process, such as the right to the reasoning of decisions, to the use of the remedies provided by law or to respect for the principle of contradiction and the right to be heard in the procedure. This does not prevent Article 5.2 from laying down a specific condition linked to procedural public policy in proceedings where the defendant fails to appear. However, this is a special rule which does not prevent other violations of due process from being invoked on the basis of Article 5.1. Thus, it is possible that in the original proceedings the defendant was duly notified and appeared in the proceedings, but the principle of contradiction was not respected in the presentation of evidence or in the defense of the case, in which case such an essential procedural defect can be invoked through the general public policy reservation of Article 5.1.

B) Procedural public order

Article 5.2 of the Convention, therefore, is limited to a basic requirement of due process linked to the principle of adversarial proceedings, so that a decision rendered without the defendant's appearance will not be recognized if such a violation of the principle of adversarial proceedings is not attributable to the defendant himself or herself. Indeed, if the service of the claim has been effected with guarantees and sufficient time to prepare a defense, the defendant's failure to appear is culpable or strategic and the defendant's responsibility. Consequently, the condition will only succeed if the failure to appear was due to a service made in such a way as to cause defenselessness, either because of the service mechanism used or because of the untimeliness or lack of time to defend due to a summons without sufficient time to prepare a defense.

This condition is formulated in the Convention on the basis of a factual consideration of the rights of defense, which is the formula that best guarantees the constitutional right not to be defenseless. Indeed, the fact that the service of the application is irregular is not in itself decisive, but that it

does in fact produce defenselessness, irrespective of its regularity. Thus, under certain international regimes of cross-border service, service is irregular if it is not accompanied by a translation into the language of the State in which the defendant is domiciled; however, there is no defenselessness if it is established that the defendant was perfectly familiar with the language in which the claim was served. Similarly, it is possible that the service regime applicable to the case does not require translation as a condition of formal regularity of service, and yet defenselessness in fact arises because the defendant has not been able to fully understand the fact or the content of the claim served.

C) Incompatibility with pending decisions or proceedings

An elementary principle of legal certainty prevents the recognition of judgments that are incompatible with other judgments already rendered in the addressed State. Article 5.3 of the Convention provides for this condition in a broad formulation: it is not necessary for there to be a perfect identity of parties, subject-matter and cause of action between the two decisions, but merely a logical contradiction or incompatibility. Thus, it is inconsistent to recognize a judgment for maintenance between spouses given in a State party when in the addressed State there is a divorce judgment between the spouses. Or it is inconsistent to recognize a divorce judgment if a judgment of marriage annulment has been given in the addressed State. The fact that there is no identity of subject-matter between the two proceedings does not preclude the application of the condition and the consequent refusal of recognition.

International harmony of solutions and respect for international obligations towards third states also make it advisable to refuse recognition if the decision to be recognized is irreconcilable with an earlier decision rendered in a third State, whether it has already been recognized in the addressed State or is merely subject to recognition (Article 5.4).

Finally, refusal of recognition is also possible if the judgment is incompatible with proceedings which are still pending in the State addressed but which have the same parties, subject-matter and cause of action as the proceedings which gave rise to the judgment in the State of origin (Article 5.5). In this case, refusal is only appropriate if the proceedings pending in the addressed State were instituted before the proceedings which gave rise to the original decision. Otherwise, fraud would be encouraged through so-called "torpedo proceedings", opened in other States for the sole purpose of preventing the recognition and enforcement of the decision given by the court first seized.

This is without prejudice to the fact that, in order to avoid such situations, the States Party may choose to add a rule of international *lis pendens* to the Convention, as is the case in some bilateral regimes in comparative practice. The wording of this additional provision could be as follows:

"Where an action is brought before the courts of a State Party between the same parties, involving the same subject and cause of action as an earlier action brought before the courts of the other State Party, the courts of the State Party second seized shall stay the proceedings and decline jurisdiction in favor of the courts first seized, unless their jurisdiction is not justified under Article 6 of the Convention".

D) Indirect international jurisdiction

Article 6 of the Convention provides for review of the international jurisdiction of the organs and authorities of the State of origin or "indirect" jurisdiction. The use by the State of origin of exorbitant or unreasonable grounds of jurisdiction will prevent recognition of the judgment. To this end, the Model Convention has not opted for the traditional system of establishing, issue-by-issue, which criteria of indirect international jurisdiction are considered reasonable. This system provides a high degree of concreteness, but often leads in practice to the omission of reasonable grounds of international jurisdiction. The option of establishing express rules of indirect jurisdiction also has the disadvantage of rigidity. States Party can pool the fora of international jurisdiction used in their respective domestic rules on direct international jurisdiction in civil and commercial matters and build from there the rules setting out in the Convention what are the reasonable criteria for justifying the international jurisdiction of the court or authority of origin. However, while international conventions on the recognition and enforcement of judgments tend to be established for an unlimited and, in practice, very long duration, the domestic rules on direct jurisdiction tend to evolve and change more frequently on the occasion of domestic reforms or the adoption of

international conventions. This means that, over time, there may be a dysfunction between a convention's rules of indirect jurisdiction and the rules of direct jurisdiction in force in the States Party, so that the former can justify refusing recognition of a judgment on the grounds of failure to comply with the convention's rules of indirect jurisdiction when it has used a forum of jurisdiction that is customary under the rules of direct jurisdiction of the addressed State in force at the time of recognition.

The Convention has therefore preferred a simpler and more flexible system. Firstly, decisions of the State of origin which infringe jurisdiction which the addressed State legally considers belonging exclusively to it will not be recognized. If the matter is not regulated by criteria of exclusive jurisdiction, the exorbitant nature of the jurisdiction of the court of origin is measured, in the first instance, by a positive criterion: the jurisdiction of the court of origin will be considered reasonable if the criterion of international jurisdiction used coincides with one of the fora of international jurisdiction used at any given time by the law of the State addressed to determine the direct international jurisdiction of its own courts. This criterion, however, cannot be exclusive. No State law exhausts the reasonable fora of international jurisdiction, so that it is possible that, even if the forum used in origin does not coincide with the fora envisaged in the addressed State, it may be a reasonable criterion. The body competent for recognition in the State addressed will in such a case have to assess the degree of reasonable proximity of the forum of jurisdiction, having regard in particular to the fact that it does not impose an unreasonable procedural burden on the defendant.

Moreover, according to a generally accepted principle, in the review of the international jurisdiction of the State of origin, the addressed State may question the reasonableness of the standard of jurisdiction used, but not the factual circumstances which the court of origin has considered as proven, such as the residence or domicile of a party, the place of performance of a contract or the place where an accident occurred (Article 6.3).

E) No substantive review

The conditions laid down in Articles 5 and 6 of the Convention are limited, so that recognition cannot be refused on grounds other than those set out therein. Article 7 of the Convention formulates in this sense a principle generally recognized in systems for the recognition and enforcement of foreign judgments, in the sense that the decision of the other State cannot be subjected to scrutiny or review of the grounds, reasonings or merits of the decision, nor can recognition be refused on the ground that in the original proceedings a different law was applied to the merits of the dispute from that which would have been applied by the courts or authorities of the State addressed.

5. Decisions and acts eligible for recognition

A) Judgments

The Convention provides for the possibility of recognizing the effects of judgments, irrespective of their finality and the contentious or voluntary nature of the proceedings (Articles 2.1 and 4). Article 2.1 contains a broad and exemplary concept of recognizable judgments. For a declaration of enforceability, Article 9.1 requires that the judgment be enforceable in the State of origin, even if it is not final.

Consequently, the Convention does not preclude the recognition and enforcement of interim measures adopted in the State of origin. It is true that in many systems, even in areas as integrated as the European Union, recognition of protective measures is limited to those that have not been taken *inaudita altera pars* or that are justified by the substantive jurisdiction of the courts of the State of origin, so that protective measures taken on the grounds of the mere presence of persons or property in the territory of a State have a strictly territorial effect. The Convention, however, implicitly enables these limitations, by virtue of the conditions for recognition set out in Articles 5.2 and 6, respectively, which would make it possible to refuse recognition of such measures.

The Convention lays down some special provisions concerning decisions for the payment of procedural costs. On the one hand, Article 2.2 includes them in the concept of "judgments", even if they are made by non-judicial bodies. In some systems it is for non-judicial authorities (court clerks or court officers) to fix these costs, so it seems appropriate to extend the concept in

order to allow recognition of these decisions in addition to the judgment on the merits. On the other hand, Article 12.4 excludes from recognition awards for costs, and any pecuniary award in general, if the amount has not been fixed in the decision in liquid form.

B) Legal transactions

The declaration of enforceability of court settlements enforceable in the State of origin is provided for in Article 13 of the Convention. The procedure for recognition will be that laid down, *mutatis mutandis*, for judgments in Chapter III. The conditions, however, are limited to the enforceability of the settlement in the State of origin and non-contradiction with the international public policy of the forum.

For the submission of the application for a declaration of enforceability, two options are envisaged, as for judgments. The first requires the certified copy of the court settlement to be accompanied by a document certifying its enforceability in the State of origin. The second allows the application to be simplified by means of a certificate issued by the authority of origin in accordance with Annex II. In both cases, the body responsible for the declaration of enforceability may dispense with the presentation of a document if it considers itself sufficiently informed or set a time-limit for remedy.

Not only court settlements are subject to possible recognition and enforcement under the Convention, but also enforceable agreements that can be authorized by a non-judicial official or body (Article 13.4). Thus, a settlement of maintenance obligations authorized by the administrative authorities or social services of a Contracting State will be recognized and enforced in the addressed State under the regime provided for judicial settlements.

C) Authentic instruments

The effectiveness of authentic instruments drawn up in the State of origin is governed by different rules depending on whether they are to be enforceable or simply to have constitutive effect or to be used as a title for registration.

In the first case (Article 14 of the Convention), authentic instruments will be declared enforceable under the same regime as provided for in Article 13 for court settlements. The application is also regulated by two options, although Annex III includes a specific certification for authentic instruments.

There is, however, a special feature of the system for the recognition of enforceability of authentic instruments. If, in the State addressed, the deed is reserved to the intervention of a court, authentic instruments drawn up by a public notary or non-judicial authority in the State of origin will be recognized as judicial decisions, in accordance with the procedure laid down in Chapter III and subject to the conditions laid down in Chapter II. Thus, if the appointment of a guardian or the partition of the estate in case of disagreement of the heirs falls within the competence of a court under the law of the State addressed, an appointment of a guardian or a partition in such circumstances made by a non-judicial authority in the State of origin shall be regarded as a judgment for the purposes of its recognition and enforcement in the State addressed. Conversely, judgments of the State of origin which relate to acts not reserved in the State addressed to the courts shall be declared enforceable as authentic instruments in accordance with Article 14.

If it is not the executory effect of the authentic instrument executed in the State of origin that is sought, but merely its constitutive or registry effect (for example, the recognition of a notary divorce for the purposes of its registration in the civil status register), Article 15 of the Convention lays down specific conditions for recognition. First of all, the document is defined as public or authentic by equivalence with public or authentic documents as provided for in the law of the addressed State. This equivalence requires, in addition to the authority's status as a public official and the fact that the authority is invested with public faith, that the basic conditions of equivalence are fulfilled in its intervention. Thus, the intervention of a Colorado *notary public* is not equivalent to that of a notary in the Latin notary system, such as Mexico. On the other hand, that of an *international notary public* or *civil law notary* from Florida has clear elements of equivalence. The comparison of the intervention of a notary as a mere authenticator of signatures or qualified witness in private deeds with that of a notary who checks the identity, legal capacity and legality of the deed, receiving the consent of the parties in his or her presence and formalising the deed in public

form, requires certain data on the notary function in the State of origin to be compared. For this reason, Annex III contains specific information on the extent of the involvement of the public official issuing the deed.

In addition to equivalence, recognition requires that not only the criteria of international public policy of the State addressed but also the law applicable to the deed, according to the conflict rules of the State addressed, have been respected. Thus, a notary declaration of heirs cannot be recognized if a law other than that provided for in the conflict rules of the addressed State has been applied to the succession or if, even applying that law, the children are discriminated against on the basis of gender or other personal circumstances.

As in the case of enforceability, the recognition of the constitutive and registry effects of authentic instruments is modulated according to whether or not in the State addressed the document is reserved to judicial authorities. In the first case, the incidental or principal recognition of the effects of the authentic instrument will be subject to the rules laid down in Chapters II and III for judgments. Thus, if in the State addressed a divorce decree or a declaration of heirs can only be issued by a judge in voluntary or contentious proceedings, the notary divorce or notary declaration of heirs issued by a notary in the State of origin shall be considered as a judgment for the purposes of its recognition or enforcement.

Irrespective of its possible executory, constitutive or registration effect, any authentic instrument executed in a State Party will, without the need for recognition, have the evidentiary effect of the mere facts stated in the instrument, simply by satisfying the requisite requirements of authenticity (Article 15.3). Indeed, a divorce in a notary deed, even if it is not recognized, can attest to the circumstances stated in the deed concerning the status of the spouses, their residence, etc.

6. Formal requirements

The recognition and enforcement of judgments, court settlements and authentic instruments require the production of documents that must meet the conditions of authenticity, legalization and translation. Chapter V of the Convention deals with both issues.

The Convention proposes three options for the treatment of the legalization requirement in Article 16. Option I, the strictest one, requires that the decisions, settlements and public documents to be submitted must be accompanied by appropriate legalization. It is the option suitable for the case where one or both Contracting States are not party to the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, done at The Hague on 5 October 1961, or to any other multilateral or bilateral convention exempting the requirement of legalization. Option II, suitable for the case where both Contracting States are party to the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, done at The Hague on 5 October 1961, is to require only the apostille. Finally, Option III is the least burdensome and the one that optimizes the efficiency of the recognition regime by exempting any legalization or similar formality, although it provides for a system of confirmation of authenticity in case of doubt which is intended to be rapid by being handled through the system of rapid and direct consultation to the Consulate of the State of origin, although the Contracting States may agree on any other alternative system of confirmation, in particular through direct communications.

Finally, translation in case of disparity of languages (Article 17) is merely optional for the authority entrusted with the recognition or declaration of enforceability. Two options are presented in the event that translation is required. The first is suitable for those States Parties that regulate the conditions for official translation and consists in the need to provide a translation signed by an official or accredited translator. This requirement not only offers greater guarantees, but also avoids the costs and delays that can be caused by a "battle" of contradictory private translations submitted by the parties, forcing the judge to request a third independent private translation. However, given that not all States regulate official translation, a second option should allow for the possibility of providing a faithful private translation.

7. Final provisions

The Convention also includes final provisions, some of which have already been analyzed (compatibility and temporal application clauses). With regard to the interpretation of the

Convention, Article 21 makes use of diplomatic channels. It also lays down model rules on entry into force, duration and denunciation, which are merely indicative and may be modified by the Contracting States as they see fit.

II. TEXT

CHAPTER I: SCOPE

Article 1: Scope

1. This Convention shall apply to the recognition of judicial decisions, court settlements and authentic instruments in civil and commercial matters, irrespective of the name of the court or authority from which they emanate.

2. The following are excluded from the scope of this Convention:

- (a) Tax, customs and administrative matters.
- b) Bankruptcy and insolvency.
- c) Social security.
- d) Arbitration.
- e) (...)

CHAPTER II: RECOGNITION

Article 2: Judgments

1. For the purposes of this Convention, a judgment shall mean any decision taken by a court or tribunal of a State Party, irrespective of the name given to it or the nature of the proceedings, whether contentious or voluntary, such as judgments, orders, decrees, decisions or acts.

2. Similarly, for the purposes of this Convention, acts by which the costs of legal proceedings are settled, irrespective of the authority by which they were rendered, shall be deemed to be judgments.

Article 3: Incidental recognition

1. Judgments given in one State Party (the State of origin) shall be recognized in the other State Party (the State addressed) without any special procedure for recognition or enforcement.

2. The judicial or administrative authority of the State Party before which incidental recognition of a judgment rendered in the other State Party is sought shall verify of its own motion that the conditions set out in Articles 5 and 6 are fulfilled.

3. An incidental recognition shall not produce the effects of res judicata nor may it be invoked before an authority of the addressed State other than the one which pronounced the incidental recognition.

Article 4: Recognition on a principal basis

1. Any interested party may apply in a State Party for final and res judicata recognition of a judgment given in the other State Party, in accordance with the procedure for declaration of enforceability provided for in Chapter III.

2. Similarly, any interested party may object to the incidental recognition and apply in a State Party for a final and res judicata decision refusing recognition in accordance with the procedure for declaration of enforceability provided for in Chapter III.

Article 5: Grounds for refusal of recognition

Court decisions shall not be recognized:

1. If the recognition is manifestly contrary to the international public policy of the addressed State.

2. If the judgment is given without the defendant appearing in court, in cases where the summons has been served in such a manner as to leave the defendant without defense or without sufficient time to arrange for his defense.

3. If the judgment is incompatible with a judgment given in a dispute between the same parties in the State addressed.

4. If the judgment is incompatible with a judgment previously given between the same parties in a third State and already recognized or likely to be recognized in the State addressed.

5. If the judgment is irreconcilable with proceedings pending in the State addressed between the same parties and involving the same cause of action, provided that the proceedings in the State addressed were instituted before the proceedings which gave rise to the judgment given in the other State Party and sought to be recognized.

Article 6: Jurisdiction of the court of origin

1. A judgment shall not be recognized if it infringes jurisdiction which is considered to be the exclusive competence of the courts or authorities of the State addressed under the law of the State addressed.

2. Even if the exclusive jurisdiction of the courts and authorities of the State addressed is not infringed, judgments shall not be recognized if the jurisdiction of the court or authority of origin is not based on reasonable grounds. The criterion of international jurisdiction of the court or authority of origin shall be presumed to be reasonable if it corresponds to a criterion of international jurisdiction provided for in the law of the State addressed for determining the jurisdiction of its own courts or authorities. Otherwise, the international jurisdiction of the court or authority of origin shall be considered to be reasonable if it meets sufficient criteria of close connection.

3. In assessing the international jurisdiction of the courts or authorities of the State of origin, the authority responsible for recognition or declaration of enforceability in the State addressed shall be bound by the findings of fact on which the courts or authorities of the State of origin based their jurisdiction.

Article 7: No substantive review

Judgments sought to be recognized shall not be subject to review on their merits.

Article 8: Partial recognition

1. Partial recognition may be applied for if the foreign judgment has been given in respect of several severable claims.

2. Partial recognition may also be granted if the foreign judgment has been given in respect of several severable claims and it is not possible to recognize all of them.

CHAPTER III: ENFORCEMENT

Article 9: Declaration of enforceability or executability

1. Judgments given in a State Party which are enforceable under the law of that State shall be enforced in the State addressed upon a declaration of enforceability or executability.

2. In matters not covered by this Convention, the procedure for a declaration of enforceability or exequatur shall be governed by the law of the State addressed.

3. After the judgment given in the State Party of origin has been declared enforceable, the enforcement or execution procedure shall be governed by the law of the State addressed.

Article 10 (Option I): Application documents

1. The application for recognition or declaration of enforceability shall be accompanied by the following documents:

- a) a certified true copy of the judgment, evidencing by itself or by additional documents its enforceability and the fact that it has been served on the defendant;
- b) if the judgment was given without the defendant appearing in person, documentary evidence of the manner and time of service of the claim;
- c) document accrediting, if applicable, the benefit of legal aid.

2. The body responsible for the declaration of enforceability may dispense with the presentation of some of the documents indicated if it considers it sufficiently illustrated. It may also set a time limit within which any formal defects in the application must be remedied.

Article 10 (Option II): Application documents

1. The application for recognition or declaration of enforceability shall be accompanied by the following documents:

- a) A certified true copy of the decision.
- b) Annex I issued by the body authorized for that purpose by the State of origin.

2. The body responsible for the declaration of enforceability may dispense with the presentation of some of the documents indicated if it considers it sufficiently illustrated. It may also set a time limit within which any formal defects in the application must be remedied.

Article 11 (Option I): Jurisdiction for declaration of enforceability

1. The competent authority for the declaration of enforceability shall be:

- (a) the (courts of first instance) in State A, corresponding to the place of domicile of the party against whom enforcement is sought or, if that place of domicile is not in State A, the place where the judgment is to be enforced.
- (b) the (courts of first instance) in State B, corresponding to the place of domicile of the party against whom enforcement is sought or, if that place of domicile is not in State B, the place where the judgment is to be enforced.

2. A decision at first instance declaring or refusing to declare enforceable a judgment given in the State of origin shall be enforceable:

- (a) Appeal to the courts X of State A.
- (b) Appeal to the courts X of State B.

3. The decision rendered on appeal shall not be subject to any recourse .

Article 11 (option II): Jurisdiction for declaration of enforceability

1. The competent authority for the declaration of enforceability shall be:

- (a) the (court) in State A for the place of domicile of the party against whom enforcement is sought or, if that place of domicile is not in State A, for the place where the judgment is to be enforced.
- (b) the (court) in State B for the place of domicile of the party against whom enforcement is sought or, if that place of domicile is not in State B, for the place where the judgment is to be enforced.

2. The decision declaring or denying the enforceability of a judgment given in the State of origin shall not be subject to any recourse.

Article 12: Procedure for declaration of enforceability

1. The procedure for a declaration of enforceability or exequatur shall be a rapid, simple and adversarial procedure.

2. If the judgment to be recognized has not yet become final, the authority competent to declare enforceability may, on its own motion or on application by a party, stay the proceedings, require security or a bond from the applicant, or take precautionary measures until the judgment has become final.

3. The authority with jurisdiction to declare enforceability shall of its own motion verify that the judgment fulfils the conditions for recognition referred to in Articles 5 and 6.

4. Enforceability of a pecuniary order or an order for costs may not be declared enforceable if the amount has not been determined in cash in the judgment given in the State of origin.

5. If the applicant for enforcement benefited from legal aid in the proceedings which gave rise to the judgment in the State of origin, he or she shall benefit from legal aid in the proceedings for a declaration of enforceability in the State addressed.

6. An applicant for enforcement may not be required to provide a surety of establishment or a surety by reason of his or her nationality or residence.

7. In any event, the applicant may request precautionary measures permitted under the law of the State addressed.

CHAPTER IV: COURT SETTLEMENTS AND AUTHENTIC INSTRUMENTS

Article 13: Court settlements

1. A court settlement which is enforceable by the authorities of a State Party shall be declared enforceable in the other State Party in accordance with the procedure provided for in Chapter III in so far as it is applicable, provided that the court settlement is not manifestly contrary to the international public policy of the addressed State.

2. (Option I) The application for recognition or declaration of enforceability shall be accompanied by the following documents:

- a) Authentic copy of the court settlement.
- b) Document attesting to the enforceability of the court settlement in the State of origin.

2. (Option II) The application for recognition or declaration of enforceability shall be accompanied by the following documents:

- a) Authentic copy of the court settlement.
- b) Annex II issued by the body authorized for that purpose by the State of origin.

3. The authority responsible for the declaration of enforceability may dispense with the presentation of some of the documents indicated if it considers it sufficiently illustrated. It may also set a time limit within which any formal defects in the application must be remedied.

4. Transactions authorized by non-judicial authorities which are enforceable, including those relating to instruments which in the State addressed are reserved in the State addressed to the jurisdiction of the courts, shall be declared enforceable in accordance with the rules provided for in this Article.

Article 14: Authentic instruments

1. An authentic instrument which has been formally drawn up or registered as an authentic instrument by the authorities of a State Party shall be declared enforceable in the other State Party in accordance with the procedure provided for in Chapter III insofar as it is applicable, provided that the authentic instrument is not manifestly contrary to the international public policy of the State addressed.

2. (Option I) The application for recognition or declaration of enforceability shall be accompanied by the following documents:

- a) A certified true copy of the public document.
 - b) Document attesting the enforceability of the authentic instrument in the State of origin.
2. (Option II) The application for recognition or declaration of enforceability shall be accompanied by the following documents:
- a) A certified true copy of the public document.
 - b) Annex II issued by the body authorized for that purpose by the State of origin.
3. The authority responsible for the declaration of enforceability may dispense with the presentation of some of the documents indicated if it considers it sufficiently illustrated. It may also set a time limit within which any formal defects in the application must be remedied.
4. Authentic instruments concerning documents which are enforceable in respect of acts reserved in the State addressed to the jurisdiction of the courts shall be declared enforceable in accordance with the rules laid down for judgments in Chapters II and III.
5. Judgments relating to acts which in the State addressed fall within the jurisdiction of non-judicial authorities shall be declared enforceable in accordance with the procedure provided for in this Article.

Article 15: Recognition of non-executory effects of authentic instruments

The constitutive and registry effects of authentic instruments issued by authorities of a State Party shall be recognized, provided that:

- a) the authentic instruments are authentic and equivalent to authentic instruments issued by the authorities of the addressed State.
 - b) the documented act is in accordance with the law applicable to that act under the rules of Private International Law of the addressed State.
 - c) the document is not manifestly contrary to the international public policy of the addressed State.
2. The constitutive and registry effects of authentic instruments authorized in a State Party which relate to acts reserved in the State addressed to the jurisdiction of the courts shall be recognized in accordance with the rules laid down for judgments in Chapters II and III.
3. However, public documents authorized in a State Party shall have evidentiary effect in respect of the facts stated therein, provided that they comply with the requirements of authenticity and translation set out in Chapter V.

CHAPTER V: MISCELLANEOUS PROVISIONS

Article 16 (Option I): Legalization

Judgments, court settlements, authentic documents and certifications of a State Party shall be presented in the other State Party duly authenticated.

Article 16 (Option II): Legalization

Judgments, court settlements, authentic documents and certifications of a State Party shall be presented in the other State Party duly apostilled in accordance with the provisions of the Convention Abolishing the Requirement of Legalization for Foreign Public Documents, done at The Hague on 5 October 1961.

Article 16 (Option III): Legalization

1. Judgments, court settlements, public documents and certifications of a State Party shall be exempt from legalization, apostille or any analogous formality.

2. If the authority of the addressed State responsible for recognition or declaration of enforceability entertains reasonable doubt as to the authenticity of a document or certificate, it shall send a request for confirmation to the Consulate of the other Contracting State, which shall reply within a short period of time.

Article 17. (Option I) Translation

If judgments, court settlements, authentic instruments and certificates of a State are drawn up in a language which is not an official language of the State addressed, the authority responsible for recognition or declaration of enforceability may require the applicant to provide an official translation.

Article 17. (Option II) Translation

If judgments, court settlements, authentic instruments and certificates of a State Party are drawn up in a language which is not an official language of the State addressed, the authority responsible for recognition or declaration of enforceability may require the applicant to provide a true translation.

CHAPTER VI: FINAL PROVISIONS

Article 18. Compatibility with other international conventions

This Convention does not preclude the application of any other international conventions, multilateral or bilateral, in force between the States Party, which may be more favorable to recognition or enforcement.

Article 19. Compatibility with national law

This Convention does not preclude the application of the regime of recognition and enforcement provided for by the domestic law of the addressed State, which may be more favorable to recognition or enforcement.

Article 20. Temporary scope

This Convention shall apply to the recognition and enforcement of judgments, court settlements and authentic instruments rendered or granted in a State Party after its entry into force.

Article 21. Interpretation

Difficulties and doubts arising in the interpretation of this Convention shall be settled through diplomatic channels.

Article 22. Entry into force

This Convention shall enter into force on the first day of the second month following the date of notification through diplomatic channels of the last instrument of ratification.

Article 23. Duration and denunciation

This Convention shall be concluded for an indefinite period. It may be denounced upon six months' notice following the actual receipt of the denunciation by the other State Party.

Annex I

1. Party State:
 2. Body issuing the certificate:
 - 2.1. Name:
 - 2.2. Address and contact details:
 3. The court which delivered the decision:
 - 3.1. Name:
 - 3.2. Identification and location:
 - 3.3. Address and contact details:
 4. Judgment:
 - 4.1. Reference number:
 - 4.2. Date:
 - 4.3. Identification of the parties:
 - 4.3.1: Claimant:
 - 4.3.2 : Respondent:
 - 4.3.3 : Others:
 - 4.4. Date and way of notification of the judgment:
 - 4.5. (Judgment given in default of appearance): Date and way of service of the application:
 - 4.6. Full text of the Resolution (Annex):
 - 4.7. Names of the parties to whom legal aid has been granted in the proceedings:
- The judgment IS/IS NOT final/enforceable (delete as appropriate) in the Member State of origin against:(name(s)).
- In (place), (date)
- Signature and stamp

Annex II

1. Party State:
 2. Body issuing the certificate:
 - 2.1. Name:
 - 2.2. Address and contact details:
 3. Body authorising the settlement/document:
 - 3.1. Name:
 - 3.2. Identification and location:
 - 3.3. Address and contact details:
 4. Court settlement/Authentic document:
 - 4.1. Reference number:
 - 4.2. Date:
 - 4.3. Identification of the parties:
 - 4.3.1: Claimant or Party A:
 - 4.3.2 : Respondent or Party B:
 - 4.3.3 : Others:
 - 4.4. Full text of the Court settlement/authentic document (Annex):
 - 4.7. Names of the parties to whom legal aid has been granted in the proceedings:
- The court settlement/authentic document IS/IS NOT enforceable (delete as appropriate) in the Member State of origin against: (name(s)).
- In (place), (date)
- Signature and stamp