

## OUTLINE

### HAGUE DIVORCE CONVENTION



#### *The Hague Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations*

### Introduction

The issues related to the marriage and divorce of couples whose lives are connected to more than one legal system were among the first topics to become the subject of international treaties established by the Hague Conference on Private International Law at the turn of the 19<sup>th</sup> century. The first Hague Convention on divorce and separation, adopted on 12 June 1902, dealt with conflicts of law and jurisdiction in this field. However, more than half a century later, the 1902 Convention proved less and less adapted to prevailing circumstances and the Member States of the Hague Conference found it necessary to draw up a new Convention. The *Hague Convention on Recognition of Divorce and Legal Separations* was concluded on 1 June 1970 and entered into force on 24 August 1975.

### Objectives

The *1970 Hague Recognition of Divorce Convention* aims to facilitate the recognition in one Contracting State of divorces and legal separations obtained in another Contracting State<sup>1</sup> and thus assure divorced and separated spouses that their new status shall receive the same recognition abroad as in the country where the divorce or separation is obtained.<sup>2</sup> The Convention thereby simplifies the possibility of remarriage and clarifies the legal relationship of the couple concerned, a factor which can prove very important for the dependent children of a new relationship. The Convention furthermore envisages combating “forum shopping” in the field of divorce.<sup>3</sup>

### Scope

The Convention applies to the recognition of divorces and legal separations which follow judicial or other proceedings officially recognised in a Contracting State and which are legally effective there.<sup>4</sup> The Convention covers not only decrees granted by a court but also divorces or legal separations resulting from legislative, administrative or religious acts.<sup>5</sup> The Convention only applies to the decree of divorce or legal separation, not to findings of fault or to ancillary orders pronounced on the making of the decree of divorce or legal separation.<sup>6</sup> Furthermore, the annulment of marriages does not fall within the scope of the Convention.

The Convention deals with the recognition of the described divorces and legal separations only; whether or not their enforcement requires proceedings, and if so, of what kind, is left to the States concerned to decide.<sup>7</sup>

The Convention applies regardless of the date on which the divorce or legal separation was obtained.<sup>8</sup>

---

<sup>1</sup> See Preamble and Article 1.

<sup>2</sup> See Explanatory Report by P. Bellet and B. Goldman.

<sup>3</sup> *Ibid.*

<sup>4</sup> Article 1.

<sup>5</sup> See Explanatory Report.

<sup>6</sup> See Article 1 and Explanatory Report.

<sup>7</sup> See Explanatory Report.

<sup>8</sup> Article 24.

## How the Convention pursues its objectives

The Convention does not establish direct uniform rules of jurisdiction in the Contracting States. It regulates jurisdiction indirectly, by providing that recognition of divorces or legal separations is conditional upon presence of certain links between the spouses, or either one of them, and the State of divorce or legal separation.

### *Divorces and legal separations to be recognised*

The Convention provides for recognition of divorces or legal separations obtained in a Contracting State if, at the date the proceedings were instituted, the respondent had his or her habitual residence there,<sup>9</sup> or the petitioner had his or her habitual residence there. For the latter case, an additional condition is that either the petitioner's habitual residence existed for more than one year or the spouses last habitually resided there together.<sup>10</sup> Recognition of divorce or legal separation is furthermore provided for cases where both spouses were nationals of the State of origin or the petitioner was a national of that State, provided that the petitioner had his habitual residence there or he had habitually resided there for a continuous period of, at least one year, within the two year preceding the institution of the proceedings.<sup>11</sup> Finally, a divorce is to be recognised where the petitioner was a national of that State and he was present there at the time of institution of the proceedings, provided that the spouses last habitually resided together in a State whose law, at the date of the institution of the proceedings, did not provide for divorce.<sup>12</sup> The latter rule only applies to divorces and cannot be extended to legal separations by analogy.<sup>13</sup>

The expression "habitual residence" is to be deemed to include the term domicile, where the State of origin of a divorce or legal separation uses the concept of domicile as a test of jurisdiction in matters of divorce or legal separation.<sup>14</sup>

### *Refusal of recognition*

The recognition of a divorce or legal separation may be refused where: (1) both parties were nationals of States which did not provide for divorce and of no other State;<sup>15</sup> (2) adequate steps were not taken to give notice of the proceedings to the respondent;<sup>16</sup> and, (3) the divorce or legal separation is incompatible with a previous decision determining the matrimonial status of the spouses, provided that the decision is in effect or recognisable in the State where recognition of the divorce or legal separation is sought.<sup>17</sup> Furthermore, a Contracting State may refuse recognition where such recognition is manifestly incompatible with its public policy.

### *Reservations*

Contracting States may at the time of ratification or accession reserve the right to refuse recognition in the following circumstances: where the spouses at the time of divorce or legal separation were nationals only of the State in which recognition is sought and the law applicable according to the private international law of that State would have led to a different result than the law applied by the State of origin;<sup>18</sup> and, where the spouses at the relevant time both

---

<sup>9</sup> Article 2 (1).

<sup>10</sup> Article 2 (2).

<sup>11</sup> Article 2 (3), (4).

<sup>12</sup> Article 2 (5).

<sup>13</sup> See Explanatory Report.

<sup>14</sup> Article 3.

<sup>15</sup> Article 7.

<sup>16</sup> Article 8.

<sup>17</sup> Article 9.

<sup>18</sup> Article 19 (1).

habitually resided in States which did not provide for divorce.<sup>19</sup> Further reservations are possible for States whose laws do not provide respectively for divorce or legal separation.<sup>20</sup>

### **Convention Status**

The *1970 Hague Recognition of Divorce Convention* has currently 18 Contracting States. The Convention is open for signature to any State represented at the Eleventh Session of the Hague Conference on Private International Law.<sup>21</sup> Any other State which is a Member of the Hague Conference today or of the United Nations or of a specialized agency of that Organisation or a Party to the International Court of Justice may accede to the Convention.<sup>22</sup> The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession.<sup>23</sup>

---

<sup>19</sup> Article 19 (2); Contracting States who make a reservation according to Article 19 (2) may not refuse recognition by the application of Article 7.

<sup>20</sup> Articles 20 and 21.

<sup>21</sup> Article 26.

<sup>22</sup> Article 28 (1).

<sup>23</sup> Article 28 (4).