

**PROCEDURES DE RECONNAISSANCE ET D'EXECUTION A L'ETRANGER DES DECISIONS
CONCERNANT LES ALIMENTS ENVERS LES ENFANTS ET
D'AUTRES MEMBRES DE LA FAMILLE**

Rapport établi par William Duncan, Secrétaire général adjoint

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**PROCEDURES FOR RECOGNITION AND ENFORCEMENT ABROAD OF DECISIONS
CONCERNING CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE**

Report drawn up by William Duncan, Deputy Secretary General

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à l'intention de la Commission spéciale de juin 2004
sur le recouvrement international des aliments
envers les enfants et d'autres membres de la famille*

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for the attention of the Special Commission of June 2004
on the International Recovery of Child Support
and other Forms of Family Maintenance*

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INTRODUCTION

1. It has already been agreed by the Special Commission on the international recovery of child support and other forms of family maintenance that provisions for the recognition and enforcement of foreign maintenance decisions should be included as a core element in the instrument currently being developed. Considerable progress was made during the first meeting of the Special Commission, held in The Hague in May 2003, in developing the basic elements of a system of recognition and enforcement, and the extent of that progress is now reflected in Chapter IV of the Working Draft of a Convention on International Recovery of Child Support and Other Forms of Family Maintenance, prepared by the Drafting Committee at its meeting in January 2004.¹

2. The Working Draft includes provisions on the bases for recognition, on the definition of "decision" for the purposes of recognition and enforcement, on grounds for refusing recognition or enforcement, and some other more specific matters. On the other hand, the Working Draft does not yet include complete provisions concerning procedures for recognition or enforcement. Several questions remain to be addressed. What level of control or review should be exercised by the authorities of the State addressed when a request for the enforcement of a foreign decision is made? What are the matters which the authorities addressed should be entitled to take into account on an *ex officio* basis? At what stage should the party against whom enforcement is sought, have the right to raise objections, and should the grounds for challenge be limited? Should procedures for recognition or enforcement be time-limited or summary in nature? The purpose of this paper is to present a number of the models from existing instruments, as well as a suggested model for discussion which may assist the Special Commission in further consideration of these questions.

PART I - GENERAL PRINCIPLES AND CONSIDERATIONS

3. In Preliminary Document No 3,² the argument for a simple, speedy and cost-effective procedure was put as follows:

- ~~///~~ "... the procedures for recognition and enforcement need to be simple and cost effective. Again, it has to be borne in mind that maintenance decisions generally involve relatively modest sums which do not justify the use of cumbersome and expensive procedures;
- ~~///~~ the need for speed in a system whose purpose is to provide for the support of needy dependents is obvious;
- ~~///~~ the risks involved in adopting a principle of automatic recognition and summary enforcement are relatively low, given that maintenance payments are mostly modest and periodic in nature. The risk that the debtor may be reduced to a below-subsistence income is low; within many national systems of enforcement devices (*e.g.* protected earnings rates) exist to prevent this. Provided that there remains a right of subsequent challenge for the debtor, irregularities or injustices should generally be remediable before any serious

¹ See Prel. Doc. No 7 of April 2004, Working Draft of a Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, prepared by the Drafting Committee which met at The Hague from 12-16 January 2004, for the attention of the Special Commission of June 2004 on the International Recovery of Child Support and other Forms of Family Maintenance.

² See Prel. Doc. No 3 of April 2003, Towards a New Global Instrument on the International Recovery of Child Support and Other Forms of Family Maintenance, Report drawn up by William Duncan for the attention of the Special Commission of May 2003 on the International Recovery of Child Support and Other Forms of Family Maintenance.

injustice is done. In other words, there is much to be said for a strong presumption in favour of automatic and immediate recognition and enforcement; ...”

4. Discussions during the first meeting of the Special Commission in May 2003 revealed some hesitations about such a radical approach. The need to allow for the State addressed to have some opportunity to raise issues of public policy, and for the person against whom enforcement is sought to put forward certain defences, were suggested as reasons why “automatic and immediate recognition or enforcement” may be premature. On the other hand, there was recognition of the need for a procedure which is speedy and cost-effective.

PART II - THE WORKING DRAFT

5. The Working Draft already contains a number of elements which would help to simplify and expedite the procedure for the recognition and enforcement of child support orders and other family maintenance orders.

- 1) The grounds for refusing recognition and enforcement, set out in draft Article 29, are limited. The grounds are discretionary and not mandatory. However, discussion of these grounds is not yet complete. Further consideration has to be given to the provision³ relating to default decisions⁴ as well as to the possibility of addressing certain problems surrounding modification of jurisdiction under the heading of “conflicting decisions”.⁵
- 2) Draft Article 31 binds the State addressed to the findings of fact on which the authority of the State of origin based its jurisdiction.
- 3) Draft Article 32 prohibits review of the merits of the decision by the State addressed.
- 4) Although discussion of the documentary requirements for an application for recognition and enforcement is not yet complete, draft Article 12 sets out preliminary ideas. There is the possibility that the application might be made according to a standard form and that only a synopsis of the decision might be required. There is also the possibility of a standard form for certifying that the decision is no longer subject to ordinary forms of review and that it is enforceable in the State of origin.

PART III - PROCEDURES FOR RECOGNITION AND ENFORCEMENT - SOME MODELS

A) Hague Conventions

6. Under the *1973 Hague Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations*, the general principle is that the procedure for recognition or enforcement of a decision is governed by the law of the State addressed.⁶ Recognition or enforcement of a decision in another Contracting State is required provided that the originating authority had jurisdiction under the Convention rules, and

³ Art. 29, paragraph 5.

⁴ See Prel. Doc. No 7, footnote 106, and see below, paragraph 6.

⁵ See Prel. Doc. No 7, footnote 105.

⁶ Art. 13.

that the decision is no longer subject to ordinary forms of review in the State of origin.⁷ Recognition or enforcement may be refused on a number of specified grounds.⁸ The party seeking recognition or applying for enforcement must furnish certain documents, including a complete and true copy of the decision.⁹ There can be no review of the merits and the authority addressed is bound by the findings of fact on which the originating authority based its jurisdiction.¹⁰

7. Apart from these specific provisions, the 1973 Convention leaves it to the State addressed to decide upon the general procedures to be applied to recognition and enforcement and, in particular, whether there should be a full *inter partes* hearing on an application for recognition and enforcement, and what degree of *ex officio* control should be exercised by the authority addressed.

8. The same general approach is adopted in later Hague Conventions such as the *Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children* and *Convention of 13 January 2000 on the International Protection of Adults*, with certain modifications. In the 1996 Convention, for example, there is specific reference to the need for a declaration of enforceability or registration for the purposes of enforcement of measures of child protection. However, this again takes place according to procedures provided in the law of the State addressed.¹¹ The only further limitation on the State addressed is that the procedure should be "simple and rapid".¹²

9. The *Montevideo Convention of 15 July 1989 on Support Obligations* is rather more specific. It requires the authority addressed to ascertain "directly" whether the requirements for recognition have been met. Although proceedings are required to be summary, notice must be given to the debtor and a hearing must take place, though without a reopening of the merits.¹³

B) Instruments placing greater restraints on procedures for recognition or enforcement

10. In the three instruments to be described in this section, the process by which a maintenance decision is registered for enforcement or declared to be enforceable is more tightly controlled. *Ex officio* control is limited to certain formal or documentary matters. A full *inter partes* hearing at the stage of registration or declaration is ruled out. The burden then falls on the person against whom enforcement is sought to raise certain limited defences to recognition or enforcement.

11. The Brussels *Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters*¹⁴ which has maintenance obligations within its scope,¹⁵ contains the familiar formula that the procedures by which a judgment is declared enforceable (or registered for enforcement) in another State are governed by

⁷ Art. 4.

⁸ See Art. 5 and 6.

⁹ Art. 17.

¹⁰ Art. 12 and 9.

¹¹ Art. 26, paragraph 1.

¹² Art. 26, paragraph 2.

¹³ Art. 13.

¹⁴ No 44/2001 of 22 December 2000.

¹⁵ The Regulation excludes from its scope matters of status and property arising out of a matrimonial relationship (Art. 1(2)(a)).

the law of the Member State in which enforcement is sought.¹⁶ However, the declaration of enforceability must be given immediately on the completion of certain formalities.¹⁷ These consist of a production of a copy of the judgment and a standard form certificate, including a statement that the judgment is enforceable in the State of origin.¹⁸ At this point there can be no review of the possible grounds for refusing recognition, which are set out in Article 34, nor of the basis upon which the originating court assumed jurisdiction. Also, the party against whom enforcement is sought is not entitled at this stage to make submissions on the application. An appeal against the declaration of enforceability may be lodged within one month of service thereof (two months where the appellant is resident in another Member State).¹⁹ Only limited defences may be raised²⁰ in the appeal and the decision on the appeal must be taken without delay.²¹

12. The rationale for this system is described thus in paragraphs 17 and 18 of the Preamble to the Regulation.

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

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

13. A similar system, with certain exceptions which are referred to below under sub-part C, applies to the recognition and enforcement of judgments on the exercise of parental responsibility under the *Brussels Regulation concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility*.²²

14. Under the *Uniform Interstate Family Support Act* (2001 revision) (USA),²³ registration is the primary method for interstate enforcement of a child support order by a tribunal in a responding state. The process is triggered by the sending of specified records and information (including a certified copy of the order) to the state addressed. Registration occurs when the order is filed in the registering tribunal of the state addressed. The order is then enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal in the state addressed.²⁴

¹⁶ Art. 40, paragraph 1.

¹⁷ Art. 41.

¹⁸ Art. 53.

¹⁹ Art. 43, paragraph 5.

²⁰ These include the grounds for refusing recognition set out in Art. 34 as well as lack of jurisdiction in the originating court, but only in very limited cases. See Art. 35(1).

²¹ Art. 45.

²² No 2201/2003 of 27 November 2003.

²³ All US jurisdictions had by 1998 enacted UIFSA. The latest revision is that of 2001.

²⁴ Section 603.

15. The non-registering party is then notified (including full information about the effects of registration) and told that a request for a hearing to contest the validity of enforcement must be made within twenty days after notice.²⁵ The burden falls on the non-registering party to assert narrowly defined defences, for example that the originating authority lacked jurisdiction, that payment has already been made, or that the order was obtained by fraud.

16. The Canadian *Inter-jurisdictional Support Orders Act*²⁶ adopts a similar approach. That Act was adopted in Manitoba in July 2001²⁷ and it is that adaptation of the Act that is referred to here. On receipt of a certified copy of an extra-provincial or a foreign order, the Manitoba court must register the order as an order of the court.²⁸ It then has the same effect as if it were a support order made by the court addressed, and may be enforced in the same manner as a support order made by that court. Notice of registration must then be sent to any party to the order resident in Manitoba. That party may apply, within thirty days after notice, to have registration set aside. The grounds for challenge are limited as follows:

- 1) that in the proceeding in which the foreign order was made, a party to the order did not have proper notice or a reasonable opportunity to be heard,
- 2) that the foreign order is contrary to the public policy of Manitoba, and
- 3) that the court that made the foreign order did not have jurisdiction to make the order.²⁹

C) Instruments which allow for automatic enforcement (abolition of *exequatur*)

17. Under the *Uniform Interstate Family Support Act* (2001 revision) (USA) there are two direct enforcement procedures which do not require the assistance of a tribunal. First, an income withholding order can be sent directly to the obligor's employer in another state, unless the employee objects.³⁰ Secondly, a Support Enforcement Agency, on receiving the documents necessary for registration of a support order or income withholding order from another state, may use any administrative procedure allowed by the law of its state to enforce the support or income withholding order. If the obligor does not contest the validity of administrative enforcement, the order need not be registered.³¹

²⁵ Section 605.

²⁶ The Act, which applies to maintenance obligations in respect of children and adults, has been enacted in all the thirteen Canadian Provinces and Territories with the exception of Quebec, the Northwest Territories and the Yukon.

²⁷ C.C.S.M. c.160.

²⁸ Section 18.

²⁹ Section 19, sub-section 3.

³⁰ Section 501 and following.

³¹ Section 507.

18. The Brussels *Regulation on parental responsibility*,³² which does not apply to maintenance obligations, contains special rules for the enforcement in another Member State of rights of access granted in an enforceable judgment.³³ In such a case, there is no need for a declaration of enforceability or registration for enforcement and there is no possibility of opposing recognition or enforcement. The judgment must be certified by the judge of origin according to a standard form.³⁴ The same applies to an order for the return of an abducted child made by the authorities of the country where the child is habitually resident.³⁵ No appeal lies against the issuing of a certificate in these two cases.³⁶

19. Also of interest, is the current development by the European Parliament and Council of a European Enforcement Order for uncontested claims, in civil and commercial, including maintenance, matters.³⁷ A claim is to be regarded as uncontested:

- 1) if the debtor has expressly agreed to it in the course of court proceedings,
- 2) if the debtor never objected to it in the course of court proceedings,
- 3) if the debtor has not appeared at a court hearing after having initially objected to the claim, and
- 4) if the debtor has expressly agreed to it in an authentic instrument.³⁸

20. An uncontested claim which has been certified as a European Enforcement Order in the State of origin will be entitled to recognition and enforcement in other Member States without the need for a declaration of enforceability and without any possibility of opposing its recognition, except for a case where the judgment is incompatible with an earlier judgment (Art. 21). In effect, the requirements for the recognition and enforcement of the order are checked only by the court of origin. The Regulation covers also default judgments and contains strict requirements for service.

PART IV - A MODEL FOR DISCUSSION

21. Discussion in the first meeting of the Special Commission suggests that the approach most likely to attract consensus is a middle road which falls between the complete abolition of *exequatur* on the one hand and, on the other hand, the preservation at the registration / declaration stage of a procedure allowing extensive *ex officio* control as well as an *inter partes* hearing. If this is the case, then the intermediate models set out above under sub-part B are likely to appear most attractive. Drawing on these, the following is a possible model which is put forward for the purposes of discussion only.

³² See above, paragraph 13.

³³ Art. 41.

³⁴ Art. 41, paragraph 2.

³⁵ Art. 42.

³⁶ Art. 43, paragraph 2.

³⁷ See Council of the European Union Inter-institutional File: 2002/0090(COD), Brussels 6 February 2004, 16041/1/03, concerning the "Common position adopted by the Council with a view to the adoption of [the Regulation] ...". (This document contains the final text.)

³⁸ Art. 3.1.

- 1) The new Convention would indicate precisely what documents / information should accompany an application for recognition and enforcement of a decision made in another Contracting State. The matters to be considered for inclusion, in particular, are:
 - a) a standard form of application,
 - b) a certified copy of the decision or a certified synopsis (according to a standard form),
 - c) certification that the decision is no longer subject to ordinary forms of review and that it is enforceable in the State of origin,
 - d) certification that, in the case of a default decision, an appropriate opportunity to be heard (or notice) was given to the debtor,³⁹
 - e) a statement of the basis (including relevant findings of fact) upon which the originating authority founded its jurisdiction.

- 2) On receipt of the appropriate documentation, the authority addressed would be required to register the decision for enforcement or declare the decision to be enforceable by a simple and expeditious procedure. At this stage, the authority addressed would be confined to an examination of the documentation to establish (a) that formal requirements have been satisfied, and (b) that the documentation on its face shows no basis for refusing recognition and enforcement by reason of manifest incompatibility with public policy. An alternative would be to confine *ex officio* review to the matters mentioned in (a). Under the three models (Brussels, USA and Canada) set out in paragraphs above *ex officio* control on a public policy basis by the authority addressed is not permitted. There would be no hearing at this stage and no possibility for the person against whom enforcement is sought to make submissions or raise objections.

- 3) Appeal would be allowed against a refusal to register the decision for enforcement or declare the decision to be enforceable.

- 4) Immediately following the registration of the decision for enforcement (or the declaration of enforceability) the person against whom enforcement is sought would be notified. The notification would include a statement of the effects of registration and would indicate the period of time within which an appeal may be lodged.

- 5) The possible grounds for appeal would be listed in the Convention and might include:
 - a) the grounds for refusing recognition and enforcement which are set out in Article 29 of the Working Draft,
 - b) absence of jurisdiction in the originating authority, and
 - c) that the debt has already been paid.

- 6) In the absence of an appeal against registration or declaration, the decision once registered or declared enforceable would be enforceable as if it were a decision taken by the authority addressed.

22. Some further matters would need to be considered. First, should the special procedure for recognition and enforcement only apply where application is made *via* the Central Authorities. Arguably this should be the case, given the additional control exercised by the Central Authorities themselves. However, if this is agreed, would separate provisions be needed for applications which are not processed through the Central Authority system?

³⁹ See below at paragraph 25.

23. Second, should there be a provision permitting two or more Contracting Parties to agree to apply a procedure for recognition or enforcement which is simpler and swifter than that set out above? For example, should it be possible for two or more States to abolish *exequatur* as between themselves in respect of the enforcement of decisions generally or, perhaps, in respect of particular categories of decision (for example, uncontested decisions or wage-withholding orders)? This would allow for the development of procedures which are simpler, swifter and cheaper as between Contracting Parties that are ready to accept this level of co-operation and integration. An analogy is to be found in Article 39, paragraph 2 of the *Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* which allows Contracting States to enter into agreements "with a view to improving the application of the Convention in their mutual relations," and specifies the provisions of the Convention from which derogation may be made. Another example is Article 36 of the *Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* which, without specifying the particular provisions from which derogation is possible, allows Contracting States to limit the restrictions to which the return of a child is subject.

24. Third, it may be considered whether an expedited procedure for recognition and enforcement, such as that set out above, would be appropriate in respect of all forms of maintenance decision, or only in respect of orders for the making of periodic payments. For example, should an order for the payment of a substantial lump sum, or for the transfer of property (which would be considered in some jurisdictions to be "maintenance" decisions provided that the purpose was to provide support for the creditor)⁴⁰ be subject to the same procedure? It may be recalled that, under Article 26 of the *Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations*, a Contracting State may reserve the right not to recognise or enforce a decision or settlement unless it provides for periodic payments.

PART V - DEFAULT DECISIONS

25. The Special Commission meeting in May 2003 discussed the possible grounds for refusing recognition or enforcement of a decision, and the conclusions reached are reflected in Article 29 of the Working Draft. While it was agreed that "lack of notice of the proceedings and / or opportunity to be heard"⁴¹ would be a possible basis for refusal, no precise formula was agreed. In footnote 106 of the Working Draft, three formulas are suggested for consideration as follows:

- (a) Recognition may be refused where the decision was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so (see the *Brussels Regulation of 22 December 2000 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters*, Article 34(2)).

⁴⁰ See Prel. Doc. No 3, paragraph 182.

⁴¹ Draft Art. 29(5).

or a stand-alone provision

- (b) "Without prejudice to the provisions of Article 5, a decision rendered by default shall be recognised or enforced only if notice of the institution of the proceedings, including notice of the substance of the claim, has been served on the defaulting party in accordance with the law of the State of origin and if, having regard to the circumstances, that party has had sufficient time to enable him to defend the proceedings" (the Hague Convention of 1973 on Recognition and Enforcement, Article 6).

or

- (c) "Maintenance decisions made after the failure of the respondent to appear shall be considered as decisions under paragraph 1 if it is demonstrated that notice had been given and the opportunity to be heard had been satisfied in a way to satisfy the standards of the Requested Party" (the United States Model Agreement for the Enforcement of Maintenance (Support), Article 7(2)).

26. At the same time, the same footnote states that it will be important to bear in mind the procedures operating within certain administrative systems of child support, in which the protection for the debtor consists, not in a requirement of prior notice, but rather in the opportunity to request review of a maintenance decision or assessment. This may suggest that a formula which focuses on the broader concept of "opportunity to be heard," at least as an alternative to the more specific requirement of notice, may be appropriate. The wording used in the (Canada) *Inter-jurisdictional Support Orders Act* provides an example. The Act permits a court to set aside registration of a foreign order if, in the proceedings in which the foreign order was made, "a party to the order did not have proper notice or a reasonable opportunity to be heard."⁴²

⁴² Section 19(3)(b)(i).

ANNEXES

Precedents on procedures for recognition and enforcement

1	Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations – Articles 4, 5, 6, 9, 10, 12, 13, 14, 15.....	i
2	Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children – Articles 26, 28	iii
3	Inter-American (Montevideo) Convention of 15 July 1989 on Support Obligations – Articles 11, 12, 13.....	iv
4	Council of the European Union Regulation (EC) No 44/2001 of 22 December 2000 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters – Articles 33.1, 34, 35, 36, 38, 40.1, 41, 42, 43, 45, 46.1.....	v
5	Uniform Interstate Family Support Act (USA) 2001 – Sections 601, 602 (a) (chapeau only), (b), 603, 605, 606, 607, 608	viii
6	The Inter-jurisdictional Support Orders Act, C.C.S.M. c. I60, (Manitoba, Canada) (July 6, 2001) – Sections 17, 18, 19.....	x
7	Council Regulation concerning Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters and the Matters of Parental Responsibility of November 2003, repealing Regulation (EC) No 1347/2000 – Articles 41, 42	xii
8	Draft Regulation of the European Parliament and of the Council creating a European Enforcement Order for Uncontested Claims – Articles 3, 5	xiv

1) HAGUE CONVENTION OF 2 OCTOBER 1973 ON THE RECOGNITION AND ENFORCEMENT OF DECISIONS RELATING TO MAINTENANCE OBLIGATIONS

Article 4

A decision rendered in a Contracting State shall be recognised or enforced in another Contracting State –

- (1) if it was rendered by an authority considered to have jurisdiction under Article 7 or 8; and
- (2) if it is no longer subject to ordinary forms of review in the State of origin.

Provisionally enforceable decisions and provisional measures shall, although subject to ordinary forms of review, be recognised or enforced in the State addressed if similar decisions may be rendered and enforced in that State.

Article 5

Recognition or enforcement of a decision may, however, be refused –

- (1) if recognition or enforcement of the decision is manifestly incompatible with the public policy ("ordre public") of the State addressed; or
- (2) if the decision was obtained by fraud in connection with a matter of procedure; or
- (3) if proceedings between the same parties and having the same purpose are pending before an authority of the State addressed and those proceedings were the first to be instituted; or
- (4) if the decision is incompatible with a decision rendered between the same parties and having the same purpose, either in the State addressed or in another State, provided that this latter decision fulfils the conditions necessary for its recognition and enforcement in the State addressed.

Article 6

Without prejudice to the provisions of Article 5, a decision rendered by default shall be recognised or enforced only if notice of the institution of the proceedings, including notice of the substance of the claim, has been served on the defaulting party in accordance with the law of the State of origin and if, having regard to the circumstances, that party has had sufficient time to enable him to defend the proceedings.

Article 9

The authority of the State addressed shall be bound by the findings of fact on which the authority of the State of origin based its jurisdiction.

Article 10

If a decision deals with several issues in an application for maintenance and if recognition or enforcement cannot be granted for the whole of the decision, the authority of the State addressed shall apply this Convention to that part of the decision which can be recognised or enforced.

Article 12

There shall be no review by the authority of the State addressed of the merits of a decision, unless this Convention otherwise provides.

Article 13

The procedure for the recognition or enforcement of a decision shall be governed by the law of the State addressed, unless this Convention otherwise provides.

Article 14

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

Article 15

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

2) HAGUE CONVENTION OF 19 OCTOBER 1996 ON JURISDICTION, APPLICABLE LAW, RECOGNITION, ENFORCEMENT AND CO-OPERATION IN RESPECT OF PARENTAL RESPONSIBILITY AND MEASURES FOR THE PROTECTION OF CHILDREN

Article 26

1. If measures taken in one Contracting State and enforceable there require enforcement in another Contracting State, they shall, upon request by an interested party, be declared enforceable or registered for the purpose of enforcement in that other State according to the procedure provided in the law of the latter State.
2. Each Contracting State shall apply to the declaration of enforceability or registration a simple and rapid procedure.
3. The declaration of enforceability or registration may be refused only for one of the reasons set out in Article 23, paragraph 2.

Article 28

Measures taken in one Contracting State and declared enforceable, or registered for the purpose of enforcement, in another Contracting State shall be enforced in the latter State as if they had been taken by the authorities of that State. Enforcement takes place in accordance with the law of the requested State to the extent provided by such law, taking into consideration the best interests of the child.

3) INTER-AMERICAN (MONTEVIDEO) CONVENTION OF 15 JULY 1989 ON SUPPORT OBLIGATIONS

Article 11

Support orders of one State Party shall be enforced in other States Parties if they meet the following requirements:

- a. The judicial or administrative authority issuing the order had jurisdiction under Articles 8 and 9 of this Convention to hear and decide the matter;
- b. The order and the documents attached thereto required under this Convention have been duly translated into the official language of the State in which the order is to be enforced;
- c. As necessary, the order and the documents attached thereto have been certified in accordance with the law of the State in which the order is to be enforced;
- d. They have been certified in accordance with the law of the State of origin;
- e. The defendant was served with notice or was summoned to appear in due legal form substantially equivalent to that established by the law of the State in which the order is to be enforced;
- f. The parties had the opportunity to present their defence;
- g. The orders are final in the State in which they were rendered. A pending appeal from such order shall not delay its enforcement.

Article 12

A request for enforcement of an order shall include the following;

- a. A certified copy of the order;
- b. Certified copies of the documents needed to prove compliance with Article 11.e and 11.f;
- c. A certified copy of a document showing that the support order is final or is being appealed.

Article 13

Compliance with the above requirements shall be ascertained directly by the competent authority from which enforcement is sought, which shall proceed summarily, giving notice to the debtor and, where necessary, to the appropriate public agency and holding a hearing without reopening the merits. Should the enforcement decision be appealable, the appeal shall not suspend provisional measures or such collection or enforcement orders as may be in effect.

4) COUNCIL OF THE EUROPEAN UNION REGULATION (EC) NO 44/2001 OF 22 DECEMBER 2000 ON JURISDICTION AND THE RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS

Article 33

1. A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.
(...)

Article 34

A judgment shall not be recognised:

1. if such recognition is manifestly contrary to public policy in the Member State in which recognition is sought;
2. where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;
3. if it is irreconcilable with a judgment given in a dispute between the same parties in the Member State in which recognition is sought;
4. if it is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed.

Article 35

1. Moreover, a judgment shall not be recognised if it conflicts with Sections 3, 4 or 6 of Chapter II, or in a case provided for in Article 72.
2. In its examination of the grounds of jurisdiction referred to in the foregoing paragraph, the court or authority applied to shall be bound by the findings of fact on which the court of the Member State of origin based its jurisdiction.
3. Subject to the paragraph 1, the jurisdiction of the court of the Member State of origin may not be reviewed. The test of public policy referred to in point 1 of Article 34 may not be applied to the rules relating to jurisdiction.

Article 36

Under no circumstances may a foreign judgment be reviewed as to its substance.

Article 38

1. A judgment given in a Member State and enforceable in that State shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there.

2. However, in the United Kingdom, such a judgment shall be enforced in England and Wales, in Scotland, or in Northern Ireland when, on the application of any interested party, it has been registered for enforcement in that part of the United Kingdom.

Article 40

1. The procedure for making the application shall be governed by the law of the Member State in which enforcement is sought.

Article 41

The judgment shall be declared enforceable immediately on completion of the formalities in Article 53 without any review under Articles 34 and 35. The party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.

Article 42

1. The decision on the application for a declaration of enforceability shall forthwith be brought to the notice of the applicant in accordance with the procedure laid down by the law of the Member State in which enforcement is sought.

2. The declaration of enforceability shall be served on the party against whom enforcement is sought, accompanied by the judgment, if not already served on that party.

Article 43

1. The decision on the application for a declaration of enforceability may be appealed against by either party.

2. The appeal is to be lodged with the court indicated in the list in Annex III.

3. The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters.

4. If the party against whom enforcement is sought fails to appear before the appellate court in proceedings concerning an appeal brought by the applicant, Article 26(2) to (4) shall apply even where the party against whom enforcement is sought is not domiciled in any of the Member States.

5. An appeal against the declaration of enforceability is to be lodged within one month of service thereof. If the party against whom enforcement is sought is domiciled in a Member State other than that in which the declaration of enforceability was given, the time for appealing shall be two months and shall run from the date of service, either on him in person or at his residence. No extension of time may be granted on account of distance.

Article 45

1. The court with which an appeal is lodged under Article 43 or Article 44 shall refuse or revoke a declaration of enforceability only on one of the grounds specified in Articles 34 and 35. It shall give its decision without delay.

2. Under no circumstances may the foreign judgment be reviewed as to its substance.

Article 46

1. The court with which an appeal is lodged under Article 43 or Article 44 may, on the application of the party against whom enforcement is sought, stay the proceedings if an ordinary appeal has been lodged against the judgment in the Member State of origin or if the time for such an appeal has not yet expired; in the latter case, the court may specify the time within which such an appeal is to be lodged.

5) UNIFORM INTERSTATE FAMILY SUPPORT ACT (USA) 2001**(601) Registration of order for enforcement.**

A support order or an income-withholding order issued by a tribunal of another state may be registered in this state for enforcement.

(602) Procedure to register order for enforcement.

1. A support order or income-withholding order of another state may be registered in this state by sending the following documents and information to the appropriate tribunal in this state:

- a. A letter of transmittal to the tribunal requesting registration and enforcement;
 - b. Two copies, including one certified copy, of all orders to be registered, including any modification of an order;
- (...)

(603) Effect of registration for enforcement.

1. A support order or income-withholding order issued in another state is registered when the order is filed in the registering tribunal of this state.
2. A registered order issued in another state is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.
3. Except as otherwise provided in this chapter, a tribunal of this state shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction.

(605) Notice of registration of order.

1. When a support order or income-withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.
2. The notice must inform the nonregistering party:
 - a. That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;
 - b. That a hearing to contest the validity or enforcement of the registered order must be requested within twenty days after notice;
 - c. That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted; and
 - d. Of the amount of any alleged arrearages.
3. Upon registration of an income-withholding order for enforcement, the registering tribunal shall notify the obligor's employer pursuant to the income-withholding requirements of chapter 14-09.

(606) Procedure to contest validity or enforcement of registered order.

1. A nonregistering party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing within twenty days after notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to section 14-12.2-41.
2. If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.
3. If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties of the date, time, and place of the hearing.

(607) Contest of registration or enforcement.

1. A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses:
 - a. The issuing tribunal lacked personal jurisdiction over the contesting party;
 - b. The order was obtained by fraud;
 - c. The order has been vacated, suspended, or modified by a later order;
 - d. The issuing tribunal has stayed the order pending appeal;
 - e. There is a defense under the law of this state to the remedy sought;
 - f. Full or partial payment has been made; or
 - g. The statute of limitation under section 14-12.2-38 precludes enforcement of some or all of the arrearages.
2. If a party presents evidence establishing a full or partial defense under subsection 1, a tribunal may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under the law of this state.
3. If the contesting party does not establish a defense under subsection 1 to the validity or enforcement of the order, the registering tribunal shall issue an order confirming the order.

(608) Confirmed order.

Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

6) THE INTER-JURISDICTIONAL SUPPORT ORDERS ACT, C.C.S.M. c. 160, (MANITOBA, CANADA) (JULY 6, 2001)

Receipt of an order in Manitoba

17(1) To register an extra-provincial order or a foreign order, the order must be forwarded to the designated authority in Manitoba.

Designated authority forwards order to court

17(2) On receiving a certified copy of an extra-provincial order or a foreign order, the designated authority in Manitoba must forward a copy of the order in accordance with the regulations to the Manitoba court.

Registration

18(1) On receiving an extra-provincial order or foreign order, the Manitoba court must register the order as an order of that court.

Effect of registration of order

18(2) On being registered, the extra-provincial order or foreign order

(a) has, from the date it is registered, the same effect as if it was a support order made by a Manitoba court; and

(b) may, both with respect to arrears accrued before registration and with respect to obligations accruing after registration, be enforced in the same manner as a support order made by a court in Manitoba, or varied as provided in this Act, whether the order is made before, on or after the day on which this Act comes into force.

Foreign orders

19(1) After the registration of a foreign order under section 18, the designated authority must, in accordance with the regulations, notify any party to the order believed to be ordinarily resident in Manitoba of the registration of the order.

Application to set aside registration of foreign order

19(2) A party to the order may apply to the Manitoba court to set aside the registration of the foreign order within 30 days after receiving notice of the registration of the foreign order and on giving notice in accordance with the regulations.

Order re registration of foreign order

19(3) On an application under subsection (2), the Manitoba court may

(a) confirm the registration; or

- (b) set aside the registration if the Manitoba court determines
 - (i) that, in the proceeding in which the foreign order was made, a party to the order did not have proper notice or a reasonable opportunity to be heard,
 - (ii) that the foreign order is contrary to the public policy of Manitoba, or
 - (iii) that the court that made the foreign order did not have jurisdiction to make the order.

Reasons required if court sets aside registration

19(4) If the Manitoba court sets aside the registration, it must give reasons for its decision.

Jurisdiction of the court

19(5) For the purposes of subclause (3)(b)(iii), a court has jurisdiction

- (a) if both parties to the order were ordinarily resident in the reciprocating jurisdiction outside Canada; or
- (b) if a party, who was not ordinarily resident in the reciprocating jurisdiction outside Canada, is subject to the jurisdiction of the court that made the foreign order.

Notice of decision or order required

19(6) Notice of a decision or order of the Manitoba court must, in accordance with the regulations, be given to the parties and the designated authority.

7) COUNCIL REGULATION CONCERNING JURISDICTION AND THE RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN MATRIMONIAL MATTERS AND THE MATTERS OF PARENTAL RESPONSIBILITY OF NOVEMBER 2003, REPEALING REGULATION (EC) No 1347/2000

Article 41

Rights of access

1. The rights of access referred to in Article 40(1)(a) granted in an enforceable judgment given in a Member State shall be recognised and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition if the judgment has been certified in the Member State of origin in accordance with paragraph 2.

Even if national law does not provide for enforceability by operation of law of a judgment granting access rights, the court of origin may declare that the judgment shall be enforceable, notwithstanding any appeal.

2. The judge of origin shall issue the certificate referred to in paragraph 1 using the standard form in Annex III (certificate concerning rights of access) only if:

(a) where the judgment was given in default, the person defaulting was served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable that person to arrange for his or her defense, or, the person has been served with the document but not in compliance with these conditions, it is nevertheless established that he or she accepted the decision unequivocally;

(b) all parties concerned were given an opportunity to be heard;

and

(c) the child was given an opportunity to be heard, unless a hearing was considered inappropriate having regard to his or her age or degree of maturity.

The certificate shall be completed in the language of the judgment.

3. Where the rights of access involve a cross-border situation at the time of the delivery of the judgment, the certificate shall be issued *ex officio* when the judgment becomes enforceable, even if only provisionally. If the situation subsequently acquires a cross-border character, the certificate shall be issued at the request of one of the parties.

Article 42

Return of the child

1. The return of a child referred to in Article 40(1)(b) entailed by an enforceable judgment given in a Member State shall be recognised and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition if the judgment has been certified in the Member State of origin in accordance with paragraph 2.

Even if national law does not provide for enforceability by operation of law, notwithstanding any appeal, of a judgment requiring the return of the child mentioned in Article 11(b)(8), the court of origin may declare the judgment enforceable.

2. The judge of origin who delivered the judgment referred to in Article 40(1)(b) shall issue the certificate referred to in paragraph 1 only if:

(a) the child was given an opportunity to be heard, unless a hearing was considered inappropriate having regard to his or her age or degree of maturity,

(b) the parties were given an opportunity to be heard, and

(c) the court has taken into account in issuing its judgment the reasons for and evidence underlying the order issued pursuant to Article 13 of the 1980 Hague Convention.

In the event that the court or any other authority takes measures to ensure the protection of the child after its return to the State of habitual residence, the certificate shall contain details of such measures.

The judge of origin shall of his or her own motion issue that certificate using the standard form in Annex VII (certificate concerning return of the child(ren)).

The certificate shall be completed in the language of the judgment.

8) DRAFT REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL CREATING A EUROPEAN ENFORCEMENT ORDER FOR UNCONTESTED CLAIMS

Article 3

Enforcement titles to be certified as a European Enforcement Order

1. This Regulation shall apply to judgments, court settlements and authentic instruments on uncontested claims.

A claim shall be regarded as uncontested if:

(a) the debtor has expressly agreed to it by admission or by means of a settlement which has been approved by a court or concluded before a court in the course of proceedings; or

(b) the debtor has never objected to it, in compliance with the relevant procedural requirements under the law of the Member State of origin, in the course of the court proceedings; or

(c) the debtor has not appeared or been represented at a court hearing regarding that claim after having initially objected to the claim in the course of the court proceedings, provided that such conduct amounts to a tacit admission of the claim or of the facts alleged by the creditor under the law of the Member State of origin; or

(d) the debtor has expressly agreed to it in an authentic instrument.

2. This Regulation shall also apply to decisions delivered following challenges to judgments, court settlements or authentic instruments certified as European Enforcement Orders.

Article 5

Abolition of exequatur

A judgment which has been certified as a European Enforcement Order in the Member State of origin shall be recognised and enforced in the other Member States without the need for a declaration of enforceability and without any possibility of opposing its recognition.