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I. THE HISTORY

On June 30, 2005, the Twentieth Session of the Hague Conference on Private International Law unanimously adopted a new Convention on Choice of Court Agreements.1 This new treaty is now open for signature and ratification, or accession, by all States, regardless of whether they are Member States of the Hague Conference or not. It is hoped that the Convention will do for choice of court agreements (forum selection clauses) and the resulting judgments what the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards2 does for arbitration agreements and the resulting awards.

At the origin was a proposal made by the United States of America in 1992 to include a convention on recognition and enforcement of foreign judgments

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in the agenda of the Hague Conference. European Member States of the Hague Conference, on the other hand, were more interested in harmonizing jurisdiction rules at a global level, and in particular in limiting U.S. long-arm jurisdiction. Following some preparatory discussions, formal negotiations started in 1996. In 1999, a so-called “preliminary draft Convention” was adopted by vote. The intention was that the negotiating States should consult their stakeholders back home on the text and return for one last meeting, the Diplomatic Conference convened with a view to adopting the Convention. The 1999 text was a comprehensive “mixed convention” attempting to divide bases of jurisdiction into three categories: 1) the “good grounds” explicitly listed in the Convention, which would lead to judgments entitled to recognition and enforcement under the Convention in other Contracting States; 2) the “bad grounds” explicitly prohibited by the Convention (which thereby strongly interfered with the internal law of Contracting States at the jurisdiction stage, and any judgment based on such ground would not be recognized and enforced in other Contracting States under the Convention or internal law); and 3) the “gray area” of bases of jurisdiction existing under national law which were neither incorporated in the Convention nor expressly prohibited. Recognition and enforcement of judgments based on such grounds would not be granted under the Convention but was still possible under national law.

Consultations on the 1999 text showed, however, that this attempt for global harmonization was too ambitious for its time. Procedural systems were too different; and this was reflected even in the drafting style. Moreover, there were opposing interests of stakeholders involved, and the growing importance of Internet and electronic commerce led to fierce discussions on which were the “right” rules to deal with the new digital economy. This was true for substantive law rules, e.g. on the liability of Internet service providers or on the infringement of intellectual property rights on the Internet, but also traditional choice of law rules and choice of jurisdiction rules were questioned. Therefore the formal Hague negotiations were suspended until 2001 to allow for informal discussions and further examination of these new questions. In 2001, a first part of the Diplomatic Conference was held, and it led to a text (known as the 2001 Interim Text) which tried to combine civil-law and common-law drafting styles and cover up differences between U.S. and European civil procedure. In an attempt to move to consensus-based negotiations rather than to rely on


voting, square brackets were placed around the controversial items—which left little outside the brackets.

The Hague Conference is a Member-State driven organization which means that the work program and policy are decided once a year by its Member States at a so-called Special Commission on General Affairs and Policy of the Conference. In 2002, this meeting decided that a small Informal Working Group should examine the bases of jurisdiction in the 1999/2001 texts and search for consensus. After three meetings, the group submitted a draft text of a Convention on Choice of Court Agreements in B2B Cases, and Member States of the Conference agreed that this could be a good basis for formal negotiations. This change of scope and policy was strongly supported by the business world. The International Chamber of Commerce had in fact carried out an empirical research by circulating a questionnaire to its member companies through its more than ninety national committees, one of which is USCIB. The purpose was to find out when and how choice of court agreements and/or arbitration agreements were included into international commercial contracts, and what impact the existing legal instruments had on the use of one or the other clause. The business world stated that more choice would be welcomed, and that a parallel instrument to the New York Convention would be highly useful.

II. THE 2005 CONVENTION ON CHOICE OF COURT AGREEMENTS

A. General Overview

1. Scope

The new Convention was elaborated during two Special Commissions held in December 2003 and April 2004, and a Diplomatic Session held from June 14–30, 2005. It applies primarily to exclusive choice of court agreements in international B2B cases in civil or commercial matters (Article 1), with an optional extension on a reciprocal basis to judgments given by a court designated in a non-exclusive choice of court agreement (Article 22). Consumer and employment contracts, as well as a number of other matters such as family law matters, rights in rem in immovable property, insolvency, the carriage of passengers and goods, certain maritime matters, liability for nuclear damage, the validity of intellectual property rights other than copyright and related rights, claims for personal injury brought by or on behalf of natural persons, and tort or delict claims for damage to tangible property that do not arise from a contractual relationship are excluded from the scope of the Convention. The reasons for those exclusions are in most cases the existence of other, more specific international instruments, and of national, regional or international rules on exclusive jurisdiction for some of these matters. The first
reason applies, *inter alia*, to the carriage of goods, and to maritime matters. The second reason applies to the validity of intellectual property rights, rights *in rem* in immovable property, and insolvency. While due to the drafting technique used, this list appears rather long, in most cases it only states the obvious common denominator of what States would not want to leave to party autonomy. Should this not be enough for a particular State in an exceptional case, Article 21 allows for a declaration by that State, excluding any other specific matter from the scope of the Convention. In relation to all other States Parties, the State making such declaration will be considered like a non-Contracting State with regard to that matter. The drafters of the Convention expressed the strong wish that such declarations be limited to what is strictly necessary and be as narrow as possible.

2. Exclusive Choice of Court Agreements

An exclusive choice of court agreement is defined as follows in order to fall within the scope of the Convention (Article 3(a)):

... an agreement concluded by two or more parties that meets the requirements of paragraph (c) and designates, for the purpose of deciding disputes which have arisen or may arise in connection with a particular legal relationship, the courts of one Contracting State or one or more specific courts in one Contracting State to the exclusion of the jurisdiction of any other courts.\(^5\)

So if the parties to a contract choose "the courts of France," or "the courts of New York or San Francisco" (but not "the courts of New York or Ottawa"), the agreement is exclusive for the purposes of the Convention. More importantly, Article 3(b) contains an important "deeming rule" that will change the legal situation in particular in common law legal systems, and will greatly expand the scope of the Convention: "[A] choice of court agreement which designates the courts of one Contracting State or one or more specific courts in one Contracting State shall be deemed to be exclusive unless the parties have expressly provided otherwise."\(^6\)

This means that where the parties agree, e.g., that "the court in Ottawa shall decide all disputes arising out of this contract," this choice is deemed exclusive. Paragraph (c) contains the Convention's form requirement: The exclusive choice of court agreement must be "concluded or documented—in

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5. 2005 Hague Convention, *supra* note 1, art. 3(a).
6. *Id.* 3(b).
writing; or by any other means of communication which renders information accessible so as to be usable for subsequent reference."  

The wording of subparagraph (ii) is inspired by Article 6 of the UNCITRAL Model Law on Electronic Commerce (1996) and ensures that choice of court agreements concluded, for example, by an exchange of e-mails are covered.

3. Three Basic Rules

The Convention contains three main rules addressed to three different courts:

The chosen court must hear the case if the choice of court agreement is valid according to the standards established by the Convention (in particular there is no room for discretion/forum non conveniens in favor of courts of another State) (Article 5).  

Any court seized that is located in a State other than that of the chosen court must dismiss the case unless the choice of court agreement is invalid according to the standards established by the Convention (Article 6).  

Any judgment rendered by the court of a Contracting State which was designated in an exclusive choice of court agreement that is valid according to the standards established by the Convention must be recognized and enforced in other Contracting States (Article 8).

4. Exceptions

There are exceptions to these rules: Article 6 lists situations where the court seized but not chosen may take the case in spite of the choice of court agreement. Articles 9, 10 and 11 list situations where a judgment given by the chosen court does not have to be recognized or enforced under the Convention in whole or in part.  

The main exception for both courts is that the choice of court agreement is null and void. The Convention does not itself establish rules on consent and substantive validity. It was considered too ambitious to attempt a global harmonization of these important aspects of substantive contract law. However, no rule at all would have created a considerable threat to legal certainty, and to the foreseeability for the parties which the Convention is intended to enhance.

7. Id. art. 3(c).  
8. Id. art. 5.  
9. Id. art. 6.  
10. 2005 Hague Convention, supra note 1, art. 8.
Allowing that the chosen court and another court seized, or the enforcement court, each evaluate the validity of the choice of court agreement under their own law and come to different results could lead to the following situation: the chosen court holds the choice of court agreement valid and bases its jurisdiction on it, but then another court seized holds the agreement invalid under its own law and also takes the case; which leads to parallel litigation and conflicting judgments; or the enforcement court refuses to enforce the judgment given by the chosen court because it holds the agreement to be invalid. In order to avoid double standards and the situations just described, the Convention takes a choice-of-law approach. All three courts (the chosen court, any court seized in spite of the agreement and the court requested to enforce a judgment given by the chosen court) have to assess the substantive validity according to the law (including the choice-of-law rules) of the State of the chosen court. Although this looks like a complicated rule at first sight, it is hoped that this can avoid the above situations to happen while keeping global harmonization of the law in this area to the essential minimum.

Another important rule can be found in Article 11, which is addressed to the court requested to recognize and enforce a foreign judgment. The provision reads:

1) Recognition or enforcement of a judgment may be refused if, and to the extent that, the judgment awards damages, including exemplary or punitive damages, that do not compensate a party for actual loss or harm suffered.\(^\text{11}\)

2) The court addressed shall take into account whether and to what extent the damages awarded by the court of origin serve to cover costs and expenses relating to the proceedings.\(^\text{12}\)

This Article contains a number of important messages. Firstly, judgments awarding damages are covered by the Convention just like any other judgment, as long as they fall within a choice of court agreement between the parties, and it was the chosen court that gave the judgment. Secondly, the non-compensatory part of the judgment may be "shaved off" under Article 11(1). This can both increase and reduce the enforcement of damage awards, as compared to the present situation. It can increase enforcement in those States which at present reject recognition and enforcement to the full extent, even if only part of the award is non-compensatory. It could reduce enforcement in those States that currently always enforce to the full extent and now get a tool to reduce the damages awarded to enforcing only the compensatory part if they

\(^{11}\) Id. art. 11(1).

\(^{12}\) Id. art. 11(2)
so wish. This is however not very likely because the Convention does not oblige them to do so, and enforcement to a larger extent under national law remains possible.

B. Some Particular Issues Highlighted

1. Litigation Concerning Intellectual Property Rights

As mentioned earlier, litigation having as its object/subject the validity of intellectual property rights other than copyright and related rights, is excluded from the scope of the Convention. Moreover, sheer piracy will normally not fall within the scope because pirates do not normally conclude choice of court agreements with the rightholder before infringing intellectual property rights. But in spite of these exclusions, there is still a large and economically important body of intellectual property litigation that remains within the scope of the Convention. This concerns first and foremost litigation over licensing contracts and other contracts for the transfer or use of intellectual property rights. Where one party sues the other for royalties, or for damages based on an exploitation that allegedly exceeds the license granted, litigation brought in contract is therefore clearly covered. In some countries, however, the plaintiff has to plead not only the facts but also identify the legal basis for his claim, and there may be reasons to bring a claim in tort rather than in contract, albeit based on the same facts as just described. Such tort litigation is also covered by the Convention, as long as the case could have been brought as well based on a contract between the parties (Article 2(2)(o)).

Where in litigation covered by the Convention, the invalidity of the intellectual property right is raised as a defense, this does not exclude the case from the scope of the Convention (Article 2(3)). If, in the above example, a money judgment awarding royalties or damages is given, this will normally be enforced in other Contracting States (Article 8). The preliminary (or implicit) ruling on validity in the reasoning of the court will not be given any effect (such as collateral estoppel or similar) under the Convention in other Contracting States (Article 10(1)). If the money judgment is to be enforced in the State where the intellectual property right was granted or registered, however, and there are proceedings pending on that State which have as their object the validity of the right as such, or it has already been held invalid by the competent authorities of that State, the money judgment does not have to be recognized and enforced there (Article 10(3)). This limited exception to the obligation to recognize and enforce judgments under the Convention protects the sovereignty of the requested State over intellectual property rights created or granted by it.
2. Insurance Litigation

Article 17 makes clear that insurance litigation is also covered by the Convention:

1) Proceedings under a contract of insurance or reinsurance are not excluded from the scope of this Convention on the ground that the contract of insurance or reinsurance relates to a matter to which this Convention does not apply.

2) Recognition and enforcement of a judgment in respect of liability under the terms of a contract of insurance or reinsurance may not be limited or refused on the ground that the liability under that contract includes liability to indemnify the insured or reinsured in respect of (a) a matter to which this Convention does not apply; or (b) an award of damages to which Article 11 might apply.  

In other words, if a party takes out an insurance for nuclear liability, is then held liable for nuclear damages and sues its insurer who refuses to indemnify it under the insurance contract which contains a choice of court agreement, the proceedings will be covered by the Convention even though liability for nuclear damage as the object of the proceedings is excluded by Article 2(2)(i). The resulting judgment will be recognized and enforced under the Convention. The same applies where the insured party has taken out an insurance against having to pay damages, including non-compensatory damages, to others. Where this party is held liable to pay punitive damages and claims reimbursement from its insurer, the enforcement of the resulting judgment may not be refused under Article 11 with regard to the non-compensatory part of the damages that the insurance is supposed to cover.

3. Relationship with Other Instruments

Article 26 sets out in great detail how the new Convention relates to other treaties and other instruments. In general, the Convention strives for compatibility with other treaties, and it respects regional arrangements that may be based on greater harmonization of law in that region. The important connecting factor to look at is the residence of the parties. For example, where among a sub-group of States Parties to the new Hague Convention there exists another (earlier or later) treaty on the same subject-matter and the case is purely internal to those States bound by that other treaty because all the parties are resident either in those States or in States that are only Parties to the other treaty

13. Id. art. 17.
but not to the Hague Convention, the other treaty prevails (Article 26(2)). The same applies for rules adopted by a Regional Economic Integration Organization (e.g. for the Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [the Brussels Regulation]). In case of a treaty conflict caused by Article 26(2) (this rule does not apply to rules of a Regional Economic Integration Organization), Article 26(3) allows a State Party to both instruments to comply with its obligations towards third States. Earlier and later treaties on specific subject matters may also prevail, provided that the State Party to both that treaty and the new Hague Convention makes a declaration to that effect (Article 26(5)). With regard to recognition and enforcement, other instruments may continue to apply, but enforcement may not be granted to a lesser extent than under the Hague Convention (Article 26(4)).

Among all these complicated rules, there is one which, in political terms, is highly important. It concerns the relationship between the new Hague Convention and European Community rules, in particular the Brussels Regulation. This Regulation, together with its predecessor, the Brussels Convention of September 27, 1968, harmonizes jurisdiction and enforcement of judgments in civil and commercial matters throughout the European Community with its twenty-five Member States. A judgment given in one of these States will be enforced in all others without the jurisdiction of the first court being examined at the enforcement stage. According to its terms, the Regulation, which also contains an Article 23 on choice of court agreements, is applicable as soon as one of the parties is domiciled within the European Community. For non-EU States such as the United States, it would not be very interesting to conclude a new Hague Convention if being told at the outset that the EU Member States will continue to apply the Brussels Regulation even if one party is domiciled in the EU and the other in the United States. So, reasonably enough, the EU and its Member States agreed that in such a case, the Hague Convention should apply. This covers only cases where the State in which the non-EU party is resident—in our example the United States—is also a Party to the Hague Convention; a further incentive to join this new treaty. Currently, the co-Reporters Trevor Hartley (United Kingdom) and Masato Dogauuchi (Japan) are preparing the Explanatory Report, an article-by-article commentary on the new Convention which is based on the deliberations that took place during the Diplomatic Session in June 2005. Informal consultations have already started, and as soon as the Report is final, it is expected that formal consultations with a view to signature and ratification or accession will begin in the States that participated in the negotiations, and any other interested States.
III. APPENDIX

Final Act of the Twentieth Session

The undersigned, Delegates of the Governments of Argentina, Australia, Austria, Belarus, Belgium, Brazil, Bulgaria, Canada, China, Croatia, Czech Republic, Denmark, Egypt, Finland, France, Germany, Ireland, Israel, Italy, Japan, Republic of Korea, Latvia, Luxembourg, Mexico, Morocco, Netherlands, New Zealand, Norway, Panama, Peru, Poland, Portugal, Romania, Russian Federation, Slovenia, South Africa, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, Ukraine, United States of America and Venezuela, convened at The Hague from 14-30 June 2005, at the invitation of the Government of the Netherlands, in the Twentieth Session of the Hague Conference on Private International Law.

Following the deliberations laid down in the records of the meetings, they have decided to submit to their Governments—

A The following Convention—

CONVENTION ON CHOICE OF COURT AGREEMENTS

The States Parties to the present Convention,

Desiring to promote international trade and investment through enhanced judicial co-operation,

Believing that such co-operation can be enhanced by uniform rules on jurisdiction and on recognition and enforcement of foreign judgments in civil or commercial matters,

Believing that such enhanced co-operation requires in particular an international legal regime that provides certainty and ensures the effectiveness of exclusive choice of court agreements between parties to commercial transactions and that governs the recognition and enforcement of judgments resulting from proceedings based on such agreements,

Have resolved to conclude this Convention and have agreed upon the following provisions—
CHAPTER I—SCOPE AND DEFINITIONS

Article 1 Scope

1. This Convention shall apply in international cases to exclusive choice of court agreements concluded in civil or commercial matters.

2. For the purposes of Chapter II, a case is international unless the parties are resident in the same Contracting State and the relationship of the parties and all other elements relevant to the dispute, regardless of the location of the chosen court, are connected only with that State.

3. For the purposes of Chapter III, a case is international where recognition or enforcement of a foreign judgment is sought.

Article 2 Exclusions from scope

1. This Convention shall not apply to exclusive choice of court agreements—
   a) to which a natural person acting primarily for personal, family or household purposes (a consumer) is a party;
   b) relating to contracts of employment, including collective agreements.

2. This Convention shall not apply to the following matters—
   a) the status and legal capacity of natural persons;
   b) maintenance obligations;
   c) other family law matters, including matrimonial property regimes and other rights or obligations arising out of marriage or similar relationships;
   d) wills and succession;
   e) insolvency, composition and analogous matters;
   f) the carriage of passengers and goods;
   g) marine pollution, limitation of liability for maritime claims, general average, and emergency towage and salvage;
   h) anti-trust (competition) matters;
   i) liability for nuclear damage;
   j) claims for personal injury brought by or on behalf of natural persons;
   k) tort or delict claims for damage to tangible property that do not arise from a contractual relationship;
   l) rights in rem in immovable property, and tenancies of immovable property;
   m) the validity, nullity, or dissolution of legal persons, and the validity of decisions of their organs;
n) the validity of intellectual property rights other than copyright and related rights;
o) infringement of intellectual property rights other than copyright and related rights, except where infringement proceedings are brought for breach of a contract between the parties relating to such rights, or could have been brought for breach of that contract;
p) the validity of entries in public registers.

3. Notwithstanding paragraph 2, proceedings are not excluded from the scope of this Convention where a matter excluded under that paragraph arises merely as a preliminary question and not as an object of the proceedings. In particular, the mere fact that a matter excluded under paragraph 2 arises by way of defence does not exclude proceedings from the Convention, if that matter is not an object of the proceedings.

4. This Convention shall not apply to arbitration and related proceedings.

5. Proceedings are not excluded from the scope of this Convention by the mere fact that a State, including a government, a governmental agency or any person acting for a State, is a party thereto.

6. Nothing in this Convention shall affect privileges and immunities of States or of international organisations, in respect of themselves and of their property.

**Article 3 Exclusive choice of court agreements**

For the purposes of this Convention—

a) "exclusive choice of court agreement" means an agreement concluded by two or more parties that meets the requirements of paragraph c) and designates, for the purpose of deciding disputes which have arisen or may arise in connection with a particular legal relationship, the courts of one Contracting State or one or more specific courts of one Contracting State to the exclusion of the jurisdiction of any other courts;

b) a choice of court agreement which designates the courts of one Contracting State or one or more specific courts of one Contracting State shall be deemed to be exclusive unless the parties have expressly provided otherwise;

c) an exclusive choice of court agreement must be concluded or documented—

i) in writing; or
ii) by any other means of communication which renders information accessible so as to be usable for subsequent reference;

d) an exclusive choice of court agreement that forms part of a contract shall be treated as an agreement independent of the other terms of the contract. The validity of the exclusive choice of court agreement cannot be contested solely on the ground that the contract is not valid.

Article 4 Other definitions

1. In this Convention, "judgment" means any decision on the merits given by a court, whatever it may be called, including a decree or order, and a determination of costs or expenses by the court (including an officer of the court), provided that the determination relates to a decision on the merits which may be recognised or enforced under this Convention. An interim measure of protection is not a judgment.

2. For the purposes of this Convention, an entity or person other than a natural person shall be considered to be resident in the State—
   a) where it has its statutory seat;
   b) under whose law it was incorporated or formed;
   c) where it has its central administration; or
   d) where it has its principal place of business.

CHAPTER II—JURISDICTION

Article 5 Jurisdiction of the chosen court

1. The court or courts of a Contracting State designated in an exclusive choice of court agreement shall have jurisdiction to decide a dispute to which the agreement applies, unless the agreement is null and void under the law of that State.

2. A court that has jurisdiction under paragraph 1 shall not decline to exercise jurisdiction on the ground that the dispute should be decided in a court of another State.

3. The preceding paragraphs shall not affect rules—
   a) on jurisdiction related to subject matter or to the value of the claim;
   b) on the internal allocation of jurisdiction among the courts of a Contracting State. However, where the chosen court has
discretion as to whether to transfer a case, due consideration should be given to the choice of the parties.

Article 6 Obligations of a court not chosen

A court of a Contracting State other than that of the chosen court shall suspend or dismiss proceedings to which an exclusive choice of court agreement applies unless—

a) the agreement is null and void under the law of the State of the chosen court;

b) a party lacked the capacity to conclude the agreement under the law of the State of the court seised;

c) giving effect to the agreement would lead to a manifest injustice or would be manifestly contrary to the public policy of the State of the court seised;

d) for exceptional reasons beyond the control of the parties, the agreement cannot reasonably be performed; or

e) the chosen court has decided not to hear the case.

Article 7 Interim measures of protection

Interim measures of protection are not governed by this Convention. This Convention neither requires nor precludes the grant, refusal or termination of interim measures of protection by a court of a Contracting State and does not affect whether or not a party may request or a court should grant, refuse or terminate such measures.

CHAPTER III – RECOGNITION AND ENFORCEMENT

Article 8 Recognition and enforcement

1. A judgment given by a court of a Contracting State designated in an exclusive choice of court agreement shall be recognised and enforced in other Contracting States in accordance with this Chapter. Recognition or enforcement may be refused only on the grounds specified in this Convention.

2. Without prejudice to such review as is necessary for the application of the provisions of this Chapter, there shall be no review of the merits of the judgment given by the court of origin. The court addressed shall be bound by the findings of fact on which the court of origin based its jurisdiction, unless the judgment was given by default.
3. A judgment shall be recognised only if it has effect in the State of origin, and shall be enforced only if it is enforceable in the State of origin.

4. Recognition or enforcement may be postponed or refused if the judgment is the subject of review in the State of origin or if the time limit for seeking ordinary review has not expired. A refusal does not prevent a subsequent application for recognition or enforcement of the judgment.

5. This Article shall also apply to a judgment given by a court of a Contracting State pursuant to a transfer of the case from the chosen court in that Contracting State as permitted by Article 5, paragraph 3. However, where the chosen court had discretion as to whether to transfer the case to another court, recognition or enforcement of the judgment may be refused against a party who objected to the transfer in a timely manner in the State of origin.

Article 9 Refusal of recognition or enforcement

Recognition or enforcement may be refused if—

a) the agreement was null and void under the law of the State of the chosen court, unless the chosen court has determined that the agreement is valid;

b) a party lacked the capacity to conclude the agreement under the law of the requested State;

c) the document which instituted the proceedings or an equivalent document, including the essential elements of the claim, 
   i) was not notified to the defendant in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant entered an appearance and presented his case without contesting notification in the court of origin, provided that the law of the State of origin permitted notification to be contested; or 
   ii) was notified to the defendant in the requested State in a manner that is incompatible with fundamental principles of the requested State concerning service of documents;

d) the judgment was obtained by fraud in connection with a matter of procedure;

e) recognition or enforcement would be manifestly incompatible with the public policy of the requested State, including situations where the specific proceedings leading to the
judgment were incompatible with fundamental principles of procedural fairness of that State;

f) the judgment is inconsistent with a judgment given in the requested State in a dispute between the same parties; or

g) the judgment is inconsistent with an earlier judgment given in another State between the same parties on the same cause of action, provided that the earlier judgment fulfils the conditions necessary for its recognition in the requested State.

**Article 10 Preliminary questions**

1. Where a matter excluded under Article 2, paragraph 2, or under Article 21, arose as a preliminary question, the ruling on that question shall not be recognised or enforced under this Convention.

2. Recognition or enforcement of a judgment may be refused if, and to the extent that, the judgment was based on a ruling on a matter excluded under Article 2, paragraph 2.

3. However, in the case of a ruling on the validity of an intellectual property right other than copyright or a related right, recognition or enforcement of a judgment may be refused or postponed under the preceding paragraph only where—
   a) that ruling is inconsistent with a judgment or a decision of a competent authority on that matter given in the State under the law of which the intellectual property right arose; or
   b) proceedings concerning the validity of the intellectual property right are pending in that State.

4. Recognition or enforcement of a judgment may be refused if, and to the extent that, the judgment was based on a ruling on a matter excluded pursuant to a declaration made by the requested State under Article 21.

**Article 11 Damages**

1. Recognition or enforcement of a judgment may be refused if, and to the extent that, the judgment awards damages, including exemplary or punitive damages, that do not compensate a party for actual loss or harm suffered.

2. The court addressed shall take into account whether and to what extent the damages awarded by the court of origin serve to cover costs and expenses relating to the proceedings.
Article 12  Judicial settlements (transactions judiciaires)

Judicial settlements (transactions judiciaires) which a court of a Contracting State designated in an exclusive choice of court agreement has approved, or which have been concluded before that court in the course of proceedings, and which are enforceable in the same manner as a judgment in the State of origin, shall be enforced under this Convention in the same manner as a judgment.

Article 13  Documents to be produced

1. The party seeking recognition or applying for enforcement shall produce—
   a) a complete and certified copy of the judgment;
   b) the exclusive choice of court agreement, a certified copy thereof, or other evidence of its existence;
   c) if the judgment was given by default, the original or a certified copy of a document establishing that the document which instituted the proceedings or an equivalent document was notified to the defaulting party;
   d) any documents necessary to establish that the judgment has effect or, where applicable, is enforceable in the State of origin;
   e) in the case referred to in Article 12, a certificate of a court of the State of origin that the judicial settlement or a part of it is enforceable in the same manner as a judgment in the State of origin.

2. If the terms of the judgment do not permit the court addressed to verify whether the conditions of this Chapter have been complied with, that court may require any necessary documents.

3. An application for recognition or enforcement may be accompanied by a document, issued by a court (including an officer of the court) of the State of origin, in the form recommended and published by the Hague Conference on Private International Law.

4. If the documents referred to in this Article are not in an official language of the requested State, they shall be accompanied by a certified translation into an official language, unless the law of the requested State provides otherwise.

Article 14  Procedure

The procedure for recognition, declaration of enforceability or registration for enforcement, and the enforcement of the judgment, are governed by the law of
the requested State unless this Convention provides otherwise. The court addressed shall act expeditiously.

Article 15  Severability

Recognition or enforcement of a severable part of a judgment shall be granted where recognition or enforcement of that part is applied for, or only part of the judgment is capable of being recognised or enforced under this Convention.

Chapter iv—general clauses

Article 16  Transitional provisions

1. This Convention shall apply to exclusive choice of court agreements concluded after its entry into force for the State of the chosen court.
2. This Convention shall not apply to proceedings instituted before its entry into force for the State of the court seised.

Article 17  Contracts of insurance and reinsurance

1. Proceedings under a contract of insurance or reinsurance are not excluded from the scope of this Convention on the ground that the contract of insurance or reinsurance relates to a matter to which this Convention does not apply.
2. Recognition and enforcement of a judgment in respect of liability under the terms of a contract of insurance or reinsurance may not be limited or refused on the ground that the liability under that contract includes liability to indemnify the insured or reinsured in respect of—
   a) a matter to which this Convention does not apply; or
   b) an award of damages to which Article 11 might apply.

Article 18  No legalisation

All documents forwarded or delivered under this Convention shall be exempt from legalisation or any analogous formality, including an Apostille.

Article 19  Declarations limiting jurisdiction

A State may declare that its courts may refuse to determine disputes to which an exclusive choice of court agreement applies if, except for the location of the chosen court, there is no connection between that State and the parties or the dispute.
Article 20 Declarations limiting recognition and enforcement

A State may declare that its courts may refuse to recognise or enforce a judgment given by a court of another Contracting State if the parties were resident in the requested State, and the relationship of the parties and all other elements relevant to the dispute, other than the location of the chosen court, were connected only with the requested State.

Article 21 Declarations with respect to specific matters

1. Where a State has a strong interest in not applying this Convention to a specific matter, that State may declare that it will not apply the Convention to that matter. The State making such a declaration shall ensure that the declaration is no broader than necessary and that the specific matter excluded is clearly and precisely defined.

2. With regard to that matter, the Convention shall not apply—
   a) in the Contracting State that made the declaration;
   b) in other Contracting States, where an exclusive choice of court agreement designates the courts, or one or more specific courts, of the State that made the declaration.

Article 22 Reciprocal declarations on non-exclusive choice of court agreements

1. A Contracting State may declare that its courts will recognise and enforce judgments given by courts of other Contracting States designated in a choice of court agreement concluded by two or more parties that meets the requirements of Article 3, paragraph c), and designates, for the purpose of deciding disputes which have arisen or may arise in connection with a particular legal relationship, a court or courts of one or more Contracting States (a non-exclusive choice of court agreement).

2. Where recognition or enforcement of a judgment given in a Contracting State that has made such a declaration is sought in another Contracting State that has made such a declaration, the judgment shall be recognised and enforced under this Convention, if—
   a) the court of origin was designated in a non-exclusive choice of court agreement;
   b) there exists neither a judgment given by any other court before which proceedings could be brought in accordance with the non-exclusive choice of court agreement, nor a proceeding pending
between the same parties in any other such court on the same cause of action; and

c) the court of origin was the court first seised.

Article 23 Uniform interpretation

In the interpretation of this Convention, regard shall be had to its international character and to the need to promote uniformity in its application.

Article 24 Review of operation of the Convention

The Secretary General of the Hague Conference on Private International Law shall at regular intervals make arrangements for –

a) review of the operation of this Convention, including any declarations; and

b) consideration of whether any amendments to this Convention are desirable.

Article 25 Non-unified legal systems

1. In relation to a Contracting State in which two or more systems of law apply in different territorial units with regard to any matter dealt with in this Convention—

a) any reference to the law or procedure of a State shall be construed as referring, where appropriate, to the law or procedure in force in the relevant territorial unit;

b) any reference to residence in a State shall be construed as referring, where appropriate, to residence in the relevant territorial unit;

c) any reference to the court or courts of a State shall be construed as referring, where appropriate, to the court or courts in the relevant territorial unit;

d) any reference to a connection with a State shall be construed as referring, where appropriate, to a connection with the relevant territorial unit.

2. Notwithstanding the preceding paragraph, a Contracting State with two or more territorial units in which different systems of law apply shall not be bound to apply this Convention to situations which involve solely such different territorial units.

3. A court in a territorial unit of a Contracting State with two or more territorial units in which different systems of law apply shall not be bound to recognise or enforce a judgment from another Contracting
State solely because the judgment has been recognised or enforced in another territorial unit of the same Contracting State under this Convention.

4. This Article shall not apply to a Regional Economic Integration Organisation.

Article 26  Relationship with other international instruments

1. This Convention shall be interpreted so far as possible to be compatible with other treaties in force for Contracting States, whether concluded before or after this Convention.

2. This Convention shall not affect the application by a Contracting State of a treaty, whether concluded before or after this Convention, in cases where none of the parties is resident in a Contracting State that is not a Party to the treaty.

3. This Convention shall not affect the application by a Contracting State of a treaty that was concluded before this Convention entered into force for that Contracting State, if applying this Convention would be inconsistent with the obligations of that Contracting State to any non-Contracting State. This paragraph shall also apply to treaties that revise or replace a treaty concluded before this Convention entered into force for that Contracting State, except to the extent that the revision or replacement creates new inconsistencies with this Convention.

4. This Convention shall not affect the application by a Contracting State of a treaty, whether concluded before or after this Convention, for the purposes of obtaining recognition or enforcement of a judgment given by a court of a Contracting State that is also a Party to that treaty. However, the judgment shall not be recognised or enforced to a lesser extent than under this Convention.

5. This Convention shall not affect the application by a Contracting State of a treaty which, in relation to a specific matter, governs jurisdiction or the recognition or enforcement of judgments, even if concluded after this Convention and even if all States concerned are Parties to this Convention. This paragraph shall apply only if the Contracting State has made a declaration in respect of the treaty under this paragraph. In the case of such a declaration, other Contracting States shall not be obliged to apply this Convention to that specific matter to the extent of any inconsistency, where an exclusive choice of court agreement designates the courts, or one or more specific courts, of the Contracting State that made the declaration.
6. This Convention shall not affect the application of the rules of a Regional Economic Integration Organisation that is a Party to this Convention, whether adopted before or after this Convention –
   a) where none of the parties is resident in a Contracting State that is not a Member State of the Regional Economic Integration Organisation;
   b) as concerns the recognition or enforcement of judgments as between Member States of the Regional Economic Integration Organisation.

CHAPTER V—FINAL CLAUSES

Article 27 Signature, ratification, acceptance, approval or accession

1. This Convention is open for signature by all States.
2. This Convention is subject to ratification, acceptance or approval by the signatory States.
3. This Convention is open for accession by all States.
4. Instruments of ratification, acceptance, approval or accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

Article 28 Declarations with respect to non-unified legal systems

1. If a State has two or more territorial units in which different systems of law apply in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that the Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.
2. A declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.
3. If a State makes no declaration under this Article, the Convention shall extend to all territorial units of that State.
4. This Article shall not apply to a Regional Economic Integration Organisation.

Article 29 Regional Economic Integration Organisations

1. A Regional Economic Integration Organisation which is constituted solely by sovereign States and has competence over some or all of the matters governed by this Convention may similarly sign, accept,
approve or accede to this Convention. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that the Organisation has competence over matters governed by this Convention.

2. The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, notify the depositary in writing of the matters governed by this Convention in respect of which competence has been transferred to that Organisation by its Member States. The Organisation shall promptly notify the depositary in writing of any changes to its competence as specified in the most recent notice given under this paragraph.

3. For the purposes of the entry into force of this Convention, any instrument deposited by a Regional Economic Integration Organisation shall not be counted unless the Regional Economic Integration Organisation declares in accordance with Article 30 that its Member States will not be Parties to this Convention.

4. Any reference to a “Contracting State” or “State” in this Convention shall apply equally, where appropriate, to a Regional Economic Integration Organisation that is a Party to it.

Article 30 Accession by a Regional Economic Integration Organisation without its Member States

1. At the time of signature, acceptance, approval or accession, a Regional Economic Integration Organisation may declare that it exercises competence over all the matters governed by this Convention and that its Member States will not be Parties to this Convention but shall be bound by virtue of the signature, acceptance, approval or accession of the Organisation.

2. In the event that a declaration is made by a Regional Economic Integration Organisation in accordance with paragraph 1, any reference to a “Contracting State” or “State” in this Convention shall apply equally, where appropriate, to the Member States of the Organisation.

Article 31 Entry into force

1. This Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the second instrument of ratification, acceptance, approval or accession referred to in Article 27.

2. Thereafter this Convention shall enter into force—
a) for each State or Regional Economic Integration Organisation subsequently ratifying, accepting, approving or acceding to it, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;

a) for a territorial unit to which this Convention has been extended in accordance with Article 28, paragraph 1, on the first day of the month following the expiration of three months after the notification of the declaration referred to in that Article.

Article 32 Declarations

1. Declarations referred to in Articles 19, 20, 21, 22 and 26 may be made upon signature, ratification, acceptance, approval or accession or at any time thereafter, and may be modified or withdrawn at any time.

2. Declarations, modifications and withdrawals shall be notified to the depositary.

3. A declaration made at the time of signature, ratification, acceptance, approval or accession shall take effect simultaneously with the entry into force of this Convention for the State concerned.

4. A declaration made at a subsequent time, and any modification or withdrawal of a declaration, shall take effect on the first day of the month following the expiration of three months after the date on which the notification is received by the depositary.

5. A declaration under Articles 19, 20, 21 and 26 shall not apply to exclusive choice of court agreements concluded before it takes effect.

Article 33 Denunciation

1. This Convention may be denounced by notification in writing to the depositary. The denunciation may be limited to certain territorial units of a non-unified legal system to which this Convention applies.

2. The denunciation shall take effect on the first day of the month following the expiration of twelve months after the date on which the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation shall take effect upon the expiration of such longer period after the date on which the notification is received by the depositary.
Article 34  Notifications by the depositary

The depositary shall notify the Members of the Hague Conference on Private International Law, and other States and Regional Economic Integration Organisations which have signed, ratified, accepted, approved or acceded in accordance with Articles 27, 29 and 30 of the following—

a) the signatures, ratifications, acceptances, approvals and accessions referred to in Articles 27, 29 and 30;
b) the date on which this Convention enters into force in accordance with Article 31;
c) the notifications, declarations, modifications and withdrawals of declarations referred to in Articles 19, 20, 21, 22, 26, 28, 29 and 30;
d) the denunciations referred to in Article 33.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at The Hague, on 30 June 2005, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the Member States of the Hague Conference on Private International Law as of the date of its Twentieth Session and to each State which participated in that Session.