

CONVENTION ON THE LAW APPLICABLE TO MAINTENANCE OBLIGATIONS

(Concluded 2 October 1973)

(Concluded 1 October 1977)

The States signatory to this Convention,

Desiring to establish common provisions concerning the law applicable to maintenance obligations in respect of adults,

Desiring to coordinate these provisions and those of the Convention of the 24th of October 1956 on the Law Applicable to Maintenance Obligations in Respect of Children,

Have resolved to conclude a Convention for this purpose and have agreed upon the following provisions:

CHAPTER I – SCOPE OF CONVENTION

Article 1

This Convention shall apply to maintenance obligations arising from a family relationship, parentage, marriage or affinity, including a maintenance obligation in respect of a child who is not legitimate.

Article 2

This Convention shall govern only conflicts of laws in respect of maintenance obligations.

Decisions rendered in application of this Convention shall be without prejudice to the existence of any of the relationships referred to in Article 1.

Article 3

The law designated by this Convention shall apply irrespective of any requirement of reciprocity and whether or not it is the law of a Contracting State.

CHAPTER II – APPLICABLE LAW

Article 4

The internal law of the habitual residence of the maintenance creditor shall govern the maintenance obligations referred to in Article 1.

In the case of a change in the habitual residence of the creditor, the internal law of the new habitual residence shall apply as from the moment when the change occurs.

Article 5

If the creditor is unable, by virtue of the law referred to in Article 4, to obtain maintenance from the debtor, the law of their common nationality shall apply.

Article 6

If the creditor is unable, by virtue of the laws referred to in Articles 4 and 5, to obtain maintenance from the debtor, the internal law of the authority seized shall apply.

Article 7

In the case of a maintenance obligation between persons related collaterally or by affinity, the debtor may contest a request from the creditor on the ground that there is no such obligation under the law of their common nationality or, in the absence of a common nationality, under the internal law of the debtor's habitual residence.

Article 8

Notwithstanding the provisions of Articles 4 to 6, the law applied to a divorce shall, in a Contracting State in which the divorce is granted or recognised, govern the maintenance obligations between the divorced spouses and the revision of decisions relating to these obligations.

The preceding paragraph shall apply also in the case of a legal separation and in the case of a marriage which has been declared void or annulled.

Article 9

The right of a public body to obtain reimbursement of benefits provided for the maintenance creditor shall be governed by the law to which the body is subject.

Article 10

The law applicable to a maintenance obligation shall determine *inter alia* –

- (1) whether, to what extent and from whom a creditor may claim maintenance;
- (2) who is entitled to institute maintenance proceedings and the time limits for their institution;
- (3) the extent of the obligation of a maintenance debtor, where a public body seeks reimbursement of benefits provided for a creditor.

Article 11

The application of the law designated by this Convention may be refused only if it is manifestly incompatible with public policy ("ordre public").

However, even if the applicable law provides otherwise, the needs of the creditor and the resources of the debtor shall be taken into account in determining the amount of maintenance.

CHAPTER III – MISCELLANEOUS PROVISIONS

Article 12

This Convention shall not apply to maintenance claimed in a Contracting State relating to a period prior to its entry into force in that State.

Article 13

Any Contracting State may, in accordance with Article 24, reserve the right to apply this Convention only to maintenance obligations –

- (1) between spouses and former spouses;
- (2) in respect of a person who has not attained the age of twenty-one years and has not been married.

Article 14

Any Contracting State may, in accordance with Article 24, reserve the right not to apply this Convention to maintenance obligations –

- (1) between persons related collaterally;
- (2) between persons related by affinity;
- (3) between divorced or legally separated spouses or spouses whose marriage has been declared void or annulled if the decree of divorce, legal separation, nullity or annulment has been rendered by default in a State in which the defaulting party did not have his habitual residence.

Article 15

Any Contracting State may, in accordance with Article 24, make a reservation to the effect that its authorities shall apply its internal law if the creditor and the debtor are both nationals of that State and if the debtor has his habitual residence there.

Article 16

Where the law of a State, having in matters of maintenance obligations two or more systems of law of territorial or personal application, must be taken into consideration - as may be the case if a reference is made to the law of the habitual residence of the creditor or the debtor or to the law of common nationality, reference shall be made to the system designated by the rules in force in that State or, if there are no such rules, to the system with which the persons concerned are most closely connected.

Article 17

A Contracting State within which different territorial units have their own rules of law in matters of maintenance obligations is not bound to apply this Convention to conflicts of law concerned solely with its territorial units.

Article 18

This Convention shall replace, in the relations between the States who are Parties to it, the Convention on the Law Applicable to Maintenance Obligations in Respect of Children, concluded at The Hague, the 24th of October 1956.

However, the preceding paragraph shall not apply to a State which, by virtue of the reservation provided for in Article 13, has excluded the application of this Convention to maintenance obligations in respect of a person who has not attained the age of twenty-one years and has not been married.

Article 19

This Convention shall not affect any other international instrument containing provisions on matters governed by this Convention to which a Contracting State is, or becomes, a Party.

CHAPTER IV – FINAL PROVISIONS

Article 20

This Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Twelfth Session.

It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Article 21

Any State which has become a Member of the Hague Conference on Private International Law after the date of its Twelfth Session, or which is a Member of the United Nations or of a specialised agency of that Organisation, or a Party to the Statute of the International Court of Justice may accede to this Convention after it has entered into force in accordance with the first paragraph of Article 25.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Article 22

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect on the date of entry into force of the Convention for the State concerned.

At any time thereafter, such extensions shall be notified to the Ministry of Foreign Affairs of the Netherlands.

Article 23

A Contracting State which has two or more territorial units in which different systems of law apply in matters of maintenance obligations may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention shall extend to all its territorial units or only to one or more of them, and may modify its declaration by submitting another declaration at any time thereafter.

These declarations shall be notified to the Ministry of Foreign Affairs of the Netherlands, and shall state expressly

the territorial unit to which the Convention applies.

Article 24

Any State may, not later than the moment of its ratification, acceptance, approval or accession, make one or more of the reservations referred to in Articles 13 to 15. No other reservation shall be permitted.

Any State may also, when notifying an extension of the Convention in accordance with Article 22, make one or more of the said reservations applicable to all or some of the territories mentioned in the extension.

Any Contracting State may at any time withdraw a reservation it has made. Such a withdrawal shall be notified to the Ministry of Foreign Affairs of the Netherlands.

Such a reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

Article 25

This Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 20.

Thereafter the Convention shall enter into force

- for each State ratifying, accepting or approving it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance or approval;
- for each acceding State, on the first day of the third calendar month after the deposit of its instrument of accession;
- for a territory to which the Convention has been extended in conformity with Article 22, on the first day of the third calendar month after the notification referred to in that Article.

Article 26

This Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 25, even for States which have ratified, accepted, approved or acceded to it subsequently.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Netherlands, at least six months before the expiry of the five year period. It may be limited to certain of the territories to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 27

The Ministry of Foreign Affairs of the Netherlands shall notify the States Members of the Conference, and the States which have acceded in accordance with Article 21, of the following –

- (1) the signatures and ratifications, acceptances and approvals referred to in Article 20;
- (2) the date on which this Convention enters into force in accordance with Article 25;
- (3) the accessions referred to in Article 21 and the dates on which they take effect;
- (4) the extensions referred to in Article 22 and the dates on which they take effect;
- (5) the declarations referred to in Article 23, as well as modifications of them and the dates on which these declarations and their modifications take effect;
- (6) the denunciations referred to in Article 26;
- (7) the reservations referred to in Articles 13 to 15 and 24 and the withdrawals of the reservations referred to in Article 24.

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

Done at The Hague, on the 2nd day of October, 1973, 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 Netherlands, and of which a certified copy shall be sent, through the diplomatic channel to each of the States Members of the Hague Conference on Private International Law at the date of its Twelfth Session.