



Explanatory Report to the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children

Luxembourg, 20.V.1980

I. The European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, drawn up within the Council of Europe by a committee of governmental experts under the authority of the European Committee on Legal Co-operation (CDCJ), was opened for signature by the member States of the Council of Europe on 20 May 1980 in Luxembourg on the occasion of the 12th Conference of European Ministers of Justice.

II. The text of the explanatory report prepared by the committee of experts and submitted to the Committee of Ministers of the Council of Europe, as amended and completed by the CCJ, does not constitute an instrument providing an authoritative interpretation of the Convention, although it might be of such nature as to facilitate the application of the provisions contained therein.

Introduction

1 In 1972, at their 7th Conference (Basle, 15-18 May 1972) the European Ministers of Justice examined ways of improving co-operation concerning the guardianship and custody of children on the basis of a report presented by Mr Christian Broda, Austrian Minister of Justice.

2. In that report the Minister dwelt, *inter alia*, on the necessity of ad. equate protection of children and the need to ensure the recognition and enforcement in foreign States of national judgments governing custody. In its Resolution No. 1, the Conference recommended that the Committee of Ministers of the Council of Europe should ask the European Committee on Legal Co-operation (CDCJ) to study forms of co-operation among the member States with a view to children being afforded increased international protection based solely on their welfare.

3. Subsequently the European Committee on Legal Co-operation proposed, and the Committee of Ministers approved, the setting up of a committee of governmental experts to indicate, as a preliminary step, what concrete measures might be taken within the framework of the Council of Europe to implement the resolution mentioned above.

4. The committee of experts was made up of experts appointed by the governments of member States and observers from Finland, Spain (which became a member State in 1977) and the Hague Conference on Private International Law; it elected Mr R. Loewe (Austria) Chairman and Mr M. C. Blair (United Kingdom) Vice-Chairman.

5. At its first meeting, in 1973, the committee of experts considered it appropriate, under its terms of reference, to propose as a priority task the drawing up of a European convention on the recognition and enforcement of decisions relating to the custody of children. The committee of experts had, in fact, noted that the Hague Convention of 5 October 1961 concerning the competence of authorities and the law applicable in respect of the protection

of minors contained no provisions guaranteeing the enforcement of foreign decisions in this field. Further, more, a number of Council of Europe member States have not as yet acceded to the convention. It therefore seemed desirable that, as the Council of Europe advocates ever closer unity among its members, they should make common provisions to this effect, for the right of custody could be adversely affected if the measures which enabled it to be exercised were not enforced abroad.

6. In 1976, the experts for Switzerland on the committee presented a proposal for a preliminary draft convention on the restoration of custody of children. This proposal dealt in particular with the restoration of custody of children removed from the person having their custody and taken across an international frontier. The European Committee on Legal Co-operation (CDCJ) authorised the committee of experts to examine the Swiss proposal together with the draft European convention on recognition and enforcement of decisions relating to the custody of children.

7. In carrying out this examination the committee of experts decided to harmonise the two drafts and reconstruct the documents so as to form a single convention with a twofold purpose:

- i. the recognition and enforcement of decisions concerning custody of children, and
- ii. the restoration of custody in the case of a removal of a child to another country.

8. The preparatory work was completed by the committee of experts at its meeting from 29 January to 3 February 1979 under the chairmanship of Mr G. Koumantos (Greece). Mr R. L. Jones (United Kingdom) was Vice-Chairman.

9. The draft convention was examined and amended by the European Committee on Legal Co-operation (CDCJ) and submitted to the Committee of Ministers which adopted the text and decided to open it to signature by member States of the Council of Europe on 20 May 1980, in Luxembourg, on the occasion of the 12th Conference of European Ministers of Justice.

Commentary on the provisions of the Convention

General comments

10. The Convention is concerned with different situations relating to the right of custody, and lays down specific solutions for them.

The situations and solutions are as follows:

a. Improper removal of a child where both parents and the child have as their sole nationality that of the State in which the decision regarding the right of custody was given and where, furthermore, the child has his habitual residence in that State; non-repatriation of a child after a period of access abroad, in breach of either an agreement confirmed by a competent authority or of a decision by the competent authority concerning the right of access. In these cases covered by Article 8, if the application is made within a very short space of time, laid down as six months from the removal or non-repatriation, the custody shall be restored forthwith and may not be subject to any condition other than the establishment of the facts as covered by those cases.

b. Improper removal where one of the conditions provided for under Article 8, paragraph 1. a (common nationality, habitual residence in the State of origin) is not fulfilled but the application is made within six months from the date of the improper removal. This case, covered by Article 9, calls for the restoration of the custody, which may be subject to only a limited number of grounds for refusal, generally concerned with the observance of the rights of defence and of decisions already given in the requested State.

c. In all other cases, covered by Article 10, including those where the request is made after more than six months, the conditions laid down for repatriation are more numerous since the child may already have been integrated into the surroundings to which he has been removed.

11. With the aim of making the Convention acceptable to a larger number of States, a special provision (Article 17) enables States so wishing to apply, by means of a reservation, the conditions referred to in c above to either or both of the situations described at a and b above.

Article 1

12. This article contains the definitions of certain concepts, as understood in the context of the Convention.

13. In connection more particularly with the concept of a "child", the age of 16 has been taken, not because of the age of legal capacity, but because a decision on custody could not easily be enforced against the wishes of a child over that age. On addition, there is less need after the child has reached the age of 16 to protect him against improper removals.

The conditions required by the definition as regards a child's age and his right to decide on his residence are cumulative.

14. In most Council of Europe member States decisions on custody are the exclusive preserve of the courts. There are, however, some member States, such as Denmark, Norway and Switzerland, in which this power is also given to administrative authorities. The definition of the concept of "authority" takes account of this situation.

15. Nationality and habitual residence are not defined in the Convention and must be determined in accordance with the law of each Contracting State. However, where the child's habitual residence is concerned, reference can be made to rules 7-11 in Resolution (72) 1 of the Committee of Ministers of the Council of Europe on standardisation of the legal concepts of "domicile" and "residence".

16. For the purpose of the Convention it is immaterial whether the person to whom custody is granted or refused be a physical or legal person, an institution or an authority.

17. The definition of decisions relating to custody is also intended to cover the right of access, which is governed by Article 11. A decision which is limited to ordering the return of the child to the place where he was before his removal is also a decision relating to custody. The decisions in question must originate in a Contracting State; this follows from Article 7 and the whole structure of the Convention.

18. The Convention is not applicable to decision which do not relate either to the care of the person of the child, or to the right to decide on the place of his residence or the right to access to him. In particular, it is inapplicable to decisions bearing only on legal representation as such or on the granting of consent in property matters. But of course, where a decision on legal representation has direct effects on the granting or exercise of custody, it falls to this extent within the scope of the Convention ("decision relating to the custody"). In such a case it is for the applicant for recognition or enforcement to satisfy the court that the law applied by the original court in the decision on the question of the legal representation involves, by virtue of that court's decision, rights or obligations relating to custody.

19. The term "care of the person of the child" should in principle be taken to cover physical, medical, moral and intellectual care generally including education and attendance at a particular school. It was thought better not to include a strict definition, however, since situations can vary considerably. In the last resort, therefore, it will be for the courts in the State addressed to decide whether certain activities or decisions on the part of the person

having custody must be deemed to be part of the care of the person of a child, thus causing a decision given by a court in the State of origin to fall within the scope of the Convention.

20. The definition of improper removal, which presupposes a decision concerning custody, does not exclude the application of the Convention in cases where, in accordance with national law, custody exists *ex lege*. In fact such cases can be covered by the application of Article 12.

Article 2

21. Article 2 makes provision for legal co-operation among the States by means of central authorities appointed for that purpose by each Contracting State. Persons wishing to secure in another Contracting State the restoration of custody or recognition or enforcement of a decision may make an application to the central authority of any Contracting State. This does not prevent them from applying directly to the courts of the State addressed without going through a central authority.

22. The co-operation provided for in this Article covers both co-operation between the central authorities themselves and co-operation between competent national authorities. The objective is that these authorities shall not limit themselves to considering the national aspects of the matters submitted to them, but should also take into consideration the international elements. Such co-operation should lead to the speeding up of procedures.

Article 4

23. Article 4 describes the duties to be carried out by the requesting central authority. The applicant may apply to any central authority. This arrangement has been adopted in the interests of the applicant because he is in the best position, bearing in mind the circumstances (removal, holidays, etc.) to know which authority to approach.

24. It is up to the requesting central authority to make sure that all the documents to be provided are complete and in due form. This means, among other things, that when it is manifest that the decision cannot be recognised or enforced in the State addressed, the central authority is not obliged to forward the documents to the central authority in the State addressed.

25. Although paragraph 4 enables the requested authority to refuse to act when the conditions laid down by the Convention are not fulfilled, the central authority shall nevertheless always be entitled to offer its assistance for proceedings which may be admissible on other grounds. This is the case in particular when proceedings are brought on the basis of an international instrument which allows for recognition and enforcement and whose operation is secured by Article 19.

Article 5

26. Under the terms of Article 5 the central authority in the State addressed is empowered to apply directly to its competent authorities in appropriate cases.

27. The provision in paragraph 1 of this Article whereby the central authority in the State addressed is obliged to take the necessary steps to discover the whereabouts of the child covers searches in the territory of the State addressed. While it will be possible for a person who has lost track of a child who is the subject of a custody order to apply to the central authorities in all the other Contracting States in the hope that one of them may be able to trace the child, in practice it seems unlikely that a person will wish to apply to the central authority of a particular State unless there is some indication that the child may be present in the territory of that State. The central authority should devote to the task of discovering the whereabouts of the child all the means available to it under the law of the State addressed.

28. The obligation of the central authority in the State addressed under paragraph 1. c is to be understood broadly and covers not only *exequatur* in the technical sense but also restoration of custody as provided for in Article 8.

29. Under paragraph 3, if the applicant applies to a central authority he will not be required to defray any expenses even if his application is rejected. This solution has been adopted because in many cases where the Convention has to be applied the circumstances of the persons involved are modest. An exception has been made concerning the cost of repatriation, which does not have to be borne by the State addressed.

30. Under paragraph 4, the central authority in the State addressed is given fresh duties in cases where its efforts on behalf on the applicant have not been successful, but have resulted in a refusal of recognition or enforcement. In some such cases it is likely that it would be in the applicant's interests to start fresh proceedings concerning the child's custody. In cases of this sort the central authority should use its best endeavours to secure representation of the applicant in those proceedings. In certain cases, for example, the central authority in the State addressed will be able to act following the intervention of the public authority.

Article 6

31. The system adopted provides that communications should be in the official language or one of the official languages of the State addressed or be in English or in French or be accompanied by a translation into one of these languages. This system will tend to accelerate the enforcement in the State addressed of decisions coming from the applicant State.

These rules have already been adopted in a number of international instruments of the Council of Europe, for example in the European Agreement on the Transmission of Applications for Legal Aid, of 27 January 1977.

32. The choice of this system made it necessary to allow a reservation, as provided for under paragraph 3.

33. Paragraph 3 of this Article shall be construed in the sense that when a Contracting State, by using the reservation provided for, has excluded one of the official Council of Europe languages, any other Contracting State may require that, in communications with it, the official language which has not been excluded should be used by the State which has used the reservation.

Article 7

34. Decisions on the custody of children must be enforced rapidly if they are to have any practical effect. To be enforced in the State addressed it is sufficient that the decision is enforceable in the State of origin. If internal remedies in the State of origin had first to be exhausted, the situation, even after the improper removal of a child, might well have been so radically changed by the passage of time that its recognition or enforcement might no longer be in accordance with the child's welfare

35. Enforcement will be granted only if the decision is enforceable in the State of origin. If in the State of origin a decision of its court, not having yet acquired the authority of a final judgment (*chose jugée*) is not enforceable or is enforceable only under certain conditions, such a decision will have the same effect in the State addressed. Further, by virtue of subparagraph a of paragraph 2 of Article 10, the court applied to may adjourn the proceedings for recognition or enforcement if the original decision is the subject, in the State of origin, of an ordinary form of review which has been commenced. It will be for the person opposing recognition or enforcement to establish that fact.

36. Decisions relating to custody recognised and enforceable in a Contracting State under Article 7 must of course be assimilated with regard to their effect to national decisions of the enforcing State on this subject.

Article 8

37. Article 8 relates to the situation referred to in paragraph a of the general comments above, and limits to a strict minimum the conditions laid down for the child's repatriation.

38. Furthermore, as many cases of improper removal occur in connection with the exercise of the right of access, it was considered desirable to lay down special provisions for such cases. For these cases, paragraph 3 of Article 8 provides for the restoration of the child pursuant to paragraphs 1.b and 2, even if the conditions required by sub-paragraph a of paragraph 1 are not fulfilled.

Article 9

39. This Article applies to cases of improper removal of children other than those cases covered by Article 8, when a request is made to a central authority within a period of six months from the improper removal.

40. The three grounds of refusal are, briefly: failure to serve notice of proceedings in cases of default, lack of competence of the court of origin in cases of default and incompatible decisions.

41. The purpose of paragraph 1.a is to ensure that decisions are recognised or enforced only if the person who, according to the applicable law, has to be notified of any proceedings relating to the custody of the child was in fact given a reasonable opportunity to appear. The person who was not duly served with notice of the proceedings in sufficient time need not be the person who now opposes recognition. Where there has been a change in the persons concerned with the custody of the child between the original decision and the application for recognition, the person opposing recognition must, in order to rely on sub-paragraph a, show that the original defendant was not properly notified.

42. Paragraph 1.b is intended to cover the situation where the decision was taken in the defendant's absence and there were no sufficient links between the authority which took the decision and the parties to justify the recognition or enforcement of the decision.

43. Paragraph 1.c allows recognition and enforcement to be refused if a prior decision on the custody of the child has already been given in the State addressed. This decision must have become enforceable before the improper removal. The main object of this proviso is to prevent a person from "forum shopping" by obtaining a favourable decision in a State other than that where the child is and then kidnapping the child by taking him into that State and seeking to use the decision as a ground for refusal.

44. The text of paragraph 2 makes it clear that an application to the central authority is not an indispensable requirement to enable the system provided by the Convention to come into operation. It is also possible in cases under Articles 9 and 10 for the interested party to bypass the central authority and apply directly to the competent authority in the State addressed. If all the relevant conditions of the Convention are satisfied the competent authority has to apply the system of the Convention.

45. The grounds of refusal in Article 9 are only procedural; the facts on which the foreign decision was based are not to be taken into consideration.

Article 10

46. This article applies where there has not been an improper removal or if the application for recognition or enforcement has been made more than six months after the improper removal. If the State addressed made the reservation under Article 17, the grounds for refusal set out in Article 10 will also apply even when the application for restoration was made within six months from the improper removal.

47. Paragraph 1.a of this article is more restrictive than the usual clause governing refusal of *exequatur* on grounds of public policy. The welfare of the child being one of the fundamental principles of law, paragraph 1.a of this article would enable recognition and enforcement of a decision to be refused when such enforcement would constitute a manifest violation of this fundamental principle.

48. Paragraph 1.b is designed to afford an equitable solution in cases where the court addressed has grounds for thinking that circumstances have so changed that the decision to be recognised or enforced no longer corresponds to the child's welfare. If, having regard to the assessment made by the original court, the court addressed finds that the circumstances have changed, it can refuse to recognise or enforce. The necessary change in the circumstances may be constituted by a new factor, but also by the mere passage of time as a result of which the child's welfare is no longer the same as it was previously. However, there is an important exception to this rule: a change in the child's place of residence after an improper removal cannot by itself constitute such a change in the circumstances. The intention is to preclude the possibility that, in all cases of abduction of a child, the person abducting the child could use the change of the child's place of residence as an argument to institute proceedings which might ultimately result in a refusal of recognition or enforcement. The situation is different, even if the original decision was given before the abduction, when the application for recognition or enforcement is lodged such a long time after the abduction that it would be possible to say that, as the child had already become accustomed to his environment in the new place of residence, it would be against his welfare to return him to his former place of residence. In such cases, it is not the change of residence but the child's integration into the new environment which may justify a fresh examination.

49. It should be noted that the term "manifestly" is used both in sub. paragraph a and sub-paragraph b of paragraph 1. The intention of those who drafted these texts was that these grounds for refusal should not be used except in a clear case.

50. The purpose of paragraph 1, sub-paragraph c. i and ii, of this Article is to enable recognition and enforcement to be refused where the child's links with the State addressed are substantial and where he had no such links with the State of origin or if the only link is that he is a dual national.

51. Under sub-paragraph d recognition and enforcement may also be refused where a decision is incompatible with a decision given in the State addressed or in a third State which is enforceable in the State addressed. A similar ground for refusal already appears in paragraph 1.c of Article 9. But since Article 10 applies even if there has not been an improper removal, the requirements in relation to this ground of refusal are somewhat different. In order that grounds for refusal should apply, the previous decision must have been given not before the improper removal but in pursuance of proceedings begun before the institution of the procedures for recognition and enforcement. This is likely to prevent the person who has possession of the child in the State addressed from trying to avoid the effect of the foreign decision by commencing proceedings in the State addressed after the proceedings for recognition or enforcement have been begun.

52. The burden of proof in respect of the grounds for refusal falls as a general rule on the party opposing the recognition or enforcement of the foreign decision.

53. Finally, incompatibility is not an automatic ground for refusal. Refusal may take place only if it is in accordance with the welfare of the child. Its welfare will be the determining factor where there is a choice to make between the different decisions.

54. Decisions on custody must be recognised and enforced in the other Contracting States even if they have not yet acquired the authority of a final and conclusive judgment (*chose jugée*) Sub-paragraph a of paragraph 2 of Article 10 lays down an important exception to this principle.

55. The term "adjourned" in connection with proceedings for enforcement must be understood in the sense given to it by the law of the forum.

56. The fact that other proceedings are pending (sub-paragraph b of paragraph 2) is not in this Convention treated as a ground for refusal but as a ground for adjourning proceedings for recognition or enforcement. There are two reasons for this. The first reason is to avoid any proceedings regarding the custody of the same child which might already have commenced before a court in the State addressed from necessarily leading to refusal of recognition or enforcement, where at the stage reached in the pending proceedings it is not yet possible to foresee the result. The second reason is that Article 10, paragraph 1.d, provides for cases in which, despite the existence of an incompatible national decision, preference should be given to the foreign decision. It would be too much to expect the court deciding on recognition or enforcement to take these circumstances into consideration in advance, at the stage when proceedings were still pending.

57. The situation under sub-paragraph c of paragraph 2 is similar to that under sub-paragraph b.

58. The word "may" in the introductory phrase of paragraph 2 also enables the judge to fix a time-limit within which the national proceedings must be completed, failing which proceedings for recognition or enforcement can be resumed. In States where for constitutional reasons a discretionary power cannot be conferred on the judge, the legislator can impose mandatory duties on him.

Article 11

59. Paragraph 1 of this Article recognises the principle of right of access. As the conditions for the exercise of a right of access granted to a parent who does not have the custody of the child may vary considerably from one State to another, it was considered appropriate, in a separate Article concerning decisions relating to access, to permit the appropriate authorities of the State addressed to modify or supplement such decisions coming from other Contracting States to bring them into line with the normal practice of the State addressed. For this reason paragraph 2 empowers the competent authority of the State addressed to determine the ways in which this right may be exercised, in accordance, in particular, with undertakings entered into by the parties and taking into account, for example, local circumstances such as the timing of school holidays.

60. Provision is made in paragraph 3 enabling the central authority of the State addressed, at the request of the person claiming a right of access, to apply to its competent authority for a decision on the right of access, in particular when recognition and enforcement of the decision.

Article 12

61. This article provides a remedy in cases where a person who was entitled to custody only by the automatic operation of law (*ex lege*) or who was exercising custody in fact (*de facto*) is deprived of his custody by an improper removal of the child across an international frontier. A decision by a competent authority would therefore have to be obtained after the removal to enable action to be taken in another Contracting State. Such a decision should be required in order to give the necessary certainty as to the person entitled to custody in the State of origin and thus to enable the State addressed to take the steps provided by the Convention.

This article covers all situations where custody is exercised without a previous decision, either by one of the parents or by both parents jointly.

The article in fact covers two situations. The first of these is where a person or authority has custody under the law of the State of origin and the person who removes the child has no such rights. The second is where two persons share the child's custody and one removes the child in breach of the other's rights. Although a decision relating to custody is necessary in both cases, only the first case requires a confirmation of the right of custody whereas in the second case a decision of substance may be required.

62. The decisions in the State of origin must cover two elements. First, they must declare the removal to be improper. Secondly, they must indicate who had the custody rights, to enable the child to be restored to him. These elements may be covered by a single decision or by two separate decisions according to the internal law of the State of origin. However, a decision which is limited to ordering the return of the child to the place where he was before the removal may be considered as being sufficient for the application of Article 12.

Article 13

63. Article 13 specifies all the documents which a person seeking recognition or enforcement of a decision must produce. The requirements of Article 13 must be met whether the person seeking recognition or enforcement goes directly to the court in the State addressed, or through the central authorities envisaged by the Convention.

64. In sub-paragraph d, "if applicable" means that a document establishing that a decision is enforceable is necessary only if the applicant seeks enforcement of the decision and not merely recognition.

Article 14

65. The intention behind the provisions of this article is to facilitate the recognition or enforcement of decisions by calling on the States to simplify their procedural rules on the matter where appropriate. Within the context of Articles 8 and 9 proceedings for restoration should be brought by urgent procedure in such States as have this procedure.

Article 15

66. The child's own views as to his welfare may often be extremely important for the purpose of the decision which the court has to take under Article 10, paragraph 1.b. The court is not obliged itself to hear the child, but is enabled by the Convention to ask that he be heard by another authority or person authorised to do so and that the testaments thus obtained be conveyed to the court by that person.

67. The costs of enquiries are to be met by the authorities of the State where they are carried out (paragraph 2).

68. Under paragraph 3, requests for and results of the enquiries effected may be sent through the intermediary of the central authorities. This applies even in cases where the applicant has not approached the central authorities in order to commence proceedings before the court.

Article 16

69. This article is designed to speed up exchanges between central authorities by dispensing with the formalities of legalisation. Similar articles appear in other conventions, e.g. Article 6 of the Convention of the European Communities on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, of 27 September 1968.

Article 17

70. Under paragraph 2 of Article 8 none of the grounds for refusal of recognition and enforcement set out in the Convention apply to cases to which that article applies. Secondly, the grounds for refusal are very limited in the case specified in Article 9, which deals with an improper removal when the request for recognition or enforcement has been made within six months. As certain member States have difficulty in accepting these limitations, Article 17 allows them to make a reservation.

71. A declaration covering all the cases envisaged in this article leaves the courts or other competent authorities of the State addressed a discretion to refuse recognition and enforcement of a decision of another State on any of the grounds set out in Articles 9 and 10, whether or not there had been an improper removal and whether or not the child is a national of and a habitual resident in the State of origin. This follows from the fact that Article 10 also allows as grounds for refusal the three grounds set out in paragraph 1 of Article 9. Under Article 17 a State's declaration may apply to some only of the grounds of refusal specified in the above-mentioned articles. For example, a State might specify in its declaration that lack of due service should not be a ground for refusal in the cases under paragraphs 1 and 3 of Article 8, whilst retaining the discretion to rely on the other grounds for refusal. A State might also decide not to apply all or any of the grounds for refusal to the cases covered by paragraph 1 of Article 8, but to apply them to a case covered by paragraph 3 of that article.

72. A reservation made under Article 17 will apply also to the cases referred to in Article 10 because under that Article all the provisions of the Convention will be applicable, including any reservation made in relation to Articles 8 and 9.

73. Paragraph 2 of Article 17 provides that, where a Contracting State has made a declaration, other States may apply to decisions of that State the same grounds of refusal as are referred to in the latter State's declaration.

Article 18

74. This article provides that a Contracting State may enter a reservation to Article 12 but that in that event it may not require its own decisions under Article 12 to be enforced in other Contracting States.

Article 19

75. This article states that the Convention shall not exclude the possibility of relying on any other international instrument in force between the State of origin and the State addressed or on any other law of the State addressed. The effect is that where such a provision would facilitate recognition and enforcement it shall prevail over the Convention. The wording of this article is derived from that of Article 23 of the Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decisions relating to Maintenance Obligations.

76. Where a person, in order to obtain recognition or enforcement, wishes to rely on a bilateral convention between the State of origin and the State addressed, he may still be able to seek the assistance of the central authorities set up under this Convention.

Article 20

77. Paragraph 1 of this article aims at preventing conflicts between this Convention and other international instruments to which a Contracting State is a Party.

78. It is possible that a number of member States of the Council of Europe may have uniform legislation or a special system for recognition or enforcement of decisions concerning the custody of children and will wish, thereafter, to treat their respective territories as a single zone for these purposes. If this were to come about, the regional arrangements would take precedence over the present Convention and paragraph 2 authorises this.

Articles 21 to 27 and 29 to 30

79. These articles are similar to the final clauses normally inserted, with the necessary modifications, in the conventions and agreements concluded within the framework of the Council of Europe and which are not restricted to States members of the organisation.

80. Article 23 concerns the accession to the Convention of States which are not members of the Council of Europe. Such a State, in order to accede to the Convention, must be invited by the Committee of Ministers after a decision given according to the Statute of the Council of Europe (a two-thirds majority of the votes cast and a majority of representatives having the right to sit on the Committee). Although the present Convention is not a Convention reserved only for member States of the Council of Europe, it presupposes that the future Contracting Parties have points in common and a certain legal affinity in the field of family law.

81. So that non-member States which do not fulfil the conditions mentioned above do not become Contracting Parties to this Convention merely by obtaining a majority within the Committee of Ministers, Article 23, paragraph 1, provides that all member States of the Council of Europe which are already Contracting Parties to the Convention should have voted in favour.

82. Article 24 concerns the extension of the Convention to territories on whose behalf the Contracting State is authorised to give undertakings. Article 25 enables the territorial application of the Convention to be varied in the case of a Contracting State comprising two or more territorial units with different systems of law. Article 26 contains provisions concerning the application of the Convention in relation to a Contracting State which has two or more systems of law, whether or not the Convention applies to the whole of the territorial units of which that State is composed.

83. The reference in Article 26, paragraph 1.a, to "the system of law with which the person concerned is most closely connected" should be taken as a reference to one of the systems of law of which the State concerned is composed.

Article 28

84. With a view to facilitating and harmonising the working of the Convention between States, it is provided that representatives of the central authorities appointed by the Contracting States should be invited to meet at the end of the third year following the date of entry into force of the Convention. These representatives will be responsible for considering the application of the Convention. Their comments and the conclusions of the meeting will be included in a report which will be submitted for information to the Committee of Ministers of the Council of Europe and distributed widely among the authorities of the Contracting States.

At this meeting, the member States of the Council of Europe which are not Parties to the Convention will be able to be represented by an observer. The purpose of the opportunity thus offered to them is to facilitate their ratification of this Convention.

85. Such meetings may also be convened on a periodical basis on the initiative of the Secretary General of the Council of Europe at any time after the date of the entry into force of this Convention