

No. 26749

**BELGIUM, DENMARK, GERMANY,
FEDERAL REPUBLIC OF, FRANCE, IRELAND,
ITALY, LUXEMBOURG, NETHERLANDS
AND UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND**

Convention on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters and to the Protocol on its interpretation by the Court of Justice (with joint declaration, and with Danish, English and Irish texts of the 1968 Convention and the 1971 Protocol). Concluded at Luxembourg on 9 October 1978

Authentic texts of the Convention and joint declaration: Danish, German, English, French, Irish, Italian and Dutch.

Registered by the Secretary-General of the Council of the European Communities, acting on behalf of the Parties, on 1 August 1989.

CONVENTION¹ ON THE ACCESSION OF THE KINGDOM OF DENMARK, IRELAND AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND TO THE CONVENTION ON JURISDICTION AND THE ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS² AND TO THE PROTOCOL ON ITS INTERPRETATION BY THE COURT OF JUSTICE³

PREAMBLE

THE HIGH CONTRACTING PARTIES TO THE TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY,

CONSIDERING that the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, in becoming members of the Community, undertook to accede to the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters² and to the Protocol on the Interpretation of that Convention by the Court of Justice,³ and to this end undertook to enter into negotiations with the original Member States of the Community in order to make the necessary adjustments thereto,

¹ Came into force on 1 November 1986, i.e., the first day of the third month following the deposit with the Secretary-General of the Council of the European Communities of the last instrument of ratification by the original member States of the European Economic Community and one new member State, in accordance with article 39:

State	Date of deposit of the instrument of ratification	
Belgium.....	21 August	1986
Denmark*.....	27 August	1986
France.....	27 February	1984
Germany, Federal Republic of	7 March	1984
(With a declaration of application to <i>Land Berlin</i> .)		
Italy.....	7 May	1981
Luxembourg.....	22 October	1981
Netherlands.....	8 December	1980

* See p. 231 of this volume for the text of declarations made upon ratification.

Subsequently, the Convention came into force in respect of each of the following member States on the first day of the third month following the deposit of its instrument of ratification with the Secretary-General of the Council of the European Communities, in accordance with article 39:

State	Date of deposit of the instrument of ratification	
United Kingdom of Great Britain and Northern Ireland	7 October	1986
(With effect from 1 January 1987.)		
Ireland.....	31 March	1988
(With effect from 1 January 1988.)		

² United Nations, *Treaty Series*, vol. 1262, p. 154 (authentic German text), p. 168 (authentic French text), p. 181 (authentic Italian text), p. 194 (authentic Dutch text), and p. 223 (English translation).

³ *Ibid.*, vol. 1262, p. 242 (authentic German text), p. 245 (authentic French text), p. 248 (authentic Italian text), p. 251 (authentic Dutch text), and p. 260 (English translation).

HAVE DECIDED to conclude this Convention and to this end have designated as their Plenipotentiaries:

HIS MAJESTY THE KING OF THE BELGIANS:

Renaat VAN ELSLANDE,
Minister for Justice;

HER MAJESTY THE QUEEN OF DENMARK:

Nathalie LIND,
Minister for Justice;

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY:

Dr. Hans-Jochen VOGEL,
Federal Minister for Justice;

THE PRESIDENT OF THE FRENCH REPUBLIC:

Alain PEYREFITTE,
Keeper of the Seals,
Minister for Justice;

THE PRESIDENT OF IRELAND:

Gerard COLLINS,
Minister for Justice;

THE PRESIDENT OF THE ITALIAN REPUBLIC:

Paolo BONIFACIO,
Minister for Justice;

HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG:

Robert KRIEPS,
Minister of Education and Justice;

HER MAJESTY THE QUEEN OF THE NETHERLANDS:

Prof. Mr J. DE RUITER,
Minister for Justice;

HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND:

The Right Honourable the Lord Elwyn-Jones, C.H.,
Lord High Chancellor of Great Britain;

WHO, meeting within the Council, having exchanged their Full
Powers, found in good and due form,

HAVE AGREED AS FOLLOWS:

TITLE I

GENERAL PROVISIONS

ARTICLE 1

The Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland hereby accede to the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, signed at Brussels on 27 September 1968 (hereinafter called "the 1968 Convention"), and to the Protocol on its interpretation by the Court of Justice, signed at Luxembourg on 3 June 1971 (hereinafter called "the 1971 Protocol").

ARTICLE 2

The adjustments to the 1968 Convention and to the 1971 Protocol are set out in Titles II to IV of this Convention.

TITLE IIADJUSTMENTS TO THE 1968 CONVENTION

ARTICLE 3

The following shall be added to the first paragraph of Article 1 of the 1968 Convention:

"It shall not extend, in particular, to revenue, customs or administrative matters."

ARTICLE 4

The following shall be substituted for the second paragraph of Article 3 of the 1968 Convention:

"In particular the following provisions shall not be applicable as against them:

- in Belgium : Article 15 of the civil code (Code civil - Burgerlijk Wetboek) and Article 638 of the judicial code (Code judiciaire - Gerechtelijk Wetboek);
- in Denmark : Article 248(2) of the law on civil procedure (Lov om rettens pleje) and Chapter 3, Article 3 of the Greenland law on civil procedure (Lov for Grønland om rettens pleje);
- in the Federal Republic of Germany : Article 23 of the code of civil procedure (Zivilprozessordnung);
- in France : Articles 14 and 15 of the civil code (Code civil);

- in Ireland : the rules which enable jurisdiction to be founded on the document instituting the proceedings having been served on the defendant during his temporary presence in Ireland;
- in Italy : Article 2 and Article 4, Nos 1 and 2 of the code of civil procedure (Codice di procedura civile);
- in Luxembourg : Articles 14 and 15 of the civil code (Code civil);
- in the Netherlands : Article 126(3) and Article 127 of the code of civil procedure (Wetboek van Burgerlijke Rechtsvordering);
- in the United Kingdom : the rules which enable jurisdiction to be founded on:
 - (a) the document instituting the proceedings having been served on the defendant during his temporary presence in the United Kingdom; or
 - (b) the presence within the United Kingdom of property belonging to the defendant; or
 - (c) the seizure by the plaintiff of property situated in the United Kingdom."

ARTICLE 5

1. The following shall be substituted for the French text of Article 5(1) of the 1968 Convention:

"1° - en matière contractuelle, devant le tribunal du lieu où l'obligation qui sert de base à la demande a été ou doit être exécutée;"

2. The following shall be substituted for the Dutch text of Article 5(1) of the 1968 Convention:

"1° - ten aanzien van verbintenissen uit overeenkomst: voor het gerecht van de plaats, waar de verbintenis, die aan de eis ten grondslag ligt, is uitgevoerd of moet worden uitgevoerd;"

3. The following shall be substituted for Article 5(2) of the 1968 Convention:

"2° - in matters relating to maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident or, if the matter is ancillary to proceedings concerning the status of a person, in the court which, according to its own law, has jurisdiction to entertain those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties;"

4. The following shall be added to Article 5 of the 1968 Convention:

"6° - in his capacity as settlor, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, in the courts of the Contracting State in which the trust is domiciled;

7° - as regards a dispute concerning the payment of remuneration claimed in respect of the salvage of a cargo or freight, in the court under the authority of which the cargo or freight in question

(a) has been arrested to secure such payment, or

(b) could have been so arrested, but bail or other security has been given;

provided that this provision shall apply only if it is claimed that the defendant has an interest in the cargo or freight or had such an interest at the time of salvage."

ARTICLE 6

The following Article shall be added to Title II, Section 2, of the 1968 Convention:

"ARTICLE 6A

Where by virtue of this Convention a court of a Contracting State has jurisdiction in actions relating to liability arising from the use or operation of a ship, that court, or any other court substituted for this purpose by the internal law of that State, shall also have jurisdiction over claims for limitation of such liability."

ARTICLE 7

The following shall be substituted for Article 8 of the 1968 Convention:

"ARTICLE 8

An insurer domiciled in a Contracting State may be sued:

- 1° - in the courts of the State where he is domiciled, or
- 2° - in another Contracting State, in the courts for the place where the policy-holder is domiciled, or
- 3° - if he is a co-insurer, in the courts of a Contracting State in which proceedings are brought against the leading insurer.

An insurer who is not domiciled in a Contracting State but has a branch, agency or other establishment in one of the Contracting States shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that State."

ARTICLE 8

The following shall be substituted for Article 12 of the 1968 Convention:

"ARTICLE 12

The provisions of this Section may be departed from only by an agreement on jurisdiction:

- 1° - which is entered into after the dispute has arisen, or
- 2° - which allows the policy-holder, the insured or a beneficiary to bring proceedings in courts other than those indicated in this Section, or
- 3° - which is concluded between a policy-holder and an insurer, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Contracting State, and which has the effect of conferring jurisdiction on the courts of that State even if the harmful event were to occur abroad, provided that such an agreement is not contrary to the law of that State, or
- 4° - which is concluded with a policy-holder who is not domiciled in a Contracting State, except insofar as the insurance is compulsory or relates to immovable property in a Contracting State, or
- 5° - which relates to a contract of insurance insofar as it covers one or more of the risks set out in Article 12A."

ARTICLE 9

The following Article shall be added to Section 3 of Title II of the 1968 Convention:

"ARTICLE 12A

The following are the risks referred to in Article 12(5):

- 1° - Any loss of or damage to
 - (a) sea-going ships, installations situated off-shore or on the high seas, or aircraft, arising from perils which relate to their use for commercial purposes,
 - (b) goods in transit other than passengers' baggage where the transit consists of or includes carriage by such ships or aircraft;
- 2° - Any liability, other than for bodily injury to passengers or loss of or damage to their baggage,
 - (a) arising out of the use or operation of ships, installations or aircraft as referred to in 1°(a) above insofar as the law of the Contracting State in which such aircraft are registered does not prohibit agreements on jurisdiction regarding insurance of such risks,
 - (b) for loss or damage caused by goods in transit as described in 1°(b) above;
- 3° - Any financial loss connected with the use or operation of ships, installations or aircraft as referred to in 1°(a) above, in particular loss of freight or charter-hire;
- 4° - Any risk or interest connected with any of those referred to in 1° to 3° above."

ARTICLE 10

The following shall be substituted for Section 4 of Title II of the 1968 Convention:

"Section 4

Jurisdiction over consumer contracts

ARTICLE 13

In proceedings concerning a contract concluded by a person for a purpose which can be regarded as being outside his trade or profession, hereinafter called the "consumer", jurisdiction shall be determined by this Section, without prejudice to the provisions of Articles 4 and 5(5), if it is:

- 1° - a contract for the sale of goods on instalment credit terms, or
- 2° - a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods, or
- 3° - any other contract for the supply of goods or a contract for the supply of services, and
 - (a) in the State of the consumer's domicile the conclusion of the contract was preceded by a specific invitation addressed to him or by advertising, and
 - (b) the consumer took in that State the steps necessary for the conclusion of the contract.

Where a consumer enters into a contract with a party who is not domiciled in a Contracting State but has a branch, agency or other establishment in one of the Contracting States, that party shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that State.

This section shall not apply to contracts of transport.

ARTICLE 14

A consumer may bring proceedings against the other party to a contract either in the courts of the Contracting State in which that party is domiciled or in the courts of the Contracting State in which he is himself domiciled.

Proceedings may be brought against a consumer by the other party to the contract only in the courts of the Contracting State in which the consumer is domiciled.

These provisions shall not affect the right to bring a counterclaim in the court in which, in accordance with this Section, the original claim is pending.

ARTICLE 15

The provisions of this Section may be departed from only by an agreement:

- 1° - which is entered into after the dispute as arisen, or
- 2° - which allows the consumer to bring proceedings in courts other than those indicated in this Section, or
- 3° - which is entered into by the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Contracting State, and which confers jurisdiction on the courts of that State, provided that such an agreement is not contrary to the law of that State."

ARTICLE 11

The following shall be substituted for Article 17 of the 1968 Convention:

"ARTICLE 17

If the parties, one or more of whom is domiciled in a Contracting State, have agreed that a court or the courts of a Contracting State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have exclusive jurisdiction. Such an agreement conferring jurisdiction shall be either in writing or evidenced in writing or, in international trade or commerce, in a form which accords with practices in that trade or commerce of which the parties are or ought to have been aware. Where such an agreement is concluded by parties, none of whom is domiciled in a Contracting State, the courts of other Contracting States shall have no jurisdiction over their disputes unless the court or courts chosen have declined jurisdiction.

The court or courts of a Contracting State on which a trust instrument has conferred jurisdiction shall have exclusive jurisdiction in any proceedings brought against a settlor, trustee or beneficiary, if relations between these persons or their rights or obligations under the trust are involved.

Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if they are contrary to the provisions of Articles 12 or 15, or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 16.

If an agreement conferring jurisdiction was concluded for the benefit of only one of the parties, that party shall retain the right to bring proceedings in any other court which has jurisdiction by virtue of this Convention."

ARTICLE 12

The second paragraph of Article 20 of the 1968 Convention shall be replaced by the following:

"The court shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end."

ARTICLE 13

1. Article 27(2) of the 1968 Convention shall be replaced by the following:

"2° - where it was given in default of appearance, if the defendant was not duly served with the document which instituted the proceedings or with an equivalent document in sufficient time to enable him to arrange for his defence;"

2. The following shall be added to Article 27 of the 1968 Convention:

"5° - if the judgment is irreconcilable with an earlier judgment given in a non-Contracting State involving the same cause of action and between the same parties, provided that this latter judgment fulfils the conditions necessary for its recognition in the State addressed."

ARTICLE 14

The following paragraph shall be added to Article 30 of the 1968 Convention:

"A court of a Contracting State in which recognition is sought of a judgment given in Ireland or the United Kingdom may stay the proceedings if enforcement is suspended in the State in which the judgment was given by reason of an appeal."

ARTICLE 15

The following paragraph shall be added to Article 31 of the 1968 Convention:

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

ARTICLE 16

The following shall be substituted for the first paragraph of Article 32 of the 1968 Convention:

"The application shall be submitted:

- in Belgium, to the tribunal de première instance or rechtbank van eerste aanleg;
- in Denmark, to the underret;
- in the Federal Republic of Germany, to the presiding judge of a chamber of the Landgericht;
- in France, to the presiding judge of the tribunal de grande instance;
- in Ireland, to the High Court;

- in Italy, to the corte d'appello;
- in Luxembourg, to the presiding judge of the tribunal d'arrondissement;
- in the Netherlands, to the presiding judge of the arrondissementsrechtbank;
- in the United Kingdom:
 - 1° - in England and Wales, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court on transmission by the Secretary of State;
 - 2° - in Scotland, to the Court of Session, or in the case of a maintenance judgment to the Sheriff Court on transmission by the Secretary of State;
 - 3° - in Northern Ireland, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court on transmission by the Secretary of State."

ARTICLE 17

The following shall be substituted for Article 37 of the 1968 Convention:

"ARTICLE 37

An appeal against the decision authorising enforcement shall be lodged in accordance with the rules governing procedure in contentious matters:

- in Belgium, with the tribunal de première instance or rechtbank van eerste aanleg;
- in Denmark, with the landsret;
- in the Federal Republic of Germany, with the Oberlandesgericht;
- in France, with the cour d'appel;

- in Ireland, with the High Court;
- in Italy, with the corte d'appello;
- in Luxembourg, with the Cour supérieure de Justice sitting as a court of civil appeal;
- in the Netherlands, with the arrondissements-rechtbank;
- in the United Kingdom:
 - 1° - in England and Wales, with the High Court of Justice, or in the case of a maintenance judgment with the Magistrates' Court;
 - 2° - in Scotland, with the Court of Session, or in the case of a maintenance judgment with the Sheriff Court;
 - 3° - in Northern Ireland, with the High Court of Justice, or in the case of a maintenance judgment with the Magistrates' Court.

The judgment given on the appeal may be contested only:

- in Belgium, France, Italy, Luxembourg and the Netherlands, by an appeal in cassation;
- in Denmark, by an appeal to the højesteret, with the leave of the Minister of Justice;
- in the Federal Republic of Germany, by a Rechtsbeschwerde;
- in Ireland, by an appeal on a point of law to the Supreme Court;
- in the United Kingdom, by a single further appeal on a point of law."

ARTICLE 18

The following paragraph shall be added after the first paragraph of Article 38 of the 1968 Convention:

"Where the judgment was given in Ireland or the United Kingdom, any form of appeal available in the State in which it was given shall be treated as an ordinary appeal for the purposes of the first paragraph."

ARTICLE 19

The following shall be substituted for the first paragraph of Article 40 of the 1968 Convention:

"If the application for enforcement is refused, the applicant may appeal:

- in Belgium, to the cour d'appel or hof van beroep;
- in Denmark, to the landsret;
- in the Federal Republic of Germany, to the Oberlandesgericht;
- in France, to the cour d'appel;
- in Ireland, to the High Court;
- in Italy, to the corte d'appello;
- in Luxembourg, to the Cour supérieure de Justice sitting as a court of civil appeal;
- in the Netherlands, to the gerechtshof;
- in the United Kingdom:
 - 1° - in England and Wales, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court;
 - 2° - in Scotland, to the Court of Session, or in the case of a maintenance judgment to the Sheriff Court;
 - 3° - in Northern Ireland, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court."

ARTICLE 20

The following shall be substituted for Article 41 of the 1968 Convention:

"ARTICLE 41

A judgment given on an appeal provided for in Article 40 may be contested only:

- in Belgium, France, Italy, Luxembourg and the Netherlands, by an appeal in cassation;
- in Denmark, by an appeal to the højesteret, with the leave of the Minister of Justice;
- in the Federal Republic of Germany, by a Rechtsbeschwerde;
- in Ireland, by an appeal on a point of law to the Supreme Court;
- in the United Kingdom, by a single further appeal on a point of law."

ARTICLE 21

The following shall be substituted for Article 44 of the 1968 Convention:

"ARTICLE 44

An applicant who, in the State in which the judgment was given, has benefited from complete or partial legal aid or exemption from costs or expenses, shall be entitled, in the procedures provided for in Articles 32 to 35, to benefit from the most favourable legal aid or the most extensive exemption from costs or expenses provided for by the law of the State addressed.

An applicant who requests the enforcement of a decision given by an administrative authority in Denmark in respect of a maintenance order may, in the State addressed, claim the benefits referred to in the first paragraph if he presents a statement from the Danish

Ministry of Justice to the effect that he fulfils the economic requirements to qualify for the grant of complete or partial legal aid or exemption from costs or expenses."

ARTICLE 22

Article 46(2) of the 1968 Convention is replaced by the following:

"2° - in the case of a judgment given in default, the original or a certified true copy of the document which establishes that the party in default was served with the document instituting the proceedings or with an equivalent document."

ARTICLE 23

The following paragraph shall be added to Article 53 of the 1968 Convention:

"In order to determine whether a trust is domiciled in the Contracting State whose courts are seised of the matter, the court shall apply its rules of private international law."

ARTICLE 24

The following shall be inserted at the appropriate places in chronological order in the list of Conventions set out in Article 55 of the 1968 Convention:

—The Convention between the United Kingdom and the French Republic providing for the Reciprocal Enforcement of Judgments in Civil and Commercial Matters, with Protocol, signed at Paris on 18 January 1934;¹

¹ League of Nations, *Treaty Series*, vol. 171, p. 183.

- The Convention between the United Kingdom and the Kingdom of Belgium providing for the Reciprocal Enforcement of Judgments in Civil and Commercial Matters, with Protocol, signed at Brussels on 2 May 1934;¹
- The Convention between the United Kingdom and the Federal Republic of Germany for the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters, signed at Bonn on 14 July 1960;²
- The Convention between the United Kingdom and the Republic of Italy for the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters, signed at Rome on 7 February 1964, with amending Protocol signed at Rome on 14 July 1970;³
- The Convention between the United Kingdom and the Kingdom of the Netherlands providing for the Reciprocal Recognition and Enforcement of Judgments in Civil Matters, signed at The Hague on 17 November 1967.⁴

ARTICLE 25

1. The following shall be substituted for Article 57 of the 1968 Convention:

"ARTICLE 57

This Convention shall not affect any conventions to which the Contracting States are or will be parties and which, in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments.

This Convention shall not affect the application of provisions which, in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments and which are or will be contained in acts of the Institutions of the European Communities or in national laws harmonised in implementation of such acts."

¹ League of Nations, *Treaty Series*, vol. 173, p. 291.

² United Nations, *Treaty Series*, vol. 414, p. 143.

³ *Ibid.*, vol. 941, p. 173.

⁴ *Ibid.*, vol. 699, p. 11.

2. With a view to its uniform interpretation, paragraph 1 of Article 57 shall be applied in the following manner:

- (a) The 1968 Convention as amended shall not prevent a court of a Contracting State which is a party to a convention on a particular matter from assuming jurisdiction in accordance with that convention, even where the defendant is domiciled in another Contracting State which is not a party to that convention. The court shall, in any event, apply Article 20 of the 1968 Convention as amended.
- (b) A judgment given in a Contracting State in the exercise of jurisdiction provided for in a convention on a particular matter shall be recognised and enforced in the other Contracting States in accordance with the 1968 Convention as amended.

Where a convention on a particular matter to which both the State of origin and the State addressed are parties lays down conditions for the recognition or enforcement of judgments, those conditions shall apply. In any event, the provisions of the 1968 Convention as amended which concern the procedures for recognition and enforcement of judgments may be applied.

ARTICLE 26

The following paragraph shall be added to Article 59 of the 1968 Convention:

"However, a Contracting State may not assume an obligation towards a third State not to recognise a judgment given in another Contracting State by a court basing its jurisdiction on the presence within that State of property belonging to the defendant, or the seizure by the plaintiff of property situated there:

- 1° - if the action is brought to assert or declare proprietary or possessory rights in that property, seeks to obtain authority to dispose of it, or arises from another issue relating to such property, or,

- 2° - if the property constitutes the security for a debt which is the subject-matter of the action."

ARTICLE 27

The following shall be substituted for Article 60 of the 1968 Convention:

"ARTICLE 60

This Convention shall apply to the European territories of the Contracting States, including Greenland, to the French overseas departments and territories, and to Mayotte.

The Kingdom of the Netherlands may declare at the time of signing or ratifying this Convention or at any later time, by notifying the Secretary-General of the Council of the European Communities, that this Convention shall be applicable to the Netherlands Antilles. In the absence of such declaration, proceedings taking place in the European territory of the Kingdom as a result of an appeal in cassation from the judgment of a court in the Netherlands Antilles shall be deemed to be proceedings taking place in the latter court.

Notwithstanding the first paragraph, this Convention shall not apply to:

- 1° - the Faroe Islands, unless the Kingdom of Denmark makes a declaration to the contrary,
- 2° - any European territory situated outside the United Kingdom for the international relations of which the United Kingdom is responsible, unless the United Kingdom makes a declaration to the contrary in respect of any such territory.

Such declarations may be made at any time by notifying the Secretary-General of the Council of the European Communities.

Proceedings brought in the United Kingdom on appeal from courts in one of the territories referred to in subparagraph 2 of the third paragraph shall be deemed to be proceedings taking place in those courts.

Proceedings which in the Kingdom of Denmark are dealt with under the law on civil procedure for the Faroe Islands (lov for Faeroerre om rettens pleje) shall be deemed to be proceedings taking place in the courts of the Faroe Islands."

ARTICLE 28

The following shall be substituted for Article 64(c) of the 1968 Convention:

"(c) any declaration received pursuant to Article 60;"

TITLE IIIADJUSTMENTS TO THE PROTOCOL ANNEXED TO THE 1968 CONVENTION

ARTICLE 29

The following Articles shall be added to the Protocol annexed to the 1968 Convention:

"ARTICLE V A

In matters relating to maintenance, the expression "court" includes the Danish administrative authorities.

ARTICLE V B

In proceedings involving a dispute between the master and a member of the crew of a sea-going ship registered in Denmark or in Ireland, concerning remuneration or other conditions of service, a court in a Contracting State shall establish whether the diplomatic or consular officer responsible for the ship has been notified of the dispute. It shall stay the proceedings so long as he has not been notified. It shall of its own motion decline jurisdiction if the officer, having been duly notified, has exercised the powers accorded to him in the matter by a consular convention, or in the absence of such a convention, has, within the time allowed, raised any objection to the exercise of such jurisdiction.

ARTICLE V C

Articles 52 and 53 of this Convention shall, when applied by Article 69(5) of the Convention for the European Patent for the Common Market, signed at

Luxembourg on 15 December 1975, to the provisions relating to "residence" in the English text of that Convention, operate as if "residence" in that text were the same as "domicile" in Articles 52 and 53.

ARTICLE V D

Without prejudice to the jurisdiction of the European Patent Office under the Convention on the Grant of European Patents, signed at Munich on 5 October 1973,¹ the courts of each Contracting State shall have exclusive jurisdiction, regardless of domicile, in proceedings concerned with the registration or validity of any European patent granted for that State which is not a Community patent by virtue of the provisions of Article 86 of the Convention for the European Patent for the Common Market, signed at Luxembourg on 15 December 1975."

TITLE IV

ADJUSTMENTS TO THE 1971 PROTOCOL

ARTICLE 30

The following paragraph shall be added to Article 1 of the 1971 Protocol:

"The Court of Justice of the European Communities shall also have jurisdiction to give rulings on the interpretation of the Convention on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the Convention of 27 September 1968 and to this Protocol."

ARTICLE 31

The following shall be substituted for Article 2(1) of the 1971 Protocol:

- "1. - in Belgium: la Cour de Cassation - het Hof van Cassatie and le Conseil d'Etat - de Raad van State,
- in Denmark: højesteret,

¹ United Nations, *Treaty Series*, vol. 1065, p. 199.

- in the Federal Republic of Germany: die obersten Gerichtshöfe des Bundes,
- in France: la Cour de Cassation and le Conseil d'Etat,
- in Ireland: the Supreme Court,
- in Italy: la Corte Suprema di Cassazione,
- in Luxembourg: la Cour supérieure de Justice when sitting as Cour de Cassation,
- in the Netherlands: de Hoge Raad,
- in the United Kingdom: the House of Lords and courts to which application has been made under the second paragraph of Article 37 or under Article 41 of the Convention;"

ARTICLE 32

The following shall be substituted for Article 6 of the 1971 Protocol:

"ARTICLE 6

This Protocol shall apply to the European territories of the Contracting States, including Greenland, to the French overseas departments and territories, and to Mayotte.

The Kingdom of the Netherlands may declare at the time of signing or ratifying this Protocol or at any later time, by notifying the Secretary-General of the Council of the European Communities, that this Protocol shall be applicable to the Netherlands Antilles.

Notwithstanding the first paragraph, this Protocol shall not apply to:

- 1° - the Faroe Islands, unless the Kingdom of Denmark makes a declaration to the contrary,
- 2° - any European territory situated outside the United Kingdom for the international relations of which the United Kingdom is responsible, unless the United Kingdom makes a declaration to the contrary in respect of any such territory.

Such declarations may be made at any time by notifying the Secretary-General of the Council of the European Communities."

ARTICLE 33

The following shall be substituted for Article 10(d) of the 1971 Protocol:

"(d) any declaration received pursuant to Article 6."

TITLE V

TRANSITIONAL PROVISIONS

ARTICLE 34

1. The 1968 Convention and the 1971 Protocol, with the amendments made by this Convention, shall apply only to legal proceedings instituted and to authentic instruments formally drawn up or registered after the entry into force of this Convention in the State of origin and, where recognition or enforcement of a judgment or authentic instrument is sought, in the State addressed.
2. However, as between the six Contracting States to the 1968 Convention, judgments given after the date of entry into force of this Convention in proceedings instituted before that date shall be recognised and enforced in accordance with the provisions of Title III of the 1968 Convention as amended.
3. Moreover, as between the six Contracting States to the 1968 Convention and the three States mentioned in Article 1 of this Convention, and as between those three States, judgments given after the date of entry into force of this Convention between the State of origin and the State addressed in proceedings instituted before that date

shall also be recognised and enforced in accordance with the provisions of Title III of the 1968 Convention as amended if jurisdiction was founded upon rules which accorded with the provisions of Title II, as amended, or with provisions of a convention concluded between the State of origin and the State addressed which was in force when the proceedings were instituted.

ARTICLE 35

If the parties to a dispute concerning a contract had agreed in writing before the entry into force of this Convention that the contract was to be governed by the law of Ireland or of a part of the United Kingdom, the courts of Ireland or of that part of the United Kingdom shall retain the right to exercise jurisdiction in the dispute.

ARTICLE 36

For a period of three years from the entry into force of the 1968 Convention for the Kingdom of Denmark and Ireland respectively, jurisdiction in maritime matters shall be determined in these States not only in accordance with the provisions of that Convention but also in accordance with the provisions of paragraphs 1 to 6 following. However, upon the entry into force of the International Convention relating to the Arrest of Sea-going Ships, signed at Brussels on 10 May 1952,¹ for one of these States, these provisions shall cease to have effect for that State.

1. A person who is domiciled in a Contracting State may be sued in the courts of one of the States mentioned above in respect of a maritime claim if the ship to which the claim relates or any other ship owned by him has been

¹ United Nations, *Treaty Series*, vol. 439, p. 193.

arrested by judicial process within the territory of the latter State to secure the claim, or could have been so arrested there but bail or other security has been given, and either:

- (a) the claimant is domiciled in the latter State; or
 - (b) the claim arose in the latter State; or
 - (c) the claim concerns the voyage during which the arrest was made or could have been made; or
 - (d) the claim arises out of a collision or out of damage caused by a ship to another ship or to goods or persons on board either ship, either by the execution or non-execution of a manoeuvre or by the non-observance of regulations; or
 - (e) the claim is for salvage; or
 - (f) the claim is in respect of a mortgage or hypothecation of the ship arrested.
2. A claimant may arrest either the particular ship to which the maritime claim relates, or any other ship which is owned by the person who was, at the time when the maritime claim arose, the owner of the particular ship. However, only the particular ship to which the maritime claim relates may be arrested in respect of the maritime claims set out in subparagraphs (o), (p) or (q) of paragraph 5 of this Article.
3. Ships shall be deemed to be in the same ownership when all the shares therein are owned by the same person or persons.
4. When in the case of a charter by demise of a ship the charterer alone is liable in respect of a maritime claim relating to that ship, the claimant may arrest that ship or any other ship owned by the charterer, but no other ship owned by the owner may be arrested in respect of such claim. The same shall apply to any case in which a person other than the owner of a ship is liable in respect of a maritime claim relating to that ship.

5. The expression "maritime claim" means a claim arising out of one or more of the following:
- (a) damage caused by any ship either in collision or otherwise;
 - (b) loss of life or personal injury caused by any ship or occurring in connection with the operation of any ship;
 - (c) salvage;
 - (d) agreement relating to the use or hire of any ship whether by charterparty or otherwise;
 - (e) agreement relating to the carriage of goods in any ship whether by charterparty or otherwise;
 - (f) loss of or damage to goods including baggage carried in any ship;
 - (g) general average;
 - (h) bottomry;
 - (i) towage;
 - (j) pilotage;
 - (k) goods or materials wherever supplied to a ship for her operation or maintenance;
 - (l) construction, repair or equipment of any ship or dock charges and dues;
 - (m) wages of masters, officers or crew;
 - (n) master's disbursements, including disbursements made by shippers, charterers or agents on behalf of a ship or her owner;
 - (o) dispute as to the title to or ownership of any ship;
 - (p) disputes between co-owners of any ship as to the ownership, possession, employment or earnings of that ship;
 - (q) the mortgage or hypothecation of any ship.
6. In Denmark, the expression "arrest" shall be deemed as regards the maritime claims referred to in subparagraphs (o) and (p) of paragraph 5 of this Article, to include a "forbud", where that is the only procedure allowed in respect of such a claim under Articles 646 to 653 of the law on civil procedure (lov om rettens pleje).

TITLE VIFINAL PROVISIONS

ARTICLE 37

The Secretary-General of the Council of the European Communities shall transmit a certified copy of the 1968 Convention and of the 1971 Protocol in the Dutch, French, German and Italian languages to the Governments of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland.

The texts of the 1968 Convention and the 1971 Protocol, drawn up in the Danish, English and Irish languages, shall be annexed to this Convention. The texts drawn up in the Danish, English and Irish languages shall be authentic under the same conditions as the original texts of the 1968 Convention and the 1971 Protocol.

ARTICLE 38

This Convention shall be ratified by the signatory States. The instruments of ratification shall be deposited with the Secretary-General of the Council of the European Communities.

ARTICLE 39

This Convention shall enter into force, as between the States which shall have ratified it, on the first day of the third month following the deposit of the last instrument of ratification by the original Member States of the Community and one new Member State.

It shall enter into force for each new Member State which subsequently ratifies it on the first day of the third month following the deposit of its instrument of ratification.

ARTICLE 40

The Secretary-General of the Council of the European Communities shall notify the signatory States of:

- (a) the deposit of each instrument of ratification,
- (b) the dates of entry into force of this Convention for the Contracting States.

ARTICLE 41

This Convention, drawn up in a single original in the Danish, Dutch, English, French, German, Irish and Italian languages, all seven texts being equally authentic, shall be deposited in the archives of the Secretariat of the Council of the European Communities. The Secretary-General shall transmit a certified copy to the Government of each signatory State.

[For the testimonium and signatures, see p. 229 of this volume.]

TIL BEKRÆFTELSE HERAF har undertegnede befuldmægtigede underskrevet denne konvention.

ZU URKUND DESSEN haben die unterzeichneten Bevollmächtigten ihre Unterschriften unter dieses Uebereinkommen gesetzt.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have affixed their signatures below this Convention.

EN FOI DE QUOI, les plénipotentiaires soussignés ont apposé leurs signatures au bas de la présente convention.

DÁ FHIANÚ SIN, chuir na Lánchumhachtaigh thíos-sínithe a lámh leis an gCoinbhinsiún seo.

IN FEDE DI CHE, i plenipotenziari sottoscritti hanno apposto le loro firme in clace alla presente convenzione.

TEN BLIJKE WAARVAN de ondergetekende gevolmachtigden hun handtekening onder dit verdrag hebben gesteld.

UDFÆRDIGET i Luxembourg, den niende oktober nitten hundrede og otteoghalvfjerds.

GESCHEHEN zu Luxemburg am neunten Oktober neunzehnhundertachtundsiebzig.

DONE at Luxembourg on the ninth day of October in the year one thousand nine hundred and seventy-eight.

FAIT à Luxembourg, le neuf octobre mil neuf cent soixante-dix-huit.

ARNA DHÉANAMH i Lucsamburg, an naoú lá de Dheireadh Fómhair sa bhliain míle naoi gcéad seachtó a hocht.

FATTO a Lussenburgo, addì nove ottobre millenovecentosettantotto.

GEDAAN te Luxemburg, de negende oktober negentienhonderd achtenzeventig.

Pour Sa Majesté le Roi des Belges :
Voor Zijne Majesteit de Koning der Belgen:
[For His Majesty the King of the Belgians:]

[RENAAT VAN ELSLANDE]¹

For Hendes Majestæt Danmarks Dronning:
For Her Majesty the Queen of Denmark:
[Pour Sa Majesté la Reine de Danemark :]

[NATHALIE LIND]

¹ The names of the signatories appearing between brackets were not legible and have been supplied by the Council of the European Communities — Les noms des signataires donnés entre crochets étaient illisibles et ont été fournis par le Conseil des Communautés européennes.

Für den Präsidenten der Bundesrepublik Deutschland:
[For the President of the Federal Republic of Germany:]
[Pour le Président de la République fédérale d'Allemagne :]

[Dr. HANS-JOCHEN VOGEL]

Pour le Président de la République Française :
[For the President of the French Republic:]

[ALAIN PEYREFITTE]

Thar ceann Uachtarán na hÉireann:
[For the President of Ireland:]
[Pour le Président de l'Irlande :]

[GERARD COLLINS]

Per il Presidente della Repubblica italiana:
[For the President of the Italian Republic:]
[Pour le Président de la République italienne :]

[PAOLO BONIFACIO]

Pour Son Altesse Royale le Grand-Duc de Luxembourg :
[His Royal Highness the Grand Duke of Luxembourg:]

[ROBERT KRIEPS]

Voor Hare Majesteit de Koningin der Nederlanden:
[Her Majesty the Queen of the Netherlands:]
[Pour Sa Majesté la Reine des Pays-Bas :]

[Prof. Mr. J. DE RUITER]

For Her Majesty the Queen of the United Kingdom of Great Britain
and Northern Ireland:
[Pour Sa Majesté la Reine du Royaume-Uni de Grande-Bretagne
et d'Irlande du Nord :]

[The Right Honourable the Lord ELWYN-JONES, C.H.]

DECLARATIONS MADE UPON
RATIFICATION

DENMARK

[TRANSLATION — TRADUCTION]

Article 3 of the Convention

The Danish provisions on jurisdiction contained in article 248 (2) of the law on civil procedure have been amended by Act No. 324 of 4 June 1986. The provisions in force governing jurisdiction in respect of foreign nationals based on residence or situation of property are now contained in article 246, paragraphs 2 and 3, of the law on civil procedure.

Article 32 of the Convention

The name of the court to which an application must be submitted pursuant to the first paragraph of article 32 has been changed by Act No. 260 of 8 June 1979 from “underret” to “byret”.

DÉCLARATIONS FAITES
LORS DE LA RATIFICATION

DANEMARK

« Article 3 de la Convention »

Les dispositions danoises en matière de compétence, contenues à l'article 248 paragraphe 2 de la loi sur la procédure civile, ont été modifiées par la loi n° 324 du 4 juin 1986. Les dispositions en vigueur concernant la compétence pour les étrangers basée sur le séjour ou la situation des biens se trouvent maintenant dans l'article 246 paragraphes 2 et 3 de la loi sur la procédure civile.

Article 32 de la Convention

La dénomination du tribunal auquel doit être présentée la requête conformément à l'article 32 paragraphe 1^{er} a été modifiée par la loi n° 260 du 8 juin 1979 de « underret » en « byret. »

CONVENTION ON JURISDICTION AND THE ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS¹

PREAMBLE

The High Contracting Parties to the Treaty establishing the European Economic Community,

Desiring to implement the provisions of Article 220 of that Treaty by virtue of which they undertook to secure the simplification of formalities governing the reciprocal recognition and enforcement of judgments of courts or tribunals,

Anxious to strengthen in the Community the legal protection of persons therein established,

Considering that it is necessary for this purpose to determine the international jurisdiction of their courts, to facilitate recognition and to introduce an expeditious procedure for securing the enforcement of judgments, authentic instruments and court settlements,

Have decided to conclude this Convention and to this end have designated as their Plenipotentiaries:

His Majesty the King of the Belgians:

Mr. Pierre Harmel, Minister for Foreign Affairs;

The President of the Federal Republic of Germany:

Mr. Willy Brandt, Vice-Chancellor, Minister for Foreign Affairs;

The President of the French Republic:

Mr. Michel Debré, Minister for Foreign Affairs;

The President of the Italian Republic:

Mr. Giuseppe Medici, Minister for Foreign Affairs;

His Royal Highness the Grand Duke of Luxembourg:

Mr. Pierre Grégoire, Minister for Foreign Affairs;

Her Majesty the Queen of the Netherlands:

Mr. J. M. A. H. Luns, Minister for Foreign Affairs;

Who, meeting within the Council, having exchanged their Full Powers, found in good and due form,

Have agreed as follows:

TITLE I. SCOPE

Article 1. This Convention shall apply in civil and commercial matters whatever the nature of the court or tribunal.

The Convention shall not apply to:

- 1° The status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;

¹ For the text of the English translation, see United Nations, *Treaty Series*, vol. 1262, p. 153.

- 2° Bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
- 3° Social security;
- 4° Arbitration.

TITLE II. JURISDICTION

Section 1. GENERAL PROVISIONS

Article 2. Subject to the provisions of this Convention, persons domiciled in a Contracting State shall, whatever their nationality, be sued in the courts of that State.

Persons who are not nationals of the State in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that State.

Article 3. Persons domiciled in a Contracting State may be sued in the courts of another Contracting State only by virtue of the rules set out in Sections 2 to 6 of this Title.

In particular the following provisions shall not be applicable as against them:

- In Belgium:
Article 15 of the civil code (*Code civil*), [and] the provisions of Articles 52, 52 *bis* and 53 of the law of 25 March 1876 on jurisdiction (*loi sur la compétence*);
- In the Federal Republic of Germany:
Article 23 of the code of civil procedure (*Zivilprozessordnung*);
- In France:
Articles 14 and 15 of the civil code (*Code civil*);
- In Italy:
Article 2 and Article 4, Nos. 1 and 2, of the code of civil procedure (*Codice di procedura civile*);
- In Luxembourg:
Articles 14 and 15 of the civil code (*Code civil*);
- In the Netherlands:
Article 126 (3) and Article 127 of the code of civil procedure (*Wetboek van Burgerlijke Rechtsvordering*).

Article 4. If the defendant is not domiciled in a Contracting State, the jurisdiction of the courts of each Contracting State shall, subject to the provisions of Article 16, be determined by the law of that State.

As against such a defendant, any person domiciled in a Contracting State may, whatever his nationality, avail himself in that State of the rules of jurisdiction there in force, and in particular those specified in the second paragraph of Article 3, in the same way as the nationals of that State.

Section 2. SPECIAL JURISDICTION

Article 5. A person domiciled in a Contracting State may, in another Contracting State, be sued:

- 1° In matters relating to a contract, in the courts for the place of performance of the obligation in question;
- 2° In matters relating to maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident;
- 3° In matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred;
- 4° As regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seised of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings;
- 5° As regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place in which the branch, agency or other establishment is situated.

Article 6. A person domiciled in a Contracting State may also be sued:

- 1° Where he is one of a number of defendants, in the courts for the place where any one of them is domiciled;
- 2° As a third party in an action on a warranty or guarantee or in any other third party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case;
- 3° On a counterclaim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending.

Section 3. JURISDICTION IN MATTERS RELATING TO INSURANCE

Article 7. In matters relating to insurance, jurisdiction shall be determined by this Section, without prejudice to the provisions of Articles 4 and 5 (5°).

Article 8. An insurer domiciled in a Contracting State may be sued, either in the courts of that State, or in another Contracting State in the courts for the place where the policy-holder is domiciled, or, if two or more insurers are the defendants, in the courts of the Contracting State where any one of them is domiciled.

An insurer may also, if there is provision for such jurisdiction in the law of the court seised of the matter, be sued in a Contracting State other than that of his domicile in the courts for the place where the agent who acted as intermediary in the making of the contract of insurance has his domicile, provided that this domicile is mentioned in the insurance policy or proposal.

An insurer who is not domiciled in a Contracting State but has a branch or an agency in one of the Contracting States shall, in disputes arising out of the operations of the branch or agency, be deemed to be domiciled in that State.

Article 9. In respect of liability insurance or insurance of immovable property, the insurer may in addition be sued in the courts for the place where the harmful event occurred. The same applies if movable and immovable property are covered by the same insurance policy and both are adversely affected by the same contingency.

Article 10. In respect of liability insurance, the insurer may also, if the law of the court permits it, be joined in proceedings which the injured party has brought against the insured.

The provisions of Articles 7, 8 and 9 shall apply to actions brought by the injured party directly against the insurer, where such direct actions are permitted.

If the law governing such direct actions provides that the policy-holder or the insured may be jointed as a party to the action, the same court shall have jurisdiction over them.

Article 11. Without prejudice to the provisions of the third paragraph of Article 10, an insurer may bring proceedings only in the courts of the Contracting State in which the defendant is domiciled, irrespective of whether he is the policy-holder, the insured or a beneficiary.

The provisions of this Section shall not affect the right to bring a counterclaim in the court in which, in accordance with this Section, the original claim is pending.

Article 12. The provisions of this Section may be departed from only by an agreement:

- 1° Which is entered into after the dispute has arisen or
- 2° Which allows the policy-holder, the insured or a beneficiary to bring proceedings in courts other than those indicated in this Section or
- 3° Which is concluded between a policy-holder and an insurer, both of whom are domiciled in the same Contracting State, and which has the effect of conferring jurisdiction on the courts of that State even if the harmful event were to occur abroad, provided that such an agreement is not contrary to the law of that State.

Section 4. JURISDICTION IN MATTERS RELATING TO INSTALMENT SALES AND LOANS

Article 13. In matters relating to the sale of goods on instalment credit terms, or to loans expressly made to finance the sale of goods and repayable by instalments, jurisdiction shall be determined by this Section, without prejudice to the provisions of Articles 4 and 5 (5°).

Article 14. A seller or lender who is domiciled in a Contracting State may be sued either in the courts of that State or in the courts of the Contracting State in which the buyer or borrower is domiciled.

Proceedings may be brought by a seller against a buyer or by a lender against a borrower only in the courts of the State in which the defendant is domiciled.

These provisions shall not affect the right to bring a counterclaim in the court in which, in accordance with this Section, the original claim is pending.

Article 15. The provisions of this Section may be departed from only by an agreement:

- 1° Which is entered into after the dispute has arisen or
- 2° Which allows the buyer or the borrower to bring proceedings in courts other than those indicated in this Section or
- 3° Which is concluded between a buyer and a seller, or between a borrower and a lender, both of whom are domiciled or habitually resident in the same Contracting State, and which confers jurisdiction on the courts of that State, provided that such an agreement is not contrary to the law of that State.

Section 5. EXCLUSIVE JURISDICTION

Article 16. The following courts shall have exclusive jurisdiction, regardless of domicile:

- 1° In proceedings which have as their object rights *in rem* in, or tenancies of, immovable property, the courts of the Contracting State in which the property is situated;
- 2° In proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, or the decisions of their organs, the courts of the Contracting State in which the company, legal person or association has its seat;
- 3° In proceedings which have as their object the validity of entries in public registers, the courts of the Contracting State in which the register is kept;
- 4° In proceedings concerned with the registration or validity of patents, trade marks, designs, or other similar rights required to be deposited or registered, the courts of the Contracting State in which the deposit or registration has been applied for, has taken place or is under the terms of an international convention deemed to have taken place;
- 5° In proceedings concerned with the enforcement of judgments, the courts of the Contracting State in which the judgment has been or is to be enforced.

Section 6. PROROGATION OF JURISDICTION

Article 17. If the Parties, one or more of whom is domiciled in a Contracting State, have, by agreement in writing or by an oral agreement evidenced in writing, agreed that a court or the courts of a Contracting State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have exclusive jurisdiction.

Agreements conferring jurisdiction shall have no legal force if they are contrary to the provisions of Articles 12 or 15, or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 16.

If the agreement conferring jurisdiction was concluded for the benefit of only one of the parties, that party shall retain the right to bring proceedings in any other court which has jurisdiction by virtue of this Convention.

Article 18. Apart from jurisdiction derived from other provisions of this Convention, a court of a Contracting State before whom a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered solely to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of Article 16.

Section 7. EXAMINATION AS TO JURISDICTION AND ADMISSIBILITY

Article 19. Where a court of a Contracting State is seised of a claim which is principally concerned with a matter over which the courts of another Contracting State have exclusive jurisdiction by virtue of Article 16, it shall declare of its own motion that it has no jurisdiction.

Article 20. Where a defendant domiciled in one Contracting State is sued in a court of another Contracting State and does not enter an appearance, the court shall

declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of this Convention.

The court shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.

The provisions of the foregoing paragraph shall be replaced by those of Article 15 of the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters,¹ if the document instituting the proceedings or notice thereof had to be transmitted abroad in accordance with that Convention.

Section 8. LIS PENDENS — RELATED ACTIONS

Article 21. Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Contracting States, any court other than the court first seised shall of its own motion decline jurisdiction in favour of that court.

A court which would be required to decline jurisdiction may stay its proceedings if the jurisdiction of the other court is contested.

Article 22. Where related actions are brought in the courts of different Contracting States, any court other than the court first seised may, while the actions are pending at first instance, stay its proceedings.

A court other than the court first seised may also, on the application of one of the parties, decline jurisdiction if the law of that court permits the consolidation of related actions and the court first seised has jurisdiction over both actions.

For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

Article 23. Where actions come within the exclusive jurisdiction of several courts, any court other than the court first seised shall decline jurisdiction in favour of that court.

Section 9. PROVISIONAL, INCLUDING PROTECTIVE, MEASURES

Article 24. Application may be made to the courts of a Contracting State for such provisional, including protective, measures as may be available under the law of that State, even if, under this Convention, the courts of another Contracting State have jurisdiction as to the substance of the matter.

TITLE III. RECOGNITION AND ENFORCEMENT

Article 25. For the purposes of this Convention, “judgment” means any judgment given by a court or tribunal of a Contracting State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court.

¹ United Nations, *Treaty Series*, vol. 658, p. 163.

Section 1. RECOGNITION

Article 26. A judgment given in a Contracting State shall be recognized in the other Contracting States without any special procedure being required.

Any interested party who raises the recognition of a judgment as the principal issue in a dispute may, in accordance with the procedures provided for in Sections 2 and 3 of this Title, apply for a decision that the judgment be recognized.

If the outcome of proceedings in a court of a Contracting State depends on the determination of an incidental question of recognition that court shall have jurisdiction over that question.

Article 27. A judgment shall not be recognized:

- 1° If such recognition is contrary to public policy in the State in which recognition is sought;
- 2° Where it was given in default of appearance, if the defendant was not duly served with the document which instituted the proceedings in sufficient time to enable him to arrange for his defence;
- 3° If the judgment is irreconcilable with a judgment given in a dispute between the same parties in the State in which recognition is sought;
- 4° If the court of the State in which the judgment was given, in order to arrive at its judgment, has decided a preliminary question concerning the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills or succession in a way that conflicts with a rule of the private international law of the State in which the recognition is sought, unless the same result would have been reached by the application of the rules of private international law of that State.

Article 28. Moreover, a judgment shall not be recognized if it conflicts with the provisions of Sections 3, 4 or 5 of Title II, or in a case provided for in Article 59.

In its examination of the grounds of jurisdiction referred to in the foregoing paragraph, the court or authority applied to shall be bound by the findings of fact on which the court of the State in which the judgment was given based its jurisdiction.

Subject to the provisions of the first paragraph, the jurisdiction of the court of the State in which the judgment was given may not be reviewed; the test of public policy referred to in Article 27(1) may not be applied to the rules relating to jurisdiction.

Article 29. Under no circumstances may a foreign judgment be reviewed as to its substance.

Article 30. A court of a Contracting State in which recognition is sought of a judgment given in another Contracting State may stay the proceedings if an ordinary appeal against the judgment has been lodged.

Section 2. ENFORCEMENT

Article 31. A judgment given in a Contracting State and enforceable in that State shall be enforced in another Contracting State when, on the application of any interested party, the order for its enforcement has been issued there.

Article 32. The application shall be submitted:

- In Belgium, to the “tribunal de première instance” or “rechtbank van eerste aanleg”;
- In the Federal Republic of Germany, to the presiding judge of a chamber of the “Landgericht”;
- In France, to the presiding judge of the “tribunal de grande instance”;
- In Italy, to the “corte d’appello”;
- In Luxembourg, to the presiding judge of the “tribunal d’arrondissement”;
- In the Netherlands, to the presiding judge of the “Arrondissementsrechtbank”.

The jurisdiction of local courts shall be determined by reference to the place of domicile of the party against whom enforcement is sought. If he is not domiciled in the State in which enforcement is sought, it shall be determined by reference to the place of enforcement.

Article 33. The procedure for making the application shall be governed by the law of the State in which enforcement is sought.

The applicant must give an address for service of process within the area of jurisdiction of the court applied to. However, if the law of the State in which enforcement is sought does not provide for the furnishing of such an address, the applicant shall appoint a representative *ad litem*.

The documents referred to in Articles 46 and 47 shall be attached to the application.

Article 34. The court applied to shall give its decision without delay; the party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.

The application may be refused only for one of the reasons specified in Articles 27 and 28.

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

Article 35. The appropriate officer of the court shall without delay bring the decision given on the application to the notice of the applicant in accordance with the procedure laid down by the law of the State in which enforcement is sought.

Article 36. If enforcement is authorized, the party against whom enforcement is sought may appeal against the decision within one month of service thereof.

If that party is domiciled in a Contracting State other than that in which the decision authorizing enforcement was given, the time for appealing shall be two months and shall run from the date of service, either on him in person or at his residence. No extension of time may be granted on account of distance.

Article 37. An appeal against the decision authorizing enforcement shall be lodged in accordance with the rules governing procedure in contentious matters:

- In Belgium, with the “tribunal de première instance” or “rechtbank van eerste aanleg”;
- In the Federal Republic of Germany, with the “Oberlandesgericht”;
- In France, with the “cour d’appel”;

- In Italy, with the “corte d’appello”;
- In Luxembourg, with the “Cour supérieure de Justice” sitting as a court of civil appeal;
- In the Netherlands, with the “Arrondissementsrechtbank”.

The judgment given on the appeal may be contested only by an appeal in cassation or, in the Federal Republic of Germany, by a “Rechtsbeschwerde”.

Article 38. The court with which the appeal under the first paragraph of Article 37 is lodged may, on the application of the appellant, stay the proceedings if an ordinary appeal has been lodged against the judgment in the State in which that judgment was given or if the time for such an appeal has not yet expired; in the latter case, the court may specify the time within such an appeal is to be lodged.

The court may also make enforcement conditional on the provision of such security as it shall determine.

Article 39. During the time specified for an appeal pursuant to Article 36 and until any such appeal has been determined, no measures of enforcement may be taken other than protective measures taken against the property of the party against whom enforcement is sought.

The decision authorizing enforcement shall carry with it the power to proceed to any such protective measures.

Article 40. If the application for enforcement is refused, the applicant may appeal:

- In Belgium, to the “Cour d’appel” or “hof van beroep”;
- In the Federal Republic of Germany, to the “Oberlandesgericht”;
- In France, to the “Cour d’appel”;
- In Italy, to the “corte d’appello”;
- In Luxembourg, to the “Cour supérieure de Justice” sitting as a court of civil appeal;
- In the Netherlands, to the “Gerechtshof”.

The party against whom enforcement is sought shall be summoned to appear before the appellate court. If he fails to appear, the provisions of the second and third paragraphs of Article 20 shall apply even where he is not domiciled in any of the Contracting States.

Article 41. A judgment given on an appeal provided for in Article 40 may be contested only by an appeal in cassation or, in the Federal Republic of Germany, by a “Rechtsbeschwerde”.

Article 42. Where a foreign judgment has been given in respect of several matters and enforcement cannot be authorized for all of them, the court shall authorize enforcement for one or more of them.

An applicant may request partial enforcement of a judgment.

Article 43. A foreign judgment which orders a periodic payment by way of a penalty shall be enforceable in the State in which enforcement is sought only if the amount of the payment has been finally determined by the courts of the State in which the judgment was given.

Article 44. An applicant who has been granted legal aid in the State in which the judgment was given shall automatically also qualify for legal aid in the procedures provided for in Articles 32 to 35.

Article 45. No security, bond or deposit, however described, shall be required of a party who in one Contracting State applies for enforcement of a judgment given in another Contracting State on the ground that he is a foreign national or that he is not domiciled or resident in the State in which enforcement is sought.

Section 3. COMMON PROVISIONS

Article 46. A party seeking recognition or applying for enforcement of a judgment shall produce:

- 1° A copy of the judgment which satisfies the conditions necessary to establish its authenticity;
- 2° In the case of a judgment given in default, the original or a certified true copy of the document which establishes that the party in default was served with the document instituting the proceedings.

Article 47. A party applying for enforcement shall also produce:

- 1° Documents which establish that, according to the law of the State in which it has been given, the judgment is enforceable and has been served;
- 2° Where appropriate, a document showing that the applicant is in receipt of legal aid in the State in which the judgment was given.

Article 48. If the documents specified in Article 46(2) and Article 47(2) are not produced, the court may specify a time for their production, accept equivalent documents or, if it considers that it has sufficient information before it, dispense with their production.

If the court so requires, a translation of the documents shall be produced; the translation shall be certified by a person qualified to do so in one of the Contracting States.

Article 49. No legalization or other similar formality shall be required in respect of the documents referred to in Articles 46 or 47 or the second paragraph of Article 48, or in respect of a document appointing a representative *ad litem*.

TITLE IV. AUTHENTIC INSTRUMENTS AND COURT SETTLEMENTS

Article 50. A document which has been formally drawn up or registered as an authentic instrument and is enforceable in one Contracting State shall, in another Contracting State, have an order for its enforcement issued there, on application made in accordance with the procedures provided for in Article 31 *et seq.* The application may be refused only if enforcement of the instrument is contrary to public policy in the State in which enforcement is sought.

The instrument produced must satisfy the conditions necessary to establish its authenticity in the State of origin.

The provisions of Section 3 of Title III shall apply as appropriate.

Article 51. A settlement which has been approved by a court in the course of proceedings and is enforceable in the State in which it was concluded shall be

enforceable in the State in which enforcement is sought under the same conditions as authentic instruments.

TITLE V. GENERAL PROVISIONS

Article 52. In order to determine whether a party is domiciled in the Contracting State whose courts are seised of the matter, the court shall apply its internal law.

If a party is not domiciled in the State whose courts are seised of the matter, then, in order to determine whether the party is domiciled in another Contracting State, the court shall apply the law of that State.

The domicile of a party shall, however, be determined in accordance with his national law if, by that law, his domicile depends on that of another person or on the seat of an authority.

Article 53. For the purposes of this Convention, the seat of a company or other legal person or association of natural or legal persons shall be treated as its domicile. However, in order to determine that seat, the court shall apply its rules of private international law.

TITLE VI. TRANSITIONAL PROVISIONS

Article 54. The provisions of this Convention shall apply only to legal proceedings instituted and to documents formally drawn up or registered as authentic instruments after its entry into force.

However, judgments given after the date of entry into force of this Convention in proceedings instituted before that date shall be recognized and enforced in accordance with the provisions of Title III if jurisdiction was founded upon rules which accorded with those provided for either in Title II of this Convention or in a convention concluded between the State of origin and the State addressed which was in force when the proceedings were instituted.

TITLE VII. RELATIONSHIP TO OTHER CONVENTIONS

Article 55. Subject to the provisions of the second paragraph of Article 54, and of Article 56, this Convention shall, for the States which are parties to it, supersede the following conventions concluded between two or more of them:

- The Convention between Belgium and France on Jurisdiction and the Validity and Enforcement of Judgments, Arbitration Awards and Authentic Instruments, signed at Paris on 8 July 1899;
- The Convention between Belgium and the Netherlands on Jurisdiction, Bankruptcy, and the Validity and Enforcement of Judgments, Arbitration Awards and Authentic Instruments, signed at Brussels on 28 March 1925;¹
- The Convention between France and Italy on the Enforcement of Judgments in Civil and Commercial Matters, signed at Rome on 3 June 1930;²

¹ League of Nations, *Treaty Series*, vol. XCIII, p. 431.

² *Ibid.*, vol. CLIII, p. 135.

- The Convention between Germany and Italy on the Recognition and Enforcement of Judgments in Civil and Commercial Matters, signed at Rome on 9 March 1936;
- The Convention between the Federal Republic of Germany and the Kingdom of Belgium on the Mutual Recognition and Enforcement of Judgments, Arbitration Awards and Authentic Instruments in Civil and Commercial Matters, signed at Bonn on 30 June 1958;¹
- The Convention between the Kingdom of the Netherlands and the Italian Republic on the Recognition and Enforcement of Judgments in Civil and Commercial Matters, signed at Rome on 17 April 1959;²
- The Convention between the Kingdom of Belgium and the Italian Republic on the Recognition and Enforcement of Judgments and other Enforceable Instruments in Civil and Commercial Matters, signed at Rome on 6 April 1962;³
- The Convention between the Kingdom of the Netherlands and the Federal Republic of Germany on the Mutual Recognition and Enforcement of Judgments and other Enforceable Instruments in Civil and Commercial Matters, signed at The Hague on 30 August 1962,⁴

and, insofar as it is in force:

- The Treaty between Belgium, the Netherlands and Luxembourg on Jurisdiction, Bankruptcy, and the Validity and Enforcement of Judgments, Arbitration Awards and Authentic Instruments, signed at Brussels on 24 November 1961.

Article 56. The Treaty and the conventions referred to in Article 55 shall continue to have effect in relation to matters to which this Convention does not apply.

They shall continue to have effect in respect of judgments given and documents formally drawn up or registered as authentic instruments before the entry into force of this Convention.

Article 57. This Convention shall not affect any conventions to which the Contracting States are or will be parties and which, in relation to particular matters, govern jurisdiction and the recognition and enforcement of judgments.

Article 58. This Convention shall not affect the rights granted to Swiss nationals by the Convention concluded on 15 June 1869 between France and the Swiss Confederation on Jurisdiction and the Enforcement of Judgments in Civil Matters.

Article 59. This Convention shall not prevent a Contracting State from assuming, in a convention on the recognition and enforcement of judgments, an obligation towards a third State not to recognize judgments given in other Contracting States against defendants domiciled or habitually resident in the third State where, in cases provided for in Article 4, the judgment could only be founded on a ground of jurisdiction specified in the second paragraph of Article 3.

¹ United Nations, *Treaty Series*, vol. 387, p. 245.

² *Ibid.*, vol. 474, p. 207.

³ *Ibid.*, vol. 490, p. 317.

⁴ *Ibid.*, vol. 547, p. 173.

TITLE VIII. FINAL PROVISIONS

Article 60. This Convention shall apply to the European territories of the Contracting States, to the French overseas departments and to the French overseas territories.

The Kingdom of the Netherlands may declare at the time of signing or ratifying this Convention or at any later time, by notifying the Secretary-General of the Council of the European Communities, that this Convention shall be applicable to Surinam and the Netherlands Antilles. In the absence of such declaration with respect to the Netherlands Antilles, proceedings taking place in the European territory of the Kingdom as a result of an appeal in cassation from the judgment of a court in the Netherlands Antilles shall be deemed to be proceedings taking place in the latter court.

Article 61. This Convention shall be ratified by the signatory States. The instruments of ratification shall be deposited with the Secretary-General of the Council of the European Communities.

Article 62. This Convention shall enter into force on the first day of the third month following the deposit of the instrument of ratification by the last signatory State to take this step.

Article 63. The Contracting States recognize that any State which becomes a member of the European Economic Community shall be required to accept this Convention as a basis for the negotiations between the Contracting States and that State necessary to ensure the implementation of the last paragraph of Article 220 of the Treaty establishing the European Economic Community.

The necessary adjustments may be the subject of a special convention between the Contracting States of the one part and the new Member State of the other part.

Article 64. The Secretary-General of the Council of the European Communities shall notify the signatory States of:

- (a) The deposit of each instrument of ratification;
- (b) The date of entry into force of this Convention;
- (c) Any declaration received pursuant to the second paragraph of Article 60;
- (d) Any declaration received pursuant to Article IV of the Protocol;
- (e) Any communication made pursuant to Article VI of the Protocol.

Article 65. The Protocol annexed to this Convention by common accord of the Contracting States shall form an integral part thereof.

Article 66. This Convention is concluded for an unlimited period.

Article 67. Any Contracting State may request the revision of this Convention. In this event, a revision conference shall be convened by the President of the Council of the European Communities.

Article 68. This Convention, drawn up in a single original in the Dutch, French, German and Italian languages, all four texts being equally authentic, shall be deposited in the archives of the Secretariat of the Council of the European Communities. The Secretary-General shall transmit a certified copy to the Government of each signatory State.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have signed this Convention.

DONE at Brussels this twenty-seventh day of September in the year one thousand nine hundred and sixty-eight.

For His Majesty the King of the Belgians,

PIERRE HARMEL

For the President of the Federal Republic of Germany,

WILLY BRANDT

For the President of the French Republic,

MICHEL DEBRÉ

For the President of the Italian Republic,

GIUSEPPE MEDICI

For His Royal Highness the Grand Duke of Luxembourg,

PIERRE GRÉGOIRE

For Her Majesty the Queen of the Netherlands,

J. M. A. H. LUNS

PROTOCOL

The High Contracting Parties have agreed upon the following provisions, which shall be annexed to the Convention:

Article I. Any person domiciled in Luxembourg who is sued in a court of another Contracting State pursuant to Article 5(1°) may refuse to submit to the jurisdiction of that court. If the defendant does not enter an appearance the court shall declare of its own motion that it has no jurisdiction.

An agreement conferring jurisdiction, within the meaning of Article 17, shall be valid with respect of a person domiciled in Luxembourg only if that person has expressly and specifically so agreed.

Article II. Without prejudice to any more favourable provisions of national laws, persons domiciled in a Contracting State who are being prosecuted in the criminal courts of another Contracting State of which they are not nationals for an offence which was not intentionally committed may be defended by persons qualified to do so, even if they do not appear in person.

However, the court seised of the matter may order appearance in person; in the case of failure to appear, a judgment given in the civil action without the person concerned having had the opportunity to arrange for his defence need not be recognised or enforced in the other Contracting States.

Article III. In proceedings for the issue of an order for enforcement, no charge, duty or fee calculated by reference to the value of the matter in issue may be levied in the State in which enforcement is sought.

Article IV. Judicial and extrajudicial documents drawn up in one Contracting State which have to be served on persons in another Contracting State shall be transmitted in accordance with the procedures laid down in the conventions and agreements concluded between the Contracting States.

Unless the State in which service is to take place objects by declaration to the Secretary-General of the Council of the European Communities, such documents may also be sent by the appropriate public officers of the State in which the document has been drawn up directly to the appropriate public officers of the State in which the addressee is to be found. In this case the officer of the State of origin shall send a copy of the document to the officer of the State addressed who is competent to forward it to the addressee. The document shall be forwarded in the manner specified by the law of the State addressed. The forwarding shall be recorded by a certificate sent directly to the officer of the State of origin.

Article V. The jurisdiction specified in Article 6(2°) and Article 10 in actions on a warranty or guarantee or in any other third party proceedings may not be resorted to in the Federal Republic of Germany. In that State, any person domiciled in another Contracting State may be sued in the courts in pursuance of Article 68, 72, 73 and 74 of the code of civil procedure (*Zivilprozessordnung*) concerning third-party notices.

Judgments given in the other Contracting States by virtue of Article 6(2°) or Article 10 shall be recognised and enforced in the Federal Republic of Germany in accordance with Title III. Any effects which judgments given in that State may have on third parties by application of Articles 68, 72, 73 and 74 of the code of civil

procedure (*Zivilprozessordnung*) shall also be recognised in the other Contracting States.

Article VI. The Contracting States shall communicate to the Secretary-General of the Council of the European Communities the text of any provisions of their laws which amend either those articles of their laws mentioned in the Convention or the lists of courts specified in Section 2 of Title III of the Convention.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have signed this Convention.

DONE at Brussels this twenty-seventh day of September in the year one thousand nine hundred and sixty-eight.

For His Majesty the King of the Belgians,

PIERRE HARMEL

For the President of the Federal Republic of Germany,

WILLY BRANDT

For the President of the French Republic,

MICHEL DEBRÉ

For the President of the Italian Republic,

GIUSEPPE MEDICI

For His Royal Highness the Grand Duke of Luxembourg,

PIERRE GRÉGOIRE

For Her Majesty the Queen of the Netherlands,

J. M. A. H. LUNS

JOINT DECLARATION

The Governments of the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands,

On Signing the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters,

Desiring to ensure that the Convention is applied as effectively as possible,

Anxious to prevent differences of interpretation of the Convention from impairing its unifying effect,

Recognising that claims and disclaimers of jurisdiction may arise in the application of the Convention,

Declare themselves ready:

1. To study these questions and in particular to examine the possibility of conferring jurisdiction in certain matters on the Court of Justice of the European Communities and, if necessary, to negotiate an agreement to this effect;
2. To arrange meetings at regular intervals between their representatives.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have signed this Joint Declaration.

DONE at Brussels this twenty-seventh day of September in the year one thousand nine hundred and sixty-eight.

PIERRE HARMEL
GIUSEPPE MEDICI

WILLY BRANDT
PIERRE GRÉGOIRE

MICHEL DEBRÉ
J. M. A. H. LUNS

PROTOCOL ON THE INTERPRETATION BY THE COURT OF JUSTICE OF THE CONVENTION OF 27 SEPTEMBER 1968 ON JURISDICTION AND THE ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS¹

The High Contracting Parties to the Treaty establishing the European Economic Community,

Having regard to the Declaration annexed to the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, signed at Brussels on 27 September 1968,

Have decided to conclude a Protocol conferring jurisdiction on the Court of Justice of the European Communities to interpret that Convention, and to this end have designated as their Plenipotentiaries:

His Majesty the King of the Belgians:

Mr. Alfons VRANCKX, Minister of Justice;

The President of the Federal Republic of Germany:

Mr. Gerhard JAHN, Federal Minister of Justice;

The President of the French Republic:

Mr. René PLEVEN, Keeper of the Seals, Minister of Justice;

The President of the Italian Republic:

Mr. Erminio PENNACCHINI, Under-Secretary of State in the Ministry of Justice;

His Royal Highness the Grand Duke of Luxembourg:

Mr. Eugène SCHAUS, Minister of Justice, Deputy Prime Minister;

Her Majesty the Queen of the Netherlands:

Mr. C. H. F. POLAK, Minister of Justice;

Who, meeting within the Council, having exchanged their Full Powers, found in good and due form,

Have agreed as follows:

Article 1. The Court of Justice of the European Communities shall have jurisdiction to give rulings on the interpretation of the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters and of the Protocol annexed to that Convention, signed at Brussels on 27 September 1968, and also on the interpretation of the present Protocol.

Article 2. The following courts may request the Court of Justice to give preliminary rulings on questions of interpretation:

1. In Belgium: la Cour de Cassation — het Hof van Cassatie and le Conseil d'Etat — de Raad van State,

In the Federal Republic of Germany: die obersten Gerichtshöfe des Bundes,

In France: la Cour de Cassation and le Conseil d'Etat,

¹ For the text of the English translation, see United Nations, *Treaty Series*, vol. 1262, p. 241.

In Italy: la Corte Suprema di Cassazione,

In Luxembourg: la Cour supérieure de Justice, when sitting as Cour de Cassation,

In the Netherlands: de Hoge Raad;

2. The courts of the Contracting States when they are sitting in an appellate capacity;
3. In the cases provided for in Article 37 of the Convention, the Courts referred to in that article.

Article 3. 1. Where a question of interpretation of the Convention or of one of the other instruments referred to in Article 1 is raised in a case pending before one of the courts listed in Article 2(1), that court shall, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.

2. Where such a question is raised before any court referred to in Article 2(2) or (3), that court may, under the conditions laid down in paragraph (1), request the Court of Justice to give a ruling thereon.

Article 4. 1. The competent authority of a Contracting State may request the Court of Justice to give a ruling on a question of interpretation of the Convention or of one of the other instruments referred to in Article 1 if judgments given by courts of that State conflict with the interpretation given either by the Court of Justice or in a judgment of one of the courts of another Contracting State referred to in Article 2(1) or (2). The provisions of this paragraph shall apply only to judgments which have been *res judicata*.

2. The interpretation given by the Court of Justice in response to such a request shall not affect the judgments which gave rise to the request for interpretation.

3. The Procurators-General of the Courts of Cassation of the Contracting States, or any other authority designated by a Contracting State, shall be entitled to request the Court of Justice for a ruling on interpretation in accordance with paragraph (1).

4. The Registrar of the Court of Justice shall give notice of the request to the Contracting States, to the Commission and to the Council of the European Communities; they shall then be entitled within two months of the notification to submit statements of case or written observations to the Court.

5. No fees shall be levied or any costs or expenses awarded in respect of the proceedings provided for in this Article.

Article 5. 1. Except where this Protocol otherwise provides, the provisions of the Treaty establishing the European Economic Community¹ and those of the Protocol on the Statute of the Court of Justice annexed thereto, which are applicable when the Court is requested to give a preliminary ruling, shall also apply to any proceedings for the interpretation of the Convention and the other instruments referred to in Article 1.

2. The Rules of Procedure of the Court of Justice shall, if necessary, be adjusted and supplemented in accordance with Article 188 of the Treaty establishing the European Economic Community.

¹ United Nations, *Treaty Series*, vol. 298, p. 3.

Article 6. This Protocol shall apply to the European territories of the Contracting States, to the French overseas departments and to the French overseas territories.

The Kingdom of the Netherlands may declare at the time of signing or ratifying this Protocol or at any later time, by notifying the Secretary-General of the Council of the European Communities, that this Protocol shall be applicable to Surinam and the Netherlands Antilles.

Article 7. This Protocol shall be ratified by the signatory States. The instruments of ratification shall be deposited with the Secretary-General of the Council of the European Communities.

Article 8. This Protocol shall enter into force on the first day of the third month following the deposit of the instrument of ratification by the last signatory State to take this step; provided that it shall at the earliest enter into force at the same time as the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

Article 9. The Contracting States recognise that any State which becomes a member of the European Economic Community, and to which Article 63 of the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters applies, must accept the provisions of this Protocol, subject to such adjustments as may be required.

Article 10. The Secretary-General of the Council of the European Communities shall notify the signatory States of:

- (a) The deposit of each instrument of ratification;
- (b) The date of entry into force of this Protocol;
- (c) Any designation received pursuant to Article 4(3);
- (d) Any declaration received pursuant to the second paragraph of Article 6.

Article 11. The Contracting States shall communicate to the Secretary-General of the Council of the European Communities the texts of any provisions of their laws which necessitate an amendment to the list of courts in Article 2(1).

Article 12. This Protocol is concluded for an unlimited period.

Article 13. Any Contracting State may request the revision of this Protocol. In this event, a revision conference shall be convened by the President of the Council of the European Communities.

Article 14. This Protocol, drawn up in a single original in the Dutch, French, German and Italian languages, all four texts being equally authentic, shall be deposited in the archives of the Secretariat of the Council of the European Communities. The Secretary-General transmit a certified copy to the Government of each signatory State.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have signed this Convention.

DONE at Luxembourg this third day of June in the year one thousand nine hundred and seventy-one.

For His Majesty the King of the Belgians,

ALFONS VRANCKX

For the President of the Federal Republic of Germany,

GERHARD JAHN

For the President of the French Republic,

RENÉ PLEVEN

For the President of the Italian Republic,

ERMINIO PENNACCHINI

For His Royal Highness the Grand Duke of Luxembourg,

EUGÈNE SCHAUS

For Her Majesty the Queen of the Netherlands,

C. H. F. POLAK

JOINT DECLARATION

The Governments of the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands,

On signing the Protocol on the Interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters,

Desiring to ensure that the provisions of that Protocol are applied as effectively and as uniformly as possible,

Declare themselves ready to organize, in co-operation with the Court of Justice, an exchange of information on the judgments given by the courts referred to in Article 2(1) of that Protocol in application of the Convention and the Protocol of 27 September 1968.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have signed this Convention.

DONE at Luxembourg this third day of June in the year one thousand nine hundred and seventy-one.

For His Majesty the King of the Belgians,

ALFONS VRANCKX

For the President of the Federal Republic of Germany,

GERHARD JAHN

For the President of the French Republic,

RENÉ PLEVEN

For the President of the Italian Republic,

ERMINIO PENNACCHINI

For His Royal Highness the Grand Duke of Luxembourg,

EUGÈNE SCHAUS

For Her Majesty the Queen of the Netherlands,

C. H. F. POLAK

FÆLLESERKLÆRING

GEMEINSAME ERKLAERUNG

JOINT DECLARATION

DÉCLARATION COMMUNE

DEARBHÚ COMHPHÁIRTEACH

DICHIARAZIONE COMUNE

GEMEENSCHAPPELIJKE VERKLARING

JOINT DECLARATION

The representatives of the Governments of the Member States of the European Economic Community, meeting within the Council,

Desiring to ensure that in the spirit of the Convention of 27 September 1968 uniformity of jurisdiction should also be achieved as widely as possible in maritime matters,

Considering that the International Convention relating to the Arrest of Sea-going Ships, signed at Brussels on 10 May 1952,¹ contains provisions relating to such jurisdiction,

Considering that all of the Member States are not parties to the said Convention,

Express the wish that Member States which are coastal states and have not already become parties to the Convention of 10 May 1952 should do so as soon as possible.

DÉCLARATION COMMUNE

Les représentants des Gouvernements des Etats membres de la Communauté Economique Européenne, réunis au sein du Conseil,

Désirant assurer que, dans l'esprit de la Convention du 27 septembre 1968, l'uniformité des compétences judiciaires soit également réalisée, dans toute la mesure du possible, en matière maritime,

Considérant que la Convention internationale pour l'unification de certaines règles sur la saisie conservatoire des navires de mer, signée à Bruxelles le 10 mai 1952², contient des dispositions sur la compétence judiciaire,

Considérant que les Etats membres ne sont pas tous parties à ladite Convention,

Emettent le vœu que les Etats membres qui sont des Etats côtiers et qui ne sont pas encore devenus parties à la Convention du 10 mai 1952, la ratifient ou y adhèrent dans les meilleurs délais.

¹ United Nations, *Treaty Series*, vol. 439, p. 193.

² Nations Unies, *Recueil des Traités*, vol. 439, p. 193.

UDFÆRDIGET i Luxembourg, den niende oktober nitten hundrede og otteoghalvfjerds.

GESCHEHEN zu Luxemburg am neunten Oktober neunzehnhundertachtundsiebzig.

DONE at Luxembourg on the ninth day of October in the year one thousand nine hundred and seventy-eight.

FAIT à Luxembourg, le neuf octobre mil neuf cent soixante-dix-huit.

ARNA DHÉANAMH i Lucsamburg, an naoú lá de Dheireadh Fómhair sa bhliain míle naoi gcéad seachtó a hocht.

FATTO a Lussenburgo, addì nove ottobre millenovecentosettantotto.

GEDAAN te Luxemburg, de negende oktober negentienhonderd achtenzeventig.

[For His Majesty the King of the Belgians:]

Pour Sa Majesté le Roi des Belges :

Voor Zijne Majesteit de Koning der Belgen:

[RENAAT VAN ELSLANDE]¹

[For Her Majesty the Queen of Denmark:]

[Pour Sa Majesté la Reine de Danemark :]

For Hendes Majestæt Danmarks Dronning:

[NATHALIE LIND]

[For the President of the Federal Republic of Germany:]

[Pour le Président de la République fédérale d'Allemagne :]

Für den Präsidenten der Bundesrepublik Deutschland:

[HANS-JOCHEN VOGEL]

[For the President of the French Republic:]

Pour le Président de la République Française :

[ALAIN PEYREFITTE]

[For the President of Ireland:]

[Pour le Président de l'Irlande :]

Thar ceann Uachtarán na hÉireann:

[GERARD COLLINS]

[For the President of the Italian Republic:]

[Pour le Président de la République italienne :]

Per il Presidente della Repubblica italiana:

[PAOLO BONIFACIO]

¹ The names of the signatories appearing between brackets were not legible and have been supplied by the Council of the European Communities — Les noms des signataires donnés entre crochets étaient illisibles et ont été fournis par le Conseil des Communautés européennes.

[His Royal Highness the Grand Duke of Luxembourg:]
Pour Son Altesse Royale le Grand-Duc de Luxembourg :

[ROBERT KRIEPS]

[Her Majesty the Queen of the Netherlands:]
[Pour Sa Majesté la Reine des Pays-Bas :]
Voor Hare Majesteit de Koningin der Nederlanden:

[Prof. Mr. J. DE RUITER]

For Her Majesty the Queen of the United Kingdom
of Great Britain and Northern Ireland:
[Pour Sa Majesté la Reine du Royaume-Uni de Grande-Bretagne
et d'Irlande du Nord :]

[The Right Honourable the Lord ELWYN-JONES, C.H.]
