

ภาคผนวก



**CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF
FOREIGN JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS**

(Concluded 1 February 1971)

The States signatory to the present Convention,

Desiring to establish common provisions on mutual recognition and enforcement of judicial decisions rendered in their respective countries,

Have resolved to conclude a Convention to this effect and have agreed on the following provisions:

CHAPTER I

SCOPE OF THE CONVENTION

ARTICLE 1

This Convention shall apply to decisions rendered in civil or commercial matters by the courts of Contracting States.

It shall not apply to decisions the main object of which is to determine

- (1) the status or capacity of persons or questions of family law, including personal or financial rights and obligations between parents and children or between spouses;
- (2) the existence or constitution of legal persons or the powers of their officers;
- (3) maintenance obligations, so far as not included in sub-paragraph (1) of this Article;
- (4) questions of succession;

(5) questions of bankruptcy, compositions or analogous proceedings, including decisions which may result therefrom and which relate to the validity of the acts of the debtor;

(6) questions of social security;

(7) questions relating to damage or injury in nuclear matters.

This Convention does not apply to decisions for the payment of any customs duty, tax or penalty.

ARTICLE 2

This Convention shall apply to all decisions given by the courts of a Contracting State, irrespective of the name given by that State to the proceedings which gave rise to the decision or of the name given to the decision itself such as judgment, order or writ of execution.

However, it shall apply neither to decisions which order provisional or protective measures nor to decisions rendered by administrative tribunals.

ARTICLE 3

This Convention shall apply irrespective of the nationality of the parties.

CHAPTER II
CONDITIONS OF RECOGNITION AND ENFORCEMENT

ARTICLE 4

A decision rendered in one of the Contracting States shall be entitled to recognition and enforcement in another Contracting State under the terms of this Convention

(1) if the decision was given by a court considered to have jurisdiction within the meaning of this Convention, and

(2) if it is no longer subject to ordinary forms of review in the State of origin.

In addition, to be enforceable in the State addressed, a decision must be enforceable in the State of origin.

ARTICLE 5

Recognition or enforcement of a decision may nevertheless be refused in any of the following cases

(1) if recognition or enforcement of the decision is manifestly incompatible with the public policy of the State addressed or if the decision resulted from proceedings incompatible with the requirements of due process of law or if, in the circumstances, either party had no adequate opportunity fairly to present his case;

(2) if the decision was obtained by fraud in the procedural sense;

(3) if proceedings between the same parties, based on the same facts and having the same purpose

a) are pending before a court of the State addressed and those proceedings were the first to be instituted, or

b) have resulted in a decision by a court of the State addressed, or

c) have resulted in a decision by a court of another State which would be entitled to recognition and enforcement under the law of the State addressed.

ARTICLE 6

Without prejudice to the provisions of Article 5, a decision rendered by default shall neither be recognised nor enforced unless the defaulting party received notice of the institution of the proceedings in accordance with the law of the State of origin in sufficient time to enable him to defend the proceedings.

ARTICLE 7

Recognition or enforcement may not be refused for the sole reason that the court of the State of origin has applied a law other than that which would have been applicable according to the rules of private international law of the State addressed.

Nevertheless, recognition or enforcement may be refused if, to reach its decision, the court of the State of origin had to decide a question relating either to the status or the capacity of a party or to his rights in other matters

excluded from this Convention by sub-paragraphs (1)-(4) of the second paragraph of Article 1, and has reached a result different from that which would have followed from the application to that question of the rules of private international law of the State addressed.

ARTICLE 8

Without prejudice to such review as is required by the terms of the preceding Articles, there shall be no review of the merits of the decision rendered by the court of origin.

ARTICLE 9

In questions relating to the jurisdiction of the court of the State of origin, the authority addressed shall be bound by the findings of fact on which that court based its jurisdiction, unless the decision was rendered by default.

ARTICLE 10

The court of the State of origin shall be considered to have jurisdiction for the purposes of this Convention

(1) if the defendant had, at the time when the proceedings were instituted, his habitual residence in the State of origin, or, if the defendant is not a natural person, its seat, its place of incorporation or its principal place of business in that State;

(2) if the defendant had, in the State of origin, at the time when the proceedings were instituted, a commercial, industrial or other business

establishment, or a branch office, and was cited there in proceedings arising from business transacted by such establishment or branch office;

(3) if the action had as its object the determination of an issue relating to immovable property situated in the State of origin;

(4) in the case of injuries to the person or damage to tangible property, if the facts which occasioned the damage occurred in the territory of the State of origin, and if the author of the injury or damage was present in that territory at the time when those facts occurred;

(5) if, by a written agreement or by an oral agreement confirmed in writing within a reasonable time, the parties agreed to submit to the jurisdiction of the court of origin disputes which have arisen or which may arise in respect of a specific legal relationship, unless the law of the State addressed would not permit such an agreement because of the subject-matter of the dispute;

(6) if the defendant has argued the merits without challenging the jurisdiction of the court or making reservations thereon; nevertheless such jurisdiction shall not be recognised if the defendant has argued the merits in order to resist the seizure of property or to obtain its release, or if the recognition of this jurisdiction would be contrary to the law of the State addressed because of the subject-matter of the dispute;

(7) if the person against whom recognition or enforcement is sought was the plaintiff in the proceedings in the court of origin and was unsuccessful in those proceedings, unless the recognition of this jurisdiction

would be contrary to the law of the State addressed because of the subject-matter of the dispute.

ARTICLE 11

The court of the State of origin shall be considered to have jurisdiction for the purposes of this Convention to try a counterclaim

(1) if that court would have had jurisdiction to try the action as a principal claim under sub-paragraphs (1)-(6) of Article 10, or

(2) if that court had jurisdiction under Article 10 to try the principal claim and if the counterclaim arose out of the contract or out of the facts on which the principal claim was based.

ARTICLE 12

The jurisdiction of the court of the State of origin need not be recognised by the authority addressed in the following cases

(1) if the law of the State addressed confers upon its courts exclusive jurisdiction, either by reason of the subject-matter of the action or by virtue of an agreement between the parties as to the determination of the claim which gave rise to the foreign decision;

(2) if the law of the State addressed recognises a different exclusive jurisdiction by reason of the subject-matter of the action, or if the authority addressed considers itself bound to recognise such an exclusive jurisdiction by reason of an agreement between the parties;

(3) if the authority addressed considers itself bound to recognise an agreement by which exclusive jurisdiction is conferred upon arbitrators.

CHAPTER III
RECOGNITION AND ENFORCEMENT PROCEDURES

ARTICLE 13

The party seeking recognition or applying for enforcement shall furnish

- (1) a complete and authenticated copy of the decision;
- (2) if the decision was rendered by default, the originals or certified true copies of the documents required to establish that the summons was duly served on the defaulting party;
- (3) all documents required to establish that the decision fulfills the conditions of sub-paragraph (2) of the first paragraph of Article 4, and, where appropriate, of the second paragraph of Article 4;
- (4) unless the authority addressed otherwise requires, translations of the documents referred to above, certified as correct either by a diplomatic or consular agent or by a sworn translator or by any other person so authorised in either State.

If the terms of the decision do not permit the authority addressed to verify whether the conditions of this Convention have been complied with, that authority may require the production of any other necessary documents.

No legalisation or other like formality may be required.

ARTICLE 14

The procedure for the recognition or enforcement of foreign judgments is governed by the law of the State addressed so far as this Convention does not provide otherwise.

If the decision contains provisions which can be dissociated, any one or more of these may be separately recognised or enforced.

ARTICLE 15

Recognition or enforcement of an award of judicial costs or expenses may be accorded by virtue of this Convention only if this Convention is applicable to the decision on the merits.

This Convention shall apply to decisions relating to judicial costs or expenses even if such decisions do not proceed from a court, provided that they derive from a decision which may be recognised or enforced under this Convention and that the decision relating to costs or expenses could have been subject to judicial review.

ARTICLE 16

A judgment for costs or expenses given in connection with the granting or refusal of recognition or enforcement of a decision may be enforced under this Convention only if the applicant in the proceedings for recognition or enforcement relied on this Convention.

ARTICLE 17

No security, bond or deposit, however termed under the law of the State addressed, shall be required by reason of the nationality or domicile of the applicant to guarantee the payment of judicial costs or expenses if the applicant, being a natural person, has his habitual residence in or, not being a natural person, has a place of business in a State which has concluded with the State addressed a Supplementary Agreement in accordance with Article 21.

ARTICLE 18

A party granted legal aid in the State of origin shall be extended such aid in accordance with the law of the State addressed in any proceedings for the recognition or for the enforcement of a foreign decision.

ARTICLE 19

Settlements made in court in the course of a pending proceeding which may be enforced in the State of origin shall be enforceable in the State addressed under the same conditions as decisions falling within this Convention, so far as those conditions apply to settlements.

CHAPTER IV
CONCURENT ACTIONS

ARTICLE 20

If two States have concluded a Supplementary Agreement pursuant to Article 21, the judicial authorities of either State may dismiss an action brought before them or may stay such an action when other proceedings between the same parties, based on the same facts and having the same purpose, are pending in a court of another State and these proceedings may result in a decision which the authorities of the State in which the first mentioned action was brought would be bound to recognise under the terms of this Convention.

The authorities of these States may nevertheless order provisional or protective measures regardless of proceedings elsewhere.

CHAPTER V
SUPPLEMENTARY AGREEMENTS

ARTICLE 21

Decisions rendered in a Contracting State shall not be recognised or enforced in another Contracting State in accordance with the provisions of the preceding Articles unless the two States, being Parties to this Convention, have concluded a Supplementary Agreement to this effect.

ARTICLE 22

This Convention shall not apply to decisions rendered before the entry into force of the Supplementary Agreement provided for in Article 21 unless that Agreement otherwise provides.

The Supplementary Agreement shall continue to be applicable to decisions in respect of which recognition or enforcement proceedings have been instituted before any denunciation of that Agreement takes effect.

ARTICLE 23

In the Supplementary Agreements referred to in Article 21 the Contracting States may agree

(1) to clarify the meaning of the expression “civil and commercial matters”, to determine the courts whose decisions shall be recognised and enforced under this Convention, to define the expression “social security” and to define the expression “habitual residence”;

(2) to clarify the meaning of the term “law” in States with more than one legal system;

(3) to include within the scope of this Convention questions relating to damage or injury in nuclear matters;

(4) to apply this Convention to decisions ordering provisional or protective measures;

(5) not to apply this Convention to decisions rendered in the course of criminal proceedings;

(6) to specify the cases under which a decision is no longer subject to ordinary forms of review;

(7) to recognise and enforce decisions upon which enforcement could be obtained in the State of origin even if such decisions are still subject to ordinary forms of review and in such a case to define the conditions under which a stay of proceedings for recognition or enforcement is possible;

(8) not to apply Article 6 if the decision rendered by default was notified to the defaulting party and the latter had the opportunity to lodge a timely appeal against such a decision; (8 bis) that the Authority addressed shall not be bound by the findings of fact on which the court of the State of origin based its jurisdiction;

(9) to consider the courts of the State in which the defendant has his “domicile” as having jurisdiction under Article 10:

(10) that the court of origin shall be considered as having jurisdiction under the terms of this Convention in cases where its jurisdiction is admitted by another Convention in force between the State of origin and the State addressed if that other Convention contains no special rules relating to the recognition or enforcement of foreign judgments;

(11) that the court of origin shall be considered as having jurisdiction under the terms of this Convention either when its jurisdiction is admitted by the law of the State addressed relating to the recognition or enforcement of foreign judgments, or on grounds additional to those in Article 10;

(12) to define, for the purposes of the application of Article 12, the bases of jurisdiction which are exclusive by reason of the subject-matter of the action;

(13) to exclude, in cases where jurisdiction is based on an agreement between the parties, the application of sub-paragraph (1) of Article 12 as well as to exclude that of sub-paragraph (3) of Article 12;

(14) to regulate the procedure for obtaining recognition or enforcement;

(15) to regulate the enforcement of judgments other than those which order the payment of a sum of money;

(16) that the enforcement of a foreign judgment may be refused when a specified period has elapsed from its date;

(17) to fix the rate of interest payable from the date of the judgment in the State of origin;

(18) to adapt to the requirements of their legal systems the list of documents required by Article 13, but with the sole object of enabling the authority addressed to verify whether the conditions of this Convention have been fulfilled;

(19) to subject the documents referred to in Article 13 to legalisation or to a similar formality;

(20) to depart from the provisions of Article 17 and to depart from the provisions of Article 18;

(21) to make the provisions of the first paragraph of Article 20 obligatory;

(22) to include within the scope of this Convention “actes authentiques”, including documents upon which immediate enforcement can be obtained, and to specify those documents.

CHAPTER VI
FINAL CLAUSES

ARTICLE 24

This Convention shall not affect other Conventions relating to the recognition and enforcement of judgments to which the Contracting States are already Parties so long as those States have not concluded a Supplementary Agreement under the terms of Article 21.

Unless it is otherwise agreed, the provisions of a Supplementary Agreement concluded under Article 21 shall prevail over the terms of any prior Conventions in force between the Parties relating to the recognition and enforcement of judgments to the extent that their terms are mutually inconsistent.

ARTICLE 25

Whether or not they have concluded a Supplementary Agreement under Article 21, the Contracting States shall not conclude between themselves other Conventions relating to the recognition and enforcement of judgments within the scope of this Convention unless they consider it

necessary, in particular, because of economic ties or of particular aspects of their legal systems.

ARTICLE 26

Notwithstanding the provisions of Articles 24 and 25, this Convention and the Supplementary Agreements made under Article 21 shall not prevail over Conventions to which the Contracting States are or may become Parties in special fields and which contain provisions for the recognition and enforcement of judgments.

ARTICLE 27

This Convention shall be open for signature by the States represented at the Tenth Session of the Hague Conference on Private International Law and Cyprus, Iceland and Malta.

It shall be ratified and the instruments of ratification shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

ARTICLE 28

This Convention shall enter into force on the sixtieth day after the deposit of the second instrument of ratification.

This Convention shall enter into force for each State which ratifies it subsequently on the sixtieth day after the deposit of its instrument of ratification.

ARTICLE 29

Any State not falling within the provisions of the first paragraph of Article 27 may accede to this Convention after it has entered into force in accordance with the first paragraph of Article 28. The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

This Convention shall enter into force for such a State in the absence of any objection from a State which has ratified this Convention before such deposit, notified to the Ministry of Foreign Affairs of the Netherlands within a period of six months after the date on which the said Ministry has notified it of such accession.

In the absence of any such objection, this Convention shall enter into force for the acceding State on the first day of the month following the expiration of the last of the periods referred to in the preceding paragraph.

ARTICLE 30

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

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

This Convention shall enter into force for the territories mentioned in such an extension on the sixtieth day after the notification referred to in the preceding paragraph.

The Parties to a Supplementary Agreement concluded under Article 21 shall determine its territorial application.

ARTICLE 31

This Convention shall have a duration of five years from the date on which it enters into force under the first paragraph of Article 28, even in its application to States which have subsequently ratified or acceded to it.

In the absence of any denunciation, this Convention shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Netherlands at least six months before the end of the five year period.

Such denunciation may be limited to any one of the territories to which this Convention applies.

Such denunciation shall affect only the notifying State. This Convention shall remain in force for the other Contracting States.

ARTICLE 32

Each Supplementary Agreement concluded under Article 21 shall take effect from the date specified in such Agreement; a certified copy and, if necessary, a translation into French or English shall be communicated to the Ministry of Foreign Affairs of the Netherlands.

Any Contracting State may, without denouncing this Convention, denounce a Supplementary Agreement either under any provision for denunciation in such Agreement or, if such Agreement contains no such provision, by giving six months' notice to the other State. Any State denouncing a Supplementary Agreement shall so inform the Ministry of Foreign Affairs of the Netherlands.

Notwithstanding the denunciation of this Convention, it shall nevertheless continue to have effect between the denouncing State and any other State with which the former has concluded a Supplementary Agreement under Article 21, unless such Agreement provides otherwise.

ARTICLE 33

The Ministry of Foreign Affairs of the Netherlands shall give notice to the States referred to in Article 27, and to the States which have acceded in accordance with Article 29, of the following

- a) the signatures and ratifications referred to in Article 27;
- b) the date on which the present Convention enters into force in accordance with the first paragraph of Article 28;
- c) the accessions referred to in Article 29 and the dates on which they take effect;
- d) the extensions referred to in Article 30 and the dates on which they take effect;
- e) a translation or a copy of the text in English or French of Supplementary Agreements concluded under Article 21;

f) the denunciations referred to in the third paragraph of Article 31 and the second paragraph of Article 32.

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

Done at The Hague, on the first day of February, 1971, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Netherlands, and of which a certified copy shall be sent, through the diplomatic channel, to each of the States represented at the Tenth Session of the Hague Conference on Private International Law, and to Cyprus, Iceland and Malta.

**PROTOCOL ON LIABILITY AND COMPENSATION FOR DAMAGE
RESULTING FROM TRANSBOUNDARY MOVEMENTS OF
HAZARDOUS WASTES AND THEIR DISPOSAL**

The Parties to the Protocol,

Having taken into account the relevant provisions of Principle 13 of the 1992 Rio Declaration on Environment and Development, according to which States shall develop international and national legal instruments regarding liability and compensation for the victims of pollution and other environmental damage,

Being Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal,

Mindful of their obligations under the Convention,

Aware of the risk of damage to human health, property and the environment caused by hazardous wastes and other wastes and the transboundary movement and disposal thereof,

Concerned about the problem of illegal transboundary traffic in hazardous wastes and other wastes,

Committed to Article 12 of the Convention, and emphasizing the need to set out appropriate rules and procedures in the field of liability and compensation for damage resulting from the transboundary movement and disposal of hazardous wastes and other wastes,

Convinced of the need to provide for third party liability and environmental liability in order to ensure that adequate and prompt

compensation is available for damage resulting from the transboundary movement and disposal of hazardous wastes and other wastes,

Have agreed as follows:

ARTICLE 1

Objective

The objective of the Protocol is to provide for a comprehensive regime for liability and for adequate and prompt compensation for damage resulting from the transboundary movement of hazardous wastes and other wastes and their disposal including illegal traffic in those wastes.

ARTICLE 2

Definitions

1. The definitions of terms contained in the Convention apply to the Protocol, unless expressly provided otherwise in the Protocol.
2. For the purposes of the Protocol:
 - (a) “The Convention” means the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal;
 - (b) “Hazardous wastes and other wastes” means hazardous wastes and other wastes within the meaning of Article 1 of the Convention;

(c) “Damage” means:

(i) Loss of life or personal injury;

(ii) Loss of or damage to property other than property held by the person liable in accordance with the present Protocol;

(iii) Loss of income directly deriving from an economic interest in any use of the environment, incurred as a result of impairment of the environment, taking into account savings and costs;

(iv) The costs of measures of reinstatement of the impaired environment, limited to the costs of measures actually taken or to be undertaken; and

(v) The costs of preventive measures, including any loss or damage caused by such measures, to the extent that the damage arises out of or results from hazardous properties of the wastes involved in the transboundary movement and disposal of hazardous wastes and other wastes subject to the Convention;

(d) “Measures of reinstatement” means any reasonable measures aiming to assess, reinstate or restore damaged or destroyed components of the environment. Domestic law may indicate who will be entitled to take such measures;

(e) “Preventive measures” means any reasonable measures taken by any person in response to an incident, to prevent, minimize, or mitigate loss or damage, or to effect environmental cleanup; (f) “Contracting Party” means a Party to the Protocol;

(g) “Protocol” means the present Protocol;

(h) “Incident” means any occurrence, or series of occurrences having the same origin that causes damage or creates a grave and imminent threat of causing damage;

(i) “Regional economic integration organization” means an organization constituted by sovereign States to which its member States have transferred competence in respect of matters governed by the Protocol and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve, formally confirm or accede to it;

(j) “Unit of account” means the Special Drawing Right as defined by the International Monetary Fund.

ARTICLE 3

Scope of Application

1. The Protocol shall apply to damage due to an incident occurring during a transboundary movement of hazardous wastes and other wastes and their disposal, including illegal traffic, from the point where the wastes are loaded on the means of transport in an area under the national jurisdiction of a State of export. Any Contracting Party may by way of notification to the Depository exclude the application of the Protocol, in respect of all transboundary movements for which it is the State of export, for such incidents which occur in an area under its national jurisdiction, as regards damage in its area of national jurisdiction. The Secretariat shall inform all Contracting Parties of notifications received in accordance with this Article.

2. The Protocol shall apply:

(a) In relation to movements destined for one of the operations specified in Annex IV to the Convention other than D13, D14, D15, R12 or R13, until the time at which the notification of completion of disposal pursuant to Article 6, paragraph 9, of the Convention has occurred, or, where such notification has not been made, completion of disposal has occurred; and

(b) In relation to movements destined for the operations specified in D13, D14, D15, R12 or R13 of Annex IV to the Convention, until completion of the subsequent disposal operation specified in D1 to D12 and R1 to R11 of Annex IV to the Convention.

3. (a) The Protocol shall apply only to damage suffered in an area under the national jurisdiction of a Contracting Party arising from an incident as referred to in paragraph 1;

(b) When the State of import, but not the State of export, is a Contracting Party, the Protocol shall apply only with respect to damage arising from an incident as referred to in paragraph 1 which takes place after the moment at which the disposer has taken possession of the hazardous wastes and other wastes. When the State of export, but not the State of import, is a Contracting Party, the Protocol shall apply only with respect to damage arising from an incident as referred to in paragraph 1 which takes place prior to the moment at which the disposer takes possession of the hazardous wastes and other wastes. When neither the State of export nor the State of import is a Contracting Party, the Protocol shall not apply;

(c) Notwithstanding subparagraph (a), the Protocol shall also apply to the damages specified in Article 2, subparagraphs 2 (c) (i), (ii) and (v), of the Protocol occurring in areas beyond any national jurisdiction;

(d) Notwithstanding subparagraph (a), the Protocol shall, in relation to rights under the Protocol, also apply to damages suffered in an area under the national jurisdiction of a State of transit which is not a Contracting Party provided that such State appears in Annex A and has acceded to a multilateral or regional agreement concerning transboundary movements of hazardous waste which is in force. Subparagraph (b) will apply *mutatis mutandis*.

4. Notwithstanding paragraph 1, in case of re-importation under Article 8 or Article 9, subparagraph 2 (a), and Article 9, paragraph 4, of the Convention, the provisions of the Protocol shall apply until the hazardous wastes and other wastes reach the original State of export.

5. Nothing in the Protocol shall affect in any way the sovereignty of States over their territorial seas and their jurisdiction and the right in their respective exclusive economic zones and continental shelves in accordance with international law.

6. Notwithstanding paragraph 1 and subject to paragraph 2 of this Article:

(a) The Protocol shall not apply to damage that has arisen from a transboundary movement of hazardous wastes and other wastes that has commenced before the entry into force of the Protocol for the Contracting Party concerned;



(b) The Protocol shall apply to damage resulting from an incident occurring during a transboundary movement of wastes falling under Article 1, subparagraph 1 (b), of the Convention only if those wastes have been notified in accordance with Article 3 of the Convention by the State of export or import, or both, and the damage arises in an area under the national jurisdiction of a State, including a State of transit, that has defined or considers those wastes as hazardous provided that the requirements of Article 3 of the Convention have been met. In this case strict liability shall be channelled in accordance with Article 4 of the Protocol.

7. (a) The Protocol shall not apply to damage due to an incident occurring during a transboundary movement of hazardous wastes and other wastes and their disposal pursuant to a bilateral, multilateral or regional agreement or arrangement concluded and notified in accordance with Article 11 of the Convention if:

(i) The damage occurred in an area under the national jurisdiction of any of the Parties to the agreement or arrangement;

(ii) There exists a liability and compensation regime, which is in force and is applicable to the damage resulting from such a transboundary movement or disposal provided it fully meets, or exceeds the objective of the Protocol by providing a high level of protection to persons who have suffered damage;

(iii) The Party to the Article 11 agreement or arrangement in which the damage has occurred has previously notified the Depositary of the nonapplication of the Protocol to any damage occurring in an area under its

national jurisdiction due to an incident resulting from movements or disposals referred to in this subparagraph; and

(iv) The Parties to the Article 11 agreement or arrangement have not declared that the Protocol shall be applicable;

(b) In order to promote transparency, a Contracting Party that has notified the Depository of the non-application of the Protocol shall notify the Secretariat of the applicable liability and compensation regime referred to in subparagraph (a) (ii) and include a description of the regime. The Secretariat shall submit to the Meeting of the Parties, on a regular basis, summary reports on the notifications received;

(c) After a notification pursuant to subparagraph (a) (iii) is made, actions for compensation for damage to which subparagraph (a) (i) applies may not be made under the Protocol.

8. The exclusion set out in paragraph 7 of this Article shall neither affect any of the rights or obligations under the Protocol of a Contracting Party which is not party to the agreement or arrangement mentioned above, nor shall it affect rights of States of transit which are not Contracting Parties.

9. Article 3, paragraph 2, shall not affect the application of Article 16 to all Contracting Parties.

ARTICLE 4**Strict Liability**

1. The person who notifies in accordance with Article 6 of the Convention, shall be liable for damage until the disposer has taken possession of the hazardous wastes and other wastes. Thereafter the disposer shall be liable for damage. If the State of export is the notifier or if no notification has taken place, the exporter shall be liable for damage until the disposer has taken possession of the hazardous wastes and other wastes. With respect to Article 3, subparagraph 6 (b), of the Protocol, Article 6, paragraph 5, of the Convention shall apply *mutatis mutandis*. Thereafter the disposer shall be liable for damage.

2. Without prejudice to paragraph 1, with respect to wastes under Article 1, subparagraph 1 (b), of the Convention that have been notified as hazardous by the State of import in accordance with Article 3 of the Convention but not by the State of export, the importer shall be liable until the disposer has taken possession of the wastes, if the State of import is the notifier or if no notification has taken place. Thereafter the disposer shall be liable for damage.

3. Should the hazardous wastes and other wastes be re-imported in accordance with Article 8 of the Convention, the person who notified shall be liable for damage from the time the hazardous wastes leave the disposal site,

until the wastes are taken into possession by the exporter, if applicable, or by the alternate disposer.

4. Should the hazardous wastes and other wastes be re-imported under Article 9, subparagraph 2 (a), or Article 9, paragraph 4, of the Convention, subject to Article 3 of the Protocol, the person who reimports shall be held liable for damage until the wastes are taken into possession by the exporter if applicable, or by the alternate disposer.

5. No liability in accordance with this Article shall attach to the person referred to in paragraphs 1 and 2 of this Article, if that person proves that the damage was:

(a) The result of an act of armed conflict, hostilities, civil war or insurrection;

(b) The result of a natural phenomenon of exceptional, inevitable, unforeseeable and irresistible character;

(c) Wholly the result of compliance with a compulsory measure of a public authority of the State where the damage occurred; or

(d) Wholly the result of the wrongful intentional conduct of a third party, including the person who suffered the damage.

6. If two or more persons are liable according to this Article, the claimant shall have the right to seek full compensation for the damage from any or all of the persons liable.

ARTICLE 5**Fault-based Liability**

Without prejudice to Article 4, any person shall be liable for damage caused or contributed to by his lack of compliance with the provisions implementing the Convention or by his wrongful intentional, reckless or negligent acts or omissions. This Article shall not affect the domestic law of the Contracting Parties governing liability of servants and agents.

ARTICLE 6**Preventive Measures**

1. Subject to any requirement of domestic law any person in operational control of hazardous wastes and other wastes at the time of an incident shall take all reasonable measures to mitigate damage arising therefrom.

2. Notwithstanding any other provision in the Protocol, any person in possession and/or control of hazardous wastes and other wastes for the sole purpose of taking preventive measures, provided that this person acted reasonably and in accordance with any domestic law regarding preventive measures, is not thereby subject to liability under the Protocol.

ARTICLE 7**Combined Cause of the Damage**

1. Where damage is caused by wastes covered by the Protocol and wastes not covered by the Protocol, a person otherwise liable shall only be liable according to the Protocol in proportion to the contribution made by the wastes covered by the Protocol to the damage.

2. The proportion of the contribution to the damage of the wastes referred to in paragraph 1 shall be determined with regard to the volume and properties of the wastes involved, and the type of damage occurring.

3. In respect of damage where it is not possible to distinguish between the contribution made by wastes covered by the Protocol and wastes not covered by the Protocol, all damage shall be considered to be covered by the Protocol.

ARTICLE 8**Right of Recourse**

1. Any person liable under the Protocol shall be entitled to a right of recourse in accordance with the rules of procedure of the competent court:

- (a) Against any other person also liable under the Protocol; and
- (b) As expressly provided for in contractual arrangements.

2. Nothing in the Protocol shall prejudice any rights of recourse to which the person liable might be entitled pursuant to the law of the competent court.

ARTICLE 9

Contributory Fault

Compensation may be reduced or disallowed if the person who suffered the damage, or a person for whom he is responsible under the domestic law, by his own fault, has caused or contributed to the damage having regard to all circumstances.

ARTICLE 10

Implementation

1. The Contracting Parties shall adopt the legislative, regulatory and administrative measures necessary to implement the Protocol.
2. In order to promote transparency, Contracting Parties shall inform the Secretariat of measures to implement the Protocol, including any limits of liability established pursuant to paragraph 1 of Annex B.
3. The provisions of the Protocol shall be applied without discrimination based on nationality, domicile or residence.

ARTICLE 11**Conflicts with Other Liability and Compensation Agreements**

Whenever the provisions of the Protocol and the provisions of a bilateral, multilateral or regional agreement apply to liability and compensation for damage caused by an incident arising during the same portion of a transboundary movement, the Protocol shall not apply provided the other agreement is in force for the Party or Parties concerned and had been opened for signature when the Protocol was opened for signature, even if the agreement was amended afterwards.

ARTICLE 12**Financial Limits**

1. Financial limits for the liability under Article 4 of the Protocol are specified in Annex B to the Protocol. Such limits shall not include any interest or costs awarded by the competent court.
2. There shall be no financial limit on liability under Article 5.

ARTICLE 13**Time Limit of Liability**

1. Claims for compensation under the Protocol shall not be admissible unless they are brought within ten years from the date of the incident.

2. Claims for compensation under the Protocol shall not be admissible unless they are brought within five years from the date the claimant knew or ought reasonably to have known of the damage provided that the time limits established pursuant to paragraph 1 of this Article are not exceeded.

3. Where the incident consists of a series of occurrences having the same origin, time limits established pursuant to this Article shall run from the date of the last of such occurrences. Where the incident consists of a continuous occurrence, such time limits shall run from the end of that continuous occurrence.

ARTICLE 14

Insurance and Other Financial Guarantees

1. The persons liable under Article 4 shall establish and maintain during the period of the time limit of liability, insurance, bonds or other financial guarantees covering their liability under Article 4 of the Protocol for amounts not less than the minimum limits specified in paragraph 2 of Annex B. States may fulfil their obligation under this paragraph by a declaration of self-insurance. Nothing in this paragraph shall prevent the use of deductibles or co-payments as between the insurer and the insured, but the failure of the insured to pay any deductible or co-payment shall not be a defence against the person who has suffered the damage.

2. With regard to the liability of the notifier, or exporter under Article 4, paragraph 1, or of the importer under Article 4, paragraph 2, insurance,

bonds or other financial guarantees referred to in paragraph 1 of this Article shall only be drawn upon in order to provide compensation for damage covered by Article 2 of the Protocol.

3. A document reflecting the coverage of the liability of the notifier or exporter under Article 4, paragraph 1, or of the importer under Article 4, paragraph 2, of the Protocol shall accompany the notification referred to in Article 6 of the Convention. Proof of coverage of the liability of the disposer shall be delivered to the competent authorities of the State of import.

4. Any claim under the Protocol may be asserted directly against any person providing insurance, bonds or other financial guarantees. The insurer or the person providing the financial guarantee shall have the right to require the person liable under Article 4 to be joined in the proceedings. Insurers and persons providing financial guarantees may invoke the defences which the person liable under Article 4 would be entitled to invoke.

5. Notwithstanding paragraph 4, a Contracting Party shall, by notification to the Depositary at the time of signature, ratification, or approval of, or accession to the Protocol, indicate if it does not provide for a right to bring a direct action pursuant to paragraph 4. The Secretariat shall maintain a record of the Contracting Parties who have given notification pursuant to this paragraph.

ARTICLE 15

Financial Mechanism

1. Where compensation under the Protocol does not cover the costs of damage, additional and supplementary measures aimed at ensuring adequate and prompt compensation may be taken using existing mechanisms.

2. The Meeting of the Parties shall keep under review the need for and possibility of improving existing mechanisms or establishing a new mechanism.

ARTICLE 16

State Responsibility

The Protocol shall not affect the rights and obligations of the Contracting Parties under the rules of general international law with respect to State responsibility.

PROCEDURES

ARTICLE 17

Competent Courts

1. Claims for compensation under the Protocol may be brought in the courts of a Contracting Party only where either:

- (a) The damage was suffered; or
- (b) The incident occurred; or
- (c) The defendant has his habitual residence, or has his principal place of business.

2. Each Contracting Party shall ensure that its courts possess the necessary competence to entertain such claims for compensation.

ARTICLE 18

Related Actions

1. Where related actions are brought in the courts of different Parties, any court other than the court first seized may, while the actions are pending at first instance, stay its proceedings.

2. A court may, on the application of one of the Parties, decline jurisdiction if the law of that court permits the consolidation of related actions and another court has jurisdiction over both actions.

3. For the purpose 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 judgements resulting from separate proceedings.

ARTICLE 19

Applicable Law

All matters of substance or procedure regarding claims before the competent court which are not specifically regulated in the Protocol shall be governed by the law of that court including any rules of such law relating to conflict of laws.

ARTICLE 20

Relation Between the Protocol and the Law of the Competent Court

1. Subject to paragraph 2, nothing in the Protocol shall be construed as limiting or derogating from any rights of persons who have suffered damage, or as limiting the protection or reinstatement of the environment which may be provided under domestic law.

2. No claims for compensation for damage based on the strict liability of the notifier or the exporter liable under Article 4, paragraph 1, or the importer liable under Article 4, paragraph 2, of the Protocol, shall be made otherwise than in accordance with the Protocol.

ARTICLE 21**Mutual Recognition and Enforcement of Judgements**

1. Any judgement of a court having jurisdiction in accordance with Article 17 of the Protocol, which is enforceable in the State of origin and is no longer subject to ordinary forms of review, shall be recognized in any Contracting Party as soon as the formalities required in that Party have been completed, except:

- (a) Where the judgement was obtained by fraud;
- (b) Where the defendant was not given reasonable notice and a fair opportunity to present his case;
- (c) Where the judgement is irreconcilable with an earlier judgement validly pronounced in another Contracting Party with regard to the same cause of action and the same parties; or
- (d) Where the judgement is contrary to the public policy of the Contracting Party in which its recognition is sought.

2. A judgement recognized under paragraph 1 of this Article shall be enforceable in each Contracting Party as soon as the formalities required in that Party have been completed. The formalities shall not permit the merits of the case to be re-opened.

3. The provisions of paragraphs 1 and 2 of this Article shall not apply between Contracting Parties that are Parties to an agreement or arrangement in force on mutual recognition and enforcement of judgements under which the judgement would be recognizable and enforceable.

ARTICLE 22

Relationship of the Protocol with the Basel Convention

Except as otherwise provided in the Protocol, the provisions of the Convention relating to its Protocols shall apply to the Protocol.

ARTICLE 23

Amendment of Annex B

1. At its sixth meeting, the Conference of the Parties to the Basel Convention may amend paragraph 2 of Annex B following the procedure set out in Article 18 of the Basel Convention.
2. Such an amendment may be made before the Protocol enters into force.

FINAL CLAUSES

ARTICLE 24

Meeting of the Parties

1. A Meeting of the Parties is hereby established. The Secretariat shall convene the first Meeting of the Parties in conjunction with the first meeting of the Conference of the Parties to the Convention after entry into force of the Protocol.

2. Subsequent ordinary Meetings of the Parties shall be held in conjunction with meetings of the Conference of the Parties to the Convention unless the Meeting of the Parties decides otherwise. Extraordinary Meetings of the Parties shall be held at such other times as may be deemed necessary by a Meeting of the Parties, or at the written request of any Contracting Party, provided that within six months of such a request being communicated to them by the Secretariat, it is supported by at least one third of the Contracting Parties.

3. The Contracting Parties, at their first meeting, shall adopt by consensus rules of procedure for their meetings as well as financial rules.

4. The functions of the Meeting of the Parties shall be:

(a) To review the implementation of and compliance with the Protocol;

(b) To provide for reporting and establish guidelines and procedures for such reporting where necessary;

(c) To consider and adopt, where necessary, proposals for amendment of the Protocol or any annexes and for any new annexes; and

(d) To consider and undertake any additional action that may be required for the purposes of the Protocol.

ARTICLE 25**Secretariat**

1. For the purposes of the Protocol, the Secretariat shall:

(a) Arrange for and service Meetings of the Parties as provided for in Article 24;

(b) Prepare reports, including financial data, on its activities carried out in implementation of its functions under the Protocol and present them to the Meeting of the Parties;

(c) Ensure the necessary coordination with relevant international bodies, and in particular enter into such administrative and contractual arrangements as may be required for the effective discharge of its functions;

(d) Compile information concerning the national laws and administrative provisions of Contracting Parties implementing the Protocol;

(e) Cooperate with Contracting Parties and with relevant and competent international organisations and agencies in the provision of experts and equipment for the purpose of rapid assistance to States in the event of an emergency situation;

(f) Encourage non-Parties to attend the Meetings of the Parties as observers and to act in accordance with the provisions of the Protocol; and

(g) Perform such other functions for the achievement of the purposes of this Protocol as may be assigned to it by the Meetings of the Parties.

2. The secretariat functions shall be carried out by the Secretariat of the Basel Convention.

ARTICLE 26**Signature**

The Protocol shall be open for signature by States and by regional economic integration organizations Parties to the Basel Convention in Berne at the Federal Department of Foreign Affairs of Switzerland from 6 to 17 March 2000 and at United Nations Headquarters in New York from 1 April to 10 December 2000.

ARTICLE 27**Ratification, Acceptance, Formal Confirmation or Approval**

1. The Protocol shall be subject to ratification, acceptance or approval by States and to formal confirmation or approval by regional economic integration organizations. Instruments of ratification, acceptance, formal confirmation, or approval shall be deposited with the Depositary.

2. Any organization referred to in paragraph 1 of this Article which becomes a Contracting Party without any of its member States being a Contracting Party shall be bound by all the obligations under the Protocol. In the case of such organizations, one or more of whose member States is a Contracting Party, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Protocol. In such cases, the organization and the member States shall not be entitled to exercise rights under the Protocol concurrently.

3. In their instruments of formal confirmation or approval, the organizations referred to in paragraph 1 of this Article shall declare the extent of their competence with respect to the matters governed by the Protocol. These organizations shall also inform the Depositary, who will inform the Contracting Parties, of any substantial modification in the extent of their competence.

ARTICLE 28

Accession

1. The Protocol shall be open for accession by any States and by any regional economic integration organization Party to the Basel Convention which has not signed the Protocol. The instruments of accession shall be deposited with the Depositary.

2. In their instruments of accession, the organizations referred to in paragraph 1 of this Article shall declare the extent of their competence with respect to the matters governed by the Protocol. These organizations shall also inform the Depositary of any substantial modification in the extent of their competence.

3. The provisions of Article 27, paragraph 2, shall apply to regional economic integration organizations which accede to the Protocol.

ARTICLE 29**Entry into Force**

1. The Protocol shall enter into force on the ninetieth day after the date of deposit of the twentieth instrument of ratification, acceptance, formal confirmation, approval or accession.

2. For each State or regional economic integration organization which ratifies, accepts, approves or formally confirms the Protocol or accedes thereto after the date of the deposit of the twentieth instrument of ratification, acceptance, approval, formal confirmation or accession, it shall enter into force on the ninetieth day after the date of deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval, formal confirmation or accession.

3. For the purpose of paragraphs 1 and 2 of this Article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

ARTICLE 30**Reservations and Declarations**

1. No reservation or exception may be made to the Protocol. For the purposes of the Protocol, notifications according to Article 3, paragraph 1,

Article 3, paragraph 6, or Article 14, paragraph 5, shall not be regarded as reservations or exceptions.

2. Paragraph 1 of this Article does not preclude a State or a regional economic integration organization, when signing, ratifying, accepting, approving, formally confirming or acceding to the Protocol, from making declarations or statements, however phrased or named, with a view, *inter alia*, to the harmonization of its laws and regulations with the provisions of the Protocol, provided that such declarations or statements do not purport to exclude or to modify the legal effects of the provisions of the Protocol in their application to that State or that organization.

ARTICLE 31

Withdrawal

1. At any time after three years from the date on which the Protocol has entered into force for a Contracting Party, that Contracting Party may withdraw from the Protocol by giving written notification to the Depositary.

2. Withdrawal shall be effective one year from receipt of notification by the Depositary, or on such later date as may be specified in the notification.

ARTICLE 32**Depositary**

The Secretary-General of the United Nations shall be the Depositary of the Protocol.

ARTICLE 33**Authentic Texts**

The original Arabic, Chinese, English, French, Russian and Spanish texts of the Protocol are equally authentic.

ANNEX A**List of States of Transit as referred to in Article 3, subparagraph 3 (d)**

- | | |
|------------------------|--|
| 1. Antigua and Barbuda | 22 Nauru |
| 2. Bahamas | 23. Netherlands, on behalf of Aruba,
and the Netherlands Antilles |
| 3. Bahrain | 24. New Zealand, on behalf of
Tokelau |
| 4. Barbados | 25. Niue |
| 5. Cape Verde | 26. Palau |
| 6. Comoros | 27. Papua New Guinea |
| 7. Cook Islands | 28. Samoa |
| 8. Cuba | |
| 9. Cyprus | |

- | | |
|--------------------------------------|------------------------------------|
| 10. Dominica | 29. Sao Tome and Principe |
| 11. Dominican Republic | 30. Seychelles |
| 12. Fiji | 31. Singapore |
| 13. Grenada | 32. Solomon Islands |
| 14. Haiti | 33. St. Lucia |
| 15. Jamaica | 34. St. Kitts and Nevis |
| 16. Kiribati | 35. St. Vincent and the Grenadines |
| 17. Maldives | 36. Tonga |
| 18. Malta | 37. Trinidad and Tobago |
| 19. Marshall Islands | 38. Tuvalu |
| 20. Mauritius | 39. Vanuatu |
| 21. Micronesia (Federated States of) | |

ANNEX B

Financial limits

1. Financial limits for the liability under Article 4 of the Protocol shall be determined by domestic law.
2. The limits of liability shall:
 - (a) For the notifier, exporter or importer, for any one incident, be not less than:
 - (i) 1 million units of account for shipments up to and including 5 tonnes;

(ii) 2 million units of account for shipments exceeding 5 tonnes, up to and including 25 tonnes;

(iii) 4 million units of account for shipments exceeding 25 tonnes, up to and including 50 tonnes;

(iv) 6 million units of account for shipments exceeding 50 tonnes, up to and including to 1,000 tonnes;

(v) 10 million units of account for shipments exceeding 1,000 tonnes, up to and including 10,000 tonnes;

(vi) Plus an additional 1,000 units of account for each additional tonne up to a maximum of 30 million units of account;

(b) For the disposer, for any one incident, be not less than 2 million units of account for any one incident.

3. The amounts referred to in paragraph 2 shall be reviewed by the Contracting Parties on a regular basis taking into account, inter alia, the potential risks posed to the environment by the movement of hazardous wastes and other wastes and their disposal, recycling, and the nature, quantity and hazardous properties of the wastes.

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