

to appear, to give evidence, or to produce documents, does not preclude a request being subsequently made in accordance with Articles IV or V.

Article VIII

Where evidence is taken in either of the ways provided in Articles IV or V, the requesting State shall repay to the other State concerned any expense incurred by the competent authority of the latter, in the execution of the request, in respect of any charges and expenses payable to witnesses, experts, interpreters or translators, the costs of obtaining the attendance of witnesses who have not appeared voluntarily and the charges and expenses payable to any person whom such authority may have deputed to act, and any charges and expenses incurred by reason of a special procedure being requested and followed. These expenses shall be such as are usually allowed in similar cases in the court of the State where the evidence has been taken.

(IV) FINAL REPORT ADOPTED AT THE
SEVENTH SESSION

**FINAL REPORT OF THE COMMITTEE ON RECIPROCAL
ENFORCEMENT OF JUDGMENTS, SERVICE OF PROCESS
AND RECORDING OF EVIDENCE IN CIVIL AND
CRIMINAL CASES**

The questions relating to "Reciprocal Enforcement of Judgments, Service of Process, and Recording of Evidence among States both in Civil and Criminal Cases" have been referred to this Committee under Article 3 (b) of its Statutes by the Government of Ceylon with a view to formulate a uniform set of rules to ensure reciprocal recognition and enforcement of foreign judgments and to facilitate the service of process and recording of evidence in foreign countries.

At the Sixth Session of the Committee held in Cairo in 1964, the subject was considered by a Sub-Committee appointed for the purpose, consisting of the Representatives of Ceylon, India, Iraq and the United Arab Republic on the basis of a study prepared by the Secretariat and certain memoranda submitted by the Delegations of Ceylon and the United Arab Republic. The Sub-Committee placed before the Committee a report containing two draft agreements, one on the subject of "Recognition and Enforcement of Judgments", and the other on the subject of "Service of Process and Recording of Evidence."

The Committee at the present Session took up for consideration the Report of the Sub-Committee appointed at the Cairo Session. It was agreed in the Committee to give detailed consideration to the provisions of the two drafts prepared by the Sub-Committee on the basis that those provisions, if adopted, would be recommended as model rules on the subject for consideration of the Governments. The Committee, after a careful consideration of the Report of the Sub-Committee, is agreed on the adoption of the model rules on the subject, which are set out in Annexures I and II to this Report.

The Committee decides to submit this Report to the Government of Ceylon and the Governments of other participating countries in the Committee as the Final Report of the Committee on the subject.

ANNEXURE I

MODEL RULES ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS IN CIVIL CASES

Article 1

In these model rules:

- (a) A *foreign judgment* means a decision made by a judicial authority whose jurisdiction does not extend to the State in which its enforcement is sought.
- (b) A *final judgment* means a judgment which is enforceable in the State in which it was delivered.
- (c) *recognized* means being given effect to as a *res judicata* according to the law of the State in which its effects are sought to be maintained.
- (d) *enforceable* means capable of being compulsorily executed.

Article 2

These rules shall apply to foreign judgments in civil cases, including commercial cases, whereby a definite sum of money is made payable. It shall not apply to judgments whereby a sum of money is payable in respect of a tax, fine or penalty.

Note:—The Delegations of India and Pakistan desired express provision excluding (1) arbitration award, even if such an award is enforceable as money decree or judgment, (2) order for the payment of money arising out of matrimonial proceedings.

Article 3

A foreign judgment shall be recognized as conclusive and be enforceable between the parties thereto as if it had been issued by a court of the State in which its enforcement is sought.

Article 4

A foreign judgment shall not be recognized or enforced unless the following facts are verified:

- (a) that it is final and conclusive.
- (b) that it is issued by a court which is internationally competent.
- (c) that it is issued according to a procedure which would enable the defendant to submit his defence.
- (d) that it does not violate the public policy or morality of the State in which enforcement is sought.
- (e) that it is not obtained by fraud.
- (f) that it does not conflict with any judgment, delivered by any court of the State in which enforcement is sought, between the same parties on the same subject matter in an action instituted earlier.
- (g) that there is no action, instituted earlier, pending between the same parties on the same subject matter in the State in which enforcement is sought.

Note:—(I) Regarding Clause (b) of the Article.

The Delegations of India and Ceylon desired that the expression "a court which is internationally competent" should be defined to mean a court having jurisdiction which satisfies the following requirements:

- (1) (a) the judgment debtor has voluntarily appeared in the proceedings for the purpose of contesting the merits and not solely for the purpose of:
 - (i) contesting the jurisdiction of the said court, or
 - (ii) protecting his property from seizure or obtaining the release of seized property; or
 - (iii) protecting his property on the ground that in the future it may be placed in jeopardy of seizure on the strength of the judgments; or
- (b) the judgment debtor has submitted to the jurisdiction of the said court by an express agreement; or
- (c) the judgment debtor at the time of the institution of the proceeding ordinarily resides in the State of the said court; or

- (d) the judgment debtor instituted the proceeding as plaintiff or counterclaimed in the State of the said court; or
- (e) the judgment debtor, being a corporate body, was incorporated or has its seat (*siege*) in the State of the said court, or at the time of the institution of the proceedings had its place of central administration or principal place of business in that State; or
- (f) the judgment debtor, at the time of the institution of the proceeding, has either a commercial establishment or a branch office in the State of the said court and the proceeding is based upon a cause of action arising out of the business carried on there; or
- (g) in an action based on contract, the parties to the contract ordinarily reside in different States and all, or substantially all, of the performance by the judgment debtor was to take place in the State of the said court; or
- (h) in an action in tort (*delict* or *quasi delict*) either the place where the defendant did the act which caused the injury or the place where the last event necessary to make the defendant liable for the alleged tort (*delict* or *quasi delict*) occurred in the State of the said court.

(2) Notwithstanding anything in clause (1), the court which issued the judgment shall not have jurisdiction:

- (a) in the cases stated in sub Clauses (c), (e), (f) and (g), if the bringing of proceedings in the said court was contrary to an express agreement between the parties under which the dispute in question was to be settled otherwise than by a proceeding in that court
- (b) if by the law of the country in which enforcement is sought exclusive jurisdiction over the subject matter of the action is assigned to another court;

The bases of jurisdiction recognized in the foregoing clauses are, however, not exclusive and the court in which enforcement is sought may accept additional bases.

The Delegations of Ghana and Pakistan desired that Clause

(b) of Article 4 be altered as follows: "that it had been issued by a court of competent jurisdiction".

Note:—(II) Regarding Clause (c) of this Article,

The Delegations of India and Pakistan suggested that the following be substituted:

"that it had been issued according to a procedure which gives the defendant reasonable notice of the proceeding and reasonable opportunity of submitting his defence and follows the principles of natural justice".

Note:—(III) Regarding Clause (f) of this Article.

The Delegations of the United Arab Republic desired that the clause should be as follows:

"that it does not contradict any judgment delivered by a court of the State in which enforcement is sought".

Note:—(IV)—Regarding Clause (d) of this Article

The Delegations of India and Pakistan desired that the following clauses should be added to the Article as clauses (h) and (i):

- (h) that it is not founded on a refusal to recognize the law of the State in which enforcement is sought in cases where such law is applicable.
- (i) that it does not sustain a claim founded on a breach of any law in force in the State in which enforcement is sought.

Article 5

A foreign judgment shall not be recognized or be enforceable except by a formal decision made by the appropriate court in accordance with the procedural requirements of the State in which enforcement is sought.

Note:—The Delegation of India and Pakistan desired an additional provision to the following effect:

"Proceedings for enforcement shall be stayed on proof of

appeal being filed or other steps being taken to have the judgment set aside”.

Article 6

The appropriate judicial authority required to recognize or direct the enforcement of a foreign judgment shall not investigate the merits of that judgment.

Article 7

Requests for recognition or enforcement should be supported by the following documents:

- (a) A certified true copy of the judgment sought to be executed duly authenticated by the appropriate authorities.
- (b) A certificate from the appropriate authority to the effect that the judgment sought to be enforced is final and executory.
- (c) A certificate that the parties were duly summoned to appear before the appropriate authority in cases where the judgment was obtained in default of appearance of either party.

MODEL RULES FOR THE SERVICE OF JUDICIAL PROCESS AND RECORDING OF EVIDENCE IN CIVIL & CRIMINAL CASES

PART ONE—GENERAL PROVISIONS

Article 1

In these model rules:

- (a) *Judicial Process* means every type of document, which is required to be served on a party or witness in civil or criminal proceedings.
- (b) *Recipient* means the person on whom such process is intended to be served.
- (c) *Requesting State in Part Two* means the State which requests the service of judicial process in the territory of another State and in *Part Three* means the State from which a request to record evidence emanates.
- (d) *Competent Authority in Part Two* means the authority which is empowered to record evidence in terms of these Rules.

PART TWO—SERVICE OF PROCESS

Article 2

- (a) Judicial process shall be served in accordance with the law of the State in which such service is to be effected. Provided that if the requesting State desires such process to be served in accordance with its own law, the request shall be complied with unless it conflicts with the law of the State where the service is to be effected.
- (b) If the recipient is a national of the requesting State, the process may be served by a Consular Officer of the requesting State provided that the State in which it is to be served shall bear no responsibility.

Note:—The Delegation of Ghana desired the omission of the proviso to Clause (a).

Article 3

Subject to the provisions of Article 2, a request for the service of judicial process shall be made as follows:

- (a) The Letter of Request shall be addressed by a Diplomatic or Consular Officer of the requesting State to the competent authority of the State where such process is to be served.
- (b) It shall state the full name, address and such other information as is necessary to identify the recipient.
- (c) Two copies of the process to be served shall be annexed to the Letter of Request and where the process is not drawn up in the language of the State in which it is to be served, it shall be accompanied by a translation in duplicate.

Article 4

- (a) A request for service of process made in accordance with the preceding provisions shall be complied with unless:
 - (1) the authenticity of the request for service is not established; or
 - (2) the State to which the request is made considers it to be contrary to its public policy.
- (b) The competent authority by whom the request is executed shall furnish a certificate in proof of such service or explain the reasons which have prevented such service.

PART THREE—RECORDING OF EVIDENCE

Article 5

When evidence is required to be recorded in a civil or criminal proceeding by a court of one State in the territory of another State, such evidence shall be taken in accordance with the following provisions.

Article 6

A request to record evidence shall be executed by the competent authority in accordance with the law in force in that State, provided that if the requesting State desires it to be executed in some other way, such request shall be complied with unless it conflicts with the law of the State in which such evidence is to be recorded.

Article 7

- (a) The Letter of Request shall be addressed by a Diplomatic or Consular Officer of the requesting State to the competent authority of the State where such evidence is to be recorded.
- (b) The Letter of Request shall be drawn up in the language of the State where the evidence is to be taken or be accompanied by a translation in such language. The Letter of Request shall state the nature of the proceeding for which the evidence is required and the full name and address of the witnesses whose evidence is to be recorded.
- (c) The Letter of Request shall either be accompanied by a list of interrogatories and documents, if any, to be put to the witness or it shall request the competent authority to allow such questions to be asked *viva voce* as the parties or their representatives shall desire to ask.

Article 8

A request for the recording of evidence made in accordance with the aforesaid provisions shall be complied with unless:

- (1) The authenticity of the Letter of Request is not established; or
- (2) The State to whom the request is made considers it to be contrary to its public policy.

Sd/-SHAKIR AL-ANI
President.
1-4-1965.

APPENDICES
