OPINION OF ADVOCATE GENERAL JACOBS
delivered on 14 May 1996 *

1. The issue put to the Court by the House of Lords in this case concerns two sets of proceedings, involving the same cause of action and between the same parties, which are pending before courts in two States (Portugal and the United Kingdom) now party to the Brussels Convention of 1968 (hereafter 'the Brussels Convention' or 'the Convention'). [1] The first set of proceedings was commenced in Portugal before the Convention entered into force between Portugal and the United Kingdom, whereas the second set of proceedings was commenced in the United Kingdom after the Convention had entered into force between the two States. The House of Lords wishes to know whether, in such circumstances, the court second seised (i. e. the United Kingdom court) may or must stay proceedings or decline jurisdiction and whether it is required or permitted, for the purpose of deciding whether to stay proceedings or to decline jurisdiction, to conduct an examination of the basis on which the court first seised (the Portuguese court) assumed jurisdiction.

Relevant provisions of the Brussels and San Sebastian Conventions

2. Title II of the Convention contains general and special rules governing the jurisdiction of courts of the Contracting States. Article 2 provides:

'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.'

3. In Section 8 of Title II of the Convention, entitled 'Lis pendens — related actions', is to be found Article 21, which, as amended by

* Original language: English.

1 — Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

Article 8 of the San Sebastian Convention of 26 May 1989, [2] provides:

'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 stay its proceedings until such time as the jurisdiction of the court first seised is established.

Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.'

4. Title III of the Convention concerns recognition and enforcement of judgments given in other Contracting States. Article 26 lays down the general rule that a judgment given in a Contracting State is to be recognized in the other Contracting States without any special procedure being required. Article 27 specifies a number of cases in which a judgment is not to be recognized including, in paragraph 3, the case where:

'the judgment is irreconcilable with a judgment given in a dispute between the same parties in the State in which recognition is sought'.

5. In *Overseas Union Insurance* [3] the Court, referring to its judgment in *Gubisch*, [4] held that Article 21 of the Convention was intended:

'to preclude, in so far as possible and from the outset, the possibility of a situation arising such as that referred to in Article 27(3), that is to say the non-recognition of a judgment on account of its irreconcilability with a judgment given in proceedings between the same parties in the State in which recognition is sought. It follows that, in order to achieve those aims, Article 21 must be interpreted broadly so as to cover, in principle, all situations of *lis pendens* before courts in Contracting States, irrespective of the parties' domicile.'

6. The Court held further that, without prejudice to the case where the court second

2 — Convention on the accession of the Kingdom of Spain and the Portuguese Republic 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 the adjustments made to them by the Convention on the accession of the Kingdom of Denmark, of Ireland and of the United Kingdom of Great Britain and Northern Ireland and the adjustments made to them by the Convention on the accession of the Hellenic Republic, OJ 1989 L 285, p. 1.

3 — Case C-351/89 *Overseas Union Insurance and Others* v *New Hampshire Insurance Company* [1991] ECR I-3317, paragraph 16 of the judgment.

4 — Case 144/86 *Gubisch Maschinenfabrik* v *Palumbo* [1987] ECR 4861.

seised had exclusive jurisdiction under the Convention, Article 21 of the Convention prevented the court second seised from examining the jurisdiction of the court first seised where the jurisdiction of the latter was contested; the only option for the court second seised, in the event of its not declining jurisdiction, was to stay proceedings.

7. Article 29 of the San Sebastian Convention provides:

'1. The 1968 Convention and the 1971 Protocol, as amended by the 1978 Convention, the 1982 Convention and 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, 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 be recognized and enforced in accordance with the provisions of Title III of the 1968 Convention, as amended by the 1978 Convention, the 1982 Convention and this Convention, if jurisdiction was founded upon rules which accorded with the provisions of Title II of the 1968 Convention, as amended, or with the provisions of a convention which was in force between the State of origin and the State addressed when the proceedings were instituted.'

The facts and the national court's questions

8. Mrs von Horn is a German citizen domiciled in Portugal. Mr Cinnamond is a company director domiciled in England. Both sets of proceedings arise out of an agreement made on or about 19 December 1989 between Mrs von Horn and Mr Cinnamond whereby the latter agreed to pay Mrs von Horn an amount of £600 000, representing the balance of monies owed to Mrs von Horn in respect of the sale by her of shares in a Portuguese company to a Gibraltar company, and out of a further promise to pay that amount made on 23 April 1990. In the event Mr Cinnamond failed to pay Mrs von Horn the amount in question.

9. On 27 August 1991 Mr Cinnamond commenced proceedings against Mrs von Horn before a Portuguese court, seeking a declaration that he was not liable to pay Mrs von Horn the £600 000 or the equivalent sum in Escudos. On 9 March 1992 Mrs von Horn served a defence and a counterclaim seeking a declaration that Mr Cinnamond was liable

to pay her the amount in question and an order for payment.

10. Mrs von Horn subsequently commenced proceedings in England, issuing a writ on 9 November 1992 which was served on the defendant on 18 November 1992. Mr Cinnamond then issued a summons seeking a declaration that the English court had no jurisdiction; as the court second seised, it should stay proceedings and in due course decline jurisdiction pursuant to Article 21 of the Convention.

11. It is common ground that both sets of proceedings are between the same parties and concern the same cause of action within the meaning of Article 21. The problem in the case arises from the fact that Portugal's accession to the Convention, pursuant to the San Sebastian Convention, did not take effect until 1 July 1992, that is to say after the commencement of the Portuguese proceedings (but before the commencement of the English proceedings).

12. On 5 March 1993 the proceedings in the English High Court were stayed by order of a Master, but Mrs von Horn's appeal against that order was allowed by a Judge. Mr Cinnamond unsuccessfully appealed to the Court of Appeal and was subsequently granted leave to appeal to the House of Lords, which decided to seek a ruling from the Court on the following questions:

'In a case where:

(a) there are pending proceedings in two different Contracting States involving the same cause of action and between the same parties;

(b) the first such proceedings in time were initiated in Contracting State A before the Brussels Convention and/or any applicable Accession Convention came into force in that State;

(c) the second such proceedings are initiated in Contracting State B in accordance with Article 2 of the Brussels Convention after the Brussels Convention and/or any applicable Accession Convention has come into force in both State A and State B;

and having regard to Article 29(1) of the San Sebastian Convention and the corresponding articles in any other applicable Accession

Convention and Article 21 of the Brussels Convention (as amended):

(1) Does the Brussels Convention (as amended) and/or any applicable Accession Convention lay down any, and if so what, rules as to whether the proceedings in State B may or must be stayed, or jurisdiction declined, on the ground of pending proceedings in State A

and in particular

(2) Is the Court second seised required or permitted, for the purpose of deciding whether or not to decline jurisdiction in respect of, or to stay, the proceedings before it, to conduct any and, if so, what examination of the basis upon which the Court first seised assumed jurisdiction?'

The arguments put forward before the Court

13. Mr Cinnamond's primary contention is that, notwithstanding Article 29(1) of the San Sebastian Convention, Article 21 of the Brussels Convention applies in the present case and that the English court is therefore required to decline jurisdiction. According to Mr Cinnamond, Article 29(1) of the San Sebastian Convention does not preclude that view because the Portuguese proceedings may still be considered to have been 'brought' for the purposes of Article 21 even though they are not proceedings to which the Convention 'shall apply' for the purposes of Article 29(1). Mr Cinnamond considers his view to be consistent with the scheme and purpose of the relevant provisions. Since by virtue of Article 29(2) any judgment in the Portuguese proceedings will be recognized and enforceable in the other Contracting States in accordance with Title III of the Convention, Article 21 must apply in order to avoid the risk of irreconcilable judgments in the Convention area.

14. In his written observations Mr Cinnamond also puts forward two subsidiary submissions. The first of those is that the *lis pendens* rule in Article 21 is a particular expression of a more general principle of law which must or, at the very least, may be applied by a court of a Contracting State in the event of parallel proceedings in another Contracting State. The rule in Article 21 must or may therefore be applied by analogy. It is open to the court second seised to investigate whether the proceedings in the court first seised were founded on a basis of jurisdiction which accords with the rules in Title II of the Convention.

15. Mr Cinnamond's second subsidiary submission is that, in the event of the *lis pendens* rule in the Convention not applying directly or by analogy, neither the Convention nor any Accession Convention precludes the court of a Contracting State from staying proceedings or declining jurisdiction in circumstances such as those of this case in accordance with its national procedural rules on the ground of *forum non conveniens* or *lis alibi pendens*.

16. Mrs von Horn, the United Kingdom and the Commission all take the view that Article 21 does not apply in the present case because the Portuguese proceedings are not proceedings brought in the courts of a Contracting State within the meaning of that provision. Article 21 allocates jurisdiction between two courts both of which are bound by the rules of the Convention. Where the court first seised assumed jurisdiction under rules applicable before the Convention took effect, it may have assumed jurisdiction considered by the Convention to be exorbitant; in such circumstances there would be no justification for requiring the court second seised, which, but for Article 21, would be entitled to assume jurisdiction in accordance with the rules of the Convention, to decline jurisdiction. The United Kingdom adds that a judgment of the court first seised might well be unenforceable before the courts of the Contracting States since Article 29(2) of the San Sebastian Convention would not require enforcement in such a case; the application of Article 21 in such circumstances could therefore lead to a denial of justice. In order to meet that point Mr Cinnamond conceded at the hearing that Article 21 did not apply to proceedings which were not capable of producing a judgment enforceable in the other Contracting States because the court first seised did not assume jurisdiction on a basis which conformed to the rules of the Convention or with a convention in force at the material time between the State of origin and the State addressed as required by Article 29(2) of the San Sebastian Convention.

17. The Commission notes that, although the transitional provision in Article 29(2) of the Accession Convention allows the court of the State addressed to inquire into the basis on which the court of the State of origin assumed jurisdiction, no such provision is made in relation to *lis pendens*. The explanation, it suggests, is that it may not always be possible for the court second seised to verify whether the court first seised assumed jurisdiction on grounds compatible with the Convention; the operation of Article 29(2) is less problematic in that respect since the court before which enforcement is sought has available a judgment on the basis of which it can verify the grounds on which jurisdiction was assumed.

18. Although considering Article 21 of the Convention to be inapplicable, the United Kingdom suggested in its written observations that the obligation which Article 29(2) of the San Sebastian Convention imposed on

Contracting States in certain circumstances to recognize and enforce a judgment given after the date of entry into force of the Convention in proceedings instituted before that date was relevant to the question whether, in the circumstances postulated by the referring court, the court second seised should exercise jurisdiction to decide the dispute.

19. Referring to that suggestion, the Court put a written question to Mrs von Horn, Mr Cinnamond, the United Kingdom and the Commission, asking whether, if Article 21 of the Convention did not apply, it might be inferred from Article 29(2) of the San Sebastian Convention that, so as to avoid frustrating the application of that provision by delivering a judgment which might be irreconcilable with that of the court first seised, the court second seised was obliged in circumstances such as the present to consider whether the court first seised had assumed jurisdiction on the basis of rules which accorded with the Brussels Convention and, where that appeared to be the case, to refrain from proceeding to judgment pending the judgment of the court first seised.

20. In its written reply to that question and also at the hearing, the United Kingdom stated that, having considered the matter further, it took the view that an implied obligation arose from Article 29(2) not to perform an act which would be likely to frustrate the operation of Article 29(2) and thereby prevent, in part, the achievement of the purposes of the San Sebastian Convention. That would be the case if, in the circumstances postulated by the referring court, the court second seised were to exercise jurisdiction. The judgment delivered by that court might be irreconcilable with the judgment of the court first seised, thus preventing recognition of the latter judgment in the State of the court second seised.

21. The Commission — although acknowledging at the hearing that the solution suggested by the United Kingdom in response to the Court's question would to a large extent resolve the conceptual and practical problems in the case — considers that the most appropriate solution is to treat Portugal as a non-contracting State for the purposes of the present case. In its view the only possible construction of the Convention which will avoid undesirable results without undermining its effectiveness is to apply by 'effet réflexe' the derogations embodied in the Convention to non-contracting States. An example of the alleged 'effet réflexe' would be that the exclusive jurisdiction conferred on the courts of Contracting States in specified circumstances by Article 16 of the Convention could have an 'effet réflexe' as regards the courts of third countries: thus the courts of a Contracting State should decline jurisdiction over a defendant domiciled in that State where the proceedings relate to, for example, immovable property in a non-contracting State. Article 16 recognizes that, where the conditions laid down therein are fulfilled, the jurisdiction assigned by

Article 2 is displaced. In the Commission's view the Convention allows such derogations in favour of a non-contracting State where the conditions are fulfilled in that State, thereby filling the void left by the fact that the Convention refers only to Contracting States. The consequence of the 'effet réflexe' in such a case, however, is to entitle rather than to oblige the courts of the Contracting State to decline jurisdiction if the conditions are met in the non-contracting State. The Commission considers that the question of *lis pendens* in a non-contracting State should be dealt with in the same manner. Where jurisdiction is based on an ordinary ground in a Contracting State, the courts of that State may decline jurisdiction, as if the *lis pendens* existed in a Contracting State, where the conditions provided for in Articles 21 to 23 are fulfilled in a non-contracting State.

22. At the hearing the United Kingdom considered that such a view, based on the 'effet réflexe' of the Convention, was open to objection on a number of grounds: first, the Convention was intended to regulate jurisdiction between Contracting States and not relations with non-contracting States; secondly, it would involve a radical re-drafting of the Convention and a massive extension of its provisions; thirdly, it would lead to legal uncertainty, thereby defeating one of the principal objectives of the Convention.

Appraisal of the issues

The effect of Article 21 of the Convention

23. I do not share Mr Cinnamond's view that Article 21 of the Convention is applicable in the present case. Article 21 states that, 'where proceedings ... are brought in the courts of different Contracting States, any court other than the court first seised shall ... stay its proceedings'. It is true that that wording does not wholly preclude Mr Cinnamond's construction. As Mr Cinnamond suggests, it would be possible to interpret Article 21 as requiring only that, at the moment at which the applicability of Article 21 arises (i. e. at the moment when the second set of proceedings is instituted), proceedings involving the same cause of action and between the same parties should be pending in another Contracting State, even if the Convention as a whole does not apply to those proceedings.

24. It seems to me however that a more natural construction of Article 21 is that the proceedings before the court first seised must be ones to which the Convention applies. Since by virtue of Article 29(1) of the San Sebastian Convention the Brussels Convention does not apply to the Portuguese proceedings in the present case, Article 21 is inapplicable. The terms of Article 21 ('Where proceedings ... are brought in the courts of different Contracting States') sug-

gest that the proceedings must have been instituted before the court first seised after the entry into force of the Convention. That is consistent with the other language versions of the Convention. Only the Dutch and German versions use terms in Article 21 ('aanhangig zijn', 'anhängig gemacht') which might be considered to have a slightly different connotation. Contrary to Mr Cinnamond's suggestion, it does not assist to contrast the language of Article 21 of the Convention with that of Article 54, which contains a transitional provision similar to that in Article 29 of the San Sebastian Convention. Most language versions appear to use terms which are virtually synonymous in the two provisions.

25. That Article 21 is inapplicable in the present case also follows from the scheme of that provision.

26. In *Overseas Union Insurance* [5] the Court held that, without prejudice to the case where the court second seised had exclusive jurisdiction under the Convention, Article 21 of the Convention prevented the court second seised from examining the jurisdiction of the court first seised where the latter court's jurisdiction was contested. The Court based that conclusion first on the wording of Article 21, which laid down a sole exception to the obligation to decline jurisdiction, to the effect that the court second seised should stay proceedings until the jurisdiction of the court first seised was established. It then added that the court second seised was never better placed than:

'the court first seised to determine whether the latter has jurisdiction. Either the jurisdiction of the court first seised is determined directly by the rules of the Convention, which are common to both courts and may be interpreted and applied with the same authority by each of them, or it is derived, by virtue of Article 4 of the Convention, from the law of the State of the court first seised, in which case that court is undeniably better placed to rule on the question of its own jurisdiction.

Moreover, the cases in which a court in a Contracting State may review the jurisdiction of a court in another Contracting State are set out exhaustively in Article 28 and the second paragraph of Article 34 of the Convention. Those cases are limited to the stage of recognition or enforcement and relate only to certain rules of special or exclusive jurisdiction having a mandatory or public-policy nature. It follows that, apart from those limited exceptions, the Convention does not authorize the jurisdiction of a court to be reviewed by a court in another Contracting State.' [6]

5 — Cited at note 3.

6 — Paragraphs 23 and 24 of the judgment.

27. Thus the premiss underlying Article 21 is that the court first seised has assumed jurisdiction under the rules of the Convention (or under national legislation in circumstances where that is expressly provided for by the Convention); if necessary its jurisdiction may be challenged in accordance with the procedures laid down by the law of the State of the court first seised. On that premiss it is unnecessary for the court second seised to examine the basis on which jurisdiction was assumed by the court first seised. Accordingly, by contrast with Article 28 and the second paragraph of Article 34, Article 21 makes no provision for such an examination.

28. As Mrs von Horn, the United Kingdom and the Commission point out, the premiss underlying Article 21 does not apply where the Convention was not in force at the moment when the first proceedings were instituted. In such circumstances the court first seised would not be bound by the jurisdictional rules of the Convention and might assume jurisdiction on a basis which the Convention considers exorbitant. Moreover, as the United Kingdom points out, a judgment of the court first seised might be unenforceable before the courts of the Contracting States.

29. As already noted above, Mr Cinnamond, in response to that argument, conceded at the hearing that Article 21 applies only where the judgment of the court first seised would be capable of recognition and enforcement in the Contracting States. That concession does not however overcome the difficulty that Article 21, as interpreted by the Court in *Overseas Union Insurance*, does not allow the court second seised to examine the basis on which the court first seised assumed jurisdiction. Mr Cinnamond sought to meet that objection by arguing that, while the policy considerations underlying that rule were perfectly understandable in the context of the normal application of Article 21, the situation here was different inasmuch as the court first seised had not assumed jurisdiction on the basis of the Convention. By examining the basis on which the court first seised assumed jurisdiction the court second seised would not be questioning the jurisdiction of the court first seised in order to verify its correctness but would be merely ascertaining the basis on which jurisdiction was assumed in order to determine whether its judgment was capable of recognition and enforcement in the Contracting States.

30. That argument may deal with part of the Court's reasoning in *Overseas Union Insurance*, namely that both courts interpret and apply the Convention with equal authority and the court first seised is better placed to interpret its national law in cases where Article 4 applies. Even on that point, however, it might be replied that the Court was merely setting out the reasons for the omission from Article 21 of any provision for examination of jurisdiction; that those reasons do not apply merely serves to show that Article 21 was not intended to cover a case such as the present. In any event, the remain-

der of the Court's reasoning, based on the wording of Article 21 and the express provision for an examination of jurisdiction in Article 28 and the second paragraph of Article 34, applies with equal force. Mr Cinnamond's modified construction of Article 21 is difficult to reconcile with the wording of the provision.

31. I therefore consider that Article 21 does not apply.

The effect of Article 29(2) of the San Sebastian Convention

32. Contrary to the Commission's view, however, I do not think that it is possible to disregard for the purposes of this case the fact that Portugal acceded to the Convention before the English proceedings were instituted; indeed it is that accession which has given rise to the essential problem in this case. Article 29(2) of the San Sebastian Convention requires the recognition and enforcement in the United Kingdom, in accordance with the provisions of Title III of the Convention, of judgments of Portuguese courts given after the date of entry into force of the Convention between Portugal and the United Kingdom in proceedings instituted before that date where the jurisdiction of the Portuguese court was founded upon rules which accorded with the provisions of Title II of the Convention, a requirement that is met in the present proceedings. Thus, although by virtue of Article 29(1) the Convention does not apply to the Portuguese proceedings in this case, it will apply to the judgment given in those proceedings.

33. It is true, as the Commission points out, that Article 29(2) is not itself a rule on *lis alibi pendens*. However, it seems to me that it inevitably has some bearing on the steps to be taken by the court second seised in circumstances such as the present. Article 27(3) of the Convention, contained in Title III to which Article 29(2) refers, provides that a judgment is not to be recognized where it is irreconcilable with a judgment given in a dispute between the same parties in the State in which recognition is sought. As the United Kingdom points out, if in circumstances such as the present the court second seised were to exercise jurisdiction without regard to the proceedings already pending before the court first seised, its judgment might prove to be irreconcilable with the judgment given subsequently by the court first seised, thereby preventing recognition of the latter judgment pursuant to Article 29(2). Such a result would be inappropriate where the court second seised was aware that there were proceedings pending before the court first seised which might give rise to a judgment that would otherwise require recognition and

enforcement in the United Kingdom and in other Contracting States. I share the United Kingdom's view that in such circumstances Article 29(2) of the San Sebastian Convention imposes by implication on the court second seised an obligation not to perform an act which may frustrate the operation of the transitional provision in Article 29(2).

34. To give effect to that obligation it would seem appropriate (as suggested by the United Kingdom in its reply to the Court's written question) for the court second seised to proceed as follows:

(1) The court second seised should seek to ascertain the basis on which the court first seised assumed jurisdiction and, where it finds that the basis of jurisdiction accords with the rules of the Convention (or another convention between the States concerned applicable at the material time), it should decline jurisdiction.

(2) If the court second seised is as yet unable to ascertain the basis on which the court first seised assumed jurisdiction, it should stay proceedings pending the judgment of the court first seised, whereupon the disposal of the case will depend on the basis on which the court first seised exercised jurisdiction.

35. That solution overcomes the difficulty noted by the Commission that the court second seised may not be able to ascertain the basis on which the court first seised assumed jurisdiction in the absence of a judgment by the latter. Moreover, as the United Kingdom observed at the hearing, it has the merit of achieving a result which is consistent with the objectives of the Convention, while avoiding the undesirable consequences which would flow from the direct application of Article 21 to cases where the Convention was not in force at the moment when the first proceedings were instituted. It also accords with legal principle. It does not entail a strained interpretation of the wording of the Convention or of the San Sebastian Convention. In addition it is consistent with the rules of public international law. Article 26 of the Vienna Convention of 22 May 1969 on the Law of Treaties embodies the universally recognized principle that treaties must be performed by the parties in good faith; and Article 18 of that Convention, which imposes an obligation of good faith on the signatories to a treaty even prior to its entry into force, prohibits States from performing 'acts which would defeat the object and purpose of a treaty'. [7]

7 — For a discussion of Articles 18 and 26 of the Vienna Convention see Sinclair, *The Vienna Convention on the Law of Treaties*, Second Edition, Manchester University Press, 1983, in particular at pp. 83, 84, 86 and 99.

36. The above solution is also in conformity with that adopted by the general rules on *lis alibi pendens* of a number of Member States, [8] according to which the court second seised must consider whether foreign pending proceedings are likely to give rise to a judgment capable of recognition in the State of that court.

37. Consequently, I do not think it necessary in this case to consider the question, raised by the Commission, of the possible effects of the Convention in relations with non-contracting States. That question in any event raises issues of broader significance which have not been fully debated in these proceedings.

Conclusion

38. Accordingly, I am of the opinion that the Court should give the following reply to the questions put by the House of Lords:

(1) In a case where there are proceedings pending in two States party to the Brussels Convention involving the same cause of action and between the same parties and the Brussels Convention entered into force in the first State by virtue of the San Sebastian Convention after proceedings were instituted in the first State but before proceedings were instituted in the second State, Article 29(2) of the San Sebastian Convention imposes by implication on the court second seised an obligation not to exercise jurisdiction in such a way as to frustrate the operation of that provision.

(2) In such circumstances:

(a) The court second seised should seek to ascertain the basis on which the court first seised assumed jurisdiction and, where it finds that the basis of

8 — See, for example, Article 7(1) of Italian Law No 218 of 31 May 1995 (*Gazzetta Ufficiale della Repubblica Italiana* of 3 June 1995), which provides:
'Quando, nel corso del giudizio, sia eccepita la previa pendenza tra le stesse parti di domanda avente il medesimo oggetto e il medesimo titolo dinanzi a un giudice straniero, il giudice italiano, se ritiene che il provvedimento straniero possa produrre effetto per l'ordinamento italiano, sospende il giudizio. ...'
See also, on German law, Haimo Schack, *Internationales Zivilverfahrensrecht*, 2nd edition, Verlag C. H. Beck, Munich 1996, at p. 293 et seq.; and on French law, Batiffol and Lagarde, *Droit international privé*, 7th edition, Vol. II, Librairie générale de droit et de jurisprudence, Paris 1983, pp. 467 and 468.

jurisdiction accords with the rules of the Convention (or another convention between the States concerned applicable at the material time), it should decline jurisdiction.

(b) If the court second seised is as yet unable to ascertain the basis on which the court first seised assumed jurisdiction, it should stay proceedings pending the judgment of the court first seised, whereupon the disposal of the case will depend on the basis on which the court first seised exercised jurisdiction.