

Législation / Preuves / Notification  
Legalisation / Evidence / Service

Doc. pré. No 4  
Prel. Doc. No 4

Août / August 2003



**QUESTIONNAIRE RELATIF À  
LA CONVENTION DE LA HAYE DU 18 MARS 1970 SUR L'OBTENTION DES  
PREUVES À L'ÉTRANGER EN MATIÈRE CIVILE OU COMMERCIALE**

établi par le Bureau Permanent

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**QUESTIONNAIRE RELATING TO  
THE HAGUE CONVENTION OF 18 MARCH 1970 ON THE TAKING OF  
EVIDENCE ABROAD IN CIVIL OR COMMERCIAL MATTERS**

drawn up by the Permanent Bureau

*Document préliminaire No 4 d'août 2003  
à l'intention de la Commission spéciale d'octobre / novembre 2003*

*Preliminary Document No 4 of August 2003  
for the attention of the Special Commission of October / November 2003*

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## Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters

### QUESTIONNAIRE

*The Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters* has received 39 accessions or ratifications from Member States (35) and non-Member States (4) of the Hague Conference. The text of the Convention and a full statement of ratifications and accessions are available from the Hague Conference website at [www.hcch.net](http://www.hcch.net).

The Convention's practical operation was reviewed at the meeting of a Special Commission in June 1978 (see *Actes et documents de la Quatorzième session*, 1980, Tome IV, p. 393 *et seq.*), by a Special Commission in May 1985 (see *Practical Handbook* on the operation of this Convention, p. 70(A) to 70(P), and *International Legal Materials*, Vol XXXIV, No 6, November 1985, p. 1668) and by a Special Commission in April 1989 (see Report published by the Permanent Bureau).

In order to prepare effectively for the forthcoming Special Commission meeting in October/November 2003 on the practical operation of the Convention, your replies to the following questions would be very useful to us. This is why, we request that you provide them to us **at the latest by 10 October 2003**, by electronic mail at the following addresses: [cb@hcch.nl](mailto:cb@hcch.nl) and [lt@hcch.nl](mailto:lt@hcch.nl).

1. Do you have at your disposal recent precedents delivered pursuant to the 1970 Convention and which would be relevant for the Special Commission? If so, can you provide them to us? Insofar as the text of the ruling is drafted in a language other than English or French, a summary in the English or French language of the facts and grounds for the ruling would be very helpful.
2. Do you have at your disposal statistics relating to the number of requests to obtain evidence addressed to your State from different States Party to the Convention?
3. Have you encountered practical difficulties connected with application of the Convention?
4. In light of the terminology used in the Practical Handbook for the Service Convention (see provisional version of the new Practical Handbook, Prel. Doc. No 1, (I. -5. -B)), do you have at your disposal precedents determining whether the Convention is considered as "mandatory" by your State? Do you have at your disposal case-law determining whether the Convention is considered as "exclusive" by your State?

5. If your State has stated a reservation under Article 23 of the Convention, has that reservation been asserted to deny performance of requests to obtain evidence from abroad?
6. At the Special Commission of 1989, it was recommended that priority be granted to the procedures provided for under the Convention for their requests to obtain evidence located abroad, and that States having made or proposing to make the reservation under Article 23 should limit its scope. Do you consider this recommendation to have been helpful? Has it been applied in practice?
7. The Permanent Bureau has been faced on several occasions with the issue whether the Convention applies to arbitration proceedings. This issue was discussed at the Special Commission in May 1985, but the Commission had considered at the time that there was no need to adopt a Protocol in this respect. For its part, the 1989 Special Commission stated that the law of certain countries provided for legal assistance to obtain evidence in arbitration matters, in which case the Convention might be used in order to seek evidence abroad.

The position advised by the Permanent Bureau is that the benefit of the Convention may extend to arbitration proceedings insofar as the arbitration panel sends its request to obtain evidence abroad to a judicial authority of its State, which will then assume forwarding to the State addressed of the request to obtain evidence: as the arbitration panel cannot be treated as a judicial authority for the purposes of the Convention, it cannot itself forward the request to obtain evidence directly to the State addressed.

Have you had occasion to deal with such requests to obtain evidence in the course of arbitration proceedings?

Do you share the view of the Permanent Bureau?

8. What is the average time elapsing between receipt of the request to obtain evidence and its performance?
9. Do you allow the representatives of a requesting Court to take part in the execution pursuant to Article 8 of the Convention?
10. Do your Central Authorities accept to receive requests by electronic means to obtain evidence from abroad?
11. Have your authorities received or forwarded requests to obtain evidence requiring the use of new information technology? If so, were these requests fulfilled?
12. Would you consider it useful to have a recommendation adopted for the promotion of the use of modern communication technologies? Do you consider that development of a new instrument ought to be considered in order to deal more specifically with these issues?