

Obligations alimentaires
Maintenance obligations

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**COMPILATION DES REPONSES AU QUESTIONNAIRE DE 2002 CONCERNANT
UN NOUVEL INSTRUMENT MONDIAL SUR LE RECOUVREMENT INTERNATIONAL
DES ALIMENTS ENVERS LES ENFANTS ET D'AUTRES MEMBRES DE LA FAMILLE**

établi par le Bureau Permanent

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**COMPILATION OF RESPONSES TO THE 2002 QUESTIONNAIRE CONCERNING
A NEW GLOBAL INSTRUMENT ON THE INTERNATIONAL RECOVERY
OF CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE**

drawn up by the Permanent Bureau

*Document préliminaire No 2 d'avril 2003
à l'intention de la Commission spéciale de mai 2003
sur le recouvrement international des aliments
envers les enfants et autres membres de la famille*

*Preliminary Document No 2 of April 2003
for the attention of the Special Commission of May 2003
on the International Recovery of Child Support and
Other Forms of Family Maintenance*

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PARTIE I PRATIQUE EN VERTU DES INSTRUMENTS INTERNATIONAUX EXISTANT

Le questionnaire sur les obligations alimentaires, transmis préalablement à la Commission spéciale d'avril 1999, a déjà fourni beaucoup d'informations sur la pratique en vertu des instruments internationaux existants. Les parties I à IV de ce questionnaire sont jointes en annexe I à ce document.

Les Etats et les organisations qui ont répondu au questionnaire en 1999 sont invités à fournir les réponses supplémentaires aux parties I à IV de ce questionnaire concernant toute évolution pertinente survenue depuis avril 1999.¹

Les Etats et les organisations qui ont été dans l'impossibilité de répondre en 1999 sont invités à transmettre des réponses complètes.

PART I PRACTICE UNDER EXISTING INTERNATIONAL INSTRUMENTS

The questionnaire on maintenance obligations, which was sent out in advance of the Special Commission of April 1999 has already provided much information on practice under the existing international instruments. Parts I to IV of that questionnaire are attached to this document as Annex I.

States and organisations which responded to the questionnaire in 1999 are requested only to supply supplementary responses to Parts I to IV of that questionnaire, covering any relevant developments since April 1999.²

States and organisations which were not able to respond in 1999 are asked to provide full responses.

Voir annexe 1 / See Annex 1

¹ Voir extraits des réponses au Questionnaire sur les obligations alimentaires, Doc. prélim. N 3 à l'intention de la Commission spéciale d'avril 1999 (<http://www.hcch.net/f/workprog/maint.html>).

² See extracts from responses to the Questionnaire on Maintenance Obligations, Prel. Doc. No 3 for the attention of the Special Commission of April 1999 (<http://www.hcch.net/e/workprog/maint.html>).

PARTIE II QUESTIONS CONCERNANT LES SYSTEMES NATIONAUX RELATIFS AUX ALIMENTS ENVERS LES ENFANTS ET D'AUTRES MEMBRES DE LA FAMILLE

PART II QUESTIONS CONCERNING NATIONAL SYSTEMS OF MAINTENANCE OBLIGATIONS IN RESPECT OF CHILDREN AND OTHER FAMILY MEMBERS

UNITED STATES OF AMERICA

PRELIMINARY NOTE: In addition to the information provided herein, the United States believes that three additional U.S. documents will be useful to persons wishing to understand the U.S. approach to international child support agreements. Those are 1) the provision of U.S. law that authorizes the negotiation and conclusion of bilateral child support agreements; 2) the Model Agreement that the U.S. has used in bilateral negotiations; and 3) a paper titled, "Toward an Accommodation of Divergent Jurisdictional Standards for the Determination of maintenance Obligations in Private International Law," which explains the U.S. fact-based, non-jurisdictional approach to the enforcement of child support obligations, and which was submitted at the 1999 Hague Conference Special Commission on Maintenance Obligations. Copies of these documents are attached hereto, and they should be considered integral parts of the U.S. response.

Preliminary Comments on Family Support Law under the U.S. Federal System

Before responding to the specific questions posed by the questionnaire, the United States believes that it will be useful to provide some background on the relationship between the federal and state governments how this affects the establishment and enforcement of family maintenance obligations in the United States.

Under the U.S. Constitution, powers not specifically delegated to the federal government are reserved to the individual states. Family law, including child support (i.e., maintenance), is one of those subjects that has traditionally been considered as being within the nearly exclusive jurisdiction of individual state legislatures and courts. However, over the past three decades, child support law has become much more standardized in the United States, as the federal role in child support enforcement has expanded significantly.

The U.S. Congress established the national Child Support Enforcement Program in 1975 under Title IV-D of the Social Security Act (title IV-D), 42 U.S.C. §§ 651-669a. The Child Support Enforcement Program is a joint federal, state and local partnership designed to ensure that parents provide support to their children. Pursuant to title IV-D and related federal regulations, 45 C.F.R. §§ 301.00-310.190, each state operates a child support program, either in the human services department, department of revenue, or district attorneys office, often with the help of prosecuting attorneys, other law enforcement agencies, and officials of family or domestic relations courts. The program involves 54 separate state and territory systems, each with its own unique laws and procedures. Under the auspices of the Federal Office of Child Support Enforcement (OCSE) within the U.S. Department of Health and Human Services, state child support programs provide four major services: locating non-custodial parents, establishing paternity, establishing child support obligations, and collecting child support for families.

Federal law requires states, as a condition for receiving certain federal funds, to adopt a variety of specified laws or procedures to accomplish the objectives of the Child Support Enforcement Program. One of the required laws, the Uniform Interstate Family Support Act (UIFSA) of 1996, was developed by the National Conference of Commissioners on Uniform State Laws (NCCUSL) to provide for a uniform reciprocal process for the establishment and enforcement of child support obligations across state lines. (NCCUSL is composed of representatives of each state, and develops laws, which individual states can then choose to adopt, in areas where uniformity among the states would be beneficial). The nationwide adoption of UIFSA brings uniformity among states in the processing of interstate cases; it

provides for the recognition and enforcement of sister state orders; it establishes rules so that there is only one outstanding child support order between the parties; and it establishes rules among states for establishing and modifying support orders.

Thus, although it is true that child support is primarily a matter of state law in the United States, because of both federal and state actions much of that law is substantively the same from state to state. The areas where state laws are not uniform include, by way of example, guidelines (all states must have uniform guidelines that limit the decision maker's discretion in determining the amount of a child support order, but the substance of those guidelines differs from state to state); the duration of the child support obligation (i.e., when a child ceases to be a dependent); and the statute of limitations for enforcing payment of arrears.

Title IV-D and UIFSA have special provisions for international cases. In general, if a foreign country is determined under either federal or state law to be a "reciprocating" country, it is treated as if it were a state of the United States for purposes of child support enforcement, and all of the procedures and enforcement mechanisms available under title IV-D and UIFSA for interstate cases are available for cases from that foreign country.

The United States is not currently a party to any multilateral convention on maintenance (see answers to 1999 questionnaire, *supra*, for explanation). Therefore, the provisions of title IV-D and UIFSA are the only mechanisms for the enforcement of foreign child support obligations through a public agency.

ISRAEL

Introduction

In order to get a clearer understanding of the way in which maintenance obligations works in Israel, it is first necessary to understand a few salient aspects of family law in Israel.

Firstly, a distinction needs to be made between civil and religious law. There are certain family law matters, where the religious law is applied as opposed to the civil law. In these cases, the law of the respective religion a person practices, is the law that will be applied. In other words, if a person is Jewish, then Jewish law will be applied; if a person is a Muslim, then Islamic law will be applied, and so on. This is what hereinafter will be referred to as the 'personal law'. If a person does not have a personal law, then civil law makes provisions for those circumstances such as in the Family Law Amendment (Maintenance) Act 1959 (hereinafter - the Maintenance Act).

Another principle which needs to be understood is that of the court's jurisdiction. The civil and religious courts have parallel jurisdiction in most family law matters, and the court in which the matter is heard, is dependant firstly on the parties' choice and secondly the court before which the matter was first brought. If a matter calls for the personal law to be applied, it will be applied even if the matter is heard in a civil court. It should be noted, however, that only a religious court can grant the actual decree of divorce, but any matters incidental to the divorce, such as custody and maintenance, can be heard by either a civil or religious court.

Nature de la décision relative à des aliments

Form of maintenance decision

1. Quelle forme une décision relative à des aliments envers (a) les enfants (b) l'époux ou d'autres membres de la famille peut-elle prendre ? L'une ou l'autre se limite-t-elle notamment à un paiement périodique ? Existe-t-il des circonstances dans lesquelles un versement unique, un transfert de propriété ou une ordonnance similaire peuvent tendre à assurer les obligations alimentaires?
1. What form may a maintenance decision take in respect of (a) a child and (b) a spouse or other family member? In particular, are they confined to periodic payments of money? Are there any circumstances in which a lump sum, property transfer or similar order may be made to satisfy a maintenance obligation?

AUSTRALIA

A maintenance order is a decision in respect of a maintenance obligation. A maintenance obligation means a liability that is a liability of:

- (i) a parent of a child to pay a periodic amount for the maintenance of the child;
- (ii) a step-parent of a child to pay a periodic amount for the maintenance of the child; or
- (iii) a party to a marriage to pay a periodic amount for the maintenance of the other party to the marriage;

whether or not the liability arises under a decision of a court order, or court registered agreement or administrative assessment.

Essentially only periodic amounts are enforceable in Australia. However, there may be circumstances where a lump sum etc may be taken into account to reduce the original periodic payment.

Lump sum and other non-periodic maintenance liabilities (eg school fees, medical costs) can be enforced privately by the payee or by AG's on behalf of the payee.

AUSTRIA

Concerning children there are always periodic payments ordered (fixed amounts and no percentages of the debtor's income). Concerning spouses or ex-spouses more flexibility is possible (eg lump sums, property transfer).

BULGARIE

Les obligations alimentaires selon leur caractéristique générale sont des obligations légales de certains membres de la famille d'assurer des moyens pour l'existence des membres de la famille qui ont besoin de cela. Ces obligations se manifestent comme droit de support des personnes autorisées. Le code de la famille régit dans un chapitre tous les rapports alimentaires, c'est à dire les obligations de fournir des aliments que la loi attache de plein droit à certains rapports de famille. Fondées sur des rapports de famille, les obligations alimentaires naissent aussi bien du mariage que de la filiation hors mariage et d'une façon plus générale de la parenté. En établissant les obligations alimentaires en tant qu'obligations légales, le législateur s'inspire du principe de la solidarité et de l'entraide familiale. Aussi les obligations alimentaires revêtent-elles un caractère réciproque /art.81 et 82/. Chacun des sujets des rapports est créancier ou débiteur virtuel de l'autre selon l'état de ses besoins et de ses ressources.

CANADA

Une décision relative à des aliments soit pour enfants, époux ou autres membres de la famille peut requérir que les paiements soient faits de manière périodique ou sous forme de somme forfaitaire ou les deux. La plupart des paiements sont périodiques, notamment pour ce qui est des pensions alimentaires pour les enfants. Le versement unique et le transfert de propriété sont possibles mais peu fréquents. Dans certaines juridictions, l'exécution en nature est également possible.

A support order for either a child or spouse or other family member may require support to be paid in periodic payments or as a lump sum, or both. Most payments are periodic, especially for child support. Lump sum payments and property transfers are available but not common. In certain jurisdictions, support in kind may also be available.

CHILE

The forms it may take are:

- 1) An agreement between the parties, called "Transacción" which is submitted to the Court for ratification and approval;
- 2) "Avenimiento", which is an agreement reached by the parties during the maintenance proceedings and
- 3) the rendering of a Court decision, "Resolución Judicial".

Yes, decisions are confined to monthly payments of money.

It is not possible to make a Court order for payment of a lump sum.

However, the Judge may decree or approve that certain benefits provided by the maintenance provider on account of education health, food, clothing, recreation and other maintenance recipient's needs be imputed, wholly or partly, to payment of maintenance allowances.

The Judge may also determine or approve that the maintenance allowance be imputed, wholly or partly, to rights of usufruct, use or habitation respect of property belonging to the maintenance provider, who shall not dispose of or encumber the same without the Judge's authorization. In the case of real property, the Court decision shall entitle the beneficiary to register the in rem rights and the prohibition to dispose of or encumber such property in the relevant registers of the Real Estate Registry. The maintenance recipient himself/herself may request said registrations. Constitution of said in rem rights shall not impair the rights of the maintenance provider's creditors whose credits have a cause preceding such registration.

Should the maintenance provider fail to pay the maintenance allowance so decreed or agreed, he/she shall incur the penalties established by the law.

CHINA - HONG KONG SPECIAL ADMINISTRATIVE REGION

A maintenance decision (a) during marriage and (b) on application for separation/divorce/nullification of marriage, etc. for a spouse and a child of the marriage is made under the Separation and Maintenance Orders Ordinance ("SMOO", Chapter 16 of the Laws of Hong Kong)³ and section 8 of the Matrimonial Proceedings and Property Ordinance ("MPPO", Chapter 192) respectively. Section 3 of SMOO provides 8 grounds under which a spouse may apply for maintenance. A spouse and a child of the family may obtain maintenance pending suit under sections 3 and 5 of MPPO. Maintenance pending suit is provided by way of periodical payments from the time of presentation of the petition to the

³ The Laws of Hong Kong are available online at www.justice.gov.hk/Home.htm.

date of decree absolute. There is no express provision governing the provision of maintenance for family members other than the spouse and child.

On granting of a decree of judicial separation, the court is empowered to make financial provision and property adjustment to a party to a marriage and a child of the family.

Maintenance is not confined to periodical payments of money. Under section 5(1) of SMOO, the orders that the court can make include –

- (a) a party to a marriage to pay to the other party such lump sum or periodical payments, or both, as the court considers reasonable having regard to the means of both parties. A lump sum order may be made for the purpose of enabling any liabilities or expenses reasonably incurred in maintaining such other party before the making of the order.
- (b) A party to a marriage to pay the other party such lump sum or periodical payments for the maintenance and education of a child of the marriage committed to such other party's custody that the court considers reasonable having regard to the means of both parties. However, a lump sum order can only be made for the purpose of providing for the immediate and non-recurring needs of a child, or of enabling any liabilities or expenses reasonably incurred in maintaining the child before the making of the order, or both.

In making any of the above orders, the court shall have regard primarily to the best interests of the children.

There are various forms of maintenance payment. The orders that the court may make under section 8 of MPPO include –

- (a) An order that the respondent shall make to the applicant such periodical payments and for such term as may be so specified in the order;
- (b) An order that the respondent shall secure to the applicant, to the satisfaction of the court, such periodical payments and for such term as may be so specified;
- (c) An order that the respondent shall pay to the applicant such lump sum as may be so specified;
- (d) An order that the respondent shall make to such person as may be specified in the order for the benefit of the child to whom the application relates, or to that child, such periodical payments and for such terms as may be so specified;
- (e) An order that the respondent shall secure to such person as may be so specified for the benefit of that child, or to that child, to the satisfaction of the court, such periodical payments and for such term as may be so specified;
- (f) An order that the respondent shall pay to such person as may be so specified for the benefit of that child, or to that child, such lump sum as may be specified.

Property transfer and other orders are available to satisfy a maintenance obligation. Sections 4, 6 and 6A of MPPO provide that where a court grants a decree of divorce, it may make an order for –

- (a) periodical payments;
- (b) secured periodical payments;
- (c) lump sum;
- (d) transfer of property;
- (e) settlement of property;
- (f) variation of settlement of property; and
- (g) sale of property.

CROATIA

Maintenance decisions in Croatia are made in the form of a court decision. Exceptions are cases involving child support in which an agreement may be reached in respect of support (amount or increased amount) between the parents of an underage child or between the parent and a full-age child. Such an agreement, according to the Family Act, is signed at a social welfare centre which in turn is responsible to make sure that the agreement is in the child's best interest.

Maintenance is ruled in monthly payments to be made in advance for every month from the day of submittal of the maintenance claim.

In case of non-compliance with court-ruled maintenance obligations, a distress procedure may be initiated to ensure collection of the outstanding amount or an agreement.

Under the Distress Act, maintenance money can be deducted on a compulsory basis from the salary or other income, chattels or real estate of the maintenance debtor.

CYPRUS

The Law does not specify. In practice, however, maintenance takes the form of periodical payments, though, in special circumstances, provided that all the parties concerned consent, a lump sum or a similar order may be made to satisfy a maintenance obligation.

CZECH REPUBLIC

Maintenance decisions concerning obligations toward child, spouse or parent are issued by Czech courts as judgments. In the judgment, the court specifies regular alimony payments and/or in what manner the due alimony debt is to be paid (by one-time amount paid or in several installments at due dates stipulated by the court). Parents may agree on the alimony for a minor child. The parents' written agreement is examined by the court in respect to its being in compliance with minor child's interest and needs and shall be approved by the same; the court approval is released as a judgment. The court judgment regarding the maintenance obligation satisfaction by means of a one-time amount settlement or property transfer is not governed by Czech Laws. Only spouses being parties of divorce proceedings may, pursuant to Family Act #94/1963 Coll. Sec. 94 para 2 in its current version, enter into a written agreement concerning a one-time maintenance settlement in an agreed amount once forever.

DENMARK

Maintenance decisions according to Danish law are confined to periodic payments of money. However, the maintenance debtor may satisfy a maintenance obligation by voluntarily paying a sum of money that covers his or her obligations.

ESTONIA

In all the cases when a person fails to perform his/her legal maintenance obligation in respect of a family member, support may be ordered from him/her by a court decision. This applies both in case of maintenance owed to (a) a child (b) a spouse and to other family member entitled to support.

The law stipulates the payment of maintenance support under periodic intervals, i.e. monthly payment of maintenance support (the modalities thereof, such as lump sum payments or transfer of objects of property are possibly applicable as measures of securing an action).

FINLAND

Maintenance to a child

The parents of a child may make a written agreement on the maintenance to be paid by a parent to the child. The agreement shall be submitted to the municipal social welfare board for approval. When the municipal social welfare board has approved the agreement, it can be enforced in the same way as a final judgment issued by a court.

If the parents cannot reach an agreement on the maintenance to be paid to the child, a maintenance proceeding may be instituted in a court. The proceeding may be instituted by the custodian or the guardian of the child. The proceeding may also under certain conditions be instituted by the municipal social welfare board. If the question of maintenance arises in connection with a trial on establishment of paternity, the municipal child welfare supervisor may bring forward a claim on maintenance to be paid to the child.

Maintenance shall be paid in money in advance for each month unless otherwise is agreed by the parents or ordered by the court. As provided in the agreement or in the judgment, the maintenance may be paid in different amounts for different periods. Maintenance may also be paid as a lump sum, if so is stipulated in the agreement or in the judgment.

The maintenance to a child may also be paid in property. Such provisions may be included in the agreement made by the parents or in the judgment issued by the court.

The provisions on maintenance to a child are in the Child Maintenance Act (704/1975).

Maintenance to a spouse

The spouses may make a written agreement on the maintenance to be paid by one spouse to the other. The agreement shall be submitted to the municipal social welfare board for approval. When the municipal social welfare board has approved the agreement, it can be enforced in the same way as a final judgment issued by a court.

If the spouses cannot reach an agreement on the maintenance to be paid by one of the spouses to the other spouse, the spouse asking for maintenance has the right to institute a proceeding in the court in order to obtain a judgment on the maintenance to be paid to him or her.

Maintenance may be paid in money at regular intervals until otherwise agreed upon by the spouses/former spouses or otherwise ruled in a judgment. There may also be a provision in the initial agreement or judgment that maintenance shall be paid in money until the end of a certain period determined in the agreement or in the judgment. Maintenance may also be paid as a lump sum, if so is stipulated in the agreement or in the judgment.

The maintenance to a spouse may also be paid in property. Such provisions can be included in the agreement made by the spouses or in the judgment issued by the court.

The provisions on maintenance to a spouse are in the Marriage Act (234/1929).

FRANCE

La fixation d'aliments envers des enfants, l'époux ou d'autres membres de la famille peut prendre la forme soit d'une convention amiable entre les parties concernées, soit d'une décision judiciaire.

En matière de contribution à l'entretien et l'éducation des enfants, la loi n° 2002-305 du 4 mars 2003 relative à l'autorité parentale prévoit expressément la possibilité pour les parents

de saisir le juge des affaires familiales afin de faire homologuer la convention par laquelle ils fixent la contribution à l'entretien et l'éducation de l'enfant.

Le versement d'aliments prend en principe la forme d'un paiement périodique.

Cependant, en matière de contribution à l'entretien et l'éducation d'un enfant, la loi prévoit que la pension alimentaire peut, en tout ou partie, prendre la forme d'une prise en charge directe de frais exposés au profit de l'enfant et qu'elle peut être servie sous forme d'un droit d'usage et d'habitation. En outre, lorsque la consistance des biens du débiteur s'y prête, la pension alimentaire peut être remplacée, en tout ou partie, par le versement d'une somme d'argent entre les mains d'un organisme accrédité chargé d'accorder en contrepartie à l'enfant une rente indexée, l'abandon de biens en usufruit ou l'affectation de biens productifs de revenus.

GERMANY

Maintenance between relatives is to be granted by effecting payment of an annuity to be paid monthly in advance. The obligor may request to be permitted to provide it in another manner if special reasons justify this (section 1612 subsections 1 and 3 of the Civil Code [Bürgerliches Gesetzbuch - BGB]). If parents are obliged to grant support to an unmarried child, they may determine how and for what period in advance support is to be granted (section 1612 subsection 2 first sentence of the Civil Code).

Maintenance rights between parents who are not married with one another are to be met in line with the provisions relating to maintenance obligations between relatives (section 1615I subsection 3 first sentence of the Civil Code).

Maintenance between spouses is to be granted in the manner suggested by the marital cohabitation (section 1360a subsection 2 first sentence of the Civil Code). With post-marital maintenance, ongoing maintenance is to be granted by paying an annuity monthly in advance. Instead of the annuity, the obligee may demand a lump sum in capital if an important reason applies and the obligor is not unfairly burdened thereby (section 1585 subsection 1 first and second sentences, and subsection 2 of the Civil Code).

ISRAEL

- (a) Child support is always periodic.
- (b) In terms of the law applicable to the majority of the population, a husband is only required to maintain his wife while they are still married and the duty to maintain the wife does not extend beyond divorce. Maintenance for both a spouse and other family members is also periodic.

JAPAN

If no agreement is reached or possible on the extent and mode of maintenance, the Family Court shall determine such matters, taking into account the needs of the creditor, the resource of the debtor and all other circumstances (Article 879 of the Civil Code). The court has discretion in determining the form of decision, which includes periodic payment, lump sum, etc.

LUXEMBOURG

Les décisions relatives à des aliments se limitent en principe à la condamnation à des paiements périodiques. Dans la mesure où le secours alimentaire est à allouer en fonction du

critère de l'insuffisance des moyens de subsistance personnels du créancier d'aliments, lequel critère est donc essentiellement variable, il n'est guère concevable qu'une décision de justice alloue, à titre d'aliments, une pension capitalisée. Une seule exception est prévue par la loi, s'agissant de l'obligation alimentaire entre conjoints: la succession de l'époux précédé doit des aliments au conjoint survivant s'il est dans le besoin. Ces aliments peuvent être prélevés en capital sur la succession.

A signaler une jurisprudence récente de la Cour d'appel, intervenue dans le cadre de la liquidation d'un régime matrimonial après divorce : le fait pour l'un des conjoints de continuer à rembourser de ses revenus de travail un prêt hypothécaire sur l'ancien domicile conjugal, dans lequel continue à résider après le prononcé du divorce l'autre conjoint, ne constitue pas l'exécution d'une obligation alimentaire

MALTA

Maintenance is defined in Section 19 (1) (Civil Code) (Chapter 16 of the Laws of Malta) as follows: Maintenance shall include food, clothing, health and habitation.' This definition does not distinguish between maintenance due to a child and that due to a spouse or other family member. However, subsection (2) of the same section goes on to specify that with regard to children maintenance is to include the expenses necessary for health and education.

A maintenance order may establish that the obligation of maintenance is to be fulfilled by periodic payments of money. Indeed, Section (2) of the *Maintenance Orders (Reciprocal Enforcement) Act* describes a maintenance order in paragraph (a) as follows:

'an order ...which provides for the periodical payment of sums of money towards the maintenance of any person, being a person whom the person liable to make payments under the order is, according to the law applied in the place where the order was made, liable to maintain'

The Civil Code takes a wider approach and provides for other methods of supplying maintenance.

Section 23 of the Civil Code (Chapter 16 of the Laws of Malta) mentions the possibility of maintenance being made in kind. Indeed subsection (1) of this section stipulates that a person bound to supply maintenance may not without a just cause, be compelled to pay a maintenance allowance if s/he offers to take and maintain into his own house the person entitled to maintenance. Moreover subsection (2) states that where maintenance is to be furnished out of the house of the person liable to provide such maintenance, he may, provided he shows a good cause, supply such maintenance in kind instead of paying an allowance in money.

Once again the law in Section 23 does not distinguish between maintenance supplied to a child and that supplied to a spouse or any other family member. It may consequently be interpreted that Section 23 applies to both children and spouses or other family members in respect of whom maintenance is due.

Section 54 of the Civil Code (Chapter 16 of the Laws of Malta) provides for the obligation for maintenance in cases of personal separation. Subsection (3) states that on separation being pronounced, the court may, if it deems it appropriate, order the spouse liable to supply maintenance to pay to the other spouse, in lieu of the whole or part of such maintenance, a lump sum, which the court deems sufficient in order to make the spouse who is to receive maintenance financially independent or less dependent of the spouse from whom maintenance is forthcoming. Subsection (5) of the same section states that the lump sum referred to in subsection (3) may be made by equal or unequal instalments spread over a reasonable period of time. Moreover, the court may direct that in lieu of the payment of a lump sum of money (as mentioned in subsection (3)) the spouse liable thereto shall assign to the other spouse property in ownership or in usufruct, use or habitation (as per Section 54 (6)).

The provision of maintenance as provided for in Section 54 (6) does not seem applicable only in respect of a spouse. In *Emma Borg v L-Avukat Dr. John Mizzi et noe* (5 October 1998) the Court of Appeal held that the immovable property belonging to the male spouse was to be assigned to his spouse in order to set off the maintenance obligation due to both his spouse and their children. The court explicitly claimed that in this decision Section 54 (6) was applied. It follows that Section 54 (6) applies in fulfilment of a maintenance obligation both in respect of a child and a spouse.

THE NETHERLANDS

Maintenance granted by a judicial decision consists of periodic payments of money.

NEW ZEALAND

In New Zealand the provision of child support is covered by two Acts of Parliament. The Child Support Act 1991 covers payment of child support within NZ (and Australia) and is based on an administrative formula assessment regime. It assesses the minimum level of financial support payable by certain parents in respect of their children and provides for the collection and payment of child support and spousal maintenance payments.

The legislation for overseas maintenance (*i.e.* the registration and confirmation of provisional orders under the British Commonwealth Scheme as well as the processing of claims from contracting states to the 1956 New York Convention) is in Part VIII of the Family Proceedings Act 1980.

- 1 (a) In New Zealand, the child support scheme is administered by the Inland Revenue Department. Child support becomes payable on application from either the custodial person or the paying parent. If the custodian is in receipt of a government benefit then the custodian must apply for child support. In those cases the payment of child support is retained by the Government. In other cases where the custodian is not receiving the benefit then the child support payments are passed on to the custodian.

Child maintenance is generally assessed according to a formula based calculation. This formula takes into account the paying parent's annual income. From this amount a deduction is allowed according to the living circumstances of the paying parent. The value of that deduction is determined on whether the paying parent is living alone or in another relationship and whether there are any children (either natural or step children) also living with the paying parent.

Child support is assessed on an annual basis (our child support year runs from 1 April to the following 31 March) and payments are made monthly.

Child maintenance can also be assessed according to a voluntary agreement entered into by the custodial and non-custodial parent. The amount payable in those cases will be the amount agreed upon between the two parties.

- 1 (b) Maintenance to support separated spouses is also administered by NZ Inland Revenue Child Support. The amount payable is either determined by the Court or can be by way of a voluntary agreement between the parties.
- 1 (c) There is provision in the Child Support Act 1991 for either parent to apply to the Court for an order for the payment of a lump sum payment. There is no provision in the Act to contract out of the payment of child support by virtue of a property settlement in favour of the custodial parent.

- 1 (d) Under Part VIII of the Family Proceedings Act the Judge can direct a respondent to pay a periodical sum or a lump sum.

NORWAY

- (a) In Norway, maintenance decisions in respect of children are always confined to monthly payments of money.
- (b) The same applies in most cases for maintenance obligations for spouses. Nevertheless, in certain cases the support may also be determined as a lump sum alone, or in addition to a monthly payment.

PANAMA

In Panama maintenance is called alimony and is an economic benefit that takes into consideration the economic resources of the person who is compelled to grant it and the necessity of the person or persons that need it. These needs cover:

1. Supply of nutritional or edible substances, medical attention and medicaments.
2. Needs for clothing and housing.
3. Obligation to supply the necessary resources in order to grant elemental or higher education or the learning of an art and craft, even after full age until a maximum of 25 years old if the studies are effectuated with a benefit in time as well as in the academic performance, unless it concerns a very disabled person and in such case the education will last until this person requires it.
4. Concerning minors, everything that is necessary to achieve their entire development since the conception.

Claims of alimony can be interposed among themselves: by spouses, descendants and ascendants relatives.

Payments will be verified by month in advance and when the beneficiary dies, his/hers heirs will not be compelled to return what they had received earlier.

The alimony right is exigible by a court order of imprisonment, having priority food debts over any other without exception. No compliance with it may cause measures of execution to be taken, such as seizure of movable and immovable property.

PHILIPPINES

Maintenance is essentially in the form of monetary support for both child and spouse. Generally, maintenance is given on a monthly basis, however, this does not preclude the parties to enter into an agreement providing for a lump sum transfer of money and property.

POLAND

Maintenance in respect of a child shall be determined by the arrangement between the obligor and the eligible person, or in judicial proceedings by a court judgement or by a settlement concluded before a court. Maintenance in respect of a spouse or other family member may be determined in an analogous way. Any form of maintenance payments is acceptable, including pecuniary payments /usually periodic payments/, or in-kind payments. The choice of method for the accomplishment of payments should accord with the purpose of the obligation and take the facts of the given case into account /e.g. personal payments, providing or giving access to the premises/. By way of exception, the agreement upon a method of fulfilling the obligation

other than periodic payments of specified sums of money is also acceptable and maintenance payments in respect of adult persons can be determined more freely.

ROUMANIE

La pension d'entretien s'établit par la décision du juge.

Dans le cas d'une pension alimentaire pour un enfant, celle-ci s'établit, par office, une fois que le mineur a été confié. L'accord des parents concernant la assignation de l'enfant et la contribution de chacun aux dépenses de la croissance. De l'éducation, de préparation professionnelle, produit des effets seulement si elle est approuvée par une instance judiciaire (article 42 du Code de la Famille).

L'obligation d'entretien a un caractère successif (s'exécute par des prestations successives). Cela parce que son but est de couvrir les dépenses d'entretien, au mesure que celles-ci apparaissent et imposées par les besoins courants, en principe, l'entretien ne peut être accordé sous la forme d'une prestation unique et globale. L'article 93 du Code de la Famille prévoit que l'obligation d'entretien s'exécute en nature ou par le paiement d'une pension en espèces. L'instance judiciaire établit le mode et les modalités d'exécution, en tenant compte des circonstances. En pratique, on a décidé que la pension d'entretien établit sous la forme de prestations périodiques peut être remplacée par la déposition anticipée des sommes dues pour toute la période d'entretien. Les instances sont réticentes d'accorder des pensions d'entretien sous forme globale.

SLOVAKIA

A maintenance decision (which includes also a court approved private agreement) has the form of a judgement which establishes the monthly sum of money to be paid. Only the arrears may be expressed in the form of a lump sum. There is not distinction in this respect between maintenance for a child or another person

SUISSE

(a) Concernant les enfants, il peut y avoir une décision judiciaire fixant des aliments :

- en connexion avec une procédure de paternité, en vertu de l'art. 280 al. 3 du Code civil suisse (CC ; cf. *extraits annexe 1*),
- suite à une action tendant à obtenir une contribution d'entretien proprement dite (art. 279 ss. CC),
- dans une procédure de divorce (art. 111 ss. CC), de séparation (art. 117 s. CC) ou dans le cadre des mesures judiciaires visant à protéger l'union conjugale des parents (art. 173 CC), y compris les éventuelles mesures provisoires y relatives (art. 137 CC et 281 al. 1 CC).

Une autre forme de « décision » relative à des aliments envers l'enfant est la convention relative aux contributions d'entretien approuvée par l'autorité tutélaire compétente, soit une autorité administrative, en vertu de l'art. 287 CC. Ces conventions peuvent également être approuvées par le juge dans le cadre d'une procédure judiciaire.

(b) La décision fixant des aliments au bénéfice de l'époux est régulièrement une décision (judiciaire) de divorce ou de séparation, une mesure judiciaire de protection de l'union conjugale ou encore une mesure provisoire dans une procédure de divorce ou de séparation (cf. les articles du CC cités sous a)

En revanche, des décisions administratives ne sont pas connues par le droit suisse dans ce domaine.

S'agissant des autres membres de la famille, il peut y avoir une décision judiciaire fixant des aliments aux parents en ligne directe ascendante et descendante – l'obligation d'entretien des père et mère et du conjoint étant réservée – dans la mesure où la personne débitrice vit dans l'aisance, alors que la personne créancière tomberait autrement dans le besoin (art. 328 s. CC). Enfin, la mère non mariée peut, devant le juge compétent, demander au père de l'indemniser des frais d'entretien pour un certain nombre de semaines avant et après la naissance de l'enfant (art. 295 CC).

Il s'agit dans la très grande majorité des cas d'un paiement périodique. Toutefois, lorsque des circonstances particulières le justifient, le juge peut imposer un règlement définitif en capital dans le cadre d'un divorce (art. 126 al. 2 CC). Les parties d'une convention relative aux contributions d'entretien pour un enfant peuvent également convenir ; à titre exceptionnel, d'un versement d'une indemnité unique (art. 288 CC). Une circonstance particulière peut être le fait que les paiements périodiques et réguliers futurs ne sont durablement pas garantis. Exemple : départ du débiteur dans un pays où le recouvrement d'aliments est aléatoire (!), développement futur hautement incertain de sa situation financière, etc.

SWEDEN

(a) Maintenance payments shall be determined by a judgement or by agreement.

Payments shall be made in advance for each calendar month. However, the court may decide on another mode of payment if there are special reasons for doing so.

An agreement under which future maintenance is to be paid by means of a lump sum or for periods exceeding three months is valid only if it is in writing and is witnessed by two persons. If the child is under eighteen years of age, the agreement must also be approved by the Social Welfare Committee.

Maintenance in the form of a lump sum shall be paid to the Social Welfare Committee if the child is under eighteen years of age. The sum paid to the committee shall be used to purchase from an insurance company an annuity for the child appropriate to the obligation to maintain the child, unless the agreement prevents this or the Committee finds that the sum can be used in some other appropriate manner for the maintenance of the child.

An application for maintenance payments to be determined may not be granted for a retroactive period of more than three years prior to the date of which proceedings were commenced, unless the person liable to pay maintenance agrees.

(b) If the spouses cannot agree on the issue of maintenance, a court can determine the dispute.

After a divorce, the maintenance allowance shall be periodic. However, payment of a lump sum can be ordered if there are special reasons, e.g. that the spouse needs to make a pension contribution.

An application for maintenance payments to be determined may not be granted for a retroactive period of more than three years prior to the date of which proceedings were commenced, unless the person liable to pay maintenance agrees.

UNITED KINGDOM - ENGLAND AND WALES

The UK has two systems for dealing with maintenance obligations, the Child Support Agency and the courts in England and Wales.

The Child Support Agency

Child Support Act 1991 amended by Child Support Act 1995, Social Security Act 1998 and Child Support, Pensions and Social Security Act 2000

The Child Support Agency (CSA) is part of the Department for Work and Pensions. It covers the whole of the UK, but certain features differ slightly for Scotland and Northern Ireland. The CSA is responsible for assessing, collecting, paying and enforcing child support maintenance. The Agency operates out of six Child Support Agency Centres and across a network of local offices. The six Child Support Agency Centres are in Hastings, Falkirk, Dudley, Plymouth, Birkenhead and Belfast. The Centres carry out most of the maintenance assessment work and deal with the collection of maintenance payments. A Client Helpline Service is based in each Centre to allow the individual to phone the CSA about their particular case.

The main Centres are supported by a number of processing offices; these are responsible for a range of activities including tracing the parent who needs to pay maintenance, initiating contact with non-resident parents and arranging the payment of child support maintenance.

(a) Child support maintenance is awarded under the *Child Support Act 1991* and is administered in the UK by the Child Support Agency. The scheme only relates to child maintenance and does not cover spousal only maintenance.

The Act provides for the structure of the scheme, application for child support maintenance, calculation of the amounts to be paid appeals, variations, collection and enforcement. The detail of the scheme is left to regulations. Child support officers under delegated powers make certain decisions, such as the calculation of child maintenance and are subject to appeal under the Act

Child support maintenance decisions take the form of periodic payments of money, expressed as weekly amounts. Before 1993, lump sum payments and property transfers could be made as final settlements under a court order. Since the setting up of the CSA, these final settlements are not accepted, but are taken into consideration when making a maintenance assessment.

The Courts

(a) The Courts in England Wales provide for maintenance of the under the *Children Act 1989*.

Children Act 1989 Schedule 1

The Act provides for financial relief for a child in the High Court, or County Court or Magistrates' (Family Proceedings) Court.

Application can be made for a child under 18 years of age for the following:

periodical payments, secured periodical payments and lump sum payments, settlements of property or transfer of property. Where a child is over 18 and is undergoing education or training, or where there are special circumstances and there is not in force a periodical payments order immediately before the child reached the age of 16.

(a) & (b) The Courts also provide for maintenance for spouses and children, children, spouses only and other family members under various legislation.

Matrimonial Causes Act 1973 sections 23,24A, 27 and 10(2)

On granting a decree of divorce, nullity of marriage, or a judicial separation the court may make an order for periodical or lump sum payments for either party of the marriage and for

periodical payments or lump sum payments to the applicant for the benefit of a child of the family or to the child of the family (sec23).

A spouse may apply to the High Court or a county court for periodical payments, secured periodical payments and a lump sum payment (but not a transfer of property) for him/herself and or for the children without a petition for divorce, judicial separation or nullity (sec 27).

Where the court makes a secured periodical payments order, lump sum payments order, or a property adjustments order, at anytime thereafter the court may make a further order for the sale of such property specified in the order. The order may contain supplementary provisions requiring the making of a payment out of the proceeds of sale, or it could be used to secure periodic payments (sec 24A).

An application can be made by a spouse where a court has granted a divorce (before the decree absolute) for a pension attachment and/ or sharing order where the petitioner has given an undertaking containing specific proposals to make suitable financial provision for the respondent (sec 10(2)).

Domestic Proceedings and Magistrates' Courts Act 1978 sections 2, 6 and 7

Financial provision may be made for either party of the marriage and for any child of the family. The magistrates' court may make an order for the following:

Periodical payments or lump sum payments to the party to a marriage (spouse), periodical payments or lump sum payments to the applicant for the benefit of a child of the family to whom the application relates. A lump sum order is limited to £1000 (sec 2).

Orders for payments that have been agreed by the parties can be made on the grounds that either party to a marriage has agreed to make such financial provision as may be specified in the application for the benefit of the applicant, the benefit of a child of the family or to a child of the family. There is no limit to the amount of a lump sum order here (sec 6).

These provisions are complementary to the orders for financial provision for children under the *Children Act 1989* above

Inheritance (Provision for Family and Dependents) Act 1975 sec 2

Certain members of the deceased's family and dependants may make a claim against the estate of a deceased person for financial provision. These are: the wife or husband of the deceased, a former wife or husband who has not remarried, a child of the deceased, any person who was treated as a child of the family and any person who was being maintained by the deceased before death.

The Court may make an order for periodic payments from the estate for a specified term, an order for the payment of a specified lump sum, an order for the transfer, and settlement or acquisition of specified property being part of the deceased's estate.

UNITED KINGDOM - SCOTLAND

In Scotland, there are presently two systems for the determination of child support: the Child Support Act 1991 has taken priority over the Family Law (Scotland) Act 1985, and has effectively removed child support from the private law arena and the jurisdiction of the courts, to the public sphere and the stewardship of the Secretary of State for the Department for Work and Pensions.

Under the 1991 Act, decisions on maintenance are taken by the Child Support Agency, and are, therefore, administrative decisions. In those cases governed by the 1991 Act there would be an adjustment between the amount received by the parent with care on benefits and the

amount of child support payable by the absent parent. This adjustment is done by means of set formulae. CSA awards are all periodical payments.

Although the Agency was meant to take over from the courts in this area, it has been unable to take on the full workload of all the mandatory and voluntary applications for assessment which it would potentially receive. Transitional provisions were therefore enacted to allow the courts to continue temporarily to make and vary aliment awards in cases where the parent with care was not in receipt of income support, family credit or disability working allowance, and where either (i) the parent with care had obtained a court order for aliment before April 5, 1993, or (ii) had made a written agreement relating to aliment with the absent parent before April 5, 1993.

Furthermore, it has now been provided that even if parents did not make an agreement before April 5, 1993 they can still ask the court to make a maintenance order which is in all material respects in the same terms as a written agreement entered into by the parties after that date.

Some residual jurisdiction, other than that arising due to transitional provisions, remains with the courts in respect of awards of aliment. This principally arises:

- (i) Where maintenance is sought for children who are aged over 16 (or over 19 if in full-time non-advanced education and the court has jurisdiction under the 1985 Act).
- (ii) Where an additional or "top up" aliment award is sought on top of the amount set by child support officers using the ordinary 1991 Act formula. This will be relevant only where the absent parent is a very high income earner;
- (iii) Where the absent parent lives abroad;
- (iv) Where support is sought from a non-parent who has accepted the child as a member of his family. This is possible under the 1985 Act but not the 1991 Act;
- (v) Where support is sought for a child with a disability.

For the aforementioned case and those others where maintenance is sought for a spouse, the 1985 Act is the relevant legislation. Under this Act it is not necessary to go to court to obtain aliment (note that under the 1991 Act parents can still enter into agreements, legally enforceable or not, provided caring parent does not claim benefit). Parties may reach their own agreements with respect to aliment which the courts will enforce. Otherwise, a judicial decision will be made on the matter. In granting decree in an action for aliment the court has power according to section 3(1) of the 1985 Act to:

"(a) Order the making of periodical payments, whether for a definitive or an indefinite period or until the happening of a specified event:

(b) Order the making of alimentary payments of an occasional or special nature ...

The Act says that this includes "payments in respect of inlying, funeral or educational expenses"; this power is not intended to give the court a power to substitute a lump sum for a periodical payment (section 3(2)). Aliment is conceived as being of an income nature although the regular payments may be supplemented by occasional or special payments under paragraph (b).

- (c) to backdate an award of aliment
 - (i) to the date of bringing of the action or to such later date as the court thinks fit; or
 - (ii) on special cause shown, to a date prior to the bringing of the action;
- (d) to award less than the amount claimed even if the claim is undisputed".

UNITED STATES OF AMERICA

- (a) Maintenance decisions involving child support vary on a state-by-state basis within the United States. For a child, maintenance decisions may take many forms, including: (1) periodic payments of money (*e.g.*, U.S. \$X/month); (2) the provision of medical insurance or additional financial payments by the noncustodial parent for medical support; (3) payments for prior periods; and (4) money judgments for unpaid arrears. In some states, lump sum payments, property transfers, or other alternatives to periodic payments are available. The enactment of UIFSA in all U.S. states and territories has reduced the range of variation in state law, although it is still considerable.
- (b) The form of maintenance decisions in respect of a spouse or other family member also varies among the states, but for the most part is not subject to significant regulation at the federal level or application of the UIFSA statutory scheme. UIFSA applies to interstate establishment and enforcement of spousal maintenance, but does not apply to modification of spousal maintenance or to any maintenance decisions respecting other family members. The same forms that are available for a child may also be available for other family members to whom support is owed.

Eligibilité

Eligibility

- 2 Dans votre pays, qui est en droit de bénéficier d'une décision relative à des aliments ? (par ex. : l'enfant, l'époux, un autre parent, etc.)
- 2 Who is eligible in your country to benefit from a maintenance decision? (*e.g.* child, spouse, other relative, etc)?

AUSTRALIA

Only a child or spouse.

AUSTRIA

Child, spouse, ex-spouse, parent.

BULGARIE

Le droit de bénéficier d'une décision relative à des aliments selon le Code de la famille bulgare appartient à une personne frappée d'incapacité de travail et dont les ressources ne lui permettrait pas d'assurer sa subsistance. /art.79 du Code de la famille/. Les deux conditions sont cumulatives. Elles déterminent le besoin de recouvrement des aliments. Le recouvrement des aliments est du par la personne qui a la possibilité de l'effectuer. Le code de la famille bulgare vise des cas spécifiques: l'obligation alimentaire de la part des parents envers leurs enfants mineurs, envers leurs enfants majeurs qui sont étudiants, l'obligation alimentaire entre ex-époux.

CANADA

Dans les provinces et territoires de common law :

Enfants*; époux; conjoints de fait; parents dépendant et, dans certaines juridictions, partenaires domestiques et ceux de même sexe.

Dans la province de droit civil du Québec :

Époux, conjoints unis civilement, parents en ligne directe au 1er degré (parents et enfants*) (Article 585 Code civil du Québec).

*En vertu de la Loi sur le divorce fédérale, le terme « enfant » signifie l'enfant biologique et l'enfant adopté ainsi que l'enfant pour lequel un parent agit *in loco parentis*. En vertu des lois provinciales, le terme « enfant » inclut l'enfant biologique et l'enfant adopté et, dans certaines juridictions, inclut également l'enfant pour lequel un parent agit *in loco parentis*.

In common law provinces and territories:

Child*; spouse; common law partners, dependant parents and, in some jurisdictions, domestic partners and same sex partners.

In the civil law province of Quebec:

Spouses, civil union spouses, relatives in the direct line in the first degree (parent and child*) (Article 585 Civil Code of Quebec).

*For the purposes of the Divorce Act, the term "child" means biological and adopted children and a child to whom a person stands in *loco parentis*. Under provincial legislation, the term "child" means biological and adopted children and, includes, in some jurisdictions, a child to whom a person stands in *loco parentis*.

CHILE

The following persons are eligible: the spouse, descendants, ascendants, brothers/sisters and anyone who made a substantial donation, if not terminated or revoked.

CHINA - HONG KONG SPECIAL ADMINISTRATIVE REGION

See reply to Question 1, paragraph 1.

CROATIA

According to the Family Act, a maintenance beneficiary can be a child, an adoptive child and an adoptive parent, a parent, a spouse, marital and extramarital, mother of an extramarital child, a minor stepchild, if unable to obtain maintenance from the parent, a stepmother or a stepfather (if the stepchild cannot obtain maintenance from the parent or if the parent dies and at the time of death the child lived with the stepfather or the stepmother).

CYPRUS

Eligible is a child, the parents and the spouse.

CZECH REPUBLIC

Pursuant to Family Act #94/1963 Coll. in its current version are eligible for maintenance in the Czech Republic children, spouses and parents. A maintenance allocation is due, under Sec. 95 of said Act, to unmarried mother of the child, for the period of 2 years.

DENMARK

Danish law imposes an obligation to pay maintenance only in relation to the debtor's children or spouse – *i.e.* only children and spouses can benefit from a maintenance decision.

ESTONIA

The persons eligible for maintenance support are as follows:

- (a) A minor child and an adult child incapacitated for work in the need of assistance; also an adult child who continues attending an institution of basic or secondary education or vocational training. An obligated person is the parent, the maintenance support is ordered by the court in favour of the parent who has filed a claim or in favour of a guardian or a person, in whose interests the guardianship authority has filed the claim.
- (b) The parent incapacitated for work and in need of assistance (the obligated person is the adult child) or a grandparent (provided he/she does not have a spouse or an adult child or if it is impossible to get maintenance support from them).
- (c) A step-parent or a foster-parent incapacitated for work and in need of assistance, who does not have an adult working child or a spouse or if it is impossible to get maintenance support from them. The obligated person is an adult step- or foster child, whom the step-parent or foster-parent requesting support has raised and supported for at least 10 years.
- (d) A spouse during the time of marriage – in case the spouse in need of assistance is incapacitated for work, also during pregnancy of the spouse and during care of the child till the child gets 3 years old. The obligated person is the other spouse, in case his/her financial status allows to support.
- (e) A spouse after divorce of marriage – in case the spouse in need of assistance is incapacitated for work and became invalid or reached the age of retirement during the time of marriage; also the divorced spouse during pregnancy and during care of the child until the child attains three years of age, in case the child was conceived during the marriage. The obligated person is the other divorced spouse, in case his/her financial status allows for provision of maintenance.

FINLAND

Children

Children have a right to receive maintenance from their parents. No difference is made between children born in wedlock and children born out of wedlock. Stepchildren and foster children have a right to receive maintenance only from their biological parents.

Adopted children have a right to receive maintenance from their adoptive parents. The provisions which are applicable to biological children are, according to Finnish law, also applicable to adopted children.

Spouses

A man and a woman who have entered into a marriage with one another have a mutual maintenance obligation towards one another. A spouse may ask for maintenance during the marriage or in connection with divorce.

In a registered partnership of persons of the same sex the partners have a mutual maintenance obligation towards each other. Provisions in an act or a decree which are applicable to a spouse

apply, according to the Act on Registered Partnerships (950/2001), likewise to a partner in a registered partnership, unless otherwise is provided in an act or decree.

Other relatives

Other relatives do not have a maintenance obligation towards one another. For example children do not have a maintenance obligation towards their parents.

Cohabiting couples

Partners in a cohabiting couple either of different or same sex do not have a civil law obligation to maintain one another.

FRANCE

Différentes personnes peuvent bénéficier d'aliments :

- Un époux de la part de son conjoint, l'obligation pécuniaire résultant dans ce cas de l'exécution du devoir de secours qui pèse sur chacun d'eux du fait du mariage. Cette obligation persiste dans le cadre d'un divorce pour rupture de la vie commune ou d'une séparation de corps.
- Les enfants, de la part de leurs parents ou de leurs ascendants, qu'il s'agisse d'une parenté légitime, naturelle ou adoptive. Dans ce dernier cas, il convient de distinguer selon que l'adoption est plénière ou simple. En cas d'adoption plénière, l'enfant est assimilé à un enfant légitime. Dès lors, une obligation alimentaire existe entre l'adopté et ses parents adoptifs ainsi qu'avec tous les ascendants de ces derniers. L'obligation alimentaire entre l'adopté et les membres de sa famille d'origine, quant à elle, disparaît, sauf s'il s'agit de l'adoption de l'enfant du conjoint, celle-ci laissant subsister la filiation. En cas d'adoption simple, aucun lien de parenté n'est créé entre l'adopté et la famille et l'adoptant. Dès lors, l'obligation alimentaire n'existe qu'entre l'adopté et sa famille d'origine, même si elle présente un caractère subsidiaire par rapport à l'obligation de l'adoptant.
- Indépendamment de l'établissement de tout lien de filiation, un enfant de la part de celui qui a eu des relations avec sa mère pendant la période légale de conception.
- Les père et mère et autres ascendants de la part de leurs enfants. Cette obligation alimentaire ne s'impose qu'en ligne directe, mais à l'infini. Ainsi, les enfants peuvent être tenus de verser des aliments à leurs parents, grands-parents, arrière-grands-parents.
- Le beau-père et la belle-mère de la part de leurs gendres et belles-filles. En effet, le mariage engendre une obligation alimentaire entre chacun des époux et les ascendants au premier degré de l'autre, quelle que soit la nature de la filiation établie entre le conjoint et ses ascendants. La nature du régime matrimonial est également sans incidence.

Cette obligation cesse lorsque celui des époux qui produisait l'affinité et les enfants issus de son union avec l'autre époux sont décédés, ces deux conditions étant cumulatives.

Elle cesse également en cas de divorce, à compter du jour où le jugement prend force de chose jugée.

- L'époux survivant non divorcé qui est dans le besoin. En effet, la succession de l'époux prédécédé doit des aliments à l'époux survivant qui est dans le besoin, le délai pour les réclamer étant d'un an à partir du décès et pouvant se prolonger, en cas de partage, jusqu'à son achèvement. La volonté du défunt est sans effet sur le droit alimentaire du conjoint, qui est d'ordre public.

GERMANY

Direct relatives are entitled to receive maintenance (section 1601 in conjunction with section 1589 first sentence of the Civil Code), as are children, grandchildren, great grandchildren, etc., and parents, grandparents, great grandparents, etc.

Maintenance entitlements may exist between parents who are not married with one another in the first three years after the birth (section 1615I of the Civil Code). Furthermore, spouses are entitled to maintenance (section 1360 of the Civil Code), even if they are separated (section 1361 of the Civil Code) and after the marriage has been dissolved (section 1569 of the Civil Code).

ISRAEL

Spouses and minor children are eligible for maintenance in terms of their personal law. If a specific personal law does not make provisions for the payment of child support, then the minor child is eligible for maintenance in terms of the Maintenance Act. This Act also makes provisions for the payment of maintenance to other family members, such as parents, grandparents and siblings, but only if the following conditions are fulfilled:

- ability to pay maintenance after the maintenance debtor has supplied his own requirements and that of his spouse and minor children.
- the particular relative is unable to supply his own requirements.
- there is no family member of a closer degree of relation, who is liable to pay him maintenance.

JAPAN

The lineal relatives by blood and brothers and sisters shall be under duty to furnish support each other (Article 877 of the Civil Code). Husband and wife shall aid each other and share the expenses of the married life with each other (Article 752 of the Civil Code). Under special circumstances, the court may impose a duty to support between relatives within the third degree (Article 877 of the Civil Code).

A spouse who has the custody of an 'immature' children (see *infra*, 3) is entitled to receive child support from the other spouse as the share of the expenses of marriage life (Article 760 of the Civil Code), and a parent not married is entitled to receive it from the other parent as the expenses of the care and custody of children (Articles 766, 749, 771 and 788 of the Civil Code).

LUXEMBOURG

Peuvent bénéficier d'une décision relative à des aliments toutes les personnes qui, d'après la loi, peuvent se prévaloir d'une créance alimentaire. Les obligations alimentaires instituées par la loi sont réciproques, c'est-à-dire que le créancier d'aliments peut aussi être débiteur d'aliments.

Une telle obligation alimentaire existe :

- en ligne directe entre les enfants, leurs père et mère ou autres ascendants;
- entre certains alliés (beaux-parents, gendres et belles-filles), sous réserve de certaines limitations légales ;
- entre conjoints.

Un projet de loi relatif aux effets légaux de certains partenariats, actuellement engagé dans la procédure législative, prévoit, à titre exceptionnel, il est vrai, la possibilité pour un partenaire de demander à l'autre des aliments, à la fin du partenariat.

MALTA

The persons so eligible have been pointed out in the following list. Relevant supporting provisions of the law indicating the eligibility criteria have been cited after each person mentioned as entitled to benefit from a maintenance order.

(a) A spouse

- Both spouses are bound, each in proportion to his or her means and of his or her ability to work whether in the home or outside the home as the interest of the family requires, to maintain each other and ... (Section 3 Civil Code)
- In regard to maintenance, the spouse shall have a prior right over the parents or other ascendants. (Section 5 (1) Civil Code)
- Notwithstanding any other provision, the spouse who was responsible for the nullity of marriage, is bound to pay maintenance to the other spouse in good faith for a period of five years, which duty shall cease if the party in good faith marries during such period. (Section 20(5) of the Marriage Act)

(b) A Child

- Maintenance imposes on both spouses the obligation to look after, maintain, instruct and educate the children of the marriage ... (Section 3B Civil Code)
- Where both children and spouse claim maintenance, they shall be in a position of equality. (Section 5(2) Civil Code)
- Parents are bound to look after, maintain, instruct and educate their children in the manner laid down in article 3B of this Code. (Section 7(1) Civil Code)
- Section 57 (Civil Code) caters for maintenance and the care and custody of children in the context of personal separation. Section 57(1) reads as follows:
Whosoever may be the person to whom the children are entrusted, the father and mother shall maintain their right to watch over their maintenance and education, and shall still be bound to contribute thereto, according to law.
- The Children and Young Persons (Care Orders) Act enables the Minister responsible for social welfare to take a child or young person (i.e. a person under the age of sixteen years) under his hand so as to take such child or young person into his care. This occurs if upon representations made to the said Minister in writing by the Director of the Department responsible for social welfare and after giving the parents and the guardian, if any, of the child or young person an opportunity to express their views, and after hearing any other person he may deem likely to assist him, the Minister is satisfied that the child or young person as the case may be, is in need of care, protection or control (as per Section 4(1) of the Act herementioned).

Section 10 of the same Act addresses the issue of provision of accommodation and maintenance of a child or young person deemed to be in need of care, protection or control. In fact, subject to the provisions of the Act, the Minister shall discharge his duty either by accommodating and maintaining him in a residential home, hostel or similar institution provided by the Minister for the reception of children or young persons in his care or by boarding him out with a fit person, whether a relative or not, or with a private institution willing to undertake the care of him on such terms as to payment by the Minister or other terms as the Minister may, in agreement with such person or private institution, determine by regulation.

- (c) A Parent
 - The children are bound to maintain their parents or other ascendants, who are indigent. (Section 8 Civil Code)
 - It shall not be lawful for either of the spouses to claim maintenance from the children or other descendants or from the ascendants if such maintenance can be obtained from the other spouse. (Section 5(3) Civil Code)
 - In default of the parents, or where the parents do not possess sufficient means, the liability for the maintenance and education of the children devolves on the other ascendants. (Section 7(2) Civil Code)
- (d) Brothers/Sisters
 - The liability for maintenance shall extend to brothers and sisters, of the full or half-blood, only in default of other persons liable for maintenance. (Section 15(1) Civil Code)
 - The persons mentioned in Article 12 [Civil Code] shall, in all cases, have a prior claim over brothers and sisters, except in cases of great urgency, regard being had to health, age, or other circumstances. (Section 15(3) Civil Code)
- (e) Ascendants/Descendants
 - In regard to children and other descendants, it shall also include the expenses necessary for health and education. (Section 19(2))
 - A person who cannot implement his obligation to supply maintenance otherwise than by taking the claimant into his house, shall not be deemed to possess sufficient means to supply maintenance, except where the claimant is an ascendant or a descendant. (Section 20(4) Civil Code)

THE NETHERLANDS

Maintenance obligations may be divided into the following categories:

- (a) Maintenance obligations of spouses and registered partners to each other: there is a mutual obligation to provide for the maintenance of one's spouse or partner (articles 1:81 to 86 and article 1:80b Civil Code).
- (b) Maintenance obligation to former spouses or registered partners (articles 1:80c, 80d, 157, 158, 160, 397 Civil Code). This obligation is limited.
- (c) Maintenance obligations of parents to their:
 - (1) minor children and stepchildren (0-18 years)
 - (2) younger adult children (18-21)
 - (3) younger adult stepchildren forming part of the stepparent's family
 - (4) children over the age of 21: only if they are indigent.
 Parents and children have a reciprocal obligation to provide for each other's maintenance. Stepparents and stepchildren do not have a reciprocal obligation of this kind.
- (d) The maintenance obligation between parents-in-law and children-in-law is reciprocal, but applies only where the claimant is indigent.

- (e) Maintenance obligations in cases of joint parental responsibility (parent and non-parent) and joint guardianship (article 1:2w and article 1:282, paragraph 6 in conjunction with article 1:253W Civil Code).
Stepparents: only when the stepchildren form part of the family and only during a marriage or registered partnership.
- (f) Maintenance obligations between spouses following a judicial separation (article 1:169, paragraph 2 in conjunction with article 157 Civil Code).
- (g) Maintenance obligations of the biological father / life partner of the mother: if a child has a mother and no father, its biological father is under an obligation to contribute to the costs of the child's care and upbringing and the costs of the child's upkeep and education as a young adult (18-21). This obligation continues after the age of 21 if the child is indigent. The same obligation (article 1:394 Civil Code) applies to a woman's life partner who has consented to an act that may have resulted in the conception of the child (artificial insemination using donor sperm, in vitro fertilisation).

NEW ZEALAND

For child support it is the qualifying children from the relationship and for spousal maintenance it is the spouses (husband/wife).

NORWAY

Children up to 18 years of age will always be entitled to support. If the child has reached the age of 18 and study in a comprehensive, secondary education he/she will also be entitled to support, (discretionary assessment). In addition, spouses may receive maintenance support, but only if the divorced spouse is expected to have severe problems of supporting himself, caused by long periods of care for home and children.

PANAMA

In Panama are eligible to benefit from a decision of maintenance, spouses between themselves, ascendent and descendent relatives, provided that it is proven in a judicial process the necessity of the benefit.

PHILIPPINES

Only the spouse and children (both legitimate and illegitimate) are entitled for support.

POLAND

The list of persons who are eligible to benefit from a maintenance decision includes children, spouse, kins, other direct relatives. In exceptional situations also spouse's children can be included.

ROUMANIE

Conformément à l'article 86 du Code de la Famille, obligation d'entretien existe en le mari et la femme, parents et enfants, celui qui adopte et l'adopté, grand-parents et neveux, arrière – grands parents et arrière neveux, frères et sœurs, mais aussi entre les autres personnes prévues par la loi.

Les autres personnes prévues par la loi sont :

- ex-mariés qui ont divorcé
- ex-mariés dont le mariage a été annulé, mais auquel au moins un des marié était de bonne croyance ;
- en face d'un enfant qui a été pris en charge sans les formes d'adoption;
- le mari qui a contribué à l'entretien de l'enfant de l'autre mari a l'obligation d'entretien de cet enfant ;
- les héritiers de la personne qui a été obligée à l'entretien d'un mineur ou qui, sans obligation légale, a donné à celui-ci entretien.

La vocation d'entretien des personnes énumérées dans l'article 86 est réciproque.

SLOVAKIA

The beneficiaries are as follows:

- the child has the right of maintenance against his parents and if they cannot fulfill their obligation, against the respective grandparents;
- parents have the right of maintenance against their grown up children;
- the spouses against each other (this obligation precedes the maintenance obligation of the children towards their parents);
- ex spouses against each other (again this obligation precedes the maintenance obligation of the children towards their parents) as long as the needy ex spouse does not remarry;
- unmarried mother of the child has the right of maintenance against the father of the child for a period of one year after the birth of the child.

SUISSE

Sont en droit de bénéficier d'aliments :

- les enfants mineurs,
- les enfants majeurs en formation selon certaines conditions (rapports non perturbés avec les parents, formation à achever dans des délais normaux, moyens économiques des parents, art. 277 CC),
- les époux,
- les parents en ligne directe ascendante et descendante selon certaines conditions (cf. réponse ad 1, art. 328 CC),
- la mère non mariée pour une période limitée avant (et après) la naissance d'un enfant (art. 295 CC), indépendamment des droits de l'enfant né.

SWEDEN

Children, spouses and divorced spouses are eligible to benefit from maintenance decisions.

UNITED KINGDOM - ENGLAND AND WALES

The Child Support Agency

Under the *Child Support Act 1991*, the people who are eligible to benefit from a maintenance decision are:

- A parent who is the main provider (custodial parent) of day-to-day care of the child/children (qualifying child)

- Someone other than the parent who lives with, and has care of the child/children (qualifying child). For example grandparents or other relations.
- Other relations, or guardians who have care of a child whose parents live elsewhere in England, Scotland and Wales or Northern Ireland may be able to apply for child maintenance from the non-resident parent, provided there is no court order, or written maintenance agreement in force.
- The non- custodial parent in certain defined circumstances may also be able to make a claim for maintenance. For example, where care of the child/children is shared, and the non-resident parent provides fewer nights of care than the other parent or person.

The Courts

- Under the *Domestic Proceedings and Magistrates' Courts Act 1978*
Either party to a marriage may apply for financial provision in the Magistrates' Court for themselves or any child of the family.
- Under the *Inheritance (Provision for Family and Dependents) Act 1975*
The following may apply for maintenance: the spouse of the deceased, the former spouse of the deceased who has not re-married, a cohabitant of the deceased, a child of the deceased, any person who was treated as a child of the family or any other person who before the death of the deceased was being maintained by him.
- Under the *Matrimonial Causes Act 1973* either spouse to a marriage may apply to the High Court or County Court for maintenance.

Under the *Children Act 1989 Schedule 1* application for financial relief can be made to a High Court or County Court, or Magistrates' (Family Proceedings) Court for a child under 18 by a parent or guardian of a child, or the holder of a residence order. Additionally, a child can mean someone over the age of 18 in specified circumstances. Application can be made by a child over 18 who is, or will be undergoing education or training or where there are special circumstances, or whose parents are not living together, or where a periodical payments order was not in force immediately before he was 16. (See 1 above)

UNITED KINGDOM - SCOTLAND

Under the 1991 Act only a "qualifying child" (one who has at least one absent parent) is eligible to benefit from a maintenance decision.

Under section 1(1) of the 1985 Act an obligation of aliment is owed by, and only by:

- a husband to his wife;
- a wife to her husband;
- a father or mother to his or her child;
- a person to a child (other than a child who has been boarded out with him by a local or other public authority or voluntary organisation) who has been accepted by him as a child of his family.

UNITED STATES OF AMERICA

In every jurisdiction of the United States, a person with legal custody of a child can benefit from a child support maintenance decision. Similarly, with respect to a spouse, the availability of spousal maintenance is virtually universal, although the details vary significantly by state. Some states provide for a legal obligation to support relatives other than children and spouses, although such support appears to be rare.

Under title IV-D, a state child support enforcement agency will establish a maintenance decision only for a child.

3 Quelle est votre définition d'un enfant « à charge » dans le contexte des aliments envers les enfants?

3 What is your definition of a "dependent" child for child support purposes?

AUSTRALIA

- under 18 years of age;
- not a member of a couple (i.e. living with a person of the opposite sex on a genuine domestic basis or with someone they are legally married to);
- in some circumstances a child cared for under a child welfare law may not be considered dependant for child support purposes.

A child may also be considered dependant, after the age of eighteen, if they are completing their education or have special needs such as a disability.

AUSTRIA

A child - even after having reached the age of majority - who is not self-supporting (eg a child who is a major but still studying is entitled to be maintained).

BULGARIE

Il existe deux hypothèses d'obligation alimentaire des parents envers leurs enfants, revêtant certains aspects particuliers :

- (a) les parents sont tenus de pourvoir à l'entretien de leurs enfants jusqu'à l'âge de la majorité indépendamment de toute condition d'ordre général apportant des restrictions à l'obligation alimentaires /art.88, al.1/. Aussi chaque parent doit-il entretenir son enfant mineur même si celui-ci ne travaille pas tout en étant capable d'occuper un emploi même si ses propres ressources pouvaient lui assurer la subsistance. Dans le cas d'une disproportion trop marquée entre les ressources de l'enfant et celles des parents, des ajustements pourraient être entrepris quant à la fixation du montant de la pension alimentaire. Le père et mère déchu de leurs droits de parents n'en sont pas moins tenus de fournir des aliments à leurs enfants.

Le Code de la famille établit une règle d'ordre général selon laquelle "la personne ayant commis des fautes graves envers le débiteur des aliments ou envers son conjoint, son descendant ou ascendant, n'aura pas droit à une pension alimentaire". Or cette déchéance ne concerne pas l'obligation alimentaire incombant aux parents des enfants mineurs de 16 ans, c'est à dire n'ayant pas encore atteint l'âge donnant droit d'occuper certains emplois rémunérateurs /art.86, al.2/.

- (b) En ce qui concerne la pension alimentaire due par les parents à leurs enfants majeurs le Code de la famille prévoit ce qui suit: les parents doivent pourvoir à l'entretien de leurs enfants jusqu'à l'accomplissement de l'âge de 18 ans et jusqu'à l'âge de 25 ans pour ceux qui poursuivent leurs études dans un établissement d'enseignement supérieur. /art.88, al.2/

Cette pension alimentaire ne provient pas directement par la loi mais à la base d'une décision judiciaire après le dressement d'un recours de la part de l'enfant majeur.

- (c) En ce qui concerne la pension alimentaire due par les parents à leurs enfants frappés de l'incapacité de travail et dont les ressources sont insuffisantes à couvrir leurs besoins - c'est le cas général de l'art.79 du Code.

CANADA

En général, un enfant « à charge » est un enfant qui :

- N'a pas atteint l'âge de la majorité* et est toujours à la charge de ses parents ;
- A atteint l'âge de la majorité* ou plus, est à la charge d'un parent et est incapable, en raison d'une maladie, d'invalidité ou d'une autre cause (par exemple, inscrit à temps plein dans un programme scolaire) de subvenir à ses propres besoins.

*L'âge de la majorité au Canada varie entre 18 et 19 ans, selon la juridiction où vit l'enfant.

In general a "dependent" child is:

- under the age of majority*/ and has not withdrawn from parental care;
- at the age of majority* or over and under the charge of a parent, and unable, by reason of illness, disability, or other cause (for example, enrolled in a full time program of education), to support himself.

*The age of majority in Canada may be 18 or 19 years of age depending on the jurisdiction where the child lives.

CHILE

In Chile, in order for a child to be entitled to child support, he/she must be legally recognized by the person from whom support is claimed. This may be by matrimonial or non-matrimonial filiation. As regards adoption, the rights between adopter and adopted and the filiation that may be established between them are governed by the respective law.

CHINA - HONG KONG SPECIAL ADMINISTRATIVE REGION

Section 2 of MPPO defines who is a "child of the family". A child of the family in relation to the parties to the marriage means –

- (a) a child of both those parties; and
- (b) any other child who has been treated by both those parties as a child of their family.

A "child", in relation to one or both parties of the marriage, includes an illegitimate child or adopted child of one or both parties. Thus, a "child of the family" includes not only a biological child of the parties, legitimate or otherwise, it also includes an adopted child, a stepchild living with the parties, or any child who has been treated as a child of the family.

CROATIA

Under the Family Act, parents are obliged to support their underage child or full-age child who is a regular student. A full-age child who has finished school but unable to find a job has to be supported by his/her parents for a period of one year after completed education. Furthermore, parents are obliged to support their full-age child taken ill or mentally or physically disabled and thus rendered incapable of working, as long as such incapacity lasts.

CYPRUS

There is no definition in the Law of the word "dependent"

CZECH REPUBLIC

Under Sec. 85 para 1 of the Act, children are entitled to maintenance as long as they are incapable of earning their own living (*e.g.* until they complete a study preparing for performing certain occupation).

DENMARK

The obligation to pay child support ceases when the child reaches 18 years of age. However, a parent may be ordered to pay economic contribution to the education of the child until the child has reached 24 years of age.

ESTONIA

"Dependent" child in the meaning of law is:

- (a) a minor child;
- (b) an adult child in need of assistance and incapacitated for work;
- (c) an adult child who continues attending an institution of basic or secondary education or vocational training.

FINLAND

Children under the age of 18 years have a right to receive maintenance from their parents. The parents are also responsible for expenses incurred in the education of the child after the child has reached the age of 18 years, if this is deemed reasonable. The term "education" refers primarily to upper secondary education.

A parent is responsible for the maintenance of the child, even if he or she is not a custodian of the child.

The child's right to receive maintenance from his or her parent may diminish or come to an end even when the child is under the age of 18 years, if the child is able to maintain him- or herself.

FRANCE

Il n'existe pas de définition de l'enfant « à charge » dans le code civil et le juge apprécie souverainement la réalité de cette situation au vu des éléments de fait qui lui sont soumis.

Il peut être précisé cependant que l'accès à la majorité ne fait pas présumer que l'enfant n'est plus à charge, l'obligation faite aux parents de contribuer à l'entretien et l'éducation des enfants ne cessant pas de plein droit à cette date.

GERMANY

In general terms, a requirement to provide maintenance among relatives is conditional on the person entitled to maintenance being unable to maintain themselves (section 1602 subsection 1 of the Civil Code). A minor unmarried child may require from his/her parents, even if he/she has assets, to grant maintenance to the extent that the income of his/her assets and the yield of his/her work are insufficient for maintenance (section 1602 subsection 2 of the Civil Code).

ISRAEL

A child is considered a minor until the age of 18. Case law, however, has created a presumption that from the age of 18 until the age of 21 (which is usually the age at which a child completes his or her compulsory military service), a parent still has an obligation to support a child, but only in an amount which is one third of what the child received until the age of 18.

JAPAN

A child may obtain support from his/her parents when he/she is in need (Article 877 of the Civil Code), and we have no clear definition of a 'dependent child.' It is considered, however, that parents are under heavier duty of support to an 'immature' child (i.e. a child who cannot maintain his/her economic life without the care and custody of parents) than to a 'mature' child.

LUXEMBOURG

La notion d'enfant à charge est une notion qui en principe n'a d'incidence que sur l'obligation d'entretien mise à charge des père et mère par l'article 203 du code civil, obligation qui peut s'étendre au-delà de la majorité civile de l'enfant, en cas de poursuite d'études justifiées, pour infirmité ou pour un autre motif. Pour l'obligation alimentaire proprement dite il est tenu compte du besoin de celui qui réclame des aliments et de la fortune de celui qui les doit.

MALTA

We have no express definition. The word 'children' in Section 3B of the Civil Code applies to any child whatever his or her status.

THE NETHERLANDS

There are three categories of children, according to age:

- (a) 0–18 (minor children): upkeep, defined as the costs of care and upbringing;
- (b) 18–21 (young adults): upkeep and study costs;
- (c) 21+ (adult children): when indigent.

NEW ZEALAND

"Dependent child" is defined as being a child:

"Who is maintained as a member of that person's family; and in respect of whom the person either is the sole or principal provider of ongoing daily care for the child or shares ongoing daily care of the child substantially equally with another person; and who is not financially independent and who is under 19 years of age and who is not married".

A married person is defined as:

(a) A person who is legally married to another person and who is not living apart from that person; or

(b) A person who is living with another person and who, although not legally married to the other person, has entered into a relationship in the nature of marriage with the other person.

NORWAY

In general, a child under the age of 18, not living together with both parents. (See also the above description of entitlement to support for older children).

PANAMA

It is a child whose basic necessities can not be covered, such as: supply of nutritional or edible substances, medical attention and medicaments, education and everything which is necessary to obtain his/her full development since conception until the age of 18, unless he/she is studying then the age will be extended to 25.

PHILIPPINES

Dependent child is defined as the child who is below eighteen years of age or more than eighteen years of age but is mentally or physically incapacitated.

POLAND

A child may claim maintenance if he/she is incapable of earning his/her own living, unless the income coming from a child's property is sufficient to cover his/her living expenses.

ROUMANIE

L'obligation d'entretien des parents face à l'enfant est constitué de l'obligation d'assurance des moyens nécessaire à la vie : les aliments, une maison, des habits, des médicaments, des besoins spirituels – éléments qui entrent dans le contenu général de l'obligation d'entretien existante et autres catégories de personnes, qui dans ce cas contient l'obligation d'assurance des moyens nécessaires pour la croissance, l'éducation, l'apprentissage et la préparation professionnelle de l'enfant.

Dans ce sens restreint, l'enfant en entretien est l'enfant face duquel est établi l'obligation d'entretien.

SLOVAKIA

A "dependent" child is a person unable to provide for himself. The jurisprudence have interpreted this notion as "the time during which the child is preparing for his future occupation through regular study". Possible interruption in the ongoing process (*i.e.* repeating a year of studies) has no influence over the existing obligation. However, if the child does not continue to the college after finishing secondary education (at the age of 17 or 18), starts working and then decides to take up college or university, the obligation is not automatically renewed. Though the court, upon a motion, may still award maintenance to the child. Depending on the circumstances of the case.

SUISSE

La notion « à charge » est plutôt utilisée dans le droit fiscal. Dans le contexte des aliments il faut sans doute entendre par enfant « à charge » un enfant qui ne peut pas subvenir à son entretien par le produit de son travail ou par ses autres ressources et qui, de ce fait, doit être entretenu par ses parents (art. 276 CC).

SWEDEN

- a) A child under eighteen years of age
- b) A child over eighteen, but under twenty-one years of age, if the child's basic education is not concluded.

UNITED KINGDOM - ENGLAND AND WALES

The Child Support Agency

Child Support Act 1991 Section 55

A person is a child if he is under the age of 16, or under the age of 19, if receiving full time education, which is not advanced education (still at school or an equivalent educational establishment), he is under the age of 18 and prescribed conditions are satisfied with respect to him.

The courts

Domestic Proceedings and Magistrates' Courts Act 1978 Section 88

A dependent child is defined in relation to one or both parties to a marriage and includes a child whose father and mother were not married to each other at the time of his birth.

A child of the family is defined as being a child of both parties to a marriage and any other child, not being a child who is placed with those parties as foster parents by a local authority or voluntary organisation and who has been treated as a child of the family by both those parents.

Children Act 1989 Schedule 1

Additionally, a child can mean someone over the age of 18 in specified circumstances. For example, a child who has reached the age of 18 and who is continuing in education, or to whom special circumstances apply can obtain from his parents periodical payments or lump sum payments where his parents are not living with each other in the same household and there was no periodical payments order in force in respect of him before he reached the age of 16.

UNITED KINGDOM - SCOTLAND

For the purposes of the 1991 Act, a child is:

- (i) under the age of 16 or
- (ii) in full time education which is not advanced education, and under the age of 19 or
- (iii) under 18 and available for either work or youth training while the parent is still claiming child support in respect of the child.

For the purposes of the 1985 Act, a child is generally defined as a person under 18, but may also include a person over the age of 18 but under the age of 25 who is "reasonably and appropriately undergoing instruction at an educational establishment, or training for employment or for a trade, profession or vocation."

UNITED STATES OF AMERICA

In answering this question, the use of "dependent" child for child support purposes will be confined to a child entitled to maintenance or, as is usually referred to in these answers, entitled to child support. For child support purposes, once again the definition of "dependent" varies by state. Generally, a child is "dependent" (*i.e.*, eligible to receive child support) if someone has legal custody or guardianship of a child who has not reached the age of majority for purposes of child support, as defined by that particular state. For example, in Texas, child support terminates when the child reaches 18 years of age or graduates from high school, whichever comes later. In New York, the age of majority for maintenance is 21. Hawaii extends the obligation to support a child past 21 if the child is enrolled in higher education.

A child may also be considered "dependent" beyond the state's age of majority in the case of mental or physical disability. Most commonly the disability must have been present or occurred before the child reached the age of majority.

- 4 Quelle est la loi applicable pour déterminer l'éligibilité (a) des enfants (b) l'époux ou d'autres membres de la famille à se voir octroyer des aliments?**
- 4 Which is the law applicable to the question of eligibility of (a) child and (b) a spouse or other family member to obtain maintenance?**

AUSTRALIA

- (a) Family Law Act 1975 and Child Support (Assessment) Act 1989.
- (b) Family Law Act 1975.

AUSTRIA

In the case of a child up to the age of 21 years: the law of his/her habitual residence (Hague Convention 1956); other children: the law of their nationality (according to Austrian private international law). In the case of spouses: the law of the common nationality; if they have no common nationality: the law of the habitual residence. In the case of ex-spouses: the law of the common nationality resp. habitual residence at the time of the divorce (according to Austrian private international law).

BULGARIE

Le Code de la famille considère comme relevant d'une seule institution tous les rapports alimentaires, c'est à dire les obligations de fournir des aliments que la loi attache de plein droit à certains rapports de famille. Les obligations alimentaires revêtent un caractère de réciprocité. Chacun des sujets de rapports alimentaires est créancier ou débiteur virtuel de l'autre selon l'état de ses besoins et de ses ressources. /art.81 et 82/.

Les débiteurs et les créanciers alimentaires sont des personnes se trouvant dans des rapports de famille étroits : conjoints, descendants, ascendants, frères et sœurs. Le Code a rangé ces personnes en groupes familiaux dans l'ordre d'intensité décroissant du devoir moral. Il a attribué à l'obligation alimentaire un caractère non simultané mais successif. Ainsi dans le cas où les débiteurs des aliments seraient dans l'impossibilité d'en fournir. L'obligation alimentaire passera à la charge des personnes figurant dans l'ordre qui suit immédiatement / art.81,al.2/.

CANADA

Pour les affaires relatives au divorce, la loi applicable à la question d'éligibilité des enfants ou des époux à des aliments est la Loi sur le divorce.

En vertu des lois provinciales en matière d'obligations inter-juridictionnelles des provinces et territoires de common law :

- (a) Pour les obligations alimentaires des enfants, les règles de droit de la juridiction dans lequel l'enfant réside habituellement. Toutefois, si l'enfant n'a pas droit à des aliments en vertu de ces règles, la loi du for;
- (b) Pour les obligations alimentaires de l'époux, la loi du for. Toutefois, si le demandeur n'a pas droit à des aliments en vertu de ces règles, la loi de la dernière résidence habituelle commune des parties.

Suivant les règles de droit international privé du Québec :

(a)(b) L'obligation alimentaire est régie par la loi du domicile du créancier. Toutefois, lorsque le créancier ne peut obtenir d'aliments du débiteur en vertu de cette loi, la loi applicable est celle du domicile de ce dernier (Article 3094 Code civil du Québec).

(b) L'obligation alimentaire entre époux divorcés, séparés de corps ou dont le mariage a été déclaré nul est régie par la loi qui est applicable au divorce, à la séparation de corps ou à la nullité (Article 3096 Code civil du Québec). La créance alimentaire d'un collatéral ou d'un allié est irrecevable si, selon la loi de son domicile, il n'existe pour le débiteur aucune obligation alimentaire à l'égard du demandeur (Article 3095 du Code civil du Québec).

For divorce matters, the law applicable to the question of eligibility of a child or a spouse to obtain maintenance is the Divorce Act.

Under provincial interjurisdictional support legislation in the common law provinces and territories:

- (a) For child support, the law of the jurisdiction in which the child is ordinarily resident, but if under that law the child is not entitled to support, the law of the forum;
- (b) For spouse support, the forum law. But if under the law of the forum, the spouse is not entitled to support, the law of the jurisdiction in which the parties last maintained a common habitual residence.

Under the private international rules of the civil law province of Quebec:

(a)(b) The obligation of support is governed by the law of the domicile of the creditor. However, where the creditor cannot obtain support from the debtor under that law, the applicable law is that of the domicile of the debtor (Article 3094 Civil Code of Quebec).

(b) The obligation of support between spouses who are divorced or separated from bed and board or whose marriage has been declared null is governed by the law applicable to the divorce, separation from bed and board or declaration of nullity (Article 3096 of the Civil Code of Quebec). No claim of support of a collateral relation or a person connected by marriage is admissible if, under the law of his domicile, there is no obligation for the debtor to provide support to the plaintiff (Article 3095 of the Civil Code of Quebec).

CHILE

The applicable law is: the Civil Code, Law No. 19,585, amending the Civil Code and other legal texts in the matter of Filiation, and Law No. 19,741, amending Law No. 14,908 on family abandonment and payment of maintenance.

CHINA - HONG KONG SPECIAL ADMINISTRATIVE REGION

SMOO provides that a "married person" may apply. Section 2 of SMOO states that a married person means a husband or a wife. A husband means "the husband or partner of a wife or married woman". A wife and a married woman means the wife or partner of a man by –

- (a) a marriage celebrated or contracted in accordance with the Marriage Ordinance (Chapter 181);
- (b) a modern marriage validated by the Marriage Reform Ordinance ("MRO", Chapter 178);
- (c) a customary marriage declared to be valid by MRO;
- (d) a union of concubinage as defined in section 14 of the Legitimacy Ordinance (Chapter 184);
- (e) a *kim tiu* marriage entered in accordance with Chinese law and custom applicable thereto in Hong Kong before 7 October 1971 under MRO; or
- (f) a marriage celebrated or contracted outside Hong Kong in accordance with the law in force at the time and in the place where the marriage was performed.

There is no express provision governing the provision of maintenance for family members other than the spouse and child.

CROATIA

The Family Act defines which persons and under what conditions are eligible for maintenance.

Procedure for the assessment of maintenance is stipulated in the Family Act as *lex specialis* and the Court Procedure Act.

CYPRUS

By s. 2 of L. 216/90 "child" "means the person who has not reached the eighteenth year of his age but does not include a married person who has not completed the aforesaid age." By s. 33(2) of the same Law "[t]he obligation [of parents to provide maintenance to their minor child] may continue especially in case of disability of the child and after the majority of the child by a decision and by a relative arrangement from the Court." By s. 34 of the same Law "[t]he child who has reached the age of majority has an obligation for the maintenance of his parents, provided the parents are not able to maintain themselves for their property or

incomes or from the job which is appropriate to their age, their health condition and other living conditions of them.” By s. 2 of L. 232/91 “spouse” means the relation created between a male and female as a result of a marriage recognised by the State. By s. 3 of the same Law, the spouses have according to their abilities reciprocal obligation to maintain each other. After divorce, for an ex spouse to claim maintenance from the other ex spouse, there must be special circumstances as provided in s. 5 of the same Law.

CZECH REPUBLIC

See question 2 and 3.

DENMARK

The provisions on payment of child maintenance are found in the Act of Child Maintenance (formerly the Act of the Legal Status of Children), No. 200 of May 18, 1960, most recently amended by Act No. 460 of June 7, 2001.

The provisions on the payment of spouse maintenance are found in:

- (1) The Act on the Contracting and the Dissolution of Marriage, No. 256 of June 4, 1969, most recently amended by Act No. 461 of June 6, 2001.
- (2) The Act on the Legal Effects of Marriage, No. 56 of March 3, 1925, most recently amended by Act No. 385 of May 22, 1996.

ESTONIA

Pursuant to Article 61 of the International Private Law Act (RT I 2002, 35, 217), the Hague Convention on the Law Applicable to Maintenance Obligations from October 2, 1973 applies to the duty of maintenance based on filiation relations.

Pursuant to Estonian legislation the right of maintenance proceeding from filiation relations, also the maintenance relations between spouses and divorced spouses are regulated by the Family Law Act.

FINLAND

The applicable law in matters on maintenance is also the applicable law on the question of who is eligible for maintenance.

Applicable law on maintenance to a child

If a Finnish municipal social welfare board is competent (*administrative jurisdiction*) to approve an agreement on maintenance to be paid to a child, the board will apply Finnish law in the matter.

If a Finnish court has jurisdiction in a matter on child maintenance:

- a) the court will, when the matter relates to *a child born in wedlock*, apply the law of the state of which the child is a citizen (the section 19 of the Act on Certain International Family Relationships (379/1929))⁴,

⁴ When the parties are citizens of Finland, Denmark, Iceland, Norway or Sweden and habitually resident in one of these countries, the Finnish court will apply Finnish law (*lex fori*) according to article 9 in the Convention between Finland, Denmark, Iceland, Norway and Sweden made in Stockholm 6th February 1931 on Provisions on International Private Law relating to Marriage, Adoption and Guardianship.

- b) the court will, when the matter relates to a *child born out of wedlock*, apply Finnish law (section 21 of the Act on Certain International Family Relationships).

Applicable law on maintenance to a spouse

If a Finnish municipal social welfare board is competent (*administrative jurisdiction*) to approve an agreement on maintenance to be paid to a spouse, the board will apply Finnish law in the matter.

If a Finnish court has jurisdiction in a matter on maintenance to be paid to a spouse, it will apply the law of the state in which the spouse, who is entitled to maintenance, is domiciled (subsection 2 of section 128 of the Marriage Act). There are however some restrictions in the application of foreign law. In a matter on maintenance to a spouse, the assessment shall always be based on the need for support of the person entitled to the maintenance and the means of the person liable to provide maintenance, notwithstanding any provisions in the applicable law (section 132 of the Marriage Act).

FRANCE

La Convention de La Haye du 2 octobre 1973, sur la loi applicable aux obligations alimentaires, ratifiée par la France, s'applique à toutes les obligations alimentaires découlant des relations de famille, de parenté, de mariage ou d'alliance. Elle donne compétence successivement :

- (1) à la loi interne de la résidence habituelle du créancier ;
- (2) à la loi nationale commune, lorsque le créancier ne peut obtenir d'aliment du débiteur en vertu de la première loi ;
- (3) à la loi interne de l'autorité saisie, lorsque la deuxième loi ne permet pas non plus au créancier d'obtenir d'aliments.

La loi désignée peut être écartée lorsqu'elle est manifestement contraire à l'ordre public.

GERMANY

The Federal Republic of Germany ratified the Hague Convention on the law applicable to maintenance obligations towards children on 2 October 1973. The Convention entered into force for Germany on 1 April 1987.

The provisions of the Convention which refer to the collision of laws were included in Art. 18 of the Introductory Act to the Civil Code in the interest of the comprehensibility of German international private law.

In accordance with Art. 18 subsection 1 first sentence of the Introductory Act to the Civil Code, on principle the material provisions of the law applying at the respective place of habitual residence of the person entitled to maintenance are to be applied to all kinds of family law maintenance duties.

If the law of the place of habitual residence does not afford the person entitled to maintenance a right to maintenance, in accordance with Art. 18 subsection 1 second sentence of the Introductory Act to the Civil Code the subordinate law of the state is to be applied to which the maintenance obligee and obligor belong jointly. Only in cases in which neither the law of the place of habitual residence nor the law of the joint home grant maintenance, is German law to apply in accordance with Art. 18 subsection 2 of the Introductory Act to the Civil Code.

A special provision for maintenance after divorce is contained in Art. 18 subsection 4 of the Introductory Act to the Civil Code. In accordance with this provision, which corresponds to Art. 8 subsection 1 of the abovementioned Convention, maintenance claims between divorced

spouses living in legal separation is adjudicated in accordance with the law under which the spouses were divorced.

ISRAEL

The law pertaining to maintenance is contained in the Maintenance Act of 1959 but since, in terms of this Act, the law applying to maintenance of spouses and minor children is the personal law of a person, reference has to be made to the particular religious law, *i.e.* Jewish law, Islam, etc. When, however, the personal law makes no provision for a parent to pay maintenance for their child, the Maintenance Act imposes a duty to pay maintenance.

JAPAN

The law of the habitual residence of the creditor shall apply. If he/she is unable to obtain support from the debtor under the said law, the law of their common nationality shall apply. If the creditor is unable to obtain support under either of the laws mentioned above, the law of Japan shall apply (Article 2 of the Law Relating to the Law Applicable to Maintenance Obligations. This law has been enacted to implement the 1973 Hague Convention on the Applicable Law to Maintenance Obligations).

LUXEMBOURG

Après la ratification de la Convention de La Haye du 2 octobre 1973 sur la loi applicable aux obligations alimentaires, le régime découlant de celle-ci constitue dorénavant le droit commun des conflits de lois en matière d'obligations alimentaires découlant de relations de famille, de parenté, de mariage ou d'alliance, y compris les obligations alimentaires à l'égard d'enfants nés hors mariage.

Il en résulte par exemple que les obligations alimentaires entre époux, dans le cadre d'un divorce, sont régies par la loi applicable au divorce, qui au Luxembourg, est soit la loi nationale des époux lorsqu'elle leur est commune, soit la loi de leur domicile effectif commun, lorsqu'ils sont de nationalité différente, soit la loi du for lorsque les époux de nationalité différente n'ont pas de domicile effectif commun. Les procédures subséquentes en révision sont également en principe régies par la loi appliquée à la dissolution du mariage.

MALTA

The Civil Code outlines who is eligible to obtain maintenance. For further details please refer to question 2 above.

THE NETHERLANDS

The 1973 Hague Convention on the law applicable to maintenance obligations.

NEW ZEALAND

- (a) Eligibility of a child is determined by the definition of "qualifying child".
The child must be under 19 years of age; and not married; and not financially independent and is either a New Zealand citizen or is ordinarily resident in New Zealand.
- (b) There is no requirement that the parties be legally married to pay spousal maintenance but generally that will be the case if maintenance is ordered by the Court.

Under Part VIII of the Family Proceedings Act an application for a maintenance order in respect of a child may only be made:

- (a) By parent against another parent; or
- (b) By a person who has lawful care of the child against a parent or parents of the child.

A parent includes:

- (a) a natural or adoptive parent of the child; and
- (b) in the case of a child of the marriage to a party to the marriage who is not a natural or adoptive parent of the child; and
- (c) for the purposes of an application under section 145E(b) of the Family Proceedings Act, to a step-parent of the child even though the child to whom the application relates is not a child of the marriage.

The applicable law in respect of spousal maintenance orders is specified to be the same as under New Zealand's domestic law, which is covered under Part VI of the Family Proceedings Act 1980.

NORWAY

- (a) Children's Act of April 8. 1981.
- (b) Matrimonial Act of July 4. 1991.

PANAMA

Those stipulated by the Family Code of the Republic of Panama.

PHILIPPINES

The Philippine Family Code.

POLAND

The law of the state of which the eligible person is a national shall be the applicable law.

ROUMANIE

Le Code de la Famille.

SLOVAKIA

The law applicable to the whole maintenance obligation (including the eligibility) is the *lex patriae* of the beneficiary. However, the law does not specifically regulate the issue in respect of other (family) relations than the ones listed in point 2 above.

SUISSE

S'agissant de l'obligation alimentaire, la loi fédérale sur le droit international privé (LDIP) renvoie expressément, tant pour les prétentions de l'enfant que pour celles des époux, à la convention de La Haye du 2 octobre 1973 sur la loi applicable aux obligations alimentaires (art. 49 et 83 LDIP). L'application par analogie de la dite convention est également prévue pour les prétentions de la mère non mariée (art. 83 al. 2 LDIP).

De manière plus générale, les effets du mariage sont en principe régis par le droit de l'Etat dans lequel les époux sont domiciliés (art. 48 al. 1 LDIP) et les effets de la filiation par le droit de l'Etat de la résidence habituelle de l'enfant (art. 82 al.1 LDIP). La loi applicable peut être différente dans des cas particuliers (si les époux ne sont pas domiciliés dans le même Etat respectivement si aucun des parents n'est domicilié dans l'Etat de résidence de l'enfant, art. 48 al. 2 LDIP et 82 al. 2 LDIP).

SWEDEN

The law of the State where the dependent has his or her habitual residence is applicable if the parties do not agree otherwise.

UNITED KINGDOM - ENGLAND AND WALES

Lex fori

- Child Support Act 1991 as amended by Child Support Act 1995, Social Security Act 1998 and Child Support, Pensions and Social Security Act 2000.
- Children Act 1989 Schedule 1.
- Matrimonial Causes Act 1973 sections 23,24A, 27 and 10(2).
- Domestic Proceedings and Magistrates' Courts Act 1978 sections 2, 6 & 7.
- Inheritance (Provision for Family and Dependants) Act 1975 sec 2.

UNITED KINGDOM - SCOTLAND

The law applicable to the question of eligibility of a child and a spouse to obtain maintenance is the Family Law (Scotland) Act 1985, sections 1 to 7 and the Child Support Act 1991.

UNITED STATES OF AMERICA

As a general matter, U.S. jurisdictions apply the law of the forum, including applicable federal law, in making decisions regarding maintenance. (This is to be distinguished from cases where a U.S. tribunal is enforcing a foreign decision. The U.S. tribunal will generally not reopen determinations made by the foreign tribunal, so long as the foreign tribunal had personal jurisdiction over the obligor under U.S. law.)

- (a) Eligibility for child support is determined primarily by state laws. Federal laws affecting the eligibility of a child for maintenance may be found in section 454 of title IV-D, 42

U.S.C. §§ 654(4), (6), (32), and related federal regulations, 45 C.F.R. §§ 302.31 & 302.33. Briefly, these federal provisions require that a state child support enforcement agency provide services with respect to each child receiving benefits under certain federal public assistance programs or to any other child upon application to the agency by an individual with respect to the child. A state child support enforcement agency may require an application fee not to exceed U.S.\$25 for furnishing such services. However, no fees or costs will be required from a foreign reciprocating country or foreign obligee.

- (b) As its name implies, the federal Child Support Enforcement Program has focused on child maintenance, although U.S. state child support enforcement agencies may enforce spousal maintenance obligations if requested to do so by a foreign reciprocating country. Generally, maintenance for spouses and other family members is governed by state law without federal oversight and eligibility requirements.

Procédure d'évaluation initiale des aliments

Procedures for the initial assessment of maintenance

5 Les décisions en matière d'aliments envers les enfants sont-elles rendues dans le cadre de procédures administrative ou judiciaire ?

5 Is child support determined through an administrative or a judicial process?

AUSTRALIA

Child Support is generally determined by an administrative process. The majority of domestic child support cases are determined by the Australian Child Support Agency (ACSA) using an administrative formula to work out an assessment of child support. The applicant, either the creditor or debtor must meet a number of requirements to be eligible for an assessment. These requirements are basically that the child is in the care of the creditor and that either the parents separated or the child was born after 1 October 1989.

If the applicant does not meet these requirements they may apply to a court for child support. Australian child support law prevents an order for child support being made judicially if the child is eligible for an administrative assessment of child support.

AUSTRIA

Judicial process

BULGARIE

Les décisions en matière d'aliments envers les enfants sont rendues dans le cadre d'une procédure judiciaire.

CANADA

Au Canada, ces décisions sont rendues dans le cadre d'une procédure judiciaire.

In Canada, child support is determined through a judicial process.

CHILE

Child support is determined through a judicial process.

CHINA - HONG KONG SPECIAL ADMINISTRATIVE REGION

Child support is determined through a judicial process.

CROATIA

Child support and collection procedure is a judicial matter. The Family Act provides for an agreement between the parents and between a full-age child and his/her parent and this matter is dealt with by the social welfare centre (administrative process).

CYPRUS

A judicial process.

CZECH REPUBLIC

As stated hereabove, maintenance is established in court proceedings.

DENMARK

In Denmark, child support is only determined through an administrative process by The County Governor's Office ("statsamtet").

ESTONIA

The maintenance support obligation and the amount of maintenance support are determined in court proceedings by way of a civil action.

FINLAND

If the parents can reach an agreement on the maintenance to be paid to the child, the matter will be handled through an administrative process. When the parents have made an agreement, they have to submit the agreement to the municipal social welfare board for approval. When the municipal social welfare board has approved the agreement, it can be enforced in the same way as a final judgment issued by a court.

If the parents cannot reach an agreement on the maintenance to be paid to the child, the matter has to be handled through a judicial process. The custodian or the guardian of the child has a right to institute the proceeding in the name of the child. The municipal social welfare board has also, under certain conditions, a right to institute the proceeding in the name of the child. If the

question of maintenance arises in connection with a trial on establishment of paternity, the municipal child welfare supervisor may bring forward a claim on maintenance to be paid to the child.

A claim on maintenance for a child may also be presented in connection with a paternity trial in court, a divorce proceeding in court and with a court proceeding on custody and rights of access.

FRANCE

Les décisions en matière d'aliments envers les enfants sont rendues dans le cadre de procédures judiciaires.

GERMANY

Support claims are determined in court proceedings or out of court by establishing an enforceable document.

In accordance with section 18 of the Eighth Book of the Social Code – children and youth assistance – there is a right to advice from the youth welfare office. In accordance with section 18 subsection 1 of the Eighth Book of the Social Code, mothers and fathers who look after a child alone have a right to advice and support in exercising personal custody, including asserting claims for support, or alternatives to support, for the child or juvenile. In accordance with section 18 subsection 2 of the Civil Code, the mother of a child who is not married to the father and is the sole holder of custody for the child also has a corresponding right as to her own claim in accordance with section 1615I of the Civil Code. In accordance with section 18 subsection 4 of the Eighth Book of the Social Code, finally, young adults (i.e. between 18 and 21) may require appropriate advice and support from the youth welfare office in asserting child support claims.

As to asserting support claims of minors, there is a provision in section 52a of the Eighth Book of the Social Code. Accordingly, the youth welfare office must offer the mother advice and support in asserting maintenance claims without delay after the birth of a child whose parents are not married with one another. The mother may decide whether or not to accept this assistance from the youth welfare office.

The youth welfare office may in particular function as an advisor in asserting maintenance claims (sections 1712 et seqq. of the Civil Code) if this is applied for. Furthermore, documents may be established at the youth welfare office in accordance with section 59 No. 3 of the Eighth Book of the Social Code regarding the maintenance duty if the person entitled to maintenance has not yet reached the age of 21. Coercive execution may be pursued in accordance with the provisions of the Code of Civil Procedure (Zivilprozessordnung) regarding coercive execution of executable documents from such documents that have been established by the youth welfare office in accordance with section 59 of the Eighth Book of the Social Code. The advantage of documentation at the youth welfare office is that this takes place without fees being charged. Other agencies allowed to establish executable documents (*e.g.* notaries, etc.) levy fees.

The youth welfare office however does not have a right or a duty to bindingly establish the child support/maintenance amounts. Only courts have such an entitlement.

As to the court procedure, the following can be stated:

If it is a matter of claims by minor children, they may not themselves claim in court in accordance with section 52 of the Code of Civil Procedure, which is why they need representation. This is carried out by the parents if they have custody (sections 1626 subsection 1 and 1629 subsection 1 of the Civil Code), or the youth welfare office as an

advisor (section 1712 subsection 1 No. 2 of the Civil Code). A lawyer is required to pursue an action for maintenance if it takes place in connection with divorce proceedings. Otherwise, no representation by a lawyer is required at first instance. Such representation is provided on the basis of a private law mandate between the lawyer and the client. In cases in which the personal and economic circumstances do not permit proceedings to be pursued, legal aid may be granted if there are prospects for success. The consequence of this is that legal costs for the lawyer appointed to the party are initially assumed by the state coffers. Depending on the assets, these costs must be repaid in instalments.

In the case of children who have a right to support, there may be a right to advance court costs against the parents who are under a duty to effect payment of support which assists the financial side of pursuing the proceedings.

ISRAEL

Child support is determined through a judicial process.

JAPAN

Child support is ultimately determined through judicial process.

Child support can be paid either a) by a parent to the child as the performance of maintenance obligation, or b) by a parent to the other as the payment of expenses for the care and custody of their child. Whatever the legal ground is, the amount can be determined by the agreement between the parties concerned. If no agreement is reached or possible, the Family Court shall determine the matter by the procedure provided by the Law for Determination of Family Affairs (Articles 766, 749, 771, in 788f1 and 879 of the Civil Code and Paragraph 1, Article 9 of the Law for Determination of Family Affairs). The District Court may determine child support in the latter sense (*i.e.* the payment of expenses for the care and custody of the child) in conjunction with the declaration of divorce or annulment of marriage (Article 15 of the Law of Procedure in Actions Relating to Personal Status).

LUXEMBOURG

Les décisions en matière d'aliments sont rendues dans le cadre de procédures judiciaires.

MALTA

Section 32(2) of the Code of Organisation and Civil Procedure states that the Civil Court, First Hall shall take cognizance of all causes of a civil and commercial nature, including those causes which have been assigned or cognizable by the Civil Court, First Hall and in regard to which it has not been otherwise provided for in this Code or in any other law.

It follows that once there is a claim for maintenance it is the Civil Court, First Hall which will decide if maintenance and the amount thereof is to be given to the claimant. No distinction is made as to whether the claimant is a child or not.

However, the proviso to Section 470(1) of the Code of Organisation and Civil Procedure is also noteworthy in this respect. It provides that in an application for leave to sue for personal separation or at a subsequent date but prior to the commencement of litigation before the court of contentious jurisdiction, a demand may be made for determining the amount of an allowance for maintenance during the pendency of the proceedings before the court of voluntary jurisdiction and the court of contentious jurisdiction and for the issue of a decree ordering the payment of such allowance.

THE NETHERLANDS

The amount payable may be determined by a court (judicial process) or by the parties in an agreement. The latter mainly happens during divorce proceedings, when the parties request the court to set the maintenance payments at the amount they have agreed.

NEW ZEALAND

Child support is determined on application from either parent as an administrative process. See (1) above.

If the application is a request to register an Order made overseas under the provisions of the Commonwealth scheme the process is administrative. Applications for confirmation of provisional orders or claims under the New York Convention are judicial processes.

NORWAY

It is handled administratively.

PANAMA

Alimony is determined through administrative or judicial processes.

PHILIPPINES

It is essentially a judicial process.

POLAND

Decisions on maintenance claims are taken through a judicial process, and not through an administrative one.

ROUMANIE

Dans le cadre de la procédure judiciaire.

SLOVAKIA

Child support is determined through judicial proceedings.

SUISSE

Comme il a été dit plus haut (cf. réponse ad 1 a), les deux sont possibles.

SWEDEN

Maintenance support for a child with parents who are separated is paid to the custodial parent by the local Social Insurance Office at a rate of SEK 1173/month. The parent liable for maintenance must repay the State, related to income and total number of children. If the allowance instead is paid directly to the custodial parent, the Social Insurance Office pays an equally reduced support. The obligation to repay is initially determined through an administrative process. There is no reason for a child or a parent to ask a court for a maintenance order unless the liable parent should pay more than SEK 1173/month and neglects this obligation.

UNITED KINGDOM - ENGLAND AND WALES

Child support is determined through both an administrative process and a judicial process. The administrative process is conducted through the Child Support Agency, under the *Child Support Act 1991*. Child support is conducted through the courts in England and Wales when the following legislation is applied: *Children Act 1989 Schedule 1*, *Matrimonial Causes Act 1973*, *Domestic Proceedings and Magistrates' Courts Act 1978* and *Inheritance (Provision for Family and Dependents) Act 1975*.

UNITED KINGDOM - SCOTLAND

It depends on whether the case falls within the 1991 Act or the 1985 Act (see above). If under the Child Support Act 1991, then, determination of child support is an administrative process; otherwise, it is still a judicial process.

UNITED STATES OF AMERICA

In the United States, individual states determine whether to establish, enforce, and modify child support through administrative or judicial processes, or both. Recent legislative changes in many individual states have emphasized the use of administrative processes.

- 6 **Si le demandeur ou le défendeur vit à l'étranger, la procédure est-elle différente ? Dans l'affirmative, merci de bien vouloir préciser.**
- 6 **Is the process different where either the applicant or the respondent live abroad? If so, please give details.**

AUSTRALIA

No. However a debtor who is overseas can only apply for an administrative assessment if the application is made on their behalf by the appropriate authority.

AUSTRIA

Yes. If the child is a minor and habitually resident in Austria or an Austrian national child maintenance is ordered in an informal ex-officio proceedings (so-called "ausserstreitiges Verfahren"); in all other cases the lodging of a formal law-suit is necessary (so-called "streitiges Verfahren").

BULGARIE

Si le demandeur ou le défendeur vit à l'étranger, la procédure est différente et elle s'accomplit à la base d'une procédure de reconnaissance et exécutions des décisions concernant les obligations alimentaires s'il existe une convention d'aide judiciaire ou à la base de réciprocité déterminée par le ministre de la justice (art.303-307 du Code de procédure civile.)

CANADA

Lorsque la Loi sur le divorce s'applique:

Toute la procédure est judiciaire et se déroule devant un tribunal canadien dans la province où le défendeur a résidé habituellement depuis au moins un an.

Lorsque la Loi sur le divorce ne s'applique pas:

Si le demandeur étranger réside dans une juridiction avec laquelle où il existe une entente de réciprocité :

En général, la procédure est judiciaire dans les deux cas, c'est-à-dire que le demandeur peut faire une demande de l'étranger (processus administratif), laquelle sera soumise à un tribunal canadien pour détermination (procédure judiciaire). Le demandeur résidant au Canada peut faire une demande au Canada (processus administratif) afin qu'elle soit acheminée dans la juridiction du défendeur pour détermination selon la loi de cette dernière. L'autorité désignée prendra les mesures nécessaires dans le cadre de la procédure administrative.

Si le demandeur étranger réside dans une juridiction avec laquelle il n'y a pas d'entente de réciprocité :

La procédure complète sera judiciaire et se déroulerait devant le tribunal canadien compétent.

When the Divorce Act applies: the entire process is judicial and takes place before a Canadian Court in a province in which the respondent has ordinarily resided for at least one year.

When the Divorce Act does not apply:

When the foreign applicant resides in a reciprocating jurisdiction:

In general, the process is similar in both cases, i.e., an applicant residing in a foreign reciprocating jurisdiction could make an application from abroad (administrative process) that would be placed before a Canadian court for judicial determination (judicial process). The applicant who resides in Canada could commence an application in Canada (administrative process) to be forwarded to the respondent's jurisdiction for determination in accordance with that jurisdiction's law. The administrative process is arranged by the designated authorities.

When the foreign applicant resides in a non reciprocating State:

The entire process is judicial and would take place before a Canadian court having jurisdiction.

CHILE

The process is not different.

CHINA - HONG KONG SPECIAL ADMINISTRATIVE REGION

The process and assessment criteria used in assessment of maintenance are the same, regardless of whether the applicant or respondent lives in Hong Kong or abroad. Section 3 of the Matrimonial Causes Ordinance (Chapter 179) provides that the court has jurisdiction to entertain a petition or application for divorce if –

- (a) either of the parties to the marriage was domiciled in Hong Kong at the date of the petition or application;
- (b) either of the parties to the marriage was habitually resident in Hong Kong throughout the period of 3 years immediately preceding the date of the petition or application; or
- (c) either of the parties to the marriage had a substantial connection with Hong Kong at the date of the petition or application.

CROATIA

The process is different if the recognition of a foreign court decision or a maintenance agreement is required, because in such a case an extrajudiciary process is conducted at the competent court. The procedure is similar in all other cases.

CYPRUS

No.

CZECH REPUBLIC

The procedure in a Czech court in such proceedings is not affected by circumstances that the applicant or the respondent live abroad or that the application for maintenance judgment pertains to a spouse or a parent, to the difference to a child. Proceedings for maintenance of a child or a person specified here may not be combined.

DENMARK

The process is the same, wherever the parents are living.

ESTONIA

With regard to duties of maintenance within the family, the Hague Convention on the Law Applicable to Maintenance Obligations (October 02, 1973) applies.

In case pursuant to the above Estonian law is applicable, there are no procedural differences stipulated for in cases where the applicant or the respondent lives abroad.

FINLAND

If the municipal social welfare board or the court has the competence (*jurisdiction*) to handle the matter, the administrative process and the judicial process will be the same for those living in Finland and for those living abroad.

FRANCE

Les juridictions françaises sont compétentes pour connaître des litiges internationaux relatifs à la mise en œuvre de l'obligation alimentaire lorsque le défendeur ou le créancier demandeur demeure en France.

Les tribunaux français sont encore compétents quand bien même ni le défendeur ni le créancier demandeur ne demeureraient en France, dès lors que l'une des parties au procès est française.

Ce privilège ne peut toutefois être invoqué contre les défendeurs domiciliés sur le territoire d'un Etat contractant aux conventions de Bruxelles du 27 septembre 1968 et de Lugano du 16 septembre 1988.

GERMANY

The process is not different depending on whether either the applicant or the respondent lives in Germany or abroad.

This may only be significant when initiating proceedings or on concluding them, but not for the actual course of the proceedings: The residence of a party may be relevant to the international and local jurisdiction of the court. For instance, section 23 a of the Code of Civil Procedure governs the local jurisdiction at the place of residence of the person entitled to maintenance if there is no venue on domestic territory against the person obliged to pay maintenance. Section 642 of the Code of Civil Procedure governs the exclusivity of venues with maintenance actions of minor children against the parents.

In the area of application of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (hereinafter referred to as: Brussels I), all jurisdiction arrangements contained in the Code of Civil Procedure are supplanted by the latter.

Furthermore, written applications or actions must be served. This also applies a rule to summonses to appear. This may lead to different periods for the submission of objections if an order to appear at an early first hearing is to be served abroad (section 274 subsection 3 second sentence of the Code of Civil Procedure). The court determines in written proceedings the statutory deadline within which willingness to defend must be demonstrated (section 276 subsection 1 third sentence of the Code of Civil Procedure) if the written action is to be served abroad. Comparable provisions also exist to set other periods if service must be effected abroad (section 339 subsection 2 and section 647 subsection 1 of the Code of Civil Procedure).

If it is necessary to take evidence abroad, special provisions apply to this (sections 363 et seq. and 369 of the Code of Civil Procedure). This however does not depend on whether the parties live abroad. Furthermore, if one may expect the judgment to be executed abroad, it is possible that a ruling with reasoning may be required, whilst otherwise an abstract may be considered (section 313 a subsection 4 and section 313 b subsection 3 of the Code of Civil Procedure).

ISRAEL

The moment an applicant or respondent falls within the scope of Israel's rules of jurisdiction, the process is exactly the same.

JAPAN

The question of international jurisdiction will be decided on the basis of case law where one of the parties lives abroad. Apart from that, the same process will apply regardless of the parties' residence.

LUXEMBOURG

Il n'y a pas lieu de distinguer, pour ce qui est de la procédure, suivant que le demandeur ou le défendeur est domicilié à l'étranger.

MALTA

Applicants are not treated in a different manner because of their residence.

THE NETHERLANDS

The procedure is basically the same, except where private international law issues arise (such as what court is competent and what law is applicable).

Where the respondent resides in the Netherlands, the Dutch Central Authority may negotiate an arrangement for the respondent to pay amounts of support corresponding to his financial means.

NEW ZEALAND

If the custodian lives in NZ and the paying parent lives overseas then the application can be made in NZ.

One of the criteria that the paying parent must meet before an application for child support can be made is that the paying parent must be either a NZ citizen or ordinarily resident in NZ or resident in a country with whom NZ has a reciprocal agreement. At the present time, NZ has a reciprocal agreement with Australia only.

For applications received from overseas applicants see (5) above.

NORWAY

In cases where one of the parties lives abroad, the services are centralised to our National Office for Social Insurance Abroad for determination of the maintenance support. Except for the special procedures necessary for the cooperation with the actual foreign country, the cases are usually fully treated on an administrative level. The courts may nevertheless be brought into the case if court approval of validity of documents is needed.

PANAMA

If the plaintiff lives in Panama the administrative or judicial process could be established in Panama or in the country of residence of the defendant. In case the demand is established in Panama, the defendant will be notified by means of letters requisitorial or letters rogatory.

In case the plaintiff lives abroad, he/she could establish the demand in Panama or initiate the same in his/her country of residence and it will be governed under the norms and laws of such country, and once it is decided, the interested party must establish a procedure of exequatur.

PHILIPPINES

No, it is not different.

POLAND

There are no differences in the process.

ROUMANIE

Etablissement du quantum de l'obligation d'entretien se fait sur les mêmes critères.

SLOVAKIA

If the respondent lives abroad, the Slovak court does not have jurisdiction if maintenance of other person than a minor child is involved. If the beneficiary lives abroad, the jurisdiction of the Slovak court is not given, unless the respondent is a Slovak national. Otherwise the process itself is the same irrespective of the place of residence. Of course, if a foreign resident is involved, the procedure gets more complicated due to the need of service abroad and taking of evidence abroad (or application of foreign material law), etc.

SUISSE

Non. Si l'enfant a sa résidence habituelle en Suisse et que la procédure pour fixer les contributions d'entretien se déroule en Suisse, la procédure n'est pas différente, que le parent débiteur vive à l'étranger ou non.

SWEDEN

Children living abroad are not entitled to maintenance support from the Social Insurance Office. In those cases the maintenance allowances are decided through an agreement or a judicial process.

If the liable parent lives abroad, the Social Insurance Office can order the custodial parent to take steps to get the maintenance obligation determined through a judicial process. The Social Insurance Office takes over the child's right to maintenance allowance up to the sum paid out by the office as maintenance support.

UNITED KINGDOM - ENGLAND AND WALES

Child Support Agency

The UK Child Support Agency has no jurisdiction to deal with maintenance applications if the non-resident parent is not habitually resident in the UK, except if the non-resident parent works abroad for a company with a UK based payroll.

The courts

The process is not different in the courts in England and Wales. Once the process has been started, applications made under the *Maintenance Orders (Reciprocal Enforcement) Act 1972 s 27A* for a maintenance order in the case of a child or children alone is dealt with under the *Children Act 1989*. In any other case an application is dealt with under the *Domestic Proceedings and Magistrates' Courts Act 1978*.

UNITED KINGDOM - SCOTLAND

Proceedings arising out of an application under section 31(1) of the Maintenance Orders (Reciprocal Enforcement) Act 1972 are treated as an action for aliment within the meaning of the Family Law (Scotland) Act 1985 and, as said above, jurisdiction remains with courts in respect of awards of aliment if the absent parent lives abroad. In fact, the CSA has no jurisdiction to deal with claims where the absent parent lives abroad.

UNITED STATES OF AMERICA

Yes, where one parent lives abroad, the process will differ depending upon whether the foreign parent lies in a foreign reciprocating country and whether the U.S. State has personal jurisdiction over the foreign respondent, as explained below.

a. Foreign Applicant/U.S. Respondent.

If the applicant resides in a foreign country, a state child support enforcement agency will process the request as one from another U.S. state if the country is a foreign reciprocating country under either state or federal law. As of January 1, 2003, the United State of America will have federal-level arrangements in effect with Australia, the Czech Republic, Ireland, the Netherlands, Norway, Poland, Portugal, the Slovak Republic, and the Canadian Provinces of Alberta, British Columbia, Manitoba, Newfoundland/Labrador, Nova Scotia, and Ontario. Individual states of the United States have established reciprocal arrangements with up to 20 foreign countries and Canadian provinces. Lists of foreign reciprocating countries for the various U.S. states can be found at the OCSE website: <http://ocse3.acf.hhs.gov/ext/irg/sps/selectastate.cfm>; see section C1 for each state].

If the applicant resides in a non-reciprocating country, it is within the state's discretion whether to process the request, and many U.S. states will not accept such requests due to resource constraints.

b. U.S. Applicant/Foreign Respondent.

With respect to a case where the respondent lives abroad, but the applicant resides in the United States, how the U.S. state processes the case will depend on whether it has personal jurisdiction over the respondent. A U.S. state with personal jurisdiction over the respondent will establish an order and ask for that order to be registered and enforced in the other nation. If the U.S. state does not have jurisdiction, then either the state agency or the applicant will need to ask the foreign country where the respondent resides to determine the child support obligation.

- 7 La procédure relative à une demande en matière d'aliments envers l'époux ou d'autres membres de la famille diffère-t-elle de celle envers les enfants ? Dans l'affirmative, merci de bien vouloir annexer les deux procédures.
- 7 Is the process different where the application is for maintenance for a spouse or other family member rather than a child? If so, can the two processes be joined?

AUSTRALIA

Yes. Spousal maintenance can only be determined judicially. However, it may be possible, in limited circumstances, for child support and spousal maintenance to be determined by a court at the same time.

AUSTRIA

Yes (see answer to question no. 6); processes can only be joined if both applications (child and spousal maintenance) have to be decided in the "streitiges Verfahren".

BULGARIE

Non. La procédure relative a une demande en matière d'aliments envers l'époux ou d'autres membres de la famille ne diffère pas de celle envers les enfants

CANADA

Dans les provinces et territoires de common law :

Il n'y a aucune différence. Les deux procédures peuvent être jointes dans une seule demande.

Dans la province de droit civil du Québec :

Oui, il y a des règles de procédure particulières pour les demandes relatives aux obligations alimentaires à l'égard des enfants (825.8 et suivants du Code de procédure civile). Les deux procédures peuvent être jointes dans une même demande.

In common law provinces and territories:

There are no differences and the two processes can be joined in one application.

In the civil law province of Quebec:

Yes, there are specific procedural rules applying for the determination of child support (Article 825.8 and following of the Code of Civil Procedure of Quebec). The two processes can be joined in one application.

CHILE

Matters regarding maintenance for children, the maintenance provider's spouse, when so requested by the latter jointly with the minor children, or for other adult or minor family members jointly requesting maintenance, shall be heard by the Juvenile Court Judge of the maintenance provider's or maintenance recipient's domicile, at the election of the latter. If maintenance is requested for adults only, the matter shall be heard by the Civil Court Judge.

CHINA - HONG KONG SPECIAL ADMINISTRATIVE REGION

There is no difference and the two processes can be joined. There is no express provision governing the provision of maintenance for family members other than the spouse and child.

CROATIA

The process is conducted according to the same rules, and if, for example, a mother as the child's legal representative has requested maintenance for both the child and herself, it will normally be a combined procedure; if two applications are separately filed, it is possible under the Court Procedure Act, and subject to a court decision, to join the processes for reasons of economy and expeditiousness. For all joined processes a single court decision can be made. The difference is that for a child an agreement can be reached at the social welfare centre, whereas for other family members this possibility is not provided under the Family Act. Besides, a social welfare centre can initiate and conduct a process for enforcement of maintenance or adjusted maintenance.

CYPRUS

No, it is not different. The two processes are dealt with, by two different Laws, however, there seems to be no prohibition for the two processes to be joined, though this does not happen in practice.

CZECH REPUBLIC

See question 6.

DENMARK

The process is the same.

ESTONIA

The process of ordering (maintenance) support for a child or for a spouse or for another family member are not regulated differently. It is possible to join the actions pursuant to the provisions of the civil procedural right.

FINLAND

The administrative process and the judicial process is the same for matters relating to maintenance for a child and to maintenance for a spouse.

Administrative process

When parents, who are married to one another, have made an agreement on the maintenance to be paid to the child and another agreement on the maintenance to be paid by one spouse to the other spouse, the parents can submit the two agreements at the same time to the municipal social welfare board for approval. The board will handle the two agreements as separate matters, but the board can have the same timetable for the approval of the agreements.

Judicial process

When a divorce proceeding is pending at a court, the court may upon request by the spouses or one of them give a judgment on the maintenance to be paid to a child and/or to one of the spouses in connection with the divorce proceeding.

FRANCE

Le juge compétent, dans tous les cas, est le juge des affaires familiales, sauf en ce qui concerne la demande de subsides que peut former un enfant à l'encontre de celui qui a eu des relations avec sa mère pendant la période légale de conception, qui relève de la compétence du tribunal de grande instance.

Une différence essentielle existe entre l'obligation d'aliments et la contribution à l'entretien et l'éducation des enfants dont sont redevables les père et mère.

En effet, la loi du 3 janvier 1972 permet au juge de décharger le débiteur de tout ou partie de sa dette alimentaire quand le créancier aura lui-même manqué gravement à ses obligations envers lui.

Ce principe est expressément applicable au devoir de secours entre époux séparés de corps.

Si aucun texte ne permet d'étendre ces dispositions à la situation d'un époux débiteur d'une contribution aux charges du mariage ou d'une pension alimentaire envers son ex-conjoint après un divorce pour rupture de la vie commune, la jurisprudence admet néanmoins la possibilité de dispenser le débiteur de ses obligations alimentaires s'il rapporte la preuve de circonstances particulières, généralement en rapport avec la responsabilité de son conjoint dans la séparation ou l'existence de manquements graves aux obligations et devoirs du mariage.

GERMANY

A normal case of maintenance proceedings is action proceedings. Such proceedings function in the same manner for both persons entitled to maintenance in terms of procedural law. The maintenance applications may be filed together with a divorce, and (if no separation is applied for) are then heard and decided on together. If this is not the case, both sets of proceedings are released from the obligation to be represented by a lawyer at first instance. There is therefore no obstacle to joining the proceedings in accordance with general principles.

As to child support, the child may select between two methods of claiming support. He/she may either demand a specific amount of annuity or a percentage of the respective normal amount graded by age groups in accordance with the Ordinance on Normal Amounts (Regelbetrag-Verordnung) (hereinafter referred to as Normal Amounts Ord.). The Normal Amounts Ord. determines – graded by three age groups – a normal amount for the maintenance of a minor child as against the parent with whom he/she does not live in a household. The normal amount here determines not the individual needs of the child entitled to support, or the needs of children entitled to support in general, but is a number irrespective of needs. The support to which the child entitled to support is entitled is converted here into a percentage of the normal amount. This states the ratio of the individual circumstances of the person entitled to maintenance to normal needs in accordance with the Normal Amounts Ord. In accordance with section 1612a subsection 4 of the Civil Code, the normal amounts determined in the Normal Amounts Ord. are determined again in line with the (economic) development of the average disposable income every two years in each case as of 1 July.

In addition to the action proceedings, minor children have available the simplified procedure on support for minor children (sections 645 et seqq. of the Code of Civil Procedure). Also in the simplified proceedings, the child may opt between the two types of asserting the support claim which are available. The simplified procedure however only takes place if the parent claimed

against does not live in a household with the child and maintenance is to be determined for the first time.

Furthermore, only maintenance claims may be asserted in these proceedings which do not exceed 150 % of the normal amount in accordance with the Normal Amounts Ord. before child benefit or comparable payments are counted against it (sections 1612b and 1612c of the Civil Code) in accordance with the Normal Amounts Ord.

The simplified procedure is initiated by means of an application in the shape of a form submitted to the Local Court. It is not a judge who has jurisdiction in this instance, but a judicial administration officer. The latter does not examine whether the asserted support claim actually exists, but merely calls on the opponent to assert relevant objections against the claims. If no objections are submitted within a specific period, or if objections are not put forward in the prescribed form, the support applied for is determined by means of a ruling. If there are relevant objections, at least the part that is non-contentious and has been recognised is determined by means of a ruling. As to the part of the support claim that was originally applied for and has not been determined, the party may apply for implementation of the action proceedings in accordance with section 651 subsection 1 first sentence of the Code of Civil Procedure

ISRAEL

In principle there is no difference in the process of application. It should however be noted that in child support applications the maintenance creditor is the child himself and the child is represented in court by a parent or a guardian.

JAPAN

The process is the same in that the mode and amount shall be ultimately determined by the Family Court pursuant to the Law for Determination of Family Affairs.

LUXEMBOURG

La différence réside au niveau de la juridiction compétente pour statuer sur une demande en matière d'aliments : en principe le juge de paix connaît de toutes demandes en pension alimentaire, à l'exception de celles se rattachant à une instance en divorce ou séparation de corps. Au cours d'une instance en divorce, compétence pour décider des mesures provisoires relatives aux aliments (tant pour un époux que pour les enfants) est reconnue au président du tribunal d'arrondissement statuant en référé. Le tribunal d'arrondissement ayant à statuer sur la demande en divorce est également compétent pour statuer sur les mesures accessoires au divorce, et imposer à ce titre à l'une des parties l'obligation de verser à l'autre une pension alimentaire ; il peut au même titre fixer la pension alimentaire pour les enfants (étant précisé toutefois que dans le cadre d'une instance en divorce, tant dans le cadre des mesures provisoires que dans le cadre des mesures accessoires au divorce, l'obligation mise à charge des père et mère découle en réalité de leur obligation d'entretien et d'éducation des enfants).

MALTA

The process is not different.

The two processes can be joined. There are various court judgements where the court has decided upon the issue of maintenance obligations in respect of both a spouse and children. Such is the case of the following judgements: *A v B* (Civil Court, First Hall 16 March 1990); *Jane Camilleri, f'isimha proprju u bhala kuratrici 'ad litem' ta' bintha minuri Clairita nominata b'digriet*

tat-3 ta' Gunju, 1987 v Carmelo Camilleri (Civil Court, First Hall, 7 November 1990); *Victoria Camilleri f'isimha u bhala kuratrici ad litem ta' uliedha minuri Omar u Daniel v Mahmood Faraj Abdul Kareem* (Court of Appeal 2 November 1994); *A v B* (Court of Appeal, December 1997).

THE NETHERLANDS

There are no differences in procedure.

NEW ZEALAND

Where spousal maintenance is payable under a voluntary agreement both parties must either be NZ citizens or ordinarily resident in NZ before an application can be accepted by NZ Inland Revenue Child Support. There are no such requirements where spousal maintenance is payable under a Court order so far as citizenship or residency is concerned.

Under Part VIII of the Family Proceedings Act both are judicial processes and can be heard conjointly.

NORWAY

Norway uses the same procedures as long as suitable and we do unite the two processes.

PANAMA

The processes are equal and they can be jointly dealt with, nevertheless there are certain essential requirements to apply.

PHILIPPINES

There is no difference for applicants whether he is a spouse or a child.

POLAND

It is not different.

ROUMANIE

La procédure judiciaire est identique, les critères sont les mêmes.

SLOVAKIA

The process is not necessarily different. The condition for the determination of maintenance are. The only difference is that while the maintenance of a minor child is adjudicated, the child has to have a special guardian in the proceedings (*guardian at litem*). No such person is involved in the proceedings for adult persons.

The law does not prohibit the joining of proceedings for maintenance of a child and another person, if it is effective. In practice this does not happen. On the other hand, the law prescribes that the establishment of maintenance for a child must be joined with the paternity proceedings and with a divorce proceedings. In fact, the proceeding is not solely for

maintenance, but for the regulation of all parental rights and responsibilities (including placement and maintenance).

SUISSE

La seule différence est qu'il y a une procédure en plus pour la fixation des contributions d'entretien envers les enfants, à savoir la possibilité de conclure une convention approuvée par l'autorité de tutelle (*cf.* réponse ad 1 a).

SWEDEN

There is no possibility for a spouse to get maintenance support from the Social Insurance Office. The maintenance allowance is decided through an agreement or a judicial process.

The two processes can be joined in a divorce case.

UNITED KINGDOM - ENGLAND AND WALES

See 1 above.

Child Support Agency

The Child Support Agency only applies to maintenance for children and does not apply to these circumstances at all.

The courts

In the courts in England and Wales spousal and child maintenance applications are often joined. However, applications for maintenance under the *Inheritance (Provision for Family and Dependents) Act 1975* cannot be joined and are always treated separately.

UNITED KINGDOM - SCOTLAND

The process is essentially the same; however different factors would be taken into consideration when determining the amount of aliment due. In cases of divorce, the court will make such award of aliment for children of the marriage as is justified in the circumstances, before turning to any question of financial support for the spouse.

UNITED STATES OF AMERICA

The process is the same where a request is being made for both a child and a custodial parent residing with that child. Otherwise, processes governing the application for maintenance for a spouse vary by state. Pursuant to federal law, requests from foreign reciprocating countries for enforcement of spousal support where no child is involved may be provided at the option of a particular state. However, while many of the substantive and procedural provisions of UIFSA apply equally to child support and spousal support, private attorneys rather than state child support enforcement agencies typically provide the necessary legal services for these cases on a fee-for-service basis.

Processes governing the application for maintenance for family members other than children and custodial parents also vary by state. Under title IV-D, state child support agencies do not provide services for maintenance of other family members. Nor do any of the substantive or procedural provisions of UIFSA apply to support of other family members.

Méthodes de calcul des aliments

Methods of calculating maintenance

- 8 L'estimation des aliments envers les enfants est-elle basée sur une formule, des lignes directrices ou d'autres critères ? Merci de bien vouloir préciser les principaux éléments déterminant une évaluation.**
- 8 Is the assessment of child support based on a formula, guidelines, or other criteria? Please outline the principal elements involved in making an assessment.**

AUSTRALIA

An Australian child support assessment is determined using a formula. Attachment B has details of the basic formula. The ACSA website (www.csa.gov.au) has calculators which parents can use to get an idea of the amount of child support payable under the formula.

AUSTRIA

There are guidelines used by the courts (percentages from the debtor's net income which depend on the age of the child and the average needs of children depending of the age).

BULGARIE

L'estimation des aliments envers les enfants est basée sur des critères relatives. Selon l'art.84 le taux de la pension alimentaire est détermine d'après les besoins du créancier alimentaires et les ressources de celui qui doit les aliments. Il s'agit donc d'un double critère / besoins et ressources / qui se rapportent a la fois a l'existence même de l'obligation alimentaire et a son quantum. Le code laisse sur ce dernier point au tribunal un large pouvoir d'appréciation. Cette solution dont la souplesse est indéniable, es de nature a permettre la fixation du montant de la pension de la pension alimentaire de la façon la plus équitable.

CANADA

Toutes les juridictions canadiennes utilisent des lignes directrices sur les pensions alimentaires pour enfants. Les lignes directrices sur les pensions alimentaires comprennent des tables qui fixent des montants de pensions alimentaires basés sur les facteurs suivants :

Dans les provinces et territoires de common law :

- Le nombre d'enfants ;
- Le lieu de résidence du débiteur ;
- Le revenu du débiteur ;
- On peut modifier les montants qui s'y trouvent pour tenir compte des dépenses spéciales, tel frais de garde ou dépenses médicales, de difficultés excessives, de la garde partagée ou exclusive, d'un niveau de revenu exceptionnellement élevé ou encore ou encore d'enfant majeur.

Dans la province de droit civil du Québec:

- Les revenus des deux parents;
- Le nombre d'enfants;

- Le temps de garde;
- Certains frais additionnels relatifs aux besoins des enfants s'il y a lieu (frais de garde, d'étude, frais médicaux, frais liés aux activités parascolaires);
- Le montant de la pension alimentaire peut augmenter ou diminuer s'il y a des difficultés excessives.

All the provinces and territories apply child support guidelines. The child support guidelines include tables which fix an amount of support based on the following factors:

In common law provinces and territories:

- The income of the payer;
- The number of children;
- The place of residence of the payer;
- Adjustment to the table amounts may be made to account for the following:
 - Undue hardship;
 - Special expenses such as day care or medical expenses;
 - Shared or split custody;
 - Exceptionally high income;
 - Children over the age of majority.

In the civil law province of Quebec:

- Parents' income;
- Number of children;
- Custody arrangements;
- Certain additional expenses relating to the children's needs, if applicable (custody fees, study fees, medical fees, extracurricular activities' fees);
- The amount of child support can be increased or decreased depending on undue hardship.

CHILE

For the purpose of decreeing child support when requested by a minor child from his/her mother or father, the maintenance provider shall be presumed to have the means to provide the same. By virtue of this presumption, the minimum maintenance allowance amount decreed in favor of a minor child shall not be less than 40% of the minimum remuneration applicable according to the maintenance provider's age. In case of two or more minor children, said amount shall not be less than 30% for each.

CHINA - HONG KONG SPECIAL ADMINISTRATIVE REGION

Under section 7(2) of MPPO, the factors the court considers in a maintenance for child case include –

- (a) the financial needs of the child;
- (b) the income, earning capacity (if any), property and other financial resources of the child;
- (c) any physical or mental disability of the child;
- (d) the standard of living enjoyed by the family before the breakdown of the marriage; and
- (e) the manner in which he was being and in which the parties to the marriage expected him to be educated.

CROATIA

There is no single formula. The Family Act defines in principle what should be determined in a court process and taken into account in assessing the amount of support. Thus a court will determine the total amount of funds required for support, with allowance being made for the applicant's income, property, ability to work, job prospects, health condition and other relevant

circumstances. Taken into account for a supported child are age and educational needs. The Act also provides for an increased maintenance if accompanied by improved living circumstances of a parent.

As for the respondent, the Act provides that in assessing maintenance all his/her income or improved earning capacities, as well as personal needs and legal support obligations be taken into account.

The parent, capable for work, is obliged to pay maintenance regardless of his income or employment status.

CYPRUS

Under s. 37 of L. 216/90 "(1) The maintenance shall be prescribed according to the needs of the beneficiary, as they result from his living conditions and the financial possibilities that exist for the maintenance of a person. (2) The maintenance includes all that is necessary for the maintenance and welfare of the beneficiary and in addition, as the case may be, the expenses for his general education." The principle of equality and the principle of analogy are applied as regards the obligation of the parents to maintain their children.

CZECH REPUBLIC

The calculation of maintenance for a child/spouse/parent is not being made on the basis of a formula, directions or firmly defined criteria. The Family Act #94/1963 Coll. in its current version sets forth that, in determining the alimony amount, the court shall take into consideration the justified needs of the beneficiary (i.e. the person entitled to maintenance) and the liable person's (i.e. person liable to provide for maintenance) abilities, capacity and property as well. This method shall be used for determining the maintenance also in cases when the beneficiary or the liable person is living abroad.

DENMARK

The law sets no limit as to the amount of child maintenance.

If the maintenance debtor has a gross-income that does not exceed the average income, child maintenance payment will be fixed to the standard allowance (In 2002 the standard allowance is DKK 940 (Euro 126,56) a month).

If the maintenance debtor has a gross-income exceeding the average gross-income, maintenance payment can be fixed at a higher amount. Every year, the Ministry of Justice lays down advisory guidelines for maintenance payments higher than the standard maintenance payment.

In recent years, the Ministry of Justice has not made a decision about a higher amount of child maintenance than five times the standard allowance.

ESTONIA

According to Estonian law, the assessment of the amount of child support is primarily based on the financial status of both parents and on the needs of the child. The ability of the obligated person to procure facilities, necessary for performance of maintenance obligation, as well as his/her other obligations, are taken into account.

The law stipulates the minimum amount of monthly support per child, that is ¼ of the minimum monthly salary established by the Government of the Republic (minimum support in 2002 - 342.- kroons). For good reasons, the court is entitled to reduce the amount of support to less than the above-mentioned minimum.

FINLAND

The assessment of child support (maintenance) is not based on a formula or guidelines.

The assessment of child support (maintenance) is based on the following criteria in the Child Maintenance Act:

1. A child has the right to sufficient maintenance. Maintenance means the satisfaction of the material and spiritual needs of the child as well as his care and education, and the coverage of the resulting costs.
2. The parents are responsible for the maintenance of the child in accordance with their abilities.
3. In the assessment of the ability of the parents to provide maintenance consideration shall be given to their age, ability to work and opportunity to take part in gainful employment, the amount of assets available to them and their other statutory maintenance responsibilities.
4. In the assessment of the ability of the parents to provide maintenance, consideration shall also be given to the ability and opportunity of the child to be responsible for his own maintenance as well as to the circumstances on the basis of which the parents are not burdened with any expenses, or are burdened with only minor expenses, for the maintenance of the child.

FRANCE

Les aliments que sont susceptibles de percevoir les enfants sont de deux ordres, et il n'existe aucune barème d'application automatique pour en évaluer le montant.

- Les père et mère ont, à l'égard de leurs enfants une obligation d'entretien et d'éducation, qui est évaluée à proportion des ressources respectives de chacun d'eux et des besoins de l'enfant.

Ses besoins s'entendent alors de façon élargie. En effet, ils comprennent les dépenses nécessaires à la vie (nourriture, vêtements, logement...), conformément à toute obligation alimentaire de droit commun, mais couvrent également tous les frais qui s'attachent à son éducation et sa formation.

- Après l'obligation d'entretien et d'éducation qui pèse sur les père et mère, qui n'a, contrairement aux obligations alimentaires proprement dites, aucun caractère de réciprocité, succède l'obligation réciproque de droit commun entre parents et enfants, qui suppose la preuve d'un état de besoin de la part du demandeur.

GERMANY

The Civil Code only provides that the degree of the support to be granted is to be determined by the circumstances of the person in need (suitable maintenance) (section 1610 subsection 1 of the Civil Code). Maintenance covers all living expenses, including the cost of suitable preliminary training for an occupation, and with an individual still in education, also the cost of such education (section 1610 subsection 2 of the Civil Code). Furthermore, the question of the amount in which a maintenance claim exists, taking account of the circumstances of the individual case in a case of dispute, is to be ruled on by the competent independent courts.

In court practice, guidelines and tables apply to support in cash which have been developed by the Higher Regional Courts. These are not binding provisions, but can be understood as an orientation from which it is possible to derogate, and from which it is necessary to derogate, depending on the situation of the individual case.

The well-known "Düsseldorf table" (as on: 1 January 2002) distinguishes by the net income of a person obliged to give cash support (14 groups), the number of children entitled to support and their age (4 age groups). Occupational expenses and debts which may be taken into account are to be deducted from the net income (corrected net income). Special provisions exist for children who study and do not live with their parents or a parent. It is ensured that the necessary own needs of the person obliged to grant maintenance is retained, also with regard to any maintenance obligations towards the (former) spouse. If the income is not sufficient to cover the needs of the obligor to give maintenance and the person entitled to maintenance with equal rank (so-called insufficiency cases), after the necessary own needs (deductible) of the person obliged to give maintenance have been deducted, equal distribution is carried out to the person entitled to maintenance at the respective requirement rates.

Calculation example:

A person obliged to pay cash maintenance with a corrected net income of Euro 2,700 (8th group) must pay to his/her three-year-old child (1st age group) Euro 301, and to his/her ten-year-old child (2nd age group) Euro 365 per month. The necessary own needs of the person obliged to pay maintenance of at least Euro 840 are hence safeguarded.

The normal amounts contained in the Normal Amounts Ordinance issued on the basis of section 1612a of the Civil Code do not serve to determine the child's support needs, but as the basis for assessment in establishing support titles in an index-linked form and as a point of reference for the preconditions for admission to the simplified procedure. They merely form the starting amount for the maintenance guidelines values contained in the maintenance law guidelines and tables of the Higher Regional Courts, but do not replace an individual calculation on the basis of these guidelines and tables.

ISRAEL

There are no regulations setting out a formula to be used in calculating maintenance. The court (both civil and religious) determines the amount of maintenance according to the personal law. The court, however, does take into account the needs of the creditor balanced against the ability of the debtor to make maintenance payments. Regardless of which personal law is applied, there is a procedural obligation on both the maintenance creditor and debtor to detail a list of their income and assets.

JAPAN

We don't have any formula, guidelines, or other criteria in making the assessment of child support. The child support award may be determined at the discretion of the Family Court mainly based on the best interest of child and the following considerations:

- (a) gross and net income of the parents;
- (b) income taxes, health insurance payments etc. of the parents;
- (c) business expenses of the parents;
- (d) age of the child;
- (e) educational expenses for the child;
- (f) any other factors the court may deem relevant.

LUXEMBOURG

Il n'existe pas au Luxembourg de barème pour la fixation des aliments.

Sur base de la jurisprudence en matière d'aliments redus aux enfants par les père et mère on peut dégager une tendance consistant à allouer pour chaque enfant environ 10% du revenu net du débiteur d'aliments (revenu net = revenu brut duquel il y a lieu de déduire l'impôt sur le revenu retenu à la source et les charges sociales). Cette jurisprudence ne semble toutefois pouvoir être généralisée ni à toutes les hypothèses où des enfants sont demandeurs d'aliments (une progression linéaire semble nécessairement devoir se heurter à des limites) ni aux hypothèses où d'autres personnes sont demandeurs d'aliments.

Les aliments doivent essentiellement répondre aux besoins du créancier et être proportionnés aux facultés de la partie tenue à l'obligation.

MALTA

Section 20 of the Civil Code delineates the criteria, which determine the amount of maintenance. Maintenance is to be due in proportion to the want of the person claiming it and the means of the person liable thereto. When one is to examine whether the claimant can otherwise provide for his won maintenance, regard shall also be had to his ability to exercise some profession, art or trade. Moreover, in estimating the means of the claimant regard shall also be had to the value of any movable or immovable property possessed by him. In estimating the means of the person liable to provide maintenance, regard shall only be had to his earnings from the exercise of any profession, art, or trade, to his salary or pension payable by the Government or any other person, and to the fruits of any movable or immovable property. If the person liable to pay maintenance cannot implement this obligation other than by taking the claimant into his house, then for the purposes of the said Section 20 that person shall not be deemed to possess sufficient means to supply maintenance, except where the claimant is an ascendant or a descendant.

THE NETHERLANDS

Generally speaking, both financial and non-financial criteria are used to determine the maintenance contribution. The criteria are not the same for every maintenance obligation.

The financial criteria that are relevant to minor children are means and needs (i.e. costs of care and upbringing). Being indigent (i.e. having no income or an income insufficient to support oneself) is not a criterion. The obligation exists even if the child has assets. The court has no right to reduce the maintenance obligation on grounds of the child's behaviour. In principle, non-financial factors are not taken into account.

The financial factors relevant to young adults (18-21) are means and needs (i.e. costs of upkeep and education). Being indigent is not a criterion. The court may reduce the maintenance obligation on the basis of the young adult's behaviour. In principle there is no difference between the maintenance obligation vis-à-vis minor children and that for young adults (except for the court's right to reduce the maintenance obligation).

Children over the age of 21 are entitled to maintenance only if they are indigent. The general financial criteria (means and needs) apply.

The courts have the power to reduce the maintenance obligation.

The main guidelines developed by the Dutch Court Magistrates' Association are set out in *Trema (Tijdschrift voor de Rechterlijke Macht)*, updated most recently in *Trema 2001 no. 1a*. In 2002 the amounts and the calculation formulas were adjusted for the euro. These guidelines are used mainly to calculate the means of the person liable for maintenance, and can also be used to determine the needs of the former partner / spouse.

Special guidelines have been developed for determining the needs of minor children.

NEW ZEALAND

See 1(a) above. However, as an example say a paying person's income was \$40,000 and that person is living with a new partner and her two children from a previous marriage. The paying parent is liable to pay child support for his three children from his failed marriage. The calculation would be as follows:

Income amount	\$40,000
Less living allowance	\$25,746
Net amount	\$14,254

Rate of child support payable for three children is 27 per cent. The annual amount payable is \$14,254 multiplied by 27 per cent equals \$3848.58 or \$320.71 a month.

The percentage rate of child support varies depending on how many children the paying parent is liable for. The percentage for one child is 18, for two it is 24 and three it is 27 and four (the maximum number of children a person can be liable for) 30 per cent.

Also the living allowances change each year and vary according to the living circumstances of the paying parent. For the year commencing 1 April 2003 to 31 March 2004 the living allowances are:

Single with no dependents	\$12,226
Remarried or repartnered with no dependent children	\$16,541
Remarried or repartnered with one dependent child	\$23,302
Remarried or repartnered with two dependent children	\$25,746
Remarried or repartnered with three dependent children	\$28,190
Remarried or repartnered with four dependent children	\$30,634

The income amount of the paying parent used in the formula assessment varies depending on whether that person is a salary and wage earner or self-employed. For example, if the paying person derives his or her income solely from salary or wages then the income figure used in the formula for the child support year 1 April 2003 to 31 March 2004 is taken from employers' records for the income tax year that ends on 31 March 2003. If the paying person is self employed the income used in the formula assessment for the child support year 1 April 2003 to 31 March 2004 is taken from the tax return for the year ended 31 March 2002.

A paying parent can estimate his or her income where the current income amount is at least 15 per cent lower than the income amount used for child support purposes. There is an annual reconciliation between the actual income and the estimated income figure used.

Also there is provision whereby either the custodian or the paying parent can apply to have either the custodian's entitlement or the paying parent's assessment reviewed under a process called an administrative review. This process takes into account "special circumstances" that may apply in that particular case. There are 10 grounds under which either party can apply and his process is carried out by application from either party. For example, a child may have special needs and requires greater financial support than a child of similar age who has no special needs. Subject to the facts of a particular case the custodian might be able to have the child support entitlement increased to take into account those special needs for that child.

The application for an administrative review is heard by legally qualified solicitors who work under contract to New Zealand Inland Revenue Child Support. If either party is unhappy with the outcome of the review then either party can apply to have the matter heard in the Family Court.

Section 145C of Part VIII of the Family Proceedings Act sets out the principal elements involved in assessing maintenance for persons in contracting states to the UNCRAM Convention:

- "(1) Each parent of a child is liable to maintain the child-
 - (a) Until the child attains the age of 16 years; and
 - (b) Where it appears to the Court to be in the best interests of a child who has attained or shortly will attain the age of 16 years, until the child attains the age of 18 years or such earlier age as the Court directs, and
 - (c) Where it appears to the Court that the child is or will be engaged, after attaining the age of 16 years in a course of full-time education or training and it is expedient that the child should continue to be maintained until the child attains the age of 20 years or such earlier age as the Court directs.
- (2) In determining the amount that is payable by a parent for the maintenance of a child, the Court shall also have regard to all relevant circumstances affecting the welfare of the child, including the following circumstances:
 - (a) The reasonable needs of the child; and
 - (b) The manner in which the child is being educated or trained, and the expectations of each parent as to the child's education or training.
- (3) In determining the amount that is payable by a parent for the maintenance of a child, the Court shall also have regard to the following circumstances;
 - (a) The means including potential earning capacity, of each parent;
 - (b) The reasonable needs of each parent;
 - (c) The fact that either parent is supporting any other person;
 - (d) The contribution (whether in the form of oversight, services, money payments, or otherwise) of either parent in respect of the care of that or any other child of the marriage;
 - (e) The financial and other responsibilities of each parent;
 - (f) Where the person against whom the order is sought is not a natural or adoptive parent of the child –
 - (i) The extent (if at all) to which that person has assumed responsibility for the maintenance of the child, the basis on which that person has assumed responsibility, and the length of time during which that person has discharged that responsibility, and
 - (ii) Whether that person assumed or discharged any responsibility for the maintenance of the child knowing that person was not a natural parent of the child: and
 - (iii) The liability of any other person to maintain the child:
 - (g) Any property and income of the child:

(h) Where the child has attained the age of 16 years, any earning capacity of the child.”

NORWAY

Child support is determined as a percentage of the debtor's gross income (11% for one child, 18% for two, 24% for three and 28% for four children or more). In special cases, such as low-income debtors, the amount is determined on a discretionary basis.

However, with effect from October 1. 2003 our maintenance system will be totally changed and made more complex entailing the assessment of a number of relevant criteria. The most features are:

- A determined average cost of bringing up a child (3 cost groups depending on the age of the child)
- The cost is shared between the parents according to their gross income
- The non-custodial parent's share is taken as the support payment due
- The non-custodial parent may be relieved wholly or partly of the obligation if his income is below certain levels
- A fixed visitation agreement reduces the payable amount by a certain amount per night of visitation
- The total amount payable may not exceed 25 per cent of the debtor's gross income
- If the debtor earns more than NOK 649 000 per year (app. 86 500 EURO), a 15 per cent additional support will be assessed.

PANAMA

The alimony amount will be proportional to the wealth or means of the person who gives it and the needs of the person who receives it. The person obliged to grant alimony could satisfy it by paying the fixed allowance or receiving and maintaining in his/her own house the person who has the right to receive alimony.

PHILIPPINES

Support is dependent on the capacity of the person giving support and the need of the person seeking support.

POLAND

While assessing child support, the justified needs of the applicant and the income and property capacity of the respondent are taken into account. Moreover, a child's right to the standard of living equal to that of his/her parents, regardless whether he/she lives together with the parents or separately, is taken into account while assessing child support. There are no specified criteria to be employed for the purpose of the assessment of the maintenance payments due for the eligible person. While making such an assessment, *inter alia*, the costs of living of the applicant, the expenses necessary to satisfy his/her personal needs, as well as the obligations with respect to other persons whom the obligor supports, are taken into consideration.

ROUMANIE

Conformément à l'article 94 du Code de la Famille, l'entretien est du en conformité avec le besoin de celui qui le demande et avec les moyens de celui qui va la payer. Quand l'entretien

est du d'un parent ou de celui qui adopte, il s'établit jusqu'à un tiers de son gain du travail pour un enfant, un tiers pour deux enfants et la moitié pour trois ou plusieurs enfants.

(Il faut tenir compte de tous les enfants qui sont dans l'entretien de celui obligé, aussi d'autres mariage, en dehors du mariage ou des adoptés).

La base de calcul. Ce qui signifie gains du travail :

- des gains habituels, ayant un caractère permanent, stables ;
- non ceux sporadiques (heures supplémentaires, indemnités de déplacement, transfère, licenciement) ;
- non ceux de gain pour des conditions difficiles spéciales.

Conformément à l'article 409 du Code de procédure civile, on peut suivre les salaire et d'autres gains réalisés du travail, les pensions accordés dans le cadres des assurances sociales, mais aussi d'autres sommes qui sont payées périodiquement au débiteur et sont destinées à l'assurance des moyens d'existence de celui-ci.

SLOVAKIA

The assessment of child support is left for the court's discretion. The guiding criteria are the justifiable needs of the beneficiary as well as the abilities and possibilities of the obligor. Both parents fulfill their obligation on the basis of their abilities, possibilities and economic circumstances. The child has the right to share the standard of living of their parents. The court shall take into account the fact which parent personally cares for the child and to what extent and, if the parents live together, also their involvement in maintaining the common household. Recently a new aspect was added: if the financial circumstances of the obligor allow so, the accumulation of moneys for the purposes of future studies may also be considered as justifiable needs of the child.

SUISSE

En Suisse, chaque cas est en principe traité individuellement. Pour les enfants mineurs, *l'art. 285 al. 1 CC* est déterminant: « La contribution d'entretien doit correspondre aux besoins de l'enfant ainsi qu'à la situation et aux ressources des père et mère, compte tenu de la fortune et des revenus de l'enfant »

Il n'existe pas de formule prédéfinie ou de table de calcul contraignante. Les recommandations de l'office de jeunesse du canton de Zurich pour le calcul des contributions d'entretien destinées aux enfants (cf. « Empfehlungen des Jugendamtes des Kantons Zürich zur Bemessung von Unterhaltsbeiträgen für Kinder », janvier 2000, annexe 2) ont bien une certaine influence dans la pratique et donnent des pistes aux juges. Toutefois, les besoins des enfants peuvent différer en fonction du lieu de domicile (milieu citadin ou rural), de la santé, de la formation, du milieu social etc. S'agissant de la situation et des ressources des parents, elles ne peuvent qu'être prises en compte individuellement. Outre les revenus et les dépenses, il y a lieu de tenir compte également de la fortune d'une part et du revenu hypothétique que le parent débiteur pourrait raisonnablement percevoir d'autre part.

Pour les enfants majeurs, « les père et mère doivent, dans la mesure où les circonstances permettent de l'exiger d'eux, continuer à subvenir à leur entretien jusqu'à la fin de cette formation pour autant qu'elle soit achevée dans les délais normaux » (*art. 277 al. 2 CC*). En plus des critères qui sont pris en compte pour les enfants mineurs s'ajoutent donc des critères liés à la formation et aux rapports entretenus entre parents et enfants majeurs. De plus, si on peut laisser au parent d'un enfant mineur tout juste le minimum vital, les parents d'un enfant majeur ont droit à un peu plus de souplesse et d'égard au niveau financier.

SWEDEN

It is based on legal criteria. A parent is entitled to retain from his or her incomes net of tax an amount for his or her own maintenance. Housing expenses are generally calculated. In addition to this, there are other living expenses, which are computed with the guidance of an index-linked standard amount. He or she can also reserve an amount for maintenance of a spouse at home if there are special reasons. Finally the liable parent can make a reservation for an amount for the support of children at home. How much of the excess that should be claimed for maintenance allowance depends, among other things, on the needs of the child and the other parent's capacity to bear the maintenance expenses. To some extent deductions can be made for expenses for contact.

UNITED KINGDOM - ENGLAND AND WALES

Child Support Agency

For child support the Child Support Agency's assessment is currently based on a complex formula. It takes into account the number and ages of the children (qualifying child) and the ability of both parents to contribute towards the child maintenance. Ability to pay is calculated by looking at the income available after making allowances for basic day-to-day expenses. (This calculation is not carried out for a parent with care who is receiving public assistance payments.) The formula is based on Income Support (public assistance) rates. Rates of all child support maintenance are described as *basic rate, reduced rate, flat rate nil rate and shared care*. There are safeguards to ensure that non-resident parents do not pay maintenance of more than 30% of their net income. Maintenance is reduced if the parents share care of the child. A new, simpler, method of calculation is being introduced based on a percentage of the non-resident parent's net income after deductions have been made for the children in his current family - 15% for one child, 20% for two and 25% for three or more children.

The courts

When making an assessment under *Schedule 1 of the Children Act 1989* the court will take the following into account:

- (a) the income, earning capacity, property and other financial resources, which any parent of the child, the applicant for the order or any other person in whose favour the court proposes to make the order.
- (b) the financial needs obligations and responsibilities which those mentioned at (a) above has or is likely to have in the foreseeable future.
- (c) the financial needs of the child.
- (d) the income, earning capacity (if any), property and other financial resources of the child.
- (e) any physical or mental disability of the child.
- (f) the manner in which the child was being, or was expected to be educated or trained.

Where a person is not the mother or father of the child the court would have regard to whether that person had assumed responsibility for the maintenance of that child and the length of time that responsibility was met. The court would also consider whether he did so knowing that the child was not his child and take into account the liability of any other person to maintain the child.

UNITED KINGDOM - SCOTLAND

Under the 1985 Act, aliment is such support as is reasonable in the circumstances having regard to the needs and resources of the parties, their earning capacities and, generally, all the circumstances of the case. Both present and foreseeable needs and resources are to be taken into account and a consideration of earning capacity clearly entitles the court to have regard not only to present earned income and opportunities in present employment but, more generally, to the potential income which it may be within a party's capacity to earn. The court is not to take account of any conduct of a party unless it would be manifestly inequitable to leave it out of account.

By contrast, under the 1991 Act, aliment is determined in accordance with set formulae, which are simplified by the Child Support, Pensions and Social Security Act 2000, in force since April 2002. Under the new formulae (section 1 and Schedule 1 of the 2000 Act) the only factors that matter are: net weekly income of the non residential parent (the absent parent in 1991 Act terminology) and the number of qualifying children living with the parent with care.

The weekly rate of child support maintenance is the basic rate unless a reduced rate, flat rate or the nil rate applies. The basic rate is the following percentage of the non-resident parent's weekly income:

- 15% where he has one qualifying child.
- 20% where he has two qualifying children.
- 25% where he has three or more qualifying children.

Qualifying children includes step-children as well as blood children by new partner.

Net weekly income is gross income less income tax, NI, and all payments into approved pension schemes.

UNITED STATES OF AMERICA

Federal law requires each state to establish child support guidelines to facilitate determinations of all support orders in the state. These guidelines must be applied when the child support obligation is established unless doing so is found to be unfair.

The guidelines may be established by statutory law or by judicial or administrative action and must be reviewed at least once every four years to ensure that their application results in the determination of an appropriate child support award. As part of the four-year review, states consider economic data on the cost of raising children and analyze case data, gathered through sampling or other methods, on the application of, and deviations from, the guidelines.

Federal law requires that, in any judicial or administrative proceeding for the award of child support, there must be a rebuttable presumption that the amount of the award that would result from the application of the guidelines is the correct amount of child support to be awarded. A written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case, as determined under criteria established by the state, is sufficient to rebut the presumption in an individual case. Such criteria must take into account consideration the best interests of the child.

At a minimum, federal law requires state guidelines to meet the following criteria:

- Take into consideration all earnings and income of the noncustodial parent;
- Be based on specific descriptive and numeric criteria and result in a computation of the support obligation;
- Provide for the child's health care needs, through health insurance coverage or other means.

State guidelines vary substantially. Depending on the state, the following factors may be considered in the guidelines:

- Both parents' income
- Use of gross or net income
- Educational expenses
- Child care expenses
- Extraordinary health care costs
- Age of children
- Custody and visitation arrangements
- Expenses of subsequent families
- Current spouse's earnings
- Any other household income

There are three principal types of guidelines currently in place throughout the United States: (1) income shares, (2) percentage of income, and (3) the Melson formula.

- An income shares guideline is based on the concept that the child should receive the same proportion of parental income that he would have received if the parents lived together. Thirty-four states use an income shares guideline.
- The basic principle of the percentage of income guideline is that the noncustodial parent should pay a flat percentage of gross or net income in child support. These guidelines often include an adjustment for pre-existing support orders, and take into account the number of dependents. Seventeen states use the percentage-of-income guideline.
- The Melson guideline is a comprehensive formula with three basic principles: (1) parents should keep sufficient income for their basic needs and to encourage continued employment; (2) parents should not retain any excess income until the basic needs of the dependents are met; and (3) when income is sufficient to provide the basic needs of the parents and all dependents, the dependents are entitled to share any additional income so that they can benefit from the noncustodial parent's higher standard of living. Three states use the Melson guideline.

To access information on each state's guidelines for child maintenance, go to OCSE's website: <http://www.acf.dhhs.gov/programs/cse/> - see especially "Online Interstate Referral Guide [<http://ocse3.acf.dhhs.gov/ext/irg/sps/selectastate.cfm>] - Support Details" and "Links to States."

- 9 Lorsque (a) le demandeur ou (b) le défendeur vit à l'étranger, les critères d'évaluation employés sont-ils différents ?
- 9 Are there any differences in the assessment criteria employed when (a) the applicant or (b) the respondent live abroad?

AUSTRALIA

No.

AUSTRIA

Yes, if the applicant lives in a state where the standard of living is lower than in Austria (lower average living costs).

BULGARIE

Lorsque (a) le demandeur ou (b) le défendeur vit à l'étranger, les critères d'évaluation employés ne sont pas différents. Le tribunal accepte que (a) ou (b) peut assurer le salaire moyen pour le pays.

CANADA

- a) il n'y a pas de différence quand le demandeur réside à l'étranger et les critères mentionnés à la question 8 s'appliquent.
- b) lorsque le défendeur réside à l'étranger :
- (i) que le tribunal canadien rend la décision :
 - En vertu de la loi sur le divorce, les lignes directrices fédérales sur les pensions alimentaires pour enfants s'appliquent (voir question 8) ;
 - Dans les provinces et territoires de common law, en vertu du droit provincial, les lignes directrices sur les pensions alimentaires pour enfants (voir question 8) ;
 - Dans la province de droit civil du Québec, les règles québécoises de fixation des pensions alimentaires pour enfants s'appliquent.
 - (ii) Lorsque le défendeur réside dans une juridiction avec laquelle il existe une entente de réciprocité et que le demandeur a commencé la procédure en vertu de la Loi sur l'établissement et l'exécution réciproques des ordonnances alimentaires, le tribunal étranger fera l'évaluation en vertu des critères établis par sa législation.
- (a) When the applicant resides abroad, there are no differences in the assessment criteria employed and response to question 8 applies.

(b) When the respondent resides abroad:

- (i) When the Canadian court makes a decision:
 - Under the Divorce Act, the federal child support guidelines apply (see question 8);
 - In common law provinces and territories, under provincial legislation, the child support guidelines apply (see question 8);
 - In the civil law province of Quebec, the court will apply the Quebec child support guidelines.
- (ii) When the respondent resides in a foreign reciprocating jurisdiction and the applicant has started the process under the ISO Act, the foreign court will make the assessment in accordance with its own legislation.

CHILE

No.

CHINA - HONG KONG SPECIAL ADMINISTRATIVE REGION

The process and assessment criteria used in assessment of maintenance are the same, regardless of whether the applicant or the respondent lives in Hong Kong or abroad.

CROATIA

General criteria are stated in the foregoing answer and also apply in these cases.

CYPRUS

No.

CZECH REPUBLIC

See question 8.

DENMARK

Generally, there are no differences in the assessment criteria wherever the parents are living.

However, if the maintenance creditor and the child lives in a country, where the living expenses are considerable lower than in Denmark, maintenance payment can be fixed to an amount less than the standard allowance.

ESTONIA

No.

FINLAND

When the maintenance is assessed in Finland according to Finnish law, the same provisions will apply irrespective of in what state the applicant or the respondent lives.

If the applicant (child) lives in another country than Finland, special consideration is given to the costs of living in that state.

FRANCE

Voir question 8.

GERMANY

If the person entitled to maintenance and the person obliged to pay maintenance live in different states, and if German law applies to the maintenance relationship, the circumstances at the respective place of residence are to be taken into account in assessing the requirements of the obligee and the evaluation of the economic circumstances of the obligor.

ISRAEL

There are no differences in the assessment criteria.

JAPAN

See question 8.

LUXEMBOURG

Les critères d'évaluation restent les mêmes, sans qu'il y ait lieu de distinguer suivant que le demandeur ou le défendeur vit à l'étranger. On appliquera donc toujours le critère du besoin du demandeur et le critère des facultés du défendeur, quitte à ce qu'il soit, suivant les cas, tenu compte des niveaux de vie à l'étranger dans l'appréciation des besoins et des facultés contributives.

MALTA

-

THE NETHERLANDS

The assessment criteria are those of the law applicable according to the 1973 Hague Convention on the law applicable to maintenance obligations.

NEW ZEALAND

See above.

If the paying parent lives overseas then the overseas income can be taken into account for child support assessment purposes. Otherwise the same provisions stated above are the same. If the child is not an eligible child under the Child Support Act the assessment is a judicial process and the principles outlined above apply.

NORWAY

a) and b) If one of the parties lives abroad, the maintenance support will be discretionary assessed based on the living cost of the actual country. However, in cases where the applicant and the child live in a country where the cost of living is very low, the support must not be set below certain levels.

PANAMA

Judges utilize the same economic and necessity criterion of the beneficiary to fix such allowances.

PHILIPPINES

No difference.

POLAND

The fact that the applicant or the respondent lives abroad shall have some importance only for the purpose of making the comparison of their standards of living.

ROUMANIE

La loi ne prévoit pas d'autres critères d'évaluation.

SLOVAKIA

No difference.

SUISSE

Non, si la procédure se déroule en Suisse dans les deux cas.

SWEDEN

No (if the same law still is applicable)

UNITED KINGDOM - ENGLAND AND WALES

No. The same criterion is applied.

Child Support Agency

See 6 above.

For those cases where the non-resident parent lives abroad and the company has a UK based payroll, where the absent parent is in the armed forces, or employed by the Crown (including the Diplomatic Service), or is employed by certain UK based local authorities and health authorities no difference is applied to the assessment criteria by the Child Support Agency. In all other cases where a party resides abroad, the Child Support Agency does not apply.

The courts

Assessment of maintenance by a UK Court is undertaken under the criteria set out in *Section 3 of the Domestic Proceedings and Magistrates' Courts Act 1978*, which mirror that of the *Matrimonial Causes Act 1973* and which are applied by the Divorce Courts. These are: -

- a) The income, earning capacity, property and other financial resources that each party has or is likely or may reasonably be expected to have in the future.
- b) The financial needs, obligations and responsibilities which each of the parties has or is likely to have.
- c) The standard of living enjoyed by the parties prior to the breakdown of the relationship.
- d) The age of each party.
- e) Any disabilities.
- f) Contributions, past and foreseeable, which the parties have made to the welfare of the family.
- g) The conduct of the parties if it is such that it would be inequitable to disregard it.

Applications for child maintenance from abroad are dealt with under the *Children Act 1989 Schedule 1*. The provision enables the High Court, County Courts to make periodical payments, make secured periodical payments, lump sum payments, settlement of property or transfer of property order (if the Convention or Agreement allows). The provision also enables the Magistrates' Family Proceedings Courts to make periodical payments or a lump sum order for a child irrespective of whether the child's parents are married.

UNITED KINGDOM - SCOTLAND

The CSA will not get involved at all if the respondent lives abroad.

UNITED STATES OF AMERICA

- a) No.
- b) No.

10 La méthode de calcul des aliments envers l'époux ou d'autres membres de la famille diffère-t-elle de celle envers les enfants ?

10 Is the method different when the application is for maintenance in respect of a spouse or other family member rather than a child?

AUSTRALIA

Yes. Spousal maintenance can only be determined by a court.

AUSTRIA

Yes, concerning persons other than children there are no detailed guidelines.

BULGARIE

Non. La méthode de calcul des aliments envers l'époux ou d'autres membres de la famille ne diffère pas de celle envers les enfants.

CANADA

Oui. Il n'existe pas de lignes directrices concernant la méthode de calcul des aliments envers l'époux ou d'autres membres de la famille. Les critères les plus importants pour calculer la pension alimentaire sont les suivants:

- Nature et durée de la relation entre les parties;
- Moyens des parties;
- Besoins des parties;
- le temps nécessaire au créancier pour acquérir une autonomie financière; et
- Autres circonstances des parties.

Yes. There are no guidelines for calculating maintenance of a spouse or other family member. The most important elements for assessment of support are the following:

- Nature and length of the relationship between the parties;
- Means of each party;
- Needs of each party;
- Time necessary to acquire economic self-sufficiency; and
- Other circumstances of each party.

CHILE

Yes. In order to decree maintenance for adults, the Judge takes into consideration the economic needs of claimant and respondent, and the economic means to satisfy them, the economic means of the claimant, socio-economic situation of the parties, health, age of the maintenance recipient, etc.

CHINA - HONG KONG SPECIAL ADMINISTRATIVE REGION

Under section 7(1) of MPPO, the factors the court considers in a maintenance case relating to parties of the marriage include –

- (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (c) the standard of living enjoyed by the family before the breakdown of the marriage;
- (d) the age of each party to the marriage and the duration of the marriage;
- (e) any physical or mental disability of either of the parties to the marriage;
- (f) the contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family; and
- (g) in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

There is no express provision governing the provision of maintenance for family members other than the spouse and child.

CROATIA

There are some differences in respect of a child, specified in the Act, mentioned under 8 above.

CYPRUS

No.

CZECH REPUBLIC

-

DENMARK

Generally, applications for maintenance in respect of a spouse or a child are treated the same way.

ESTONIA

The minimum amount of support mentioned in p. 8 is applicable only by the assessment of the amount of support for a child. The maintenance obligation in respect of any other person rather than a child incurs only in the case when the financial status of the obligated person allows for provision of maintenance.

FINLAND

Maintenance to a child and maintenance to a spouse are not calculated by the same criteria.

The criteria for calculating maintenance for a child are described in the answer to question 8.

The criteria for calculating maintenance for a spouse are the following:

In the administrative process:

The municipal social welfare board may approve an agreement on maintenance to be paid by one spouse to the other spouse, if the agreement is deemed reasonable with a view to the spouse's need for maintenance, the ability of the other spouse to pay maintenance and other relevant circumstances.

In the judicial process:

If a spouse during the marriage neglects his or her maintenance obligation or if the spouses are separated, the court may upon request order a spouse to pay maintenance to the other spouse in accordance with the principles laid down in section 46 of the Marriage Act. According to the aforementioned section each spouse shall participate in the common household of the family and the maintenance of the spouses to the best of his or her abilities. The maintenance of the spouses means the fulfilment of the common needs of the spouses as well as the personal needs of each spouse.

When spouses are granted a divorce by a court and a spouse is deemed to be in need of maintenance, the court may upon request order the other spouse to pay the requesting spouse maintenance deemed reasonable with a view to the paying spouse's capability to pay maintenance and other circumstances. Maintenance may be ordered to be paid until further notice or until the end of a period determined in the order. The maintenance may, however, be ordered to be paid as a lump sum if necessary with a view to the financial and other circumstances of the spouse ordered to pay it. The obligation to pay maintenance in periodic instalments shall lapse, if the spouse to whom the maintenance is granted remarries.

FRANCE

En ce qui concerne les aliments entre époux, telle la contribution aux charges du mariage, expression du devoir de secours résultant de leur union, il doit être tenu compte du niveau d'existence auquel l'époux créancier peut prétendre en raison des facultés de son conjoint. La demande ne suppose pas la preuve d'un état de besoin.

En revanche, à l'égard des autres membres de la famille, les principes habituels en matière d'aliments sont applicables : ils sont donc accordés « dans la limite du besoin de celui qui les réclame, et de la fortune de celui qui les doit ».

GERMANY

The parents have a more intensive duty of maintenance towards minor unmarried children than exists between other relatives. Parents who when taking account of their other obligations are unable to afford to provide support to their children without endangering their own appropriate maintenance must use all funds available to them equally to maintain themselves and their children. The obligation does not apply if there is another relative obliged to provide maintenance; it also does not apply to a child whose maintenance can be obtained from his/her capital. The same applies towards unmarried children who have come of age, until they reach the age of 21, if they still live in the household of one or both parents and are in general schooling (section 1603 of the Civil Code).

Because of this basic legal difference, the guidelines and tables of the Higher Regional Courts developed with regard to the support claim of children towards their parents (cf. Response to Question 8) do not apply to maintenance claims between other relatives. There has been no comparable schematisation in this area.

The degree of maintenance of the divorced spouses is determined in accordance with the marital circumstances (section 1578 subsection 1 first sentence of the Civil Code). The case law on principle splits the difference between the income of both sides, after deducting additional occupational expenses (principle of equal shares).

ISRAEL

The law applicable is different but the method used is the same for spouse, child and other family member maintenance.

JAPAN

The method of assessment is the same in that the Family Court has discretion in determining the amount of maintenance based on the totality of circumstances.

LUXEMBOURG

Il n'y a pas de différence quant au principe même de la fixation des aliments.

MALTA

The law does not make any express provision for a different mode of assessment of maintenance in respect of different claimants. It is important to stress however that as specified by Section 19(2) Civil Code, that maintenance in respect of children and other descendants is to include the expenses necessary for health and education.

THE NETHERLANDS

For assessment under Dutch Law, see the response to question 8.

NEW ZEALAND

As previously stated there is no formula based assessment for spousal maintenance. Spousal maintenance is set either by agreement between the parties or by the Family Court and is therefore a judicial process. The administrative review process does not apply to spousal maintenance.

NORWAY

No.

PANAMA

The same method is utilized to fix maintenance regarding a spouse or a minor or a family member.

PHILIPPINES

No difference.

POLAND

If a child is entitled to maintenance, then the amount of money to be paid should be assessed on the basis of the eligible person's needs and the respondent's income and property capacity, as well as on the basis of a child's right to the standard of living equal to that of his/her parents. Other persons shall be entitled to maintenance, in principle only if they suffer material deficiency. In order to assess whether or not a given person suffers material deficiency, the degree in which basic needs of that person are satisfied shall be taken into consideration.

ROUMANIE

Les critères sont les mêmes : le besoin de celui qui sollicite et les moyens de celui qui doit payer.

SLOVAKIA

In addition to the common criteria (justifiable needs of the beneficiary as well as the abilities and possibilities of the obligor), there are some specific aspects. For the obligation of children towards their parents the criterion is that the children have an obligation to provide to their parents "decent living". Each child has this obligation to the extent that reflects the ratio of his abilities and possibilities to the abilities and possibilities of the other children. In maintenance obligation of spouses the criteria are that the material and cultural living conditions of both spouses must be equal in principle. The involvement in maintaining the common household must be taken into consideration, too. Ex spouse who is incapable of providing for himself/herself has the right to apply for "adequate" maintenance from the other ex spouse according to his abilities and possibilities. This right is limited by re-marriage or the death of the obligor.

SUISSE

Oui.

S'agissant du calcul des aliments envers l'époux, les critères sont énumérés de manière détaillés à l'art. 125 al. 2 CC. Cette disposition est très explicite et justifie qu'elle soit citée in extenso (*cf. annexe 1*):

"Art. 125

Entretien après le divorce :

I. Conditions

- 1 Si l'on ne peut raisonnablement attendre d'un époux qu'il pourvoie lui-même à son entretien convenable, y compris à la constitution d'une prévoyance vieillesse appropriée, son conjoint lui doit une contribution équitable.
- 2 Pour décider si une contribution d'entretien est allouée et pour en fixer, le cas échéant, le montant et la durée, le juge retient en particulier les éléments suivants:
 1. la répartition des tâches pendant le mariage;
 2. la durée du mariage;
 3. le niveau de vie des époux pendant le mariage;
 4. l'âge et l'état de santé des époux;
 5. les revenus et la fortune des époux;
 6. l'ampleur et la durée de la prise en charge des enfants qui doit encore être assurée;

7. la formation professionnelle et les perspectives de gain des époux, ainsi que le coût probable de l'insertion professionnelle du bénéficiaire de l'entretien;
8. les attentes de l'assurance-vieillesse et survivants et de la prévoyance professionnelle ou d'autres formes de prévoyance privée ou publique, y compris le résultat prévisible du partage des prestations de sortie.

3 L'allocation d'une contribution peut exceptionnellement être refusée en tout ou en partie lorsqu'elle s'avère manifestement inéquitable, en particulier parce que le créancier:

1. a gravement violé son obligation d'entretien de la famille;
2. a délibérément provoqué la situation de nécessité dans laquelle il se trouve;
3. a commis une infraction pénale grave contre le débiteur ou un de ses proches."

S'agissant du calcul des aliments envers d'autres membres de la famille, la personne tenue à fournir ces aliments à ses parents en ligne directe ascendante et descendante doit vivre dans l'aisance. La conférence suisse des institutions d'action sociale (CSIAS) a développé quelques recommandations chiffrées à ce sujet (*cf. Aide sociale: concepts et normes de calcul, CSIAS, 3 édition décembre 2000, pt. F.4 et H.4, annexe 3*). L'autre condition est que la personne à aider tomberaient dans le besoin à défaut de cette assistance.

SWEDEN

Yes. There are no strict legal criteria. However, some of the assessment criteria mentioned above serve as guidelines.

UNITED KINGDOM - ENGLAND AND WALES

NOTE: The UK Child Support Agency does not deal with applications for spousal or other maintenance.

The courts

The method of calculation is not different for a child, spouse, or other family member, however different factors are taken into consideration when the assessments are made. See 1 above.

UNITED KINGDOM - SCOTLAND

Under the 1985 Act, the method of calculation of maintenance is not different in respect of a spouse rather than a child, although different factors would be taken into consideration when making the calculations, e.g., the court may, if it thinks fit, take account of any support, financial or otherwise, given by the defender to any person whom he or she maintains as a dependant in his or her household, whether or not the defender owes an obligation of aliment to that person.

UNITED STATES OF AMERICA

The Title IV-D agencies establish, enforce and modify only child support or spousal maintenance when child support is involved in the same case. As a result, there are no federal requirements regarding the determination of maintenance in respect of a spouse or other family member. State law governs the method for providing maintenance to these individuals. See answer to question 4, *supra*.

11 Quelle est la loi applicable à l'évaluation des aliments envers (a) les enfants (b) l'époux ou d'autres membres de la famille ?

11 Which is the law applicable to the assessment of maintenance for (a) child and (b) a spouse or other family member?

AUSTRALIA

(a) *Child Support (Assessment) Act 1989* and *Family Law Act 1975*.

(b) *Family Law Act 1975* -Spousal maintenance only and does not provide for other family members.

AUSTRIA

See answer to question No 4.

BULGARIE

L'art.85 du Code de la famille régit l'évaluation des aliments envers les enfants mineurs. Cette méthode d'évaluation de l'obligation alimentaire n'est valable que dans l'hypothèse de recouvrements des obligations alimentaires envers les enfants mineurs. Selon l'art.85, al.1 «Le taux de la pension alimentaire qu'un parent doit à ses enfants mineurs est déterminé d'après les besoins des enfants et les ressources des parents dans des limites, déterminées du Conseil des ministres». A la base de cet article est adoptée une réglementation du Conseil des ministres) 38 du 1 juillet 1985, amendée avec une nouvelle réglementation de 1991 qui établit les limites de l'obligation alimentaire.

CANADA

(a) La loi applicable est la loi du for.

(b) Même réponse que celle prévue à la question 4, pour l'époux.

(a) The law applicable is the forum law.

(b) Same as in Question 4 for the spouse.

CHILE

Law No. 19,741 amending Law No. 14,908 on family abandonment and payment of maintenance.

CHINA - HONG KONG SPECIAL ADMINISTRATIVE REPUBLIC

Section 7(2) of MPPO is applicable to the assessment of maintenance for a child. See answer to Question 8. Section 7(1) of MPPO is applicable to the assessment of maintenance for a spouse. See answer to Question 10. There is no express provision governing the provision of maintenance for family members other than the spouse and child.

CROATIA

The Family Act is the applicable law in all cases.

CYPRUS

As regards children see 8 above. As regards maintenance between spouses, s. 7 of L. 232/91 provides that maintenance is determined on the basis of the needs of the beneficiary, as they result from his living conditions and it includes all that is necessary for the maintenance of the beneficiary. However, the maintenance obligation may be excluded or limited if this is imposed by serious reasons, some of which are mentioned in the said section.

CZECH REPUBLIC

See question 8.

DENMARK

See the answer to question 4 above.

ESTONIA

Pursuant to Article 61 of the International Private Law Act (RT I 2002, 35, 217), the Hague Convention on the Law Applicable to Maintenance Obligations from October 02, 1973, applies to the duty of maintenance based on filiation relations.

Pursuant to the Estonian law, the assessment of the amount of (maintenance) support is regulated by the Family Law Act.

FINLAND

Please, see the answer to question 4.

FRANCE

La même loi que la loi applicable à la détermination d'un droit à aliment c'est-à-dire, en principe, la loi du créancier d'aliments ou la loi appliquée au divorce.

GERMANY

Also the question as to which law applies to assessment of maintenance is standard for all family law maintenance claims in accordance with Art. 18 of the Introductory Act to the Civil Code. In this sense, reference may be made to the information provided at Question 4 in this respect

ISRAEL

The personal law is applied.

JAPAN

The law of the habitual residence of the creditor shall primarily governs. If he/she is unable to obtain support from the debtor under the said law, the law of their common nationality shall apply. If the creditor is unable to obtain support under either of the laws mentioned above, the law of Japan shall apply. Even if the applicable law provides otherwise, the needs of the creditor and the resources of the debtor shall be taken into account in determining the extent of maintenance. (Articles 2 and 8 of the Law Relating to the Law Applicable to Maintenance Obligations. This law has been enacted to implement the 1973 Hague Convention on the Applicable Law to Maintenance Obligations.)

LUXEMBOURG

Il y a lieu de renvoyer à la réponse au point 4. La loi applicable telle que désignée par la Convention de La Haye du 2 octobre 1973 (et qui constitue donc le droit commun luxembourgeois des conflits de lois en matière d'obligations alimentaires) régit aussi le mode d'établissement du montant de la pension alimentaire. Il y a toutefois lieu de préciser que quelle que soit la teneur de la loi applicable, le montant de la prestation alimentaire doit toujours être établi en fonction des besoins du créancier et des ressources du débiteur.

MALTA

The Civil Code. For further details please consult the answer to question 8 above

THE NETHERLANDS

See the response to question 4.

NEW ZEALAND

The law that governs the assessment and collection of child support is under the Child Support Act 1991. The law that provides for the collection and recovery of spousal maintenance is under the same Act. Where spousal maintenance is assessed by the Family Court the jurisdiction to make those orders comes under the Family Proceedings Act 1980. The applicable law is set out below.

"Section 63 – Maintenance during marriage—

- (1) During a marriage, each party is liable to maintain the other party to the extent that such maintenance is necessary to meet the reasonable needs of the other party, where the other party cannot practicably meet the whole or any part of those needs because of any 1 or more of the circumstances specified in subsection (2).
- (2) The circumstances referred to in subsection (1) are as follows:
 - (a) the ability of the parties to be or to become self-supporting, having regard to -
 - (i) the effects of the division of functions within the marriage while the parties are living together or lived together;
 - (ii) the likely earning capacity of each party;
 - (iii) any other relevant circumstances;
 - (b) the responsibilities of each party for the ongoing daily care of any minor or dependent children of the marriage after the parties ceased to live together;
 - (c) the standard of living of the parties while they are living together or lived together;
 - (d) any physical or mental disability;
 - (e) any inability of a party to obtain work that—
 - (i) it is reasonable in all the circumstances for that party to do; and
 - (ii) is adequate to provide for that party;
 - (f) the undertaking by a party of a reasonable period of education or training designed to increase that party's earning capacity or to reduce or eliminate that party's need for maintenance from the other party, where it would be unfair, in all the circumstances, for the reasonable needs of the party undertaking that education or training to be met immediately by that party—
 - (i) because of the effects of any of the matters set out in paragraphs (a)(i) and (b) on the potential earning capacity of that party; or
 - (ii) because that party has previously maintained or contributed to the maintenance of the other party during a period of education or training.
- (3) Except as provided in this section, neither party to a marriage is liable to maintain the other party during the marriage.

Section 64 – Maintenance after marriage dissolved or de facto relationship ends—

- (1) Subject to section 64A, after the dissolution of a marriage or, in the case of a de facto relationship, after the de facto partners cease to live together, each spouse or de facto partner is liable to maintain the other spouse or de facto partner to the extent that such maintenance is necessary to meet the reasonable needs of the other spouse or de facto partner, where the other spouse or de facto partner cannot practicably meet the whole or any part of those needs because of any 1 or more of the circumstances specified in subsection (2).
- (2) The circumstances referred to in subsection (1) are as follows:
 - (a) the ability of the spouses or de facto partners to become self-supporting, having regard to—
 - (i) the effects of the division of functions within the marriage or de facto relationship while the spouses or de facto partners lived together;
 - (ii) the likely earning capacity of each spouse or de facto partner;
 - (iii) any other relevant circumstances;
 - (b) the responsibilities of each spouse or de facto partner for the ongoing daily care of any minor or dependent children of the marriage or (as the case requires) any minor or dependent children of the de facto relationship after the dissolution of the marriage or (as the case requires) the de facto partners ceased to live together;
 - (c) the standard of living of the spouses or de facto partners while they lived together;
 - (d) the undertaking by a spouse or de facto partner of a reasonable period of education or training designed to increase the earning capacity of that spouse or de facto partner or to reduce or eliminate the need of that spouse or de facto partner for maintenance from the other spouse or de facto partner if it would be unfair, in all

the circumstances, for the reasonable needs of the spouse or de facto partner undertaking that education or training to be met immediately by that spouse or de facto partner—

- (i) because of the effects of any of the matters set out in paragraphs (a)(i) and (b) on the potential earning capacity of that spouse or de facto partner; or
 - (ii) because that spouse or de facto partner has previously maintained or contributed to the maintenance of the other spouse or de facto partner during a period of education or training.
- (3) For the purposes of subsection (2)(a)(i), if the marriage was immediately preceded by a de facto relationship between the husband and wife, the effects of the division of functions within the marriage include the effects of the division of functions within that de facto relationship.
- (4) Except as provided in this section and section 64A,—
- (a) neither party to a marriage is liable to maintain the other party after the dissolution of the marriage;
 - (b) neither party to a de facto relationship is liable to maintain the other de facto partner after the de facto partners cease to live together.

Section 64A – Spouses or de facto partners must assume responsibility for own needs within reasonable time—

- (1) If a marriage is dissolved or, in the case of a de facto relationship, the de facto partners cease to live together,—
 - (a) each spouse or de facto partner must assume responsibility, within a period of time that is reasonable in all the circumstances of the particular case, for meeting his or her own needs; and
 - (b) on the expiry of that period of time, neither spouse or de facto partner is liable to maintain the other under section 64.
- (2) Regardless of subsection (1), if a marriage is dissolved or, in the case of a de facto relationship, the de facto partners cease to live together, 1 spouse or de facto partner (party A) is liable to maintain the other spouse or de facto partner (party B) under section 64, to the extent that such maintenance is necessary to meet the reasonable needs of party B if, having regard to the matters referred to in subsection (3),—
 - (a) it is unreasonable to require party B to do without maintenance from party A; and
 - (b) it is reasonable to require party A to provide maintenance to party B.
- (3) The matters referred to in subsection (2) are as follows:
 - (a) the ages of the spouses or de facto partners;
 - (b) the duration of the marriage or de facto relationship;
 - (c) the ability of the spouses or de facto partners to become self-supporting, having regard to—
 - (i) the effects of the division of functions within the marriage or de facto relationship while the spouses or de facto partners were living together;
 - (ii) the likely earning capacity of each spouse or de facto partner;
 - (iii) the responsibilities of each spouse or de facto partner for the ongoing daily care of any minor or dependent children of the marriage or (as the case requires) any minor or dependent children of the de facto relationship after the dissolution of the marriage or (as the case requires) after the de facto partners ceased to live together;
 - (iv) any other relevant circumstances.
- (4) If the marriage was immediately preceded by a de facto relationship between the husband and wife,—
 - (a) for the purposes of subsection (3)(b), the de facto relationship must be treated as if it were part of the marriage; and
 - (b) for the purposes of subsection (3)(c)(i), the effects of the division of functions within the marriage include the effects of the division of functions within that de facto relationship.

Section 65 – Assessment of maintenance payable to spouse or de facto partner—

- (1) This section sets out the matters that a Court must have regard to in determining the amount payable,—
 - (a) in the case of a marriage, by 1 spouse for the maintenance of the other spouse (whether during the marriage or after its dissolution):
 - (b) in the case of a de facto relationship, by 1 de facto partner for the maintenance of the other de facto partner after the de facto partners cease to live together.
- (2) The matters that the Court must have regard to are as follows:
 - (a) the means of each spouse or de facto partner, including—
 - (i) potential earning capacity:
 - (ii) means derived from any division of property between the spouses or de facto partners under the Property (Relationships) Act 1976:
 - (b) the reasonable needs of each spouse or de facto partner:
 - (c) the fact that the spouse or de facto partner by whom maintenance is payable is supporting any other person:
 - (d) the financial and other responsibilities of each spouse or de facto partner:
 - (e) any other circumstances that make 1 spouse or de facto partner liable to maintain the other.
- (3) In considering the potential earning capacity of each spouse or de facto partner under subsection (2)(a)(i), the Court must have regard to the effects of the division of functions within the marriage or the de facto relationship while the spouses or de facto partners were living together.
- (4) For the purposes of subsection (3), where the marriage was immediately preceded by a de facto relationship between the husband and wife, the effects of the division of functions within the marriage include the effects of the division of functions within that de facto relationship.
- (5) In considering the reasonable needs of each spouse or de facto partner under subsection (2)(b), the Court may have regard to the standard of living of the spouses or de facto partners while they were living together.”

The applicable law in respect of maintenance for a child is set out in Question 8.

NORWAY

The same laws as mentioned above. The Children’s Act and the Matrimonial Act.

PANAMA

The applicable law is the one stipulated in the Family Code, but it will always be the judgement of the judge that will prevail according to the necessity of the beneficiary.

PHILIPPINES

The Philippine Family Code.

POLAND

The national law of the person entitled to maintenance.

ROUMANIE

Le Code de la Famille.

SLOVAKIA

Same as point 4.

SUISSE

La loi applicable à l'évaluation des aliments est la même qui détermine l'éligibilité (cf. réponse ad 4).

SWEDEN

The law of the state where the dependent has his or her habitual residence is applicable if the parties not agree otherwise.

UNITED KINGDOM - ENGLAND AND WALES

Applicable law of the forum

(a)

- Child Support Act 1991 as amended by Child Support Act 1995, Social Security Act 1998 and Child Support, Pensions and Social Security Act 2000.
- Children Act 1989 Schedule 1.

(a) and (b)

- Matrimonial Causes Act 1973 sections 23,24A, 27 and 10(2).
- Domestic Proceedings and Magistrates' Courts Act 1978 sections 2, 6 & 7.
- Inheritance (Provision for Family and Dependants) Act 1975 section 2.

UNITED KINGDOM - SCOTLAND

The Child Support Act 1991 applies to children as specified above (see answer 1) and spouses seeking support not only for themselves but also for children of the marriage will come within the jurisdiction of the 1991 Act for the children unless they have a prior court order or agreement. For the remaining cases, the 1985 Act applies.

UNITED STATES OF AMERICA

As explained in the answer to question 4, U.S. jurisdictions generally apply the law of the forum, including applicable federal law, in maintenance cases.

(a) State law governs within the broad federal mandates as discussed above.

- Federal law - 42 U.S.C. § 667.
- Federal regulations - 45 C.F.R. § 302.56.

(b) State law almost entirely controls establishment of spousal maintenance, and totally controls maintenance of other family members. See answer to question 7, *supra*.

***Réévaluation / ajustement /
modification des décisions ou des évaluations relatives aux aliment***

***Reassessment / adjustment /
modification of maintenance decisions or assessments***

- 12 Le montant et la fréquence des versements de la pension alimentaire envers les enfants ou l'époux et d'autres membres de la famille font-ils l'objet d'une réévaluation automatique, et dans l'affirmative, par qui et avec quelle fréquence ?**
- 12 Are maintenance payments in respect of children or spouses or other family members subject to automatic reassessment, and if so, by whom and with what frequency?**

AUSTRALIA

Child Support that has been administratively determined by ACSA is reassessed automatically. Generally a reassessment by ACSA would occur every 10 to 15 months and the trigger for a reassessment is almost always because ACSA receives newer information about the parents' taxable income. If the parents circumstances change the assessment can be updated more frequently providing a greater degree of flexibility.

Court orders for spousal maintenance or child support may contain clauses for automatic changes. Generally these would be annual. ACSA will recalculate the payment if the order is registered with ACSA.

AUSTRIA

No automatic reassessment.

BULGARIE

Oui, avec une décision judiciaire, fondée sur l'art.86 du Code de la famille le montant et la fréquence des versements de la pension alimentaire envers les enfants ou l'époux et d'autres membres de la famille font l'objet d'une réévaluation automatique si le débiteur alimentaire demande la réduction ou la décharge complète de sa dette dans le cas où ses ressources auraient diminué ou les besoins du créancier decru. «a la suite d'un changement des circonstances, elle peut être modifiée ou même interrompue.»

CANADA

En général, la réponse est négative. Il doit y avoir une nouvelle demande faite au tribunal pour changer une ordonnance existante. Toutefois, les provinces et territoires canadiens ont la compétence législative de prévoir dans leurs lois respectives la réévaluation automatique et annuelle des montants de pension alimentaire. La province de Terre-Neuve et Labrador a mis en place, dans l'Ouest de la province, un service de pension alimentaire permettant une telle réévaluation sur la base de l'information concernant le revenu des parties.

No generally, there must be a new application to change the existing order. However, Canadian provinces and territories have legislative authority to provide for annual automatic reassessment in their legislation. The Western part of the province of Newfoundland and Labrador has put in place a child support service providing for an automatic annual reassessment based on income information.

CHILE

Questions 12 and 13 - When maintenance allowance is not fixed in a percentage of the maintenance provider's income, or in the minimum wages or other automatically adjustable values, but rather in a determined amount, the allowance shall be semi-annually adjusted according to the increase experienced by the Consumer Price Index as established by the National Institute of Statistics, or any body that may replace it, from the month following that on which the decision determining the maintenance allowance amount has become final.

This adjustment, however, must be requested directly by the maintenance recipient to the Court, and will be made by the Court Clerk. The Court will not do so ex officio.

CHINA - HONG KONG SPECIAL ADMINISTRATIVE REGION

Maintenance payments are not subject to automatic reassessment unless it is specifically provided for in the maintenance order.

CROATIA

There is no provision to this effect. For reassessment or adjustment of maintenance decisions a new process must be initiated or a new agreement reached.

CYPRUS

No.

CZECH REPUBLIC

If the material standing of the beneficiary or the liable person, being the basis for determining the maintenance for a minor child, change, the court may, even without a motion, modify the original court judgment or parents' agreement on the maintenance. However, if the child is of lawful age already, a motion for change or revocation of a judgment on the maintenance must be filed.

DENMARK

Only maintenance payments in respect of children are subject to automatic reassessment. The Ministry for Social Affairs regulates the standard allowance once a year. In 2002 the standard allowance is DKK 940 (Euro 126,56) a month.

ESTONIA

The amount of support is not automatically subject to periodical reassessment. The amount of support can be modified upon the claim of the interested person by way of a court decision.

FINLAND

Maintenance payments in respect of children and spouses are subject to automatic reassessment. The reassessment is carried out by the Ministry for Social Welfare and Health. The provisions on the system for automatic reassessment are in the Act on the Linking of Certain Maintenance Payments to the Cost-of-Living Index (669/1966).

The system of automatic reassessment is bound to an index on cost-of-living. If there has been a rise of at least 5 % in the index on cost-of-living for the month of October in comparison to the index on cost-of living according to which the latest reassessment was carried out, the Ministry for Social Welfare and Health will fix the percentage of reassessment.

If the criteria for a new automatic reassessment are fulfilled, the Ministry for Social Welfare and Health has to make a decision in the matter during the month of November. The reassessment enters into force in the beginning of the forthcoming January.

The municipal social welfare board will upon request make a note of the reassessed maintenance in the agreement or in the judgment.

The court may also upon request make a note of the reassessed maintenance in the agreement or in the judgment, if this is necessary because of the need to have the agreement or judgment enforced in a foreign state.

FRANCE

Questions 12 et 13 - L'indexation en matière d'aliments peut avoir une origine conventionnelle.

Elle peut également résulter d'une décision du juge. La loi du 03 janvier 1972 a, en effet, introduit une nouvelle disposition aux termes de laquelle « le juge peut, même d'office, et selon les circonstances de l'espèce, assortir la pension alimentaire d'une clause de variation permise par les lois en vigueur ».

Ce pouvoir concerne toutes les obligations alimentaires y compris la contribution aux charges du mariage, l'obligation d'entretien et d'éducation d'un enfant, la pension alimentaire entre époux séparés de corps et la pension alimentaire versée à l'époux qui n'a pas pris l'initiative de la procédure dans le cas d'un divorce pour rupture de la vie commune.

Les parties et le juge ont le libre choix de l'indice.

GERMANY

There is no automatic repeat of the procedure. The execution title may be structured as to maintenance for the future such that also future maintenance claims are already determined as recurring claims. No new proceedings are then required in order to determine maintenance. Added to this is the fact that maintenance proceedings on principle are subject to the maxim of parity disposition, and hence their initiation depends on the will of the person entitled to maintenance, who must file a corresponding application.

ISRAEL

Application for reassessment can only be made when there has been a substantial change in circumstances.

JAPAN

Maintenance payments are not subject to automatic reassessment.

LUXEMBOURG

Les pensions alimentaires sont essentiellement variables. Il n'y a cependant pas de réévaluation automatique, celle-ci ne pouvant intervenir que sur demande.

MALTA

No. If one of the interested parties feels that a maintenance order needs to be revised then such party has to file an application with the First Hall, Civil Court in order to request that such an order be amended.

THE NETHERLANDS

Article 1:402a of the Civil Code provides for the annual automatic statutory adjustment of maintenance obligations by a percentage to be set by the Minister of Justice. This adjustment applies to maintenance obligations established by the courts or by agreement between the parties.

NEW ZEALAND

Child support assessments are made annually and are subject to amendment or reassessment at any time. Spousal maintenance assessments are not subject to automatic annual changes but can be subject to change where either the Court makes a new order or the parties agree the change the amount payable.

Child support assessments can be altered where children move from one parent to the other or the care of the children is shared between the two parents or the children cease to be "qualifying" children (see paragraph 4(a)). Changes can also be made to the paying parent's living allowance where living circumstances change from time to time.

Orders made under Part VI or VIII of the Family Proceedings Act ie spousal maintenance or child maintenance are not subject to automatic adjustment unless the Court so directs.

NORWAY

No.

PANAMA

Maintenance payment will be increased or reduced proportionally according to the increase or reduction of the necessities of the person who receives it and the wealth or means of the person who might satisfy it. This reevaluation must be done by a judge by request of the interested party.

PHILIPPINES

There is no provision for automatic reassessment of the award of maintenance. However, the spouse or child entitled to maintenance may file a motion before the court seeking an increase of his/her maintenance.

POLAND

There is no automatic reassessment.

ROUMANIE

Le quantum de la pension ne se modifie pas automatiquement, une fois avec la modification des revenus du débiteur, mais seulement à la demande de la personne intéressée.

SLOVAKIA

There is no automatic reassessment provided for in the law.

SUISSE

- L'obligation alimentaire envers les enfants : L'art. 286 al. 1 CC stipule que le juge peut ordonner que la contribution d'entretien peut automatiquement être augmentée ou réduite dès que des changements déterminés interviennent dans les besoins de l'enfant, les ressources des père et mère ou le coût de la vie. Dans la pratique, il est ordonné que la contribution augmente d'office par tranche d'âge déterminée de l'enfant (une augmentation est fixée par exemple à partir de 6 ans, puis à partir de 12 ans) et/ou est liée à l'augmentation de l'indice suisse des prix à la consommation (une augmentation proportionnelle est ordonnée par exemple à chaque fois que cet indice augmente de 10 points) ou peut être réduite automatiquement dès l'instant où l'enfant quitte la Suisse pour un pays donné ou que le père débiteur annonce à l'avance un salaire inférieur pour une date déterminée.
- L'obligation alimentaire envers l'époux : En vertu de l'art. 128 CC, le juge peut décider que la contribution d'entretien sera augmentée ou réduite d'office en fonction de variations déterminées du coût de la vie.
- L'obligation alimentaire envers d'autres membres de la famille : une réévaluation automatique en fonction de l'indice suisse des prix à la consommation n'est pas exclue non plus.

SWEDEN

No.

UNITED KINGDOM - ENGLAND AND WALES

Child Support Agency

The Child Support Agency will look at assessments at intervals, based on the circumstances of the case, in order to bring them up to date - this is known as a periodic case check. If neither party to the assessment is in receipt of a prescribed benefit, such as Income Support or Jobseeker's Allowance, both parties will be invited to tell the Child Support Agency of any changes in their circumstances that might affect their assessment. If either party is in receipt of a prescribed benefit, a case check will be carried out automatically. The Agency does not, however, automatically re-assess liability.

The Courts

The courts, on the other hand in England and Wales do not automatically of their own motion re-assess maintenance payments. Assessment is done in response to an application.

UNITED KINGDOM - SCOTLAND

Answers 12-14

Under the 1985 Act, maintenance payments in respect of children or spouses are not subject to any type of automatic reassessment.

A decree granted in an action for aliment may, on an application by or on behalf of either party to the action, be varied or recalled by an order of the court if, since the date of the decree, there has been a material change of circumstances. The provisions of the 1985 Act apply to applications and orders for variation or recall as they apply to actions for aliment and decrees in such actions. So the same factors have to be taken into account in quantifying aliment and the court has the same powers, including power to backdate a variation or recall to the date of the application or, on special cause shown, to an earlier date. The expression "a material change of circumstances" can cover a change in foreseen circumstances on the basis of which the decree was granted. However, it will not cover the case where the court has simply made the original award on the basis of incomplete or incorrect information: in such a case there has not been a change of circumstances.

Under the 1991 Act, there is provision for reviews on a periodical basis. These are to be conducted as if fresh application for maintenance assessment had been made. The regulations provide that assessment must be reviewed after it has been in force for a period of 52 weeks (in the case of an assessment whose effective date is on or before April 18, 1994) or 104 weeks (where the effective date is after April 18, 1994).

Furthermore, there is also provision for review where there is a change of circumstances. This includes such matters as increases in wages or benefits; but for a reassessment to take place the change must normally satisfy one of several financial thresholds between £1 and £10. This is to avoid constant trivial revisions.

There may also be review at the instigation of the child support officer (CSO). This occurs where the CSO is satisfied that a maintenance assessment in force is defective because it has been made in ignorance of a material fact, is based on a mistake as to a material fact or is wrong in law: in these circumstances he or she may make a fresh assessment as if there had been an application by the affected party. In addition the CSO has power to make an assessment as if an application had been made on grounds of change of circumstances or against refusal to make or review an assessment where satisfied that application for such a review would be appropriate.

UNITED STATES OF AMERICA

In most cases, child support orders are not subject to automatic reassessment (reviews). Federal law provides that either parent can ask a state to review the child support order every three years or if there is a significant change of circumstances (as defined by the state). However, some states review public assistance cases automatically every three years and a few states automatically adjust orders using cost-of-living measures (see #13, *infra*), usually on a two-year cycle. The same authority that established the original child support order conducts the review of the order.

There are no federal requirements regarding the automatic reassessment of maintenance payments for spouses or other family members.

13 Ces versements font-ils l'objet d'une réévaluation automatique en fonction de critères objectifs comme l'index du coût de la vie, et dans l'affirmative, quels en sont les mécanismes et la périodicité ?

13 Are such payments subject to automatic adjustment in accordance with an external marker, such as the cost of living index, and if so, by what mechanisms and with what frequency?

AUSTRALIA

An assessment is based on a parent's taxable income (see attachment B) and a new assessment will be done either at the end of 15 months or when a parent lodges their taxable income with the Australian Taxation Office from the last financial year (1 July to 30 June).

Generally court orders have automatic adjustments linked to the Australian Consumer Price Index.

AUSTRIA

No automatic adjustment.

BULGARIE

« A la suite d'un changement des circonstances, l'obligation alimentaire peut être modifiée ou même interrompue ».- selon l'art.86. Si le débiteur alimentaire demande la réduction ou la décharge complète de sa dette dans le cas où ses ressources auraient diminué ou les besoins du créancier accru. Le créancier alimentaire serait de son côté fondé à réclamer une augmentation des aliments si ses besoins venaient à s'accroître ou si les ressources du débiteur venaient à augmenter

CANADA

Dans les provinces de common law :

Non, il n'y a pas d'ajustement automatique prévu dans la loi mais le tribunal peut ordonner une augmentation en fonction du coût de la vie qui permettra l'ajustement annuel automatique. Dans la partie ouest de la province de Terre-Neuve et Labrador, si le payeur ne fournit pas de preuve quant à ses revenus, il y aura un ajustement automatique basé sur l'index du coût de la vie.

Dans la province de droit civil du Québec :

Oui. Le Code civil du Québec prévoit que les jugements accordant des aliments sont indexés de plein droit suivant l'indice annuel des rentes. Toutefois, lorsque l'application de cet indice entraîne une disproportion sérieuse entre les besoins du créancier et les facultés du débiteur, le tribunal peut soit fixer un autre indice d'indexation, soit ordonner que la créance ne soit pas indexée (Article 590 Code Civil du Québec).

In Common Law provinces and territories:

No, there is no automatic adjustment in legislation but the court may order a cost of living increase to provide for automatic annual adjustment. However, in the Western part of the province Newfoundland and Labrador, if the payor does not provide evidence of his financial situation, there is an annual automatic adjustment based on the cost of living index.

In the Civil Law province of Quebec:

Yes. The Civil Code of Quebec provides that support orders are indexed by operation of law in accordance with the annual Pension Index. However, where the application of the index brings about a serious imbalance between the needs of the creditor and the means of the debtor, the court may either fix another basis of indexation or order that the claim not be indexed (Article 590).

CHILE

See question 12 above.

CHINA - HONG KONG SPECIAL ADMINISTRATIVE REGION

Maintenance payments are not the subject of automatic reassessment unless it is specifically provided for in the maintenance order.

CROATIA

There is no automatic adjustment. Please see 12 above.

CYPRUS

No.

CZECH REPUBLIC

Maintenance is not automatically valorized in the Czech Republic.

DENMARK

The standard allowance is regulated every year by January the 1st by the same index that is used to regulate social benefits.

ESTONIA

No. Even in the case of change of the minimum monthly salary forming the basis of the minimum support mentioned in p. 8, the respective modification of the amount of support for the child has to be pursued in court.

FINLAND

Please, read the answer to question 12.

FRANCE

Voir question 12.

GERMANY

On principle, the maintenance title is not index-linked. Only with child support can a maintenance title be forced which automatically adjusts to the development of average disposable incomes. As already stated, a minor child has the choice as to whether to demand maintenance as a percentage of the respective normal amount in accordance with the Normal Amounts Ord. or a maintenance annuity expressed as a figure. If a maintenance title was obtained which hands down a percentage of the respective normal amount, this title does not need to be adjusted. The normal amounts are adjusted in accordance with section 1612 a subsection 4 of the Civil Code every two years respectively as on 1 July to the development of the average disposable income. The specific maintenance owed is automatically adjusted through each adjustment of the normal amounts via the personal percentage of the maintenance title, without a need for an action to effect an alteration.

ISRAEL

When the court makes a maintenance order, it is usually linked to the Consumer Price Index.

JAPAN

Maintenance payments are not subject to automatic adjustment in accordance with an external marker.

LUXEMBOURG

En règle générale, les pensions alimentaires font l'objet d'une adaptation automatique aux variations du coût de la vie. Les décisions judiciaires prévoient que la pension alimentaire sera adaptée automatiquement et sans mise en demeure préalable conformément aux dispositions de la loi portant généralisation de l'échelle mobile des salaires et traitements. Cette loi prévoit une adaptation des salaires et traitements suivant l'évolution de l'indice pondéré des prix à la consommation.

MALTA

The Civil Court may take cognisance of the cost of living index in its computation of the amount of maintenance. In the case *Cachia utrinque* (Civil Court, First Hall, 2 June 1980) the Court took into consideration the rate of inflation when determining maintenance.

There are instances where the Civil Court has delivered rulings whereby the amount payable in maintenance had to be revised within a stipulated period of time so decided by the court on the basis of the cost of living index. Such was the case in *A v B* (25 May 1993) before the Civil Court, First Hall. There was an appeal from this decision and the Court of Appeal decided that the maintenance obligation was not to subsist and consequently the revision of the maintenance amount was not ruled upon by the Court of Appeal.

THE NETHERLANDS

The indexing rules provide for the automatic annual adjustment of the level of maintenance obligations in line with inflation and corresponding salary increases. The percentage increase, based on the wage index, is fixed on 30 September and takes effect on 1 January of the following year.

NEW ZEALAND

As mentioned above, child support assessments are made annually to take into account the latest income details of the paying parent. There is an inflation adjustment made to the income amount where the paying parent is self employed because that income figure used in those assessments is almost two years old when that income amount forms the basis for the formula assessment. There is no ongoing adjustment made during the year, whether it be an inflation adjustment or cost of living adjustment, to the assessment.

NORWAY

Yes, the level of the maintenance payments are subject to an annual increase in accordance with changes in the consumer price index. The maintenance officers are responsible for adjusting the payments.

PANAMA

No, adjustments must be done by a judge by request of the interested party, demonstrating increase of the income or reduction of the same.

PHILIPPINES

If there is a change in the circumstances of the parties that may warrant an increase or decrease of maintenance, since maintenance under Philippine law is based on a need and capacity basis. Either party may file a Motion to increase or decrease maintenance before the trial court that rendered the decision of maintenance.

POLAND

There is no automatic adjustment. In each case, in order to reassess the sum of maintenance payments, a request filed by the obligee or by the obligor is required. The reassessment of maintenance payments shall be carried out by agreement between the parties or by a court judgement. There is, however, the possibility of assessing maintenance payments by determining the percentage of the obligor's income to correspond with maintenance payments. If the maintenance is paid voluntarily, then in case of the percentage method of assessment, parties themselves shall determine the amount of payments. In execution, payments shall be determined by the execution authority or by other authorised agency (e.g. the obligor's employer).

ROUMANIE

Seulement si la pension d'entretien est établie sous la forme d'une cote partie du revenus du débiteur, la majoration des ces revenus (ou l'index par exemple) conduit automatiquement à la modification automatique du quantum de la pension. Les instances judiciaires, par ailleurs, établissent rarement de cette manière la pension d'entretien.

SLOVAKIA

N/A.

SUISSE

cf. réponse ad 12. L'indice suisse des prix à la consommation est réévalué et publié chaque mois (*cf. Indice suisse des prix à la consommation, annexe 4*). La réévaluation automatique des contributions d'entretien dans les jugements s'effectue en revanche une fois par année. L'augmentation valable à partir du 1er janvier se calcule alors généralement en fonction de l'indice du mois de novembre de l'année écoulée, divisé par l'indice de base indiqué dans le jugement ; la formule exact de ce calcul y figure également.

SWEDEN

Yes. They are adapted according to alterations in the price base amount. The National Social Insurance Board determines each year whether the maintenance allowance shall be altered and in that event by what percentage. The alteration, usually on 1 February, applies to maintenance allowance that has been decided before 1 November of the immediately preceding year.

UNITED KINGDOM - ENGLAND AND WALES

No.

UNITED KINGDOM - SCOTLAND

See question 12 above.

UNITED STATES OF AMERICA

Federal law requires states to adjust child support orders using one or more of the following methods: (1) child support guidelines, (2) a cost-of-living adjustment, or (3) automated methods determined by the state. To access information on each state's procedures for reviewing and adjusting child support orders, go to OCSE's website: <http://www.acf.dhhs.gov/programs/cse/> - see especially "Online Interstate Referral Guide - Modification and Review/Adjustment".

State law determines whether a child support order is subject to automatic adjustment by an external marker, i.e. a cost-of-living index. Approximately seven states automatically adjust some or all of their child support orders using an external marker.

For example, almost all Minnesota orders are adjusted every two years with a cost-of-living adjustment (COLA). Minnesota uses the Minneapolis/St. Paul earnings index.

In New York, the Consumer Price Index for Urban Consumers (CPI-U) is used for administrative reviews. If the CPI-U has risen by 10% and 24 months have passed since the order was established or modified, the order will be adjusted automatically in public assistance cases. All parties must receive notice. The parties have a right to appeal to the court, which can either find that no adjustment is warranted or apply the guidelines to the case.

The Alaska Child Support Enforcement Agency uses an administrative process to establish orders. The judicial process is often used when parents seek a child support order without the assistance of the child support enforcement agency. In Alaska, a cost-of-living adjustment is only applicable if contained in the court order; it is not applicable to administrative orders.

Other states use the following external markers to automatically adjust maintenance payments in some cases:

New Jersey - Consumer Price Index for metropolitan statistical areas that encompass New Jersey;
 Delaware - Standard of Living Adjustment; and,
 Iowa - Consumer Price Index for all urban consumers, U.S. city average.

- 14 Dans quelles circonstances la décision en matière d'aliments envers les enfants ou l'époux et d'autres membres de la famille ou l'évaluation de ces aliments peut-elle être revue / modifiée à la hausse ou la baisse ? Cela se fait-il par la même autorité ayant rendu la décision initiale ?**
- 14 In what circumstances may a maintenance decision or assessment in respect of a child or a spouse or other family member be varied / modified upwards or downwards? Is this done by the same authority that made the original determination?**

AUSTRALIA

In relation to an assessment a number of circumstances can be taken in to consideration such as change in income or care or contact of the child/ren. A parent can also apply to ACSA to have their assessment changed if they believe that special circumstances exist. There are 10 reasons that a parent could apply (see attachment C). This is called the Change of Assessment process and where either parent is dissatisfied with the decision they can formally object to the decision. If still dissatisfied with the outcome either parent can apply to the court for a departure order under the *Family Law Act* because of their special circumstances.

Child or spousal support determined by a court can be changed if similar circumstances exist but any changes must be made by a court.

AUSTRIA

A modification is possible if the relevant factors have changed (needs of the applicant, resources of the debtor); the modification is made by the same court if it still has jurisdiction.

BULGARIE

Voir la réponse à la question n 11.

CANADA

Une décision en faveur d'un époux ou d'autres membres de la famille peut être modifiée si un *changement significatif* est démontré. Les modifications aux pensions alimentaires pour les enfants sont faites en fonction des changements de circonstances mentionnées à la question 8 qui donneraient lieu à une modification de l'ordonnance. Les modifications peuvent être ordonnées par n'importe quelle autorité compétente.

A maintenance decision made in favour of a spouse or other family member may be varied if a material change is proved. Child support variations are based on any change in circumstances outlined in question 8 that would result in a different order being made. A variation may be ordered by any authority having jurisdiction.

CHILE

When the economic circumstances of the parties and the children's needs have changed. Yes, the same Judge who made the original determination of maintenance shall be competent to hear claims for maintenance increase, reduction or cessation.

CHINA - HONG KONG SPECIAL ADMINISTRATIVE REGION

Where the court has made a maintenance order, it has the power to vary or discharge the order or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended. In exercising the powers, the court shall have regard to all circumstances of the case, including any change in any matter to which the court was required to have regard when making the order, where the party against whom that order was made has died, as well as the changed circumstances resulting from his/her death. The variation is done by the same authority that makes the original maintenance order - the court.

CROATIA

Please see 8 and 11 above.

CYPRUS

When the terms of the decision, which fixes the maintenance have changed, i.e. the needs and expenses of the beneficiary have changed or the abilities of the persons obliged to provide maintenance have changed. (S. 38 of 216/90 and s. 10 of L. 232/91).

CZECH REPUBLIC

Maintenance may be modified up or down due to reasons quoted hereabove (change of material standing on beneficiary's or liable person's part) only. A decision concerning maintenance or maintenance amount made by a foreign authority may be changed following a motion filed by liable person abroad (in the country where the liable person has his/her residence), however, the beneficiary must not be deprived of his/her rights as a party to the proceedings in such proceedings (any and all documents must be duly delivered to him/her or his/her legal counsel, he/she must have the opportunity to take position in the proceedings etc.), a decision of a foreign court must not collide with the public order of the Czech Republic.

DENMARK

A decision regarding child or spouse maintenance is normally valid until further notice. Upon application the decision may be modified either upwards or downwards. This means that the maintenance can be altered, for instance if there are considerable changes in the personal or economic situation of the parties concerned.

Normally, modifications only have effect for future payments.

Modifications are done by the same authority (The County Governor's Office), which made the original assessment.

ESTONIA

The amount of support may be modified by the court (both upwards and downwards) upon the claim of the interested person, if there has been a change either (a) in the financial status of the obligated person; or (b) in the need of assistance of the dependant (child). The upwards modification of the support is possible upon the lapse of the circumstances which originally caused the restriction of the amount of support (e.g. the obligated person acquires larger income). Downwards modification of the support or cessation of payment may come under discussion first of all in case the obligated person has become incapable for work or the dependant himself/herself has acquired sufficient income.

FINLAND

Children

An agreement on maintenance to be paid to a child may be modified through a new agreement or through a new judgment. *A judgment* on maintenance to a child may be modified through a new agreement or through a new judgment.

The criteria for the modification of an agreement or a judgment on maintenance to be paid to a child are the following: the amount and manner of payment of maintenance may be modified if

the circumstances that shall be taken into consideration in confirming the maintenance (please, read the answer to question 8) have changed to such an extent that alteration of the maintenance shall be deemed reasonable in view of the circumstances of both the child and the parent responsible for the payment of the maintenance. In considering the modification of maintenance, the amount of maintenance shall be taken into consideration as adjusted on the basis of the Act on the Linking of Certain Maintenance Payments to the Cost-of-Living Index.

An agreement on maintenance to be paid to a child may also be modified, if the agreement is deemed unreasonable.

Spouses

An agreement on maintenance to be paid to a spouse may be modified through a new agreement or through a new judgment. *A judgment* on maintenance to be paid to a spouse may be modified through a new agreement or through a new judgment.

The criteria for the modification of an agreement or a judgment on maintenance to a spouse are the following: an agreement or a judgment may be modified if necessary due to changed circumstances. An agreement or a judgment on a lump sum may not be modified after the lump sum has been paid.

An agreement on maintenance to be paid to a spouse may be modified if the agreement is to be deemed unreasonable.

FRANCE

L'obligation alimentaire est toujours révisable quel que soit la manière dont elle a été initialement fixée.

- Si le quantum a été fixé par décision de justice, celle-ci a autorité de la chose jugée. La modification peut, en conséquence, être demandée au vu d'éléments nouveaux.
- Si le quantum de l'obligation légale a été fixé par une convention entre le créancier et le débiteur, celle-ci peut toujours être révisée, soit par un nouvel accord des parties, soit par une décision de justice qui interviendra sur la demande de l'une des parties.

Les circonstances justifiant la majoration de l'obligation peuvent être l'augmentation des besoins du créancier, de ses charges, ou l'accroissement des ressources du débiteur à moins que les besoins du créancier soient déjà comblés.

Les circonstances justifiant la diminution, voire la suppression de l'obligation peuvent résulter notamment de la diminution des ressources du débiteur, d'une modification de sa situation de famille entraînant un alourdissement de ses charges ou de la diminution des besoins du créancier.

GERMANY

A maintenance title may be amended under the preconditions of section 323 of the Code of Civil Procedure. This change action initiates new, separate proceedings – separate from the original maintenance proceedings, that is???. Jurisdiction is had by the family court with jurisdiction in accordance with general rules. This is not necessarily the court of first instance first seized.

The alteration clause in accordance with section 323 of the Code of Civil Procedure is only admissible with a conviction to recurrent payments due in future. It is conditional on a major change having subsequently (in other words after the last oral hearing in the maintenance

case) taken place in the circumstances that are relevant in the sentence determining the amount of the payments or the duration of their establishment.

ISRAEL

In respect of child maintenance, a variation in the order will usually be made, on application to the court in three different circumstances which are:

- (1) a change of income of the maintenance debtor.
- (2) a change of income of the maintenance creditor.
- (3) a change in the child's needs.

Although this is determined by the personal law, there is little difference between the various religious laws. In respect of spouse maintenance there can be huge variations in maintenance made by the court especially in the Jewish religious courts, where if a spouse (usually the husband) refuses to give or receive a "get" (a Jewish decree of divorce which is only granted subject to the consent of both spouses) then the court can obligate that spouse to pay more maintenance.

It should be noted that in terms of the various personal laws applicable to the majority of Israel's population, spouse maintenance is only payable until a decree of divorce is given by the court and not beyond that.

JAPAN

Maintenance determined by conciliation or adjudication by the Family Court may be modified upward or downward ultimately by the Family Court on the ground of (a) the change of circumstances concerning the income of the parents and the educational expenses for the child, (b) the increase in expense by re-marriage, the birth of new child and so on, (c) any other factors the Family Court may consider. Judgements of the District Court on the approval of collateral claims in a divorce suit may also be changed in the same manner.

LUXEMBOURG

Dans la mesure où les aliments doivent répondre aux besoins du créancier d'aliments et être proportionnés aux facultés du débiteur d'aliments, toute modification significative de la situation de l'un ou de l'autre est susceptible de se traduire, sur demande, par une modification des montants alloués.

Les demandes en modification sont de la compétence du juge de paix, sous réserve des demandes de modification se rattachant à une instance en divorce ou séparation de corps (voir réponse point 7.)

MALTA

Section 21 of the Civil Code caters for the situation whereby the person supplying maintenance becomes unable to continue to do so. If such a person becomes unable to fulfil his obligation in whole or in part, he may demand that he be released from his obligation, or that the amount of maintenance be reduced. Application is made to the Civil Court, First Hall through which the person supplying maintenance invokes Section 21 and makes his demand to that effect.

THE NETHERLANDS

Article 1:401 of the Civil Code contains the grounds for modifying or cancelling the maintenance obligation. A court order may be amended if circumstances change such that the original order no longer complies with the statutory criteria, or if the court based its order on incorrect or incomplete information so that the order did not comply with the statutory criteria from the outset. An agreement on maintenance may be amended if circumstances have changed such that the agreement no longer complies with the statutory criteria or if it was entered into on the basis of a serious misunderstanding of the criteria.

Under the Brussels/Lugano instruments the jurisdiction of a EU Member State's courts in respect of a request for variation is determined by articles 2 and 5, second paragraph, respectively, at the time of the request for variation.

NEW ZEALAND

See 8 above. In respect of overseas maintenance orders made under the provisions of Part VIII of the Family Proceedings Act an application /claim must be made to the Court in the same manner as the original application was made.

NORWAY

Both parents may apply for modification of the amount payable at any time. If changes in the debtor's income warrant at least a 10 per cent upwards or downwards adjustment of the payment, the amount will be reassessed according to our assessment rules (as mentioned above, the amount is at present assessed as percentages of gross income). This will apply even in the new maintenance system. The same authorities handle both the original and the modification process and determination.

PANAMA

It will depend on the increase or reduction of the defendant's income. Such decision will be taken by the same authority that issued the first allowance.

PHILIPPINES

Under the same condition. Since before a foreign judgement may be enforced in the Philippines, the judgement creditor may still file an action for enforcement of foreign judgement before the local court.

POLAND

See the answer to question no. 13.

ROUMANIE

La modification se fait par décision judiciaire, à la demande de la personne intéressée (créancier/débiteur). L'instance compétente n'est pas obligatoirement celle qui a prononcé la décision initiale.

SLOVAKIA

The criterion for variation is “the change of circumstances” interpreted in the widest sense (in children usually the passage of time). The decision is done by courts. In cases of minor children there is even an obligation on the court to do so on its own motion if the circumstances of the case change.

SUISSE

- S’agissant de la décision concernant les enfants, le juge peut modifier ou supprimer la contribution d’entretien si la situation change notablement (art. 286 al. 2 CC). Les contributions d’entretien fixées par convention peuvent également être modifiées pour ces raisons (art. 287 al. 2 CC). La modification notable chez l’enfant peut par exemple découler de son placement dans une institution ou du fait qu’il peut seul subvenir à ses besoins. Chez le parent débiteur, une modification notable peut être par exemple le fait qu’il doit subvenir aux besoins de plusieurs enfants ou que son salaire s’est sensiblement et durablement amoindri (chômage ou maladie de longue durée).
- S’agissant de la décision concernant l’époux (divorce), l’art. 129 CC citée ci-après est éclairant (cf. annexe 1):

Art. 129;

“3. Modification par le juge

1. Si la situation du débiteur ou du créancier change notablement et durablement, la rente peut être diminuée, supprimée ou suspendue pour une durée déterminée; une amélioration de la situation du créancier n’est prise en compte que si une rente permettant d’assurer son entretien convenable a pu être fixée dans le jugement de divorce.
2. Le créancier peut demander l’adaptation de la rente au renchérissement pour l’avenir, lorsque les revenus du débiteur ont augmenté de manière imprévisible après le divorce.
3. Dans un délai de cinq ans à compter du divorce, le créancier peut demander l’allocation d’une rente ou son augmentation lorsque le jugement de divorce constate qu’il n’a pas été possible de fixer une rente permettant d’assurer l’entretien convenable du créancier, alors que la situation du débiteur s’est améliorée depuis lors.”

SWEDEN

The court may adjust a judgement or agreement concerning maintenance if this is prompted by a change in the circumstances. For the period prior to the commencement of proceedings, however, an adjustment contested by either party may only take the form of a reduction or cancellation of payments not yet made.

The court may also alter a maintenance agreement if the agreement is unreasonable in view of the circumstances. However, repayment of maintenance already received may only be ordered if there are special reasons for making such an order.

If the amount of a periodical maintenance payment has not been changed over a period of six years, other than through automatic adjustment, the court may, with respect to the period after the commencement of proceedings, review what was earlier decided about maintenance, without grounds for adjustments as set out above.

UNITED KINGDOM - ENGLAND AND WALES

Child Support Agency

In relation to the Child Support Agency, either parent may apply to the deciding authority for the child support maintenance assessment to be varied/modified if there is a change of circumstances, or if the assessment was made on the basis of incorrect evidence.

The deciding authority may revise the decision without application to take account of a change or error.

Either parent may apply to the deciding authority for a departure from the formula assessment to take account of specific circumstances, for example, the cost of maintaining contact with the child (the non-resident parent); lifestyle inconsistent with declared income (the parent with care).

A Child Support Appeal Tribunal may also modify an assessment.

The courts

Under *Schedule 1 6A of the Children Act 1989* and the *Domestic Proceedings and Magistrates' Courts' Act 1978*, application can be made to the magistrates' court to vary a maintenance order for periodical payments and lump sum payments. The court may vary, revoke, revive, or alter by agreement between the parties, any order made under legislation. The grounds are usually based on a material change in circumstances and the Court will consider the case *de novo* applying all the principles and criteria as outlined in legislation, unless the variation is agreed between the parties.

Under *Schedule 1 of the Children 1989* application can be made to the High Court or County Court to vary or discharge an order for periodical payments.

UNITED KINGDOM - SCOTLAND

See question 12.

UNITED STATES OF AMERICA

Federal law provides that either parent can ask a state to review the order every three years or if there is a significant change of circumstances. State law defines what constitutes a change of circumstances for adjusting a maintenance decision or assessment.

For example, Alaska will review an existing order if at least 12 months have elapsed since an order was issued, modified or last reviewed, and the party requesting the review provides evidence that the child support amount would increase or decrease by at least 15%. If the requesting party has no such evidence, the agency will review the order at the party's request if at least 36 months have elapsed since the order was issued, modified or reviewed.

Texas reviews public assistance cases automatically every three years or upon request in public assistance and non-public assistance cases. To modify an order, Texas requires a change in the circumstances of the child or a person affected by the order that is material and substantial and has occurred since the date of the order. The monthly amount of child support must differ by either 20% or U.S. \$100 from the amount that would be awarded in accordance with the child support guidelines.

Massachusetts reviews public assistance cases automatically every three years or upon request in public assistance and non-public assistance cases. Massachusetts law provides that child

support orders shall be modified if there is an inconsistency between the amount of the existing order and the amount that would result from application of the child support guidelines. An order will be modified if applying the child support guidelines results in an amount that differs from the current order by 20% or if medical support needs to be established.

The same authority that set the original amount makes the redetermination of the child support order.

There are no federal requirements regarding the circumstances by which a maintenance decision or assessment in respect of a spouse or other family member may be varied/modified upwards or downwards.

15 Dans quelles circonstances une décision ou une évaluation étrangère peut-elle être revue / modifiée par la demande d'un débiteur résident ?

15 In what circumstances may a foreign decision or assessment be varied / modified on the application of a resident debtor?

AUSTRALIA

A foreign decision or assessment cannot be varied or modified administratively. A parent can apply to an Australian Court to have the decision modified or varied or they may be advised to apply to the issuing jurisdiction. In these cases ACSA would assist the parent in the transmission of an application to the overseas jurisdiction.

When the Australian court varies a foreign decision that variation order may be final or provisional depending on which foreign jurisdiction made the original order.

AUSTRIA

A foreign order can only be modified by an Austrian court if it has international jurisdiction (which is not existing under Art.5 para.2 of the Brussel I - Regulation when the maintenance creditor is habitually resident in another EU-Member State).

BULGARIE

A la suite d'un changement des circonstances, l'obligation alimentaire peut être modifiée ou même interrompue".- selon l'art.86 du Code de la famille.

CANADA

Dans les provinces et territoires de common law :

Une décision étrangère peut être modifiée à la demande d'un débiteur résidant lorsque les deux parties se soumettent à la compétence du tribunal canadien ou lorsque les deux parties résident dans la juridiction du tribunal canadien. La loi du for s'appliquera et, en conséquence, les circonstances mentionnées à la question 14 s'appliqueront aussi à la demande de modification.

Lorsque le créancier résidant à l'étranger n'accepte pas la compétence du tribunal canadien ou que les deux parties ne résident pas dans une juridiction canadienne, le tribunal canadien n'a pas compétence pour modifier une décision étrangère. Cependant, le débiteur résident peut soumettre une demande de révision de l'ordonnance au tribunal étranger ou à toute autre

autorité compétente suivant les lois en matière d'établissement et d'exécution réciproques des ordonnances alimentaires.

Dans la province de droit civil du Québec :

Les autorités québécoises sont compétentes pour statuer sur une demande de révision d'un jugement étranger rendu en matière d'aliments qui peut être reconnu au Québec lorsque l'une des parties a son domicile ou sa résidence au Québec (Article 3143 CCQ).

In Common Law provinces and territories:

A foreign decision may be varied on the application of a resident debtor where both parties attorn to the jurisdiction of the Canadian court or where both parties reside in the jurisdiction of the Canadian court. Forum law will apply and, therefore, the circumstances set out in question 14 will apply to the variation.

Where the foreign creditor does not attorn to the jurisdiction of the Canadian court or where both parties do not reside in the Canadian jurisdiction, the Canadian court has no jurisdiction to vary a foreign decision. However, the resident debtor may submit an application to vary or modify the order to the foreign court or other competent authority in accordance with interjurisdictional support orders legislation.

In the Civil Law province of Quebec:

A Quebec authority has jurisdiction to review a foreign judgement which may be recognised in Quebec respecting support when one of the parties has his domicile or residence in Quebec. (Article 3143 of the Civil Code of Quebec).

CHILE

It may be revised or modified if there are prescribed maintenance allowances.

CHINA - HONG KONG SPECIAL ADMINISTRATIVE REGION

Where a foreign maintenance order is registered in Hong Kong, it can be varied by order of the District Court on application of the payer (resident debtor) or the payee (foreign creditor). Under section 10 of the Maintenance Orders (Reciprocal Enforcement) Ordinance ("MOREO", Chapter 188), the District Court shall not vary a registered order otherwise than by a provision order unless –

- (a) both the payer and the payee under the registered order are for the time being residing in Hong Kong;
- (b) the application is made by the payee under the registered order; or
- (c) the variation consists of a reduction in the rate of the payments under registered order and is made solely on the ground that there has been a change in the financial circumstances of the payer since the registered order was made or, in the case of an order registered under section 8 of MOREO, since the registered order was confirmed, and the courts in the reciprocating country in which the maintenance order in question was made do not have power, according to the law in force in that country, to confirm provisional orders varying maintenance orders.

CROATIA

If a recognised foreign decision explicitly states that it varies in accordance with the cost of living index, such a decision will be enforceable.

CYPRUS

Same as a domestic decision provided that the foreign decision is first registered in Cyprus.

CZECH REPUBLIC

The enforcement of a foreign decision concerning maintenance is possible in the Czech Republic based on reciprocity, usually warranted by a bilateral or multilateral international treaty.

DENMARK

A foreign decision or assessment may only be modified on the application of a resident debtor if Danish authorities have international jurisdiction in accordance with the Brussels and Lugano Conventions.

If the case is not governed by the conventions mentioned above, Danish authorities usually have international jurisdiction in situations, where the resident debtor is living in Denmark.

Having international jurisdiction, a foreign decision can be modified in Denmark according to the rules set out in the answer to question 14.

ESTONIA

The Estonian court cannot amend the support decision made by the court (or some other institution) of a foreign country. If the case is in the jurisdiction of an Estonian court and no restrictions to the substantive decision by the Estonian court proceed from the international agreements in force for Estonia, then the resident obligated person may request for a new decision by the Estonian court.

FINLAND

Modification of a foreign agreement/judgement on maintenance for a child

Rules on jurisdiction

Finland is bound by the Brussel I-regulation⁵ and the Lugano Convention⁶. According to these legal instruments Finnish courts have jurisdiction when the respondent is domiciled in Finland (article 2 in both legal instruments) or when the person entitled to maintenance is domiciled or habitually resident in Finland (point 2 of article 5 in both legal instruments). This means, when these legal instruments are applicable, that a law suite cannot be brought forward by a debtor (the person liable to pay the maintenance) in a Finnish court, if the claimant (the person entitled to maintenance) is not living in Finland.

In cases where the jurisdiction of a Finnish court is not determined by the Brussel I-regulation or the Lugano Convention, the jurisdiction will be determined by the provisions in the Act on Certain International Family Relationships. When the child has been born out of wedlock, a Finnish court has jurisdiction, when the respondent is domiciled in Finland or when the child is a Finnish citizen or when the child permanently lives in Finland. There is no written provision on in what circumstances a Finnish court has jurisdiction in law suites on maintenance to be paid to a child born in wedlock. However, according to the Supreme Court Judgement KKO 2001:109 a

⁵ The Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

⁶ The Convention on jurisdiction and the enforcement of judgments in civil and commercial matters done at Lugano on 16 September 1988.

Finnish Court has jurisdiction to rule upon a law suite for maintenance for a child born in wedlock, if the child lives in Finland. By analogy the same rules for determining jurisdiction for law suites on maintenance for a child born out of wedlock thus will apply for law suites on maintenance for a child born in wedlock. This means that a law suite cannot be brought forward by a debtor (the person liable to pay the maintenance) in a Finnish court, if the claimant (the person entitled to maintenance) is not living in Finland unless the child is a Finnish citizen.

Rules on applicable law

If the child is born in wedlock the applicable law is, according to section 19 in the Act on Certain International Family Relationships, the law of the state in which the child is a citizen.

If the child is born out of wedlock, the applicable law is, according to section 21 in the Act on Certain International Family Relationships, the Finnish law (*lex fori*).

The applicable law provides the criteria for deciding whether a foreign maintenance order may be modified and how it may be modified. If the applicable law is the Finnish law, then the question whether the foreign maintenance order may be modified will be decided by applying the same criteria as for modifying a Finnish maintenance order (please, read the answer to question 14).

FRANCE

Cela dépend de la loi applicable.

GERMANY

A foreign decision which must be recognised may be altered in Germany by means of an alteration action. There must be a domestic venue. Grounds of non-recognition are examined in an interlocutory procedure.

ISRAEL

The court does not have the jurisdiction to vary foreign judgements.

JAPAN

There have been some reported court cases in which a Family Court of Japan rendered a decision which in effect altered the preceding foreign judgement by applying the applicable law designated by Horei (Law Concerning the Applicable Law in General) in a situation where there had been substantial change of circumstances after the foreign judgement and the court found that it had international jurisdiction over the case. However, there is no established precedent with respect to the modification of foreign maintenance decisions as such.

LUXEMBOURG

La question de savoir si un débiteur d'aliments, résident luxembourgeois, peut solliciter devant les juridictions luxembourgeoises la modification de la fixation des aliments intervenue à l'étranger, ne s'est pas encore posée. Dans les affaires de recouvrement d'aliments reçues par le Parquet général en tant qu'institution intermédiaire les modifications des décisions originaires ont toujours été sollicitées devant les juridictions de l'Etat dans lequel il avait été statué sur la demande initiale (dans toutes ces affaires les créanciers d'aliments continuaient à avoir leur résidence habituelle dans l'Etat où était intervenue la fixation initiale des aliments).

A signaler un problème particulier, ayant trait aux décisions judiciaires étrangères fixent la pension alimentaire à une quote-part du salaire et des autres revenus du débiteur d'aliments : la créance d'aliments ne présente dans pareil cas pas le caractère de liquidité requis pour se prêter à une exécution forcée. Une évaluation de la créance d'aliments par le juge sera alors nécessaire, et cette évaluation s'effectuera au regard des circonstances factuelles telles qu'elles existent au moment de l'évaluation. L'évaluation pourrait dès lors aboutir en fait (et en valeur) à une modification de la décision originale.

MALTA

Section 10 of the Maintenance Orders (Reciprocal Enforcement) Act makes provision for modification in the ambit of maintenance. Under this Act a Maltese court has the power to vary or revoke the order as if it had been made by the Maltese court and shall have the power to vary/revoke a registered order by provisional order.

Order is interpreted by the said Act as including any decree or other decision, including an interlocutory decree. Provisional order means (according to the context) either an order made by a court in Malta which is provisional only and has no effect unless and until confirmed, with or without alteration, by a competent court in a reciprocating country, or an order made by a court in a reciprocating country which is provisional only and has no effect unless and until confirmed, with or without, alteration, by the competent Maltese court. Registration order is interpreted as a maintenance order which is for the time being registered, or deemed to be registered, in the competent Maltese court under the Maintenance Orders Act.

However, should take into account that subsection (2) of Section 10 restricts the instances when a registered order may be varied. It lays down instances where a registered order may not vary other than by a provisional order. Moreover subsection (3) of the same Section states that the competent Maltese court shall not revoke a registered order except by a provisional order unless both the debtor and the creditor under the registered order are for the time being residing in Malta.

The whole text of Section 10 has been reproduced in the Annex for your perusal.

THE NETHERLANDS

Only if there is a change of circumstances which precludes a revision of the merits at the stage of recognition of the initial decision (reference is made to the decision by Arnhem District Court referred to on pages 54-55 of the Pelichet Report and the comments on page 58).

NEW ZEALAND

Overseas Court orders that are sent to New Zealand for registration and confirmation can be varied by the NZ Courts. However, there is no jurisdiction under the Child Support Act to vary these orders. The paying parent named in those orders can, during the confirmation process, request the Court to vary the amount payable under the overseas order whether that be the amount of arrears or the ongoing liability or both.

NORWAY

In general according to our Children's Act, debtors living in Norway may apply for modification of foreign decisions at any time. If his income has changed with more than 10 per cent, our National office will adjust the amount. However, if the foreign state is also a member of the Lugano convention on Jurisdiction and Enforcement of Civil and Commercial Orders, the debtor has to apply for variation at the court where the creditor is resident (section 5 (2)).

PANAMA

Foreign Courts resolutions will be accepted in Panama, provided that they observe conditions established within the Panamanian legislation for the exequatur.

PHILIPPINES

Under the same condition. Since before a foreign judgement may be enforced in the Philippines, the judgement creditor may still file an action for enforcement of foreign judgement before the local court.

POLAND

Foreign decision concerning maintenance, as well as the domestic one, may be modified in case of changed relations with regard to the obligee's needs and the obligor's income capacity.

ROUMANIE

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SLOVAKIA

The conditions are the same as under 14 above (if a Slovak court has a jurisdiction at all; it has jurisdiction solely in cases where the debtor is a Slovak national).

SUISSE

Il s'agit ici d'abord d'une question de compétence. Selon la Convention de Lugano du 16.9.1988 concernant la compétence judiciaire et l'exécution des décisions en matière civile et commerciale, le débiteur d'aliments peut être attiré devant le Tribunal du lieu de son domicile ou de celui du domicile ou de la résidence habituelle du créancier d'aliments (art. 2 al. 1 et art. 5 ch. 2 de ladite Convention). Le créancier d'aliments quant à lui ne peut pas être contraint à participer à une procédure dans l'Etat de domicile du débiteur d'aliments. Ces règles de compétences valent également pour la modification d'une décision fixant les contributions d'entretien. Dans les cas où l'Etat concerné n'est pas membre de la Convention de Lugano, la

LDIP prévoit des règles de compétences semblables, à savoir que pour l'entretien de l'enfant, les tribunaux suisses de la résidence habituelle de l'enfant ou ceux du domicile, et, à défaut, ceux de la résidence habituelle du parent défendeur sont compétents (art. 79 LDIP). Un for subsidiaire d'origine, si l'enfant ou le parent défendeur est suisse, est également prévu (art. 80 LDIP).

Dans ces circonstances bien précises et si la situation a notablement changé depuis la date du prononcé de la décision étrangère, celle-ci peut être modifiée par un tribunal suisse.

SWEDEN

In the same circumstances as a domestic decision may be adjusted.

UNITED KINGDOM - ENGLAND AND WALES

Child Support Agency

The Child Support agency is not applicable in these circumstances.

The courts

In the courts a foreign assessment may be varied or modified where there has been a significant change in circumstances since the order was made, such as loss of regular employment.

Where countries are listed under Part 1 of the *Maintenance Orders (Reciprocal Enforcement) Act 1972*, and operating a common law judicial system (largely Commonwealth countries), the court may vary their registered order by a provisional order, if the reciprocating country has power to confirm that variation. The court that made the original determination makes the ultimate order.

Where there is an agreement with a reciprocating country under the New York Convention, the court in the UK can vary a registered order by a final order on an application that there has been a change of circumstances. The court in the reciprocating country therefore makes the order and not the court that made the original determination. A resident debtor in these circumstances is therefore able to apply for a final order to the court at which the order is registered.

The only variation the court can make in relation to an Order made under the 1973 Hague Convention is the method of payment and the place of payment.

UNITED KINGDOM - SCOTLAND

Under Part I of the 1972 Act, the registering court has like power to vary or revoke a registered order as if it had itself made and had jurisdiction to make the order. It may do so on the application of the payer or payee. The Act is silent on the law to be applied to an application for variation. The law applied by the reciprocating country would seem to be the appropriate law, but Scots law may be applied on the view that if it differs from that law, the necessary adjustment can, in the case of a provisional order, be made by the foreign court in deciding on confirmation.

Under Part 2, an order registered in a court other than that by which it was made may be varied or revoked by the registering court as if it had been made by it and as if that court had had jurisdiction to make it; and no other court shall have power to vary or revoke the order.

Under Part 3 of the Act, and with regard to the Republic of Ireland firstly, the powers of revocation and variation of an order remain exclusively with the courts of the country in which the order was made. Secondly, under the scheme of the Hague Convention Order, Scottish courts cannot vary or revoke an order made in a Hague Convention country (although the rate of payment may be altered in some cases). The provisions of the Reciprocal Enforcement (United States of America) Order 1995 allow Scottish Courts to vary or revoke an order made in the United States of America.

UNITED STATES OF AMERICA

Under UIFSA, a foreign child support order may be modified by a U.S. state if all parties have left the foreign jurisdiction that issued the decision, a petitioner who is a non-resident of the state in which the petition for modification is filed seeks modification in the state, and the respondent/obligor is subject to the personal jurisdiction of the state.

Alternatively, a U.S. state may modify the decision if the child is subject to the personal jurisdiction of the U.S. state and all of the parties have filed a written consent in the issuing foreign tribunal for a tribunal of the U.S. state to modify the foreign decision.

The NCCUSL has proposed amendments to the 1996 version of UIFSA that specifically address a number of international child support enforcement issues. The 2001 UIFSA amendments, which have not yet been uniformly adopted by U.S. states, include a provision that a U.S. state may modify a foreign child support order if the foreign country or political subdivision "will not or may not modify its order pursuant to its laws. . . ." Although as a general rule any requests for modification should be heard by the tribunal that issued the order, we recognize that in certain cases, modification would not be possible, absent action by the Requested Party. Such a stalemate may occur, for example, if a foreign country requires that parties be physically present to obtain a modification of a child support order, but it lacks the authority to compel a nonresident to appear. The U.S. state in such circumstances "may assume jurisdiction to modify the child-support order and bind all individuals subject to the personal jurisdiction [of the state] whether or not consent to modification of a child-support order otherwise required the individual . . . has been given or whether the individual seeking modification is a resident of [the U.S. state] or the foreign country or political subdivision." UIFSA 2001 § 615.

Détermination de la paternité

Establishing paternity

- 16 Quelle est la loi applicable à la détermination de la paternité dans le cadre des procédures en matière d'aliments envers les enfants ?**
- 16 Which is the law applicable to the determination of paternity in the context of child support proceedings?**

AUSTRALIA

Under the *Child Support (Assessment) Act 1989* ACSA is able to make a number of presumptions in relation to paternity. Once a presumption of paternity has been met an assessment for child support can be made (providing all other eligibility requirements are met). Similar presumptions also apply under the *Family Law Act 1975*. Any decision made in relation to paternity under the *Child Support (Assessment) Act 1989* is rebuttable under the *Family Law Act 1975*.

AUSTRIA

Law of the child's nationality (according to Austrian private international law).

BULGARIE

Le Code de la famille est la loi applicable à la détermination de la paternité dans le cadre des procédures en matière d'aliments envers les enfants. En ce qui concerne le champ d'application de la présomption de paternité le Code de la famille / art.32, al. 1/ prévoit que « le mari de la mère est considéré comme étant le père de l'enfant ne pendant le mariage ou avant l'écoulement de 300 jours depuis sa dissolution ». Le Code s'attache à résoudre la confusion éventuelle des paternités qui découlerait d'une application intégrale de la présomption en question dans le cas où la femme divorcée se serait remariée et aurait mis au monde un enfant avant l'expiration d'un délai de 300 jours à compter de la date de la dissolution du mariage précédent. Dans une telle hypothèse le Code prévoit que le second mari sera censé être le père de l'enfant. /art.32, al.2/.

CANADA

Dans les provinces de common law :

La loi la plus favorable à l'enfant, soit la loi de son lieu de résidence ou la loi du for. Dans la plupart des provinces de common law, la loi régissant les procédures inter-juridictionnelles en matière d'aliments prévoit que la détermination de paternité dans le contexte de la procédure en matière d'aliments n'a d'effet que pour les fins spécifiques de cette procédure.

Dans la province de droit civil du Québec :

L'établissement de la filiation est régi par la loi du domicile ou de la nationalité de l'enfant ou de l'un de ses parents, lors de la naissance de l'enfant selon ce qui est plus avantageux pour celui-ci (Article 3091 du Code civil du Québec).

In Common Law provinces :

The law most favourable to the child, either the law of its place of residence or the law of the forum. In most Common Law provinces, the laws governing inter-jurisdictional support proceedings provide that a determination of paternity (parentage) within the context of an inter-jurisdictional child support proceeding has effect only for the purposes of that support proceeding.

In the Civil Law province of Quebec:

Filiation is established in accordance with the law of the domicile or nationality of the child or of one of his parents, at the time of the child's birth, whichever is the more beneficial to the child (Article 3091 of the Civil Code of Quebec).

CHILE

Civil Code and Law No. 19,585, amending the Civil Code and other legal texts in the matter of Filiation.

CHINA - HONG KONG SPECIAL ADMINISTRATIVE REGION

Prior to the enactment of the Law Reform (Miscellaneous Provisions and Minor Amendments) Ordinance No. 80 of 1997 ("Ordinance 80/97"), an illegitimate child could obtain maintenance from his natural father by seeking an affiliation order under the Affiliation Proceedings Ordinance (now repealed). The Ordinance provided that the mother of an illegitimate child might apply to the court for an affiliation order and if the respondent was adjudicated to be the father, he could be ordered to pay maintenance.

Ordinance 80/97 has repealed the Affiliation Proceedings Ordinance. An illegitimate child can now seek a declaration of parentage under section 6 of the Parent and Child Ordinance ("PCO", Chapter 429) and seek financial provision under the Guardianship of Minors Ordinance ("GMO", Chapter 13). The range of orders under the GMO has been enlarged to include lump sum payment, secured periodical payment, transfer of property and settlement of property orders.

Under section 6 of PCO, the child can apply to the court for a declaration. It is provided in section 13(1) that –

"In any civil proceedings in which the parentage of any person falls to be determined, the court may, either of its own motion or on an application by any party to the proceedings, give a direction –

- (a) for the use of scientific tests showing whether a party to the proceedings is or is not the father or mother of that person; and
- (b) for the taking of bodily samples from that person or any party to the proceedings."

The court may direct that scientific tests be used to determine parentage but it cannot compel a party to provide a bodily sample. Consent is required. A person who has attained the age of 16 is competent to give a valid consent, but in the case of a child under 16, a sample can be taken only if a person who has care and control of the child consents. Section 15 of PCO provides that where a person fails to comply with a court direction the court may draw such inferences as appear proper in the circumstances.

CROATIA

The matter is regulated under the Family Act.

CYPRUS

Same as for children born in wedlock.

CZECH REPUBLIC

Paternity and alimony proceedings for a child may be combined in the Czech Republic. Czech courts proceed in such proceedings in accordance with quoted Family Act and Civil Proceedings Order – Act #99/1963 Coll. in their current versions.

DENMARK

The provisions on the determination of paternity are found in The Children Act, Act No. 460 of June 7, 2001.

ESTONIA

Establishment and contestation of filiation are governed by the law of the state of residence of the child at the time of birth. Filiation from a parent may be established and contested also pursuant to the law of the state of residence of the parent. The parent may recognise a child also under the law of his/her state of residence. (International Private Law Act, Article 62).

FINLAND

A question on paternity cannot be solved in the context of child support proceedings, but a question on maintenance for a child may be solved in the context of a court trial on paternity.

The applicable law in a paternity trial, when the respondent is a Finnish citizen, is Finnish law (section 21 of the Act on Certain International Family Relationships). There is no provision in Finnish law on which law is applicable when the respondent is a foreign citizen. According to the Supreme Court Decision KKO 1983 II 117 Finnish law (*lex fori*) is applicable when the respondent is a foreign citizen.⁷

FRANCE

En principe, l'obligation alimentaire à l'égard des enfants découle de l'établissement du lien de filiation à l'égard du ou des parents.

La loi française prévoit trois modes d'établissement de la paternité.

Si la reconnaissance volontaire du père en constitue le mode principal, ce lien peut également résulter de la possession d'état, le juge des tutelles dressant alors un acte de notoriété constatant le lien de filiation. Enfin, la paternité peut être déclarée judiciairement, au terme d'une action en recherche de paternité.

Cependant, des subsides peuvent être alloués à l'enfant lorsque la filiation paternelle n'est pas établie. L'action est dirigée contre l'homme qui a eu des relations avec la mère pendant la période légale de conception et est fondée sur une simple présomption de paternité. Elle s'applique notamment dans le cas où le lien ne peut être juridiquement établi (filiation incestueuse) ou risque d'être traumatisant pour la mère ou l'enfant (viol) sans pour autant limitée à ces hypothèses.

GERMANY

In accordance with the caselaw of the Federal Court of Justice, the preliminary question of paternity emerging in the context of a duty of support under family law is to be joined in a connected manner, meaning that establishing paternity is to be adjudicated in accordance with the law stated to apply by international private law of the maintenance status. As to the regulations on collision contained in Art. 18 of the Introductory Act to the Civil Code, reference may be made to the information regarding Question 4.

ISRAEL

⁷ The Ministry of Justice is planning to start a reform on new international private law rules for paternity matters.

The personal law is applicable to the determination of paternity, when the question of paternity arises during maintenance proceedings (when the determination of paternity is the main cause of action, the rules of jurisdiction differ). There is a Supreme Court judgment which determined that when the personal law (religious law) does not recognize paternity, then 'civil paternity' is established by the court in relation to maintenance and the father will be obligated to pay maintenance.

JAPAN

According to the recent decision of the Supreme Court, the law applicable to a prerequisite issue indispensable for solving an issue of law (the present issue) should be determined by the private international law of the forum State. Hence, where Japan has become the forum State, the Japanese courts would apply the law designated by Horei (Law Concerning the Application of Law in General) which adopts the principle for easier formation of parent-child relationship by providing several applicable laws on the basis of nationalities of the parties concerned. However, the question of whether or not the precedent applies in the context of maintenance proceedings is yet to be clarified, since the question should be examined with regard to the purpose of the Law Relating to the Applicable Law to Maintenance Obligations which implements the 1973 Hague Convention on the Applicable Law to Maintenance Obligations.

LUXEMBOURG

Les points 16, 17, 18 et 19 ne me semblent pas devoir comporter de plus amples développements :

- d'une part, il n'existe pas de jurisprudence luxembourgeoise, rendue sous l'empire des dispositions de la Convention de New York, sur les questions soulevées. Le Parquet général, que ce soit en tant qu'autorité expéditrice ou en tant qu'institution intermédiaire, n'a pas connaissance de ce que dans le cadre d'une procédure judiciaire de recouvrement d'aliments, des problèmes relatifs à la détermination de la paternité se soient posés.
- d'autre part, le rôle de l'autorité centrale comme autorité expéditrice ou comme institution intermédiaire au titre de la Convention de New York n'est pas conçu comme incluant un rôle actif de sa part pour compte d'une partie relativement à une question d'état, surtout si l'on envisageait l'action alimentaire comme l'accessoire d'une action d'état.
- enfin, et surtout, il risque de se poser un problème de compétence : en principe le juge de paix connaît de toutes demandes en pension alimentaire (voir réponse point 7.). Si l'article 14 du Nouveau Code de procédure civile dispose que le juge de paix connaît de toutes exceptions et de tous moyens de défense qui ne soulèvent pas une question relevant de la compétence exclusive du tribunal d'arrondissement ou d'une autre juridiction, l'article 342-2 du Code civil dispose précisément que le tribunal d'arrondissement, statuant en matière civile, est seul compétent pour connaître des actions relatives à la filiation. En tout état de cause la détermination de la paternité dans le cadre d'une procédure en matière d'aliments revêtira dès lors le caractère d'une question préjudicielle.

Il y aurait peut-être lieu, s'agissant du point 19., de renvoyer à la jurisprudence luxembourgeoise rendue à propos d'actions purement alimentaires : en approuvant la Convention conclue à La Haye le 24 octobre 1956 sur la loi applicable aux obligations alimentaires envers les enfants, le législateur luxembourgeois a manifesté son intention de ne pas ou de ne plus considérer comme contraire à l'ordre public luxembourgeois une loi étrangère qui permet d'actionner un père naturel en payement d'aliments sans qu'en même temps une filiation naturelle soit judiciairement constatée.

Pour le surplus, il est difficile en l'état actuel de se prononcer sur la question de savoir si dans le cadre d'un nouvel instrument international, il y a lieu de régler à la fois les rapports d'ordre alimentaire et les questions de filiation entre le débiteur et le créancier, mais il s'agit dévaluer cela avec prudence.

MALTA

Civil law is applicable to the determination of paternity. Title II in the Civil Code is entitled 'Of Filiation' and provides, inter alia, for the determination of paternity.

THE NETHERLANDS

Under Dutch law (articles 1:207 and 208 of the Civil Code) paternity may be judicially established by a court decision.

Under article 1:394 of the Civil Code it is also possible to obtain a maintenance order based on a determination of biological paternity, which determination does not affect the child's civil status as the mother's natural child. In the latter case the proceedings are very much the same as those for establishing paternity under article 1:207.

The applicable law is determined by the rules of the 1973 Convention on the law applicable to maintenance obligations. If the issue of paternity determination arises as an incidental question, the incidental question is governed by the 1973 Hague Convention on the law applicable to maintenance obligations.

NEW ZEALAND

The meaning of "parent" is defined in the Child Support Act.

Generally speaking, a person is a parent when that person is named as the parent on the birth certificate or is or was a party to the legal marriage and the child was conceived during that legal marriage or the child was adopted by that person or a NZ Court or overseas jurisdiction has at any time found that person to be the parent or the person has been declared to be a step parent.

If a person named as the "parent" disputes paternity they must satisfy the Inland Revenue that he or she is not the parent. Generally that can be achieved by DNA testing. DNA testing can determine parentage or conversely it can be used to remove a person named on the birth certificate of the child as being the father.

In respect of a claim for maintenance under the provisions of the 1956 New York Convention (UNCRAM), section 145D of Part VIII of the Family Proceedings Act establishes limits on liability regarding matters of paternity. The Court cannot hear claims against a father if he is not married or never has been married to the mother or whose marriage to the mother was dissolved before the conception of the child.

However with respect to Provisional Orders made in a Paternity Order and transferred to New Zealand for confirmation under the Commonwealth scheme there are safeguards for the father in the Family Proceedings Act. The father during the hearing of the confirmation proceedings may raise the defence that he is not the father of the child and that the proceedings in which the affiliation order was made were not brought to his notice. If it appears to the Judge to be necessary for the purpose of any defence to remit the case to the Court that made the provisional order for the taking of any further evidence, the Court of hearing may so remit the case, and may adjourn the proceedings for the purpose.

NORWAY

The Children's Act.

PANAMA

The applicable law to determine paternity in our Family Code is:

- a) Father by consanguinity.
- b) Father by adoption.
- c) Father by affinity.

All three categories of father are compelled to observe their pater potestas duties, therefore they are obliged to give alimony to their children.

PHILIPPINES

The Philippine Family Code.

POLAND

The law of a child's home state at the moment the child is born shall be the applicable law. However, for the recognition of a child, the law of the state of which the child is a national shall be the applicable law.

ROUMANIE

Le Code de la Famille

SLOVAKIA

The law applicable to the determination of paternity is the *lex patriae* of the child (the nationality received through birth). If the child lives in Slovak, Slovak law can be applied if it is in the best interest of the child. *The question itself, however, is somewhat misleading: there is no "determination of paternity in the context of child support proceedings", there is only "determination of child support in the context of the paternity proceedings". Child support cannot be established if paternity had not been established first. Unless, of course, there question of paternity is not questioned. Then the "determination of paternity" is just a matter of evidence (birth certificate). If paternity IS questioned, the issue cannot be dealt with in the context of child support proceedings, but a proceedings on contestation of paternity, etc. have to be introduced separately.*

SUISSE

En Suisse, la question se pose différemment, à savoir que généralement, la paternité est constaté avant qu'une procédure en matière d'aliments ne soit mise en route. Il est cependant possible que la demande d'aliments soit déposée simultanément avec l'action en paternité, respectivement dans le cadre de la procédure visant à déterminer la paternité (art. 280 al. 3 CC). Le droit applicable pour l'établissement, la constatation et la contestation de la filiation sont régis par le droit de l'Etat de la résidence habituelle de l'enfant au moment de sa naissance, à moins qu'un intérêt prépondérant n'exige que le droit de l'Etat de la résidence

habituelle de l'enfant au moment de la date de l'action soit appliqué. Toutefois, si aucun des parents n'est domicilié dans cet Etat et si les trois personnes concernées ont la même nationalité, le droit de l'Etat d'origine s'appliquera (art. 68 et 69 LDIP). Le droit applicable pour l'obligation alimentaire peut être différent dans ce contexte, dans la mesure où il s'agira généralement du droit de l'Etat de la résidence habituelle actuelle de l'enfant, et non de celle au moment de sa naissance.

SWEDEN

Presumption of paternity: The law of the state where the child initially had habitual residence is applicable. If no one is considered to be the father according to that law, *lex patriae* is applicable.

When paternity is specially determined by an acknowledgement: *lex fori*.

When paternity is specially determined by a judgement: the law of the State where the child has habitual residence at the time of the decision of the court of the first instance.

UNITED KINGDOM - ENGLAND AND WALES

The law applicable to paternity testing-

Family Law Act 1986 – under section 55A individuals have a right to make a free-standing application to the Court for a declaration of Parentage. Companies accredited by the Lord Chancellor carry out scientific tests (this can be by way of mouth swab). Currently charges are £135 + VAT per sample tested.

Child Support Act 1991- under section 27, the Child Support Agency may make application for a Declaration of Paternity following a direction for blood tests or other form of DNA sampling.

Children Act 1989 - section 89 also provides for the ordering of scientific tests to establish paternity.

Common law – a man shall be presumed to be the father of a child if he was married to the mother of the child at the time of the conception and birth of the child. The presumption can be rebutted, by DNA testing.

Human fertilisation and Embryology Act 1990 - sections 27 & 28 (please see the response from the Scottish Executive).

UNITED KINGDOM - SCOTLAND

The law applicable to the determination of paternity in the context of child support proceedings is section 5(I)(a) and (b) of the Law Reform (Parent and Child) (Scotland) Act 1986 and sections 28(2) and (3) of the Human Fertilisation and Embryology Act 1990.

UNITED STATES OF AMERICA

As explained in the answer to question 4, U.S. tribunals generally apply the law of the forum, including applicable federal law, in maintenance cases.

Federal law, 42 U.S.C. § 666(a)(5), specifies that individual U.S. states are required to have basic procedures available to establish paternity until a child attains 18 years of age, including the use of legally and medically acceptable genetic tests which tend to identify the father or exclude the alleged father. (See also response to question #17.)

An individual state may have additional features or may vary the basic requirements where the federal act is not prescriptive. For example, the percentage of probability for genetic testing that creates a rebuttable or conclusive presumption of paternity varies from state to state. All states have rules regarding a presumption-of-paternity for married parents. Many states also have additional presumption of paternity provisions covering legitimisation (marriage after birth of the child), common law marriages, and birth of the child after the death of the husband which are not covered by specific provisions of federal law.

17 Veuillez résumer les exigences administratives et judiciaires relatives à la détermination de la paternité dans le cadre de procédures en matière d'aliments envers les enfants ?

17 Please summarise your administrative and legal requirements concerning the establishment of paternity in the context of child support proceedings.

AUSTRALIA

To establish an Australian administrative assessment ACSA can make a number of presumptions as to paternity. These requirements needed are listed in attachment A. If one or more of these presumptions are met ACSA will be satisfied that the person is a parent and a legal liability, using an administrative formula, is raised by ACSA.

If the presumption requirements are not met or paternity is disputed parties may have the issue of paternity decided by a court having jurisdiction under the *Family Law Act 1975*.

A court has similar rules relating to presumption as used by ACSA in determining parentage (see Attachment A). A court can also order parentage testing to be undertaken to assist in determining paternity. Under Australian law the results of that any procedure do not automatically result in a finding of parentage by the court. The court still has to determine that it is satisfied as to parentage.

Where an overseas court or administrative authority has made a decision on the basis of their paternity rules, ACSA will simply accept that order or assessment.

AUSTRIA

If a child is born out of wedlock paternity must be established by recognition or judgment (based on biological evidence).

BULGARIE

Des exigences administratives n'existent pas.

CANADA

Dans les provinces et territoires de common law :

Le demandeur doit apporter une preuve *prima facie* de paternité. Les présomptions réfragables sont incluses dans la loi. Si aucune présomption réfragable ne trouve application ou que la présomption est repoussée, une preuve biologique de paternité (le plus souvent un test d'ADN) sera requise. Un test d'ADN peut être ordonné par un juge ou faire l'objet d'une entente entre les parties.

Dans la province de droit civil du Québec :

Pour pouvoir engager une procédure en matière d'aliments envers les enfants, la filiation doit être préalablement établie. Elle peut l'être, notamment, par l'acte de naissance ou la présomption de paternité du mari ou du conjoint de sexe différent uni civilement.

In Common Law provinces and territories:

The applicant must provide *prima facie* evidence of paternity. Refutable presumptions of paternity are presumptions as set out in legislation. If no presumption applies, or the presumption is rebutted, biological evidence of paternity, most often DNA testing, may be required. A DNA test may be ordered by a judge or agreed on by the parties.

In the Civil Law province of Quebec:

In order to ask for a support order, paternity must first be established. Paternity may be established by the act of birth or by the presumption of paternity of the husband or of the civil union spouse of opposite sex.

CHILE

I will send you by mail a copy of Law No. 19,585, amending the Civil Code and other legal texts in the matter of Filiation, for further information on this matter in Chile.

CHINA - HONG KONG SPECIAL ADMINISTRATIVE REGION

See answer to Question 16.

CROATIA

Paternity can be established by a personal admission given at legally authorized institutions or stated in the will or, in absence of such an admission, through a court procedure.

CYPRUS

From the time a child is recognised as a natural child of its father, no matter whether by a judicial process or voluntary process, the duty for its maintenance is created.

CZECH REPUBLIC

An application for establishing paternity (paternity suit) may be filed by a child represented by a collision custodian, or a mother, or a man purporting to be the child's father, or the application may be filed in joint action. In establishing the paternity, the court bases its assumptions on expert assessment; documentary evidence or witnesses hearing may be used in support. In Czech judicial practice, paternity is being established on blood test basis only exceptionally. Experts rather use molecular genetics methods, e.g. by DNA analysis of samples taken from oral cavity mucous membrane of the man identified as the child's father. These

state-of-the-art methods enable to establish paternity with 99.99% certainty; the costs of such expert assessment amount to approx. CZK20,000. The costs of expert assessment are usually borne by the respondent, provided that his paternity was thereby established. If established otherwise, the costs are borne by the state, as child and mother are exempt from paying the costs of proceedings. If the identified father (respondent) is a person of inferior economic situation, he may ask the court of jurisdiction to provide for free legal assistance. There are no differences between persons having their place of residence in the Czech Republic and those resident abroad in paternity and maintenance cases. In the Czech Republic, foreign paternity and maintenance judgment may be acknowledged and enforced only on reciprocity basis warranted by a bilateral or multilateral international treaty, in case that the foreign judgment pertains to the father being a Czech citizen. Czech court does not reassess the rationale of a foreign judgment in the execution proceedings, i.e. it does not compare whether the law or the method applied in determining the paternity in the foreign country is identical with Czech judicial practice or not.

DENMARK

If a married woman gives birth to a child, her husband shall be considered the child's father.

The husband or the mother may, however, contest the husband's paternity within 6 months after the birth of the child.

When an unmarried woman gives birth to a child, it is necessary to establish the paternity.

Unmarried parents who wish to share the care and responsibility for their child can file a Statement of Care and Responsibility with the church register office, the local birth registrar or the County Governor's office and thereby establish the man as the child's legal father. At the same time the parents will obtain joint custody of the child.

The parents can also establish paternity by submitting a written statement to the County Governor's office or by accepting paternity in a meeting at the Governor's office.

If paternity is not established as mentioned above, the courts will establish paternity.

After the child is 6 months old, paternity can only be contested if there are special circumstances. After the child is 3 years old, paternity can only be contested in exceptional cases.

ESTONIA

Under Estonian law, paternity is established as follows:

- (a) the father of a child is the man, who is/was married to the mother of the child at the time the child was born or conceived (paternity is fixed by the vital statistics office in the birth registration certificate under the petition of either parent);
- (b) under joint written petition of the father and mother of the child, submitted to the vital statistics office – if the parents of the child are not married to each other (the vital statistics office, under joint petition of the parents, fixes the paternity in the birth registration certificate of the child);
- (c) with court decision, if the parents of the child are not married to each other and paternity has not been established under joint written petition of the father and mother of the child.

FINLAND

A demand for maintenance for a child may be submitted in the context of a *paternity trial* (please, read the answer to question 16).

The criteria for the establishment of paternity in a *paternity trial* are the following: the court shall establish that a man is the father of the child if it is shown that he had intercourse with the mother at the time of conception, and if, in view of the statements of the mother of the child and the man as well as all the other circumstances, it is deemed proven that the man has conceived the child. The court shall on its own motion order that all the evidence which the court deems necessary for a ruling on the matter shall be obtained.⁸

Paternity may also be established through a judicial process for *paternity acknowledgment*.⁹ The judicial process is preceded by an administrative process where the locally competent municipal child welfare supervisor has to arrange an investigation of paternity, when he has been notified of the birth of a child born out of wedlock. The mother of the child and the man who wants to acknowledge his paternity may come to a meeting arranged by the supervisor. At this meeting the man may notify the supervisor that he is the father of the child. When the supervisor has finished the investigation of paternity, he shall send the relevant documents to the court, which may establish that the man, who has acknowledged the paternity, is the father of the child. The court may establish the paternity if there is no cause for the court to assume that the man is not the father of the child. The court may not in connection with this process give a ruling upon the maintenance to be paid to the child. The father and the mother may make a separate agreement on the maintenance to be paid to the child or institute a separate proceeding on maintenance in the court (please, read the answer to question 5).

FRANCE

L'action en recherche de paternité doit en principe être exercée dans les deux années suivant la naissance. Toutefois, si les parents ont vécu en concubinage durant la période légale de conception, l'action peut être exercée durant les deux ans suivant la cessation du concubinage. Si le père prétendu a participé à l'entretien ou à l'éducation de l'enfant en qualité de père, l'action peut également être exercée dans les deux années suivant la cessation de cette contribution.

L'enfant bénéficie également d'un droit d'agir dans les deux années qui suivent sa majorité.

L'action en recherche de paternité ne peut être intentée que s'il existe des présomptions ou indices graves. La preuve de la paternité peut ensuite être rapportée par tous moyens ; la Cour de cassation, par un arrêt en date du 28 mars 2000 a estimé que l'expertise biologique est, en matière de filiation, de droit, sauf s'il existe un motif légitime de ne pas y procéder.

Les frais d'expertises sont avancés par le demandeur et assumés par la partie perdante. L'aide juridictionnelle totale ou partielle peut être accordée aux parties selon leurs ressources, cette aide couvrant les frais d'expertise.

Sont admises au bénéfice de l'aide juridictionnelle les personnes physiques de nationalité française et les ressortissants communautaires, ainsi que les personnes de nationalité étrangère résidant habituellement et régulièrement en France.

GERMANY

⁸ The government has given a bill (HE 76/2002 vp) to the Parliament on Assisted Reproduction. This bill includes inter alia a proposal on the modification of the Paternity Act. According to the proposed modification the father of a child born through assisted reproduction is the man, who gave his approval to the assisted reproduction.

⁹ The government has given a bill (HE 79/2002 vp) to the Parliament with a proposal that the task to establish paternity on the basis of a paternity acknowledgment shall be given to the local civil registrar's office.

The proceedings to establish paternity are governed by sections 640 et seqq. of the Code of Civil Procedure and allocated to "proceedings in parent and child cases". Accordingly, the court has jurisdiction in whose area the child has his/her place of residence, or his/her place of habitual residence if there is no domestic place of residence (section 640a of the Code of Civil Procedure). In accordance with sections 23a No. 1 and 23b subsection 1 No. 12 of the Courts Constitution Act (GVG), the factual jurisdiction of the Local Court sitting as a family court emerges.

As to the proceedings, it is a fact that in proceedings under the law of parent and child the court in accordance with sections 640 subsection 1 second sentence and section 616 subsection 1 of the Code of Civil Procedure is not bound by the submission of the party, but may also carry out investigations ex officio and order evidence to be taken. In particular, the possibility exists in accordance with section 372a of the Code of Civil Procedure to also order coercive taking of blood samples, etc., if this is necessary in order to draw up a report on descent.

Without being bound to evidence offered by those concerned, the court has all means of taking evidence available to it (hearing those concerned, personal inspection, witnesses, documents and expert witnesses). It is up to the free selection of the court of items of evidence after a due assessment of the circumstances.

In accordance with section 640h first and third sentences of the Code of Civil Procedure, a positive judgment establishing paternity works for and against all, irrespective of participation in the proceedings with this regard.

Establishment of paternity is reserved to the courts. There is no administrative procedure to establish paternity.

ISRAEL

If the matter of paternity is raised in the context of child proceedings, then it forms part of the proceedings. When submitting a claim for maintenance, there is a specific form which is attached to the statement of claim which includes an affidavit. In the statement of claim, a claim of paternity can be made.

JAPAN

Except for adoption cases, one of the following legal requirements must be satisfied in order to establish paternity:

- (a) the child was conceived by or born to a married woman. If this requirement is satisfied, the child is treated as the child of the woman's husband unless the court holds otherwise (Article 772 of the Civil Code and case law).
- (b) the child has been acknowledged by its father or has obtained a judgement of acknowledgement (Articles 779, 787 and 789 of the Civil Code).

LUXEMBOURG

Voir question 16.

MALTA

To initiate legal procedures to establish paternity one may file a writ of summons with the First Hall, Civil Court.

THE NETHERLANDS

There are no special rules of evidence laid down by legislation. If the respondent denies that he is the child's father and refuses a paternity test, this may be regarded by the court as evidence supporting the request.

NEW ZEALAND

NZ Inland Revenue Child Support will cease the liability of a paying parent when it is satisfied that the person named as the parent is not the parent. Evidence to support the cessation will include DNA or an Order from the Courts.

Because New Zealand Courts cannot hear claims from UNCRAM states where the claim is against a father who is not married to the mother of a child, and has never been married or whose marriage to the mother was dissolved before the child was conceived, the mother is required to provide sufficient evidence for the NZ Court to make a Paternity Order under the domestic jurisdiction. This involves the taking of DNA samples and sending them to a NZ laboratory. The claimant is liable for the cost of this process which can total NZ\$1500. At the Hearing the Judge may direct the respondent to refund all or a portion of the costs.

NORWAY

Child support may only be imposed on a person who is established as the father of the child. If paternity has not been determined, child support payments may not be required from anyone.

Under Norwegian law the husband of the mother is automatically taken as the father of a child born in marriage. In other cases, a written acceptance of paternity is normally sufficient. In such cases paternity is determined administratively.

PANAMA

The administrative and legal requirements concerning the establishment of paternity are those indicated in our Family Code, which are:

- (1) voluntary recognizance: it is effectuated by the own father to his son or daughter and it is done in the birth certificate, which must be signed by the father in presence of two qualified witnesses and must be recorded in the civil registry; in the marriage certificate of his/her parents, where the children must be of the woman with whom he got married; before the competent judge, that must be done by intermediary of a request or will, that must be recorded in the civil registry, ordered the paternity note.
- (2) legal recognizance: which is presumed based upon the legal suppositions and must be decreed by a competent court.
- (3) judicial recognizance: it is when the son or daughter has not been recognized by his/her father and he refuses his paternity or is dead.

PHILIPPINES

There is a presumption that child born during the wedlock of its parents are presumed to be the children of the spouses unless one of them impugn its legitimacy. Thus, in claiming for maintenance legitimate children have only to show their birth certificate, or an admission of legitimate filiation in a public document or in a private handwritten instrument or in the absence of both documents it must show that it has open and continuous possession of the status of legitimate child.

However for legitimate children, they must first file an action for recognition before the trial court against the person whom they are claiming for maintenance.

POLAND

A child born in wedlock shall be assumed to be the child of the mother's husband. Paternity to a child whose mother is not married may be established either by recognition of the child by the father, or by a court's judgement. The mother's permission is required for a child to be recognised by the father. Recognition of the child shall be carried out before the Head of the Births, Marriages and Deaths Register Office (administrative authority) or before a court. If the maintenance obligor is not married to a child's mother, in order to determine maintenance, prior establishment of paternity according to the aforementioned procedure is required.

ROUMANIE

L'établissement de la paternité ne suppose pas des procédures administratives, mais seulement judiciaires.

SLOVAKIA

This question is answered in 16. Paternity has to be established as the first legal step, before the court can decide on child support. For the purposes of child support proceedings the paternity is evidenced through the birth certificate. The birth certificate is filled in by the administrative authority either on the basis of legal presumption (husband of mother), joint declaration of maternity made by the parents, on the basis of the court decision on the determination of paternity or on the basis of the decision of the Supreme Court of Slovak Republic recognizing a foreign court decision relating to the paternity of a Slovak child. Consequently, in the context of the child support proceedings the issue of paternity is not dealt with. If the obligor should raise objections as to his paternity, the court would direct him to file an application to that matter and might (but is not under the obligation to) stay the proceedings in expectation of the outcome of any such proceedings.

SUISSE

Encore une fois, la paternité n'est pas déterminée dans le cadre d'une procédure en matière d'aliments, mais l'inverse. Si la paternité n'a pas été établie par le mariage avec la mère ou par reconnaissance, la mère et l'enfant peuvent intenter action en paternité. Tant que l'enfant est mineur, soit son curateur, soit son tuteur peut agir pour lui. Si une assistance judiciaire pour la prise en charge des frais de justice, et au besoin pour les honoraires d'avocat peut être octroyée en fonction de la situation économique, une aide administrative particulière n'est pas prévue, étant donné que l'enfant a un curateur (si sa mère à l'autorité parentale) ou un tuteur (si personne d'autre n'a l'autorité parentale).

SWEDEN

If the child's mother is married when the child is born, her husband is automatically considered to be the father of the child. If she is unmarried, paternity must be specially determined by an acknowledgement or by a judgement. The Social Welfare Committee shall endeavour to establish who is the father of the child and give him an opportunity to acknowledge the paternity. The mother of the child and the Social Welfare Committee shall approve an acknowledgement. The Social Welfare Committee may approve only if it can be assumed that the person who has acknowledged paternity is the father of the child. If the investigation of the Social Welfare Committee does not clearly identify someone as the father or if the man who the committee considers is the father does not want to acknowledge paternity it is necessary to have the matter considered by a court.

UNITED KINGDOM - ENGLAND AND WALES

For the court's purposes, practical arrangements are governed by the *Magistrates' Courts (Blood Tests) Rules 1971*.

For UK Child Support Agency purposes, parentage is only an issue where it is denied. The majority of non-resident parents named on a child maintenance application accept parentage.

Where parentage is denied before a maintenance assessment has been made, the UK Child Support Agency will consider whether a presumption of paternity can be made under *section 26 of the Child Support Act 1991*. If a presumption cannot be made, the parties will be offered scientific paternity tests in order to resolve the matter. Where scientific tests are not appropriate, e.g. the child was conceived via fertility treatment involving donor sperm or eggs, an application for a declaration of parentage via the courts will be considered.

Where parentage is denied following a maintenance assessment, the onus is on the alleged non-resident parent to provide evidence of non-parentage, but the UK Child Support Agency may offer scientific testing. Only conclusive evidence such as a DNA test result or a declaration of parentage/non-parentage will trigger a revision of the maintenance assessment. Either parent can apply at any time to a court for a declaration of parentage.

UNITED KINGDOM - SCOTLAND

Paternity is primarily established through a parental genetic link between the child and the putative father. This link can be shown by leading extrinsic evidence, such as the results of scientific tests, though more commonly it is established by relying on one of a number of presumptions that the law provides. In cases involving artificially assisted conception, paternity is deemed by the law from certain facts notwithstanding the acknowledged lack of any genetic connection.

Section 5(1)(a) of the Law Reform (Parent and Child) (Scotland) Act 1986 provides that a man shall be presumed to be the father of a child if he was married to the mother of the child at any time in the period beginning with the conception and ending with the birth of the child. The presumption can be rebutted by proof on a balance of probabilities. The presumption is not rebutted by showing that either the husband or another man could be the father of the child. Scientific proof, such as DNA profiling, will in most cases be available and will give incontrovertible evidence of where the truth lies, but if it is not available extrinsic evidence on a number of factors may be led (e.g. proof that sexual intercourse took place at the relevant time).

Section 5(1)(b) of the 1986 Act provides that a man who is not married to the mother of the child at the relevant time shall be presumed to be the father of the child if both he and the

mother of the child have acknowledged that he is the father of the child and he has been registered in the appropriate register as the father. As with section 5(1)(a), this is only a presumption that can be rebutted by proof on a balance of probabilities. Such proof will take the form of proof that the man registered as the father is not genetically related to the child as his or her father.

With regard to assisted reproduction, *section 28(2) of the Human Fertilisation and Embryology Act 1990* provides that where a woman has become pregnant as a result of the placing in her of an embryo or of sperm and eggs or of her artificial insemination, and at that time she was party to a marriage, then the other party to the marriage shall, so long as the embryo was created with sperm that was not his, be treated as the father of the child. This applies whether the woman was in the United Kingdom or elsewhere at the time of the placing in her of the embryo or the sperm and eggs or of her artificial insemination. Section 28(2) does not create a presumption; it is, rather, the wholly artificial creation of a father-child relationship, deemed by the law from the husband's presumed consent to the relevant infertility treatment.

This section cannot be overcome by showing the absence of a genetic link, because its very application depends upon the absence of such a link. Likewise it is not open to another man to claim paternity by showing the existence of the relevant genetic link, for once that the provision applies no other person is to be treated as the father of the child for any purpose. Even in those cases where the mother's husband did not consent, section 28(2) will be effective until such time as the presumption of consent has been rebutted.

Finally, *section 28(3) of the 1990 Act* provides that where an embryo or sperm and eggs are placed in a woman, or she is artificially inseminated, and this is done "in the course of treatment services provided for her and a man together" by a person licensed to provide these treatment services under the 1990 Act, then the man shall be deemed, for all purposes, to be the father of the child. As with section 28(c), this provision applies only when there is no genetic link. When it applies, no other person is to be treated as the father of the child for any purpose and it is therefore irrelevant for anyone else to prove a genetic link between the child and any other person.

UNITED STATES OF AMERICA

A father can acknowledge paternity by signing a written admission in response to a petition or a voluntary acknowledgement of paternity. All states have programs in which birthing hospitals provide unmarried parents of a newborn the opportunity to acknowledge the father's paternity of the child. States must also assist parents to acknowledge paternity up until the child's eighteenth birthday through vital records offices or other entities designated by the State. Before a mother and a putative father can sign an acknowledgement of paternity, the mother and the putative father must be given notice, orally or through the use of video or audio equipment, and in writing of the alternatives to, the legal consequences of, and the rights (including, if one parent is a minor, any rights afforded due to minority status) and responsibilities that arise from signing the acknowledgement. Parents are not required to apply for child support enforcement services when acknowledging paternity.

An acknowledgement of paternity becomes a finding of paternity unless the man who signed the acknowledgement subsequently denies that he is the father within 60 days or the date of a legal proceeding relating to the child, whichever occurs first. If it becomes necessary to seek child support, a finding of paternity creates the basis for a child support order. A final support order against the father cannot be established for a child who is born to unmarried parents until paternity has been established.

In a contested case, the state child support enforcement agency can order genetic testing on blood or tissue samples of the man, mother and child. Genetic tests will be ordered upon the request of a party, if the request is supported by a sworn statement by the party: (1) alleging paternity and setting forth facts establishing a reasonable possibility of the requisite sexual

contact between the parties; or (2) denying paternity and setting forth facts establishing a reasonable possibility of the non-existence of sexual contact between the parties. Genetic test results indicate a probability of paternity and can establish a legal presumption of paternity. Under current standards of DNA testing, the accuracy of the testing generally exceeds 99 percent certainty of paternity in a case in which the alleged father is not excluded by the testing; a man who is excluded is 100% certain to be declared not to be the father (in the absence of fraud in the testing). Each party in a contested paternity case must submit to genetic tests at the request of either party or the state child support enforcement agency.

18 Veuillez préciser les procédures judiciaires et les méthodes (y compris les procédés scientifiques) par lesquelles la paternité peut être établie dans le cadre des procédures en matières d'aliments envers les enfants. Veuillez indiquer également : les coûts généralement induits ; qui devrait les assumer ; si ces coûts peuvent être couverts par une aide judiciaire ; et, si une distinction est faite sur cette question entre les résidents et les non-résidents ?

18 Please outline the legal procedures and the methods (including the scientific methods) by which paternity may be established in the context of proceedings for child support. Please indicate the costs that typically would be involved, who would bear these costs, whether the costs are capable of being covered by legal aid, and whether any distinction is made between residents and non-residents in these matters.

AUSTRALIA

See attachment D

AUSTRIA

Biological proof is necessary (blood testing, DNA analysis etc); an indication of costs is impossible. These costs are of course covered by the legal aid scheme if legal aid has been granted. Concerning legal aid there are no different requirements for residents and non-residents.

BULGARIE

Afin de permettre que la paternité effective puisse être constatée lorsque les époux vivent en état de séparation de fait et le mari ne se soucie guère de sa famille, le Code attribue à la mère la qualité de contester la paternité de son conjoint dans le délai d'un an à compter de la naissance de l'enfant / art. 33, al.2./.

Au cas où la mère aura été féconde artificiellement avec le consentement de son époux le dernier ne pourrait pas désavouer sa paternité. / art.33, al.4/.

Expertise de sang du père et expertise gynécologique. Art.31 du code de la famille.

CANADA

Dans les provinces et territoires de common law :

Lorsque le demandeur et l'enfant résident à l'étranger dans une juridiction où il existe une entente de réciprocité et que le demandeur soumet une demande de pension alimentaire à un tribunal canadien par le biais du processus inter-juridictionnel, le défendeur a le choix de contester ou non la paternité. Si le défendeur ne conteste pas la paternité, alors une

détermination de paternité pour les fins de la demande de pension alimentaire pourra être faite. Une telle détermination peut également être faite par consentement.

Si le défendeur conteste la paternité et indique qu'il est prêt à se soumettre à un test de paternité (test d'ADN le plus fréquemment), on demandera à la demanderesse de participer au test. Si la demanderesse accepte et que le paiement du test peut faire l'objet d'une entente entre les parties, le tout pourra être complété sans obtenir une ordonnance du tribunal.

Si une entente pour le paiement du test est impossible, le défendeur devra faire une demande à la cour pour une ordonnance de test de paternité avec modalité quant au paiement. Dans certaine juridiction ou le défendeur est éligible à l'aide juridique le paiement pourra être assumé en tout ou en partie par les services d'aide juridique. Dans d'autres provinces canadiennes l'aide juridique ne sera pas disponible et le paiement du test sera devra donc être fait par le défendeur et ou la demanderesse (à moins qu'une entente intervienne avec la juridiction avec laquelle une entente de réciprocité existe) Une fois les modalités de paiement en place une demande sera transmise à la compagnie qui procédera aux tests. Ces compagnies habituellement entrent en contact avec les parties pour prendre des arrangements afin d'obtenir des échantillons. Présentement il existe quelques compagnies pouvant obtenir des échantillons de l'étranger. Le coût approximatif pour un test de paternité lorsque la mère et l'enfant résident à l'extérieur du Canada (échantillons de la mère, père présumé et un enfant) varie de 500 à 800 dollars canadiens. Si les tests confirment que le défendeur est le père la cause pour la pension alimentaire sera entendue.

Cette procédure peut varier légèrement d'une province ou d'un territoire à l'autre.

In Common Law provinces and territories:

Where the claimant and child are resident abroad in a reciprocating jurisdiction and the claimant submits a child support application to a Canadian court through the inter-jurisdictional process, the respondent may or may not contest paternity. If the respondent does not contest paternity, then a determination of paternity ("parentage") for the purpose of the support proceeding can be made. That determination can also be made by consent.

If the respondent contests paternity and indicates that he is willing to participate in a paternity test (DNA most commonly), the claimant will be asked if she is willing to participate in the test. If she indicates she is willing to participate and arrangements for payment for the test can be agreed upon, the test can simply be arranged by the parties without a court order.

If payment arrangements for the test cannot be agreed upon, the respondent will have to make an application to the court seeking leave to have a paternity test and requesting that the court make an order with respect to payment for the test. In some Canadian jurisdictions where the respondent is eligible for legal aid, the legal aid authorities will agree to pay all or part of the cost of the test. In other Canadian jurisdictions, legal aid will not be available and payment for the test will be the responsibility of the respondent and/or claimant (unless other specific arrangements have been made with the particular reciprocating jurisdiction). Once payment arrangements are in place, an application will be forwarded to the testing facility. The paternity testing facility usually contacts the parties to make arrangements for them to provide samples. Currently, there are a few Canadian testing facilities that can make arrangements to obtain samples from persons that are resident abroad. The approximate cost for a paternity test for where mother and child reside outside Canada (samples taken from the mother, putative father, and 1 child) is \$500 to \$800 Canadian funds. If the paternity test confirms that the respondent is the father, the child support hearing will proceed.

The process may be slightly different in each Canadian province and territory.

CHILE

Expert proofs consisting of biological tests are taken by the Forensic Service or by suitable laboratories designated by the Judge to such effect. The parties shall, always and only once, be entitled to request a new biological expert report. The party requesting such test must bear the cost thereof, unless holder of a Legal Aid Benefit. No distinction is made between residents and non-residents.

CHINA - HONG KONG SPECIAL ADMINISTRATIVE REGION

See answer to Question 16. Where the parties are husband and wife and child support is sought –

- (a) in proceedings for divorce;
- (b) in proceedings for nullity of marriage;
- (c) in proceedings for judicial separation; or
- (d) under section 8 of MPPO,

No establishment of paternity is required. The relevant factor is whether the child is a "child of the family" and not whether the respondent is the natural father of the child.

It is up to the court to decide, after considering the circumstances of the case, whether the costs involved should be borne by the applicant, respondent or the parties in equal shares. If the party who has to bear the costs receives legal aid for the relevant proceedings, such costs will be covered by legal aid. There is no distinction between resident and non-resident in these matters.

CROATIA

If not established by admission, paternity is established in a judiciary procedure. In determining paternity the court is using all legally permissible methods (statements by the parties concerned, medical methods including DNA etc). Child care and support are also addressed in a paternity decision.

The Family Act stipulates that an advance towards the costs of paternity or maternity determination procedures shall be paid from the court's funds. The Court Procedure Act stipulates that the party unable to cover such costs without detriment to the essential wellbeing of the party or his/her family shall be exempted from covering such costs.

The Court Procedure Act contains a special provision on the coverage of judiciary costs by the applicant, a foreign national, at the respondent's request to be made at the preliminary hearing at the latest, or if no such hearing is envisaged, at the first hearing before the court session. However, the respondent is not entitled to the recovery of judiciary costs if among other stated cases the dispute is about the existence or non-existence of marriage, cancellation of marriage or divorce, or about paternity or maternity (in all these disputes a decision is also made on child support).

CYPRUS

By the judicial contested process or by the voluntary process (by affidavit of both parents before the Registrar of the Family Court), as provided by L. 187/91, or by subsequent marriage as provided by s.10 of European Convention on the Legal Status of the Children Born Out of Wedlock.

CZECH REPUBLIC

See question 17.

DENMARK

Genetic testing involving DNA-analysis is used in establishing paternity.

All testing in paternity cases is performed at no cost for the parties.

If the case is brought before the courts, both parties may need legal counsel by an attorney. The court may appoint an attorney for both parties, if the court finds it necessary. This procedure corresponds to legal aid, which covers the fees of the legal counsel.

No distinction is made between residents and non-residents in these cases.

ESTONIA

The proving of paternity is necessary only in case paternity is established by the court. In this case, the order of proof stipulated by the civil court procedure, is followed. The court may order for a DNA analysis for the establishment of paternity, which is conducted in the Estonian Bureau for Forensic Medicine. Analysis of three persons – the mother, the child and the man to be tested – costs 3600 Estonian kroons.

The costs of the above mentioned expert analysis will be added to legal costs. Under the petition of the party, in whose favour the decision was made, the court may order payment of the necessary and justified legal costs from the other party. The costs of expert analysis cannot be included to the costs for legal assistance, from the payment of which the court may release a person. (Code of Civil Procedure Article 59). Estonian law does not make any difference between the resident and non-resident parties of the procedure.

FINLAND

As explained in the answer to question 16 paternity cannot be established in the context of proceedings for child support (maintenance), but a claim for child support (maintenance) may be put forward in the context of a trial for establishment of paternity.

When the paternity is to be established through *the acknowledgement procedure*, the municipal child welfare supervisor may upon request by the potential father or if the supervisor himself deems it justified, give an order that a blood analysis (DNA) shall be made on the child, the mother and the potential father. The analysis may be carried out only with the consent of the parties. If the supervisor finds it necessary, he may obtain a medical expert statement on the time of conception of the child. The parties do not have to pay for the blood analysis nor for the medical report on the time of conception of the child. These costs will be paid by state funds. If the parties cannot pay for the travel costs for the travel to the municipal health care center, these cost can be paid by state funds. The parties do not have to pay for the service offered to them by the municipal child welfare supervisor nor for the court decision on establishment of paternity through acknowledgment.¹⁰

When the paternity is established through *a paternity trial*, the court may upon the request of one of the parties or by its own motion order that a blood analysis (DNA) shall be made on the child, the mother and the potential father. The parties may not object to the order. The parties do not have to pay for the blood analysis. The costs for the blood analysis will be paid by state funds. If the parties cannot pay for the travel costs for the travel to the municipal health care center, these cost can be paid by state funds. The parties to a paternity trial are liable for their

¹⁰ Provisions on blood analysis are in the Act on Certain Analysis on Blood and other Inheritable Characteristics (702/1975).

own legal costs, unless the court finds that there are weighty reasons to render one of the parties liable for the legal costs of the other party and the court finds that such a ruling can be considered reasonable in the light of the economic circumstances of both parties.

A party to a paternity trial who is not domiciled in Finland has according to the Decree on Granting Cost-free Court Proceedings in Certain Cases (833/1989) a right to receive cost-free court proceedings in a paternity trial with or without adjacent claims for maintenance to the child. This right is, however, subject to a condition on reciprocity.

If a party to a paternity trial who is not domiciled in Finland does not have a right to receive cost-free court proceedings according to the Decree on Granting Cost-free Court Proceedings in Certain Cases, he or she may apply for completely or partially free legal aid in accordance with the provisions in the Act on Legal Aid (257/2002). According to this act persons, who are domiciled in Finland or who are citizens in the European Union or in a state belonging to the European Economic Area and who are working or in search for work in Finland, have a right, if they fulfil the requirements of a means test, to receive completely or partially free legal aid. Legal aid may, according to the Act on Legal Aid, also be given to other persons, if he or she is involved in a judicial proceeding in Finland or if there are special reasons for giving legal aid. Legal aid will also be provided in accordance with the provisions in the Convention on International Access to Justice done at the Hague 25th October 1980 as Finland is a party to this convention.

A claimant who has been granted completely free legal aid does not have to pay any fees for the judgment of the court. A claimant or a respondent who has been granted completely free legal aid does not have to pay the fees for a legal counsel, if he or she has been appointed a legal counsel according to the provisions in the Act on Legal Aid.

FRANCE

Voir question 17.

GERMANY

In this respect, there is no difference between paternity to be established in the context of a dispute on support, and isolated proceedings to establish paternity. If the court is unable to become sufficiently convinced of paternity on the basis of other methods and by taking evidence (submissions by the parties, witnesses testimony, etc.), it will commission an expert to draft a report on descent.

In the current court practice, the well-known methods for such report on descents are blood group tests, additional Serostat test, determination of the gestation period, establishment of infertility, genetic tests and those on a genetic engineering basis (DNS). Blood group tests mostly require several blood samples to be taken of (possible) relatives of the child and costs several thousands of Euros, depending on the extent of the comparative tests to be carried out. By contrast, genetic engineering test procedures are cheaper. Costs of between Euro 500 and 1500 should be expected in most cases.

ISRAEL

There is a Supreme Court decision, that holds that a parent cannot be obligated to undergo a blood test to determine paternity. There is however, a further consideration which the court has to take into account, even when the father consents to undergo a paternity test, and that is that the child's status within Jewish law could be affected, if the paternity test indicates that a man is not really the father of the child. In such a case, the court will not allow a test to be conducted in order to preserve the best interests of the child.

Currently pending before the Supreme Court is a case which deals with the question of whether a parent can be obligated to undergo a DNA test which can be done using external samples, such as a hair or saliva sample and can be carried out without the need for an invasive procedure, such as drawing blood. There are no set rules as to payment of the costs of a test and this is determined by the court on a case by case basis.

The law applicable to non-residents is their personal law. If a couple does not have a personal law, then the law of the place of their joint residence is applied. If they do not have a joint residence, then the law of the place where the maintenance creditor resides is applied.

JAPAN

In the normal course of events, the child who seeks to establish paternity in child support proceedings is required to bring a separate action relating to personal status, such as the one to negate the paternity of existing legal father, or the one against alleged father for acknowledgement, or both, to the District Court. Plaintiff is required to apply to the Family Court for conciliation before filing actions mentioned above (Articles 18 and 17 of the Law for Determination of Family Affairs). With the consent of both parties and after conducting necessary factual investigation which may include the examination of scientific evidence, the court may make a determination corresponding to agreement (Article 23 of the Law for Determination of Family Affairs). The applicant shall bear the costs and expenses of these proceedings, but the court may impose the whole amount or a part thereof on respondent or others concerned under special circumstances (Article 7 of the Law for Determination of Family Affairs, Articles 26 and 28 of the Voluntary Matters Proceedings Law in)¹ .

In the actions relating to personal status, the court determines paternity based on the result of the oral argument, evidence produced by the parties and, if any, facts and evidence gathered by the court. Scientific evidence may be examined in the procedure. The losing party in principle bears the costs and expenses of the proceedings (Article 61 of the Code of Civil Procedure).

The attorney fee for all these court procedures is not included in legal costs and expenses and each party shall pay it, but it could be covered by legal aid under certain conditions.

The same description applies to non-residents, except that non-residents cannot usually receive legal aid.

LUXEMBOURG

Voir question 16.

MALTA

According to Section 67 (Civil Code) a child conceived in wedlock is held to be the child of the mother's husband. Therefore the legal presumption is that in wedlock the male spouse is the father of the born child. There is also a legal presumption concerning conception during wedlock. In fact Section 68 (Civil Code) states that a child not born before one hundred and eighty days from the celebration of marriage, nor after three hundred days from the dissolution or annulment of the marriage, shall be deemed to have been conceived in wedlock.

Notwithstanding the legal presumptions provided for in Sections 67 and 68 (the male spouse may still repudiate a child conceived in wedlock if any one occurrence demanded by law in Section 70 (Civil Code) ensues and is proved by such spouse. Hence a husband can repudiate a child conceived in wedlock if he proves any of the following:

- (a) that during the time from the three hundredth day to the one-hundredth-and eightieth day before the birth of the child, he was in the physical impossibility of cohabiting with his wife on account of his being away from her, or some other accident; or
- (b) that during the said time he was de facto or legally separated from his wife, provided that he may not repudiate the child if there has been, during that time, a reunion, even if temporary between him and his wife; or
- (c) that during the said time he was afflicted by impotency, even if such impotency was only an impotency to generate; or
- (d) that during the said time the wife had committed adultery or that she had concealed the pregnancy and the birth of the child, and further produces evidence of any other fact (which may also be genetic and scientific tests and data) that tends to exclude such paternity

With reference to genetic and scientific tests Section 70(3) (Civil Code) goes on to say that the court may in an action of disavowal invite all or any of the parties including the child whose filiation is in dispute to submit to the tests necessary to establish the genetic proof that may be relevant to the case. In this context, the court shall be entitled to draw such inferences as may be justified by the refusal to submit to such tests. Where the child whose filiation is in dispute is a minor, the court itself shall determine whether the child shall submit to the tests.

Within the context of filiation of illegitimate children, when there is a judicial demand for a declarator of paternity or maternity which may be contested by any party interested, the court may without prejudice to any evidence that may be produced by the parties according to law, invite the parties to submit to examinations necessary to establish a genetic proof. If any of the parties involved refuses to submit to such tests, the court, may draw any inferences as may be justified due to such refusal. (Section 100A (Civil Code)).

DNA Paternity Testings were carried out in judgement proceedings concerning the establishment of paternity. By way of example one can mention *George Bugeja v Rita Catania et* (Civil Court, First Hall, 24 January 1995) and *A v B* (Civil Court, First Hall 27 November 1998) wherein paternity tests were conducted.

Section 93 (Civil Code) is pertinent to the core subject of this questionnaire – maintenance obligations. This provision relates to duty of the father towards the illegitimate child. The father is bound to maintain and educate, according to his means, the illegitimate child whom he has acknowledged, and, even afterwards, to supply maintenance to such child, in case of need, provided such child has no husband or wife or descendants in a position to supply maintenance. Moreover, the father is under a like liability in regard to the legitimate descendants of the predeceased illegitimate son or daughter, if their surviving parent or their legitimate ascendants are unable to provide for them. Additionally, one should note that the provisions of the latter

section are still applicable when the person has not acknowledged a child but whose paternity has been declared by a judgement of the court (Section 94 (Civil Code)).

The costs of litigation are rather low. The DNA tests may, however, be quite expensive. There is no distinction between residents and non-residents for legal aid. The same criteria apply. As to DNA costs, as the law stands, it is unlikely that these can be recovered.

THE NETHERLANDS

See the reply to question 16 as far as procedures are concerned. The court may order an ex officio experts' inquiry. The costs typically involved in a DNA test (which is the current method) are 1250 Euros. These costs are not covered by legal aid. In practice the court will make a decision as regards the costs or confirm an arrangement between the parties as to the costs.

NEW ZEALAND

See above. DNA costs are around \$NZ1500. These costs can be shared between the parties. Legal aid may be available in NZ and this is determined by the appropriate legal society not the Inland Revenue. There is no compulsion for the mother to submit to DNA.

The same process would apply to non-residents.

Claimants under the provisions of UNCRAM are required to establish paternity according to the requirements of New Zealand law.

NORWAY

If the father acknowledge the paternity, or a mandatory or voluntary blood-test points out the father, the case will be prepared administratively by the municipal maintenance support officer at the local Social Security Office. The County Social Security Office then establishes officially the paternity by an administrative order.

If the father still denies the paternity or the evidences are not sufficient to establish him as the father, the case has to be taken to court. The court may decide to require blood-testing from the mother, the child, the indicated father or another man who has had sexual intercourse with the mother in the period of conception. If the DNA test points out a father or excludes him from the paternity, the court may deliver a judgement without any formal proceedings.

The costs in court are paid by the State, including the costs of collecting necessary information. Because of the modern technology of DNA, the parties will in most cases not be in need of attorneys. If it is necessary to use an attorney, they have to pay the costs of the attorney themselves if their income is beyond a certain level. Residency of the parties is of no relevance.

PANAMA

Procedures to establish paternity are those indicated in the aforementioned numeral. Concerning the methods within the legal or judicial recognizance, which will be by testimonial evidence, written and scientific, which are effective through the DNA test. The scientific method costs must be bore by the interested party, as well as the process cost. Legal representation costs will be bore by the interested party and if she/he does not have the economic resources, could apply for a free process support without distinction for being national or foreign.

Nevertheless, the costs incurred in written or scientific tests must be bore by the interested party, unless he/she demonstrates that the presumptive parent has enough economic resources to cover expenses of such tests, and if the tests are positive the Court shall order the presumptive parent to bear the incurred expenses.

PHILIPPINES

For legitimate and acknowledge illegitimate children, they have to file a Petition for Support before the Regional Trial Court. But for illegitimate children they must first file a Petition for Recognition with corresponding prayer for maintenance. Docket fees for the Petition will depend on the amount prayed for by the Petitioner. Lawyer's fee is also quite expensive. For establishment of filiation DNA test is also recommended, however, the test is also quite expensive.

POLAND

In case of establishing paternity by virtue of a court judgement, it shall be assumed that the child's father is the man who had sexual intercourse with the child's mother during the period in which the child could have been conceived. The mother should prove the fact of having had sexual intercourse (hearing the suitor, witnesses' testimonies). The man, however, has to prove that he is not a father to the child (blood test evidence, DNA test, semen test, anthropologic expertise, expert evidence). The party that claims establishing paternity and recovering the benefits it involves is statutorily exempted from the court fees. The costs related to the tests shall be borne by the defendant and the amount of these costs shall depend on the kind of evidence employed and current fees for experts. These costs may be also borne by the State Treasury in case the respondent has been exempted from the court fees. The non-residents shall be exempted from court fees in Poland on the grounds of multilateral agreements, bilateral agreements, as well as on the grounds of the mutuality principle.

ROUMANIE

Dans le cadre de l'action pour l'établissement de la paternité de l'enfant de en dehors du mariage sont admissibles tous moyens de preuves : des inscrits, des témoins, interrogatoires, expertise (sérologique, anthropologique, dactyloscopique, etc.), présomptions. De même, la paternité de l'enfant de en dehors du mariage peut se faire par reconnaissance.

Les dépenses pour l'administration des preuves sont avancées, généralement par la partie qui demande cette preuve, mais l'instance peut obliger aussi l'autre partie de déposer les sommes nécessaires (article 170 du Code de procédure Civile).

La partie qui perd les prétentions avancées, va être obligée à demande de payer les dépenses judiciaires (article 274 du Code de procédure Civile).

SLOVAKIA

As explained earlier paternity cannot be "established" in the context of support proceedings. The regular proceedings for the establishment of paternity is initiated upon the motion of the child or his mother. Since child is minor, the application, in the absence of application by the birth mother, is made in practice by *the guardian ad litem*. Such proceeding may result in joint declaration of both parents on the paternity or in the declaration of paternity by the court. The court shall name a man the father of the child, if it is proven to the court that the man had sexual intercourse with the birth mother at a period falling between 180 and 300 days before the child's birth, unless his paternity is excluded on serious grounds. Blood tests are used as the basic scientific tool. DNA testing is possible, but not yet standard practice. As regards costs of proceedings: under the present legal provisions, there are three aspects that make up this issue: the payment of court fees, payment of court costs and the costs of legal representation (attorney at law). The court fees are 500,-Sk at the moment, but if the child is the applicant, he is exempt from the fees. As regards the costs of proceedings, the rule is that each party bears their own costs. If a party needs an attorney (there is no legal requirement to be represented in the proceedings by an attorney), they have to ask the court first for the exemption from the payment of court fees. And if the court granted them the exemption, such decision would also extend to the fees for the attorney, if in the court's opinion the party needs an attorney to effectively protect his rights in the proceedings. There is no distinction between the residents and non-residents. There is a distinction between nationals and non-nationals. Equal treatment of foreigners is subject to reciprocity.

SUISSE

La procédure judiciaire est une procédure civile ordinaire, réglée par les art. 261 ss. CC et par les codes cantonaux de procédure. S'agissant des méthodes scientifiques, le test ADN est celui qui, depuis une dizaine d'années, est utilisé pratiquement de manière exclusive en Suisse.

SWEDEN

The mother or the Social Welfare Committee normally conducts the child's action. The process is sometimes joined with an application for maintenance. Proceedings in the case may be brought against more than one man. On the application of a defendant, the court shall issue a summons to a man who has not already been summoned to appear in the case and consider whether that man is the father of the child. The records of the Social Welfare Committee's inquiries shall be submitted to the court and the committee may be ordered to make additional inquiries. The court shall ensure that the question of the paternity of the child is properly investigated. Blood tests shall be carried out with respect to the mother, the child and the man who may be the father of the child, if the latter requests it or there is reason to assume that the mother had sexual intercourse with more than one man during the period in which the child could have been conceived.

The court shall declare a man to be the father if it is established that he had sexual intercourse with the child's mother during the period in which the child could have been conceived and, having regard to all the circumstances, it is probable that he fathered the child.

Each party shall bear his or her own legal costs. However, a defendant may be required to reimburse another party fully or in part for that party's legal costs, if there are special reasons. The party's own legal costs can be covered by legal aid. With a few exceptions no distinction is made between residents and non-residents in these matters.

UNITED KINGDOM - ENGLAND AND WALES

(See also 16 above).

In the courts application for maintenance is made by way of complaint. If paternity is challenged, the Complainant or Respondent may apply to the court for a Direction for Scientific Tests to establish paternity. If the results of these tests prove paternity, the court will make such a declaration. The court may draw inferences from refusal to comply with a direction for testing, but this refusal in itself would not be the sole evidence upon which a declaration would be made. Other evidence establishing the likelihood of the Respondent being the father of a child would be adduced, such as co-habitation, gestation charts etc.

Normally the person applying for the direction would be responsible for payment of the fees and associated expenses (such as travel), but in the case of an application by the Child Support Agency, they would indemnify such expenses. If an assisted party made the application for scientific tests to be carried out, legally funded services would indemnify the costs, which would be recoverable from the other party if the results of the tests were in favour of the party who applied for them.

For UK Child Support Agency purposes, where scientific testing is used as the means to resolve a parentage dispute, the costs are £224.58 at the discounted rate and £272.18 at the full rate. The discounted rate is applied where the non-resident parent pays in advance for the test. This is refunded to him where the test result is negative.

The full rate is applied where the UK Child Support Agency pays in advance for the test and the non-resident parent agrees to refund the monies in the event of a positive result. Or where the court directs scientific tests.

Residents and non-resident parents can apply to court for a declaration of parentage/non-parentage. A declaration of parentage is made in respect of each child. This is because the position in relation to each child must be considered, as they will not necessarily be the same. The cost of court proceedings depends on the level of court and time spent. The application fee to the court is £120 irrespective of whether it is made by an individual or the Secretary of State.

The time that it will take to deal with proceedings will depend on a number of factors, including the availability of court dates and the complexity of the case which may justify a number of hearings. It is, however, generally reasonable to expect that the proceedings would take a period of months to conclude and involve, as a minimum, an initial directions hearing and a final hearing. The length of the final hearing will depend on the issues and the arguments to be put but it should be recognised that the availability of scientific evidence can lead to proceedings being unopposed.

Publicly funded legal services can be applied for. The most relevant level of service is Legal Representation. This is available subject to criteria including the application of a means test, prospects of success and cost benefit (that is the likely benefits for the client as against the likely costs of the proceedings).

Where proceedings are not dealt with under publicly funded legal services, then the client, whether applicant or respondent, must meet any costs of legal representation on a private client basis. The amount involved will depend on the charging rates of the solicitor and any barrister involved, as well as the time spent and complexity of the case.

UNITED KINGDOM - SCOTLAND

If the presumptions above do not apply or if the facts of paternity are nonetheless disputed, then the matter must be resolved by evidence. The question of paternity must be resolved by raising an action for decree of parentage or non-parentage (under section 7 of the 1986 Act) or may arise as an incidental question within other proceedings such as an action for divorce,

aliment or parental rights or responsibilities. The standard of proof in proceedings to establish or deny parentage is the normal standard of the balance of probabilities.

The most useful evidence in modern paternity proceedings is that gathered from scientific tests, such as blood tests or "DNA profiling".

The Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, section 70(1)(a) provides that in any civil proceedings, the court may request a party to provide a sample of blood, or other body fluid, or of body tissue, for the purpose of blood or DNA tests. The court has a discretion whether to choose to make such a request and will not do it in every paternity case. The court may make this request either on the application of one of the parties, or of its own volition. If a request is made, and the party it is addressed to does not comply, then they will not under the present law be physically compelled to undergo tests, nor be rendered in contempt of court. Instead, if a party to whom a request has been made does not comply, then the court may draw such adverse inference, if any, as seems appropriate, taking into account the subject matter of the proceedings.

If, for some reasons, DNA or blood test evidence is not available then it may still be necessary to use other types of more circumstantial evidence to try to establish paternity. In the past evidence was often led to try to establish that the pursuer could not have been the father because around the estimated date of conception he did not have sexual access to the mother of the child. Many other facts will be relevant evidence in a paternity dispute. In the past, evidence has been led as to the mother's opportunity to have sexual relations with other men, her actings around the time of conception, the opinions of friends and relatives, and so forth.

The claimant would not normally be required to pay any costs incurred during the testing procedures if they qualify for legal aid.

There is no distinction between residents and non-residents in these matters, therefore if a payer named as a defender in an action raised in Scotland for recovery of maintenance disputes paternity, then, the Scottish court would require to make a ruling on the issue after hearing evidence. If paternity is admitted at the hearing the court would normally make an order for maintenance at that time.

UNITED STATES OF AMERICA

See the answer to question #17 for the legal procedures and methods by which paternity may be established.

No distinction is made between U.S. residents and non-residents regarding genetic testing. However, foreign reciprocating countries and their resident obligees are not charged fees for paternity or other requested services.

In any case in which the state child support enforcement agency orders genetic testing, the agency will pay costs of such tests, subject to recoupment (if the state so elects) from the alleged father if paternity is established. Payment of support owed to the obligee has priority over fees, costs and expenses. The state child support enforcement agency will also obtain additional testing in any case where an original test result is contested, upon request and advance payment by the contestant.

Genetic testing costs in 2000 ranged from about U.S. \$150 to U.S. \$500 for testing of the mother, father, and child. Costs for international cases may be higher because of the need to ensure the chain of custody of the evidence. Costs vary between states and may also depend on whether the individuals are requesting the test in a private bar case or are tested at the request of a state child support enforcement agency that has negotiated a contract price with a specific laboratory.

- 19 La reconnaissance et l'exécution d'une décision étrangère relative à des aliments envers les enfants peuvent-elles être refusées (a) si une recherche en paternité est un élément nécessaire ou (b) si une loi ou une méthode employée pour cette recherche est différente de celle utilisée dans votre pays ? Dans l'affirmative, veuillez en expliquer les raisons.**
- 19 May the recognition or enforcement of a foreign child support decision be refused (a) if it entails a determination of paternity, or (b) if a law or a method is applied to that determination different from that applied in your country? If so, please explain the reasons.**

AUSTRALIA

(a) No (b) No.

But, rare exception if contrary to public policy.

AUSTRIA

No.

BULGARIE

Non. Le tribunal bulgare ne peut pas contester la méthode employée pour cette recherche en paternité à l'étranger. Il accepte la décision étrangère à la base d'une procédure de reconnaissance et exécution d'une décision étrangère concernant les obligations alimentaires s'il existe une convention d'aide judiciaire ou à la base de réciprocité déterminée par le ministre de la justice (art.303-307 du Code de procédure civile).

CANADA

- (a) L'absence de preuve de paternité peut être une raison pour annuler l'enregistrement d'une décision étrangère ou pour refuser de la reconnaître ou de l'exécuter ;
- (b) Une décision étrangère peut ne pas être reconnue si la méthode appliquée dans la détermination de la paternité est contraire à l'ordre public. Dans les provinces et territoires de common law, si la reconnaissance est refusée, la décision peut encore être considérée comme une demande pour l'établissement d'une ordonnance de pension alimentaire pour enfants et une détermination de paternité peut être faite dans le cadre de cette demande.
- (a) The lack of evidence of paternity may be a reason to set aside a registration or to refuse the recognition or enforcement of the foreign order;

- (b) A foreign decision may not be recognised if the method that is applied for the determination of paternity is contrary to public policy. In Common Law provinces and territories, if recognition is refused, the order can be still treated as an application to establish a child support order and a determination of paternity can be made as part of this application.

CHILE

In Chile, in order for a child to claim child support, paternity must have been previously determined. That is, if the child has not been recognized, an action to determine filiation must be previously initiated, in ordinary proceedings. Once the filiation judgment has become final, then a claim for maintenance may be filed.

CHINA - HONG KONG SPECIAL ADMINISTRATIVE REGION

Maintenance orders granted overseas may be registered and enforced under the Foreign Judgments (Reciprocal Enforcement) Ordinance (Chapter 319). The Ordinance provides that if the treatment in respect of recognition and enforcement accorded by the courts of any foreign country to judgments given in Hong Kong is substantially less favourable than that accorded by Hong Kong courts to judgments of that country, the local legislation may direct that no proceedings can be entertained for the recovery of any sum alleged to be payable under the judgments of that country.

CROATIA

A foreign decision may be refused only for reasons envisaged in the Law Conflict Act. It may happen only if the court, acting upon a complaint, finds that the person concerned could not have taken part in the procedure due to procedural irregularities, that a final court decision has already been passed on the same matter or that a foreign decision on the same matter has already been recognized.

Foreign court decisions concerning the status of a national affected by a decision are recognized in Croatia without reconsideration. However, if a competent Croatian authority believes that a foreign court decision concerns the status of a Croatian national, the recognition of such a decision is subject to reconsideration under the provisions of the Law Conflict Act in respect of: finality of the decision to be confirmed by a competent body, the respondent's ability to take part in the procedure preceding the passage of the decision, jurisdiction of the body, and whether or not it collides with the established principles of the Croatian state.

CYPRUS

If there is no Convention between Cyprus and the foreign state, the rules of the English private international law applied in England before 1960, are applicable in Cyprus as part of the received common law. Usually the recognition or enforcement of a foreign decision is not refused unless it is contrary to the Cyprus public policy.

CZECH REPUBLIC

See question 17

DENMARK

- (a) Danish authorities may refuse the recognition and enforcement of a foreign child support decision, if the paternity has not yet been determined.
- (b) Danish authorities accepts recognition and enforcement of a foreign decision according to the Hague and UN conventions, if paternity is determined correctly according to the law and method of the country in question.

ESTONIA

Estonia recognizes and enforces the foreign child support decisions in accordance with the Hague Convention on Recognition and Enforcement of Maintenance Decisions from 1973. Estonian law does not provide any grounds to refuse from recognition and enforcement of foreign court decisions, if (a) the decision includes establishment of paternity or (b) a law or a method has been applied to that determination which differs from such applied in Estonia.

FINLAND

- (a) No. The recognition or enforcement of a foreign child support decision may not be refused on the ground that it entails a determination of paternity. The recognition or enforcement of a foreign child support decision may however, according to section 7 in the Act on the Recognition and Enforcement of Foreign Maintenance Orders (370/1983) be refused, if it is manifestly contrary to the ordre public of Finland.
- (b) No. Finland does not have modern provisions on the recognition of paternity decisions issued in other foreign states than Denmark, Iceland, Norway and Sweden¹¹. It is likely that such foreign paternity decisions are recognized in Finland which are legally binding in the state where the paternity decision was issued.

FRANCE

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GERMANY

The fact of a foreign support decision containing establishment of paternity does not essentially oppose its recognition and enforcement in Germany.

ISRAEL

No, it will probably not affect the recognition of the foreign decision, although, even if the decision for the maintenance award is recognized, it does necessarily mean that paternity will be recognized for the purpose of any matter other than maintenance. This answer is not definitive, however, since there has been no case in point.

¹¹ Provisions on the recognition of paternity decisions issued in Denmark, Iceland, Norway and Sweden are in the Act on Recognition of Paternity Decisions issued in a Nordic State (352/1980).

JAPAN

A foreign child support decision can be recognized and enforced under certain requirements. We cannot find a view that recognition / enforcement of the decision should be refused just because the decision entails a determination of paternity. If, for example, the recognition of a foreign decision which applied a foreign law or method of establishing paternity brings about a situation incompatible with public order and good moral, the court will refuse to recognize and enforce the decision (See Article 118 of the Code of Civil Procedure).

LUXEMBOURG

Voir question 16.

MALTA

There is no legal provision or any case law about this point.

THE NETHERLANDS

Article 27 of the Lugano Convention provides for a ground of non-recognition in the event that, in determining a person's status, the court infringes a rule of private international law of the requested State. Under the Brussels 1 Regulation this ground of non-recognition no longer exists.

NEW ZEALAND

A foreign child maintenance decision can only be administered in NZ if it is by way of an overseas Court order. Special rules however apply to Australia. If a custodian applies for an administrative assessment in Australia and the paying parent lives in NZ the recovery of payments can be administered in NZ under the Australia/NZ reciprocal agreement.

If there is an issue with paternity then that matter should be taken up with the overseas authority. It is only when the child support assessment under the NZ formula is raised by the NZ authorities that the issue of paternity can cease the NZ assessment. NZ would require advice from the overseas authority to cease administering an overseas court order or an administrative assessment.

In other words the overseas authority would first need to be satisfied that the person named as the paying parent was not liable before NZ ceased the liability under either the court order or the administrative assessment.

Please refer to Q16.

For claims under the provisions of UNCRAM please refer to Q 17.

NORWAY

- (a) According to the Norwegian Children's Act, a foreign support decision may only be recognised if the paternity is established and is not subject to any conflict. A foreign paternity order received under an international Convention will normally serve as the basis for enforcement in Norway. The question of paternity will not be raised as a specific issue by Norwegian authorities unless the father according to the order denies the paternity or the order itself in some way is giving rise to doubts concerning the paternity. If the court

or the National Office decides that the foreign order is insufficient or under conflict, Norwegian authorities competent to establish the paternity (which our authorities in fact are in cases where either the child, the mother or the possible father is resident in Norway). If the foreign state handles the case, but needs assistance from Norway, our authorities will cooperate and provide the necessary assistance.

- (b) Norwegian courts may only refuse recognition of a support decision made in a Hague-member state if the documents are not regarded as sufficient evidence or suffer from lack of credibility. Also other circumstances in the case may indicate that the foreign order is not fulfilling the minimum demands according to Norwegian standards and laws and/ or it is not in accordance with the conditions set up in the actual Hague convention. Furthermore, the principle of public order may - rarely - be an obstacle.

PANAMA

Provided that the decisions originating from the judicial authority of the other country comply with the conditions established in the Panamanian legislation for the recognizance (exequatur), there will be no obstacle for its fulfillment or application in Panama.

PHILIPPINES

No. Under the rules of court, foreign judgement is "just presumptive evidence of the rights of the parties". It may be denied enforcement by the courts only on the following grounds: 1) lack of jurisdiction; 2) want of notice to the party; 3) collusion; 4) fraud; or 5) clear mistake of law or fact.

POLAND

- (a) No.
- (b) No.

ROUMANIE

Dans le système du Code de la Famille il n'est pas possible d'accorder la pension d'entretien sans que préalablement soit déterminer la paternité de l'enfant.

SLOVAKIA

A decision containing the determination of paternity may be refused in the context of recognition and enforcement of foreign judgement on child support only in one instance: if the determination relates to a child who is a Slovak national and such decision was not previously recognized by the Supreme Court of Slovakia. In such case the court would close the case without prejudice, until the decision on paternity was recognized by the Supreme court. The recognition of a paternity determination is governed by rules of recognition contained either in domestic law or applicable international treaty. Under domestic law the application of a law (method) different from that applied in Slovakia is not legal ground for refusal or recognition.

SUISSE

Une décision relative à des aliments envers un enfant ne peut pas être reconnue si la paternité n'a pas été établie préalablement. Si la paternité a été établie à l'étranger conformément à la loi applicable et à la méthode généralement admise dans ce pays, la Suisse ne refusera la reconnaissance que si cette méthode est manifestement incompatible avec l'ordre public (par exemple établissement de la paternité sur la base de l'audition d'un témoin et non sur la base d'une méthode scientifique telle que le test ADN ou l'analyse sanguin).

SWEDEN

- (a) No, unless there is a special reason to refuse recognition of the paternity decision.
- (b) No.

UNITED KINGDOM - ENGLAND AND WALES

See 16 above.

Generally speaking it would be accepted if the law of the reciprocating country had been applied. However, it is open to the person denying paternity to request scientific tests if the evidence obtained in that country is less reliable than DNA Testing.

UNITED KINGDOM - SCOTLAND

A foreign child support decision will not be refused if it entails a determination of paternity. The only grounds for refusal of the registration of an order are:

- registration manifestly contrary to public policy;
- order obtained by fraud;
- proceedings between same parties for same purpose pending before another UK court;
- order incompatible with another order in proceedings between same parties for same purpose

As said above, there is no distinction between residents and non-residents in these matters.

UNITED STATES OF AMERICA

Procedures for contest are the same for domestic and international cases. Recognition of an out-of-state child support decision, including a determination of paternity, will not be automatically refused. However, the putative obligor is given an opportunity to contest the validity of registration and enforcement upon due process or other grounds. UIFSA, enacted by all U.S. states, specifies that a successful contest must be based upon one of the following:

- the issuing tribunal lacked personal jurisdiction over the contesting party;
- the order was obtained by fraud;
- the order has been vacated, suspended, or modified by a later order;
- the issuing tribunal has stayed the order pending appeal;
- there is a defense under state law to the remedy sought;
- full or partial payment has been made; or
- the statute of limitation precludes enforcement of some or all of the arrearages.

Legal and administrative aid and assistance

20 Quels types d'assistance (y compris l'assistance administrative, l'aide juridique et l'assistance judiciaire) sont disponibles dans votre pays pour :

- a** un résident requérant des aliments envers des enfants ;
- b** un requérant d'aliments envers des enfants résidant à l'étranger.

20 What forms of assistance (including administrative assistance, legal aid and advice) are available in your country to:

- a** resident claimant for child support;
- b** claimant for child support who is resident abroad.

AUSTRALIA

Legal assistance may be available through the Australian Attorney-General's Department (AG's). AG's may provide assistance in relation to variation of existing orders and parentage issues. The procedures and practices are still to be formalised by AG's, but as a general rule AG's will assist a creditor who is overseas to establish parentage.

AG's will obtain a spousal or child maintenance order under UNCRAM (if they are not eligible for an assessment) without charge to an applicant. No means-testing applies.

AG's will secure confirmation of a provisional order or a provisional variation order without charge to a foreign applicant. No means-testing applies. AG's will seek a variation in Australia on behalf of an overseas applicant and no charge applies.

In limited circumstances AG's may be able to assist an overseas respondent to a variation application. Applicants in Australia who require a provisional order, variation order, or a declaration of paternity etc can apply for domestic legal aid. Means testing does apply to grants of domestic legal aid.

AUSTRIA

Children living in Austria may be assisted by the child welfare authority ("Jugendamt"). Claimants living abroad may request legal aid and after granting legal aid they will be assisted by an Austrian attorney-at-law.

BULGARIE

- (a) dispose d'assistance judiciaire et aide juridique.
- (b) dispose d'assistance judiciaire et aide juridique.

CANADA

- (a) La disponibilité d'assistance administrative et juridique varie d'une juridiction à l'autre (par exemple, l'assistance d'un avocat de service ou d'un avocat du gouvernement, l'aide juridique, la médiation, les centres d'information en droit de la famille, programmes d'exécution);
- (b) Une certaine assistance administrative et juridique est disponible selon les provinces (par exemple, l'assistance de l'avocat de service ou du gouvernement, l'aide juridique). Dans

les cas où il y a entente de réciprocité, toutes les provinces et territoires fournissent une assistance par le biais de leur autorité désignée laquelle prend charge des démarches en vue de l'établissement, de la reconnaissance et de l'exécution de l'ordonnance alimentaire. Une fois l'ordonnance établie et enregistrée, elle sera exécutée par le personnel en charge du programme d'exécution des obligations alimentaires et sans frais pour le créancier.

- (a) Availability of legal and administrative assistance varies from one province to another (for example, assistance of a duty counsel or a government lawyer, legal aid, mediation, family law information centres, enforcement programs);
- (b) Some legal and administrative assistance is available depending on the provinces (legal aid, assistance of a government lawyer, for example). In cases there is a reciprocating agreement, all provinces and territories provide the assistance of their designated authority that will arrange for the establishment, recognition and enforcement of the support order. Once the order is established or registered, enforcement is made by the employees of the maintenance enforcement program at no cost to the creditor.

CHILE

- (a) and (b). There is access to legal aid and assistance available.

CHINA - HONG KONG SPECIAL ADMINISTRATIVE REGION

Legal aid is available to both resident and non-resident claimant provided that the proceedings for child support are commenced in the District Court or Court of First Instance in Hong Kong.

CROATIA

- (a) A person who meets requirements described under 18 above and if wholly exempted from payment of judicial costs is entitled to: exemption from court duty fee and advance payment against the costs of witnesses, experts, investigation and court announcements, as well as real expenses of the appointed legal representative (free legal aid). In cases involving the support of a child or a full-age child incapable of working the social welfare centre may, acting on behalf of the child, institute and conduct a maintenance assessment or readjustment procedure, if the child is under the care of another person or an institution or if the parent with whom the child lives does not exercise this right for unjustified reasons.
- (b) A foreign claimant for child support is entitled to free legal aid if this is requested under the Convention on Maintenance Obligations (New York, 1956) to which the Republic of Croatia is a party.

CYPRUS

Legal Aid assistance. Law 165(I)/02, Regulations No. 3/03.

CZECH REPUBLIC

The petitioner is exempt from payments of court fees in maintenance cases pursuant to Court Fees Act #549/1991 Coll. in its current version. This Act does not distinguish between a petitioner having his/her residence in the Czech Republic and that resident abroad. Provided that the petitioner is a person of inferior material standing, Czech court may appoint for him/her a counsel (attorney-at-law) at his/her request. The costs of such legal assistance for the petitioner are borne by Czech state. Similar conditions apply for proceedings in spouse maintenance cases as well. There are no firm criteria (e.g. income) set for providing free legal assistance in the Czech Republic. Requests for said free legal assistance are dealt with by courts individually. It is the petitioner's obligation to credibly document his/her property and social condition. Further extension of free legal assistance provided is dependent on the possibilities available to be covered from Czech national budget; currently there are no funds available.

DENMARK

The parties in child support cases are not entitled to legal aid, as such cases are dealt with through an administrative system.

Instead, the County Governor's Office is obliged to assist and advice the parties.

ESTONIA

Both a resident claimant and a non-resident claimant have a possibility to use the services of a lawyer or any other legal consultant. According to Article 59 of the Code of Civil Procedure, the court has the right to fully or partially release a natural person from payment for legal assistance and to charge the advocate's fees to the state if the court finds that the person is insolvent.

As administrative agencies do not participate in the maintenance support proceedings, they also lack any direct role of a consultant in respect of a claimant. In case of several international conventions¹² on maintenance obligation, the Ministry of Justice has been designated as the central authority. Thus, in certain cases based on such conventions, the Ministry of Justice may be obliged to provide certain information or assistance.

FINLAND

A.

Administrative process

The municipal social welfare board will help the resident claimant for child support (maintenance) to conclude an agreement with the respondent on the maintenance to be paid to the child as well in a case where the respondent is resident in Finland as in a case where the respondent is resident abroad. When the respondent lives abroad, the Ministry for Foreign Affairs may provide the board with the necessary assistance in the matter.

The municipal social welfare board does not charge fees for counselling and services in matters on maintenance to be paid to a child. Neither does the Ministry for Foreign Affairs charge fees for its assistance in the matter.

¹² The Hague Convention on Recognition and Enforcement of Foreign Decisions from 1973; The Hague Convention on the Law Applicable to Maintenance Obligations from 1973; The Convention on Reclaim of Maintenance from a Foreign Country (New York, 1956).

Judicial process

If the parties cannot reach an agreement on the maintenance to be paid to the child, the matter may be brought by the claimant to the court.

A person who because of his or her financial situation cannot pay the costs for a judicial process (fees for a legal counsel and fees for judgments) may make a petition to the State Legal Aid Office to receive free or partially free legal aid. The State Legal Aid Office can decide that the applicant will receive completely or partially free legal aid (*means test*). The provisions on the criteria for granting completely or partially free legal aid are in the Act on Legal Aid.

If legal aid is not granted, the claimant resident must him- or herself pay for a legal counsel and for a judgment.

As to the question on the obligation to pay the costs of the other party, the main rule in judicial processes on maintenance is that the claimant party and the respondent party will each have to carry the responsibility for one's own costs, which means that the losing party will not be ordered to pay the legal costs of the winning party unless there are weighty reasons (chapter 21, section 2 of Code of Judicial Procedure).

B.

Administrative process

If the claimant party for child maintenance is resident abroad, the municipal social welfare boards do not have the competence to approve an agreement even if the respondent party is resident in Finland.

Judicial process

A claimant party for child support (maintenance), who is resident abroad, has according to the Decree on Granting Legal Aid in Certain Cases, a right on the basis of reciprocity to receive completely free legal aid.

If a claimant party is not entitled to cost-free legal aid according to the Decree on Granting Legal Aid in Certain Cases, he or she can apply for completely or partially free legal aid according to the provisions in the Act on Legal Aid. The criteria for approving the application are described in the answer to question 18.

FRANCE

Le champ d'application de l'aide juridictionnelle ne comporte pas en France d'exclusions : cette aide est accordée aux demandeurs et aux défendeurs, en matière gracieuse ou contentieuse devant toute juridiction. Elle peut être accordée pour tout ou partie de l'instance ainsi qu'en vue de parvenir à une transaction avant l'introduction de l'instance ; elle peut également être accordée pour obtenir l'exécution de la décision de justice ou de tout autre titre exécutoire.

En conséquence, l'aide juridictionnelle s'applique aux procédures judiciaires visant à obtenir une décision en matière d'obligation alimentaire et à la faire exécuter.

Deux cas sont distingués :

- celui du requérant, résidant en France avec les enfants et demandeur d'aliments au parent résidant à l'étranger : l'affaire est portée devant la juridiction du domicile du requérant qui peut obtenir l'aide juridictionnelle dans les conditions prévues en droit interne (cf. question 21) ;

- celui du requérant résidant à l'étranger avec les enfants et demandeur d'aliments au parent résidant en France : dans ce cas, l'aide juridictionnelle est accordée dans le respect des conventions.

GERMANY

- (a) In accordance with sections 1712 et seqq. of the Civil Code, in response to a written application by a parent, the youth welfare office becomes an advisor for the child for the purpose of establishing paternity, and asserts support claims.

Furthermore, a child living in Germany may also request legal aid in asserting support claims in accordance with the general provisions (sections 114 et seqq. of the Code of Civil Procedure).

Financial support is provided for by the Code of Civil Procedure for court proceedings in the shape of legal aid (sections 114 et seqq. of the Code of Civil Procedure) for parties which in accordance with their personal and economic situation are unable or partly unable to meet the cost of the proceedings, or can only meet them in instalments. There is a need for a corresponding application to the court. The intended legal prosecution or defence must have sufficient prospects of success, and may not appear wanton.

Financial support in legal advice outside court proceedings is made possible by the Act on Legal Advice Aid (Beratungshilfegesetz) dated 18 June 1980 (Federal Law Gazette [BGBl.] Part I p. 689). Legal advice aid is given by lawyers. In the city states of Bremen and Hamburg, legal advice aid is given by public legal advice agencies.

- (b) It emerges from section 1777 that the advice of the youth welfare office may not provide advice if the child has his/her place of habitual residence abroad. The possibility to obtain legal aid is in line with the general provisions.

Regardless of their nationality and their place of residence, natural entities may receive legal aid in Germany to implement court proceedings. The requirement of reciprocity is no longer necessary. In accordance with section 116 first sentence No. 2 of the Code of Civil Procedure, foreign legal entities and associations which may be parties may however not receive legal aid unless a multilateral international treaty or a bilateral treaty make express provision for this (such as Article 44 of the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters).

A place of residence in Germany is not necessary in order to be able to claim benefits in accordance with the Legal Advice Aid Act. It is sufficient for a need for advice to occur in Germany and for the facts to relate to Germany.

ISRAEL

- (a) Legal aid is provided to people who meet all the requirements in the form of legal consultation and representation, when necessary.
- (b) There is no obligation to give a non-resident legal aid, but in terms of the New York Convention, if the non-resident is from a reciprocating country, he or she will be entitled to administrative assistance.

JAPAN

- Administrative assistance: For resident claimants, local governments at the prefectural level offer special consultation services by specialists such as lawyers. No assistance is available for non-resident claimants.
- Legal aid: Legal aid includes the free legal consultation service by an attorney and the assistance of an attorney in court proceedings. The Legal Aid Association pays the attorney fee on behalf of the person aided. Non-residents cannot usually receive legal aid.

LUXEMBOURG

Le demandeur résident (il y a lieu d'interpréter le terme « résident » comme synonyme de « autorisé à s'établir au pays ») a la possibilité de solliciter l'assistance judiciaire.

Pour pouvoir bénéficier de l'assistance judiciaire, il faut justifier d'une insuffisance de ressources. Il est renvoyé au point 21. ci-dessous pour le détail des conditions tenant à l'insuffisance des ressources.

Le demandeur résident peut également obtenir l'avance des pensions alimentaires par le Fonds national de Solidarité. Le créancier d'aliments doit à ces fins adresser une demande au président du Fonds et satisfaire aux conditions suivantes :

- avoir son domicile légal dans le pays et y résider depuis cinq ans (la condition de résidence est remplie si le représentant légal du créancier d'aliments a sa résidence depuis cinq ans au pays) ;
- disposer d'une décision judiciaire, fixant les aliments, exécutoire au Luxembourg ;
- avoir échoué dans le recouvrement total ou partiel de la pension poursuivie par une voie d'exécution de droit privé effectivement exercée ;
- se trouver dans une situation économique difficile.

Il est fait abstraction de la condition tenant à l'exercice infructueux d'une voie d'exécution de droit privé, si le recours aux voies d'exécution paraît de toute façon voué à l'échec ou si le débiteur réside à l'étranger.

Le demandeur non résident (mais se trouvant sur le territoire d'une Partie contractante à la Convention de New York du 20 juin 1956) a la possibilité de s'adresser à l'institution intermédiaire luxembourgeoise, pour le recouvrement des aliments. Aucune autre condition d'éligibilité, hormis la résidence sur le territoire d'une Partie contractante, n'est dans ce cas exigée.

Le demandeur non résident peut aussi poursuivre lui-même le recouvrement des aliments, en sollicitant l'assistance judiciaire. Il est éligible à l'assistance judiciaire (mis à part la condition tenant à l'insuffisance des ressources) s'il est ressortissant d'un Etat membre de l'Union européenne ou ressortissant étranger assimilé aux ressortissants luxembourgeois en matière d'assistance judiciaire par l'effet d'un traité international.

Il y aurait lieu d'ajouter que le demandeur, qu'il soit résident ou non résident, n'est éligible à l'assistance judiciaire que s'il s'agit d'une personne physique.

MALTA

a.

- The benefit of legal aid may be demanded through an application made to the Civil Court, First Hall. Such request may also be made orally to the Advocate for Legal Aid.
- Social Assistance

Section 30 of the Social Security Act (Chapter 318 Laws of Malta) regulates various kinds of social benefits related to unemployment. Where a person is unemployed, the latter person can claim assistance in favour of a relative of his. Thus an unemployed father can claim assistance for the maintenance of a child of his. However, Section 30(11) gives the Director the right to take proceedings before the competent Civil Court against such relative being the spouse, father, mother, sons or daughters as the case may be, of any person in respect of whom Social Assistance is claimed or received to compel them to refund any such assistance that is paid to or on behalf of such person and the court shall order the refund up to such sum which the person to whom Social Assistance is paid would have received had he claimed maintenance from such relatives in accordance with the Civil Code.

b.

If the claimant fulfils the criteria of Section 912 of Chapter 12 of the Laws of Malta, he may qualify for legal aid. (for further details *vide* question 21)

THE NETHERLANDS

- (a) the usual legal aid (see the appended leaflet); assistance and advice by the Dutch central authority, which assistance and advice are free of charge.
- (b) the claimant who resides in a State party to the New York Convention is usually represented in court by the Dutch central authority. Such representation, as well as assistance and advice are free of charge.

NEW ZEALAND

Assistance for Child Support Assessments is available by contacting staff at any of the child support offices in NZ. NZ Inland Revenue has an internet site and some information can be obtained through that avenue. NZ resident customers can ring on a free phone 0800 telephone number. NZ Child Support also has a number of publications available that explain customer's rights and explanations about the child support laws.

Applicants/Claimants/Customers can also can contact a family lawyer for legal advice and apply for legal aid subject to certain conditions. Overseas applicants or claimants may also contact or e-mail the National Office of the Department for Courts in Wellington, New Zealand.

NORWAY

- (a) Norway provides full administrative assistance and advice. Legal aid is not necessary as it is a public responsibility to determine and enforce child support.
- (b) The National Office for Social Insurance Abroad gives full and cost-free assistance.

PANAMA

- (a) Panama's residents could have free legal assistance and advice by the administrative authorities, and if they do not have economic resources could choose a free process support granted by the Supreme Court or by the legal office of the Law Faculty of the University of Panama.
- (b) If it is proven that this person does not have the economic resources to pay a lawyer in Panama the judge will designate a public defender but in order to do so the person must prove his/her income in his/her country.

PHILIPPINES

It is the Office of the Solicitor General (OSG) who files claim for Maintenance pursuant to the Hague Convention if it involves recovery of support and maintenance abroad. It is also the same thing if the claimant is abroad, it is the OSG who files Petition for Support before the local court.

POLAND

A claimant for child support shall be statutorily exempted from the court fees. The exemption from the court fees shall also cover the execution proceedings. It is irrelevant whether a person resides in Poland or whether he/she resides abroad. What is relevant is whether a person is a foreigner or a Polish national. Foreigners shall be offered legal aid according to the same principles as Polish nationals are, only if it has been guaranteed by international agreements, and in other cases on the grounds of the mutuality principle. The party exempted from the court fees may claim to have the legal aid (an *ex officio* legal counsel) provided. In maintenance cases, it is possible for social organisations (the list of these organisations shall be prepared by the Minister of Justice) to bring actions on behalf of the nationals.

ROUMANIE

-

SLOVAKIA

Both foreign residents claiming maintenance in Slovakia and Slovak residents claiming maintenance abroad can be assisted by the Center for International Legal Protection of Children and Youth (also the Central Authority under the New York Convention) which provides its administrative assistance free of charge. If a Slovak resident claims maintenance abroad, apart from the assistance and advice by the Center, there is no other free legal aid and advice system in place. If a foreign claimant proceeds in Slovakia, the maintenance proceedings (including enforcement) before a Slovak court are exempt from court fees by operation of law. That does not apply automatically to costs of proceedings (see more explanation under 18). The Center does, however, represent such claimants before the Slovak courts free of charge on the basis of a power of attorney.

SUISSE

Le représentant légal d'un enfant (mineur) bénéficie des aides suivantes s'il n'a pas les moyens financiers d'agir lui-même, avec les services d'un avocat :

- a) L'art. 290 CC prévoit une aide adéquate et gratuite pour obtenir l'exécution des prestations d'entretien. Cette aide étatique est fournie par un office désigné par le droit cantonal. Il s'agit d'une assistance administrative et d'une aide juridique, dans la mesure où cet office s'occupe le cas échéant d'entamer une procédure de poursuite contre le débiteur.
- b) Les créanciers résidant dans un Etat signataire de la Convention de New York du 20.6.1956 sur le recouvrement des aliments à l'étranger bénéficient de cette aide.
- a) Selon l'art. 293 al. 2 CC, il est possible que la collectivité publique avance les contributions d'entretien. Dans ce cas, la prétention passe à celle-ci qui en devient la créancière.
- b) Cette possibilité n'est ouverte qu'aux créanciers qui résident en Suisse.
- a) Le représentant légal de l'enfant peut aussi mandater un avocat en vue d'engager une procédure même s'il n'a pas les moyens financiers pour payer ses honoraires. Le Tribunal abordé peut en effet le faire bénéficier partiellement ou totalement de l'assistance judiciaire, en fonction de la situation économique. L'assistance judiciaire est réglée par les cantons.
- b) Tous les créanciers résidant à l'étranger qui ne disposent pas de ressources suffisantes peuvent bénéficier d'une assistance judiciaire minimale, pour autant que leur cause ne soit pas dépourvue de toute chance de succès.

SWEDEN

Any person who is not a Swedish citizen and who is not resident in Sweden, neither at present nor at a previous stage, can receive legal aid for matters that will be tried in Sweden, if there are special reasons. If the matter will be examined abroad, legal aid can only be granted if the person is resident in Sweden. Nationals of all EU Member States have the same rights to legal aid as Swedish citizens. Nationals of other States will have the same rights if there is reciprocity.

Legal Advice and Legal Aid are governed by the Legal Aid Act (1996:1619). Legal Advice is available for up to two hours in all legal matters, for example concerning maintenance payments. Legal Aid can be obtained in matters concerning maintenance for children if there are special reasons for it. The justification for the requirement of special reasons stems from the fact that a child who is eligible for maintenance in most cases can obtain payment from the Social Insurance Office (see question 5). In such situations the child does not have to claim for maintenance and, accordingly, is not in need for Legal Aid.

Administrative assistance can be provided by the Social Insurance Office, Foreign Department (SIO).

UNITED KINGDOM - ENGLAND AND WALES

Public funding ("legal aid") is available to anyone who qualifies, provided the applicant is seeking advice on a matter of English law or using the courts of England and Wales and the case is within the scope of the scheme. There are different levels of service which have different detailed rules but the most common are Legal Help (usually used for advice outside proceedings) and Legal Representation (for representation in proceedings). Each application for funding is treated on an individual basis and is subject only to the statutory tests of the means of the applicant and the merits of their application. When the Legal Services Commission (LSC) considers applications for funding, the applicant's place of residence does not play any part in the decision-making process, although special administrative arrangements may apply.

Assistance and advice is provided by the Child Support Agency's National Enquiry Line, Client Help Line and on the Agency's website. Voluntary organisations such as the Citizen's Advice Bureau also provide advice and assistance. The UK child support scheme is administrative and non-adversarial. There is no requirement for legal representation. Therefore publicly funded legal services are only available or likely to be justified or granted in limited circumstances or when maintenance is fixed by the court (rather than the Child Support Agency).

UNITED KINGDOM - SCOTLAND

Forms of assistance available in Scotland to:

- (a) a resident claimant for child support under 1985 Act: under 1991 Act just question of filling in forms: in this case, the claimant will need to apply for advice and assistance or legal aid giving particulars of his resources, i.e. claimant's disposable income and disposable capital.
- (b) a claimant for child support who is resident abroad: in these cases section 43A of the Maintenance Orders (Reciprocal Enforcement) Act 1972 makes special provision for legal aid and for advice and assistance in reciprocal maintenance cases.

Section 43A(1) and (2) provide respectively that, where the responsible authority in the Reciprocating country, Hague Convention country, the Republic of Ireland, the Convention country or the USA has provided a certificate of entitlement stating that the maintenance claimant would qualify for complete or partial legal aid or exemption from costs in proceedings there, the maintenance claimant should receive legal aid or advice and assistance in Scotland without inquiry into his or her financial resources, and without the need to pay a contribution. A modified procedure for making application to the Board will therefore apply.

UNITED STATES OF AMERICA

State child support enforcement agencies provide comprehensive enforcement services to resident applicants and to applicants for child support who are resident abroad. Services provided by all state child support enforcement agencies include locating parents, establishing paternity, obtaining child and spousal support, and providing legal and administrative assistance services that are part of the establishment and enforcement process.

Private legal aid (as distinct from any legal or other services offered by the state child support enforcement agency) may be available on an individual basis, depending on the residence, resource availability, or scope of services determined by the individual legal aid provider. Similarly, it would be at the option of the legal aid provider whether or not it would provide assistance to a claimant for child support who is resident abroad and does not apply through the U.S. child support system.

- 21** **Veillez spécifier les principales conditions d'éligibilité, y compris tous les tests relatifs aux moyens (financiers), pour les différentes formes d'assistance disponibles.**
- 21** **Please specify the principal eligibility requirements, including any means tests, for the different forms of assistance available.**

AUSTRALIA

Different guidelines apply in each state for domestic grants of legal aid for someone residing in Australia. Sometimes domestic legal aid may be provided to an overseas resident in limited circumstances.

AUSTRIA

The means test concerning child maintenance is child centred; the means of the custodian parent are irrelevant. The general requirement is that the fees for the proceedings would infringe the necessary costs of living of the person concerned. Legal aid to minor children is nearly automatically granted.

BULGARIE

Non. Des conditions pareilles n'existent pas.

CANADA

Pour les demandeurs résidant dans une juridiction étrangère avec laquelle il y a une entente de réciprocité, il n'y a pas de frais pour l'assistance administrative et, dans les juridictions canadiennes où l'aide juridique est possible, il peut ne pas y avoir de test financier. Pour les demandeurs résidant dans une juridiction étrangère avec laquelle il n'y a aucune entente de réciprocité, aucune assistance juridique n'est offerte à moins d'entente particulière en matière d'aide juridique. Il existe cependant une assistance administrative dans certaines juridictions.

For claimants resident in foreign reciprocating jurisdictions, there is no means test for administrative assistance and advice. In Canadian jurisdictions where legal assistance is provided, there may be no means test. For claimants resident in foreign non-reciprocating jurisdictions, there is no legal assistance available unless there is a specific agreement on legal aid and only limited administrative assistance in certain Canadian jurisdictions.

CHILE

A resident in Chile is entitled to free legal aid if earning less than US\$134.00 per month.

CHINA - HONG KONG SPECIAL ADMINISTRATIVE REGION

To be eligible for legal aid, the claimant has to pass both the merits and means tests. The claimant may pass the means test if his financial resources do not exceed HK\$169,000 (section 5 of the Legal Aid Ordinance, ("LAO", Chapter 91)). A successful applicant for legal aid may be required to contribute towards the costs of the proceedings out of his financial resources.

CROATIA

The Family Act specifies which persons are eligible for maintenance and under what conditions.

CYPRUS

Financial state of beneficiary.

CZECH REPUBLIC

See question 20.

DENMARK

All parties are entitled to assistance by the County Governor's office.

ESTONIA

In releasing a person from the costs of legal assistance, the court takes the financial status of the person into account. A person may be released from payment for legal assistance if the court finds that he/she is insolvent.

FINLAND

Legal aid can be given for administrative and judicial processes.

When a person makes an application to receive completely or partially free legal aid according to the provisions in the Act on Legal Aid, a means test is applied. The economic situation of the applicant is evaluated on the basis of the economic resources available to him or her each month (monthly income). Completely free or partially free legal aid is granted to an applicant whose monthly income is below a level fixed by a decree issued by the government.

If the applicant has an insurance that will pay for the legal costs, legal aid will not be granted to him or her.

When the applicant is resident abroad and the legal aid is available to him or her on a reciprocal basis, no means test is applied. The applicant will according to the Decree on Granting Legal Aid in Certain Cases receive legal aid irrespective of the level of his or her monthly income.

FRANCE

1 – Conditions de ressources.

L'aide juridictionnelle est accordée si la moyenne des ressources de toute nature perçues au cours de l'année civile précédente, (à l'exclusion des allocations familiales et de certaines prestations sociales) ne dépasse pas un certain seuil fixé chaque année par la loi.

Par exemple, les demandes d'aide juridictionnelle déposées en 2002 sont examinées au vu des ressources perçues en 2001. Le plafond des ressources mensuelles est, pour une personne seule, de 802 € pour **l'aide juridictionnelle totale**, et de 1203€ pour **l'aide juridictionnelle partielle**. Dans les deux cas, une majoration de 91€ est appliquée pour chacune des personnes à la charge du demandeur, élevant ainsi le seuil des ressources.

Les personnes dont les ressources dépassent ces seuils peuvent être admises à **titre exceptionnel** à l'aide juridictionnelle si leur action apparaît particulièrement digne d'intérêt en raison de l'objet du litige ou du coût prévisible du procès. (art.6 de la loi de 1991)

La déclaration de ressources n'est pas demandée à la personne bénéficiaire de l'allocation du Fonds National de Solidarité ou du Revenu Minimum d'Insertion, ni à celle qui souhaite faire valoir un droit en matière de pensions militaires d'invalidité et de victimes de la guerre.

La déclaration de ressources fait l'objet d'une étude attentive de la part du bureau d'aide juridictionnelle qui peut, le cas échéant, effectuer des vérifications par examen de la cohérence entre les éléments déclarés par le demandeur et les justificatifs fournis et/ou ceux contenus dans le dossier judiciaire. Le bureau d'aide juridictionnelle peut également procéder par enquête auprès des services fiscaux. Ces vérifications ne sont pas systématiques, elles ne sont réalisées qu'en cas de suspicion de fausses déclarations ou d'incohérence.

2 – Condition de nationalité

L'aide juridictionnelle est accordée à la personne de nationalité française ou ressortissant de l'un des états membres de l'Union Européenne ou ressortissant étranger résidant habituellement en France et en situation régulière.

L'aide juridictionnelle est également accordée pour une affaire devant une juridiction française si, à l'étranger ne résidant pas en France, ressortissant d'un Etat lié à la France par un accord international ou bilatéral qui reconnaît à ses ressortissants le bénéfice de l'aide judiciaire.

3 – Condition de résidence

Hors les cas mentionnés ci-dessus, la résidence habituelle et régulière en France est de principe.

Toutefois, elle n'est pas obligatoire à titre exceptionnel dans le cas où la situation du demandeur apparaît particulièrement digne d'intérêt au regard de l'objet du litige ou des charges prévisibles du procès.

L'aide juridictionnelle est également accordée sans condition de résidence aux étrangers lorsqu'ils sont mineurs, témoins assistés, mis en examen, prévenus, accusés, condamnés ou parties civiles ou lorsqu'ils font l'objet d'une procédure relative aux conditions d'entrée et de séjour en France.

4 – Condition de recevabilité

L'aide juridictionnelle est accordée à la personne dont l'action n'apparaît pas manifestement irrecevable ou dénuée de fondement. Cette condition n'est pas applicable au défendeur à l'action, à la personne civilement responsable, au témoin assisté, à l'inculpé, au prévenu, à l'accusé, au condamné.

En matière de **cassation**, l'aide juridictionnelle est refusée au demandeur si aucun moyen de cassation sérieux ne peut être relevé.

Lorsque l'aide juridictionnelle a été refusée sur ce fondement et que cependant le juge a fait droit à l'action intentée par le demandeur, il est accordé à celui-ci le remboursement des frais, dépens et honoraires par lui exposés ou versés, à concurrence de l'aide juridictionnelle dont il aurait bénéficié compte tenu de ses ressources.

GERMANY

Assistance for legal advice and representation outside court proceedings is received by persons in need (legal advice aid) in accordance with the Act on Legal Advice and Representation for Citizens on a Low Income (Gesetz über Rechtsberatung und Vertretung für Bürger mit geringem Einkommen - Beratungshilfegesetz).

Legal aid is granted for court proceedings in accordance with the provisions on legal aid (sections 114 – 127a of the Code of Civil Procedure). No distinction is made in the legal advice aid and legal aid proceedings between child support and maintenance for parents or relatives. The same procedural rules apply to all maintenance claims.

It is irrelevant to the approval of legal aid whether the person seeking justice lives abroad. Persons seeking justice living abroad may also be granted legal aid for court proceedings (maintenance action, coercive execution proceedings). Legal aid may however only be granted to assert rights before German courts, not to assert and implement maintenance claims abroad and for the administrative procedure in accordance with the Maintenance Abroad Act (Auslandsunterhaltsgesetz).

Procedural assistance (legal advice aid or legal aid) is granted if the person seeking justice is unable as a result of his/her personal and economic circumstances to find the required funding (need) and has no other acceptable method of obtaining assistance.

Furthermore, the intended assertion of the rights must not be wanton. In the event of legal aid being granted, furthermore, the intended assertion or defence of rights must have sufficient prospects for success. The court ruling on the application to grant legal aid must consider the legal point of view of the applicant to be correct, or at least justifiable, on the basis of their presentation of the facts and the available documents, and must be convinced from a factual point of view of the possibility of evidence being taken.

If the statutory preconditions are met, there is a right to have legal advice aid or legal aid granted.

Children are granted legal aid in the form of advice from the youth welfare office. Advice may be applied for in accordance with section 1712 of the Civil Code for the following tasks:

- (1) establishment of paternity, and
- (2) asserting maintenance claims, as well as disposing of these claims. If the child is being cared for by a third party for a fee, the advisor is entitled to effect payment to the third party from what has been paid by the person obliged to provide maintenance.

Advice may be restricted to individual tasks mentioned above in response to an application (section 1712 subsection 2 of the Civil Code).

Advice applies once the written application has been received by the youth welfare office (section 1712 subsection 1 and section 1714 of the Civil Code). In accordance with section 1713 subsection 1 second sentence of the Civil Code, the parent is entitled to file who has sole parental custody for the tasks to which the application relates. If both parents have joint parental custody for the child, the application may be filed by the parent in whose care the child is (section 1713 subsection 1 second sentence of the Civil Code in the version in effect since 11 April 2002). The application may not be made by a representative. In accordance with the provision contained in section 1717 of the Civil Code, advice only applies if the child has his/her habitual residence in Germany. Advice is no longer provided if the habitual residence of the child goes abroad after support has started to apply.

Advice is terminated if the applicant so requests in writing or no longer meets the requirements just put forward contained in section 1713 of the Civil Code (section 1715 of the Civil Code).

In accordance with section 1716 of the Civil Code, appointment of the advisor has the following effects:

- (1) Parental custody is not restricted by support (section 1716 first sentence of the Civil Code).
- (2) The advisor is given the status of a curator (cf. sections 1909 et seqq. of the Civil Code), whereby the provisions otherwise applicable to a custodian regarding invoicing, supervision by the guardianship court regarding the work of the custodian and the regulations relating to handing over a certificate of appointment by the guardianship court do not apply (section 1716 second sentence of the Civil Code). The advisor may hence represent the child both in and out of court (sections 1716, 1909, 1915 subsection 1 and 1793 of the Civil Code).

ISRAEL

There are two eligibility requirements. The first is a financial means test which is fixed according to regulation. The second requirement is the prospect of success in the case.

JAPAN

- Administrative assistance: The requirement for the assistance is that the applicant is the parent in a single-parent household.
- Legal aid: The requirements of legal aid are as follows:
 - (a) the applicant should be indigent,
 - (b) the case should have reasonable chance of winning,
 - (c) the case should conform to the purpose of legal aid.

LUXEMBOURG

L'insuffisance des ressources s'apprécie par rapport au revenu brut intégral et à la fortune du requérant ainsi que des personnes qui vivent avec lui en communauté domestique. Sont ainsi considérées comme personnes dont les ressources sont insuffisantes les personnes bénéficiant du revenu minimum garanti dans les limites des montants fixés par la législation afférente ainsi que les personnes qui vivent en communauté domestique d'un tel bénéficiaire et dont les revenus et la fortune ont été pris en considération pour la détermination du revenu minimum garanti.

Le revenu minimum mensuel garanti est fixé à :

- a) 155,55 EUR pour une personne seule ou pour la première personne de la communauté domestique
- b) 233,32 EUR pour une communauté domestique composée de deux adultes
- c) pour chaque adulte supplémentaire vivant dans la communauté domestique, le montant sous b) est augmenté de 44,50 EUR
- d) pour chaque enfant ayant droit à des allocations familiales qui vit dans la communauté domestique le montant sous a) ou b) est augmenté de 14,15 EUR.

Les montants prévus correspondent au nombre cent de l'indice pondéré du coût de la vie au 1^{er} janvier 1948. Actuellement l'indice pondéré du coût de la vie est de 642,09, de sorte que les montants sous a), b), c) et d) se chiffrent respectivement à 998,77, 1498,12, 285,73 et 90,85 EUR.

Les ressources des personnes vivant en communauté domestique avec le requérant ne sont pas prises en considération, si la procédure oppose entre eux les conjoints ou les personnes

vivant habituellement au même foyer, ou s'il existe entre eux, eu égard à l'objet du litige, une divergence d'intérêts rendant nécessaire une appréciation distincte des ressources.

Le bénéfice de l'assistance judiciaire peut également être reconnu à des personnes qui en seraient exclues au regard de la détermination des ressources, si des raisons sérieuses, tenant à la situation sociale, familiale ou matérielle du requérant justifient cette admission.

MALTA

- Legal Aid

Section 912 (Code of Organisation and Civil Procedure) lists down the conditions required by law for the eligibility of a person to benefit from legal aid. To be admissible for the benefit of legal aid the applicant must confirm on oath:

- (a) that he believes that he has reasonable grounds for taking or defending, continuing or being a party to proceedings; and
- (b) that excluding the subject-matter of the proceedings, he does not possess property of any sort, the net value whereof amounts to, or exceeds, three thousand liri, or such other sum as the Minister responsible for justice may from time to time establish by an order in the Gazette (everyday household items that are considered reasonably necessary for the use by applicant and his family are not to be included in the said computation of three thousand liri) and that his yearly income is not more than the national minimum wage established for persons of eighteen years or over, or such other sum as the Minister responsible for justice may from time to time by order in the Gazette establish. The law lays down two provisos to the latter subsection (b):
 - (i) in calculating the said net asset value, no account shall be taken of the principal residence of applicant or of any other property, immovable or movable, which forms the subject matter of court proceedings, even though such other property is not the subject matter of the proceedings in which legal aid is being applied for; and
 - (ii) in calculating the income, the period of computation shall be the twelve months' period prior to the demand for the benefit of legal aid

The conditions laid down in Section 912(Code of Organisation and Civil Procedure) cited above shall not apply to the granting of legal aid to any person for bringing an action for the correction or cancellation of any registration, or for the registration of any act of birth, marriage or death, provided that where any such action here mentioned is disallowed the court shall deprive of such benefit the person admitted to proceed with the benefit of legal aid. In this case, unless such person demonstrates a good cause to the contrary, the court shall order him to pay all costs of the suit.

A party shall not be admitted to proceed with the benefit of legal aid if any of the following situations arise:

- (a) where in the same cause and by the same court a demand made by such party for admission to the juratory caution or any other benefit whatsoever has been disallowed for want of a *probabilis causa litigandi* on the part of the applicant in respect of the action which he intends to prosecute; or
- (b) where in regard to the same action, such party has already been by the same court refused admission to proceed with the benefit of legal aid for want of a *probabilis causa litigandi*

THE NETHERLANDS

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NEW ZEALAND

The only eligibility requirement for financial assistance would be an application for legal aid. As previously stated this is not administered by Inland Revenue Child Support. Legal Aid is administered by the Legal Services Agency and eligibility is determined in accordance with the principles set out in the Legal Services Act 2000.

NORWAY

With effect from June 1. 2002 both parties have to pay a fee to the State for determination and modification of maintenance support. The fee is at the moment NOK 700 per parent. Low-income parents are exempted. In all cases where one of the parties resides abroad, full administrative assistance will be given free of charge.

PANAMA

In order to choose for a free process support it is necessary:

- 1) That the person does not earn the sum of five thousand dollars (\$5,000.00) annually, whether it is the addition of his/her properties, industry, profession or work.
- 2) That the properties in his/her possession do not reach a value of five thousand dollars (\$5,000.00).

The legal office of the University of Panama receives all requests concerning alimony of persons with no economic resources and does not demand requirements.

PHILIPPINES

There is no eligibility requirement.

POLAND

A claimant for maintenance shall be statutorily exempted from the obligation to pay the court costs. Moreover, he/she may claim to have a defence counsel appointed by a court.

ROUMANIE

L'assistance est réglementée par l'article 74-81 du Code de procédure Civile.

SLOVAKIA

The maintenance proceedings (irrespective of who is the applicant) are exempt from the payment of court fees, if maintenance between parents and children are involved. In all other cases, the applicant is exempt from the payment of court fees. As regards the costs of proceedings see under 18. The test of eligibility for the court's decision on the exemption from the payment of court fees contains two criteria: "the economic circumstances of the party so warrant" and it is no "arbitrary or obviously unsuccessful assertion or defence of a legal right".

SUISSE

S'agissant de l'aide découlant de l'art. 290 CC, la condition pour les créanciers résidant en Suisse est l'existence d'un titre respectivement d'une décision préalable fixant la contribution d'entretien. Les moyens financiers ne jouent aucun rôle pour bénéficier de cette aide. Pour les créanciers résidant dans un Etat signataire de la Convention de New York, l'étendue de l'aide est tracée par l'art. 6 de la Convention. En particulier, l'office compétent peut tenter de trouver un arrangement avec le débiteur même sans décision préalable fixant les aliments.

- Par contre, des avances effectuées sur la base de l'art. 293 al. 2 CC ne sont octroyées qu'après une analyse de la situation financière de l'enfant et du parent qui en a la charge. Les limites de revenu diffèrent d'un canton à l'autre.
- Pour l'octroi de l'assistance judiciaire, les conditions sont la faiblesse de la situation économique d'une part et les chances minimales de gagner le procès d'autre part.

SWEDEN

Legal Advice can be provided by a lawyer or junior barrister at a lawyer's office. Up to two hours' legal advice can be provided at a charge, currently SEK 1 162. If the person obtaining the legal advice has insufficient financial resources, the charge can be reduced by half. If the person obtaining the legal advice is a child, he or she usually does not need to pay anything.

To be eligible for Legal Aid one has to meet certain general conditions.

1. The applicant must have obtained Legal Advice for at least one hour.
2. The applicant must meet an income threshold. The current income limit is 260 000 SEK (approx. 27 375 EURO) a year. When the applicant's income shall be estimated attention is paid to his or her economic situation as a whole. For example, one shall consider child maintenance expenses, property and debts.
3. The applicant must be in need of a Legal Aid Counsel and it must be clear that such need can not be obtained by any other means, such as legal guidance from a specialised public authority.
4. It must be considered reasonable for public funding to contribute to the costs. The assessment of the reasonableness is made with regard to the character and significance of the matter in question, the value of the object of the civil case and other circumstances.
5. If the applicant has - or is considered ought to have had - a Legal Expenses Insurance, such insurance has to be used in the first place.

UNITED KINGDOM - ENGLAND AND WALES

For Legal Representation, people receiving income support or income-based jobseeker's allowance automatically qualify financially for funding. Otherwise, people can get "free", or non-contributory, help, if they have a gross monthly income of less than £2,250, a monthly disposable income below £263 and disposable capital of £3,000 or less. If their monthly disposable income is between £263 and £695, or disposable capital between £3,000 and £8,000, they will be offered funding on the basis that they agree to pay contributions towards their legal costs. These figures have applied since 5 August 2002.

Since 5 August 2002, higher gross income thresholds have been set for families with five or more dependants. The list of state benefits, which were disregarded from disposable income, are now also disregarded from the assessment of gross income. The purpose of these changes was to ensure that the gross income cap does not disadvantage those who have large families or rely heavily on disability benefits.

The LSC first calculates the gross income that an applicant will receive within the calendar month up to and including the date of the application. This means the total income from all sources, including the applicant's partner and any third parties such as friends or relatives. Certain state benefits, including Housing Benefit, Council Tax Benefit, disability living allowance and any payments out of the social fund, are disregarded from the total income. The gross income cap acts as a filter. If an applicant's gross income is less than the limit (currently £2250), the LSC will go on to assess disposable income and disposable capital.

To reach the disposable income figure, a number of other allowances are then offset against gross income. These include income tax; national insurance contributions; maintenance payments to an ex-spouse; child-care expenses incurred because of work; and rent or mortgage repayments. There are also fixed allowances for dependants.

For applications from 14 October 2002 the allowances have been as follows: -

Child age 15 or under £160.77 per month (£37.00 per week)

Child age 16 or over £164.25 per month (£37.80 per week)

Partner £133.40 per month (30.70 per week)

Although funding for full representation may not be available, an applicant may still be entitled to up to £500 worth of initial legal advice and assistance under the Legal Help scheme [(formerly known as advice and assistance or Green Form)]. This provides for basic advice from a solicitor on almost any point of English law. This help can include giving oral or written advice, writing letters, negotiating, and obtaining a barrister's opinion and the upper costs limit can be extended.

In order to qualify for Legal Help, an applicant must be receiving either income support, income-based jobseeker's allowance, or have no more than £2,250 of gross monthly income and £611 of disposable monthly income. An applicant must also have no more than £3,000 of disposable capital.

In addition to qualifying financially, an applicant must also show that the merits of the case justify the grant of public funding. The application is considered against criteria specific to the type of case; these criteria are set out in a document called the Funding Code. Broadly speaking, the test is designed to measure, taking all the circumstances into account, whether a privately paying client of moderate means would be prepared to spend his or her own money on taking the case.

For Legal Help a supplier contracted with the Legal Services Commission will apply both the means test and a merits test, which consists of two main elements – sufficient benefit to the client to justify work or further work being carried out and the reasonableness of funding from the Community Legal Service Fund, having regard to any other potential sources of funding.

The LSC must consider, for example, the prospects of success, any alternative sources of funding, and any other circumstances such as wider public interest or overwhelming importance to the applicant. It will also consider the possible benefits of litigation and, where possible, compare them to the likely costs.

UNITED KINGDOM - SCOTLAND

For the modified procedure to operate either in respect of advice and assistance or civil legal aid, as said above, a certificate of entitlement must have been issued in relation to the application by the responsible authority in his or her own country; in these cases, the applicant is eligible for free legal aid without enquiry into his/her resources. Although the Board needs to be satisfied that the application has probabilis causa litigandi and that it is reasonable to make legal aid available.

In cases where the foreign authority is unable to give the certificate mentioned in section 43A(2), he will inform the nominated solicitor. The applicant will then need to apply for civil legal aid in the normal way giving particulars of his resources. Such an application must normally comply with the provisions of Regulation 5(2) of the Civil Legal Aid (Scotland) Regulations 1996, SI 1997 No. 727 (S67), namely:

1. The application must be in English or French.
2. The application must be sworn:
 - (a) If the applicant resides within the Commonwealth or the Republic of Ireland, before any Justice of the Peace or Magistrate, or any person for the time-being authorised by law, in the place where he is, to administer an oath for any judicial or other legal purpose, or
 - (b) If the applicant resides elsewhere, before a Consular Officer in the service of Her Majesty's Government in the United Kingdom, or any other person for the time-being authorised to exercise the functions of such an officer or having authority to administer an oath in that place for any judicial or other legal purpose.
3. The application must be accompanied by a statement in writing, itemising the applicant's disposable income and disposable capital.

The Board has power to waive in whole or in part any of the requirements of Regulation 5(2) if it is satisfied that compliance with them would cause serious difficulty, inconvenience or delay and the application otherwise satisfies the Board's requirements.

The granting of a legal aid certificate will cover representation by a solicitor and where appropriate by counsel in the proceedings raised, and include all such assistance as is usually given by a solicitor or counsel in the steps preliminary to or incidental to the proceedings, or in arriving or giving effect to a settlement to prevent them or bring them to an end. In particular, legal aid will cover steps in the execution of diligence; this includes taking steps to locate a player who cannot be traced after a maintenance order has been registered. However, the routine collection of payments, and the transmission of these to the client will not be covered.

UNITED STATES OF AMERICA

Eligibility for child support services is not means-tested.

Assistance from the state child support enforcement agency is available at no cost to recipients of public assistance. Public assistance is means-tested and eligibility requirements vary among the individual states.

Assistance from the state child support enforcement agency is available to non-recipients of public assistance upon the completion of an application and the payment of a maximum U.S. \$25 fee.

With respect to requests from foreign reciprocating countries, no costs are assessed for assistance from the state child support enforcement agency from the foreign reciprocating country or its resident obligees. However, costs may be assessed by the state child support enforcement agency against the obligor.

22 Les règles et procédures concernant l'aide juridique ou l'assistance judiciaire ou administrative sont-elles différentes pour les demandes d'aliments envers l'époux ou d'autres membres de la famille ?

22 Are the rules and procedures concerning legal or administrative aid or assistance different for applications for maintenance for a spouse or other family member?

AUSTRALIA

As noted above means-testing does not apply to procedures undertaken by AG's and they are provided free of charge. This includes securing a spousal or child maintenance order under UNCRAM, obtaining a variation order in an Australian court for an overseas party and securing confirmation of a provisional order or a provisional variation order and the transmittal of a provisional order overseas.

AUSTRIA

The substantial requirements are the same (infringement of the necessary living costs by the fees of the court proceedings).

BULGARIE

Non.

CANADA

Non, la réponse serait la même que celle fournie à la question 21.

No, the answer to this question is the same as the one provided for question 21.

CHILE

No.

CHINA - HONG KONG SPECIAL ADMINISTRATIVE REGION

The same rules and procedures apply in the processing of legal aid applications except that of an application for legal aid on behalf of an infant claimant where the applicant is treated as the agent of the infant. There is no express provision governing the provision of maintenance for family members other than the spouse and child.

CROATIA

The Croatian law makes no distinction among persons when it comes to the exemption from paying actual costs incurred and fee due to the legal representative on account of property status, but the Family Act contains special provisions on the protection of the rights and interests of the child or an adult under guardianship in procedures involving maintenance claims – please see answers under 18 and 20 above.

CYPRUS

No.

CZECH REPUBLIC

See question 20.

DENMARK

In Denmark it is only possible to make orders about spouse or child maintenance.

ESTONIA

No. For all persons the principles of accessibility of consultation are the same.

FINLAND

The same rules for legal aid apply for applications on maintenance for children and maintenance for spouses.

FRANCE

Les règles et procédures régissant l'aide juridictionnelle sont les mêmes pour les demandeurs d'aliments envers l'époux ou d'autres membres de la famille.

GERMANY

The preconditions for granting legal aid are in line with sections 114 et seqq. of the Code of Civil Procedure. No distinction is made as to the identity of the party entitled to apply.

The possibility of advice from the youth welfare office in asserting maintenance claims exists in accordance with sections 1712 et seqq. of the Civil Code only to assert child support. Advice may not be applied for to assert maintenance claims of other persons (such as spouses during separation or once divorce has gained legal force, or the separate maintenance claim of the mother who is not married to the father of the child in accordance with section 1615I of the Civil Code, or indeed of parents against their children) (cf. Question 21).

However, the possibility also exists in the context of section 59 No. 4 of the Eighth Book of the Social Code to establish an executable document (at the youth welfare office) free of charge for maintenance claims of the mother in accordance with section 1615I of the Civil Code.

ISRAEL

The difference lies in the financial means test. When there is a request for legal aid for collection of maintenance for a minor, the minor automatically qualifies for legal aid as usually minors have no income at all. The minor will qualify even if the parent would not qualify in terms of the financial means test.

JAPAN

The rules and procedures are not different where the applicant is a spouse or other family member.

LUXEMBOURG

Pour bénéficier de l'assistance judiciaire, le requérant doit compléter un questionnaire disponible auprès du Service central d'assistance social (service constitué au Parquet général), et l'adresser au Bâtonnier de l'Ordre des avocats territorialement compétent. Doivent y figurer les indications suivantes :

- nom, prénoms, profession, date et lieu de naissance, domicile, état civil, nationalité du requérant et le cas échéant de l'autre partie en litige ;
- nature du litige et exposé sommaire des faits ou, en cas de demande de consultation juridique, la nature du problème juridique ;
- renseignements sur la situation de famille du requérant, comportant l'indication des nom, prénoms, âge et profession du conjoint et des enfants ainsi que d'autres personnes vivant dans un foyer commun ;
- situation de fortune :
 - si le requérant bénéficie du revenu minimum garanti, il lui suffit de joindre un certificat justificatif émanant de l'autorité administrative compétente (en l'occurrence le Fonds national de solidarité)
 - dans les autres cas, les éléments suivants sont à indiquer, avec pièces justificatives à l'appui :
 - a) fortune immobilière et mobilière
 - b) loyer
 - c) dettes contractées et modalités de remboursement
 - d) revenus nets provenant d'une activité salariée pour les trois mois précédant la demande
- indication des noms et adresses de l'avocat et des officiers publics ou ministériels qui prêtent leur concours au requérant ou qu'il entend choisir pour prêter leur concours ;
- déclaration que le requérant n'est pas en droit d'obtenir d'un tiers le remboursement des frais à couvrir par l'assistance judiciaire ;
- le cas échéant, indication de tous renseignements et production de toutes pièces justificatives de nature à établir un cas de rigueur susceptible de relever le requérant d'une exclusion du bénéfice de l'assistance judiciaire.

Si le requérant est dans l'impossibilité de fournir les pièces nécessaires, le Bâtonnier peut demander au Service central d'assistance sociale la production de tous documents de nature à justifier que l'intéressé satisfait aux conditions exigées pour bénéficier de l'assistance judiciaire (il doit être entendu que ce recours au Service d'assistance sociale ne se conçoit guère que pour la production de pièces disponibles auprès d'autorités ou d'organismes indigènes).

Il appartient au Bâtonnier de l'Ordre des avocats de décider de l'admission au bénéfice de l'assistance judiciaire. Contre les décisions de refus d'admission, un recours (appel) est ouvert auprès du Conseil disciplinaire et administratif de l'Ordre des avocats, qui statue en dernier ressort. Ce recours doit être introduit sous forme de lettre recommandée à l'adresse du Conseil disciplinaire et administratif, dans un délai de dix jours de la notification de la décision de Bâtonnier.

Les règles et procédures concernant l'assistance judiciaire sont les mêmes pour toutes les demandes d'aliments.

MALTA

- Legal Aid

The rules regulating legal aid do not specifically cater for particular proceedings which may be brought before the courts of law in Malta. Hence, there are no different modes of procedure followed in the case of maintenance applications for a spouse or other family member. The articles regulating the benefit for legal aid apply generally to all cases which are brought before the courts mentioned in Sections 3 and 4 (Code of Organisation and Civil Procedure), namely the superior and inferior courts of law.

THE NETHERLANDS

In principle they are not.

NEW ZEALAND

No.

NORWAY

No, except that the fee mentioned above does not apply to spousal support.

PANAMA

It is the same procedure.

PHILIPPINES

No.

POLAND

No.

ROUMANIE

Les formes et les conditions de l'accord de l'assistance juridique ne diffère pas en fonction de la nature du litige ou de la qualité des parties.

SLOVAKIA

The Centre does not provide administrative aid and legal advice to other applicants than children (outside of the New York Convention context). Otherwise the answer to 21 is applicable.

SUISSE

Non, pour ce qui a trait aux demandes d'aliments envers l'époux.

S'agissant des demandes d'aliments envers d'autres membres de la famille, seule la possibilité de l'assistance judiciaire subsiste. Les autres aides ne sont pas prévues, sauf pour les créanciers résidant dans un Etat signataire de la Convention de New York, dans les limites tracées par l'art. 6 de la Convention.

SWEDEN

The requirement for special reasons to receive legal aid only applies to matters concerning maintenance for children. As mentioned under question 20, the justification for the requirement of special reasons stems from the fact that a child who is eligible for maintenance in most cases can obtain payment from the Social Insurance Office.

UNITED KINGDOM - ENGLAND AND WALES

No. The same means testing arrangements apply and the same assessment against the Funding Code criteria would also apply.

UNITED KINGDOM - SCOTLAND

No.

UNITED STATES OF AMERICA

With respect to requests from foreign reciprocating countries, a maintenance order will be enforced for the absent parent's spouse (or former spouse) with whom the child is living if a support obligation has been established with respect to the spouse and the support obligation established with respect to the child is also being enforced by the state child support system. Such applications processed through the U.S. IV-D system will receive the benefit of the cost-free services provided by state child support enforcement agencies.

With respect to requests from foreign reciprocating countries, if a support obligation has been established only in regards to a former spouse who does not reside with a child for whom support is being enforced, individual U.S. states have the option whether to process the case through the state child support system.

Applications for establishment of maintenance obligations for spouses and other family members will not be processed by the state child support enforcement agency.

If a support application for a spouse or other family member is not processed through the state child support enforcement agency, private counsel or a legal aid attorney may need to be secured in order to present the case to the appropriate tribunal for action.

Frais de justice et autres dépenses

Legal costs and expenses

- 23** Quels types de frais de justice et autres dépenses (y compris les honoraires d'avocats et les frais de tribunaux) entraînent une demande pour des aliments envers les enfants ou l'époux et d'autres membres de la famille ? Pouvez-vous indiquer comment ces frais et ces dépenses varieront depuis la demande initiale jusqu'aux diverses procédures d'appel ou de révision ?
- 23** What are the typical legal costs and expenses (including lawyers' fees and court costs) involved in an application for child support or maintenance in respect of a spouse or other family member? Can you indicate how these costs and expenses will vary from the initial application through any processes of appeal or review?

AUSTRALIA

See above at question 22.

AUSTRIA

No indication possible.

BULGARIE

Selon le Code de procédure civile bulgare la procédure est gratuite en ce qui concerne une demande pour des aliments envers les enfants ou l'époux et d'autres membres de la famille. Les honoraires d'avocats sont déterminés à la base d'un contrat parmi les parties.

Les frais de justice concernant l'exécution de la décision judiciaire selon l'art.69 du Code de procédure civile sont à la charge du débiteur.

CANADA

Si les lois en matière d'établissement et d'exécution réciproques des ordonnances alimentaires s'appliquent, le processus, incluant la procédure judiciaire, n'implique aucun frais lorsque le demandeur réside dans une juridiction avec laquelle existe une entente de réciprocité, sauf s'il désire retenir les services d'un avocat privé ou dans le cadre d'un test de paternité.

Pour les demandeurs résidant dans une juridiction avec laquelle il n'y a pas d'entente de réciprocité ou lorsque les parties se soumettent à la juridiction du tribunal canadien, les coûts impliqués constituent les coûts habituels dans le cadre des affaires de droit familial. Ils dépendent de la province quant aux frais judiciaires, et de l'expérience et de l'expertise de l'avocat retenu quant aux frais de ce dernier. Les coûts varieront également dépendant de la complexité et du degré de mésentente entre les parties.

If the ISO legislation applies, the process, including the processing of the application through the judicial process, does not involve any costs when the applicant is resident of a reciprocating jurisdiction, unless a private lawyer or a paternity test are required.

For applicants resident in a non reciprocating jurisdiction or where the parties are attorning to the jurisdiction of a Canadian court, the costs involved are the standard costs in family law matters. They are dependent on the jurisdiction for the court costs, and the experience and

the expertise of the lawyer retained for the lawyers' fees. Costs will vary based on the complexity of the issues and the level of acrimony between the parties.

CHILE

It depends. If the maintenance recipient is legally advised and represented by a private lawyer, then the lawyer stipulates his/her fees with the client. If the person is poor, he/she is legally advised and represented by the Legal Aid Corporation, who will grant him/her a Certificate of Free Legal Aid Benefit, without any costs, these being assumed by the State.

CHINA - HONG KONG SPECIAL ADMINISTRATIVE REGION

Court fees in Hong Kong are relatively low when compared to lawyers' fees. The amount of legal costs involved in each case varies according to the complexity of the case. Costs chargeable by lawyers are either taxed or agreed on hourly rate basis. Legal costs may be reduced if an early settlement is achieved through mediation or negotiations.

CROATIA

These costs are related to expertise, e.g. medical paternity or maternity tests, means test, the costs of witnesses, court announcements, or of the appointed legal representative if the respondent's residence is unknown, etc. In respect of costs, the rules are the same for any of these processes.

CYPRUS

Different scales depending on the amount of maintenance determined by the Court.

CZECH REPUBLIC

There are no other typical costs and expenses involved except court fees and counsel costs in first-instance proceedings, in proceedings in court of appeal or revision.

DENMARK

There are no legal cost or expenses in determining the amount of child or spousal maintenance; as such cases are dealt with administratively.

However, if spouses do not agree upon the obligation to pay spousal maintenance after divorce or legal separation the question is settled by the courts. In such cases the parties may have to pay the costs of their own attorney. They may also have to pay the costs of the attorney representing the other spouse.

The Ministry of Justice has no information on the costs in such cases.

ESTONIA

Legal costs are made up of: 1) state fees (these depend on value of the action; in case of an action for support – the amount of one year's support payments); 2) costs essential to proceedings; 3) security on cassation. According to State Fees Act Article 16 Subsection 1 clause 2, the claimant is released from the payment of state fees in case of action for support. As upon appeal the state fees are due in the same amount as it is provided upon preliminary filing with the court of first instance, no state fees shall be due in the process of appeal likewise. The amount of the security on cassation to be paid is 200.- kroons.

It is difficult to specify the amount of the 'typical' costs of legal assistance, as it is not uncommon that upon support claims any legal service is waived by the parties. The other possible costs in addition to the legal assistance costs are as follows: the fee for expert, the fee for a translator and the compensation for witness; the costs connected with obtaining of the documentary evidence, costs for conducting an inspection of physical evidence and on-the-spot visit of inspection; postage and costs for serving summonses, wages which a party does not receive due to absence from work and travel and accommodation expenses. (Code of Civil Procedure, Article 52).

Enforcement costs may be added to the above – those shall be enforced from the debtor under the decision of the court bailiff.

FINLAND

When a maintenance case has been brought to a municipal social welfare board, the parties appear before the board with or without a legal counsel. Usually the parties appear without a legal counsel. The municipal social welfare board does not charge fees for its services.

When the maintenance case has been brought to a court, the parties may appear before the court with a legal counsel or without a legal counsel. The costs for a trial can roughly be divided into three categories:

1. costs for a legal counsel for the claimant,
2. costs for a legal counsel for the respondent, and
3. a fee for the judgment.

The main rule in judicial maintenance proceedings is that each party pays his or her own costs for a legal counsel. The claimant pays the fee for the judgment.

FRANCE

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GERMANY

a) Court costs

Costs are levied by the courts in maintenance proceedings (fees and expenses) in accordance with the Court Costs Act (Gerichtskostengesetz - GKG). In accordance with section 11 subsection 2 of the Court Costs Act, the amount of the fees is dependent on the respective value of the dispute.

With claims to meet a statutory maintenance obligation, in accordance with section 17 subsection 1 of the Court Costs Act the amount claimed for the first twelve months after submission of the action or of the application is the relevant value at dispute.

Fees and expenses are summarised in a list of costs relating to the Court Costs Act (Court Costs Act Cost List). Each element of a fee or expense is hence allotted a number.

In addition to a three-fold administrative fee (No. 1210 Court Costs Act Cost List) in maintenance proceedings, most are incurred for servicing. These are however only levied as expenses (No. 9002 Court Costs Act Cost List) if they exceed € 50 at one instance. Because of these limits, which in practice as a rule are not exceeded, these costs are not included in the example cases quoted in the enclosed table.

b) Lawyers' fees

Lawyers are paid (fees and expenses) in accordance with the Federal Code of Lawyers' Fees (Bundesgebührenordnung für Rechtsanwälte - BRAGO).

In the same way as the courts, they levy fees depending on certain values. In accordance with section 7 subsection 1 of the Federal Code of Lawyers' Fees, these are calculated in accordance with the value that the article has at the time the lawyer works (value of the subject-matter). Section 8 subsection 1 of the Federal Code of Lawyers' Fees refers to section 17 subsection 1 of the Court Costs Act for calculating the value. The value at dispute and the value of the subject-matter are hence identical.

In accordance with section 31 subsection 1 of the Federal Code of Lawyers' Fees, a lawyer as a rule receives two 10/10 fees in maintenance cases, one each for operating the business, including information (case fee) and for attending an oral hearing (hearing fee).

In addition to the fees, the lawyer has a right in accordance with section 25 of the Federal Code of Lawyers' Fees to have his/her expenses refunded. These are mainly the fees for posts and telecommunications (section 26 of the Federal Code of Lawyers' Fees) and turnover tax that he/she must pay (section 25 subsection 2 of the Federal Code of Lawyers' Fees).

c) Simplified procedure relating to the maintenance of minors

On request, and in accordance with section 645 of the Code of Civil Procedure, the maintenance of a minor child is established under certain preconditions in a simplified, largely formalised procedure. In these proceedings, instead of a three-fold fee, the court levies only a half-fold fee in accordance with No. 1800 of the Court Costs Act Cost List. In accordance with section 44 subsection 1 of the Federal Code of Lawyers' Fees, the lawyer receives a 10/10. No hearing fee is levied.

The following examples are to illustrate the amount of the typical court case costs, average values having been taken as a basis:

Example 1: (Value at dispute: € 3,000 to 3,500)

	Normal proceedings	Appeal proceedings	Simplified proceedings
<u>a) Court costs</u>			
aa) Procedural fee	€ 291.00	€ 145.50	€ 48.50
bb) Judgment fee	€ 0.00	€ 291.00	€ 0.00
<u>b) Legal fees</u>			
aa) Case fee	€ 217.00	€ 282.10	€ 217.00
bb) Hearing fee	€ 217.00	€ 282.10	€ 0.00
cc) Fee for posts and telecommunication services	€ 20.00	€ 20.00	€ 20.00
dd) Rate of turnover tax re b)	<u>€ 72.64</u>	<u>€ 93.47</u>	<u>€ 37.92</u>
Total court case costs:	€ 817.64	€ 1,114.17	€ 323.42

Example 2: (Value at dispute: € 4,500 to 5,000)

	Normal proceedings	Appeal proceedings	Simplified proceedings
<u>a) Court costs</u>			
aa) Procedural fee	€ 363.00	€ 181.50	€ 60.50
bb) Judgment fee	€ 0.00	€ 363.00	€ 0.00
<u>b) Legal fees</u>			
aa) Case fee	€ 301.00	€ 391.30	€ 301.00
bb) Hearing fee	€ 301.00	€ 391.30	€ 0.00
cc) Fee for posts and telecommunication services	€ 20.00	€ 20.00	€ 20.00
dd) Rate of turnover tax re b)	<u>€ 99.52</u>	<u>€ 128.42</u>	<u>€ 51.36</u>
Total court case costs:	€ 1,084.52	€ 1,475.52	€ 432.86

Court costs in the initial proceedings differ from those of the appeal proceedings by the number and amount of the fee rate. Thus, for example in the proceedings for an appeal on points of fact and law in addition to the one-and-a-half procedural fee (No. 1220 Court Costs Act Cost List) a further three-fold fee (No. 1226 Court Costs Act Cost List) is incurred for the decision of the court.

The legal fees differ only by means of the amount of the fee rate. The case and the hearing fee increase in accordance with section 11 subsection 1 fourth sentence of the Federal Code of Lawyers' Fees to 13/10 respectively.

In the simplified proceedings in accordance with section 645 of the Code of Civil Procedure, on request by a party in accordance with section 651 of the Code of Civil Procedure the (normal) dispute proceedings are implemented if the opponent has filed objections to the simplified proceedings. An appeal on points of fact and law cannot be filed in the simplified proceedings.

ISRAEL

The costs for a maintenance application vary from case to case depending on the nature of the case and the fees of the specific counsel chosen to handle the case.

JAPAN

The legal costs and expenses of the determination proceedings by the Family Court includes:

- (a) the costs and expenses which accrue before the determination such as application fee, the expenses for the examination of evidence and the expenses of service of documents. For example, the applicant shall pay ¥900 application fee for maintenance proceedings in the Family Court, and ¥1,350 fee for an appeal to the higher court (Article 3 of the Law Relating to the Costs and Expenses of Civil Litigation, etc.).
- (b) the expense of notifying the decision by certified mail.

The principle is that the applicant shall bear the costs and expenses mentioned above, but under special circumstances the court may impose the whole amount or a part thereof on the respondent or others concerned (Article 7 of the Law for Determination of Family Affairs, Articles 26 and 28 of the Voluntary Matters Proceedings Law).

Under the current system, attorney fee is not included in legal costs and expenses and each party shall pay it.

LUXEMBOURG

Les honoraires d'avocats et les frais occasionnés par l'intervention d'officiers ministériels (huissiers de justice) au niveau de l'exécution sont susceptibles d'entraîner les frais les plus importants. Les honoraires d'avocats sont en principe librement fixés, l'avocat prenant en compte les différents éléments du dossier, tels l'importance de l'affaire, le degré de difficulté, le résultat obtenu et la situation de fortune du client. Les actes d'huissier sont rémunérés soit selon un tarif fixe, soit par vacation, étant précisé que ce ne sont en principe que les actes qui ne sont pas nominativement tarifés qui sont payés par vacation.

Dans le cadre de l'assistance judiciaire l'avocat qui prête son concours au bénéficiaire de l'assistance judiciaire reçoit une indemnité qui est calculée en raison du nombre d'heures prestées, sur base d'un taux horaire correspondant au taux d'une vacation horaire d'un expert judiciaire. Pour les avocats à la Cour, ce taux est multiplié par 1,5.

MALTA

Schedule A, Tariff A of the Code of Organisation and Civil Procedure regulates the fees payable in respect of particular trial causes. Paragraph 1(a) is of particular importance since it provides that in actions for inter alia, maintenance, filiation and paternity, all the fees provided in Tariff A shall be rebated by 50% subject to one particular exception.

The filing of any petition, application, writ of summons or other act of procedure containing a claim which initiates a contentious procedure in a Court of First Instance and requiring the decision of a Judge or Magistrate as well as for any statement of defence, answer or other act of procedure in reply thereto and intended to contest, whether totally or partially, the claim made costs Lm 50. The latter fee is to include the filing of all other acts of procedure and court services required following the initiation of the cause through the said act up to and including final judgement but excluding any fees due for the notification of acts and fees due to referees or experts appointed by the Court or any fees which the Court may be required to pay to third parties.

For the filing of any petition, application, writ of summons or other legal act initiating a contentious procedure in a Court of Appeal and requiring the decision of a Judge as well as for any statement of defence, answer or other act of procedure in reply thereto and intended to contest, whether totally or partially, the appeal, the fee is of Lm 75.

Paragraph 3 of the same Tariff A lists other fees which shall be due. However, Section 3(4) provides that in actions for, inter alia, personal separation, annulment, maintenance, filiation and paternity, the fees stated in paragraph 3 shall not apply but there shall be levied a one time fee of Lm 50.

THE NETHERLANDS

In enforcement proceedings the court often orders that the court costs should be charged to the maintenance debtor. Costs incurred in the collection of support can usually be charged to the debtor.

In incoming cases under the New York Convention the claimant can usually be represented by the Central Authority. If this is not possible, an attorney is requested (and paid) to represent the claimant.

In outgoing cases claimants may have to pay lawyers' fees or costs of a bailiff in the requested State.

NEW ZEALAND

An application for child support or spousal maintenance can be made simply by completing an application form. If this is done through a family lawyer then some legal costs will be incurred. That is a matter of individual choice.

There is no cost attached to the administrative review process unless, of course, the applicant seeks the advice of their lawyer. Lawyers are not allowed to represent their clients at the administrative review hearing although they can prepare the appropriate papers for their client to submit to the review officer.

Again, if the customer wishes to go to the Family Court they can represent themselves in which case no cost would be incurred. However, generally customers engage the services of their lawyer to ensure proper representation. There would be a cost to the client in these circumstances.

In respect of applications/claims from overseas the Court usually appoints Counsel to assist the Court who will report on the appropriate processes to be followed by the Court. This is at no charge to the applicant/claimant. Overseas Applicants/Claimants however are not precluded from instructing lawyers privately to represent them in the NZ courts. An application for maintenance without an overseas component would cost approximately \$2,500. A lawyer instructed privately to represent a client in an UNCRAM claim would charge approximately \$10,000.

NORWAY

Except from the new fee in internal cases as mentioned above, the Norwegian Administrative system provides full assistance free of charge both to the spouses and to the children and their parents.

PANAMA

Lawyer's fees in Panama for an alimony request varies depending on the amount of the requesting allowance, it means that it will be a percentage of the sum fixed by the court, and if the request goes to another instance on appeal, the cost will start from three hundred dollars \$300.00, but such fees could increase according to the amount of allowance fixed.

Likewise, fees could be negotiated by the lawyer and the interested party, and that sum will include several instances on appeal.

PHILIPPINES

There is a docket fee which is around P300.00. The rest of the costs goes to the attorney's fee.

POLAND

The exemption of a maintenance claimant (a Polish national) from the court costs is absolute, so he/she shall bear no court costs also in the proceedings in appeal. If the claimant has appointed an attorney, then he/she shall bear the expenses related to the attorney's fees by himself/herself. Yet if the claimant wins the case, he/she shall have the expenses relating to the attorney's fees reimbursed by the obligor. The applicant may claim to have a legal counsel appointed by the court. If the application is accepted, the expenses related to the salary of the legal counsel appointed for the party who has been exempted from the court costs, shall be covered by the adverse party. If the claimant loses the case, then the State Treasury shall cover these expenses. The average salary of an attorney in a maintenance case usually amounts 60 zlotys (ca. 15 euro). However, if the maintenance obligor is bound to reimburse the costs, then the salary of an attorney shall vary depending on the value of the subject of the proceedings.

ROUMANIE

Généralement, on parle seulement des honoraires des avocats et ceux pour l'administrations des preuves. Les actions pour l'établissement des obligations légales d'entretien sont dépensées du paiement de la taxe de timbre et du timbre judiciaire (article 15 lettre c de la Loi no. 146/1997 concernant les taxes de timbre judiciaire).

SLOVAKIA

These are usually "low cost" proceedings, but we cannot provide you with overview of the typical costs and expenses, since such overview does not exist. The travel costs (for the parties to appear) and the lost earnings would be the typical costs involved, we presume.

SUISSE

En règle générale et pour toute procédure civile y compris l'action visant à fixer des contributions d'entretien, les types de frais sont d'une part les frais de tribunaux et d'autre part les honoraires d'avocat. Ces dépenses varient en fonction des difficultés de la cause et de la longueur de la procédure.

S'il s'agit d'exécuter une décision dans une procédure de poursuite, les frais sont minimes et sont généralement pris en charge par l'Etat pour les créanciers résidant dans un Etat signataire de la Convention de New York.

SWEDEN

The court proceedings themselves are free of charge in Sweden with the exception of an application fee, which is currently SEK 450. The most typical cost will therefore be lawyers' fees. There might also be costs for evidence and witnesses.

It is not possible to make any assessments of how these costs vary under the proceedings, since it vary from one case to another.

UNITED KINGDOM - ENGLAND AND WALES

Child Support Agency

The Child Support Agency has no role in relation to the support of spouses or other family members.

In relation to the Child Support Agency, the making of a child support maintenance assessment and the collection, enforcement, onward transmission of maintenance within the UK are services provided free by the Agency. Processes of review and appeal are also free. Any court costs are borne by the Agency and there is no requirement for legal representation.

The courts

The variables are such that legal costs and expenses involved in an application to the court for child support or other maintenance will depend on the level of court, which is used and the work, which has to be done in the circumstances of the particular case. Although court fees are fixed (by statutory order) relating to the type of application submitted to the court, the lawyer's fees and other expenses will depend on the work done. Where proceedings are publicly funded through legal aid, fees actually and reasonably incurred are allowed in accordance with hourly rates which are fixed by regulations. It is difficult to provide separate figures for legal costs and legal help, as individual statistics are not collated. These are all identified for legal aid purposes as family proceedings. Bills paid for family proceedings 2001-2002 show an estimated net cost of £2014 per application for financial provision cases brought under *Schedule 1 of the Children Act 1989*. For applications for financial provision where no children are involved the estimated net cost of £1,606 per application is given.

If a decision is appealed then the costs will be increased accordingly. Again, the amount involved will depend on the work done. In some cases, in particular where the

residential/custodial parent is in receipt of benefits (income support), child support will be fixed by the Child Support Agency through an administrative process and the matter will not normally be considered by the court.

UNITED KINGDOM - SCOTLAND

The typical legal costs and expenses, involved in an application for child support or maintenance are:

- enforcement expenses
- expenses incurred tracing a payer who cannot be found after a maintenance order has been registered
- standard legal fees
- any unrecoverable court costs

As most of the maintenance cases are heard in the sheriff courts, if a maintenance order is appealed, then, an advocate needs to be appointed to present the case in the Court of Session which will entail additional expense.

UNITED STATES OF AMERICA

Foreign reciprocating countries will not be charged throughout the enforcement process, from application to any appeals undertaken by the state child support enforcement agency.

Legal costs for cases that are not handled by the state child support enforcement agency vary widely depending upon the nature of the case and the state of the tribunal in which the proceedings will be carried out.

24 Est-il possible de recouvrer les frais de justice et autres dépenses à travers les versements d'une pension alimentaire ?

24 Is it possible for payment of costs and expenses to be met from maintenance payments?

AUSTRALIA

No.

AUSTRIA

No compensation ("Aufrechnung") of expenses due to the debtor with his/her maintenance obligations.

BULGARIE

Non. D'après l'art.90 du Code de la famille il est interdit de compenser la dette alimentaire et une créance.

CANADA

Si la question porte sur la possibilité de retenir un montant directement de la pension alimentaire pour le paiement des frais de justice et autres dépenses, la réponse est négative.

If the question refers to the possibility of assigning maintenance to pay court costs or lawyers fees, the response is negative.

CHILE

Normally, in matter of maintenance Chilean Courts do not sentence to payment of costs.

CHINA - HONG KONG SPECIAL ADMINISTRATIVE REGION

Save for the contribution required to be paid under LAO, a claimant in receipt of legal aid in respect of the case in question is not required to make any further payment to meet costs until and unless there is property recovered for him in the relevant proceedings. Under section 18A(5) of LAO, the Director of Legal Aid will not deduct legal costs from any maintenance recovered if such sum is for periodical payments not exceeding \$4,800 per month for a spouse or for periodical maintenance for a child.

CROATIA

There is no legal possibility for making such a decision.

CYPRUS

No.

CZECH REPUBLIC

The costs and expenses for maintenance case proceedings cannot be covered from maintenance money payments.

DENMARK

No.

ESTONIA

The question is not clear – it is not clear, what costs are meant and b who should pay them.

FINLAND

Costs and expenses cannot be met from maintenance payments.

FRANCE

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GERMANY

In accordance with section 91 subsection 1 of the Code of Civil Procedure, the losing party must refund the cost of the legal dispute, in particular the costs incurred by the opponent (e.g. payments effected to the court or to the lawyer) if they were necessary and expedient to assert or defend rights.

ISRAEL

Maintenance payments and costs are two separate issues, and costs are not deducted from maintenance payments. The general rule in litigation, though, is that the costs follow the cause and the court will usually order one of the parties to pay costs.

JAPAN

Application fee should be paid on the application. We have no system which is designed specifically for the collection of other costs and expenses of judicial proceedings from maintenance payments.

LUXEMBOURG

Dans le cadre d'une demande en recouvrement d'aliments sur base de la Convention de New York du 20 juin 1956, l'institution intermédiaire luxembourgeoise se refuse de mettre sur un pied d'égalité avec les aliments proprement dits les frais de justice et les autres dépenses que la fixation judiciaire des aliments a occasionnés. Si une demande formée sur base de ladite Convention donne lieu à une procédure de recouvrement judiciaire, ces frais de justice et ces autres dépenses ne seront dès lors pas compris dans le montant à recouvrer

MALTA

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THE NETHERLANDS

See the reply to question 23.

NEW ZEALAND

No. The administering authority (NZ Inland Revenue Child Support) is responsible for raising the assessment and collecting the payments and to pay those payments into the custodian's bank account (where the custodian is entitled to receive those payments). How the customer's costs associated with any action they take against the other parent is a matter for the party to pay. In respect of applications/claims being heard under the Family Proceedings Act 1980 an order for the payment of costs is a matter for the Judge to determine.

NORWAY

Irrelevant for international cases.

PANAMA

It is not possible that payment of costs be payed with payment of alimony, unless parties would have agreed that the first payment will be to cover such fees.

PHILIPPINES

Yes, if the lawyer will agree to a contingent fee.

POLAND

It is not possible to meet or otherwise cover the court costs and expenses from maintenance payments.

ROUMANIE

Non.

SLOVAKIA

The payments of costs and expenses cannot be met from the maintenance payments

SUISSE

Non. La partie qui perd un procès doit payer ces frais indépendamment et en sus des pensions alimentaires.

SWEDEN

No.

UNITED KINGDOM - ENGLAND AND WALES

No. Costs are not met from maintenance payments.

UNITED KINGDOM - SCOTLAND

Payments of costs and expenses cannot be met from maintenance payments.

UNITED STATES OF AMERICA

Foreign reciprocating countries and their resident obligees will not be charged fees by state child support enforcement agencies. Fees may be collected from the obligor by the support enforcement agency in addition to the basic maintenance payments. However, the payment of

child support owed to the obligee has priority over collection of fees, costs, and expenses from the obligor.

Legal costs for cases that are not handled by the state child support enforcement agency are paid by agreement between the parties and attorneys involved and may be collected from maintenance payments to obligee.

Accords relatifs au recouvrement et transfert et exécutions des décisions

Collection and transfer arrangements and enforcement of decisions

25 Comment le paiement et le recouvrement des aliments envers (a) les enfants (b) l'époux ou d'autres membres de la famille sont-ils organisés dans votre pays ?

25 How is the payment and collection of (a) child support and (b) maintenance for a spouse or other family member organised in your country?

AUSTRALIA

Payment and collection of both child support and spousal maintenance is handled by ACSA where these liabilities are registered with us. Periodic liabilities, once registered with ACSA, become debts due to the Commonwealth of Australia and then payable to the other parent once payments have been collected.

In cases that commenced prior to ACSA becoming responsible for overseas matters Australian courts may be involved in the collection of maintenance and make payments overseas.

AUSTRIA

The maintenance creditor has to apply for the appropriate enforcement measures to the court (eg seizure of salary or other property of the debtor).

BULGARIE

Le paiement et le recouvrement des aliments envers les enfants, l'époux ou d'autres membres de la famille sont organisés par deux voies: volontairement par voie bancaire et à la base de la procédure exécutive, le débiteur effectue le paiement en transférant de l'argent au compte bancaire du huissier.

CANADA

Un programme administratif de perception des pensions alimentaires est en place dans chaque province et territoire pour le recouvrement des aliments. Ce programme est également responsable de la gestion et de la distribution des sommes perçues à titre d'aliments et ce, sans frais pour le créancier.

There is an administrative program in place in each province or territory that is responsible for the collection, accounting for and distribution of support payments at no cost to the recipient.

CHILE

The following distinction should be made:

1. Juvenile Courts have concluded an Agreement with BancoEstado de Chile, by virtue of which when maintenance is decreed, the Court issues an Official Letter to the claimant for him/her to open an at sight savings account (without cost) with BancoEstado. After this has been done, the claimant notifies the account number to the Court, and the latter, in turn, instructs the respondent to deposit the maintenance payments monthly in such account.
2. Likewise, the Court may order the employer to withhold the maintenance payment from the respondent's salary and to deliver the same directly to the claimant, legal representative or person in whose care the child is.
3. Another possibility is ordering that the maintenance payment be deposited in the Court's current account.
4. Furthermore, the parties may agree that the maintenance payment be deposited monthly in the claimant's current account.

CHINA - HONG KONG SPECIAL ADMINISTRATIVE REGION

Payment and collection of maintenance are arranged by individuals.

CROATIA

The Family Act contains special provisions on maintenance collection. The maintenance debtor gives his/her consent before the court, a notary public, a social welfare centre, his/her employer or other source of payment to have the determined maintenance paid directly to the maintenance beneficiary from his/her salary or other regular income, without a need for a special procedure. Under this law, the employer or other source of regular income are required to act at each payment in compliance with the maintenance decision delivered to them.

The Family Act contains special provisions on child support, whereby a social welfare centre can propose the method of support payment, and if the support debtor has not agreed to compulsory deductions, the social welfare centre will, within six months of the date of the respective court decision or the signed support agreement, check if support is being paid regularly and in whole and take measures required for the protection of the child's interests.

The way of child support collection is specified in the court decision (by the support beneficiary or his/her legal representative, payment to the account specified by the support beneficiary or his/her legal representative, etc.).

CYPRUS

The orders of maintenance are executed as penalties in accordance with the provisions of the Criminal Procedure Law or any other Law, which repeals or amends it. (S. 40 of L. 216/90 and s. 12 of L. 232/91).

CZECH REPUBLIC

The judgment collection and enforcement are governed in the Czech Republic by Civil Proceedings Order – Act #99/1963 Coll. in its current version and international treaties by which the Czech Republic is committed (The Hague Conventions, New York Convention) or relevant provisions of International Private and Proceedings Law Act #97/1963 Coll. The proceedings concerned are civil proceedings. The Act #99/1963 Coll. quoted hereabove

enables an enforcement of the judgment by deduction from liable person's wages or pension, claim order (and deduction of the amount due from liable person's bank account and its crediting to beneficiary), sale of liable person's property (in case of maintenance money debt). A punishment by prison term may be imposed for failure to meet alimony obligation (failure to pay the fixed maintenance without substantial reason, deliberate avoiding alimony obligation etc.). A sentence to a prison term does not mean that the liable person may not pay the alimony debt afterwards. If he/she is working during the prison term, the alimony is deducted from the wages for such work.

DENMARK

The maintenance debtor must pay directly to the maintenance creditor.

If child support is not paid, the standard allowance may be paid in advance to the maintenance creditor by the local public authority ("kommunen").

ESTONIA

The parties may agree upon details between themselves. As a rule, the support is paid by way of a bank transfer to the account of the person, in whose favour the support was ordered. It is also widely practiced that the support is withheld from the salary of the obligated person.

In case no agreement can be reached or in case the obligated person does not voluntarily perform the court judgement by virtue of which was support ordered, the person, in whose favour the support was ordered, may institute enforcement proceedings against the obligated person. In such case the claim for payment may be made against the debtor's property pursuant to general procedure. In case of support claims, it is not permitted to demand advance payment of the enforcement costs from the entitled person.

FINLAND

Finnish payment orders

(a) Payment and collection of child support (maintenance)

The legal representative for the child may

- (1) ask the Bailiff's Office to enforce the payment order or
- (2) ask the municipal social welfare board to pay the maintenance in advance according to the provisions in the Act on Maintenance Security (671/1998). When the board has decided to pay the maintenance in advance (according to the Decree 1094/2001 the sum of this benefit is 118,15 € per month), the board has the right to collect all the maintenance payments not yet paid by the parent liable to pay maintenance. The parent liable to pay maintenance may pay the maintenance instalments only to the board.

When the board receives the maintenance instalments, it will pay that part of the instalments which exceeds the monthly benefit (X € - 118,15 €) to the child and keep the rest as reimbursement of the paid benefits (118,15 €).

If the parent, who is liable to pay maintenance, does not pay the maintenance instalments at the time of expiration of each instalment, the board shall ask the Bailiff's Office to enforce the payment order by the means available to the Bailiff's Office.

(b) Payment and collection of maintenance for a spouse

The spouse entitled to maintenance may ask the Bailiff's Office to enforce the payment order.

Foreign payment orders

Maintenance payment orders for children and spouses issued in Denmark, Iceland, Norway and Sweden are treated in the same way as Finnish payment orders¹³. Payment orders issued in other states may be enforced in Finland when the Court of Appeal of Helsinki has declared that the foreign payment order may be enforced in Finland¹⁴.

FRANCE

En cas de défaillance du débiteur d'aliments, le créancier saisit le juge qui fixe le montant de la créance alimentaire et en détermine les modalités de paiement.

Si le débiteur ne s'acquitte pas de la pension alimentaire mise à sa charge pour un enfant mineur, les organismes débiteurs de prestations familiales versent au créancier une avance sur pension qui emporte mandat à leur profit. Ils sont subrogés dans les droits du créancier et engagent les procédures de recouvrement qui peuvent, à cette occasion, être également mises en œuvre, avec l'accord du créancier, pour les pensions alimentaires qui lui sont dues à titre personnel (pension alimentaire ou rente due à titre de prestation compensatoire).

GERMANY

Reference is made to the information provided in response to Question 1.

ISRAEL

Once a maintenance award is obtained, the maintenance creditor makes direct payments to the creditor.

JAPAN

Maintenance payments are to be made by the method on which the debtor and the creditor have agreed. As to the payment which has been determined either by conciliation in or adjudication of the Family Court, the Court has the power to recommend (Articles 15-5 and 25-2 of the Law for Determination of Family Affairs) or order to pay the amount (Articles 15-6 and 25-2 of the Law for Determination of Family Affairs cf1). In the latter case, the Family Court may impose civil monetary sanction on the non-obedient debtor in order to ensure the payment.

The system described above applies regardless of whether the creditor is child or other family members.

¹³ Provisions on enforcement of payment orders issued in Denmark, Iceland, Norway and Sweden are in the Convention between Finland, Denmark, Iceland, Norway and Sweden made in Oslo 23rd March 1962 on Recovery of Maintenance Payments.

¹⁴ Provisions on recognition and enforcement of payment orders issued in other foreign states are in the Act on Recognition and Enforcement of Foreign Orders on Maintenance Payments (370/1983) and the Decree on Recognition and Enforcement of Orders on Maintenance Payments in Certain Cases (832/1989). The Court of Appeal of Helsinki may, according to section 10 in the Act on Recognition and Enforcement of Foreign Orders on Maintenance Payments, upon a demand by the claimant decide that the claimant shall receive a cost-free legal proceeding, if he or she has received a cost-free legal proceeding in the process where the decision on maintenance was given.

LUXEMBOURG

Quel que soit le débiteur d'aliments, le paiement et le recouvrement s'effectuent :

- soit par l'exécution volontaire du débiteur d'aliments
- soit par l'exécution forcée poursuivie contre le débiteur d'aliments (avec la possibilité offerte au créancier d'aliments d'obtenir l'avance des aliments par le Fonds national de Solidarité, voir ci-dessus réponse au point 20.)

MALTA

The Code of Organisation and Civil Procedure has effective enforcement procedures to ensure that court decrees are complied with. (*vide* question 27). Payment may be effected by deducting the amount of money decided on by the court from the salary or wage if the respondent is employed. Payment is also effected by means of cheques sent on a regular basis.

THE NETHERLANDS

Child maintenance (up to the age of 18) is paid to the parent caring for the child (article 1:408 Civil Code). In the case of young adults (older than 18) payment is made direct to the claimant.

NEW ZEALAND

Payment of child support or spousal maintenance for each month is to be made by the 20th day in the following month. This money is then passed on to the custodian by the 7th of the next month.

For example, the payment by the paying parent for January 2003 must be made by the 20th of February 2003. This money is then passed on to the custodian by the 7th of March 2003.

NORWAY

Child- and spouse support are handled in the same way. If the debtor pays voluntarily and on time, he may pay the amount directly to the creditor or via the public body. In Norway, we have centralised the collection function to the Maintenance Enforcement Centre, (in Kirkenes in Northern Norway, near the Russian border) which is part of our Social Security Administration. The Centre receives the maintenance claims from the local maintenance officer for enforcement. The exception is when the debtor lives abroad, refer to question 26 below.

PANAMA

Alimony payment for the spouse or another member of the family are fixed by voluntary payments, direct discounts from the work's check through consignment of payment in a judicial court, post offices or by the competent administrative entity.

PHILIPPINES

It is not recognized.

POLAND

If the obligor shall not voluntarily pay the maintenance awarded in favour of children, spouse, or other family member, the obligee may request a court enforcement officer to commence the enforcement proceedings. The enforcement may be instituted *ex officio* upon the order of the first instance court, which had issued a decision establishing the amount of maintenance payments. There is also another procedure of recovering maintenance acceptable. The obligee may file the enforceable title in the institution, which employs the obligor, or in the authority, which meets retirement or disability pension payments, and claim the maintenance payments to be met from the benefits paid to the obligor. Such a claim shall be binding for the payer.

ROUMANIE

Conformément à l'article 409 du Code de procédure Civile on peut suivre les salaires et d'autres revenus procédure Civile on peut suivre les salaires et d'autres revenus périodiquement réalisés par le travail, les pensions accordées dans le cadre des assurances sociales, mais aussi d'autres sommes qui sont payées périodiquement au débiteur et son destinées à l'assurance des moyens d'existence de celui-ci.

Les revenus du travail ou toute autre somme qui sont payés au débiteur et sont destinées à l'assurance des moyens d'existence de celui-ci, au cas ou cela sont moindre que le quantum du salaire minimum net de l'économie, peut être suivi seulement sur la partie qui dépasse la moitié de ce quantum.

On ne peut suivre que les sommes dues avec titre d'obligation d'entretien et dédommagement pour la réparation des dommages causés par la mort, par la blessure corporelle pour l'incapacité de travail temporelle, la compensation accordée aux salariés en cas d'annulation du contrat individuel de travail sur quelque base légale que ce soit, mais aussi les sommes qui reviennent aux chômeurs, conformément à la loi.

Les allocations d'état et les indemnisations pour les enfants, les aides pour les soins de l'enfant malade, les aides de maternité, ceux accordés en cas de décès, les bourses d'études accordés par l'état, les diurnes, et toute autre indemnisation avec une destination spéciale, établit conformément à la loi, ne peuvent être suivies pour aucune dette.

La preuve des moyens matériels se fait par tout moyen de preuve, comme étant un état des faits.

L'exécution. L'arrêt est constitué de la rétention de la somme due par le débiteur par celui qui à son tour lui doit des sommes d'argent. Se concrétisant, l'unité par laquelle est engagé le parent obligé à la pension d'entretien est obligée à retenir des droits salariales qui lui sont dus la somme qui représente le quantum de l'entretien, pour pouvoir être donnée à l'autre parent.

En vue de l'exécution, la loi oblige ceux qui doivent des sommes d'argent au débiteur suivi, qu'à la demande de l'instance d'exécution ou de l'exécuteur judiciaire de donner les informations nécessaires en vue de l'exécution, sous sanction d'amendes et mêmes de dédommagements si par le refus de communication on a apporté des préjudices (article 373 paragraphe 2 et 3 du Code de procédure Civile).

SLOVAKIA

There is no specific system of payment and collection of maintenance (whether for children nor for other beneficiaries). If the maintenance is paid voluntarily, the obligor either direct his employer to withhold the sums and send them to the beneficiary or has a permanent order established with his bank or sends the money by postal money order. If maintenance is not paid voluntarily, the beneficiary has to apply for enforcement with the court or with the

sheriff's officer (we have a parallel system of enforcement in Slovakia; sheriff's officers are more efficient, but also much more expensive).

SUISSE

Si le débiteur d'aliments ne remplit pas ses obligations alimentaires fixées par une décision, le représentant légal de l'enfant respectivement l'époux peut agir en privé (éventuellement en mandant un avocat) ou peut bénéficier des aides mentionnées sous chiffre 20 ci-dessus. Que ce soit la voie privée ou la voie étatique utilisée, les procédures de recouvrement décrites sous chiffres 27 et 28 ci-après sont les mêmes.

SWEDEN

Maintenance allowances shall be paid to the dependent. If the dependent is a child who has not attained the age of eighteen the allowance shall be paid to the custodial parent living together with the child. If the local Social Insurance Office pays maintenance support for a child to the custodial parent, the parent liable for maintenance may have to repay the State.

If a parent (a) or a spouse (b) neglects to pay maintenance or if a parent (a) neglects to pay back maintenance support, attachment may take place.

UNITED KINGDOM - ENGLAND AND WALES

Child Support Agency

- (a) The Child Support Agency will undertake on behalf of the parent any collection/enforcement for payment of maintenance; the individual cannot take private action on her own behalf. When a maintenance assessment has been made for child support the parents may choose to make payments directly between themselves or have the Agency collect the payments and pass them over. Where direct payment breaks down or the parent with care is receiving a welfare benefit (Income Support or income-based Jobseeker's Allowance) the non-resident parent will usually be required to make payments via the Agency.

The courts

- (b) The process in the courts is different from the Child Support Agency. With regard to the courts, payment for both (a) and (b) is usually made via the court for onward transmission and enforcement on default (with the consent of the receiving party). Payments may be made direct between the parties and the order registered with the court, but enforcement is not automatic and the recipient must invoke enforcement and prove non-payment in the latter circumstances. Most orders made at magistrates' court, or foreign orders registered in this country are registered for payment at the debtor's local magistrates' court.

UNITED KINGDOM - SCOTLAND

Firstly, under the 1985 Act, the payment and collection of child support and maintenance for a spouse when the payer pays on a voluntary basis is usually organised through bank transfers and cheque payments.

Secondly, under the 1991 Act, rather than leave collection in the hands of parents with care, part of the remit of the Child Support Agency has been to provide a cheap collection and enforcement service. The 1991 Act introduce a flat fee for those who opt to use their collection services which also applies where parents with care have no option as recipients of State benefits. This collection fee is payable by the absent parent.

UNITED STATES OF AMERICA

- (a) Collection and disbursement for child support cases handled by a state child support enforcement agency go through a single point of contact, the state disbursement unit (SDU). All collections, including wage withholdings and tax intercepts are sent to the SDU, which forwards the payments (after any appropriate deductions for recovery of public benefit payments) to the obligee. Collections and payments may be made by check or electronic transfer; cash is very rarely used.
- (b) Payment and collection of spousal support in cases where child support is also being collected are made through the same SDU system.

Payment in child and spousal support cases not handled by the state child support enforcement agency, but which involve income withholding, go through the SDU system. Non-income withholding cases may go directly between parties.

26 Quels accords particuliers, le cas échéant, sont appliqués lorsque les paiements sont effectués ou recouvrés depuis l'étranger ?

26 What, if any, particular arrangements apply where payments are to be made or collected from abroad?

AUSTRALIA

When a liability is registered with ACSA or an Australian liability transmitted, ACSA is responsible for the transfer and receipt of all payments. e.g. overseas central authority forwards payment to ACSA who then pays the Australian creditor. However, collection of child support is not guaranteed and only the amount collected from the debtor is transmitted to the creditor.

AUSTRIA

The best way is to make an application under the UN Convention 1956 on the recovery of maintenance abroad.

BULGARIE

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CANADA

Il n'existe pas d'entente particulière pour convertir et transmettre les fonds entre les juridictions ayant des ententes de réciprocité. Les provinces appliquent les mêmes procédures, que les paiements soient effectués depuis l'étranger ou au Canada. Les personnes responsables des programmes de perception des pensions alimentaires peuvent prendre des dispositions quant à la conversion monétaire des paiements.

There are no particular arrangements to convert and transmit funds between reciprocating jurisdiction. Provinces apply the same procedures to payments received from abroad to those received from within Canada. Arrangements for currency conversion of payments may be carried out by maintenance enforcement programs.

CHILE

The special arrangements are: payments are to be remitted through the Remittances Department of the Ministry of Foreign Affairs to Chilean Consulates accredited in the country where the payment is sent, or payment is to be remitted by the respondent directly to the claimant, giving the Court evidence of the remittances made.

CHINA - HONG KONG SPECIAL ADMINISTRATIVE REGION

Maintenance payments to be made or collected from abroad are regulated by section 17 of MOREO.

CROATIA

There are no special arrangements.

CYPRUS

It depends on whether there is a Convention between Cyprus and the foreign country. See for example the United Nations Convention on the Recovery Abroad of Maintenance ratified in Cyprus by L. 50/78.

CZECH REPUBLIC

No special modes of alimony payments to or from abroad are being used.

DENMARK

No particular arrangements apply.

ESTONIA

In order to enforce the judgement or of other decision of a foreign court pertaining to the recovery of a monetary debt, the debtor shall pay the money to the official account of the bailiff and it remains on this account until the claimant gets a permission to transfer it into a foreign country. Upon the wish of the claimant, the money is transferred to the deposit account or bank account, opened in his/her name in the Republic of Estonia. The money shall be transferred to the claimant by a public banking authority.

FINLAND

Finland is a party to the Convention concluded in New York on 20 June 1956 on the recovery abroad of maintenance. The Finnish Ministry for Foreign Affairs carries out the responsibilities of a central authority as prescribed in the convention. According to the decree 831/1989 the Finnish Ministry for Foreign Affairs acts as a central authority also in relation to other states than those states that are parties to the New York convention.

As the Receiving Agency the Ministry for Foreign Affairs verifies the address of the maintenance debtor, contacts the locally competent municipal social welfare board and requests the board to contact the maintenance debtor and to examine his or her financial situation. The municipal social welfare board also aims at getting the maintenance debtor to voluntarily pay the maintenance. In case where the maintenance debtor is solvent but refuses to pay voluntarily or is not willing to give account of his or her situation for the municipal social welfare board, the Ministry for Foreign Affairs will send the foreign decision to the Court of Appeal of Helsinki, which is the competent authority to decide whether a foreign maintenance order may be enforced in Finland. When the Court of Appeal of Helsinki has decided that the foreign maintenance order may be enforced in Finland, it will send the documents to the Ministry for Foreign Affairs, which will send the enforceable decision to the Bailiff's Office. The Bailiff's Office is responsible for the recovery of the maintenance. The Bailiff's Office will send the recovered maintenance directly to the foreign bank account of the maintenance creditor.

As the Sending Agency the Ministry for Foreign Affairs may provide assistance to the social welfare board in the matter. In almost every case where maintenance is recovered abroad, the mother of the child has been given maintenance support (monthly maintenance benefits) by the social welfare board, in which case the application is made by the social welfare board together with the mother. The Ministry for Foreign Affairs sends the application concerning the recognition and enforcement of the maintenance decision (or an agreement) to the central authority of the state in which the maintenance debtor lives. Maintenance payments received from abroad are requested to be paid into the indicated Finnish bank account. Acceptance of cheques is possible, but bank transfer is preferred.

The Ministry for Foreign Affairs provides its assistance free of charge.

FRANCE

En France, les frais occasionnés par le paiement de la pension sont à la charge du débiteur. Il n'existe aucun accord sur ce point.

GERMANY

The recognition and execution of foreign maintenance titles in Germany, as well as that of domestic maintenance titles abroad and their execution, is governed by bilateral treaties and in many international agreements. The German-Swiss Treaty of 2.11.1929 can be mentioned as an example of a bilateral agreement. A Convention that can be cited is the Hague Convention dated 2 October 1973 on the Recognition and Enforcement of Decisions relating to Maintenance Obligations and Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

In order to implement international treaties and regulations of the European Community, Germany has in each case issued special implementation ordinances or statutes, such as, for the Hague Convention dated 2 October 1973 and for Council Regulation (EC) No 44/2001 of 22 December 2000, the Act Implementing International Treaties and Implementing Regulations of

the European Community in the Recognition and Enforcement of Judgments in Civil and Commercial Matters (AVAG).

ISRAEL

There are no particular arrangements for payments to be made or collected from abroad.

JAPAN

No special arrangements are available where the payment is to be made or collected from abroad.

LUXEMBOURG

Pas d'accords particuliers.

MALTA

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THE NETHERLANDS

In principle the rule is the same, but in practice the central authority is generally asked to collect the payments. The costs of collection are recovered from the maintenance debtor.

NEW ZEALAND

It is the responsibility of the paying parent to remit payments to NZ by the due date of the 20th. There are, however, provisions in the Act to allow a variation to the due dates to facilitate payments other than by monthly payments. The method of payment (cash, cheque, bank cheque or bank draft) can be determined by the paying parent as best suits their individual needs. If payment is remitted from overseas there can be an annual write off of up to \$20 for any shortfall arising from currency fluctuations.

NORWAY

Even this function is centralised, but is in these cases located to the National Office for Social Insurance Abroad. However, payments from debtors in Norway are collected by the National Enforcement Centre and passed on to the recipients abroad by the National Office of Insurance Abroad.

PANAMA

Money can be sent abroad through a bank transfer or by check sent by the post.

PHILIPPINES

Usually through bank remittance.

POLAND

The applicable procedure involves filing the request under the provisions of international agreements. Courts shall provide necessary instructions and information as to the ways of recovering maintenance payments from abroad.

ROUMANIE

Voir question 25

SLOVAKIA

There are no specific arrangements, with the sole exception of the existence of the Center which can provide free assistance.

SUISSE

Sont à citer en particulier la Convention de Lugano précitée, qui prévoit une procédure d'exequatur rapide (cf. art. 31 ss. de ladite Convention), la Convention de la Haye de 1973 sur la reconnaissance et l'exécution de décisions en matière alimentaire et la Convention de New York également précitée. Si les deux premières conventions nommées sont applicables indépendamment de l'implication d'une autorité étatique, une requête déposée dans le cadre de la Convention de New York n'est généralement traitée que par un organe étatique.

SWEDEN

In addition to what is required by the New York Convention, there are no special practical arrangements concerning payments. However, the SIO has, for example in Finland, opened a special bank account to make money transfers easier and cheaper.

UNITED KINGDOM - ENGLAND AND WALES

Payments from abroad are made directly to the payee (mainly county court orders) or to the collecting magistrates' court, where it passes through their accounts, before payment is made to the payee. Payments received from the USA are, in a small number of cases sent directly to the payee. In the majority of cases payments are sent to the Reciprocal Enforcement of Maintenance Orders Section (REMO) of the Lord Chancellor's Department, as a central authority to bank and convert the currency and subsequently pay the sums to the payee.

UNITED KINGDOM - SCOTLAND

The same arrangements as under the 1985 Act apply where payments are to be made or collected from abroad.

UNITED STATES OF AMERICA

All child support payments through a state child support enforcement agency, including payments from abroad, are made to and dispersed by a "state disbursement unit," created by each state child support enforcement agency pursuant to federal legislation.

- 27 Quelle sont les procédures en vigueur pour faire exécuter des décisions relatives à des aliments envers (a) les enfants (b) l'époux ou d'autres membres de la famille ?**
- 27 What are the procedures for enforcing (a) child support decisions and (b) maintenance decisions in respect of a spouse or other family member?**

AUSTRALIA

- Register the liability within 90 days of receipt
- Determine periodic amounts for child and/or spousal maintenance (Collectable by the ACSA)
- Determine non periodic amounts (Recoverable by applicant through Australian Court)
- Calculate total arrears to the date of registration and the ongoing amount converted to Australian dollars on the date of registration
- Determine disbursement options – whether paid to overseas authority or direct to the creditor
- Issue letters to debtor and creditor and if appropriate the transmitting authority
- Commence collection action with debtor
- Disburse monies, when received from the debtor, to creditor or transmitting authority monthly

The procedures are the same for child support or spousal maintenance.

In some limited circumstances the court and AG's may be responsible for enforcement of non-periodic maintenance decisions such as overseas maintenance entry liabilities. Once an order is obtained for spousal or child maintenance in an Australian court it can then be registered with the ACSA for enforcement.

AUSTRIA

See answer to question no.25.

BULGARIE

Il accepte la décision étrangère a la base d'une procédure de reconnaissance et exécution d'une décision étrangère concernant les obligations alimentaires s'il existe une convention d'aide judiciaire ou a la base de réciprocité déterminée par le ministre de la justice /art.303-307 du Code de procédure civile/. L'exécution de cette décision judiciaire s'établit volontairement ou par la voie d'exécution obligatoire.

CANADA

Lorsqu'une décision est reçue d'une juridiction avec laquelle il existe une entente de réciprocité, les procédures sont les suivantes :

- Localisation du débiteur de l'enregistrement ;
- Enregistrement ou dépôt de l'ordonnance certifiée avec les documents pertinents ;
- Préavis au débiteur;
- Le débiteur dispose d'un délai et de conditions limités pour demander l'annulation de l'enregistrement (provinces et territoires de common law) ou pour s'opposer à l'exécution de l'ordonnance (province du Québec).
- Si l'enregistrement est annulé, on donnera l'opportunité au demandeur étranger de fournir des documents additionnels afin de procéder à l'audition d'une nouvelle demande

de pension alimentaire dans la juridiction canadienne (provinces et territoires de common law).

- Si l'enregistrement n'est pas annulé ou que la demande d'opposition est rejetée, on procède alors à l'exécution.

Dans les provinces et territoires de common law :

Chaque province ou territoire a son propre système d'exécution qui permet le recouvrement des sommes dues au créancier alimentaire. Les sommes recouvrées sont versées au créancier alimentaire, peu importe où il réside. Le créancier alimentaire n'a pas besoin d'être représenté par avocat au Canada puisque tout le processus d'exécution est pris en charge par le gouvernement.

Dans la province de droit civil du Québec, en plus de ce qui est précisé plus haut :

Il est possible de demander la reconnaissance et l'exécution d'une décision étrangère, en s'adressant directement et à ses frais au tribunal compétent (Articles 785 et 786 du Code de procédure civile).

Where the decision is received from a reciprocating jurisdiction, the procedures for enforcing child support decisions and maintenance decisions in respect of a spouse or other family member are the following:

- Location of the debtor;
- Registration of the certified order with relevant documents;
- Notice of registration to the debtor;
- The debtor has limited time to apply to set aside registration on limited grounds (Common Law provinces) or to oppose the enforcement of the decision (Quebec);
- If registration is set aside, the opportunity is given to the foreign claimant to provide additional documentation to allow for a hearing to establish a new support order in the Canadian jurisdiction (Common Law provinces);
- If registration is not set aside or the opposition is unsuccessful, the order is enforced.

In Common Law provinces and territories:

Each province and territory has a separate enforcement system that will enforce and collect money owing to a support recipient. The money collected will be paid to the support recipient whether he or she lives inside or outside of the enforcing province or territory. The support recipient will not require a lawyer in Canada as all enforcement is undertaken by the governments.

In the Civil Law province of Quebec, in addition to what is stated above:

The claimant may, at his/her own costs, ask for recognition and enforcement of a foreign decision before the competent court (Articles 785 and 786 of the Civil Code of Procedure).

CHILE

Requesting the Court the incidental execution of the judgment.

CHINA - HONG KONG SPECIAL ADMINISTRATIVE REGION

Maintenance orders are enforced through judicial process and different enforcement methods follow different procedures.

CROATIA

In either case the law provides for court collection procedure. In case of a child support decision or agreement, the Family Act provides for a special procedure as described under 25 above.

CYPRUS

The procedure is laid down by L. 121(I)/00. Filing of summons supported by affidavit, save in the case where the defendant did not appear in the foreign court procedure, in which case the procedure before Cyprus Court commences by an ex-parte application.

CZECH REPUBLIC

See question 25 above.

DENMARK

Enforcement of maintenance decisions is subject to the rules found in Act of the Enforcement of Alimony, No. 150 of April 24, 1963, most recently amended by Act No. 461 of June 7, 2001.

If maintenance is not paid on time, the maintenance creditor can be assisted by the local public authorities ("kommunerne") in recovering the amount due.

ESTONIA

Compulsory execution of support claims takes place the same way as with all other monetary claims. The order of compulsory execution is the same with the decisions, made in favour of children as well as with the decisions, made in favour of the other persons. Under the payment order, the bailiff may:

- (1) make a claim for payment against the property of the debtor by seizure or sale of the property;
- (2) make a claim for payment against the deposit of the debtor;
- (3) make a claim for payment against the money and property of the debtor, in the hands of the third parties;
- (4) confiscate from the debtor the object, mentioned in the court judgement and to hand them over to the claimant;
- (5) take other legal measures provided for in the enforcement document.

FINLAND

The Bailiff's Office recovers the maintenance in accordance with the provisions in the Enforcement Act (*ulosottolaki*).

FRANCE

Questions 27 et 28 - Si le débiteur ne s'acquitte pas spontanément de sa dette, plusieurs voies d'exécution forcée sont ouvertes au créancier qui dispose d'un titre exécutoire :

- Le créancier pourra exercer les voies d'exécution de droit commun : saisie immobilière, saisie-vente de ses meubles corporels, saisie de droits incorporels, saisie-attribution des créances de son débiteur portant sur des sommes d'argent, saisie des rémunérations dues par l'employeur de celui-ci.
- La loi du 2 janvier 1973 relative au paiement direct de la pension alimentaire a institué au profit du créancier d'aliments une procédure simplifiée qui permet, sur intervention d'un huissier, d'obtenir le paiement de la pension directement par les tiers débiteurs de sommes liquides et exigibles envers son débiteur.
- La procédure est recevable dès qu'une échéance de la pension n'a pas été payée. La mise en œuvre de cette procédure implique l'obligation pour le tiers de payer les échéances à venir mais s'applique également aux termes échus pendant les six derniers mois avant la notification de la demande.
- Les organismes débiteurs de prestations familiales se sont vus également reconnaître un rôle particulier dans le recouvrement des pensions alimentaires, dès lors que le créancier n'a pu obtenir le recouvrement par une autre voie d'exécution.
- Enfin, la loi du 11 juillet 1975 relative au recouvrement public des pensions alimentaires permet au créancier, qui n'a pu obtenir satisfaction par une voie d'exécution privée, de faire recouvrer sa pension alimentaire par le Trésor Public, grâce aux procédés de recouvrement particulièrement efficaces dont celui-ci dispose pour forcer le paiement des impôts.

La mise en œuvre de cette procédure permet au créancier d'obtenir outre le versement des échéances à venir, le paiement des termes échus à compter du sixième mois précédant la date de la demande.

GERMANY

All possibilities are open to the maintenance creditor in respect of maintenance claims which otherwise are also available in the case of coercive execution in respect of monetary claims. Coercive execution hence on principle is effected in respect of the whole assets of the debtor. Assets include all rights and things which have a monetary value, even if they are only indirectly suited to satisfying the creditor.

It is irrelevant whether it is a matter of moveables or immoveables, receivables or other rights. Conditional or elapsed receivables can also be attached.

With maintenance claims the particularity exists in the interest of the maintenance creditor that the restrictions on attachment otherwise applicable for the income with attachment for the current receivables and for the arrears from the last year before the application for attachment (section 850 d subsection 1 of the Code of Civil Procedure) do not apply. The creditor must however be left sufficient means to meet his/her own necessary maintenance and to meet his/her other priority or non-priority maintenance obligations.

ISRAEL

The maintenance creditor has recourse to the Execution Office who can execute the maintenance judgment through various methods such as attachment of property of the debtor. If the creditor is unable to obtain any maintenance through the Execution Office, the creditor can receive the payments from the National Insurance Institute (NII) (Israel's social security system), in terms of the Maintenance (Assurance of Payment) Law, 1972 and the NII can then claim it back from the debtor. Only a person who is a resident of Israel and was also a resident at the time the maintenance award was made, or 24 months out of the 48 months

prior to the time the award was made, can apply to the NII for monthly maintenance payments.

JAPAN

The enforcement proceedings of the maintenance decisions do not differ from the enforcement proceedings based on a monetary claim in general. For example, the creditor can seize a monetary claim by court order for attachment of property, and can exact this directly. Moreover, the creditor can seize real estate by court order for the initiation of auction, and can receive a liquidation from the price which the court realized.

LUXEMBOURG

Le créancier d'aliments doit exercer les voies d'exécution de droit privé (sous réserve de la possibilité d'obtenir l'avance des aliments par le Fonds national de Solidarité, voir réponse au point 20.).

MALTA

The general rule laid down in Section 256(1) (Code of Organisation and Civil Procedure) is that a judgement which does not contain any suspensive condition and which condemns a debtor to pay a liquidated sum, or to deliver up or surrender a specific thing, or to perform or fulfil any specific act or obligation whatsoever, may be enforced after two days from the day of its delivery. However Section 255 (Code of Organisation and Civil Procedure) provides that judgements ordering the supply of maintenance may be enforced after the lapse of twenty-four hours from their delivery.

Section 266 (Code of Organisation and Civil Procedure) provides that a judgement which does not constitute a *res judicata* shall not be enforceable unless, on the demand of the interested party, such judgement has been declared by the court to be provisionally enforceable. Such provisional enforcement has to be demanded by means of an application. Notwithstanding the rules purported in Section 266, any judgement ordering the supply of maintenance is always provisionally enforceable, even if the decision delivered by the court of first instance is being appealed by one of the parties.

The law does not distinguish between the enforcement of a maintenance decision in respect of a spouse and that in respect of a child. Thus the provisions relating to the enforcement of judgements are applicable to both.

For the purposes of Maltese law a judgement is an executive title. Executive titles can be enforced through the following:

- (a) Warrant of seizure
The purpose of this warrant is to seize certain movable property belonging to the debtor which is then brought under the jurisdiction of the court and eventually sold through a judicial sale by auction.
- (b) Judicial sale by auction of movable or immovable property or of rights annexed to immovable property
The Judicial sale by auction of movables must be preceded by a warrant of seizure as in para (a) above. The sale of immovable property on the other hand is preceded by an application, where the creditor has to show he has an executive title and request the sale of an immovable indicated in the same application.

- (c) Executive garnishee order
The effect of this order is to seize money in the hands of third parties involved. A garnishee order particular to maintenance is the garnishee of wages, salaries or allowances of the persons liable to pay maintenance.
- (d) warrant of ejection or eviction from immovable property
- (e) warrant *in factum*

Any of the warrants or orders mentioned above is issued by the court on the demand of the party suing out execution. This demand must be made by application to the competent court.

THE NETHERLANDS

Collection by the Dutch central authority or a bailiff.

NEW ZEALAND

See 28.

NORWAY

In Norway the system is easy and efficient. When the Maintenance Enforcement Centre receives an enforceable decision, it will ask the debtor to pay voluntarily. If he/ she does not comply or pays too late, the Centre collects the payments in accordance with the methods mentioned below.

PANAMA

Once the allowance is fixed, the person that must grant it is compelled to observe such payment, otherwise he/she is subject to a court order of imprisonment and to be demanded for its collection through the compulsory procedure.

PHILIPPINES

The judgement debtor may be held in contempt of court and he can be imprisoned until he agrees to comply with the order.

POLAND

The maintenance obligee may request the court enforcement officer to commence the execution of the maintenance payments due. The request should have the enforceable title appended. The procedure of enforcement of maintenance payments in child support is analogous to the one applied in cases of maintenance payments to other obligees (spouse of other relatives). The exemption from the costs shall also cover the enforcement proceedings.

ROUMANIE

Voir question 25.

SLOVAKIA

The procedures do not differ. The applicant applies either to the court which subsequently orders enforcement in the form requested by the applicant (most often wage withholding) or to the sheriff's officer. The officer then requests the court to issue an authority for execution. The methods for enforcement available to the court and to the sheriff's officer are the same.

SUISSE

La procédure principale est fédérale et se fonde sur la Loi fédérale sur la poursuite pour dettes et la faillite (LP). Elle s'applique pour toute exécution forcée ayant pour objet une somme d'argent ou des sûretés à fournir.

Tant pour les décisions relatives à des aliments envers les enfants qu'envers les époux, le Code civil prévoit deux procédures particulières, à savoir d'une part l'avis direct du juge aux débiteurs (très souvent, il s'agit de l'employeur), d'opérer tout ou partie de leurs paiements entre les mains du représentant légal de l'enfant (art. 291 CC) respectivement de l'époux créancier (art. 132 al. 1 CC); d'autre part, le juge peut astreindre le débiteur à fournir des sûretés si ce dernier se prépare à fuir ou à dilapider sa fortune (art. 292 CC pour l'obligation envers l'enfant respectivement art. 132 al. 2 CC pour celui envers l'époux). Ces deux procédures ne sont pas prévues pour les obligations envers les autres membres de la famille.

Il existe également une procédure pénale qui peut faire pression sur le débiteur d'aliments afin de le forcer de payer, les buts civils et pénaux n'étant cependant pas similaires. L'art. 217 du Code pénal suisse (CP) prévoit en effet une condamnation à une peine d'emprisonnement si le débiteur d'aliments viole ses obligations d'entretien.

SWEDEN

Cases concerning enforcement (a and b) are dealt with by an officer at the Enforcement Service. An application is made orally or in writing. The enforcement title shall be submitted with the application. Undertakings in writing, witnessed by two persons, relating to maintenance allowance in accordance with the Marriage Code or the Parental Code are enforced as judgments that have entered into final force. A case concerning enforcement is processed for one year from the date of the application, but can be prolonged for an unlimited period.

UNITED KINGDOM - ENGLAND AND WALES

Child Support Agency

The UK Child Support Agency may require the non-resident parent's employer to deduct child support maintenance direct from the employee's wages. For other forms of enforcement the Agency has to make an application to the court.

The courts

In the courts in England and Wales enforcement is incremental – by reminder, by summons and finally by warrant to secure the attendance of the payer at court. An inquiry into his/her means and capacity to pay is then conducted.

UNITED KINGDOM - SCOTLAND

If the payer fails to pay on a voluntary basis, under the 1985 Act the payee may use diligence procedures for enforcement of a maintenance order. Most of these diligences procedures (term used in Scotland to describe enforcement of a civil court order) are regulated by the Debtors (Scotland) Act 1987.

Section 19 of the Family Law (Scotland) Act 1985 (which freezes the power to enter into transactions over land or buildings) provides that in an action for aliment the court has power, on cause shown, to grant warrant for inhibition or warrant for arrestment on the dependence of the action and, if it thinks fit, to limit the inhibition to any particular property or to funds not exceeding a specified value. Thus, funds belonging to the payer which are held by a third party, e.g. a bank or a building society, may be attached by an arrestment and action of furthcoming. Furthermore, the payer's household goods may be attached by poinding and sale but some goods are exempt (e.g. clothing, tools of trade, basic domestic furniture, children's toys, etc).

Diligence is carried out by independent fee paid officers of the court called Messengers-at-Arms and Sheriff Officers. These officers must be paid for their work whether or not enforcement action is successful. If the claimant is eligible for legal aid then these fees will be paid by the Scottish Legal Aid Board. However, the claimant will be liable for these fees if they are not receiving legal aid.

So far as current aliment under a court decree is concerned enforcement is by means of a current maintenance arrestment under sections 51-56 of the Debtors (Scotland) Act 1987. This requires the employer of the debtor to deduct a sum, determined in accordance with a statutory formula, from the debtor's earnings on each pay-day and to pay the sum so deducted to the creditor. If the payer changes jobs then a fresh arrestment would need to be served on the new employer. This can only be used if the debtor is in default to the extent of three instalments and only if at least four weeks have elapsed since the granting of the decree for aliment was intimated to the debtor. It is also possible for the arrestment of bank accounts, inhibitions and poinding.

Where the payer is unemployed and in receipt of social security or other welfare benefits, it is not possible to recover maintenance due from any part of those benefits.

As a last resort, where the payer refuses to pay maintenance due under a court order, the payee may raise an action for civil imprisonment of the payer. This would only apply if the payer has the ability to pay but continually refuses to do so. It is not an enforcement procedure and is not automatically granted, the sheriff has complete discretion.

The Child Support Agency (CSA), created by the 1991 Act, has a range of different alternatives to enforce decisions about the maintenance assessment. These include the possibility of a deduction from earnings order. In this case, the Secretary of State has a discretionary power to make such an order. This order may be made to secure the payment of arrears of child support maintenance, as well as future amounts, or a combination of both. A deduction from earnings order must be directed at the employer of the liable person and has effect from the date specified in the order.

Where a liable person fails to make one or more payments and it appears to the CSA that it is inappropriate to make a deduction from earnings order against him or, although such an order has been made, it has provided ineffective as a means of securing that payments are made in accordance with the maintenance assessment in question then the CSA may apply to the sheriff for a liability order against the liable person. This order, in turn, may be rendered operative by poinding and sale and an arrestment and action of furthcoming or sale.

Finally, where a liability order has been made the CSA is regarded as the creditor for the purposes of Section 4 of the Civil Imprisonment (Scotland) Act 1882, and this includes imprisonment for failure to obey decree for an alimentary debt.

To sum up, the methods available in Scotland for the enforcement of child support decisions and maintenance decisions in respect of a spouse are as follows:

- Wage withholding
- Garnishment from bank accounts or other sources
- Forced sale of property
- Committal to prison

UNITED STATES OF AMERICA

- (a) A variety of mechanisms are available to each state child support enforcement agency for enforcing the order. Specific enforcement methods are listed in the response to question #28.
- (b) For child support orders including provision for spousal support, the same enforcement tools may be used.

Some methods for enforcement are not available in certain states for enforcement of support orders that pertain only to spouses or other family members.

28 Veuillez dresser une liste des méthodes disponibles pour l'exécution de décisions relatives à des aliments envers (a) les enfants (b) l'époux ou d'autres membres de la famille ? Veuillez indiquer les méthodes d'exécution / de prélèvement qui, parmi celles listées ci-dessous et en plus de celles-ci, sont disponibles dans votre pays :

- saisie sur salaire ;
- prélèvement sur remboursement d'impôt ;
- saisie arrêt de comptes bancaires ou d'autres sources ;
- déduction sur versement de sécurité sociale ;
- vente publique ;
- partage des revenus de pension ; et
- incarcération.

28 Please list the methods available for the enforcement of (a) child support decisions and (b) maintenance decisions in respect of a spouse or other family member. In particular, please indicate whether any of the following enforcement / collection methods are available in your jurisdiction:

- wage withholding;
- tax refund intercepts;
- garnishment from bank accounts or other sources;
- deductions from social security payments;
- forced sale of property;
- division of pension benefits; and
- committal to prison.

AUSTRALIA

Enforcement powers are the same for child and spousal decisions

- wage withholding; YES
- tax refund intercepts; YES
- garnishment from bank accounts or other sources; YES
- deductions from social security payments; YES - limited to AUD\$5.00 per week.
- forced sale of property; YES
- division of pension benefits; in some circumstances when superannuation is being paid to a debtor ACSA can garnishee the payments and
- committal to prison; YES - However this power would only be used as a very last resort.

AUSTRIA

All maintenance decisions are dealt with in the same way. The means available are: wage withholding, seizure of movable and immovable property with forced sale as a consequence, deduction of unemployment payments and social benefits if they are higher than the minimum amount that has to be left to the debtor. Committal to prison or division of pensions is not possible.

BULGARIE

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CANADA

Les méthodes d'exécution sont disponibles pour toutes les ordonnances alimentaires devenues exécutoires, et ce, sans frais pour le créancier résidant dans une juridiction avec laquelle il existe une entente de réciprocité. En plus de la liste ci-avant des méthodes d'exécution et de recouvrement, les méthodes suivantes sont également disponibles dans toutes ou certaines des juridictions:

- Permis fédéral refusé ou confisqué (passeport, permis de marine ou d'aviation) ;
- Permis de conduire refusé ou confisqué ;
- Saisie de prestations ou de crédits de pensions;
- Inscription de sûretés sur des propriétés ;
- Notification au bureau de crédit ;
- Déduction sur certains types de versements de sécurité sociale ;
- Saisie des sommes gagnées à la loterie ;
- Des amendes imposées par le tribunal ;
- Requérir de l'information du gouvernement et d'autres sources ;
- Refus de la possibilité de parrainer un nouvel immigrant.

Enforcement methods are available for all support obligations at no cost to the recipient residing in a reciprocating jurisdiction. In addition to the above list of enforcement / collection methods, the following methods are available in all or some jurisdictions:

- Federal License denial (Passport, Aviation and Marine licences);
- Driver license denial and suspension;
- Attachment of pension benefits or pension credits;
- Registration of lien against property;
- Credit Bureau reporting;
- Deductions from specified social security payments;
- Attachment of lottery winnings;

- Court imposed fines;
- Demanding information from government and other sources;
- Denial of ability to sponsor a new immigrant.

CHILE

Arrest and ne exeat. Wage withholding, garnishment from bank accounts or real estate, withholding of pensions received by the respondent on any account, such as retirement pensions, etc.

CHINA - HONG KONG SPECIAL ADMINISTRATIVE REGION

Judgment summons ("JS") is the most commonly used method of enforcing a maintenance order. The general provisions on the issue of JS are set out in rules 87 and 88 of the Matrimonial Causes Rules ("MCR", Chapter 179).

Other methods of enforcement include –

- Attachment of income - where the court makes an attachment of income order, it will order the payer's income source(s) to periodically deduct a certain amount from his/her pay and forward it to the maintenance payee;
- Warrant of execution - this enables goods and chattels of the debtor to be seized and sold;
- Charging order - an order can be made to charge the debtor's land or his/her interest in land with the outstanding sum; and
- Garnishee order - this enables the applicant to obtain payment of the sum owing to a payee directly from a third party who is indebted to her/his spouse (including money standing to the spouse's credit in his/her bank account).

The Public Officers' (Assignment of Emoluments) Ordinance (Chapter 363) enables public officers to assign part of their emoluments with the written permission of the Secretary for the Civil Service for purposes under section 2 of the Ordinance.

Assignment or transfer of provident fund maintained for the benefit of teachers employed by aided or subsidized schools under the Subsidized Schools Provident Fund Rules (Chapter 279D) and the Grant Schools Provident Fund Rules (Chapter 279C) is prohibited. There are no provisions in these Rules that permit the assignment/transfer of provident fund in settlement of claims in ancillary relief proceedings.

Tax refund intercepts, deductions from social security payments, and committal to prison as enforcement are not available in Hong Kong.

CROATIA

As already mentioned, child support decisions can be enforced on salary, pension benefits or other regular income (withholding up to 50% of salary or pension benefits), garnishment from bank accounts or other sources, as well as forced sale of property.

In case of non-compliance, the Criminal Law provides for special offences: "violation of family obligations" and "violation of support obligations". Failure to honour child support duties is punishable by a fine or imprisonment up to three years. Under a suspended sentence the court may rule payment of outstanding support installments and regular future fulfillment of support obligations.

CYPRUS

Wage withholding, garnishment from bank accounts or other sources, forced sale of property and committal to prison.

CZECH REPUBLIC

See question 25 above.

DENMARK

All the above-mentioned enforcement/collection methods are - to some extent - available in Denmark. Committal to prison is not used.

ESTONIA

See the previous item.

- **wage withholding** – YES (widely spread in practice);
 - **tax refund intercepts** – possible, as it concerns claims against the state or local government and it is possible to make a counterclaim against the claim for payment (Article 34, Taxation Act);
 - **garnishment from bank accounts or other sources** YES (possible pursuant the Code of Enforcement Procedure – by seizure of the bank account);
 - **deductions from social security payments** – not specifically provided for. Deductions from the pension [separately mentioned hereinafter] are possible, but the law does not stipulate anything about the other benefits;
 - **forced sale of property** – YES (Code of Enforcement Procedure: Making claims against the both the movable as well as immovable property of the debtor. The property shall be sold after seizure on the compulsory auction);
 - **division of pension benefits** – YES (the basis for making deductions from the public pension – Article 47, Public Pension Insurance Act, requires the existence of the judicial decision, subject to enforcement under the Code of Enforcement Procedure); **and**
 - **committal to prison** – YES ((a) Article 169 of the Penal Code: A parent who intentionally evades payment of monthly support ordered by a court to his or her child of majority but is incapacitated for work and needs assistance shall be punished by a pecuniary punishment or up to one year of imprisonment.
- b) Article 170 of the Penal Code: An adult child who intentionally evades payment of monthly support ordered by a court to his or her parent who is incapacitated for work and needs assistance shall be punished by a pecuniary punishment or up to one year of imprisonment.

FINLAND

The Bailiff's Office may make a wage withholding, a tax refund intercept and a garnishment from a bank account and other sources. The Bailiff's Office may also make a decision on a distraint on property for a forced sale of the property.

The Bailiff's Office may not make deductions from social security payments nor send a debtor to prison.

FRANCE

Voir question 27.

GERMANY

Reference may be made to the response to Question 27.

ISRAEL

The following collection/enforcement methods are available:

- wage withholding
- garnishment from bank accounts
- forced sale of property
- committal to prison

JAPAN

Available methods: seizure of a wages claim, seizure of a tax refund claim, seizure of the fund of bank accounts or other sources, or forced sale of property. These methods are available only through enforcement proceedings mentioned supra, 27.

Basically unavailable methods: wage withholding(not based on an attachment order mentioned supra, 27), deductions from social security payments and division of pension benefits.

Unavailable method: committal to prison.

LUXEMBOURG

Sur la liste figurant au point 28, la saisie sur les rémunérations du travail ainsi que les pensions et rentes est couramment pratiquée pour obtenir l'exécution de décisions relatives à des aliments. La saisie-arrêt entre les mains d'un tiers des sommes et effets appartenant au débiteur d'aliments est une autre possibilité offerte au créancier d'aliments.

Autres méthodes d'exécution : la saisie exécution, la saisie immobilière.

MALTA

Wage withholding

The Conditions of Employment (Regulation) (Chapter 135 Laws of Malta) generally prohibits the attachment or assignment of the wages payable by an employer to an employee. However, Section 21(3) of the same Regulation provides that the above mentioned prohibition does not apply where the assignment or attachment is intended to ensure the payment of maintenance due to, inter alia, the wife or to a minor child.

Similarly, Section 381(1) (Code of Organisation and Civil Procedure) states that a garnishee order cannot be issued upon any salary, or wages (including bonus, allowances, overtime and other emoluments); or upon any benefit, pension, allowance or assistance mentioned in the Social Security Act or other allowance of any person pensioned by the Government; or upon any

bequest expressly made for the purpose of maintenance, if the debtor has no other means of subsistence and the debt itself is not due in respect of maintenance. Notwithstanding the above, subsection (3) of the same section provides that in causes for maintenance, the court may, either in the judgement or in a subsequent decree upon an application to that effect by the creditor suing for maintenance, where the creditor is the spouse or a minor or an incapacitated child, or an ascendant of the debtor, order that a specified portion of the salary, allowance or bequest as mentioned above be paid directly to the creditor. The service of such an order on the person liable to pay maintenance shall have the same effect as a garnishee order. The person so served is to pay directly to the creditor the portion of the salary, allowance or bequest specified in the said order.

Section 382 states that salaries or wages of up to Lm 300 per month are not subject to being seized. A creditor can only attach, from an employee, any sum beyond the Lm 300. The latter is however subject to an exception in that it Section 382 does not apply to a spouse or minor seeking maintenance.

The Malta Armed Forces Act (Chapter 220 Laws of Malta) also makes provision for wage withholding. Section 149(1) of the said Act reads as follows:

Where by virtue of a judgement, decree or order which is enforceable in Malta an order has been made against any person...for the payment of any periodical or other sum specified therein for or in respect of-

- (a) the maintenance of his wife, child or ascendant; or
- (b) any costs incurred in any proceedings relating to any such order by or on behalf of the person in whose favour the order has been made and the defendant is an officer or man of the regular force, then...the Commander or any officer authorised by him may order such sum to be deducted from the pay of the defendant and appropriated in or towards satisfaction of the payment due under the order of the court as the Commander or officer thinks fit.

Additionally, the following Section of the same Act states that where the Commander or officer authorised by him is satisfied that an officer or man of the regular forces is neglecting, without reasonable cause, to maintain his wife or any child of his under the age of 18, then the Commander or officer so authorised may order such sum to be deducted from his pay and appropriated towards the maintenance of his wife and child as the Commander or officer deems fit.

Tax refund intercepts

Garnishment from bank accounts or other sources

This can be made through a garnishee order. Consequently, the bank or any other source where the debtor has money or funds will not yield the same money or funds to the debtor. Following this, the creditor has the possibility of filing a judicial act in court against the garnishee (the bank or other source) by which the court orders such bank or source to deposit money in court. Once the money is so deposited, the creditor needs to file another application requesting the court to be able to withdraw the money so deposited.

Deductions from social security payments

Please refer to *Wage Withholding* part, 2nd para.

Forced sale of property

This can happen through a judicial sale by auction of movable or immovable property belonging to the debtor.

Division of pension benefits

Please refer to *Wage Withholding* part, 2nd para.

Committal to prison

It is to be stated that under the Criminal Code a person who fails to provide maintenance for the spouse or child shall be liable to a contravention. The punishment awarded in respect of a contravention is however different from that awarded to a crime. The punishments that may be awarded for a contravention are either a detention or a fine (ammenda) or a reprimand or admonition. Additionally, Section 53 (Criminal Code) stipulates that where a person sentenced for a contravention shall within three months from the date of the expiration or remission of the punishment, commit another contravention, he may be sentenced to detention for a term not exceeding two months or to a fine (multa) or to imprisonment for a term not exceeding one month.

Section 338 (Criminal Code) relates to contraventions affecting public order

Every person is guilty of a contravention against public order, who:-

- (y) being a parent or a spouse, leaves his children or spouse in want, whether in consequence of his or her disorderly living or indolence;
- (z) when so ordered by a court or so bound by contract fails to give to his or her spouse the sum fixed by that court or laid down in the contract as maintenance for the spouse and, or, the children, within fifteen days from the day on which, according to such order or contract, such sum should be paid

THE NETHERLANDS

All these methods are available. Committal to prison is highly exceptional.

NEW ZEALAND

The ongoing monthly collection of payments can be achieved either by voluntary payments, automatic bank deductions or deduction notices issued to employers (and the State where the paying parent is receiving a social security benefit) to deduct from the paying parents weekly, fortnightly or monthly wages.

Deduction notices can also be issued to banks to withdraw lump sum amounts. This is so when there are arrears only and these deductions are used to clear only those arrears.

If payment is unable to be collected by these methods or the paying parent refuses to make payments then more advanced methods of enforcement are available under the Act. Generally this involves applications to the Court to seek various orders for enforcement.

These methods of enforcement include seeking a charge against a person's property and order for sale to realise that asset in money or distress warrants for the seizure of an asset such as a car. Arrest warrants can be obtained to have the paying parent arrested if it is anticipated that the person is about to leave NZ with the intention of avoiding paying the child support. There are also other enforcement provisions in the Act. These include receiving orders, dispositions restrained or set aside.

Paying parents can also be summoned to attend a judicial examination as to their financial ability to pay the assessed amount. This process is performed in front of a Family Court Judge who can make a number of orders including writing off all or part the debt and the penalties to making orders to pay the arrears by instalments.

All these methods are carried into effect through application by Inland Revenue Child Support filing papers in the Family Court.

NORWAY

All means listed above, with the exception of division of pension benefits, are being used, both for collecting maintenance for children and spouses. Wage withholding is by far the most usual tool of collecting payments. Committal to prison happens very rarely.

PANAMA

Concerning the methods of fulfillment of the alimony decisions, there are wage withholding, garnishment from bank accounts, forced sale of property, committal to prison and retroactive collection.

PHILIPPINES

Only committal to prison.

POLAND

The acceptable methods of enforcement are identical for maintenance payments in case of all the persons entitled.

The acceptable forms of execution cover the execution:

- (a) against movable property – by means of seizure and disposal,
- (b) against remuneration for work,
- (c) against bank accounts,
- (d) against receivables and other property rights of a debtor,
- (e) against real property – by seizure and disposal.

ROUMANIE

Le suivi forcé sur les biens mobile :

- l'arrêt sur le salaire, pour les sommes qui se trouvent dans les comptes bancaires ou d'autres sources ;
- par la vente des biens mobiles.

Le suivi forcé sur les biens immobiliers.

Les revenus et les biens du débiteur peuvent être soumis à l'exécution forcée si, conformément à la loi, on peut les suivre et seulement dans la mesure nécessaire pour la réalisation des droits des crédateurs.

On mentionne que à présent, les demandes concernant la pension alimentaire à l'étranger sont résolues en vue de la Convention de New York 1956, à laquelle la Roumanie a adhéree en 1991.

SLOVAKIA

Again no distinction between the beneficiaries. The methods available are:

- wage withholding;
- assignment of a claim by the obligor (i.e. garnishment from bank accounts or other sources);
- forced sale of movable or immovable property;

SUISSE

Si des paiements volontaires ne sont pas possibles, les méthodes de recouvrement suivantes sont prévues :

- poursuite pour dettes selon les art. 89 ss. LP (cf. réponse ad 27 ci-dessus), avec pour conséquence la saisie de salaire, la saisie de biens mobiliers, ou à défaut une vente publique de biens immobiliers ;
- avis direct du juge aux débiteurs et ordre du juge de fournir des sûretés (cf. réponse ad 27 ci-dessus) ;
- poursuite pénale (cf. réponse ad 27 ci-dessus).

Enfin, si certaines conditions sont remplies, soit lorsque le débiteur n'habite pas en Suisse mais y possède des biens, le créancier peut requérir le séquestre de ces biens (par exemple de comptes bancaires, du contenu d'un safe etc.), conformément aux art. 271 ss. LP.

SWEDEN

Possible methods:

- wage withholding; (attachment may only take place if the amount of the allowance remains unpaid or if the debtor on two or more occasions during the last two years prior to the attachment decision has failed to pay within the proper time and there is cause to assume that this may be repeated);
- tax refund intercepts;
- garnishment from bank accounts or other sources;
- deductions from social security payments;
- forced sale of property; and
- division of pension benefits.

UNITED KINGDOM - ENGLAND AND WALES

The UK can apply all of the above methods for enforcement, except tax refund intercepts.

A person who is under an obligation to make payments in accordance with a registered order in the magistrates' court is required to give notice to the clerk of the registering court of any change of address. If the payer fails to give such notice, without reasonable excuse, he/she is liable to be convicted of a summary offence and fined up to a maximum of £500 or 14 days imprisonment in default.

The following enforcement/ collection methods are available in England and Wales: Legislation - *Magistrates' Court Act 1980* and *Maintenance Enforcement Act 1991*

- wage withholding- as attachment of earnings order garnishment from bank accounts or other sources - not available in family proceedings/magistrates' courts, only available in County Courts and the High Court.
- deductions from social security payments - but only up to a maximum of £2.50 a week.
- forced sale of property - not available in family proceedings /magistrates' courts, only available in County Courts as a last resort.
- division of pension benefits - not available in family proceedings /magistrates' courts, only available in County Courts and before retirement at the time of divorce. However, pension is computed as income for the purpose of calculating maintenance where the payer has retired.
- committal to prison – yes where the court, after conducting a means enquiry and having exhausted all other methods of enforcement, finds wilful refusal or culpable neglect to pay.

- disqualification from driving – Child Support Agency only.

UNITED KINGDOM - SCOTLAND

See question 27 above.

UNITED STATES OF AMERICA

Each of the above-listed methods may be used to enforce child support and support for a former spouse living with the child.

In addition, support obligations may be enforced using work requirements under which an individual who has overdue support may be required to participate in employment programs, credit bureau reporting, liens arising by operation of law (automatically) against real and personal property for amounts of overdue support, interest on late payments, intercept of federal payments, lottery intercepts, passport denial, and denial/revocation of professional and recreational licenses.

29 Quels sont les frais bancaires types engagés dans le transfert et les paiements des aliments de / vers votre pays ?

29 What are the typical banking costs involved in the transfer of maintenance payments from / to your country?

AUSTRALIA

For the months October to December 2002 approximately AU\$465 269.00 was transferred to overseas jurisdictions (excluding New Zealand) at a cost of approximately \$8 800.00.

AUSTRIA

Approx. 10 Euro; there are rather high bank fees if payments are transferred from Austria to Sweden.

BULGARIE

Les frais bancaires types engages dans le transfert et les paiements des aliments de / vers votre pays sont assez élevés et déterminés par chaque banque.

CANADA

Les frais bancaires varient selon les juridictions.

Banking costs vary from one jurisdiction to another.

CHILE

By way of example: Austria must send a maintenance payment to Chile for a monthly amount of 346 Euros, Austrian banks withhold 8 Euros and Chilean banks an additional sum of 55 Euros; therefore, the claimant receives a net sum of 283 Euros.

CHINA - HONG KONG SPECIAL ADMINISTRATIVE REGION

When the District Court receives maintenance payment in Hong Kong dollars under foreign orders registered in Hong Kong, it will convert the money into the equivalent foreign currency of the reciprocating country in the form of a bank draft before sending the payment to the receiving authority. A fee is charged by most banks in Hong Kong for issue of a bank draft (Hongkong Bank charges HK\$50, for instance).

CROATIA

Banks are charging a certain fee for their services.

CYPRUS

It depends. It varies on the amount and the bank regulations.

CZECH REPUBLIC

The expenses ancillary to alimony payment transfers from/to abroad depend on the fees charged by individual banks for the transfers.

DENMARK

Approximately DKK 300 (Euro 40).

ESTONIA

Under the service price lists of the major Estonian banks (Hansa- ja Ühispank) the service charge for a transfer made in foreign currency is 120 – 140 kroons (to be reduced from the sum transferred), in case of full amount the service charge is 400 – 500 kroons. The service charges for foreign payments range from 30 to 100 kroons, depending on currency. For non-clients the service charges are two times higher.

FINLAND

Payments from Finland to a foreign country

When the debtor pays the maintenance payments directly to the recipient abroad he or she pays a banking fee depending on the means of payment and which country the payment is to be made to.

The most advantageous way of payment is to use net bank and electronic funds transfer to the recipient's bank account (6,50 – 8,50 € depending on the bank group and payer's custom). When the payment is made in a bank office, fees are higher (11,00 - 13,00 €). Payments can be made also by using Swift-checks (12.00 – 16.00 €).

When the Bailiff's Office carries the responsibility for the recovery of the maintenance, the Bailiff's Office will pay the banking costs resulting from the transfer of the recovered maintenance from Finland to a foreign country.

Payments from a foreign country to Finland

Finnish banks charge a fee of 4.00 – 7.00 € when depositing a payment from abroad to the recipient's account. When paying a check from abroad the minimum fee is usually 11,00 – 13,00 €.

FRANCE

La nature et la tarification des frais bancaires varient en fonction des accords interbancaires.

GERMANY

It is not possible to precisely state what banking costs are *typically* incurred since the bank fees depend on the amount transferred and the conditions of the respective bank. The following examples (as on: 25 February 2002) show that transfer fees may vary considerably. Additionally, the recipient bank abroad may also levy costs, and we cannot comment on their amount.

Banks	Prices for transfers to EU countries		Prices for transfers to other states	
Sparkasse Bonn	to € 12,500	€ 7.67	to € 10 to € 50 to € 250 over this: at least: Online: at least:	free € 5.11 € 7.67 0.15% € 10.23 0.15% € 6
Sparkasse Hennef	up to country-specific upper limits:	€ 7.67	to € 51: to € 511.30: over this: at least:	€ 3.83 € 7.67 0.15% € 10.23
Kreissparkasse Ahrweiler	in the Inter Pay System of the Sparkassen up to country-specific upper limits: over this: at least:	€ 7.67 0.15 % € 7.67	to € 255.65: over this: at least:	€ 7.67 0.15 % € 10.23
Dresdner Bank	to € 25: to € 2556.46: over this:	free € 7.50 0.15%	to € 10: to € 25: to € 125: to € 250: to € 8333.33: over this:	free € 2.50 € 7.50 € 10.00 € 12.50 0.15%
Postbank	if credited to foreign post bank account: otherwise:	€ 0.50 € 1.50	as EU states	
Volkbank Bonn Rhein-Sieg	up to country-specific upper limits:	€ 7.50	to € 75: to € 5000: over this: at least:	€ 7.50 € 11.00 0.15% € 13.00

ISRAEL

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JAPAN

Certain amount of fee is charged for remittance to / from a foreign bank. The rate may vary from bank to bank.

LUXEMBOURG

Pour les transferts en euros opérés depuis le Luxembourg vers l'étranger, il y a lieu de distinguer :

- jusqu'à un montant de 9.000 EUR des frais bancaires entre 4 EUR (pour la Belgique) et 9 EUR (pour les autres pays) sont dus. Le cas échéant il convient d'y ajouter une commission pour traitement manuel.
- au-delà de 9.000 EUR des frais bancaires de l'ordre de 0,175% sont prélevés, avec un minimum de 7 EUR et un maximum de 250 EUR.

Pour les transferts effectués en une devise autre que l'euro, s'y ajoute le cas échéant une commission de change (si le transfert est effectué depuis un compte libellé en euros).

Pour les paiements entrant au Luxembourg, des frais bancaires de l'ordre de 0,175% sont prélevés (avec un minimum de 7 EUR et un maximum de 40 EUR), quelle que soit la devise dans laquelle le transfert est opéré. Pour les paiements entrant au Luxembourg depuis la Belgique, il n'y a pas de frais bancaires qui sont mis en charge.

Pour tous les transferts il y a lieu de remarquer que l'imputation s'effectue d'après les directives du donneur d'ordre : celui-ci peut donc prendre à sa charge tous les frais, à la sortie comme à l'entrée.

MALTA

One of the banks in Malta was contacted so as to enquire what banking costs are involved in the given situation in question 29. It transpired that the commission charged by the bank in the case of a beneficiary payment is a maximum of Lm 15. However, from this enquiry it also resulted that other banking costs may be involved in that the bank abroad (from where the maintenance payment originates) may also charge a fee, the amount of which is at the discretion of the foreign bank.

THE NETHERLANDS

Banking costs are charged when the money is transferred.

NEW ZEALAND

All banks operating in NZ charge various banking fees for individual transactions no matter what that transaction is. Most banks allow a certain number of transactions free of bank

charges per month. Some accounts carry with them certain privileges in relation to bank charges.

NORWAY

The State covers all bank-expenses for transfers initiated in Norway but transfer expenses may be charged by private banks abroad. We are not able to provide statistics on transfer changes.

PANAMA

Bank expenses involved in the transfer of maintenance payments depend of the amount to be transferred. Such expense is for the person who makes the bank transfer and will be of a maximum of 2%.

PHILIPPINES

Payment of service fee to banks for remittances.

POLAND

The bank costs relating to the transfer of maintenance payments from or to Poland shall depend on the form of payment (cheque, transfer), on the amount of maintenance payment and on the existing arrangements between banks. The amount of these costs is varied.

ROUMANIE

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SLOVAKIA

The banks charge from 0,5 to 3% of the transferred sum abroad (depending on the destination – the fees for transfers to the Czech Republic are much lower – and on the fact whether the obligor is the client of the bank or not), with the minimum fee set at 200,- to 300,- Slovak Crowns. Transfers to Slovakia are without charges if the person is the client of the bank to which money was transferred. Otherwise charges are imposed depending on the transferred sum (the minimum charge being around 500,-Sk).

SUISSE

Lors de paiements d'aliments d'une banque à l'autre, des frais sont engagés tant par la banque qui transmet les fonds que par la banque à l'étranger qui les reçoit. Le montant de ces frais dépend des éléments suivants :

- les frais de la banque suisse à qui le débiteur donne l'ordre de paiement. Il n'existe pas de tarif uniforme y relatif en Suisse ;
- le moyen de virement: le transfert en papier est plus cher que le transfert électronique (e-banking) ;
- la somme du montant transféré ;
- le pays vers lequel le montant est viré ;

- les frais demandés par la banque qui reçoit le montant, frais qui sont assez élevés en général. Ils peuvent être réduits sur la base de conventions entre cette banque et le créancier ;
- le fait qu'il y a virement direct ou indirect (système « clearing ») ;
- la monnaie transférée ;
- la précision des indications (les frais se réduisent si l'on indique le numéro du compte international du créancier).

Le fait qu'il s'agisse d'aliments ne modifie en rien le montant des frais. Les frais ne sont pas non plus influencés par la personne qui donne l'ordre de paiement. Cela dépend plutôt des accords conclus entre la banque et le client, que ce dernier soit une personne privée ou une autorité.

Les frais peuvent être partagés de différentes manières entre le débiteur et le créancier. Souvent, le débiteur prend en charge les frais de la banque qui tranfere les fonds et le créancier les frais de sa propre banque. Mais on peut très bien imaginer aussi que le débiteur prenne en charge l'ensemble des frais. La solution inverse ne saurait être recommandée, dans la mesure où elle désavantage les créanciers.

En résumé, les frais dépendent beaucoup du cas individuel. En Europe, la politique du virement international des fonds est en mutation. L'on tend à harmoniser les frais (*cf. Ingeborg Schwan, Europäischer Zahlungsverkehr : Preispolitik im Umbruch, dans : ClearIT, Ausgabe 12, Februar 2002, pages 7ss., annexe 5*).

SWEDEN

Banking costs can be a problem for both payments to and from the country. There might be costs involved both when transmitting a payment and when withdrawing that same instalment in another country.

The SIO has an agreement with the Swedish bank *Nordea* with the effect that no banking fees are charged in Sweden. However, if payments are done through other banks, the fees can be quite considerable.

UNITED KINGDOM - ENGLAND AND WALES

Where money required to be paid under a registered order is expressed in a currency other than UK sterling, the order is treated as if it were an order for payment in Pounds Sterling at the rate of exchange prevailing at the date of registration of the order. Thereafter there is the rate of exchange costs and if payment is made through REMO an extra £5 charged by the clearing bank and subject to increase.

UNITED KINGDOM - SCOTLAND

Standard banking costs would be charged.

UNITED STATES OF AMERICA

Costs for transfer of payments by state child support enforcement agencies from the United States are typically only the additional international postage because most payments are currently made by mail using a U.S. dollar denomination check.

Costs for incoming payments to U.S. state child support enforcement agencies vary depending upon the contract that state has with its servicing bank for processing international payments.

Some states incur no costs other than the differential exchange rates; others experience additional fees ranging from U.S. \$25 to U.S. \$50 per check.

30 Des accords sont-ils mis en place dans votre pays, par le secteur public ou privé, afin de faciliter les virements au moindre coût de / vers l'étranger ?

30 Have any arrangements been developed in your country, either by the public or the private sector, to facilitate the easy and low-cost transfer of payments to / from abroad?

AUSTRALIA

We currently use 2 options to disburse monies to creditors outside Australia, depending on where the money is being sent.

New Zealand

Once per month by the 25th of the month for all monies collected from debtors for creditors in New Zealand ACSA produces one Excel spreadsheet detailing a break-up of payments for these clients in Australian dollars and the converted amount in NZ \$. This spreadsheet is forwarded to NZIRD together with one electronic payment for the total amount. This fits with NZIRD timeframes and is then disbursed to NZ clients by NZIRD in their major disbursement on the 7th of the following month.

All other Overseas Jurisdictions

In relation to all monies collected from debtors for creditors in other overseas jurisdictions, ACSA (via another government department) purchase an overseas foreign currency cheque for each creditor which is mailed to each client or overseas authority as appropriate. This is done automatically via the Reserve Bank and Citibank through clearing houses in London and the USA.

ACSA is currently exploring options for the transfer of funds along the lines of an electronic system that also converts currency.

AUSTRIA

No.

BULGARIE

Non.

CANADA

Il n'existe pas d'accord concret en place sur cette question. Certaines possibilités sont présentement étudiées en collaboration avec les États-Unis.

No concrete arrangement is in place on this question. Some options are being explored in partnership with the US.

CHILE

No arrangements have been made in our country to facilitate transfer of maintenance payments.

CHINA - HONG KONG SPECIAL ADMINISTRATIVE REGION

There is no foreign exchange control on transfer of payments to/from abroad.

CROATIA

No.

CYPRUS

Not yet.

CZECH REPUBLIC

See question 25 above.

DENMARK

No.

ESTONIA

No.

FINLAND

Finland is bound by the Regulation (EC) No 2560/2001 of the European Parliament and of the Council of 19 December 2001 on cross-border payments in euro and the Directive 97/5/EC of the European Parliament and of the Council of 27 January 1997 on crossborder credit transfers. These legal instruments make it possible to have an easy and low-cost transfer of payments between EU-members.

FRANCE

Non.

GERMANY

The provisions contained in section 676 a of the Civil Code regarding transfer contracts specify that transfers on principle must be effected as soon as possible. Cross-border transfers to Member States of the European Union and of the European Economic Area which are in their currency or currency unit or in Euros are, unless otherwise agreed, to be credited to the account of the financial institution of the beneficiary within an implementation period of five banking days (meaning working days on which all financial institutions concerned are usually open, excepting Saturdays).

ISRAEL

No.

JAPAN

Various methods of international transfer are available, but there is no regulation over the banking fee. No arrangement has been developed to facilitate the transfer of maintenance payments.

LUXEMBOURG

Pas d'observation.

MALTA

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THE NETHERLANDS

If a foreign central authority accepts combined transfers, all funds payable to the country involved are transferred at once to reduce transfer costs.

NEW ZEALAND

Not as yet but Inland Revenue Child Support is in the process of setting up a direct debit payment facility for paying parents living in Australia. This will enable them to pay their child support liability monthly at very little cost.

NORWAY

The National Insurance Administration and the Maintenance Centre both try to use the most efficient ways available of handling payments, both with regard to costs and transfer time.

PANAMA

In Panama we have an international banking system where the US dollar is used as a legal tender, therefore it is easy to make a transfer of money from or to another country at low costs

PHILIPPINES

None.

POLAND

No.

ROUMANIE

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SLOVAKIA

The Center has made arrangements for cases where the maintenance is being transferred via the Center (inside and outside of Slovakia). The Slovak banks do not charge any fees (in exchange for the Center not claiming interest). This, of course, has no influence on the fees charged by foreign banks upon receipt of the money transferred from Slovakia or upon transfer of the money to Slovakia.

SUISSE

Non. Il arrive cependant dans la pratique que le débiteur ou l'autorité en charge de l'encaissement fassent des virements groupés pour plusieurs mois, au lieu de transférer les aliments mensuellement, ce afin de réduire les frais. Pour le reste, nous renvoyons au chiffre 29 ci-dessus.

Les virements par la poste dépendent également de plusieurs facteurs, à savoir:

- du fait que les parties ont un compte postal ;
- du moyen de transfert (électronique ou autre) ;
- du type de paiement au créancier (en argent comptant, sur un compte postal ou bancaire) ;
- du pays où réside le créancier ;
- des frais élevés de la banque qui reçoit le montant ;
- de la vitesse de paiement demandée (par ex. express).

Un montant viré sur un compte postal en Suisse n'engendre pas de frais. Le paiement en argent comptant par la poste coûte Fr. 4.

En résumé, les frais d'un virement postal dépendent fortement des frais engendrés à l'étranger.

Enfin, il existe la possibilité de transférer des fonds par Western Union (pour les pays où cette institution est implantée). Le débiteur connaît alors par avance le montant total des frais et les prend d'emblée en charge. Le créancier n'a pas de frais (hormis un impôt à payer dans certains pays). Seules des personnes privées peuvent utiliser ce moyen, à l'exception des autorités en tant que telles.

SWEDEN

The arrangements are the ones mentioned under questions 26 and 29, i.e. that the SIO has an agreement with the Swedish bank *Nordea* and that SIO has opened bank accounts in foreign countries to facilitate payments from both a practical and an economical point of view. The SIO plans to look into the possibility of opening bank accounts in more countries, since the arrangements have been successful.

UNITED KINGDOM - ENGLAND AND WALES

No.

UNITED KINGDOM - SCOTLAND

No, they have not.

UNITED STATES OF AMERICA

The U.S. is exploring the potential for development and use of automated clearinghouse gateways for electronic transfer and currency conversion to and from other nations.

All U.S. state child support enforcement agencies are required to have state disbursement units, which must be able to send and receive U.S. funds electronically. Such capability in each state child support enforcement agency holds the potential for implementation of an international electronic funds transfer system.

For general commercial and potentially child support enforcement purposes, a public/private initiative is underway on a pilot basis with Canada, and discussions are being held with other nations, regarding an automated clearinghouse "gateway" project of the U.S. Federal Reserve. Estimated costs for currency transfer and conversion under this electronic transfer system are only a few cents per transaction.

In the future, it is hoped that countries reciprocating with the United States will use gateways, which will automatically convert outgoing U.S. funds to a foreign currency account in a partner bank in the other country. A similar arrangement would be used for incoming foreign funds going to each state's child support enforcement agency state disbursement unit.

PARTIE III QUESTIONS CONCERNANT LES ELEMENTS A INCLURE DANS LE NOUVEL INSTRUMENT

PART I QUESTIONS CONCERNING THE ELEMENTS TO BE INCLUDED IN THE NEW INSTRUMENT

- 31** Veuillez énumérer toutes les lacunes du processus actuel, pour l'obtention ou le recouvrement à l'étranger, par des personnes résidant dans votre ressort, d'aliments envers les enfants ou d'autres membres de la famille, auxquelles on pourrait remédier ou qui pourraient être améliorées dans le nouvel instrument.
- 31** Please list any shortcomings in the current processes for the obtaining or recovery abroad of child support or other forms of family maintenance by persons resident in your country which might be improved or remedied in the new instrument.

AUSTRALIA

- Not being aware of the overseas jurisdiction requirements
- Overseas jurisdictions not recognising Australian maintenance liabilities that have determined administratively.
- In order to issue accurate assessments, ACSA needs to be able to obtain accurate overseas income information. This is a major issue in that a majority of overseas maintenance authorities cannot provide this information.
- Obtaining assistance in locating clients in overseas jurisdictions is often difficult due to overseas authorities not having legal authority to trace clients in their jurisdictions.
- Overseas jurisdictions who still seem tied to a judicial process. They will now accept an administrative assessment of child support as an acceptable maintenance liability but still require, because of their own law, that this is converted into a judicial maintenance order in that country. This creates great difficulty for us when a parent in Australia applied for an assessment and wants to vary that assessment without recourse to the courts. Either parent should be able to have the assessment varied administratively where their circumstances have changed but this then has to be converted once more into a court order in some jurisdictions. A cumbersome and lengthy process is involved in doing this and seems that it would be costly for those countries who require this.

Consistent approach on variation orders. Requirement that variation orders made in Australia be provisional only for some countries can cause lengthy delays in finalising matters particularly when overseas court doesn't confirm the variation made by the Australian court. Where variation orders are final under Australian law some countries do not recognise the variations and the foreign orders continues to be enforceable in the foreign country order which leads to a situation where a payer has a liability in two countries. Lack of assistance provided to a payer or payee who wishes to vary an order in the overseas country that made the order.

AUSTRIA

If there is an enforceable court order the authorities in receiving state should immediately start enforcement proceedings. This is done in Austria in the case of incoming applications under the UN Convention 1956. Other states unfortunately start very time consuming activities to convince the debtor to comply with his/her maintenance obligations voluntarily (in France police is involved, in Germany the youth welfare authority, in Italy the local administrative authority). Enormous paperwork has to be done for the sake of granting legal aid to the applicant (eg France).

BULGARIE

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CANADA

- Difficultés d'obtenir une information complète sur les personnes-ressource à contacter dans une autre juridiction ainsi que d'obtenir de l'information sur l'évolution des dossiers en cours de traitement, même en tenant compte des règles de confidentialité;
 - Besoin d'être régulièrement mis à jour sur le statut des États contractants et sur les coordonnées des autorités compétentes aux fins de l'instrument ;
 - Les obligations réciproques ne sont pas claires avec certaines juridictions ;
 - Difficultés d'exécuter les ordonnances ;
 - Traduction inadéquate ou manque de documents ou d'informations nécessaires au traitement de la demande;
 - Pas suffisamment de détails sur l'information requise ou manque d'information pertinente;
 - Absence d'engagement suffisant pour localiser le débiteur ;
 - Manque de cohérence dans les outils d'exécution ;
 - Les règles faisant en sorte que l'enfant n'ait plus droit à une pension alimentaire ne sont pas claires (âge d'émancipation ou enfant devenu majeur, par exemple) ;
 - Les règles pour la reconnaissance et l'exécution d'un jugement ne sont pas claires dans certaines juridictions ;
 - Manque d'information sur certains aspects de la demande (règles concernant la perception d'arrérages en matière de pension alimentaire, date d'exigibilité applicable, règles d'indexation applicables).
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- Difficulties to obtain complete information on the contact persons in the other jurisdiction to be able to communicate with them and to obtain information on active cases taking in consideration confidentiality issues;
 - Need to be regularly updated on the status of the Contracting States and on the update of their co-ordinates;
 - Reciprocal obligations are unclear with some jurisdictions;
 - Problems with the enforcement of orders;
 - Adequate or lack of translation of documents;
 - No sufficient details on required information or lack of relevant documents;
 - No commitment to locate the respondent;
 - Termination dates for child support unclear (age of emancipation or child attained his or her majority);
 - Inconsistency in enforcement tools;
 - Rules for recognition and enforcement of judgement are not clear in certain jurisdictions.
 - Lack of information on certain aspect of the application (rules on recovery of arrears of support, applicable due date and indexation rules).

CHILE

Establishing arrangements to facilitate transfers of maintenance payments at a minimum cost to/from foreign countries.

CHINA - HONG KONG SPECIAL ADMINISTRATIVE REGION

Hong Kong's processes are court-based and we have no plans to change this practice.

CROATIA

The problem is the length of processes.

CYPRUS

No shortcomings.

CZECH REPUBLIC

Maintenance claims abroad for children having residence in the Czech Republic cope with drawbacks not originating in international treaties on maintenance recovery. The problem is rather in varying approaches of foreign recipient authorities and judicial or administrative authorities in the processing of maintenance recovery requests. Maintenance recovery judgment enforcement in a foreign country takes long, alimony payments to Czech Republic are being made irregularly, they have to be urged.

DENMARK

The Danish ministry of Justice has no comments in particular to the questions in part III.

ESTONIA

Estonia has not many experiences in applying the conventions and at the moment we can not point out any shortcomings.

FINLAND

1. Requesting and Requested States should have central authorities for administrative assistance in international maintenance affairs. Central authorities should offer services to national and foreign competent authorities and to debtors and creditors.
2. Requested States usually require that the whole maintenance order must be translated into the official language of the Requested State. This practice leads to very high translation expenses. Efforts should be made to reduce the expenses for translation. It should be possible for Requested States to accept that only the relevant parts of the maintenance order need to be translated. The relevant parts could be presented in an abstract of the maintenance order or in an internationally accepted form containing the relevant information of a particular maintenance order.
3. Some Requested States allow foreign maintenance orders to be modified upon request by the person liable to pay maintenance (the debtor). This practice leads to two conflicting maintenance orders in the same case. Such practice should not be allowed by appropriate rules of jurisdiction.
4. When a debtor, who because of substantial changes in his or her financial circumstances cannot pay maintenance as prescribed in a maintenance order, it might be appropriate to consider, whether the Requested State should have an obligation to help the debtor upon

his or her request by sending his or her modification request to the central authority of the Requesting State. The Requesting State would then have an obligation to institute proceedings in order to change the maintenance order.

5. Some Requested States are slow in initiating the process for recovery of maintenance. It would be desirable that the new instrument would provide a reasonable time-limit in which the Requested State must initiate the proceedings for recovery.
6. There are also many other problems in the present administrative co-operation between Requesting and Requested States:
 - Administrative co-operation should be permitted not only between central authorities but also between enforcement authorities and between other competent authorities (e.g. courts and municipal social welfare bodies).
 - The present system for transmitting of information should be made more efficient. An effort should be made to make the transmission of information faster e.g. by allowing the use of e-mail and other electronic methods for the rapid transmission of information.
 - Requested States should provide such services as assisting more efficiently in locating debtors and with the hearing of the debtor. Requested States should also upon demand by the Requesting State take contact with the debtor and gather information on his or her financial situation. These services should be available also before the recovery process is started.
 - Requested States should have an obligation upon request to provide information on the different stages that the recovery matter is going through. It is for example important for the Requesting State to know when it can expect to receive the recovered maintenance.

FRANCE

Deux difficultés essentielles se présentent :

- l'impossibilité dans certains pays d'obtenir la reconnaissance de la décision de justice fixant l'obligation alimentaire et de recouvrer **les arriérés des pensions** , lorsqu'une nouvelle décision est rendue dans l'Etat requis .
- le refus par certains pays d'appliquer la convention de New -York lorsque la demande de recouvrement concerne **une institution publique** qui a consenti à la créancière des avances sur la pension impayée .

Ces deux difficultés sont importantes puisque dans le 1^{er} cas, la décision de justice française est pour partie amputée d'une part (financièrement majeure) de son contenu. Dans le 2^{ème} cas, la subrogation de l'institution publique qui a fait des avances au créancier dans le souci de lui permettre de faire face à une situation souvent très difficile, n'est pas admise.

GERMANY

Frequently, too much time passes until the competent foreign authority reacts. It would be desirable for a new instrument if registration of the proceedings were to be immediately notified and an automatic duty to inform were to exist if it was impossible to conclude the proceedings after for instance six months.

ISRAEL

The shortcomings are often in the practical implementation, such as authorities not being able to find the maintenance debtor, or if they are able to find the debtor, they will not collect the maintenance, if the debtor is on social welfare. Furthermore, it is often not clear what the process and procedures of the Requested State are, that are necessary to follow in order to obtain or recover child support. There is usually a lack of clarity regarding the jurisdiction rules of the court of the Requested State along with the difficulty of not knowing the relevant source to turn to for clarification of those rules. Language barriers also present a problem, especially if the procedures of the Requested State are set out in that State's language.

JAPAN

Questions 31-36 - We have not ratified either the New York Convention or the Hague Conventions of 1956 and 1973 on Recognition and Enforcement of Maintenance Obligations and we need more information about the operation of the Conventions in order to answer these questions in detail. However, we believe that the new instrument should be drafted in such a manner as to accommodate the diverse legal systems among Parties and have flexibility to enable each Party to operate the instrument within the existing system

LUXEMBOURG

Au niveau de la coopération administrative :

- il faudrait se mettre d'accord sur les formalités à accomplir (à signaler que certaines institutions intermédiaires au titre de la Convention de New York, lorsqu'elles sont saisies par l'autorité expéditrice d'une demande de recouvrement d'aliments, réclament, outre la procuration prévue à l'article 3.3 de la Convention de New York, une lettre manuscrite du créancier d'aliments sollicitant l'application des dispositions de la Convention de New York. A quoi bon ?)
- il faudrait se mettre d'accord sur les pièces à produire : est-il nécessaire de produire toujours un certificat de non appel, d'une décision de première instance, assortie de l'exécution provisoire, ou un certificat de non cassation d'une décision d'appel ? La décision en question peut remonter déjà à plusieurs années, et émaner d'une juridiction étrangère (compte tenu de la libre circulation des personnes à l'intérieur de l'UE) et il sera alors difficile au créancier d'aliments de se procurer lesdits certificats. Par ailleurs il arrive souvent que le débiteur d'aliments s'est pour le moins partiellement acquitté des obligations alimentaires mises à sa charge par la décision judiciaire ? N'incomberait-il pas alors plutôt au débiteur d'aliments, s'il conteste le caractère exécutoire d'une telle décision, d'établir pour quelle raison la décision serait dépourvue de caractère exécutoire ?.

Parmi les pièces à produire devrait figurer en tout état de cause une pièce (copie d'une pièce d'identité, d'un acte d'état civil, etc.) renseignant exactement les nom, prénoms, date et lieu de naissance du débiteur d'aliments, afin de faciliter au besoin la localisation du débiteur.

- l'information du créancier d'aliments (par le biais de l'autorité expéditrice) sur les démarches entreprises devrait être beaucoup plus systématique, plus régulière et plus adéquate : des formules du genre « le dossier a été transmis à l'autorité compétente » (quelle autorité ?) pour que celle-ci entreprenne des démarches (quelles démarches ?) laissent le créancier d'aliments sur sa faim.

Au niveau de l'assistance judiciaire :

Les créanciers d'aliments devraient être informés dès le début par l'institution intermédiaire à laquelle une demande de recouvrement est adressée des plafonds de revenus (et le cas échéant des plafonds de fortune mobilière ou immobilière) au-delà desquels l'assistance judiciaire leur sera de toute façon refusée, plutôt que de leur faire remplir des formulaires et de leur imposer la production de multiples pièces. D'une manière plus générale, ne serait-il pas possible d'admettre de droit les créanciers d'aliments au bénéfice de l'assistance judiciaire ou de l'aide juridique, dès lors que les aliments ne sont en principe alloués qu'en cas d'insuffisance des moyens de subsistance personnels ?

Au niveau des voies et moyens pour assurer le recouvrement des aliments.

Si le créancier d'aliments n'est pas à même de produire un titre exécutoire (il dispose par exemple d'une convention sous seing privé), l'institution intermédiaire requise devrait exercer une action aux fins de procurer au créancier d'aliments un titre exécutoire.

Un nouvel instrument de droit international devrait contenir des dispositions relatives à la reconnaissance et à l'exécution des décisions de justice étrangères, pour pallier ainsi aux inconvénients résultant du fait que certains Etats n'admettent pas la complémentarité de la Convention de New York et, par exemple, de la Convention de la Haye concernant la reconnaissance et l'exécution de décisions relatives aux obligations alimentaires.

MALTA

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THE NETHERLANDS

Reference is made to the findings contained in the response to the 1999 questionnaire, in particular the replies to questions 20 and 22. The central authority for the Netherlands reports the failure of agencies responsible for implementing the New York Convention in a number of countries to achieve satisfactory results in recovering maintenance for creditors abroad. In the relationship with countries that do reach good results, differences of opinion sometimes arise with respect to the question what documents should be produced, supporting the claim under the Convention. Correspondence on that issue causes delays in the processing of incoming requests. Likewise, errors made in the calculation of amounts due may hamper the process of recovering maintenance.

Shortcomings of this type may be overcome by including very clear and uniform provisions about the documents to be produced, the question whether documents should be authenticated, etc.

NEW ZEALAND

There is a lack of:

- Clear process
- Standardised documentation (eg as in forms used in the Child Abduction Convention)
- Appropriate means of communicating with Transmitting and Receiving Agencies (often the only address provided is a physical address and it can take months to provide or receive critical information)
- Clarity in terms of the extent of the responsibilities of the Transmitting and Receiving Agencies
- Understanding of the applicable law provisions

NORWAY

In our experience, one of the main obstacles to an efficient cross-border enforcement is a variety of formal procedures in the Convention States. It seems to us to be the main challenge to overcome such obstacles and shorten the time between the receipt of a foreign support order and actual enforcement measures.

Participation in a new Convention accordingly should entail a commitment to start enforcing the order once certain criteria as established in the Convention are fulfilled. Specific procedures of recognition etc. in the receiving country should be abandoned through direct provisions in the Convention. This means that the transmitting document should contain all necessary information (necessary according to the Convention). In other words, the aim should be to abandon – in the context of the Convention and as a result of joining the Convention – national time-consuming procedures before the collection of money may start. However, a safety valve against errors etc. should be included.

If certain States should be unable to join such an instrument, the existing Hague Conventions would remain as possibilities of cooperation on a lower level of commitment. A new Convention would then become a possible motivating factor with regard to developing the enforcement system in the Hague countries, entailing a sharper focus on the main task – to provide support for children and custodial parents dependent on cross-border collection. It is our feeling that there is a considerable potential for improving the cooperation between the Hague countries.

The tools for this are clearly provisions which could secure:

- A commitment to start enforcing a foreign order immediately on receipt and abandon possible national procedures of recognition etc.
- Precisely defined requirements in respect of the transmitting document.
- Standard forms translated into all member languages.
- A precisely defined commitment to administrative co-operation within the areas of determining and collecting child support.
- Mandatory regulations to secure that services under the Convention are provided free of charge to the applicant. Preferably, the authorities involved should not be allowed to charge even the debtor.
- Maximum time-limits for the various steps of the proceedings.

PANAMA

That sentences over alimony issued by Panamanian courts be recognized in other States, without passing through an exequatur process, and to that end there should be an administrative or judicial authority to make sentences equal in a short term and make them valid in said State.

PHILIPPINES

Since claim has to be coursed through to the OSG, there is a concomitant delay, since this is not a priority case for the OSG given the magnitude and scope of its work for the government.

POLAND

The most important shortcomings refer to the following problems:

- long periods of waiting for a court's decision determining maintenance
- lack of knowledge of the regulations concerning recovery of maintenance abroad
- poor efficiency of enforcement
- lack of legal assistance, including legal representation

ROUMANIE

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SLOVAKIA

The problem of the current process sometimes is the variety of methods and legal bases of co-operation (enforcement), whereas the requested authorities tend to decline co-operation with reference to another available way, method, etc. The problem with the New York Convention lies exactly in the fact that it does not prescribe a certain way to proceed and thus does not provide any reliable method. The new instrument could be very helpful if it specified directly the obligations (alternative obligations) of the requesting authorities (States) i.e. recognize and enforce an existing maintenance order or, when recognition is not possible, initiate proceedings to obtain such an order. This should be the minimum standard of co-operation.

Another added value would be the system of co-operation of requesting and requested (central) authorities added on top of the system of the recognition and enforcement which is now absent in the relevant Hague Conventions.

Assistance in determining the whereabouts of the obligor and/or his employer (his income) would also help immensely.

Also, the instrument should be applicable in relations to States (like US and Canada) who cannot (for one reason or another) subscribe to a system of "unified" recognition and enforcement of foreign judgements (e.g. opt-out clauses).

A major practical help would be the introduction of a good rule on the statute of limitation (even though the acceptance of such a rule may prove difficult), either in the form of a "harmonizing" legal rule or in the form of conflict of law rules (in favor of the law of the beneficiary, if possible). The legal actions by the beneficiary are guided always by the knowledge or their own rules and their expectations may be thwarted by the application of rules of the requested State (e.g. the statute of limitation on maintenance in Slovakia is 3 years running for each individual installment; in Hungary it is only 6 months and the beneficiary has to prove to the court that the obligor willfully failed to pay maintenance to obtain arrears for a period beyond 6 months; it goes without saying that the beneficiary is almost never successful in proving the legal requirement; in the context of intercountry enforcement such requirement is unfair; if the law of the beneficiary applied or if a harmonized rule of a convention settled the matter, the beneficiary's legal position would be more transparent).

The difficulties some countries have with the transfer of maintenance abroad is also hampering the outcome of enforcement cases, the new instrument might be helpful also in this respect.

SUISSE

Dans le processus actuel, nous voyons les lacunes suivantes :

- *coopération administrative*
- manque de possibilité pour les institutions publiques ayant fait des avances d'agir en leur propre nom (cf. chiffre 33 l ci-après);
- manque de dispositions contraignant les Etats à informer et à agir dans des délais raisonnables (cf. ch. 33 k);
- manque de dispositions contraignant les Etats à utiliser, dans des délais raisonnables, tous les moyens d'exécution disponibles si le débiteur n'est pas coopératif (cf. ch. 33 b, e + k) ;
- assistance judiciaire insatisfaisante dans certains Etats, ne tenant pas compte de la situation économique des créanciers en Suisse (cf. ch. 33 f);
- frais élevés de traduction, à réduire au strict minimum (cf. ch. 33 a + e) ;
- liste parfois trop longue de documents nécessaires à produire pour un dossier de recouvrement, à réduire au strict minimum pour l'affaire en cause (cf. ch. 33 a + e) ;
- dans quelques Etats, manque de possibilité de faire une demande préalable pour localiser un débiteur (cf. ch. 33 a + e);
- manque de possibilité de déposer une demande préalable pour obtenir des informations sur la situation économique du débiteur (cf. ch. 33 a + e);
- manque de possibilité de traiter directement avec une autorité régionale ou locale après la transmission de la demande (cf. ch. a) .
- *droit applicable*
- manque de clarté sur le droit applicable sur des questions spécifiques telles que la prescription d'une prétention d'aliments / l'étendue d'une prétention d'aliments d'un enfant majeur / la prétention d'aliments d'un époux / l'obligation ou non de traiter une demande uniquement pour des arriérés, sans obligation alimentaire courante ;
- l'art. 8 de la Convention de la Haye du 2 octobre 1973 ne correspond plus à une conception moderne des couples divorcés qui souhaitent modifier une décision de divorce.
- *reconnaissance et exécution des décisions*
- révision au fond à exclure, indépendamment des requêtes en modification d'une décision (cf. ch. 33 b)

SWEDEN

A few problems have been noticed in this respect.

1. When a child who is eligible for maintenance has obtained the payment in advance from an authority, the authority might succeed the child in the right to receive the payment from the debtor. In this situation not all parties to the New York Convention are of the opinion that the convention is applicable to the authority.

It could be valuable if a future global instrument stated that it would be sufficient for the applicability if the authority can present a power of attorney from the obligor.

2. There are different views whether the obligation stated in article 6 of the New York Convention also includes actions for establishing paternity. If a future instrument would ensure that this is the case, it would make the process more efficient and less costly.
3. There are no provisions dealing with the recovery of future increases of maintenance which are index-bound. It would be of interest to regulate also such recovery.

4. The New York Convention deals with the recovery of maintenance. Thus, it contains provisions regarding the right for the child or spouse to receive payments from the debtor. However, it does not contain any provisions concerning the rights of the debtor. For example, there are no provisions dealing with modification of maintenance decisions in the interest of the debtor. To create balance, one might consider whether it would be appropriate for the new instrument to deal also with such questions.
5. When the receiving authority takes all appropriate actions to recover maintenance it might be necessary for it to examine, for example, whether the enforcement decision falls under any statute of limitation. In making such assessment the receiving authority shall apply the law of the state of the debtor, which sometimes can be a complicated task. Therefore, it could be of interest to find a less difficult solution to this problem.
6. It might be valuable to create provisions that in some detail describes how the receiving authority should act in carrying out its task of taking appropriate actions. From a practical perspective, a clearer framework on what elements that are included in the obligations of the receiving authority could be useful.

UNITED KINGDOM - ENGLAND AND WALES

- One of the main problems is tracing the liable person in their new place of residence. There is widespread ignorance of the law and who to approach.
- A major failure is the delay experienced with most applications; it can lead to several years before even an answer to the application is given. The worst case experienced was a delay of 12 years before a final response was received.
- There is no uniformity of approach when jurisdictions deal with the same types of applications. Lack of knowledge of different systems leads to confusion and adds to delay.
- Lack of clarity regarding documents required in individual jurisdictions and lack of knowledge about how to seek clarification can deter applicants.

UNITED KINGDOM - SCOTLAND

The main problem we encounter is a lack of knowledge of administrative/judicial procedures in reciprocating countries. We cannot, therefore, always supply the applicant with much in the way of detailed information on what to expect, how long procedure will take, what supporting documents will be required and whether legal aid will be given. There is also a problem in the multiplicity of international instruments applicable and the complexity of the instruments.

UNITED STATES OF AMERICA

The following are issues (not necessarily in order of importance) that we hope the new instrument will address:

- (a) Multiple decisions: Difficulties arise when the Requested State varies a decision of the Requesting State at the request of the debtor (usually by reducing the payment amount or abolishing arrears) without requiring the debtor to first seek variation in the Requesting State. In such cases, the Requesting State's original decision continues to be the controlling decision in that State, which results in two conflicting decisions. The new instrument should develop clear rules on variance, for both prospective and retroactive payments.
- (b) Assistance for debtors in variance cases: In the United States, the state child support enforcement agencies provide assistance to debtors as well as creditors. Some countries do not provide administrative assistance to debtors who have encountered substantial

changes in their financial circumstances and who seek variation of a child support decision. Therefore, debtors often seek variation sua sponte, or invest valuable resources to hire private counsel to get decisions of the Requesting State varied in the Requested State. If the Requested State assisted debtors in gathering information for a variation request and transmitting it to the Requesting State, this would go a long way toward resolving the variation problem discussed above.

- (c) The “black hole” syndrome: Requesting State requests simply disappear once they have been received by the Requested State, as if they have been swallowed up by a “black hole.” Nothing happens, and months or years go by with no payments being made to the applicant in the Requesting State. There are many reasons for this: child support workers in the Requested State do not handle many international cases, and are unsure of what to do with them; the incoming international request looks different - it is not in the same form as domestic cases; and needed information is missing and the process to get it from the Requesting State is confusing and time-consuming. An important way to address this problem is for the instrument to provide for a strong Central Authority, for effective cooperation among Central Authorities, and for monitoring how the new instrument is being implemented. Another important part of the solution to this particular problem is the development of comprehensive, uniform forms to be used in providing information in international cases. The instrument needs to recognize the importance of uniform forms, without establishing rigid requirements that will be difficult to adjust. The problems with getting necessary case information discussed in this paragraph exist with incoming cases as well. For further discussion, please see our responses to question 32.
- (d) Cost of Services: The U.S. state child support enforcement agencies provide legal, administrative, technical and other services (including paternity testing) at no cost to a resident of a foreign reciprocating country. In some countries, foreign applicants must pay for some of these services. The greater the cost to the resident of the Requesting Party of pursuing a child support action in a foreign country, the less effective the instrument will be.
- (e) Establishment of Paternity and Maintenance Decisions: The vast majority of requests from U.S. states to foreign countries are for the recognition and enforcement of a U.S. decision, i.e., paternity has been established and a decision entered in a U.S. tribunal. But occasionally a U.S. state will ask a foreign country to establish paternity and enter an initial child support decision. Some states are not able to do either of these things, leaving the U.S. applicant faced with having to go to the foreign country, hire private counsel, and initiate litigation there.
- (f) Limited Service Requests: In some cases, the Requesting State can exercise jurisdiction over a debtor residing in the Requested State, and, therefore, may enter its own child support decision. In those cases, it would be helpful if the Requested State would provide limited services, such as collection of DNA samples, location of persons or assets, or assistance with service of process, to the Requesting State, instead of establishing a foreign decision. The instrument should provide for such limited service requests.
- (g) Translation expenses: The Requesting State is usually required to submit all documentation in the language of the Requested State. Court or administrative decisions dealing with maintenance often address many other subjects as well (e.g., custody, access or divorce). In addition, even the portion of the decision that deals with maintenance may contain a lengthy recitation of background facts, income, and expenses. All of this information results in expensive and often unnecessary translation costs. The negotiators of the new instrument should consider how to reduce these unnecessary costs. Perhaps the instrument could provide that, so long as a certified copy of the entire original decision in its original language is provided, only the maintenance portion of a decision needs to be translated, or that a translated abstract is sufficient.

- 32** Veuillez énumérer toutes les lacunes du processus actuel, en vertu duquel un requérant étranger cherche à obtenir ou à recouvrir, auprès d'une personne résidant dans votre ressort, des aliments envers les enfants ou d'autres membres de la famille, auxquelles on pourrait remédier ou qui pourraient être améliorés dans le nouvel instrument.
- 32** Please list any shortcomings in the current processes by which a foreign applicant seeks to obtain or recover child support or other forms of family maintenance from a person resident in your jurisdiction which might be improved or remedied in the new instrument.

AUSTRALIA

- Often difficult to interpret the meaning of clauses etc in Overseas Court Orders
- Often difficult to determine the correct amount of arrears based on the Overseas Maintenance Liability. Clear information such as statements of arrears would be of assistance.
- Where details of the end date of the Overseas Maintenance Liability are not provided. e.g. the differences in the age of majority for a child across different jurisdictions.
- Receiving Overseas Provisional Orders for establishing or varying orders creates difficulties in that these orders can't be confirmed in an Australian Court if an Australian administrative assessment could be made.
- Difficulty with overseas authorities in not having clear rules concerning who has jurisdiction. This is especially difficult for clients to then seek variation to original orders and where these applications should be made in order to be recognised in both Australia and the other jurisdiction.

Assistance by foreign countries to locate payers. ie sometimes payees in Australia cannot provide payers birthdate or address and application will not be processed without this information.

Assistance by foreign countries in paternity disputes.

AUSTRIA

The transmitting agencies under the UN Convention 1956 are not at all checking whether or not the documentation is complete before it is sent to the receiving authority. This has the negative effect that the receiving authority has sometimes to draw up extensive requests for amendments. The transmitting authorities should be obliged to check the completeness of the applications.

BULGARIE

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CANADA

- Traduction des documents ;
- Absence de formulaires à être utilisés de manière uniforme;
- Coûts reliés au transfert de fonds ;
- Absence de preuves suffisantes ou d'informations à l'appui de la demande ;
- Délais encourus qui font en sorte que l'information requise est désuète lorsque la demande est soumise au tribunal et absence d'outils pour suivre l'évolution de la procédure;

- Les règles faisant en sorte que l'enfant n'ait plus droit à une pension alimentaire ne sont pas claires (âge d'émancipation ou enfant devenu majeur, par exemple) ;
- Manque de cohérence dans les outils d'exécution ;
- Possibilité d'utiliser les méthodes de téléconférence ou de vidéoconférence lorsque c'est disponible
- Translation of the documents;
- Lack of forms to be used uniformly;
- Funds transfer costs;
- Lack of supporting material or evidence;
- Delays which mean original information is out of date by the time case gets to court and lack of tools to follow the status of the application;
- Termination dates for child support unclear (age of emancipation or child attained his or her majority);
- Inconsistency in enforcement tools;
- Possibility of using teleconferencing or video conferences where available

CHILE

There are no shortcomings. The problem is that we are dealing with human beings and most men refuse to assume their responsibilities; therefore, they hide themselves, cease working, etc.

CHINA - HONG KONG SPECIAL ADMINISTRATIVE REGION

See answer to Question 31.

CROATIA

The problem is the length of processes and in some cases the impossibility to enforce the decision because of unemployment status of the debtor.

CYPRUS

No shortcomings.

CZECH REPUBLIC

The situation in maintenance recovery in the Czech Republic for children having residence in foreign countries has substantially improved since early 2001 when the amendment to Act #99/1963 Coll. was adopted, accelerating the procedures in Czech courts in civil proceedings. Czech Republic shall of course participate in the negotiations of the new allround Hague International Private Law Conference on maintenance recovery in foreign countries.

DENMARK

The Danish ministry of Justice has no comments in particular to the questions in part III.

ESTONIA

Estonia has not many experiences in applying the conventions and at the moment we can not point out any shortcomings.

FINLAND

Please, read the answer to question 31.

FRANCE

En France, le créancier de la pension alimentaire est le parent qui assume la charge de l'enfant mineur ou de l'enfant majeur qui ne subvient pas à ses propres besoins. Il a seul qualité pour agir pour demander la reconnaissance et l'exécution de la décision fixant la pension alimentaire. Afin d'assurer le recouvrement des pensions dues pour l'enfant représenté par un organisme public, il conviendrait de préciser la loi applicable à la représentation du mineur devant les juridictions de l'Etat requis.

GERMANY

Sending incomplete application documents has the effect of delaying the proceedings and requires time-consuming enquiries and subsequent requests for missing documents. Indispensable core elements of the application are certified duplicates of the documents on civil status (birth certificate, marriage certificate). If the child was born out of wedlock, the document on recognition of paternity is to be sent by the father of the child. Equally, certified copies of all court rulings existing in the case are to be sent with an enforcement clause and certification of legal force, as well as proof of service of the documents initiating the proceedings to the maintenance creditor (written action, summons to attend, notification) are to be enclosed. All documents must additionally be submitted in a certified German translation or in the official language of the country processing the application.

Particular significance attaches to submitting true, complete translations in the proceedings to declare foreign maintenance decisions enforceable since the title to be declared enforceable must be sufficiently precise, and no lack of clarity may remain as to what maintenance was granted to one or several beneficiaries for which period.

In accordance with applicable international private law, the substantive law of the respective place of habitual residence of the person entitled to maintenance applies on principle to maintenance obligations. In cases in which the habitual residence of the person entitled to maintenance is abroad, the preconditions for the claim, the amount and duration of the maintenance to be paid must hence be evaluated not in accordance with German law, but with the foreign law applying there. The recipient agency must be provided with all the information necessary to process the case which would also be provided to the adjudication of the foreign court. This applies, for one thing, to the question of which maintenance requirement is to be estimated, taking account of the living expenses in the country of the person entitled to maintenance, and secondly, however, also to the question of whether and under what circumstances (for example placing the debtor in arrears) foreign law permits retroactive determination of maintenance. If a mediatory agency acts, the latter must comprehensively inform the recipient agency of the legal basis applying there when assessing maintenance. If the necessary information is already available at the start of the case proceedings, no enquiries are required in subsequent court proceedings which would delay the procedure.

It is also of vital significance that the mediatory agency performs its filter function and checks the application documents for completeness before forwarding them to the recipient agency, and calls on the applicant to forward any documents which may still be missing. It should also be manifest from the application whether, and where appropriate for which periods, public coffers have advanced maintenance payments, and whether these are addressing the debtor directly in order to obtain their payments.

Quick forwarding by the mediatory agency of the documents requested is indispensable in the interest of rapidly implementing the maintenance claims.

ISRAEL

The problems encountered when dealing with foreign judgments are not so much connected with the enforcement of the judgment itself, but rather the content of the judgment. Courts may be reluctant to enforce maintenance orders which become exorbitantly high when the sum in the original order is converted into Israeli currency. A further problem which may be encountered by a foreign applicant seeking to recover or collect maintenance in Israel is that they will not qualify for legal aid. This problem arises when the debtor cannot be located. Usually, when a debtor cannot be located, a certain amount can be collected from the NII, but only if the creditor fulfills the criteria required by the NII, which are very low and usually foreign applicants do not qualify under these criteria and therefore cannot collect from the NII.

The shortcomings further lie in the practical implementation such as location of the debtor or a debtor having no assets or income from which to pay maintenance. A further problem is a difference in internal procedures which leads to difficulties in enforcing decisions in Israel such as when maintenance decisions are administrative and not judicial or when there are conflicting decisions from abroad.

JAPAN

See question 31 above.

LUXEMBOURG

Le Luxembourg ne voit pas directement en quoi un nouvel instrument international pourrait améliorer le fonctionnement interne du recouvrement d'aliments en faveur d'un créancier d'aliments qui réside à l'étranger (compte tenu par ailleurs du fait que les autorités luxembourgeoises ont toujours considéré la Convention de La Haye concernant la reconnaissance et l'exécution de décisions relatives aux obligations alimentaires comme complémentaire de la Convention de New York, de sorte que l'institution intermédiaire luxembourgeoise n'a pas de problèmes de satisfaire à l'article 6, paragraphe 1 de la Convention de New York en ce que cette disposition charge l'institution intermédiaire de faire exécuter tout jugement, ordonnance ou autre acte judiciaire).

MALTA

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NETHERLANDS

The Netherlands central authority has had to cope with a shortage of staff in 2002, resulting in delays in the processing of incoming applications.

No delays were incurred as far as outgoing applications are concerned.

It is important that the future Convention should clearly set out Contracting States' obligations as regards the infrastructure to be put in place and responsibilities of central authorities and other bodies. It should also contain some provisions relating to tools that should be available to implementing bodies for the effective recovery of maintenance.

NEW ZEALAND

See 31 above.

NORWAY

In respect of debtors residing in Norway our system functions very well, to the benefit of the creditors abroad. We determine and collect the maintenance payments for creditors abroad almost as effective as for creditors resident in Norway. However, in respect of Hague cases we have a formal procedure requiring that the foreign documents are approved by a national court. This is a time-consuming and rather meaningless process, as a standard local court has less knowledge and experience with regard to international relations than our receiving (administrative) organ, the National Office for Social Insurance Abroad. We are planning to abandon this measure as soon as possible. A clearer commitment to administrative co-operation would ease the process and make it less time-consuming when it comes to handling the documents from the sending state. Common, bilingual forms could be very effective to avoid misunderstandings etc. in order to obtain more effective recognition and enforcement procedures.

PANAMA

Same answer as in question No.31, since it is necessary that there is a Convention which creates a mechanism among States to make it easier the recognition of foreign sentences in matters concerning alimony.

PHILIPPINES

Same as the answer in question no. 31. There is also difficulty of locating the person in the country. There are instances where foreign nationals who opted to reside in the Philippines stay in the far flung islands which posed a great problem to locate them.

POLAND

The most frequent shortcomings relate to improper preparation of requests:

- absence of translation into the Polish language of the documents sent in a foreign language
- incomplete documentation. It often lacks the enclosures or the enclosures do not comply with the documents listed in the cover letter, which makes us, as the receiving agency, request the completion of documentation several times. This results in considerable delays in potential actions aiming at obtaining maintenance to be taken by us.
- sending xerox copies instead of original documents
- absence of documents enabling the ascertainment of child's origin
- incomplete and unclear information on the material situation of the eligible person and of his/her family
- lack of information on material circumstances influencing the course of proceedings, e.g. the conclusion of education by an of age creditor

Transmitting agencies should pay more attention to the selection and completeness of the documentation.

ROUMANIE

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SLOVAKIA

In view of the fact that Slovakia has created a highly specialized central authority to assist claimants from abroad whose obligations are well defined in the domestic legislation, the new instrument might not be so "vital" from this perspective for Slovakia. However, setting clear cut rules (see point 31) would help the Slovak central authority as well.

SUISSE

- *coopération administrative*
- manque de clarté des règles de coopération en vue d'obtenir une nouvelle décision judiciaire (en Suisse) : possibilité de mandater un avocat à évoquer et conditions (éventuelle subsidiarité ?) à préciser.

SWEDEN

No major shortcomings have been drawn to our attention.

UNITED KINGDOM - ENGLAND AND WALES

- The court in England and Wales cannot check the truth of evidence obtained in the reciprocating country nor easily require prompt provision of collaborative or supplementary evidence.
- Information from the applicant is often incomplete and uninformative, especially in relation to financial circumstances.
- There are not sufficient robust mechanisms available to enable a court to automatically react when a maintenance debtor defaults in his/her payments; reliance is placed on the payee to inform the court and ask for action to be taken when payments cease.
- There is an inability of the courts to establish through an agency the whereabouts of the Respondent. There is limited access to information, which is often out of date.

UNITED KINGDOM - SCOTLAND

The major problem facing an applicant from abroad seeking to obtain or recover child support in Scotland is the lack of power to locate a debtor and the lack of any effective procedure to compel the debtor to disclose his assets and employment. The creditor may then be at a disadvantage and enforcement will be difficult.

Finally, there is a problem where a foreign applicant holds an order which is not covered by an international agreement either because it is from a state not party to any agreement or the order is not one covered by any relevant agreement. In these circumstances the applicant will be able to start fresh proceedings but it is likely that sums due will not be backdated.

UNITED STATES OF AMERICA

Many of the following problems affect outgoing as well as incoming cases.

- (a) **Electronic Communication of Case Information:** There are serious problems with getting and updating all needed case information in a low-cost, efficient, and timely manner. Case information correspondence by surface or airmail is time-consuming, expensive, and difficult to automate. We need to consider how the new instrument can take advantage of developments in electronic communication. Perhaps the instrument could provide that most information could be transmitted electronically, and only a few key documents must be transmitted by surface or airmail.

Informal case update information, for example, should certainly be acceptable when transmitted electronically. The negotiators should also consider which of the official documentation required to process a request (completed forms, petitions, testimony, decisions, orders and other official court or administrative documents; payment records; birth and marriage certificates; photographs; etc.) might be transmitted electronically and used in official proceedings in the Requested State.

- (b) **Electronic funds transfer:** The problems related to sending case correspondence by surface or airmail of course also apply to collections and disbursements. Currency conversion costs diminish the collection amount because banks charge significant fees and convert at less-than-favorable exchange rates when dealing with relatively small, non-commercial amounts of foreign currency. The negotiators should consider how the instrument can facilitate the use of technology (electronic funds transfer/electronic data interchange or direct deposit to banking correspondents) so that payments can be processed at minimal cost and favorable exchange rates.

It would be useful for the negotiators or the Permanent Bureau to study how other instruments/transactions handle electronic communications and electronic funds transfer.

- (c) **Updated point-of-contact information:** Often much time is wasted simply finding out who is the person in the foreign country currently responsible for a particular case. There should be a provision in the instrument to encourage/require routine, timely updates of this information for every case.
- (d) **Timely responses to requests for information:** There should be some provision in the instrument to encourage/require responses to inquiries within a specified period of time.

- 33 Gardant à l'esprit que le nouvel instrument doit être « complet et fondé sur les meilleurs aspects des Conventions existantes », et que sa structure exacte n'a pas encore été déterminée, veuillez indiquer vos points de vue préliminaires sur les éléments clefs qui doivent y être pris en compte. A cette fin, il pourra vous être utile d'utiliser la liste suivante et d'indiquer l'importance que vous attachez à chacun des points énumérés :

- a* dispositions relatives à la coopération administrative ;
- b* dispositions pour la reconnaissance et l'exécution des décisions étrangères ;
- c* principes de loi applicable ;
- d* règles uniformes de compétence directe applicables pour déterminer et modifier la décision relative à des aliments ;
- e* dispositions spécifiques d'aide qui doit être fournie à un requérant provenant d'une autre partie contractante ;
- f* dispositions concernant l'aide et l'assistance judiciaires qui doivent être fournies à un requérant provenant d'une autre partie contractante ;
- g* dispositions relatives à la coopération pour la recherche en paternité ;
- h* dispositions concernant la coopération en matière de virement international de fonds au moindre coût ;
- i* dispositions permettant aux parties contractantes d'éviter d'octroyer des services au requérant étranger lorsque ceux-ci ne sont pas disponibles sur une base réciproque ;
- j* formules modèles ;
- k* dispositions visant à assurer le respect des obligations en vertu de l'instrument ;
- l* dispositions relatives aux institutions publiques qui poursuivent le remboursement de prestations fournies au créancier d'aliments ;
- m* autres. Merci de bien vouloir préciser.

- 33 Bearing in mind that the new instrument is to be "comprehensive in nature, building on the best features of the existing Conventions", and that the precise structure of the new instrument has yet to be determined, please indicate any preliminary views you have on the key elements to be addressed in the new instrument. In doing so, you may find it helpful to use the following list and to indicate what degree of importance, if any, you attach to each of the items listed:

- a* provisions concerning administrative co-operation;
- b* provisions for the recognition and enforcement of foreign decisions;
- c* applicable law principles;
- d* uniform direct rules of jurisdiction applying to the determination and modification of decisions in respect of maintenance;
- e* provisions specifying the assistance to be provided to an applicant from another Contracting Party;
- f* provisions concerning legal aid and assistance to be provided to an applicant from another Contracting Party;
- g* provisions concerning co-operation in the establishment of paternity;
- h* provisions concerning co-operation in the international transfer of funds at low cost;
- i* provisions enabling Contracting Parties to avoid providing services to applicants from abroad where they are not available on a reciprocal basis;
- j* standard forms;
- k* provisions aimed at securing compliance with obligations under the instrument;
- l* provisions concerning public bodies claiming reimbursement of benefits paid to a maintenance creditor;
- m* others. Please specify.

AUSTRALIA

- (a) Very High, without co-operation the instrument becomes meaningless.
- (b) Very High, under Australian Law foreign decisions are readily accepted but it is also important for foreign jurisdictions to recognise Australian decisions, especially administrative decisions.
- (c) High
- (d) Very High, it would be good if they were uniform but not essential.
- (e) High
- (f) High
- (g) High
- (h) Very High
- (i) Low - Depends on the level of service. Does not need to be identical but there should be a minimum commitment guaranteed.
- (j) Low
- (k) high
- (l) Low
- (m) Include flexibility to use future technologies.

AUSTRIA

Some of the elements mentioned seem to be reasonable. Lit.d (direct rules of jurisdiction) is not realistic. In lit.f (legal aid) a child centred approach/ means testing is indispensable. Lit.h should not be dealt with; this is a question of the bank system and not of a Hague Convention.

Austria strongly opposes to any reciprocity requirement (lit.i); this seems to be out-dated nowadays.

Standard forms are not recommended (lit.j).

Public authorities claiming reimbursement should be included (lit.l).

BULGARIE

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CANADA

- Il devrait y avoir un préambule édictant les objectifs et principes les plus importants de l'instrument, y compris les principes de réciprocité et de coopération ;
- Les points les plus importants à déterminer sont les suivants : a) (de plus, mettre en place un système administratif afin d'exécuter les décisions et verser les sommes recouvrées au créancier) ; b) ; c) ; d) ; e) ; f) (souplesse nécessaire dans l'application de ce point) ; j) ; k) et l) ;
- Clause fédérale d'extension / Clause fédérale d'interprétation ;
- Article sur le besoin de traduire les documents ;
- La Conférence de La Haye doit jouer un plus grand rôle dans la compréhension et l'application de l'instrument;
- Une base de réciprocité sur certains points de l'instrument.
- There should be a preamble stating the main goals and principles of the instruments, including reciprocity principle and co-operation;
- The items are given priority according to the following list: a) (+ to put in place an administrative program to enforce the orders and collect and disburse monies); b); c); d) (need more information on the exact nature of these rules – discuss at next call); e); f)

(flexibility necessary in the application of this item); g); h) (to be an option depending on the jurisdiction); j); k); and l);

- Federal State Clause / Interpretation Clause;
- Provision on translation of documents
- The Hague Conference needs to play a strong role in the comprehension and application of the instrument;
- A reciprocity basis in certain areas of the instrument.

CHILE

(a) Extremely important; (b) the existing law for recognition and enforcement of foreign decisions is excellent; (c) important; (d) important; (e) important; (g) extremely important; (h) extremely important}; (i) extremely important; (j) very important; (k) extremely important; (i) important.

CHINA - HONG KONG SPECIAL ADMINISTRATIVE REGION

All the items are of similar degree of importance.

CROATIA

We approve of the above items. In addition to it, as there are States which are not parties to the Convention of 5 October 1961 Abolishing the Requirement of Legislation for Foreign Public Documents, we feel that the new instrument should contain a provision abolishing the need to legalese documents to the effect that the documents duly issued or certified by a court or other competent authority of the sending State and furnished with a signature and official seal of that authority would not need re-certification for use in the receiving State. In other words, in order to simplify and shorten processes, such documents should have the same legal validity as the domestic public documents.

We also believe that elements should be added concerning the exemption from the costs of procedure, at least in providing security to the respondent.

Elements should be incorporated to ensure expeditiousness of processes.

CYPRUS

- a. very important.
- b. very important.
- c. important.
- d. very important.
- e. important.
- f. very important.
- g. very important.
- h. important.
- i. not important
- j. important
- k. important.
- l. important.
- m. --

CZECH REPUBLIC

We consider the summary of the key segments of the new Convention shown in item 33 of this part of the Questionnaire being fully sufficient and we assume that the segments are listed in their order of precedence in the summary. Binding for all parties to the Convention should be the segments listed under a) thru d), g), j), k) and l). As alternative we consider the segments listed under e), f), h) and i).

DENMARK

The Danish ministry of Justice has no comments in particular to the questions in part III.

ESTONIA

We find that all the issues mentioned should be included in the new instrument.

FINLAND

- (a) Administrative co-operation is of utmost importance. The services should be provided already before the recovery process is started. Assistance should be provided to both creditors and debtors.
- (b) The provisions on recognition and enforcement of foreign decisions should provide for a very simple procedure for recognition and enforcement of foreign decisions. It might be appropriate to consider a provision that would encourage Contracting Parties to the new instrument to apply the same provisions also to other states than Contracting Parties. If provisions on indirect jurisdiction are included in the new instrument they should not be as lenient as those in the Hague Convention of 1973.
- (d) Uniform direct rules of jurisdiction applying to the determination and modification of decisions in respect of maintenance are important and it would be desirable that such provisions were included in the new instrument.
- (e) It is very important that an applicant from another country receives assistance in the Requested State.
- (h) Please read the answer to questions number 29 and 31.6.
- (j) Standard forms and procedures are important: they facilitate the process and reduce the costs. The standard forms should be easily available in different languages.
- (k) The training of judges, the personnel of the Bailiff's Office and the personnel of other authorities involved is important.
- (l) Provisions concerning a right for public bodies to claim reimbursement of benefits paid to the maintenance creditor are very important.
- (m) It would be desirable that the new convention would provide for regularly held follow-up conferences, where the Contracting Parties could exchange information on the application of the convention in the different states bound by the convention.

FRANCE

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GERMANY

- a) *highly important*: The mediatory and recipient agencies should communicate directly, as has been the case heretofore.
- b) *highly important*: The proceedings to declare a foreign maintenance title enforceable are less time-consuming (both in preparation and as to the duration of the proceedings in court) than court proceedings to establish maintenance before a German court, and have the advantage that the amount of the maintenance owed is no longer open to dispute. Once the proceedings have been concluded, coercive execution measures may rapidly be taken if the debtor does not meet his/her obligation to pay.
- c) *highly important*: This applies in particular in cases in which the recipient agency must issue a determination of maintenance.
- d) *less important*: The main focus of attention is, initially, to assert existing court rulings from abroad. These titles should be amended as a rule by the court handing down the judgment since the latter is best able to evaluate a change to the factual situation relevant to the ruling as against the time of the initial decision, and is able to comprehensively examine the substantive law to be applied there. The required respect for the foreign jurisdiction should also be in favour of this procedure.
- e) *less important*: I presume in this assessment that the direct communication channels between mediatory and recipient agencies at a) and the person entitled to maintenance is comprehensively advised and informed by the mediatory agency of his/her country.
- f) *important*:
The previous regulations (Art. 9 of the UN Convention and Art. 15 of the 1973 Hague Convention) should be retained.
- g) *highly important*: Since the establishment of paternity is a precondition for subsequently establishing maintenance, the proceedings must be carried out rapidly. This is not always possible because of the need for many parties to work together (mother of the child, child, alleged father, court, medical institutions, experts, etc.) and the fact that the case is being processed in more than one country.
- h) *highly important*: One should strive towards a provision corresponding to Regulation (EC) No 2560/2001 of the European Parliament and of the Council of 19 December 2001 on cross-border payments in euro, in accordance with which the fees for international transfers may not be higher than for domestic transfers.
- i) *less important*: On principle, all persons seeking maintenance should be granted support.
- j) *particularly important*: The exclusive use of uniform, multilingual application forms would be welcome.
- k) *unimportant*: I consider it to be a matter of course that all contracting states should keep to the instrument.
- l) *particularly important*: It should be clarified whether as a result of the new instrument only claims of natural persons should be asserted, or claims which have transferred to public coffers because of payment of an advance.

- m) The procedure should be such that the applicant on principle must address the mediatory agency of his/her home state and only the latter should be in contact with the recipient agency. Experience shows that direct contact by the person entitled to maintenance or a third party commissioned by such party causes additional work of the recipient agency which does not serve the expedient completion of the task (constant calls, involvement in processing the case, circumventing the filter function of the mediatory agency).

ISRAEL

(a) Administrative Co-operation:

Administrative co-operation is essential to the practical success of the new instrument. The new instrument should set out the minimum threshold of administrative assistance, that should be given to a maintenance creditor, seeking to have a maintenance order recognized, enforced or established. This should include providing details of the maintenance debtor, taking steps to track down the creditor, and providing all the necessary information regarding the procedures of the Requested State and, what exactly needs to be done by a Requesting State, in order for the request to be processed.

(b) Provisions for the recognition and enforcement of foreign decisions:

There is importance in including rules of recognition of foreign decisions, whereby decisions can be recognized without necessarily referring to rules of indirect jurisdiction. As long as there is certification by the requesting state, that a maintenance decision has been validly obtained in terms of the laws, and procedures of the state of origin. Once the validity of a decision has been established, the decision will be enforced and should the debtor object to the enforcement, the burden will be upon him to institute proceedings and to prove his objection. In terms of the enforcement of the maintenance decision, the relevant authority should be required to collect only up to a certain amount.

The issue of lump sum maintenance and arrears, should be examined in order to decide whether there should be an obligation under the new instrument to enforce these.

(c) Applicable law principles:

We do not believe that it is necessary to include applicable law principles in the new instrument. Each state should enforce its own laws and procedures regarding maintenance. Applicable law clauses are liable to cause complications, lengthening the whole process of maintenance collection.

(d) Uniform direct rules of jurisdiction applying to the determination and modification of maintenance decisions:

We consider uniform direct rules of jurisdiction to be an important part of the new instrument, both in terms of modification of existing maintenance decisions and the establishment of maintenance orders.

One of the problems facing the courts, when having to enforce foreign maintenance orders, is that the amount of the maintenance payment often do not reflect the economic reality of the country, in other words, the amount of payment by the maintenance debtor required by the foreign decision is too high taking into account foreign exchange rates.

Our internal law does not allow for modification of foreign judgments and our courts, therefore are left with the choice of either not enforcing the judgment at all or enforcing it, knowing that it will be impossible for the debtor to meet the payments. We suggest a certain middle ground in the new instrument, whereby modification of the judgement is made provision for on a limited basis, accompanied by direct rules of jurisdiction entitling a court to modify the original decision. The modification should be limited only to the amount of the maintenance payment

and not the substantive part of the maintenance decision. Furthermore, the grounds for modification should also be limited to changes in the circumstances of the maintenance debtor, creditor (such as a change in income) and of the child, and modification to allow realistic adjustment of the amount according to the economic reality of the country in which the judgment is being enforced.

Direct rules of jurisdiction are also important for the establishment of decisions regarding maintenance. (perhaps a similar arrangement to the one which appears in the Convention on the Civil Aspects of International Child Abduction.)

(e) Provisions specifying the assistance to be provided to an applicant from another Contracting Party:

The provision of assistance by Requested States to a maintenance creditor is essential throughout the whole process. The assistance should be both administrative and legal. A suggestion that can be taken into account is the possibility of including in the new instrument a possibility of extending the assistance given in executing a recognized order to a certain amount only. In other words, if a maintenance decision was given for an amount of \$10 000 a month then a state will be seen as having complied with its obligation under the Convention if it collects only a certain percentage of that amount.

(f) Provisions concerning legal aid and assistance to be provided to an applicant from another contracting party:

The issue of legal aid is already covered by (e) above. Once a maintenance creditor has a decision that needs to be recognized and enforced, or needs to establish a maintenance decision, this would fall within the scope of assistance that should be given in terms of the new instrument.

(g) Provisions concerning co-operation in the establishment of paternity:

The issue of paternity is a problematic one in terms of the Jewish religious law (see answer to question 18), and so we can only make general reference to the issue. On principle, we see no reason why there should not be co-operation in establishing paternity. The new instrument should however, include a provision that should paternity be established, it would be for the purposes of the specific maintenance only.

Co-operation in this matter should be administrative and not financial. A Requested state should not have to bear the financial burden of establishing paternity. Rather, this cost should be borne by the father and, should he refuse, then the court should be able to presume his paternity for the purposes of either enforcing or establishing a maintenance order.

(h) Provisions concerning co-operation in the international transfer of funds at low cost:

(i) Provisions enabling Contracting Parties to avoid providing services to applicants from abroad where they are not available on a reciprocal basis:

We will deal with this issue together with securing compliance with obligations under the instrument and the reimbursement of public bodies who have paid benefits to a maintenance creditor (i.e. (k) and (l)).

We strongly believe that a Contracting State needs to assume responsibility under the instrument. A state should do everything in its power to ensure that all possible steps have been taken to recognize and enforce or establish a maintenance order. This responsibility spans from ensuring that the necessary administrative co-operation is given, to doing what it can to try and track down the debtor. If a state does not do this, it should be responsible for its own respective public body making the maintenance payment (or at least a certain portion thereof). In addition, a public body that has made payment to a maintenance creditor should be entitled to reimbursement. Once again, the Requested State, once it has received the

request from the public body of the Requesting State, should take all necessary steps to track down the debtor in order to enforce the maintenance decision in terms of which that public body has been paying the creditor maintenance.

(j) Standard Forms:

Standard forms are vitally important in order to ensure efficiency in processing requests. Provisions regarding standard form should be dealt with under the administrative co-operation provisions. Standard forms should be available in English or French, at least and should include information about the details of the maintenance decision, including any special circumstances that were taken into account in making the decision. The amount of the maintenance payments should be expressed as units of the payment as a percentage of the actual income of the debtor, and if the income is unknown, then according to some other standardized calculation.

JAPAN

See question 31 above.

LUXEMBOURG

Sur la liste figurant au point 33., les points a), b), e), f), j), et k) seraient à traiter prioritairement.

Pour les points c) et d) : position réservée.

Pour le point g) : dépasse le cadre d'une convention sur le recouvrement d'aliments. L'autorité centrale (ministère public) aurait par ailleurs des difficultés à se voir confier en ce domaine un rôle de coopération active, eu égard au fait qu'elle risque de se retrouver dans une position délicate, alors que dans les affaires ayant trait à l'état des personnes, le ministère public est certes partie jointe, mais n'intervient pas activement pour compte d'une des parties.

Les points h) et i) ne semblent pas prioritaires.

Le point l) soulève la question de ce qu'il y a lieu d'entendre par « créancier d'aliments ». A priori, les institutions publiques étrangères devraient disposer de moyens suffisants pour faire valoir leurs droits par leurs propres moyens.

MALTA

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NETHERLANDS

(a) and (b): The Netherlands would welcome an instrument establishing a system of international administrative co-operation combined with rules on recognition and enforcement of foreign maintenance orders. Co-operation should mainly concern the enforcement in the debtors' state of habitual residence of maintenance orders given in the creditor's state of habitual residence. If such orders cannot be enforced, assistance should be given enabling the claimant to obtain a fresh order in the debtor's state of habitual residence.

(c) and (d): Like the 1973 Maintenance (Enforcement) Convention, the future instrument should provide for the recognition and enforcement of maintenance orders irrespective of the law applied to the maintenance obligation. If it is decided to include a chapter on applicable law, a

revision of the 1973 Convention on the Law applicable to Maintenance Obligations will be necessary.

(d) In the opinion of the Netherlands the chances of reaching consensus on uniform direct rules of jurisdiction are very limited. Such rules are not indispensable for the setting up of an effective system for the recognition and enforcement of decisions.

(e) and (f): The inclusion of provisions on assistance and (preferably free) legal aid is considered to be essential.

(g) Co-operation should cover maintenance claims arising from any type of family relationship, including claims arising from decisions establishing paternity of a child born out of wedlock. As regards the autonomous character of the maintenance obligation, reference is made to the observations in the Pelichet Report, nos. 78-80 and the observations in the report of the Special Commission held in 1995.

(h) The question of facilitating the international transfer of funds should be looked into. It seems uncertain, however, whether the problem can be solved in a convention on private international law.

(i) The creation of an "à la carte" system should be avoided.

(j) The use of standard forms is a suitable means of standardising procedures. The Convention should provide for the use of recommended forms, to be developed, and where necessary amended in consultation with the bodies responsible for implementing the Convention.

(k) See the reply to question 32.

(l) In the view of the delegation of the Netherlands it is obvious that claims for the reimbursement of benefits paid by public bodies should be included in the Convention system.

(m) The issue of costs incurred by central authorities will have to be addressed. Also, attention will have to be given to issues regarding the operation of the 1973 Maintenance (enforcement) Convention, as discussed by the Special Commissions of 1995 and 1999.

NEW ZEALAND

(a) The provisions should be identical to those required by Central Authorities in the Child Abduction Convention.

(b) As New Zealand's domestic legislation only allows for the recognition of foreign decisions in respect of the Commonwealth regime this is not particularly important.

(c) The applicable law should remain the law of the state of the Respondent as then the claimant can use the enforcement mechanisms available in the same country as where the order was obtained.

(d) This would not work in practice as it would require legislative amendments to the domestic legislation of many Contracting Parties which could take years.

(e) This is very important.

(f) As above.

(g) Very important as currently many claims under the UNCRAM Convention fail in the New Zealand Courts because of the lack of co-operation/information.

- (h) We do not believe this provision is achievable.
- (i) Important.
- (j) This provision is absolutely essential.
- (k) Important.
- (l) There is no jurisdiction for such a provision in New Zealand's domestic legislation.

NORWAY

- (a) Provisions on administrative cooperation are fundamental for a successful new instrument.
- (b) More detailed and binding provisions in this field would be essential.
- (c) Because of the diversity of systems and cultures among the member-states, we are a bit doubtful if it will be realistic to obtain a comprehensive agreement on provisions on applicable law in the new instrument in addition or instead of the Lugano-convention and other conventions in this field. However, it certainly is worth a try to discuss this issue thoroughly, especially if it may serve to simplify the process of recognition and enforcement under the new instrument.
- (d) Unfortunately, we are afraid that uniform rules of jurisdiction is not very realistic to obtain in this world-wide instrument at the present stage. Such provisions are easier to implement in bilateral agreements and multilateral conventions between states which share the same cultures and traditions in this field.
- (e) Such cooperative regulations would be extremely helpful to make the new instrument effective.
- (f) Same answer as e) above.
- (g) It is essential to regulate assistance also in this field, not only for providing for the right of support, but also in order to secure the children concerned their right to have a father.
- (h) With modern technology, transfer of funds should really be more effective and cheaper than it is today. We would certainly applaud such cooperation.
- (i) Not from the Norwegian point of view. Our laws and administrative authorities provide service, when competent, to all children and custodial parents free of charge, regardless of where in the world they are resident or how helpful their home-country might be in assisting Norway in this area.
- (j) This would be most helpful if as many Member States as possible could join a standard form system in order to spare time and money in handling this cases.

- (k) As in domestic legislation, such provisions would serve as an important tool in order to secure compliance with the convention. It is difficult though, at this stage, to specify the content of such provisions. It would, among other things, depend on how committing and detailed the new instrument appears to be. Most nations will clearly have problems with an ambitious convention combined with provisions of sanctions. As mentioned above, we are not against a new Convention which, at least in the beginning, is more demanding and, therefore, more exclusive.
- (l) Norway will certainly agree to the need of such provisions. As we have a system of advance payments of maintenance payments, the state is in fact creditor in respect of a major part of the total amount of maintenance debts.
- (m) We think, at this stage, that the most vital issues are brought up to discussion. Later on in the process it would be easier to go further in details.

PANAMA

Concerning the level of importance that we consider from the provided list:

The most important are b,c,f,g,i adding the following:

- (a) jurisdiction that will be used, that of the State of residence of the plaintiff, defendant,
- (b) documentation that will be demanded in the requests,
- (c) to designate a central authority in charge of dealing with the requests
- (d) languages to be utilized in the requests
- (e) free legal assistance

PHILIPPINES

- (a) very important
- (b) already existing in the Rules of Court
- (c) important
- (d) important
- (e) important
- (f) important
- (g) important
- (h) important
- (i) important
- (j) not important
- (k) very important
- (l) irrelevant under the Philippine Law.

POLAND

- (a) Precise determination of central authorities' obligations, including the obligation to provide promptly and regularly mutual information on documents obtained and actions taken would be relevant.

For that purpose, forms of communication between authorities should be rationalised and the request forms should be unified. If we take the development of technology and the future-oriented character of the new regulation into consideration, it would be purposeful to formulate provisions, which would permit the electronic circulation of requests. This would allow avoiding many doubts and problems relating sending incomplete or unclear documents.

- (b) The procedure relating to recognition of a foreign judgement is much less time-consuming and complicated than claiming maintenance to be adjudicated by a court in the requested state.
- (c) Introducing clearly determined principles in the new regulation is necessary.
- (d) Proceedings in front of a Polish court shall be also carried on the grounds of the Polish procedural law (*lex fori*). Introducing a uniform procedure seems impossible.
- (e),(f) Introducing principles concerning legal assistance is very important. In Poland maintenance proceeding is free of charge. For the Ministry of Justice, which is the central authority and the attorney of a suitor claiming maintenance in Poland, a substitute shall be appointed. The costs of legal assistance shall be covered by the State Treasury. Introduction of uniform principles concerning legal assistance would be useful, even more, since the domestic law of some of the states does not provide for such assistance.
- (g) Establishment of such assistance is relevant, yet in our opinion it is not a priority issue.
- (h) Rationalisation of co-operation in the international transfer of funds with the avoidance of excessive costs is desirable.
The new regulation would be a good occasion to introduce a uniform rule concerning the possibility for the requesting party to obtain assistance independently of reciprocity.
- (j) standardisation of request forms is very much desired.
- (k) this is not the most important issue, yet it would be suitable to oblige states to immediate mutual provision of information about the documents received and actions taken.
- (l) in many cases there are institutions, which pay maintenance if the obligor does not comply with the obligation. The new regulation shall be an occasion to clarify the issue of regress for benefits paid to a maintenance creditor.
- (m) the new regulation could oblige the contracting states to submit statements on the domestic regulations with regard to maintenance. Such information could be accessible in an electronic form on the website.

ROUMANIE

-

SLOVAKIA

The key elements of the new instrument should be, in the order of importance we attach to them, as follows:

- I. provisions concerning administrative co-operation;
- II. provisions specifying the assistance to be provided to an applicant,
- III. provision for the recognition and enforcement of foreign decisions, with the alternate way of procedure if recognition is/was not possible,
- IV. provisions on judicial assistance in cases of maintenance establishment and modification (also paternity, if included in the instrument);
- V. provisions concerning legal aid and assistance
- VI. provisions concerning transfer of funds
- VII. opt out (pot in) clause (see point 31)
- VIII. uniform direct rules of jurisdiction, etc

- IX. applicable law (statute of limitation – see point 31)
- X. standard forms
- XI. co-operation in cases of establishment of paternity (though this may cause trouble)
- XII. provisions concerning public bodies claiming reimbursement.

SUISSE

- (m) (questions préalables, éligibilité) :
- définition de l'obligation alimentaire et des créanciers (enfants mineurs, majeurs, époux, autres parents)
- (n) (éléments complémentaires, dans la mesure où ils ne sont pas contenus dans les points a et e) :
- Possibilité de demander la localisation du débiteur d'une part et des éléments concernant sa situation financière d'autre part, cela en préalable à toute requête de recouvrement d'aliments. On éviterait ainsi de déposer des requêtes dénuées de toute chance de succès.
- Il serait également souhaitable que des autorités régionales ou locales puissent correspondre directement entre elles et suivre le cas de recouvrement, une fois que la requête initiale a été déposée et transmise par l'autorité centrale.
- Tous les points énumérés dans la liste ainsi que les points m et n susmentionnés devraient être pris en compte dans la nouvelle Convention, à l'exception de :
- la coopération pour la recherche en paternité (point g) qui nous semble introduire un élément dépassant le cadre spécifique du recouvrement de pensions alimentaires et qui compliquerait la coopération en matière d'aliments, notamment par l'implication d'autres autorités;
- le point i (réciprocité) qui va à l'encontre de l'intérêt des créanciers d'aliments.
- Le degré d'importance de ces points est à notre avis le suivant :
- éléments clefs : points a (coopération administrative), b (reconnaissance/exécution de décisions), c (principe et questions spécifiques de loi applicable concernant le recouvrement d'aliments), d (règles de compétence) e et f (aide spécifique et assistance judiciaire), k (contraintes à respecter la convention), l (collectivités publiques), m (définitions, créanciers) ;
- « nice to have » : points h (virement international), j (formule modèle), n (demande de renseignement préalable, collaboration directe) ;
- peu favorable (voir ci-dessus) : points g et i.

SWEDEN

- (a) An important element.
- (b) An important element.
- (c) Would be valuable in dealing with provisions on statute of limitations.
- (d) To address this issue will be a complicated task and will take considerable time. In the context of maintenance decisions there is, at the moment, no urgent need for uniform direct rules of jurisdiction. The new instrument should therefore not focus on the issue.
- (e) An important element.
- (f) Important to have clear and predictable provisions, which already is the case in most situations.
- (g) To establish paternity and maintenance at the same time would be of great value to make the process more efficient.
- (h) Such provisions could be interesting.
- (i) Reciprocity should not be the key element. Instead one should focus on provisions which facilitate the recovery of maintenance despite the fact that there are no reciprocal arrangements.

- (j) To develop standard forms suitable at a global level is a complicated task which takes time. The new instrument should not focus on this issue. Under all circumstances, the use of standard forms should not be mandatory.
- (k) An important element.
- (l) An important element. See under answer 31(1).

UNITED KINGDOM - ENGLAND AND WALES

- (a) VERY IMPORTANT
 - these are considered to be very important. It is crucial to have good levels of administrative co-operation.
 - standardisation of forms and use of information technology for rapid communication/translation.
 - provision of a good practice guide.
 - standardised agreement on how to deal with non-compliance, delays and completion of documents.
 - review approach to public authorities recouping payments.
 - the new global agreement could make provision for establishing a global system for electronic transfers of payments in a cost- effective way for the benefit of the payee.
 - we would welcome the opportunity to examine the benefits of comparing an administrative based system with a common law based scheme.
- (b)
 - it is considered to be very important to maintain provision to enable variation of foreign decisions in the light of changed circumstances
 - there is no problem in recognising foreign decisions, however enforcement of them is difficult if they are not made on a sound basis of fact and the liable party's ability to pay.
 - it is considered to be very important that the convention makes provision for dealing with spousal maintenance.

DESIRABLES

- consider the definition of maintenance in order to see if lump sum payments could be entertained.
- advantages of provisional orders should be taken into account.

- (c) This would be difficult to achieve.

We would prefer the Conference to concentrate on the rules of Jurisdiction, and recognition and enforcement provisions rather than applicable law principles.

If it is considered necessary to consider applicable law, we would suggest that this should be carried out in such a way that it would not delay progress on the rest of dossier.

We would prefer to retain the principle of lex fori.

- (d) Yes – and where courts should have jurisdiction to hear other connecting factors.
- (e) Yes -if they are drafted as clear and unambiguous.
- (f) Yes- assistance should generally be state funded on a non-discriminatory basis, and subject to a means test or declaration, as the parties involved are most usually not in the high-income bracket
- (g) NOT IMPORTANT
- (h) WORTH CONSIDERING AS AN IDEAL

See 33 (a) above. The conversion of currency is costly and causes delay, not least when the UK Court cannot agree with the reciprocating court upon the exchange rate to be applied

- (i) No. This would be a retrograde step.
- (j) Yes. See 33 (a) above. This is a priority.
- (k) Provision should be made for monitoring, education and support to ensure compliance.
- (l) Yes. Desirable and would be possible if powers centred on a central authority.
- (m) Fresh start – one single international Act, one single international treaty. This is challenging but not impossible.

UNITED KINGDOM - SCOTLAND

- (a) Essential but obligations should not be so wide that the cost of setting up Central Authority would deter states from signing the agreement. Time limits for dealing with cases would be useful.
- (b) Essential.
- (c) The question of applicable law raises all sorts of difficulties. We believe the main priorities should be proceeded with and only if it becomes clear that it is really necessary should anything be done.
- (d) See response to Q34.
- (e) Desirable but see (a) above.
- (f) Essential but again obligation should not be so great that it would deter states from signing. We suggest that legal aid should be available:
 - (1) Where an applicant has Legal Aid in his home state, he should qualify automatically for Legal Aid in the state in which the Maintenance Order is sought to be enforced.
 - (2) Where Legal Aid is available for enforcement action in the requested state the applicant should be entitled to such Legal Aid in accordance with local rules.
- (g) Desirable but there are a few complications. For example, if assistance is required from abroad to help make initial maintenance determination then Central Authorities may not be able to become involved because there is, as yet, no official application. Moreover consideration will have to be given to current rules of service and taking of evidence abroad.
- (h) Reluctant to become involved in transfer of funds.
- (i) Not desirable.
- (j) Essential.
- (k) Desirable but would have to make sure methods of enforcement are not too severe and concentrate on conciliation between states.
- (l) Possible advantages to this but real concern over legal aid being given to public bodies.

- (m) Others - desirable.
- Keep additional documentation to a minimum and minimise translation requirements;
 - Include definition of a 'maintenance order' for example, should it cover lump sum payments? Must draw a line between maintenance obligations which do come within scope of Convention and rights in property arising out of a matrimonial relationship which do not come within the scope of the instrument.
 - rules about appropriate jurisdiction for modifying orders.

UNITED STATES OF AMERICA

Preliminarily, the United States notes that the above reference to existing Conventions must be read in conjunction with the additional recommendation that the new instrument "be structured to combine the maximum efficiency with the flexibility necessary to achieve widespread ratification." While it may make sense for the new instrument to incorporate and build on the features of existing Conventions that have worked well in practice, features that have proved ineffective, inefficient or that have prevented widespread ratification should be discarded and replaced with new approaches.

- (a) This is an essential feature. We have learned from our bilateral child support efforts and from our experience in other public and private international law efforts, that the adoption by a large number of countries of a treaty that sets forth a comprehensive set of standards and obligations for the establishment and enforcement of maintenance is only the first step. The treaty is only a success if it works in practice. As stated previously, the Conference should focus on the goal of getting child support payments to needy children in international cases.

This instrument must ensure that parties establish strong, effective Central Authorities and other related authorities at every step in the process. Parties should provide assistance to each other (including limited service requests and judicial assistance, where appropriate) and to debtors and creditors; they should provide points of contact in every case who can respond to inquiries in a timely manner. Negotiators should consider whether the instrument should provide mechanisms for training to help countries carry out their obligations, and for monitoring parties' implementation efforts.

- (b) This is a key element of the new instrument. The recognition and enforcement of foreign decisions eliminates the necessity of re-litigating the same issues between the same parties in a maintenance case and the creation of conflicting, multiple decisions. Therefore, the United States supports an instrument that will provide for the recognition and enforcement of decisions from the Requesting State to the greatest extent possible.

The United States is convinced that a flexible, practical approach to recognition and enforcement is the only one that will work in the new instrument. Rather than imposing direct or indirect jurisdictional rules in the instrument, the instrument should provide that the Requested State must recognize and enforce the Requesting Party's decision if that decision was made under factual circumstances meeting the jurisdictional/due process standards of the Requested State. Adoption of this approach in the new instrument would avoid a prolonged and futile effort to develop uniform jurisdictional standards. Experience has shown that this is difficult if not impossible to achieve: a country will not join an instrument that is incompatible with its jurisdictional standards. Thankfully, it is not necessary to tackle the issue of jurisdiction in order to achieve our goal, which is an instrument that will get child support to needy children in a predictable, consistent, efficient, low-cost and timely manner.

Most child support decisions from a Requesting Party will meet the jurisdictional standards of the Requested Party. Even if the jurisdictional basis cited by the Requesting Party is not acceptable to the Requested Party, the facts of the case will probably provide another

jurisdictional basis which would be acceptable to that Party. In the few cases where the Requested Party is unable to recognize the decision of the Requesting Party, the instrument should provide that the Requested Party will take steps to obtain a new decision under its own law.

Variation of orders is closely related to the issue of recognition and enforcement of orders. There are wide differences among the countries of the world in the determination and calculation of the level of maintenance payments. The new instrument will not succeed if it permits the Requested Party routinely to modify the Requesting Party's decisions, using the Requested Party's guidelines. On the other hand, maintenance decisions need to be modified from time to time, and the instrument must provide for this.

The instrument should do everything possible to facilitate and encourage variation by the Requesting State (i.e., the variation should be done by the party that entered the initial decision). For example, the instrument could require the Requested State to provide administrative assistance to debtors, so that it would be easier for the debtor to transmit a variation request to the Requesting State; it could require Requesting States to have procedures for the prompt review and adjustment of decisions on the petition of either resident or non-resident creditors or debtors; and the instrument should provide that the physical presence of the creditor or the debtor is not required in maintenance proceedings, including variation proceedings.

The instrument should limit the circumstances under which the Requested State is permitted to vary an order (e.g., when no interested party any longer has a connection to the Requesting State, or when the creditor has consented to the jurisdiction of the Requested State).

The instrument should consider the treatment of arrearages in connection with variation of orders. A Requested State should not be permitted to reduce or eliminate arrears, even if it agrees to enforce the Requesting State's decision with respect to prospective amounts. Additionally, if the Requested State cannot recognize and enforce the Requesting State's order, and must establish a new order, the new order should include payments not only for periods after entry of the new order but also for accrued arrearages. The failure of a foreign state to recognize arrearages accrued in the United States creates problems with U.S. decisions because, under U.S. law, arrears that have accrued under a court order are considered "final judgments" and cannot be retroactively modified by a court.

Finally, when a decision is modified by the Requested State, as permitted under the instrument, the instrument should clarify the effect on the initial order. Ideally, there should be only one controlling order at any one time.

- (c) The law of the forum should apply, including its choice of law provisions. Any other option would be unworkable, given that this is intended to be a worldwide, and not just a regional, instrument. Insisting that lawyers and litigants analyze and argue foreign law, and that courts make decisions based on foreign law, would be an enormous burden, could be so costly as to effectively eliminate a litigant's rights, and would probably result in decisions based on incorrect application of the foreign law.
- (d) The United States strongly believes that the new instrument should avoid addressing direct or indirect rules of jurisdiction for the reasons explained in our answer in paragraph 33b. It is not necessary to establish jurisdictional rules in order to achieve the practical, concrete goals of the convention; discussion of jurisdiction will use up enormous amounts of scarce time and will distract the negotiators from the core issues which the convention must address if it is to be of use, such as administrative cooperation and enforcement of decisions; and experience has shown that any attempt to establish direct or indirect rules of jurisdiction will almost certainly fail and will jeopardize the wide acceptance of the instrument, which is a key to the success of the entire project.

- (e) It would be useful to list the types of assistance that are contemplated by the instrument, so as to avoid the problem that exists under current instruments where different countries have different understandings of what sort of assistance is required. The instrument should explicitly state which types of assistance must be provided by all parties, and which are permissive. Some of the types of assistance that should be addressed are:
- Recovery of maintenance, either by enforcement of the Requesting State's decision or by the establishment of a new decision
 - Collection and distribution of payments
 - Assistance to the debtor by the Requested State in gathering new information and transmitting it to the Requesting State for review and possible variation of the Requesting State's decision
 - Timely review by the Requesting State of requests for variation from the debtor
 - Location of persons and assets
 - Assistance with service of process
 - Help with obtaining DNA samples
 - Establishment of parentage
- (f) Through its bilateral efforts, the United States has learned that "legal aid," "administrative aid," and "technical assistance" can all mean different things in different countries. First and foremost, the new instrument must reflect a common and explicit understanding of the meaning of these terms. For example, one country may say that it cannot provide free legal assistance; however, it may be that petitioners in that country rarely need legal assistance, because the administrative assistance freely provided by the relevant agency is so extensive. Once the terminology is clarified, there will still be differences in the nature and extent of no-cost assistance that countries provide, but it may not be as great as one might suspect.

The United States strongly believes that the provision of no-cost services not only results in more money reaching more needy children but also saves the government and the taxpayer money, as fewer families need to rely on cash assistance from the government. Thus, the United States has made a policy decision that state child support enforcement agencies should provide all services related to the recovery of maintenance free of charge to foreign reciprocating countries and their residents. Therefore, we urge that the instrument require a Requested State to provide no-cost services to residents of a Requesting State.

- (g) Provisions concerning paternity establishment are definitely important. The United States is aware that a number of countries do not currently provide this service for foreign applicants. The new instrument should seek to avoid situations where no country will exercise jurisdiction to establish a child support decision, as illustrated in the following hypothetical. Suppose that a mother and child reside in Texas and the father resides in a foreign country. The father has never been in the United States, and has taken no action, such as encouraging the mother to go to the United States or sending support to the mother in the United States, that would give Texas personal jurisdiction over the father under U.S. law. (The fact that Texas is the residence of the mother and child is not, in and of itself, sufficient under U.S. law to confer jurisdiction over the father in a Texas court). Because Texas cannot establish paternity or enter a child support decision, the mother petitions the foreign country where the father resides. In our experience, the foreign country may refuse the mother's request because it considers Texas the appropriate forum. This is because the laws of many foreign countries accept the residence of the mother and child in a country as a sufficient basis for its tribunals to exercise jurisdiction over the father. Thus, the mother is left with no remedy.

Further, in its bilateral discussions, the United States has learned that the methodology and costs of paternity establishment vary widely from country to country. It would be useful during the negotiation process to arrange for a workshop on this issue, with presentations by technical experts, among others.

- (h) The negotiators must address the importance of utilizing the most expedient, cost-effective technologies available to recover maintenance and remit collections to the creditor. Currency transfer and conversion fees combine to constitute the second highest cost of recovering international maintenance. (Only translation costs are higher.) It would be useful during the negotiation process to have a workshop on this issue so that experts can explain the problems, as well as the solutions offered by technology. Once there is a greater understanding of the issue, it should be easier to determine how to treat it in the instrument.
- (i) The instrument must contain certain core obligations that every party must undertake. It would be extremely useful, however, to expand the scope of the instrument beyond those core obligations to cover other services that some parties may not be in a position to provide at the present time. If the instrument does include such "optional" services, there should, of course, be no obligation for any Contracting Party to provide such services to a country that does not reciprocate. On the other hand, the instrument should permit any country that wishes to provide services on a non-reciprocal basis to do so. How best to accomplish these objectives in the instrument needs to be carefully considered. Should each Contracting Party be required to indicate which services it will provide, with all Parties that state that they provide a particular service being automatically obligated to provide that service to each other? Or should each Contracting Party decide for itself (on a country-by-country basis or a case-by-case basis) whether it wishes to undertake an obligation to provide a particular service for a particular country?
- (j) Effective implementation of an international maintenance arrangement requires standardized forms and procedures. Bilingual forms save time and money by eliminating many of the translation requirements that would be needed to send an international request. Tribunals gain confidence in the reliability of the information provided on standard forms they have seen before. It is probably not feasible or desirable to include the precise forms in the binding international agreement, given that they will need to be in so many languages and will need to be modified from time to time.

The instrument should, however, provide for a mechanism for the development and periodic modification of forms. Even before the instrument is completed and a permanent mechanism for handling forms is established, the negotiators should consider establishing a Forms Working Group to decide which forms are most important and develop drafts of these. The Forms Group established at the 1999 Special Commission on Maintenance created a draft Transmittal that could be used as a starting point. That group also recommended the use of a separate "stand alone" Location of Persons & Assets Information Form. A Uniform International Petition or Application for filing in Tribunals may also be useful for many countries. At the program level, workers must be provided practical training in the use of these forms and a clear understanding of the procedures required to send cases to every member State.

- (k) As noted elsewhere in the U.S. response, experience has proven that the adoption of an international instrument establishing standards and procedures that all countries agree are wise is only the first step. The success of the convention depends on its full implementation by all Parties. Therefore, the instrument and the Hague Conference must do everything possible to facilitate compliance. The instrument's obligations should be very clear in order to avoid inconsistent interpretation.

Other possible ways to facilitate compliance include:

- Each party could be encouraged/required to provide the Hague Conference/other Parties in writing with the procedures to be followed in sending requests to the Central Authority;
- There could be a mechanism for coordinating the dissemination of forms and procedures among Parties;

- The instrument could provide for a mechanism to monitor/evaluate implementation. This might involve asking/requiring Parties to periodically provide information, statistics, etc.;
- The Hague Conference, member states and non-governmental organizations could organize training sessions and workshops, perhaps on a regional basis, where countries can exchange best practices.

- (l) The instrument should clearly provide for public bodies that have provided benefits to maintenance creditors to petition under the instrument for the recovery of maintenance, including maintenance owed for a prior period. Public bodies are only entitled to recover maintenance owed by the debtor for the prior period. While the public body may have an assignment of maintenance for reimbursement purposes, the reimbursement sought should not exceed the maintenance amount that was owed by the debtor but not paid.
- (m) Relationship with the 1980 Hague Convention on International Child Abduction: It will be essential to U.S. adherence to the new instrument that it not be used to facilitate recovery of maintenance from a U.S. non-custodial parent in circumstances where the child has been wrongfully removed or retained. The instrument should not disturb national law, whatever it may be, regarding enforcement of maintenance obligations in those circumstances. Therefore, the instrument should not apply if the Requested State makes or recognizes a judicial finding that the person seeking the recovery of maintenance has wrongfully removed or retained the child for whom maintenance is sought in the territory of the Requesting State.

Use of cooperation and enforcement mechanisms by private attorneys: While the new instrument will be drafted so as to establish rights and obligations between governments, maintenance creditors in the United States sometimes retain private attorneys to pursue their maintenance claims, rather than going through the state child support enforcement agency. The new instrument should provide that its enforcement and cooperation mechanisms are, to the extent appropriate, available to private counsel.

34 Au regard de la structure générale de ce nouvel instrument et en gardant à l'esprit que celle-ci devrait « combiner l'efficacité maximale avec la flexibilité nécessaire pour assurer une large ratification »,

- a** quels éléments parmi ceux que vous avez mentionnés sous la question No 33 devraient être introduits comme éléments « centraux », dans le sens où toutes les Parties contractantes devraient sans exception s'y soumettre ;
- b** quels sont, parmi ces éléments, ceux qui devraient être facultatifs, dans le sens où les Parties Contractantes devraient avoir la liberté de s'y soumettre ou non ; et

- c* êtes-vous en faveur d'un principe général par lequel, la reconnaissance d'une décision existante n'étant pas possible dans le pays où le débiteur réside, les autorités de ce pays devraient être obligées de fournir assistance au créancier pour obtenir une nouvelle décision ?

34 With regard to the overall structure of the new instrument, and bearing in mind that the new instrument should "combine the maximum efficiency with the flexibility necessary to achieve widespread ratification",

- a* which of the elements that you have mentioned under 33 should be included as core elements in the sense that all Contracting Parties should without exception be bound to comply with them,
- b* which of those elements should be optional, in the sense that Contracting Parties would have the freedom to opt in or opt out of them, and
- c* do you favour a general principle that, where recognition of an existing decision is not possible in the country where the debtor resides, the authorities of that country should be under an obligation to provide assistance to the creditor in obtaining a new decision?

AUSTRALIA

- (a) a, b, c, d, e and k.
 (b) f, g, h, I, j, l.
 (c) Yes.

AUSTRIA

Austria is in favour of not allowing reservations whatsoever. Reservations would weaken the system and cause difficulties to the practitioners (lit.a and b). Lit.c: Yes.

BULGARIE

- (a) b ; c ; d ; j
 (b) -
 (c) non

CANADA

- a) Les points qui devraient être introduits comme points centraux sont les suivants : a) ; b) ; c) ; d) ; e) ; g) ; i) ; k) ; et l) ;
- b) Les points qui dépendraient de la disponibilité ou des ressources de l'État en question sont les suivants : f) ; h) et j) ;
- c) Oui.
- a) The core elements to figure in the new instrument shall be a); b); c); d); e); g); i); k); and l).
- b) Elements that would depend on the availability or the resources in the State in question are: f); h) and j).
- c) Yes.

CHILE

(a) All. (b) None. (c) Yes.

CHINA - HONG KONG SPECIAL ADMINISTRATIVE REGION

- (a) a, b, c, d, and j.
- (b) e, f, g, h, i, k, and l.
- (c) No.

CROATIA

- (a) We would single out the elements specified under a, b, c, d, e, f, g, h, k and m.
- (b) Optional elements should in our opinion be those under i, j and l.
- (c) It would be desirable to make certain arrangements for the child to be supported in such a case as well.

CYPRUS

- (a) The ones we listed as very important.
- (b) None.
- (c) Yes.

CZECH REPUBLIC

See question 33 above.

DENMARK

The Danish ministry of Justice has no comments in particular to the questions in part III.

ESTONIA

- (a) The elements mentioned under 33 a, b, c, d, g, j and e.
- (b) The elements mentioned under 33 e, f and i.
- (c) We agree in principle to the obligation to provide assistance to the creditor in obtaining the new decision if the recognition of an existing decision is not possible. The concrete obligations of the country where the debtor resides should be specified.

FINLAND

- (a) - administrative co-operation between the Contracting Parties
- the courts and other competent authorities of the Requested States should not have a right to review the merits of a foreign decision upon the request of a debtor resident in that state
- Contracting Parties should be obliged to provide administrative assistance also to debtors and not only creditors
- the new instrument should require Contracting Parties to provide upon request information on the progress of pending maintenance cases and recovery cases.

(b)(c)

Yes. In the above mentioned case the authorities of the Requested State should help the creditor to obtain a new decision, which is enforceable in the Requested State.

FRANCE

Question 34 a

Parmi les thèmes cités, plusieurs présentent un intérêt déterminant pour assurer l'efficacité d'un nouvel instrument :

- (a) une **coopération administrative active** devrait être initiée particulièrement entre les pays dont les échanges au titre de la convention sont les plus fréquents , afin de lever un certain nombre d'obstacles par une meilleure connaissance mutuelle et par la recherche de pratiques communes .
- (b) **des dispositions facilitant et accélérant la reconnaissance et l'exécution des décisions étrangères** sont nécessaires . Elles consisteraient à déterminer une liste limitative des pièces à produire et à définir l'étendue du contrôle du juge sur la décision.
- (c) **la détermination de la loi applicable**, notamment celle qui régit le mode de représentation en justice du mineur dans l'instance dans le pays requis .
- (d) **des règles uniformes de compétence directe applicable pour déterminer et modifier la décision relative aux aliments** sont indispensables afin d'éviter la pluralité d'instances et les actions dilatoires .
- (l) **l'intervention des organismes publics** pour le recouvrement des prestations fournies au créancier d'aliments doit être possible dans tous les cas . En effet, le versement au créancier de sommes représentant des avances sur les pensions impayées procèdent d'une politique de solidarité nationale. Ces prestations représentent un coût important pour la collectivité et n'ont pas vocation à être supportées définitivement par elle, dès lors que le débiteur a les moyens de s'acquitter de sa dette.

Question 34 b

- (h) **des dispositions concernant la coopération en matière de virement international de fonds au moindre coût** sont intéressantes . La France souhaite néanmoins qu'il soit admis que le recouvrement des créances alimentaires ne doit engendrer aucun frais pour le créancier. Les frais liés au paiement des créances alimentaires devraient être à la charge exclusive du débiteur.
- (f) **des dispositions sur l'aide et l'assistance judiciaires** spécifiques qui devraient être fournies à un requérant provenant d'une autre partie contractante sont en contradiction , dans des systèmes où l'admission au bénéfice de l'aide judiciaire est basé sur le plafonnement des ressources et la progressivité des barèmes , avec l'obligation d'assurer à tous un égal accès à la justice , les personnes résidant dans l'Etat requis ne bénéficiant pas des mêmes conditions. Les Etats devraient donc être libres de déterminer les règles concernant l'aide judiciaire .

Question 34 c

Non, pour les raisons évoquées ci-dessus . De plus , cela conduirait à énoncer une nouvelle règle de compétence directe . Il semble préférable pour éviter ce cas de figure de réduire les cas de non-reconnaissance comme cela a été fait dans le cadre du règlement communautaire n°44/2001 du 22 décembre 2000 concernant la compétence judiciaire, la reconnaissance et l'exécution des décisions en matière civile et commerciale.

GERMANY

- (a) All areas marked at Question 33 as important, highly important and particularly important,
- (b) Those aspects which are marked as less important: Where possible an instrument should be striven towards which does not permit *any* options.
- (c) Yes, any other regulation would consist of a backward step as against the previous procedure.

ISRAEL

(a) and (b): Except for applicable law principles, we regard all of the above elements as being important to the new instrument. The issues of co-operation in establishing paternity (g) and provisions concerning legal aid (f) should perhaps be optional.

JAPAN

See question 31 above.

LUXEMBOURG

Il a été, du moins en partie, répondu sous le point 33. Les éléments de la liste, considérés comme devant être traités prioritairement, devraient aussi être introduits comme éléments centraux.

S'agissant du point 33, c), il se recoupe avec l'observation formulée ci-dessus au point 31. (voies et moyens pour assurer le recouvrement).

MALTA

-

THE NETHERLANDS

- (a) Core elements: a, b, e, f, g, j, k and l.
- (c) Yes.

NEW ZEALAND

- (a) Core elements:
 - A clear process
 - Standardised documentation
 - Co-operation between Transmitting Agencies
 - A clear understanding as to the applicable law
- (b) Member states should not be permitted to opt out of any of the provisions as this would lead to the same difficulty as currently being experienced with Article 42 of the Child Abduction Convention.
- (c) This is the situation under the provisions of UNC RAM and should continue particularly as in some member states eg New Zealand there is no jurisdiction to enforce existing orders if the State is not a member of the British Commonwealth.

NORWAY

- (a) These are vital issues, which need to be discussed at an early stage in the session next year. The following elements are likely to be the most essential: *a), b), e), f), g?), j), k)*. However, we are not quite convinced that the aim should be to make it possible for all countries to join without making an effort towards a higher level of commitment and cooperation.
- (b) As a preliminary view, we think that the following elements might be optional: *c), d), h), i), l)*. Reference is made to the last sentence of our answer under *litra a)*.
- (c) Yes, clearly. In all non-conventional cases and in cases according to the New York-convention, Norway assists the creditor by determining a maintenance support according to Norwegian legislation. In order to fulfill children's rights of support from both parents, this should be a central principle of cooperation. However, as mentioned above, we would support making it an absolute requirement for joining the new Convention to undertake to enforce all foreign orders provided that certain criteria are fulfilled.

PANAMA

- (a) Which jurisdiction will be utilized in the requests for the recognition and fulfillment of the requests.
- (b) Provisions concerning co-operation in the international transfer of funds at low costs and concerning public bodies claiming reimbursement of benefits paid to maintenance creditor.
- (c) Yes, and also to grant facilities to obtain a lawyer to represent the creditor.

PHILIPPINES

- (a) Provisions concerning co-operation in the establishment of paternity and provisions aimed at securing compliance with obligations under the instrument.
- (b) All those enumerated except the provisions concerning co-operation in the establishment of paternity and the provisions aimed at securing compliance with obligations under the instrument
- (c) Yes.

POLAND

- (a)(b) We are of the opinion that all the above-listed issues should be binding for the contracting states to the new regulation. We consider the co-operation with regard to establishing paternity and introducing instruments assuring the compliance with the provisions of the convention by states to be the issue of minor importance.
- (c) Yes.

ROUMANIE

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SLOVAKIA

- (a) Core elements: I,II ,V and, if included, also VIII and IX.
- (b) Opt out: III, IV, VI, XI and XII (also possibility of opt out for certain forms of maintenance, e.g. between unmarried couples, etc)
- (c) As already follows from the previous responses, Slovakia is very much in favor of this general principle.

SUISSE

- (a) Tous les points mentionnés sous « éléments clefs », peut être sans les points concernant la compétence (d), la loi applicable (c) et la liste des bénéficiaires d'aliments (m).
- (b) Les autres éléments.
- (c) Oui, c'est dans l'intérêt des créanciers.

SWEDEN

- (a) The elements mentioned under a), e), k) and l).
- (b) The elements mentioned under b), f), g) and h).
- (c) Yes.

UNITED KINGDOM - ENGLAND AND WALES

- (a)
 - Standardisation of forms
 - Standardised agreement on how to deal with non-compliance, delays and completion of documents
 - Inclusion of a provision to enable variation of foreign decisions in the light of changed circumstances
 - Provision for dealing with spousal maintenance
 - Application of uniform direct rules of jurisdiction to the determination and modification of decisions in respect of maintenance and rules which give courts jurisdiction to hear other connecting factors
 - Provision specifying the assistance to be provided to an applicant from another contracting country
- (b) Provisions enabling public authorities to recoup payments from maintenance creditors.
- (c) Yes.

UNITED KINGDOM - SCOTLAND

- (a) Elements we regard as being core are:
1. administrative co-operation
 2. provision for the recognition and enforcement of foreign decisions
 3. uniform direct rules of jurisdiction
 4. some form of mutual provision for legal aid/assistance - we do not necessarily see this as core - see our response
 5. standard forms
- (b) Elements we regard as being optional are:
1. applicable law provisions
 2. Provision regarding co-operation in the establishment of paternity
 3. provision concerning co-operation in the transfer of funds
 4. provisions concerning public bodies claiming reimbursement of benefits paid to maintenance creditors.
- (c) Yes, we do favour this. We already provide for this under the UN Convention.

UNITED STATES OF AMERICA

- (a) The answer to this question involves balancing two competing considerations. The first is how important a particular element is to the goal of obtaining support for the greatest number of needy children. There are some elements that are so important that one would question the utility of an instrument that did not include them as mandatory for all parties. The second is whether most countries would be willing to include a particular element as mandatory. The United States's preliminary view is that the following elements should be included as mandatory obligations.
- Recognition and enforcement of foreign decisions for the recovery of maintenance for minor children, including procedures for collection and distribution of maintenance payments;
 - Establishment of a maintenance decision (including the determination of paternity if necessary) by the Requested State if it is unable to recognize a decision of the Requesting State;
 - Rules regarding variance based on the principle that, as a general rule, decisions should be varied by the tribunal that originally made them;
 - Administrative cooperation;
 - Cost-free administrative services provided to debtors and creditors without travel requirements;
 - Any necessary legal services provided cost-free without travel requirements;
 - Central Authorities;
 - Limited services for location of persons/assets and collection of DNA samples;
 - Requirement of timely response to requests/inquiries from other States;
 - Provision that public bodies may recover maintenance;
 - Provision for the recovery of maintenance for prior periods, especially where the arrearages are due pursuant to a support order enforceable in the Requesting State;
 - Provisions to monitor/facilitate compliance with obligations under the instrument;
 - An instrument that includes core elements and optional elements, and permits parties to agree to the optional elements only on a reciprocal basis.
- (b)
- Maintenance for spouses and collateral relatives;
 - Use of abstracts of tribunal orders or requiring translation of only the maintenance recital;
 - Assistance with service of process;
 - Standard forms (highly desirable, but implementation of the convention should not be delayed by difficulties in developing agreed forms);

- Transfer-of-funds provisions (highly desirable, but implementation of the agreement should not be delayed by difficulties in streamlining the transfer of funds).

As noted elsewhere, the United States does not favor the inclusion of either jurisdiction or applicable law provisions.

(c) Yes.

35 Pour les Etats ayant conclu des accords bilatéraux ou régionaux, veuillez indiquer les éléments de ces accords que vous souhaiteriez voir repris dans ce nouvel instrument ?

35 In the case of States which have entered into bilateral or regional arrangements, please indicate which elements within those arrangements you would wish to see replicated or reflected in the new global instrument.

AUSTRALIA

- Co-operation in locating debtor/creditor and obtaining information before a request to collect maintenance is made.
- Jurisdiction issues made very clear.
- Administrative co-operation very flexible and practical.

AUSTRIA

No suggestions.

BULGARIE

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CANADA

- L'aspect important de réciprocité présent dans les ententes bilatérales et la possibilité de refuser la fourniture de services aux résidents d'États qui n'appliquent pas les ententes de manière coopérative;
- Clarté et détails dans les obligations réciproques;
- Une clause de transition pour les ententes bilatérales en vigueur ;
- La possibilité de garder tout ou partie des ententes bilatérales existantes dans le cadre du nouvel instrument.
- The important reciprocity aspect of bilateral arrangements and possibility to withdraw service to residents of States that do not apply the arrangements co-operatively;
- Clarity and details in the reciprocal obligations;
- Transition clause for existing bilateral arrangements;
- Possibility to keep whole or part of the existing bilateral arrangements in the framework of the new instrument.

CHILE

Chile has not entered into any bilateral or regional arrangements.

CHINA - HONG KONG SPECIAL ADMINISTRATIVE REGION

Hong Kong has not entered into any bilateral or regional agreements with other countries on maintenance recovery.

CROATIA

As there are States which are not parties to the Convention of 5 October 1961 Abolishing the Requirement of Legislation for Foreign Public Documents, we feel that the new instrument should contain a provision abolishing the need to legalize documents to the effect that the documents duly issued or certified by a court or other competent authority of the sending State and furnished with a signature and official seal of that authority would not need re-certification for use in the receiving State. In other words, in order to simplify and shorten processes, such documents should have the same legal validity as the domestic public documents.

We also believe that elements should be added concerning the exemption from the costs of procedure, at least in providing security to the respondent.

CYPRUS

The registration of Foreign judgment prerequisites/conditions.

CZECH REPUBLIC

We agree that where acknowledgement and enforcement of existing maintenance judgment in the liable person's country is impossible, the beneficiary could file a motion for the issue of a new judgment on maintenance in the liable person's country. The authorities in such country should provide him/her in acquiring a new judgment equal assistance as there is provided to their own citizens. The new global instrument should enable that its parties could enter into bilateral or regional agreements governing more into detail their authorities' procedures in the application of this global instrument and accelerate their cooperation.

DENMARK

The Danish ministry of Justice has no comments in particular to the questions in part III.

ESTONIA

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FINLAND

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FRANCE

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GERMANY

N/A.

ISRAEL

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JAPAN

See question 31 above.

LUXEMBOURG

Pas d'observation.

THE NETHERLANDS

The Netherlands has entered a bilateral agreement on the recovery of maintenance with the United States.

NEW ZEALAND

The confirmation of provisional order procedures in the British Commonwealth scheme operates well and a modified version of this process would work well.

NORWAY

We think that our bilateral agreement of June 10. 2002 with the USA contains perhaps the most vital elements, which seem to be:

- Provisions to secure recognition and enforcement of decisions without unnecessary and time-consuming procedures. When a case is transmitted, the collection of support normally may start immediately.
- Provisions of cost-free administrative assistance in all relevant processes in the case, both in court and administrative processes. Securing the other party assistance in establishing paternity in order to obtain a support order is essential. It will also improve the cooperation between the countries substantially if they were obliged to assist each other in providing information needed for assessing a suitable amount of support (the parents' economic status, other family responsibilities etc.).

PANAMA

Designation of a central authority to facilitate dealing with requests and which cooperates with other central authorities.

PHILIPPINES

The provisions concerning co-operation in the establishment of paternity and the provisions aimed at securing compliance with obligations under the instrument.

POLAND

If the proposed regulation contained a chapter on recognition and enforcement of foreign judgements, it seems suitable to include the provisions concerning the form of a request, additional documents required and determination of grounds that condition the recognition and enforcement of a judgement in this chapter. Poland is a party to bilateral agreements of that kind with a.o. Ukraine, Lithuania and Latvia.

ROUMANIE

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SLOVAKIA

The main element of these arrangements which we would like to have replicated in the new instrument is exactly the principle mentioned in point 34 lit. c.

SUISSE

Un accord avec une province canadienne est sur le point d'être conclu. Des pourparlers assez avancés pourraient faire aboutir d'autres accords bilatéraux. Aucun élément supplémentaire qui ne soit déjà contenu dans la liste sous chiffres 31 ss. ne peut être mentionné.

SWEDEN

The new instrument should be built not only on the best features of existing Conventions, but also on important and valuable features of bilateral or regional arrangements. For example, when addressing provisions concerning administrative co-operation one should elaborate on the very good US-system for making research after debtors whose places of residence are unknown.

UNITED KINGDOM - ENGLAND AND WALES

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UNITED KINGDOM - SCOTLAND

None especially.

UNITED STATES OF AMERICA

As explained elsewhere in this answer in more detail, the United States believes that the following elements would make for the strongest global instrument: Each party should be able to establish/recognize and enforce child support decisions for residents of other parties, including the establishment of paternity and the collection and distribution of payments. If a party is unable to recognize a decision of another party, then it should take all necessary steps to establish a new decision. Each party should provide these services to residents of other parties at no cost. Each party should designate a Central Authority to facilitate implementation of the Convention.

PART IV PARTENAIRES DE NEGOCIATION ET DIVERS**PART IV NEGOTIATING PARTNERS AND MISCELLANEOUS**

- 36** Hormis les Etats membres de la Conférence de La Haye et les Etats parties à la Convention de New York de 1956 (une liste complète est fournie en Annexe II) quels autres Etats souhaiteriez-vous inviter à prendre part aux négociations du nouvel instrument ?
- 36** Apart from the Member States of the Hague Conference and States Parties to the New York Convention of 1956 (a full list is provided in Annex II) are there any other States that you would wish to be invited to take part in the negotiations on the new instrument?

AUSTRALIA

No.

AUSTRIA

No suggestions.

BULGARIE

La Pologne, La République Tchèque, Arménie, Kazakhstan, Kirgistan, Moldavie. Ukraine, Turkménie.

CANADA

- Costa Rica ;
- Honduras ;
- Le Salvador.

- Costa Rica
- Honduras
- El Salvador

CHILE

USA, Canada, Peru, Bolivia, Colombia, South Africa, Paraguay, in general, all States.

CHINA - HONG KONG SPECIAL ADMINISTRATIVE REGION

N/A.

CROATIA

These should certainly be all the State Parties to the Convention on the Rights of the Child or the States whose legal system conforms with the provisions of the Convention, even if they have not yet become State Parties to the New York Convention of 1956.

CYPRUS

Not, at the moment.

CZECH REPUBLIC

We consider it sufficient that member countries of The Hague International Private Law Conference and New York Convention participate in the negotiations on the new global instrument.

DENMARK

No.

ESTONIA

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FINLAND

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FRANCE

Néant.

GERMANY

No.

ISRAEL

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JAPAN

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LUXEMBOURG

Pas d'observation.

MALTA

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THE NETHERLANDS

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NEW ZEALAND

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NORWAY

USA, Canada, China and Japan in particular, because of their position in the world community and because of the huge populations involved.

PANAMA

All countries of Latin America and the Caribbean which do not take part in The Hague Conventions in such matters.

PHILIPPINES

The other ASEAN (e.g. Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Singapore, Thailand and Vietnam) countries to participate in the Conference.

POLAND

Poland supports the idea of inviting as many states as possible to work on the project.

ROUMANIE

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SLOVAKIA

Cuba, Vietnam and Ukraine come to mind since Slovakia has a lot of unsuccessful cases of maintenance enforcement in respect of these countries. Also the involvement of most Arabic countries would be interesting, but highly improbable that it would lead to a positive (workable) outcome due to their domestic legal systems.

SUISSE

La Thaïlande, vu que plusieurs débiteurs suisses y résident.

SWEDEN

It would be of great value if European countries not parties to the Brussels and Lugano Conventions participate in the negotiations on a new instrument.

UNITED KINGDOM - ENGLAND AND WALES

Antigua, Bahamas, Guernsey, Jamaica, Jersey, Malawi, Nigeria, Uganda, Zambia.

UNITED KINGDOM - SCOTLAND

None especially

UNITED STATES OF AMERICA

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37 Seriez-vous disposés à contribuer à un fonds permettant (a) aux Etats moins bien nantis de prendre part aux négociations (b) de produire en espagnol les principaux documents et d'assurer une interprétation simultanée en espagnol en session plénière ?

37 Would you be prepared to contribute to a fund (a) to enable poorer States to be able to take part in the negotiations or (b) to enable principal documents to be translated into Spanish and simultaneous interpretation in Spanish to be available at plenary sessions?

AUSTRALIA

The ACSA does not have available funds to provide this assistance, however we will discuss this with the Attorney-General's Department and advise as soon as possible.

AUSTRIA

Unfortunately no.

BULGARIE

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CANADA

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CHILE

Unfortunately, the Legal Aid Corporation is not in a position to express an opinion in this regard, it would be advisable for you to consult this with the Ministry of Foreign Affairs of Chile.

CHINA - HONG KONG SPECIAL ADMINISTRATIVE REGION

N/A.

CROATIA

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CYPRUS

Not at the moment.

CZECH REPUBLIC

Czech Republic has currently no possibility to contribute to the fund that would provide funds for less wealthy countries so that they could participate in the negotiations and that would cover the costs of translations and interpreting into Spanish.

DENMARK

Denmark would look positively upon contributing to such a fund. A final decision on a Danish contribution would, however, have to await a concrete proposal concerning the funding of such a fund.

ESTONIA

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FINLAND

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FRANCE

La France a consenti sur les trois derniers exercices à une augmentation de sa contribution au financement de la CODIP , ainsi la contribution versée au titre de l'année 2002/2003 est en hausse de 7% par rapport à 2001/2002 . Dans ces conditions et compte tenu de contraintes budgétaires , il ne paraît pas possible d'assurer un financement supplémentaire pour les frais de fonctionnement sus mentionnés.

GERMANY

No payments over and above the membership subscription to the supplementary budget for the financial year XLVIII can be provided.

ISRAEL

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JAPAN

We are not prepared to make a contribution to the fund at this moment.

LUXEMBOURG

Ceci est une question qui relève de manière générale de la politique et des principes budgétaires inhérents à la Conférence.

MALTA

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THE NETHERLANDS

It is suggested that the Secretary General contact the Dutch Ministry for Development Co-operation.

NEW ZEALAND

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NORWAY

- (a) Before the Ministry of Social Affairs will be able to answer this question, it is important to be provided with information of level of contributions, which countries are intended to be included into such a programme, both as contributors and receivers of funds. It is also vital to know about other sources of funding. Further on, it will be essential to consider the eventual need of setting up minimum criteria for such funding (if a fund-receiving country must fulfill minimum demands, for instance that there must exist a maintenance support organisation in the state with a minimum of functionality). In principle, a contribution as mentioned would receive a favourable treatment.
- (b) It is important to be able to meet this need if we bear in mind Spanish as one of the major languages in the world. We will certainly bring this issue forward to the right canals as soon as we receive more detailed information and a formal application.

PANAMA

Panama could be part of the countries that would be asking for translations.

PHILIPPINES

The Philippines as of the moment, is still a developing country and still undergoing economic recovery, therefore, will not be able to contribute to a fund.

POLAND

- (a) No.
- (b) No.

ROUMANIE

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SLOVAKIA

Unfortunately not. Under the present economic situation we would need such funding ourselves, to be able to participate at the negotiations.

SUISSE

Oui.

SWEDEN

Sweden supports the idea of the fund and will explore ways to solve the financing of contributions to the fund. However, we cannot at this stage make any commitments to contribute to a fund.

UNITED KINGDOM - ENGLAND AND WALES

We are prepared to consider (a) and (b).

UNITED KINGDOM - SCOTLAND

We are consulting Lord Chancellor's Department about this.

UNITED STATES OF AMERICA

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38 Disposez-vous d'un site Internet ou de brochures qui fournissent des informations sur les systèmes de pensions alimentaires et d'autres formes d'aliments envers d'autres membres de la famille dans votre pays ? Dans l'affirmative, veuillez nous transmettre les détails ou une copie de toute publication.

38 Do you have a website or brochure which provides information about the system of support and other forms of family maintenance in your country? If so, please provide details or a copy of any publications.

Note: Les personnes interrogées sont également invitées à faire part de leurs observations sur tout autre sujet qu'elles considèrent essentiel au développement de ce nouvel instrument.

Note: Respondents are also invited to comment on any other matters which they consider material to the development of the new instrument.

AUSTRALIA

www.csa.gov.au.

AUSTRIA

No relevant website or brochures available.

General observation

There is no justification to use different terms "child support" and "maintenance for spouses etc". There term "**maintenance**" which is used in all relevant Hague Conventions should be used generally in the future convention. The term "support" might be familiar to the USA but this is not a justification per se.

BULGARIE

Non.

CANADA

Les sites Internet suivants du gouvernement fédéral fournit de l'information concernant le système canadien des pensions alimentaires pour enfants :

<http://canada.justice.gc.ca/fr/ps/sup/index.html> ainsi que les programmes d'exécution :
<http://canada.justice.gc.ca/fr/ps/flas/index.html>.

Des brochures d'information juridique ainsi que des brochures sur les services gouvernementaux offerts sont également disponibles dans certaines juridictions.

The following Internet sites of the Federal government provide information about Canadian child support system and the enforcement programs:

<http://canada.justice.gc.ca/en/ps/sup/index.html>

<http://canada.justice.gc.ca/en/ps/flas/index.html>

Brochures on legal information and government services are also available in some jurisdictions.

CHILE

Yes. I will mail you a Report on maintenance in Chile, prepared by the National Service for Women (Sernam).

CHINA - HONG KONG SPECIAL ADMINISTRATIVE REGION

See Enclosure.

CROATIA

The Ministry of Labour and Social Welfare has its website on which child protection regulations in the Croatian language can be found.

CYPRUS

No.

CZECH REPUBLIC

Information on Czech Republic social policy, incomes, life standard and status of Czech family may be found in Czech language on the Czech Republic Ministry of Labor and Social Welfare web site <http://www.mpsv.cz>, postal address: Ministerstvo práce a sociálních věcí ČR, Na poříčním právu 1, 128 01 Praha 1, Czech Republic. The Ministry is also the superior authority to the Children's International Law Protection Agency in Brno that is the Czech Republic's recipient and dispatch agency under The Hague Conventions for maintenance recovery in foreign countries and under the New York Convention.

DENMARK

Further information on maintenance payments can be found at the homepage of the Ministry of Justice, Department of Private Law: www.civildir.dk. Unfortunately the information is only available in Danish.

FRANCE

Le Ministère des Affaires Etrangères en sa qualité d'autorité centrale pour l'application de la convention de New -York, a élaboré et mis en ligne un site consacré au recouvrement des pensions alimentaires à l'étranger ¹⁵. Le fonctionnement pratique de la convention y est détaillé et expliqué. Le droit de la famille et en particulier le droit des obligations alimentaires d'un certain nombre de pays est présenté sous forme de fiche de synthèse permettant de satisfaire la demande d'information du public. 48,300 consultations du site ont été enregistrées depuis la mise en service du site au mois de décembre 2001. Une plaquette de présentation est diffusée dont un exemplaire est joint en annexe.

GERMANY

There is no website or brochure on the law on maintenance.

ISRAEL

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JAPAN

N/A.

LUXEMBOURG

Pour l'instant l'autorité centrale (Parquet Général) n'a pas de site Internet.

MALTA

The site of the Ministry of Social Policy gives details about support offered to families and children. Two sites are particularly relevant to this questionnaire. These can be found on the following electronic addresses:

¹⁵ www.france.diplomatie.gouv.fr/français/familles

1. Family services - http://www.appogg.gov.mt/services/services_family.htm.
2. Children and family team - http://www.appogg.gov.mt/services/services_family.htm.

These two sites have been saved in two files which are being sent to you together with the questionnaire.

THE NETHERLANDS

Information on services provided under the New York Convention can be found at the website of the Dutch central authority: www.lbio.nl.

NEW ZEALAND

The website www.ird.govt.nz/childsupport/ contains information about the child support system in New Zealand. The legislation referred to in this document can be found on www.legislation.govt.nz.

NORWAY

Our website is "Trygdeetaten.no", which belongs to the Social security -administration. It contains mostly information on social security schemes, but also sets up an overview of the Norwegian Maintenance support system, including enforcement and the State-funded system of advance payments of maintenance support.

PANAMA

We do not have an available Web Page concerning the alimony system. Nevertheless, publications have been effectuated and which we send you for general knowledge of our internal law.

PHILIPPINES

No.

POLAND

There is no official website, nor special information published, yet any person claiming maintenance may obtain in courts relevant information on the way maintenance can be recovered from persons domiciled abroad.

ROUMANIE

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SLOVAKIA

The central authority of Slovakia (The Center of International Legal Protection of Children and Youth) has a website www.cipc.sk which includes basis information on intercountry enforcement of maintenance. The Ministry of Justice has elaborated an information document

in English on the applicable provisions of the Slovak law in the field of maintenance establishment and enforcement which was used as the basis of negotiations on reciprocity with the Canadian provinces. The information document needs an update, but can be afterwards provided to the Hague Conference if that is the type of information sought.

SUISSE

La partie du site Internet de l'Office fédéral de la justice (<http://www.ofj.admin.ch/f/index.html>) qui concerne spécifiquement ce domaine est actuellement en préparation, de même qu'une brochure du Service Social International à Genève (adresse E-mail : ssi@freesurf.ch). Il existe en outre plusieurs brochures cantonales dont nous transmettons celles du canton de Berne (en extraits, cf. annexe 6).

Note - Rien de plus à signaler.

SWEDEN

Brochure and fact sheet are attached and are also available on websites www.justitie.regeringen.se and www.social.regeringen.se.

Specified e-mail address:

<http://www.justitie.regeringen.se/inenglish/pressinfo/pdf/famlaw.pdf>.

<http://www.social.regeringen.se/pressinfo/pdf/familj/familjepolitiken.pdf>.

<http://www.social.regeringen.se/pressinfo/pdf/familj/socialforsakringen.pdf>.

UNITED KINGDOM - ENGLAND AND WALES

No. However we are working on this under a communications strategy.

UNITED KINGDOM - SCOTLAND

We have details about how to claim maintenance from abroad on the Scottish courts website - www.scotcourts.gov.uk. We also produce a booklet about this. The booklet is available on the Scottish Executive Justice Department website - www.scotland.gov.uk. If both parties are living in the UK the Child Support Agency has jurisdiction. Details about them can be found on www.csa.gov.uk.

Overall Conclusion

We would advocate that a new global instrument is introduced to replace the Hague Convention of 1973 and the New York Convention of 1956.

The new instrument should provide a system for recognition and enforcement of a judicial decision relating to maintenance. We feel there should be rules of jurisdiction in the Convention and would favour using the habitual residence or domicile of the maintenance creditor. We do not think it appropriate that the creditor should have to raise an action outside her jurisdiction in order to obtain support for children. Having said that, it is appropriate that the rights of the debtor are protected and it must be shown that he has been served notice of the proceedings and a copy of any decision. It is likely that in most cases the debtor will have enough of a link with the creditor's residence to allow it to claim jurisdiction. This will satisfy states where such a link must be established. If there is no link between the debtor and the creditor's state of residence then there could be rules excluding the jurisdiction of the creditor's state and substituting the jurisdiction of the debtor. This should be seen as an exception and we would expect the creditor to be given assistance to raise the action.

Moreover, there would have to be some consideration about the practicalities. It would be important to ensure that disagreements about jurisdiction did not lead to delays about arranging maintenance.

We would also be keen to see uniform rules regarding variation of orders. Here, we consider that the court or administrative body in the original country should have jurisdiction to vary the original order as long as the payee remains within that jurisdiction. If the requested state had jurisdiction to vary orders then a debtor could thwart any jurisdictional rules in favour of the creditor's residence by immediately seeking to vary the orders. The creditor would then have to organise legal assistance in the debtor's country to defend any moves for variation.

As regards variation, a possible compromise might be to allow the debtor to vary the order in his state but then to ensure that any variation is confirmed in the state where the order was made. This system is currently used by 'commonwealth countries'. We have little experience of this in practice but it does add an 'extra layer' into the procedures and there is increased potential for conflict between the two jurisdictions.

UNITED STATES OF AMERICA

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ANNEXE I / ANNEX I

*Document préliminaire No 1 à l'attention de La Commission spéciale d'avril 1999 /
Preliminary Document No 1 for the attention of the Special Commission of April
1999*

QUESTIONNAIRE SUR LES OBLIGATIONS ALIMENTAIRES / QUESTIONNAIRE ON MAINTENANCE OBLIGATIONS

(Parties I à III seulement) / (Parts I to III only)

**PARTIE I LA CONVENTION DE NEW YORK DU 20 JUIN 1956 SUR LE RECOUVREMENT DES ALIMENTS A
L'ETRANGER**

PART I NEW YORK CONVENTION OF 20 JUNE 1956 ON THE RECOVERY ABROAD OF MAINTENANCE

*Section A – Questions adressées aux Etats Parties / Section A – Questions addressed
to States Parties*

AUSTRIA

The replies provided to the questionnaire of 1999 are still valid with the following exceptions
(see questions below).

BULGARIE

Voir extraits des réponses au Questionnaire sur les obligations alimentaires, Doc. prël. No 3 a
l'intention de la Commission spéciale d'avril 1999
(<http://www.hcch.net/f/workprog/maint.html>).

CANADA

Le Canada n'est partie à aucune des Conventions de la Conférence de la Haye relatives aux
obligations alimentaires, ni à la *Convention de New York du 20 juin 1956 sur le recouvrement
des aliments à l'étranger*.

Canada is not a party to any of the Hague Conference conventions on maintenance obligations
or to the 1956 New York Convention.

CZECH REPUBLIC

Czech Republic has no supplementary information to Sections I and IV of the April 1999
Questionnaire concerning the family maintenance obligation.

FRANCE

Il n'y a pas de modification ou d'éléments nouveaux à apporter aux réponses faites au
questionnaire de 1999.

JAPAN

We do not have supplementary answers to the questionnaire in 1999, except that the Supreme Court has recently decided on the applicable law to the incidental / preliminary question in general. For details, please see the answer to Question 16 of this questionnaire.

SWEDEN

The Swedish answers on the questionnaire from 1999 are still accurate.

SWITZERLAND

La Suisse avait déjà répondu au questionnaire de 1999 et n'a rien à ajouter à ce propos.

UNITED STATES OF AMERICA

Because the United States is not a party to existing maintenance conventions, our previously submitted responses to the questionnaire sent out in advance of the April 1999 Special Commission only addressed questions to non-party states. We now submit supplemental information concerning the 1999 questions that were addressed to state parties. Although the questions ask for a state's practice "under the Convention," as we are not a party we simply provide information on our practice.

- 1 **Les autorités de votre pays considèrent-elles la Convention de New York comme complémentaire (c'est-à-dire à utiliser en combinaison avec) d'autres traités internationaux telles les Conventions de La Haye de 1958 et de 1973 concernant l'exécution des décisions relatives aux obligations alimentaires ou les Conventions de Bruxelles et de Lugano?**
- 1 **Do your authorities treat the New York Convention as complementary to (i.e. to be used in combination with) other international instruments such as the 1958 and 1973 Hague Conventions on the Enforcement of Decisions relating to Maintenance Obligations or the Brussels and Lugano Conventions?**

AUSTRALIA

Since responding to the original questionnaire Australia has become a party to the 1973 Hague Convention on the Recognition and Enforcement of Decisions relating to Maintenance Obligations (effective from 28 February 2002).

Australia also has a number of agreements with non convention countries as well as informal reciprocal arrangements. Overall the NY convention is mainly used if a country does not fall within another treaty and/or agreement.

CROATIA

No.

CYPRUS

No.

DENMARK

Enforcement of foreign maintenance orders in Denmark is only based on the New York Convention, if enforcement according to The Hague, Brussels and Lugano Conventions is not possible.

POLAND

The Polish authorities treat the New York Convention as subsidiary to the Hague Convention on the Recognition and Enforcement of Decisions relating to Maintenance Obligations, done at The Hague on 2 October 1973 and to bilateral agreements concluded between Poland and e.g. Austria, Bulgaria, the Czech Republic, Slovakia, France, Romania, Hungary.

Moreover, on 1 February 2000, the Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters, done at Lugano on 16 September 1988, entered into force in relation to the Republic of Poland.

UNITED KINGDOM - SCOTLAND

Scotland uses the conventions separately. We carry out Central Authority functions under both the Hague Convention (although there is no provision for this) and the New York Convention. We do not recognise and enforce orders under the New York Convention but we do arrange for maintenance to be obtained either voluntarily or with a fresh, Scottish order.

UNITED STATES OF AMERICA

The United States is not a party to any of the multilateral conventions; we currently rely on federal and state-level reciprocal arrangements for the establishment and enforcement of child support obligations.

- 2 **Lorsqu'elles agissent en tant qu'Etat requis, les autorités de votre pays exigent-elles une « décision » de l'Etat d'origine avant de prendre des mesures de recouvrement des aliments?**
- 2 **When acting as the requested State, do your authorities require a "decision" from the State of origin before taking steps for the recovery of maintenance?**

AUSTRALIA

Australia does not need a "decision" to register or enforce an overseas maintenance liability but can enforce an existing liability.

The Australian Child Support Agency (ACSA) has been the central authority for overseas maintenance liabilities since 1 July 2000, replacing the Australian Attorney-General's Department.

As part of taking over the role of central authority, changes made to Australian law allow ACSA, without the need for the matter (in most cases) to go through a judicial process, to:

- register and enforce an overseas maintenance assessment
- register and enforce an overseas maintenance order
- register and enforce an 'agency reimbursement liability'
- register and enforce an overseas maintenance agreement
- register and enforce arrears that have accumulated under an overseas maintenance liability
- transmit an application for review/variation of a liability made in an overseas country; and
- assist overseas authorities with location and service requests for parents in Australia.

CROATIA

Yes. The competent court in the Republic of Croatia asks for such a decision.

CYPRUS

Yes, certified copy of the maintenance Order which is enforceable in the State of origin.

DENMARK

No.

POLAND

The requested authority in Poland requires a "decision" only if the request concerns the permission to enforce a judgement awarding maintenance.

UNITED KINGDOM - SCOTLAND

No previous decision is required unless the application is for spousal only maintenance.

UNITED STATES OF AMERICA

A decision is necessary for the enforcement of a foreign decision. However, if there is not a foreign decision, the U.S. jurisdiction may establish a legally enforceable order here.

- 3 Quels documents exigez-vous d'une Autorité expéditrice? Quels sont les documents requis en original?**
- 3 What documentation do you require from a transmitting agency? Which documents are required in the original?**

AUSTRALIA

When a country sends a request for a liability to be raised, as opposed to a request to enforce an existing liability, ACSA will make an administrative assessment using the information provided. If further information is required ACSA will contact the authority.

As a minimum ACSA would need:

- Name, address and date of birth of debtor, creditor and children;
- Presumption of parentage (see item 1 in attachment A for presumption requirements);
- Statement of arrears (if any);
- Date the parents separated if they lived together.

If ACSA is being asked to enforce an existing liability copies of the original documents are sufficient ie the court order or administrative assessment and the above information.

CROATIA

Required in the original are decisions on which a claim is based, as well as the child's birth and citizenship certificates, evidence that a full-age child is a regular student, and the power of attorney.

CYPRUS

- (i) Certified true copy of the maintenance Order, enforceable in the transmitting Country.
- (ii) Copies of:
 - Photos of the child/children
 - Birth certificates of them
 - Marriage certificate (if any).
- (iii) Certified copy of the writ of summons concerning the service of the application of maintenance to the respondent – father or certified copy of the certificate of service of the bailiff of the competent Court concerning the service.

DENMARK

- (a) Full name, address, date of birth, nationality and occupation of both the maintenance creditor and the maintenance debtor.
- (b) Specification of the debt and any relevant information of the grounds upon which the claim is based.
- (c) Final or temporarily decision or settlement of the maintenance obligation.

POLAND

A transmitting agency should send the following documentation:

- (a) A request of a person entitled to maintenance or of his/her statutory agent in case of a minor person.
- (b) The power of attorney granted by that person, authorising the Polish Ministry of Justice to take actions with the purpose of obtaining maintenance on behalf of that person.

(c) Documents in support of the claim:

- Certificates of personal status proving the existing consanguinity, judgements on adoption, certificates of admitting paternity, etc.
- A certificate of the applicant's permanent residence in the requesting state
- Any documents stating the material condition of the family (certificates of regular income, of incomes coming from different sources, of expenses relating to living, education, or state of health, etc).
- In the proceedings in relation with raising the maintenance allowance which had been established by virtue of a Polish court's judgement – a copy of this judgement or data (the name of a court, the case reference number) allowing to identify it.
- In the proceedings in relation with the execution of maintenance that had been established by virtue of a Polish court's judgement having the enforcement clause (the enforceable title) appended.

The following documents are required in the original:

- the request of the eligible person
- the power of attorney for the Polish Ministry of Justice
- the enforceable title (if the execution of maintenance established by virtue of a Polish court's judgement is being requested)

As far as the other documents are concerned, authenticated copies or excerpts should be transferred.

UNITED KINGDOM - SCOTLAND

The following documents are normally required if the application is on behalf of children:

- (a) Acknowledgement or assumption of paternity (original or certified copy) including grounds on which the claim is sought;
- (b) Marriage and/or birth certificates (original or certified copy);
- (c) Statement of financial incomings and outgoings (original or certified copy);
- (d) Statement that applicant is entitled to legal aid in requesting country (original);
- (e) Power of attorney allowing Central Authority to take action on applicant's behalf (original);
- (f) Statement of whereabouts of payer;
- (g) Name and address of claimant.

If the application is for spousal only maintenance then the original or certified copy of the divorce is required along with the original or certified copy of maintenance order.

UNITED STATES OF AMERICA

The Uniform Interstate Family Support Act (UIFSA), enacted as the local law of each U.S. state, requires that:

"the [petition] or accompanying documents must provide, so far as known, the name, residential address, and social security numbers of the obligor and the obligee, and the name, sex, residential address, social security number, and date of birth of each child for whom support is sought. The [petition] must be accompanied by a certified copy of any support order in effect. The [petition] may include any other information that may assist in locating or identifying the [respondent]."

- 4 **Quelle est la procédure type qui suit la réception d'un dossier d'une Autorité expéditrice?**
- 4 **What are your standard procedures following receipt of documentation from a transmitting agency?**

AUSTRALIA

- Action requests for tracing/location or information on incomes and return information to overseas authority.
- Consider request to register liability from either overseas authority or directly from creditor and determine whether it is an:
 - Application to create liability ;
 - Overseas maintenance assessment, order, agreement or Agency Reimbursement Liability.
- Register the liability within 90 days of receipt.
- Determine periodic amounts for child and or spousal maintenance (Collectable by the ACSA).
- Determine non periodic amounts (Recoverable by applicant through Australian Court).
- Calculate total arrears to the date of registration and the ongoing amount converted to Australian dollars on the date of registration.
- Determine disbursement options – whether paid to overseas authority or direct to the creditor.
- Issue letters to debtor and creditor and if appropriate the transmitting authority.
- Commence collection action with debtor.
- Disburse monies, when received from the debtor, to creditor or transmitting authority monthly.

CROATIA

The transmitting agency reviews the application and checks if required documents are attached. If some are missing, it informs the sending agency accordingly requesting the missing attachments, and forwards the whole file to a social welfare centre located in the area of the court competent for the respondent. The social welfare centre calls the respondent to its office to give and sign his/her statement concerning the applicant's request. If the respondent accepts the application without departing from its provisions, his/her signed consent to have the support instalments deducted from his/her salary or other regular income sources becomes legally binding. In that case the social welfare centre will immediately forward the affidavit to the respective payment body indicated therein along with the respective decision and a its certified translation. If the respondent refuses to comply with his/her support obligation, or if his/her affidavit departs from the amount of support specified in the decision, the social welfare centre will forward the application with attached documents to the competent court and initiate a procedure for the recognition and enforcement of the decision. In that case a legal representative (lawyer) is appointed to act on behalf of the applicant in the judicial procedure.

CYPRUS

The documents are forwarded to the Attorney General's Office for the preparation of the relevant application and its filing before the competent Court. A Counsel of the Republic appears in the proceedings representing the Minister and hence the applicant.

DENMARK

The case is transmitted to the local authority, which first of all attempts to obtain voluntary payments from the maintenance debtor or to reach an agreement.

If this fails, the convention allows for the creation of a new maintenance order according to Danish laws. Thus, the case is transmitted to The County Governor's Office. Thereafter, the new maintenance order of the Governor's Office is enforced like other Danish orders.

POLAND

The Ministry of Justice, as a receiving agency, applies to the Bar Council to appoint a legal counsel to manage the case. On the basis of the received documents, a legal counsel, as a substitute on behalf of the Ministry, takes actions leading to having maintenance awarded. If a debtor refuses to voluntarily fulfil maintenance obligations, a legal counsel brings action in a court for awarding (raising) maintenance or files a request for the enforcement in the territory of Poland of a foreign judgement. The obtained judgement, valid in law and with an enforcement clause (enforceable title) appended, is transmitted to the creditor, through the intermediary of the Ministry of Justice.

If the request concerns the execution of maintenance that had been established by virtue of a Polish court's judgement, the Ministry of Justice shall transfer the documents to the Chief Justice of the court for the purpose of the execution proceedings to be instituted *ex officio*.

UNITED KINGDOM - SCOTLAND

When an application is received it is checked to ensure that it meets the appropriate criteria by the Scottish Executive Justice Department and will then be sent to the Law Society of Scotland. The Law Society will transfer the application to a private firm of solicitors near the location of the payer with expertise in this area of law. These solicitors will then take appropriate action on behalf of the applicant to obtain maintenance.

UNITED STATES OF AMERICA

The petition or pleading will be filed with the appropriate tribunal, and the petitioner will be notified where and when it was filed.

- 5 **Des questions se sont-elles présentées au sujet des catégories de personnes en droit d'être considérées comme « dans le besoin » ou « dépendantes »?**
- 5 **Are there any issues that have arisen concerning the categories of persons eligible to apply as "in need" and "dependent"?**

AUSTRALIA

No - ACSA will only enforce child support or spousal maintenance.

CROATIA

In practice no similar problems have been encountered.

CYPRUS

No.

DENMARK

No.

POLAND

There is no category of "a person in need and dependent in terms of maintenance" in the Polish law. However, there is no problem with determining the scope of such a category, since the scope of categories applied in relation to this issue by the Polish Family and Guardianship Code is similar.

In principle, a child who is not able to support himself/herself (unless he/she owns property and the income related to that property is sufficient to cover the living and education expenses in connection with the child).

The possibility of obtaining maintenance by persons other than a child shall be preconditioned by the fact of suffering material deficiency by these persons and in the case of maintenance for a divorced spouse – also the statement that the divorce has caused a major deterioration of the material condition of the spouse who had not been declared exclusively guilty of the breakdown of marriage. The deficiency implies the impossibility of satisfying by means of ones own power and financial means justified needs relating to earning the living.

UNITED KINGDOM - SCOTLAND

No.

UNITED STATES OF AMERICA

There is no requirement that an applicant be "in need" to apply for services from a state child support enforcement agency.

6 Utilisez-vous des formulaires standards, que vous agissiez en tant qu'institution intermédiaire ou Autorité expéditrice? (Si oui, merci de nous adresser des copies.)

6 Do you make use of standard forms, whether acting as a receiving or transmitting agency? (If so, could you please supply copies).

AUSTRALIA

For cases transmitted to some countries ACSA does use standard forms eg United States and United Kingdom. ACSA does not require other countries to use standard forms but application forms are available on our website www.csa.gov.au.

CROATIA

We are using only a standard form when forwarding an application to the social welfare centre.

CYPRUS

No.

DENMARK

No.

POLAND

The Ministry of Justice does not use any standard forms and accepts requests made in different forms, provided that they comply with the requirements stipulated in the New York Convention and by the Polish law.

Bilingual forms are used only in relations with the German Federal Republic.

UNITED KINGDOM - SCOTLAND

A standard form is used when acting as a transmitting agency - copy attached.

UNITED STATES OF AMERICA

The federal government mandates the use by all U.S. state child support enforcement agencies of standard forms in interstate cases and is working with other nations on forms (bilingual, where appropriate) for use in international cases.

- 7 Vos autorités permettent-elles à des organes/agences publics de recourir aux procédures de la Convention pour le recouvrement d'aliments au nom du créancier ou pour le recouvrement des montants qu'ils ont déjà versés au créancier? Si oui, à quelles conditions (y a-t-il, par exemple, nécessité d'une procuration)?
- 7 Do your authorities permit public bodies / agencies to make use of the Convention procedures to recover maintenance payments on behalf of the maintenance creditor or to recover monies already paid by that public body / agency to the creditor, and if so, subject to what conditions (e.g. power of attorney)?

AUSTRALIA

Yes - not subject to any conditions except that for ACSA to enforce the liability the liability must be a periodic amount of maintenance for either a child or spouse.

CROATIA

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CYPRUS

No.

DENMARK

Yes, Denmark permits public bodies to make use of the convention if maintenance has been paid to the maintenance creditor in advance by this public body. This does not require, that certain conditions are met.

POLAND

The Polish side permits the possibility of recovering by a public body of maintenance payments already paid to the creditor under the New York Convention if the request is based upon the Hague Convention of 1973 on recognition and enforcement of decisions related to maintenance obligations.

UNITED KINGDOM - SCOTLAND

Unlikely that court would make an order in the name of a public authority. It can possibly make an order in the name of parent and then for money to be sent to public authority, providing that the claimant is still residing in requesting state and public authority has authority of maintenance creditor to collect on his/her behalf.

UNITED STATES OF AMERICA

As a non-party, the United States does not use Convention procedures. However, a state child support enforcement agency may only recover the amount of support payments owed by the obligor and not necessarily the cost of all public benefits provided to the obligee.

8 L'aide judiciaire:

- (a) Fournissez-vous une aide judiciaire au demandeur?
- (b) Si oui, sous quelle forme?
- (c) Des conditions ou des limitations sont-elles imposées?
- (d) Est-ce que les demandes d'aliments pour un époux ou un enfant sont traitées différemment?

8 Legal assistance:

- (a) Do you provide legal assistance to the claimant?
- (b) What form does this take?
- (c) Is it subject to any conditions or limitations?
- (d) Are applications for spousal and child support treated differently?

AUSTRALIA

- (a) ACSA does not but can facilitate legal assistance through the Australian Attorney General's Department (AG's).
- (b) AG's may provide assistance in relation to variation of existing orders and parentage issues.
- (c) Yes but the procedures and practices are still to be formalised by AG's. However as a general rule AG's will assist a creditor who is overseas to establish to parentage.
- (d) No.

CROATIA

The claimant is granted a legal representative, a lawyer who can provide complete legal assistance. Such assistance can also be extended by central government bodies and at the social welfare centre. Applications for spousal and child support are treated similarly. (The transmitting agency has not yet received any application for spousal support based on the Convention).

CYPRUS

- (a) Free legal assistance through the Attorney General.

DENMARK

Since the assessment and enforcement of maintenance orders is handled administratively, there is no need for legal assistance to the claimant.

POLAND

- (a) Yes.
- (b) The Polish law provides for exemption from the court costs in respect of the party seeking maintenance (article 11, paragraph 1, subparagraph 2 of the Code of Civil Procedure).

The advocate appointed as a substitute on behalf of the Ministry acts ex officio, and the eligible party does not incur any costs related to the actions taken by such advocate. Also if the request concerns the execution of maintenance adjudicated by force of a judgement passed by a Polish court, the president of the court institutes enforcement proceedings ex officio and the eligible person does not incur any costs related to it.

- (c) In each case conducted under the New York Convention the scope of assistance is the same and is not subject to any limitations.
- (d) All requests are treated equally, regardless of who they pertain to.

UNITED KINGDOM - SCOTLAND

- (a) The claimant will receive cost-free legal advice and assistance from a private solicitor providing a certificate is produced to show that she is entitled to legal aid or exemption from expenses in requesting state.
- (b) See above.

- (c) Claimant must be able to produce a certificate stating that she is entitled to legal aid or exemption from expenses in requesting country.
- (d) As regards legal assistance, such applications are not treated differently.

UNITED STATES OF AMERICA

- (a) While there is not an attorney/client relationship between the child support agency and applicant, state child support enforcement agencies provide all any necessary and appropriate administrative and legal assistance to the families they serve.
- (b) Services are provided by state child support enforcement agencies and vary by state according to the procedures and practices of each state.
- (c) The child support agency decides what services are necessary and appropriate.
- (d) Yes. State child support enforcement agencies will enforce support obligations with respect to a child and a custodial parent who lives with that child. In cases where there are no minor children, state agencies will not provide services for spousal support, unless an individual state elects to do so in the given circumstances.

9 Lorsqu'elles agissent comme institution intermédiaire, quels coûts encourus par vos autorités sont mis à la charge de l'Etat d'origine (ou du demandeur)?

9 What costs incurred by your authorities, when acting as the receiving agency, are charged to the requesting State (or the claimant)?

AUSTRALIA

None.

CROATIA

So far we have not charged the costs to any requesting State or a claimant.

CYPRUS

In Cyprus an applicant, under the relevant Convention, is not charged with any legal expenses or costs because the Minister of Justice and Public Order – Transmitting Agency designated under article 2 of the Convention is acting on his/her behalf in the Court proceedings, therefore a Counsel of the Republic from the Office of the Attorney General appears in the proceedings.

DENMARK

All services for determination and enforcement of foreign maintenance orders are free of charge, except costs in connection with forced sale of property, which are charged to the claimant.

POLAND

The Polish side acting as the party receiving the requests incurs all the costs involved in claiming maintenance under the New York Convention.

UNITED KINGDOM - SCOTLAND

None.

UNITED STATES OF AMERICA

No costs are charged to foreign reciprocating states or foreign obligees.

10 Quelles sont vos exigences concernant la traduction des documents soumis par une Autorité expéditrice?

10 What are your requirements with regard to the translation of documents submitted by the transmitting agency?

AUSTRALIA

ACSA has no formal requirements but our preference would be for documents to be translated prior to sending.

AUSTRIA

The agreement with the United Kingdom is no longer valid because the United Kingdom insisted that documents coming from Austria have to be accompanied by translations into English.

CROATIA

We ask for a certified translation into the Croatian language of the respective decisions and attached documents. If an application is received in the English language, the transmitting agency will prepare an official translation for further procedure, but the court, in case of a dispute, will demand a certified translation of all relevant documents.

CYPRUS

Apart from Greek we accept English.

DENMARK

All relevant documents must be translated into Danish, except documents from Nordic countries. However, the local public authority may also accept documents in English and sometimes in German.

POLAND

All documents submitted by transmitting agencies should be drawn up in the Polish language, or accompanied by a translation into the Polish language made by a certified sworn translator.

UNITED KINGDOM - SCOTLAND

Applications should be submitted with an English translation.

UNITED STATES OF AMERICA

All documents to be presented to a child support tribunal must be translated into English.

11 Quelles sont les langues que le personnel de votre autorité (a) utilise, et (b) accepte?

11 Which languages do personnel in your authority (a) use, and (b) accept?

AUSTRALIA

(b) English (b) any but again would prefer in English.

CROATIA

Personnel in the transmitting agency engaged in dealing with such cases are using Croatian and English languages.

CYPRUS

Greek and English.

DENMARK

The Ministry of Foreign Affairs, which is the receiving and transmitting agency in connection with the New York Convention, has stated that there are no guidelines regarding this matter. Typically, the Ministry will accept all Nordic languages, English, German and French.

POLAND

As above.

UNITED KINGDOM - SCOTLAND

(a) English.

(b) We accept the languages of those countries with which we have reciprocal agreements, otherwise, translations of official documents into the English should be provided.

UNITED STATES OF AMERICA

English is the only language accepted by most state child support agencies.

12 Est-ce que votre autorité assume la responsabilité des transferts/réceptions de paiements d'aliments effectués au nom du créancier?

12 Does your authority accept any responsibility with regard to the transfer / receipt of maintenance payments on behalf of the creditor?

AUSTRALIA

When a liability is registered with ACSA or an Australian liability transmitted, ACSA is responsible for the transfer and receipt of all payments. eg overseas central authority forwards payment to ACSA who then pays the Australian creditor. However, collection of child support is not guaranteed and only the amount collected from the debtor is transmitted to the creditor.

CROATIA

Under the Family Act, the social welfare centre is authorized to check if maintenance payments are regularly made, but this is not explicitly authorized to receive such payments on behalf of the creditor.

CYPRUS

Yes, as long as it is sent through our authority.

DENMARK

Danish law does not regulate these matters, and to the knowledge of the Ministry such questions have not appeared.

POLAND

In matters involving execution of maintenance, court executive officers and banks are the competent bodies. The Ministry of Justice does not take responsibility for the transfer/receipt of maintenance payments. However, it may request from court executive officers information on the course of execution.

UNITED KINGDOM - SCOTLAND

No.

UNITED STATES OF AMERICA

All state child support agencies have a state disbursement unit, which assists in the collection of payments and the transfer of those payments to the benefit of the obligee.

13 Quelles sont les règles/procédures applicables à la conversion des paiements

d'aliments dans la monnaie de l'Etat du créancier?

13 What rules / procedures apply with regard to the conversion of maintenance payments into the currency of the creditor's State?

AUSTRALIA

We currently use 2 options to disburse monies to creditors outside Australia depending on where the money is being sent.

New Zealand and Sweden

Once per month by the 25th of the month for all monies collected from debtors for creditors in New Zealand ACSA produces one excel spreadsheet detailing a break-up of payments for these clients in Australian dollars and the converted amount in NZ \$. This spreadsheet is forwarded to NZIRD together with one electronic payment for the total amount. This fits with NZIRD timeframes and is then disbursed to NZ clients by NZIRD in their major disbursement on the 7th of the following month.

All other Overseas Jurisdictions

All monies collected from debtors for creditors in other overseas jurisdictions, ACSA via another government department purchase an overseas foreign currency cheque for each creditor which is automatically mailed to each client or overseas authority as appropriate. This is done automatically via the Reserve Bank and Citibank Internationally through clearing houses in London and the USA.

CROATIA

The best method would be if the maintenance debtor pays extra charges (postage or banking duty). The problem is that in practice the recovery of such costs is neither claimed nor ruled. A provision would be desirable which would bind the court to rule such obligation in cases involving child support.

CYPRUS

Same days value.

DENMARK

Danish law does not regulate this.

POLAND

The maintenance recovered in the Polish currency is converted into the currency of the eligible person's country (or US dollars) according to the exchange rate established and announced by the National Bank of Poland.

UNITED KINGDOM - SCOTLAND

The exchange rate used is the rate on the day the order is registered in Scotland.

UNITED STATES OF AMERICA

Maintenance payments collected in the United States are typically transmitted in U.S. dollar denominations, regardless of residence of obligee.

14 Quelles sont les méthodes de transfert de fonds les moins coûteuses pour le créancier d'aliments?

14 What methods of transferring funds are least costly for the maintenance creditor?

AUSTRALIA

An electronic system that also converts currency would be the cheapest and ACSA is currently exploring future transfer of funds along these lines.

CROATIA

The best method would be if the maintenance debtor pays extra charges (postage or banking duty). The problem is that in practice the recovery of such costs is neither claimed nor ruled. A provision would be desirable which would bind the court to rule such obligation in cases involving child support.

CYPRUS

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DENMARK

The Ministry has no knowledge of the least costly methods of transferring funds.

POLAND

The least costly method of transferring maintenance payments to the benefit of the maintenance creditor is a deposit to that person's account opened in a Polish bank.

UNITED KINGDOM - SCOTLAND

Unsure because Scottish Executive Justice Department does not become involved with transfer of payments.

UNITED STATES OF AMERICA

Electronic transfers by automated clearinghouse gateways, currently under development by the global financial community, are the least costly transfer solution. Another low-cost option is for a foreign obligee to obtain a debit card account on a U.S. bank so that payments may be accessed through an automated teller machine.

15 Avez-vous eu connaissance de cas où des membres du personnel des Nations Unies, d'une autre organisation internationale ou d'une ambassade ont invoqué leur immunité dans le cadre de la Convention? Si oui, comment ces cas ont-ils été résolus?

15 Are you aware of cases in which UN personnel, or personnel of other international organisations or Embassy staff, have claimed immunity under the Convention? If so, how were these cases resolved?

AUSTRALIA

No

CROATIA

We are not aware of any such cases.

CYPRUS

No.

DENMARK

The Ministry is not aware of such cases.

POLAND

There have been no known cases of UN personnel or personnel of other international organisation claiming immunity in cases under the New York Convention. Should a maintenance claim be directed against a staff member of a foreign diplomatic mission in Poland, the Polish Ministry of Foreign Affairs would seek to settle the case amicably.

UNITED KINGDOM - SCOTLAND

No.

UNITED STATES OF AMERICA

In cases where personnel of international organizations of Embassies claim immunity, the state child support enforcement agency will contact the organization directly for assistance.

16 Quels sont les pouvoirs ou procédures dont dispose votre autorité pour localiser le lieu où se trouve ou travaille le débiteur de l'obligation alimentaire?

16 What powers or procedures are available to your authority to locate the whereabouts or place of work of a maintenance debtor / respondent?

AUSTRALIA

ACSA has a range of administrative powers and resources available to locate debtors/respondents and can access information such as a debtors:

- tax records;
- Motor Vehicle and license information;
- Utilities such as electricity, gas and phone;
- Social security records.

ACSA will action all requests by an authorised transmitting authority and require name, address and date of birth as a minimum. However in responding, ACSA must ensure that privacy and secrecy laws are not breached.

AUSTRIA

In Austria a computerized central register of inhabitants has been established. The Austrian receiving agency has access to this register.

CROATIA

If the social welfare centre is unable to locate the whereabouts of the maintenance debtor or his/her employer, assistance is asked from the Ministry of the Interior.

CYPRUS

Through the Cyprus Police.

DENMARK

The whereabouts or place of work of a maintenance debtor is usually found through the civil registration and the taxation systems. If this fails, the police may assist in finding the debtor.

POLAND

The court or the court executive officer are obliged ex officio to conduct proceedings aimed at the ascertainment of the place of residence and the place of work of the maintenance debtor/respondent.

For that purpose they may apply to:

- the population registry office of the community district in the territory of which the debtor recently lived or worked,
- local Police headquarters,
- Central Address Bureau,
- district labour office (in order to ascertain whether the debtor is or was registered as an unemployed person).

UNITED KINGDOM - ENGLAND AND WALES

When a respondent's address is not known to the applicant, the REMO section will contact other government departments i.e. the Department for Work and Pensions (Benefits Agency), the Passport Agency and the Immigration Department, for their assistance in ascertaining a current address for the respondent.

The police service used to fulfil this function but is now no longer available to do so other than to supply the court with any information from their records. There is a high proportion of cases, which are simply marked 'not served' because the court has been unable to determine that the application has been served upon the respondent. The court will consider proceeding in the absence of the respondent but without some positive information is unlikely to do so. The issue of a warrant against a respondent is not resorted to.

UNITED KINGDOM - SCOTLAND

This subject is currently under review in the UK. Normally we can consult the Department of Welfare and Pensions about a possible address but this will only reveal the location of a person who is claiming benefits. Solicitors may be able to obtain legal aid to hire a private detective.

UNITED STATES OF AMERICA

The federal government operates the Federal Parent Locator Service (FPLS), a computer matching system that locates noncustodial parents who owe child support. The FPLS includes two databases: the National Directory of New Hires, which is a central repository of employment, unemployment insurance, and quarterly wage information for all newly-hired U.S. employees, and the Federal Case Registry - a national database that contains information on individuals in child support cases and child support orders. The FPLS also has access to location sources from other federal agencies.

- 17 Quelle est votre politique face à un débiteur d'une obligation alimentaire dont les revenus proviennent exclusivement d'une aide des pouvoirs publics?**
- 17 What is your policy in respect of a maintenance debtor / respondent whose entire income consists of public assistance payments?**

AUSTRALIA

Under an Australian administrative assessment paying parents are required to pay a minimum amount - ie AUD\$260 per annum - of child support regardless of their income. ACSA is also able to collect money from a parent's social security payment, however this is limited to AUD\$5.00 per week.

AUSTRIA

In 2002 the minimum amount that must be left to the debtor and cannot be seized is 473 Euro per month.

CROATIA

Under the Family Act, no person able to work, even if a beneficiary of public assistance payment, can be exempted from child support obligations. However, if a support debtor fails to contribute towards child support longer than three months, and the social welfare centre finds that this may jeopardise child support, the social welfare centre, acting upon request of the other parent or at its own discretion, has to take measures to ensure provisional support funds until the support debtor resumes to honour his/her obligations. In that case the social welfare centre can claim back the funds from the support debtor.

CYPRUS

No existing policy.

DENMARK

See the answer to question 4 above and the answer to question 3 below. The debtor must thus always be left with means for the maintenance of the debtor himself and his family.

POLAND

Pursuant to the Family Code the scope of maintenance payments depends also on the capabilities of the debtor in respect of his earnings and assets. Parents may not evade the maintenance obligation invoking the ground that the fulfilment of such obligation would constitute an excessive burden for them. The fact of receiving unemployment benefits or public assistance payments by the maintenance debtor undoubtedly affects the scope of financial capabilities of the debtor. The debtor may not be compelled to fulfil the maintenance obligation if it violates the substance of the things used for the direct satisfaction of his justified living needs, as well of the sources of his income allocated for maintenance payments. In each case involving establishment (increase) of maintenance, the court individually makes an assessment of financial and earning capabilities of the debtor/respondent, adjusting respectively the amount of the maintenance payments. There is no automatic procedure in this respect. However, there are limitations in enforcement proceedings. Maintenance claims may be enforced out of unemployment benefits and funds from public assistance -to the maximum level of three fifths of the entire amount.

UNITED KINGDOM - ENGLAND AND WALES

Case law allows the court to determine that there shall be no order for maintenance. Previous practice of making nominal orders is not considered correct unless there is a likely change of financial circumstances in the near future.

UNITED KINGDOM - SCOTLAND

Not possible to arrest most state benefits. It is for the solicitor to decide the most appropriate action. It may be possible to reach voluntary agreement.

UNITED STATES OF AMERICA

The limited income of the obligor will be factored into the child support order, in accordance with the laws of the particular U.S. state.

18 Votre autorité, a-t-elle le pouvoir de prendre ou de demander des mesures provisoires ou conservatoires?

18 Does your authority have power to take or apply for any provisional or protective measures?

AUSTRALIA

Yes - ACSA has a range of administrative powers such as preventing a client from leaving Australia. ACSA also has recourse to the Australian Judicial system to take enforcement action.

CROATIA

In addition to the provisional measure described under 17 above, there are other measures to ensure support, defined in the Family Act, which the court may rule if without such measures the interests of the provider of provisional funds may be jeopardized or the enforcement of support made difficult. The Act makes a special reference to such a risk in cases involving support of an underage child or a full-age child unable to work.

CYPRUS

In principle yes.

DENMARK

If a maintenance debtor intends to emigrate from Denmark the debtor may be ordered to fulfil the maintenance obligations or provide security for the payments.

It is also possible to seize the passport of the debtor, if the debtor is a Danish citizen.

POLAND

The Polish Code of Civil Procedure provides for the institution of a claim security (article 753, paragraph 1 of the Code of Civil Procedure).

Such security may be applied ex officio (*i.e.* without a separate request by the eligible person) still before the adjudication of the final decision on the establishment (increase) of maintenance payments.

Besides, pursuant to article 333 paragraph 1 of the Code of Civil Procedure, the court appends the immediate enforcement clause to the decision on maintenance payments, which means that the decision should be enforced although it is not final yet.

The court ex officio serves the execution title on the eligible person.

UNITED KINGDOM - ENGLAND AND WALES

The court has responsibility if the maintenance order is registered, to act to enforce the order.

UNITED KINGDOM - SCOTLAND

There is an exception to the general rule against using diligence in respect of a future debt in actions for aliment or financial provision on divorce whereby the court, in terms of section 19 of the Family Law (Scotland) Act 1985, can grant a warrant for inhibition or arrestment on the dependence of the action and, if it thinks fit, to limit the inhibition to any particular property or to funds not exceeding a specified value.

UNITED STATES OF AMERICA

Temporary child support orders may be made pursuant to the law of a particular state.

19 Quels sont les pouvoirs ou les procédures dont dispose votre autorité pour déterminer l'étendue des avoirs du débiteur de l'obligation alimentaire?

19 What powers or procedures are available to your authority to determine the extent of assets of a maintenance debtor / respondent?

AUSTRALIA

A wide range of administrative powers plus the option of using Australian Courts and a judicial process.

CROATIA

In determining the facts concerning the extent of assets of maintenance debtor, the court has a power to request relevant data from any agency or source of income and to order a means test.

CYPRUS

Examination on his affidavit.

DENMARK

In determining the extent of assets the debtor or other persons with relevant information may be questioned under the penalty of law. Information may also be collected from other public authorities. Finally, enforcements proceedings may take place at the debtor's home.

POLAND

In cases involving maintenance claims, the court ex officio has the obligation to undertake actions aimed at the ascertainment of the financial position and earning capabilities of the maintenance debtor. For this purpose it may, for example:

- apply to the debtor's employer, who is obliged to issue a certificate on his remuneration within a specific period of time (e.g. for the last six months),
- apply to the revenue office for information whether the debtor is paying tax on economic activity and whether he reports income from such activity,
- apply to the Commission on disability for information whether the debtor is an invalid and if so - to what degree, whether he may undertake work or whether he receives disability

pension; an expert may be appointed to make an assessment of the debtor's health condition,

- apply to the district labour office for information whether the debtor has been registered as an unemployed person, whether he receives unemployment benefit, whether he has been offered work and whether such offers have been accepted,
- apply to the police for the conducting of an inquiry at domicile, in the place of the debtor's place of residence, for the purpose of establishing the way of life, housing conditions (e.g. whether the debtor abuses alcohol, maintains any other persons),
- apply to the bank for information on the debtor's accounts and the amounts deposited in them,
- apply to the district community office, or the land and mortgage registry of the court, for information on possible real property possessed by the debtor,
- oblige the debtor to disclose his assets.

In execution proceedings the court executive officer has similar rights.

UNITED KINGDOM - ENGLAND AND WALES

The court is able to summon the debtor and make a means enquiry and require that evidence be provided to the court of the extent of his/her assets.

UNITED KINGDOM - SCOTLAND

None.

UNITED STATES OF AMERICA

Federal and state governments have a wide variety of mechanisms to determine the assets of a debtor, including access to tax records and bank and financial account records.

20 Quels sont les principaux problèmes que vous rencontrez (a) en tant qu'Autorité expéditrice, et (b) en tant qu'institution intermédiaire?

20 What are the principal problems, which you experience in dealing with cases (a) as a transmitting agency, and (b) as a receiving agency?

AUSTRALIA

- (a) - Not being aware of the overseas jurisdiction requirements.
- Overseas Jurisdictions not recognising Australia creating maintenance liabilities under Administrative Assessments using a formula method.
- In order to issue accurate assessments, ACSA needs to be able to obtain accurate overseas incomes. This is a major issue in that a majority of overseas maintenance authorities don't have legal access to taxation records in their jurisdictions.
- Similarly, assistance in locating clients in overseas jurisdictions is often difficult due to overseas authorities not having legal authority to trace clients in their jurisdictions.

- (b) – Often difficult to interpret the meaning of clauses, etc, in Overseas Court Orders.
- Where details of the end date of the Overseas Maintenance Liability are not provided. *E.g.* the differences in the age of majority for a child across different jurisdictions.
- Receiving Overseas Provisional Orders for establishing or varying orders creates difficulties in that these orders can't be confirmed in an Australian Court if an Australian Administrative Assessment could be made.
- Difficulty with overseas authorities in not having clear rules concerning who has jurisdiction. This is especially difficult for clients to then seek variation to original orders and where these applications should be made in order to be recognised in both Australia and the other jurisdiction.

CROATIA

In either case the principal problem is the length of procedures.

CYPRUS

As a receiving agency. As far as the execution of the Order is concerned we face the problem that the respondent does not correspond with his order obligations and refuses to pay the sums due by the Order. Also the respondent may deny that he is the father.

DENMARK

None.

POLAND

- (a) The Polish side, acting as a transmitting party, most often experiences the following problems:
 - the returning of requests by foreign receiving agencies in the situation where in the request there is no current address of the debtor (quite often the eligible person does not know the exact address the debtor, or the address provided in the request has proved to be out-of-date),
 - lack of information on the acceptance of the request and on the activities undertaken by the foreign authority to carry it out,
 - refusal to institute proceedings in the event the debtor receives benefits of welfare nature,
 - worse treatment of Polish applicants, which manifests itself in adjudicating lower maintenance than that adjudicated in comparable conditions to the benefit of own citizens, which is incompatible with article 4 paragraph 1 subparagraph b, article 6 paragraph 2, and article 9 of the New York Convention.
- (b) As the receiving side, we ascertain that most often the requests are not sufficiently prepared, which manifests itself, among other things, in:

- absence of translation into the Polish language of the documents sent in a foreign language,
- sending translations made by accidental persons, and not by a sworn translator, sending xerox copies instead of originals,
- absence of documents enabling the ascertainment of child's origin,
- laconic information on the financial situation of the eligible person and his/her family,
- absence of power of attorney for the Polish Ministry of Justice,
- lack of information on material circumstances influencing the course of proceedings, e.g. the conclusion of education by an of age creditor.

UNITED KINGDOM - SCOTLAND

- (a) As a transmitting agency, the main problem is the lack of information about what documents are required and about the procedure in the respective country.
- (b) As a receiving authority, the main problem is the lack of information about the payer's whereabouts.

UNITED STATES OF AMERICA

See comments on questions 31 and 32 of the 2002 questionnaire.

- 21 Avez-vous des statistiques indiquant le nombre et l'issue des affaires traitées en application de la Convention de New York? Si oui, veuillez nous les communiquer. Si possible, veuillez distinguer entre les cas où vous agissez en tant qu'Autorité expéditrice et les cas où vous agissez en tant qu'Autorité intermédiaire et indiquer l'autre/les autres Etat(s) impliqué(s).**
- 21 Do you have any statistics indicating the number and outcome of cases brought under the New York Convention? If so, could you please supply them. If possible, please distinguish between incoming and outgoing cases, and indicate the other States involved.**

AUSTRALIA

See item 2, attachment A.

CROATIA

We are collecting statistics for the year 2002 and we expect to have such an analysis available by the end of March.

CYPRUS

No.

DENMARK

Unfortunately, no statistics are available.

POLAND

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UNITED KINGDOM - ENGLAND AND WALES

We cannot provide statistics regarding the outcome of cases brought under the New York Convention. The table below shows incoming and outgoing cases brought in 2000, 2001 and to 7 October 2002.

COUNTRY	2000 2001 2002 (YEAR)	INCOMING total	OUTGOING total
Australia	2 12 6	20	
Austria	1 1	2	
Belgium	3 0 0	3	
	1		1
Brazil	1	1	
	1		1
Finland	1 1	2	
France	3 3 1	7	
	1		1
Germany	2 1	3	
	1 4		
Hungary	1	1	
Israel	1	1	
	2		2
COUNTRY	2000 2001 2002 (YEAR)	INCOMING total	OUTGOING total
Italy	1	1	
	2		2
Netherlands	3 5 1	9	
	3		3
Norway	39 26 5	70	
Philippines			
	1		1
Poland	18 28 29	75	
Portugal	4	4	
	2		2
Romania	1	1	
Spain	6 4		10

Sweden	34 52 29	115	
	2		2
Switzerland			
	1		1
Yugoslavia	2	2	

UNITED KINGDOM - SCOTLAND

Statistical information such as this is not routinely collated, however such information could be produced if required.

UNITED STATES OF AMERICA

There are no statistics on this issue.

22 Y a-t-il des Etats avec lesquels vous rencontrez régulièrement des difficultés au sujet du fonctionnement de la Convention?

22 Are there any States with whom you experience chronic difficulties in relation to the operation of the Convention?

AUSTRALIA

No.

CROATIA

-

CYPRUS

No.

DENMARK

No.

POLAND

Not chronic.

UNITED KINGDOM - ENGLAND AND WALES

See table above (at question 21). Those countries that are part of the New York Convention and are not listed above use the convention very infrequently or not at all.

UNITED KINGDOM - SCOTLAND

No chronic difficulties, just occasional delays in receiving progress reports generally.

UNITED STATES OF AMERICA

The United States is not a Convention member.

Section B – Questions adressées aux Etats non parties / Section B – Questions addressed to non-Party States

- 1 Y a-t-il des raisons particulières pour lesquelles votre Etat n'a pas ratifié la Convention de New York?**
- 1 Are there particular reasons why your State has not ratified the New York Convention?**

PANAMA

At the moment we are thinking about the possibility of ratifying said Convention.

UNITED STATES OF AMERICA

Reasons the United States has not ratified the New York Convention:

- The Convention requirement for legal assistance depends on the legal aid system in effect in each country, with wide variation in how much assistance is given, and the standard of income for qualification. Because of these different standards, many U.S. children and custodial parents would not qualify for assistance even though they could not in fact afford to pay. It is our experience in interstate cases within the United States that many custodial parents are not able to benefit from a support enforcement program without legal assistance.
 - The Parties to the Convention do not all interpret the Convention to cover both existing orders and where an order has not been entered. Both are necessary for an adequate enforcement system.
 - The Convention does not benefit from full implementation in all Party States.
- 2 Y a-t-il des modifications/améliorations de la Convention de New York qui rendraient sa ratification plus attrayante pour votre Etat?**
 - 2 Are there any modifications / improvements to the New York Convention, which would make ratification by your State a more attractive proposition?**

PANAMA

It is been analyzed to determine if Panama must ratify it or not, and if such Convention is fitted to be utilized within our legislation.

UNITED STATES OF AMERICA

The United States is focussing its efforts on the negotiation of a new multilateral convention rather than on ratification of the New York Convention.

- 3 **Lors des négociations d'un accord bilatéral ou de tout autre traité auquel votre Etat est ou sera partie, lesquelles des questions soulevées à la Section A ont été d'un intérêt particulier? Y a-t-il d'autres questions non soulevées à la Section A qui présentent un intérêt?**
- 3 **In relation to the negotiation of any bilateral or other arrangements to which your State is, or is to become Party, which of the issues raised in Section A have been of significance? Are there other issues not raised in Section A, which have been significant?**

PANAMA

It could be questions 3, 8, 10, 11, 12, 13, 15, 16, 17, 18 and 22.

UNITED STATES OF AMERICA

Significant issues raised in Section A are those related to the issues described above.

PARTIE II LES CONVENTIONS DE LA HAYE DE 1958 ET 1973 CONCERNANT LA RECONNAISSANCE ET L'EXECUTION DE DECISIONS RELATIVES AUX OBLIGATIONS ALIMENTAIRES

PART II HAGUE CONVENTIONS OF 1958 AND 1973 ON THE RECOGNITION AND ENFORCEMENT OF DECISIONS RELATING TO MAINTENANCE OBLIGATIONS

Section A – Questions adressées aux Etats parties à l'une ou aux deux Conventions
Section A – Questions addressed to States Party to one or both Conventions

- 1 Faut-il respecter un délai de prescription pour engager une action en exequatur d'une obligation alimentaire? De quelle loi cette prescription relève-t-elle?**
- 1 Does a limitation period operate in respect of an action for the enforcement of a maintenance obligation? Which law governs any such limitation period?**

AUSTRALIA

No.

POLAND

The right to maintenance is not subject to limitation. A limitation period operates in respect of the maintenance claim itself. The limitation period is 3 years. This is regulated by the provision of article 137 of the Statute of 25 February 1964 - The Family Code.

Limitation is also regulated by the provisions of the Civil Code - the Statute of 23 April 1964 with subsequent amendments. According to article 121 paragraph 1 of the Civil Code, the course of limitation period does not begin, and if already begun is suspended - with respect to maintenance claims brought by eligible children against parents during the duration of parental authority. Maintenance claims adjudicated by a final judgement are subject to limitation after three years. The limitation period ceases to run for the time of enforcement proceedings.

UNITED KINGDOM - SCOTLAND

No limitation period.

UNITED STATES OF AMERICA

Yes. U.S. jurisdictions generally apply the law of the forum. The laws of individual U.S. states govern such limitations. Information on each state may be found on the U.S. Office of Child Support Enforcement's (OCSE) Online Interstate Roster and Referral Guide at "<http://ocse3.acf.dhhs.gov/ext/irg/sps/selectastate.cfm>."

- 2 Faut-il respecter un délai de prescription à l'exécution forcée du recouvrement d'une obligation alimentaire? De quelle loi cette prescription relève-t-elle?
- 2 Does a limitation period operate in respect of the execution of a writ for the recovery of maintenance? Which law governs any such limitation period?

AUSTRALIA

No.

POLAND

See above.

UNITED KINGDOM - SCOTLAND

No limitation period.

UNITED STATES OF AMERICA

Yes. U.S. jurisdictions generally apply the law of the forum. Laws of individual U.S. states govern such limitations. Information on each state may be found on the OCSE Online Interstate Roster and Referral Guide at "<http://ocse3.acf.dhhs.gov/ext/irg/sps/selectastate.cfm;>" see section E on Statute of Limitations.

- 3 Vos procédures d'exécution permettent-elles à un débiteur de faire valoir son incapacité à payer?
- 3 Do your procedures for enforcement permit the debtor to claim inability to pay?

AUSTRALIA

No. However, if action is taken in an Australian Court to enforce arrears the court can take into consideration the parent's capacity to pay when deciding to enforce the debt.

POLAND

The enforcement proceedings are discontinued in whole or in part ex officio if it is obvious that the enforcement will not bring an amount which would exceed the enforcement costs (e.g. the debtor does not work, does not have any assets subject to attachment).

UNITED KINGDOM - SCOTLAND

An order will be enforced if the debtor has enough assets. The debtor may appeal against the registration of the order if he does not have enough assets.

UNITED STATES OF AMERICA

Yes, but until the order is modified, arrears on the obligation continue to increase.

4 Vos procédures permettent-elles de modifier le contenu d'une décision enregistrée en application de la Convention de 1973?

4 Do your procedures allow for the possibility of modifying the content of a decision registered in application of the 1973 Convention?

AUSTRALIA

Yes, but only if the creditor or debtor make application.

POLAND

The Polish law does not allow for the possibility of modifying the content of foreign judgements subject to the proceedings aimed at recognition and enforcement.

UNITED KINGDOM - SCOTLAND

No.

UNITED STATES OF AMERICA

Modification of decisions should be sought in the jurisdiction that entered the decision, as long as one or more of the parties continues to reside in that jurisdiction.

5 Le débiteur a-t-il le droit d'intenter une action en modification de la décision étrangère? Si oui, sur quelle base juridictionnelle et sur quels fondements?

5 Is the debtor entitled to bring modification proceedings in respect of the foreign decision? If so, on what jurisdictional basis and on what grounds?

AUSTRALIA

Yes - Australian law allows the party to an order who resides in Australia to apply for an Australian court to vary an existing order. However the new Australian order is provisional if it was made in one of the countries listed at item 3 attachment A.

POLAND

The debtor may not file with the Polish court a suit for a modification of a judgement passed abroad. The debtor may apply for a decrease in the amount of maintenance payment if in a particular case jurisdiction of the Polish court applies and if the Polish court had previously allowed for the enforcement in the territory of Poland of a judgement passed abroad which specifies the amount of maintenance payment in respect of which the decrease is sought.

UNITED KINGDOM - SCOTLAND

No.

UNITED STATES OF AMERICA

The debtor may request assistance from the state child support enforcement agency in obtaining a modification review where the order was originally established. Generally, a U.S. state will not modify a foreign order unless neither parent lives in the foreign country. If the custodial parent and no other party reside in the issuing jurisdiction, the debtor must go to the state of residence of the custodial parent to seek a modification review. In the United States, significant change of circumstances is the typical basis for granting of a modification. Details on modification procedures in each state may be found on the OCSE Online Interstate Roster and Referral Guide at "<http://ocse3.acf.dhhs.gov/ext/irg/sps/selectastate.cfm>;" see section K on Modification and Review/Adjustment.

Section B – Questions adressées aux Etats non parties *Section B – Questions addressed to non-Party States*

- 1 Y a-t-il des raisons particulières pour lesquelles votre Etat n'a pas ratifié/adhéré à l'une ou l'autre des Conventions de La Haye?
- 1 Are there any particular reasons why your State has not ratified / acceded to either of the Hague Conventions?

PANAMA

There have been no requests of alimony in our Courts with countries taking part in such Convention.

UNITED STATES OF AMERICA

The United States has not ratified the 1958 and the 1973 Hague Enforcement Conventions in part because of Constitutional problems with some of the bases of jurisdiction established.

- 2 Y a-t-il des modifications/améliorations des Conventions de La Haye qui rendraient leur ratification/adhésion plus attrayante pour votre Etat?
- 2 Are there any modifications / improvements to the Hague Conventions which would make ratification / accession a more attractive proposition for your State?

PANAMA

This possibility has not been analyzed, therefore Conventions have not been studied.

UNITED STATES OF AMERICA

The United States is focussing on the negotiation of a new multilateral convention, rather than on ratification of these Hague Conventions. As noted above, the bases of jurisdiction need to be more flexible, designed to accommodate substantially different systems. Using a fact-based approach (rather than jurisdiction-based approach), which would not require fundamental changes in the Constitutional or other law of the Parties, would provide the most flexibility and cover the vast majority of cases.

PARTIE III LES CONVENTIONS DE LA HAYE DE 1956 ET 1973 SUR LA LOI APPLICABLE AUX OBLIGATIONS ALIMENTAIRES

PART III HAGUE CONVENTIONS OF 1956 AND 1973 ON THE LAW APPLICABLE TO MAINTENANCE OBLIGATIONS

Section A – Questions adressées aux Etats parties à l'une ou aux deux Conventions
Section A – Questions addressed to States Party to one or both Conventions

- 1 Quelle loi vos tribunaux appliquent-ils aux questions préalables / incidentes (concernant, par exemple, la paternité d'un enfant) soulevées dans le cadre d'une demande d'aliments en application des Conventions de La Haye?
- 1 Which law is applied by your courts to incidental / preliminary questions (e.g., as to the paternity of a child) arising in the course of maintenance proceedings within the scope of the Hague Conventions?

AUSTRALIA

Family Law Act 1975.

POLAND

The Convention regulates the question of the law applicable in respect of maintenance obligations. Maintenance obligations arise between particular persons due to the relationship of consanguinity existing between those persons. The law applicable for the ascertainment of the existence of such consanguinity relationship (most often it applies to the establishing of paternity) is indicated by the norms of competence included in the Statute of 12 November 1965 - the Private International Law. Pursuant to article 19 paragraph 2 of that statute, establishing and denying paternity or maternity is subject to the internal law of the child's home country at his birth. However, admittance of fathering a child that has already been conceived and not born yet is subject to the internal law of the mother's country. Besides, Poland has concluded a number of bilateral agreements whose provisions specify the law applicable with respect to consanguinity.

UNITED STATES OF AMERICA

U.S. jurisdictions generally apply the law of the forum. All states have procedures for establishment of paternity. See response to questions 16 - 19 of the 2002 questionnaire.

- 2 Dans une décision du 21 février 1997 (Nederlandse Jurisprudentie 1998, No 416), la Cour Suprême des Pays-Bas a décidé que l'article 8 de la Convention de La Haye de 1973, à la lumière de son histoire et de la Convention dans son entier, n'était pas incompatible avec le choix par les époux divorcés de la loi applicable, la loi choisie étant celle du pays de leur résidence habituelle pendant une longue période et, en même temps, la loi du for. (La loi néerlandaise, choisie par les parties, a été appliquée plutôt que la loi iranienne qui régissait le divorce.)

Cette décision est-elle cohérente avec la manière dont l'article 8 est interprété par vos tribunaux? Si non, pensez-vous qu'il serait souhaitable de réviser l'article 8 et d'autoriser expressément les parties à choisir la loi qui régira leurs rapports alimentaires?

- 2 In a decision of 21 February 1997 (*Nederlandse Jurisprudentie* 1998, No 416), the Netherlands Supreme Court ruled that Article 8 of the Hague Convention of 1973, in the light of its history and that of the Convention as a whole, was not incompatible with the admission of a choice by divorced spouses of the governing law, the law chosen being that of the country of their common habitual residence for a long period and of the forum. (Dutch law, chosen by the parties, was applied rather than Iranian Law which governed the divorce.)

Is this decision consistent with the manner in which Article 8 has been interpreted by your courts? If not, do you think that an amendment of Article 8 would be desirable to allow expressly for a choice of law by the spouses?

AUSTRALIA

This issue has not been raised since Australia became a Party. However, the Australian preference is for the law of the country of residence of the creditor to be applied.

POLAND

In accordance with the Polish law the parties may submit their relationship in respect of contractual obligations - to a law chosen by them provided it is related to the obligation.

UNITED STATES OF AMERICA

The United States does not think it would be desirable for the new convention to provide expressly for a choice of law by the spouses. The United States view is that the law of the forum, including its choice of law rules and including whether or not it would recognize the choice of the spouses, should be the applicable law.

- 3 Vos tribunaux considèrent-ils la Convention de 1973 comme étant applicable aux obligations d'un époux envers les enfants de l'autre époux et en faveur desquels il ou elle agit *in loco parentis*?
- 3 Do your courts interpret the Hague Convention of 1973 as applying to maintenance obligations of one spouse in respect of children of the other spouse to whom she / he is in *loco parentis*?

AUSTRALIA

This issue has not been raised since Australia became a Party.

POLAND

In accordance with the Polish law, a child may request maintenance benefits from the husband of the child's mother if that is compatible with the principles of conduct in the community. The child has the same right with respect to his father's wife who is not the child's mother.

Maintenance obligation also arises as a consequence of adoption.

Therefore it seems possible to apply the Convention of 1973 to maintenance obligations on the part of one spouse with respect to the children of the other spouse to whom she/he is *in loco parentis*.

Due to a short period of binding force of the Convention with respect of Poland, there have been no judicial decisions in this regard.

UNITED STATES OF AMERICA

U.S. courts generally require a legal custody relationship rather than merely an "in loco parentis" relationship.

- 4 **Des difficultés particulières se sont-elles posées lorsque vos tribunaux ont eu à appliquer ou à interpréter les Conventions de 1956 ou de 1973?**
- 4 **Have any particular difficulties arisen in applying / interpreting either the 1956 or the 1973 Conventions?**

AUSTRALIA

Not as yet.

POLAND

No observation.

UNITED STATES OF AMERICA

The United States is not a party to these conventions.

Section B – Questions adressées aux Etats non parties ***Section B – Questions addressed to non-Party States***

- 1 **Y a-t-il des raisons particulières pour lesquelles votre Etat n'a pas ratifié/adhéré aux Conventions de 1956 et de 1973?**
- 1 **Are there any particular reasons why your State has not ratified the 1956 or 1973 Conventions?**

PANAMA

No.

UNITED KINGDOM - SCOTLAND

Lead policy is with the Lord Chancellor's Department.

UNITED STATES OF AMERICA

The United States has not ratified the 1958 and 1973 Hague Applicable Law Conventions because of the difficulty of requiring local courts to apply foreign law. While there are few problems in recognizing and applying the law of the issuing State in interpreting and enforcing an order entered by that State, application of the law of the requesting State to procedures taking place in the United States would, as a practical matter, likely be impossible to implement.

- 2 Y a-t-il des modifications/améliorations des Conventions de La Haye de 1956 et de 1973 qui rendraient leur ratification/adhésion plus attrayante pour votre Etat?**
- 2 Are there any modifications / improvements to the 1956 or 1973 Conventions which would make their ratification / accession a more attractive proposition for your State?**

PANAMA

The possibility of ratifying the same could be analyzed in order to study its contents.

UNITED KINGDOM - SCOTLAND

Lead policy is with the Lord Chancellor's Department.

UNITED STATES OF AMERICA

The United States is unlikely to ratify either Applicable Law Convention, preferring to apply local law in enforcement proceedings.

- 3 Selon le droit de votre Etat, les époux (ou toute autre catégorie de personnes) sont-ils libres de choisir la loi qui régira leurs obligations alimentaires?**
- 3 Are spouses (or any other category of persons) free under your system to choose the law which will govern their maintenance obligations?**

PANAMA

Plaintiff could choose the applicable law, whether is that of his/her residence, that of the defendant's residence or that of the place they got married

UNITED KINGDOM - SCOTLAND

It is thought that if a Scottish court has jurisdiction in an action for aliment between spouses it will simply apply Scottish law.

UNITED STATES OF AMERICA

Choice of law is not generally available, although, in some limited situations, the practical result of other choices made by the litigants would be the application of the law of a chosen state. For instance, if an order for child support is made by one state, and the parties leave the jurisdiction and establish residence in new jurisdictions, they could, by agreement have the case considered by this new forum using its own law on some of the issues involved.

ANNEXE II / ANNEX II

*Liste des États non-membres de
la Conférence de La Haye de droit international privé
Parties à la Convention de New York du 20 juin 1956
sur le recouvrement des aliments à l'étranger*

*List of Non-Member States of the
Hague Conference on Private International Law
which are Parties to the New York Convention of 20 June 1956
on the Recovery of Maintenance Abroad*

États Parties**States Parties**

Algérie / Algeria
Barbade / Barbados
Burkina Faso
Cap-Vert / Cape Verde
République Centrafricaine / Central African Republic
Colombie / Colombia
Equateur / Ecuador
Guatemala
Haïti
Niger
Pakistan
Philippines
Saint-Siège / Holy See
Tunisie / Tunisia

ANNEXE III / ANNEX III

**NOTA INFORMATIVA Y CUESTIONARIO SOBRE
UN NUEVO INSTRUMENTO GLOBAL PARA EL COBRO INTERNACIONAL DE PENSIONES
ALIMENTICIAS CON RESPECTO A LOS MENORES
Y OTRAS FORMAS DE MANUTENCION DE LA FAMILIA**

I ANTECEDENTES

La Comisión especial sobre obligaciones alimenticias de la Conferencia de La Haya de derecho internacional privado de abril de 1999 se reunió *"para examinar la operación de los Convenios de La Haya sobre las obligaciones alimenticias y el Convenio de Nueva York del 20 de junio de 1956, sobre la obtención de alimentos en el extranjero y para examinar la conveniencia de revisar aquellos Convenios de La Haya y de redactar un nuevo instrumento de cooperación judicial y administrativa"*.¹⁶

Sobre el tema de la reforma del sistema, la Comisión especial acordó unánimemente emitir la siguiente recomendación:

"La Comisión especial para el estudio de la efectividad de los Convenios de La Haya relativas a las obligaciones alimenticias y el Convenio de Nueva York sobre la obtención de alimentos en el extranjero,

- después de haber examinado la aplicación práctica de estos Convenios y tomando en consideración otros instrumentos y acuerdos regionales y bilaterales,*
- reconociendo la necesidad de modernizar y mejorar el sistema internacional para el cobro de pensiones alimenticias respecto de menores y otros dependientes,*
- recomienda que la Conferencia de La Haya comience a trabajar en la elaboración de un nuevo instrumento internacional de alcance mundial.*

El nuevo instrumento deberá:

- contener como elemento esencial disposiciones relativas a la cooperación administrativa,*
- ser amplio en su naturaleza, basándose en las mejores características de los Convenios existentes, incluyendo en especial aquellas relativas al reconocimiento y ejecución de decisiones sobre las obligaciones alimenticias,*
- tomar en consideración necesidades futuras, los avances en los sistemas nacionales e internacionales de cobro de pensiones alimenticias, y las oportunidades proporcionadas por los adelantos en la informática,*
- estructurarse de forma tal que combine la máxima eficiencia con la flexibilidad, a fin de lograr el mayor número de ratificaciones posible.*

El trabajo deberá realizarse en cooperación con otras organizaciones internacionales pertinentes, en particular, con las Naciones Unidas.

Mientras cumple con este mandato, la Conferencia de La Haya deberá continuar ayudando a fomentar la aplicación efectiva de los Convenios existentes y la ratificación de la Convenio de Nueva York y de las dos Convenios de La Haya de 1973.

¹⁶ Informe y Conclusiones de la Comisión especial sobre obligaciones alimenticias de abril de 1999, elaborado por el Buró Permanente en diciembre de 1999, párrafo 1 (<http://www.hcch.net/e/workprog/maint.html>).

La Comisión especial recuerda y enfatiza la importancia de las recomendaciones prácticas contenidas en las Conclusiones generales de la Comisión especial de noviembre de 1995, las cuales fueron elaboradas por el Buró Permanente (asuntos generales, Documento preliminar No 10 de mayo de 1996)."

Siguiendo esta recomendación, la Comisión especial sobre los asuntos generales de mayo de 2000 concluyó que prioritariamente debería incluirse en la agenda de la Conferencia "la elaboración de un nuevo Convenio de amplio alcance sobre obligaciones alimenticias, que mejore los Convenios de La Haya sobre este tema, e incluya reglas sobre cooperación judicial y administrativa. Los Estados no miembros de la Conferencia de La Haya, en particular los Estados signatarios del Convenio de Nueva York de 1956, deberían ser invitados a participar en el futuro trabajo."¹⁷

La Comisión I sobre los asuntos generales y la política de la décimo novena Sesión diplomática de la Conferencia de La Haya de derecho internacional privado, la cual se reunió del 22 al 24 de abril de 2002, reafirmó la conclusión de la Comisión especial sobre los asuntos generales y la política de mayo de 2000 y agregó que "se deben realizar todos los esfuerzos necesarios para asegurar que los procesos pertinentes resulten comprensivos, incluyendo en lo posible, la disponibilidad de traducciones al español de los documentos e interpretaciones simultáneas al español en las reuniones plenarias."¹⁸

II PLAN DE ACCIÓN

Actualmente, el Buró Permanente está llevando a cabo investigaciones y consultas a fin de preparar el terreno para las negociaciones, en el seno de la Conferencia de La Haya, del nuevo instrumento global sobre las obligaciones alimenticias. El Buró Permanente preparará un informe para antecedentes suministrar a los Estados miembros y otros estados sobre el desarrollo del tema tanto a nivel nacional como internacional, y para identificar los asuntos que posiblemente sean objeto de debate cuando comiencen las negociaciones del nuevo instrumento. Se espera que este informe esté disponible a los Estados antes de finales del año 2002, y que por ende deba convocarse a una primera Comisión especial para que comience las negociaciones a principios del año 2003.

III EL CUESTIONARIO

A continuación se incluye un cuestionario elaborado por el Buró Permanente a fin de recabar la información necesaria y obtener una opinión preliminar sobre los principales elementos que deberían incluirse en el nuevo instrumento. El Cuestionario se está enviando a todos los Estados miembros de la Conferencia de La Haya, a los Estados participantes del Convenio de Nueva York de 1956 y a las organizaciones internacionales gubernamentales y no gubernamentales pertinentes. El Cuestionario también está disponible en el sitio Internet de la Conferencia de La Haya en: <http://www.hcch.net>.

El Cuestionario comprende cuatro partes sobre: primero, la aplicación práctica de los instrumentos internacionales existentes; segundo, las prácticas establecidas en los sistemas nacionales; tercero, los elementos que se incluirán en el nuevo instrumento; y cuarto, los socios negociadores.

El proyecto de redacción de un nuevo instrumento sobre las obligaciones alimenticias tiene el potencial de beneficiar a cientos de miles de personas, niños y adultos, a nivel mundial, así como de contribuir a la reducción de la dependencia, por parte de los particulares, de las políticas estatales de bienestar y de seguridad social. El Cuestionario es un elemento importante para establecer cimientos firmes sobre los cuales se elaborará el nuevo instrumento. A los Estados y las organizaciones a los cuales se ha dirigido el Cuestionario se

¹⁷ Conclusiones de la Comisión especial de mayo de 2000 sobre los asuntos generales y la política de la Conferencia, Documento preliminar No 10 de junio de 2000, página 17, párrafo 9 (<http://www.hcch.net/e/workprog/genaff.html>).

¹⁸ Documento de trabajo No 4 de la Comisión I, distribuido el 24 de abril de 2002.

les ruega que proporcionen sus respuestas al Buró Permanente, de ser posible, **hacia finales de septiembre de 2002.**

PARTE I PRÁCTICAS ESTABLECIDAS CONFORME A LOS INSTRUMENTOS INTERNACIONALES EXISTENTES

El Cuestionario sobre obligaciones alimenticias, el cual fue distribuido con anticipación a la reunión de la Comisión especial de abril de 1999, ya ha suministrado mucha información sobre la aplicación práctica de los instrumentos internacionales. Las Partes I a IV de dicho Cuestionario se adjuntan a este Documento como Anexo I.

A los Estados y organizaciones que respondieron al Cuestionario de 1999 se les pide que sólo suministren respuestas complementarias a las Partes I a IV del mismo, cubriendo cualquier desarrollo relevante acaecido desde abril de 1999.¹⁹

A los Estados y las organizaciones que no pudieron responder en 1999 se les pide que suministren todas las respuestas.

PARTE II PREGUNTAS RESPECTO DE LOS SISTEMAS NACIONALES DE OBLIGACIONES ALIMENTICIAS CON RESPECTO A LOS MENORES Y OTROS MIEMBROS DE LA FAMILIA

FORMA QUE ADOPTA LA DECISIÓN DE OTORGAR PENSIONES ALIMENTICIAS

- 1 ¿Qué forma adopta la decisión de otorgar pensiones alimenticias respecto de: (a) menores y (b) cónyuges u otros miembros de la familia? En particular ¿están limitadas a pagos periódicos de dinero? ¿Existen circunstancias que permitan la satisfacción de las obligaciones alimenticias a través del pago de una cantidad global, una transferencia de propiedad o una medida similar?

Beneficiarios

- 2 ¿Quién puede beneficiarse en su país de una decisión de otorgar pensiones alimenticias? (por ejemplo, menores, cónyuges, otros parientes, etc.).
- 3 ¿Cuál es su definición de menor "dependiente" para los fines de otorgar pensiones alimenticias a menores?
- 4 ¿Cuál es la ley aplicable para determinar los beneficiarios de pensiones alimenticias de (a) menores, o (b) cónyuges u otros miembros de la familia?

Procedimientos para la determinación inicial de la pensión alimenticia

- 5 La obligación de pagar pensiones alimenticias a menores, ¿se determina mediante un proceso administrativo o judicial?
- 6 ¿Varía el proceso cuando, bien sea la parte demandante o la parte demandada vive en el extranjero? De ser así, por favor especifique.
- 7 ¿Varía el proceso cuando la demanda es para pensiones alimenticias a favor de un cónyuge u otros miembros de la familia, en vez de un menor? De ser así, ¿se pueden acumular los dos procesos?

¹⁹ Véanse los extractos de las respuestas al Cuestionario sobre obligaciones alimenticias, Documento preliminar No 3 a la atención de la Comisión especial de abril de 1999 (<http://www.hcch.net/e/workprog/maint.html>).

Métodos para calcular la pensión alimenticia

- 8 ¿Se basa el cálculo de la pensión alimenticia a favor de menores en fórmulas, pautas u otros criterios? Por favor, indique los principales elementos involucrados en la elaboración del cálculo.
- 9 ¿Existen diferencias en los criterios empleados para el cálculo cuando (a) la parte demandante o (b) la parte demandada vive en el extranjero?
- 10 ¿Varía el método cuando la demanda es por pensiones alimenticias a favor de un cónyuge u otros miembros de la familia, en vez de un menor?
- 11 ¿Cuál es la ley aplicable al cálculo de la pensión alimenticia a favor de: (a) menores y (b) cónyuges u otros miembros de la familia?

Reevaluación/ajuste/modificación de las decisiones o cálculos de la pensión alimenticia

- 12 ¿Están los pagos de pensiones alimenticias con respecto a los menores, cónyuges u otros miembros de la familia sujetos a reevaluación automática? De ser así, ¿por quién y con qué frecuencia?
- 13 ¿Están tales pagos sujetos a un ajuste automático de acuerdo con un índice externo, como por ejemplo el índice del costo de vida? De ser así, ¿mediante qué mecanismos y con qué frecuencia?
- 14 ¿Bajo qué circunstancias podría modificarse, aumentarse o disminuirse el monto de la pensión alimenticia o la decisión de otorgar pensiones alimenticias a menores o cónyuges u otros miembros de la familia? Dicha modificación, ¿se realiza por la misma autoridad que efectuó la determinación original?
- 15 ¿Bajo qué circunstancias podría modificarse una decisión o cálculo proveniente del extranjero, como parte de la solicitud presentada por un deudor residente?

Determinación de la paternidad

- 16 ¿Cuál es la ley aplicable para determinar la paternidad en el contexto de los procedimientos para otorgar pensiones alimenticias a menores?
- 17 Por favor, resuma los requisitos administrativos y legales para la determinación de la paternidad en el contexto de los procedimientos para otorgar pensiones alimenticias a menores.
- 18 Por favor, indique los procedimientos legales y los métodos (incluyendo los métodos científicos) por los que se puede determinar la paternidad en el contexto de los procedimientos para otorgar pensiones alimenticias a menores. Por favor, indique los costos usuales de estos procedimientos, quién los asume, si dichos costos podrían estar cubiertos por alguna forma de asistencia legal, y si en estos procedimientos se hace alguna distinción entre residentes y no residentes.
- 19 ¿Podría rechazarse o negarse el reconocimiento o la ejecución de una decisión extranjera sobre pensiones alimenticias a menores: (a) si dicha decisión conlleva una determinación de paternidad; o (b) si las leyes o métodos utilizados para alcanzar dicha decisión difieren de las aplicadas en su país? De ser así, por favor explique las razones.

Ayuda y asistencia legal y administrativa

- 20 ¿Qué formas de asistencia (incluyendo la asistencia administrativa y la ayuda y asesoría legal) se encuentran disponibles en su país para:
- a* Una persona residente en su país que demanda por pensiones alimenticias a favor de menores;
 - b* Una persona residente en el extranjero que demanda por pensiones alimenticias a favor de menores?
- 21 Por favor, especifique los principales requisitos que se necesitan para ser beneficiario de cualquier forma de asistencia existente, incluyendo si se requiere prueba de la solvencia financiera.
- 22 ¿Varían las reglas y procedimientos para obtener ayuda o asistencia legal o administrativa cuando se trata de demandas de pensiones alimenticias a favor de cónyuges u otros miembros de la familia?

Costos y gastos legales

- 23 ¿Cuáles son los costos y gastos legales (incluyendo honorarios de abogados y costas judiciales) usualmente incurridos en una demanda por el cobro de pensiones alimenticias a favor de menores, de cónyuges u otros miembros de la familia? ¿Puede usted indicar cómo variarán estos costos y gastos desde la demanda inicial, siguiendo a través de otros procesos de apelación o revisión aplicables?
- 24 ¿Es posible que el pago de los costos y gastos sea cubierto con los pagos de pensiones alimenticias?

Mecanismos de cobranza y transferencia y ejecución de las decisiones

- 25 ¿Cómo está organizado en su país el pago y la cobranza de: (a) pensiones alimenticias a favor de menores y (b) pensiones alimenticias a favor de cónyuges u otros miembros de la familia?
- 26 ¿Qué mecanismos especiales, si los hubiera, se aplican cuando los pagos tienen que efectuarse o cobrarse en el extranjero?
- 27 ¿Cuáles son los procedimientos existentes para ejecutar las decisiones sobre: (a) pensiones alimenticias a favor de menores, y (b) pensiones alimenticias a favor de cónyuges u otros miembros de la familia?
- 28 Por favor, haga una lista de los métodos disponibles para la ejecución de las decisiones sobre: (a) pensiones alimenticias a favor de menores y (b) pensiones alimenticias a favor de cónyuges u otros miembros de la familia. En especial, por favor, indique si cualesquiera de los siguientes métodos de ejecución o cobranza se encuentran disponibles en su jurisdicción:
- retención de salarios;
 - intercepción de las devoluciones de impuestos;
 - embargo de las cuentas bancarias o de otras fuentes;
 - deducciones de pagos del seguro social;
 - venta forzada de propiedades;
 - división de beneficios de pensión; y
 - encarcelamiento.
- 29 ¿Cuáles son los costos bancarios usualmente vinculados a la transferencia de pagos de pensiones alimenticias desde/hacia su país?
- 30 ¿Se han desarrollado en su país acuerdos, ya sea por parte del sector público o privado, para realizar las transferencias de pagos de pensiones alimenticias desde/hacia el extranjero de forma fácil y a bajo costo?

PARTE III PREGUNTAS RELATIVAS A LOS ELEMENTOS QUE SE INCLUIRÁN EN EL NUEVO INSTRUMENTO

- 31 Por favor, enumere cualesquiera deficiencias de los procesos existentes para obtener o cobrar en el extranjero pensiones alimenticias a favor de menores u otras formas de manutención de la familia, por parte de personas residentes en su país, que pudieran mejorarse o corregirse mediante el nuevo instrumento.
- 32 Por favor, enumere cualesquiera deficiencias de los procesos existentes por medio de los cuales un demandante extranjero puede obtener o cobrar pensiones alimenticias a favor de menores u otras formas de manutención de la familia, provenientes de una persona obligada residente en su jurisdicción, que pudieran mejorarse o corregirse mediante el nuevo instrumento.
- 33 Por favor, indique cuáles son en su opinión los elementos clave que se deben incluir en el nuevo instrumento, considerando que el mismo debe ser "amplio en su naturaleza, basándose en las mejores características de los Convenios existentes" y que la estructura precisa de dicho instrumento aún no se ha determinado. Al hacerlo, podría serle útil la siguiente lista. Sírvase indicar qué grado de importancia le concede usted a los rubros indicados en la misma:
- a* disposiciones relativas a la cooperación administrativa;
 - b* disposiciones para el reconocimiento y ejecución de decisiones extranjeras;
 - c* principios relativos a la ley aplicable;
 - d* reglas uniformes de jurisdicción directa aplicables a la determinación y modificación de las decisiones de otorgar pensiones alimenticias;
 - e* disposiciones que especifiquen la asistencia que se proporcionará a un solicitante de otra Parte contratante;
 - f* disposiciones que especifiquen la ayuda y asistencia legal que se proporcionará a un demandante de otra Parte contratante;
 - g* disposiciones relativas a la cooperación en la determinación de la paternidad;
 - h* disposiciones relativas a la cooperación en la transferencia internacional de fondos a bajo costo;
 - i* disposiciones que permitan a las Partes contratantes el negarse a proveer servicios a los solicitantes extranjeros cuando no exista reciprocidad con el respectivo país;
 - j* formularios estándar;
 - k* disposiciones dirigidas a asegurar el cumplimiento de las obligaciones contraídas bajo el instrumento;
 - l* disposiciones relativas a entidades públicas que solicitan el reembolso de los beneficios pagados a acreedores de pensiones alimenticias;
 - m* otras. Por favor especifique.
- 34 Con respecto a la estructura general del nuevo instrumento, y teniendo en cuenta que el mismo deberá combinar "la máxima eficiencia con la flexibilidad, a fin de lograr el mayor nivel de ratificaciones posible,"
- a* ¿Cuáles de los elementos que usted ha mencionado en la pregunta 33 deberían incluirse como elementos clave, en el sentido de que todas las Partes contratantes deberían, sin excepción, estar obligadas a cumplir con ellos?
 - b* ¿Cuáles de esos elementos deberían ser opcionales, en el sentido de que las Partes contratantes puedan optar entre adoptarlos o no? y
 - c* ¿Está usted a favor de un principio general por el cual cuando no sea posible el reconocimiento de una decisión extranjera en el país donde reside el deudor, las autoridades de ese país deberían estar obligadas a prestar asistencia al acreedor para obtener una nueva decisión?

- 35 En el caso de Estados que hayan suscrito acuerdos bilaterales o regionales, por favor indique cuáles son los elementos de dichos acuerdos que desearía ver reflejados en el nuevo instrumento global.

PARTE IV SOCIOS NEGOCIADORES Y DISPOSICIONES VARIAS

- 36 Adicionalmente a los Estados miembros de la Conferencia de La Haya y a los Estados partes del Convenio de Nueva York de 1956 (identificados en el Anexo II) ¿existen otros Estados que usted quisiera que fueran invitados a participar en las negociaciones del nuevo instrumento?
- 37 ¿Estaría usted dispuesto a contribuir a un fondo que: (a) asista a los Estados más pobres para que puedan participar en las negociaciones o (b) facilite la traducción al español de los principales documentos o ayude para la interpretación simultánea al español durante el curso de las sesiones plenarias?
- 38 ¿Tiene usted un sitio Internet o un folleto que proporcione información sobre el sistema de pensiones alimenticias y otras formas de manutención de la familia en su país? De ser así, por favor proporcione detalles o una copia de cualesquiera publicaciones relevantes.

Nota: *Se invita a quienes respondan a que brinden asimismo sus comentarios sobre cualesquiera otros temas que consideren relevantes en la redacción del nuevo instrumento.*

ANEXO I

***Documento preliminar No 1, presentado a la atención de la
Comisión especial de abril de 1999***

CUESTIONARIO SOBRE LAS OBLIGACIONES ALIMENTICIAS

(Incluye sólo las Partes I a III)

PARTE I CONVENIO DE NUEVA YORK DEL 20 DE JUNIO DE 1956 SOBRE LA OBTENCION DE ALIMENTOS EN EL EXTRANJERO

SECCIÓN A - PREGUNTAS DIRIGIDAS A LOS ESTADOS PARTES

- 1 ¿Tratan sus autoridades al Convenio de Nueva York como complementaria a (esto es, para ser utilizada en combinación con) otros instrumentos internacionales, tales como los Convenios de La Haya de 1958 y 1973 sobre la Ejecución de Decisiones relativas a obligaciones alimenticias, o los Convenios de Bruselas y Lugano?
- 2 Cuando su país actúa como el Estado requerido ¿exigen sus autoridades que exista una "decisión" del Estado de origen antes de tomar las medidas necesarias para el cobro de pensiones alimenticias?
- 3 ¿Qué documentos requiere su país de la agencia transmisora del estado solicitante? ¿Qué documentos son exigidos en original?
- 4 ¿Cuáles son los procedimientos estándar aplicables después de recibir los documentos de una agencia trasmisora?
- 5 ¿Han surgido controversias en su país con respecto a la categorización que debe tener la persona solicitante, como ser "necesitada" o "dependiente"?
- 6 ¿Utilizan formularios estándar, ya sea en su capacidad de agencia receptora o trasmisora? (De ser así, por favor, suministrar copias.)
- 7 ¿Permiten sus autoridades a las entidades/agencias públicas hacer uso de los procedimientos establecidos en el Convenio a los efectos de efectuar el cobro de pensiones alimenticias en representación del acreedor de dicha pensión o de recuperar sumas de dinero ya pagadas por dicha entidad/agencia pública al acreedor? De ser así, ¿sujeto a qué condiciones (por ejemplo, poder notarial)?
- 8 Asistencia legal:
 - (a) ¿Se le proporciona asistencia legal al demandante?
 - (b) ¿Qué formulario se debe usar a estos efectos?
 - (c) ¿Está dicha asistencia sujeta a condiciones o limitaciones?
 - (d) ¿Difiere el trato de las solicitudes para cobrar pensiones alimenticias en el caso de cónyuges o de menores?
- 9 Cuando sus autoridades actúan como agencia receptora, ¿cuáles de los costos incurridos por dicha agencia son cobrados al Estado requirente (o al demandante)?
- 10 ¿Cuáles son los requisitos en su país con respecto de la traducción de documentos presentados por la agencia transmisora?
- 11 ¿Qué idiomas (a) usa o (b) acepta, el personal competente?

- 12 ¿Acepta su autoridad alguna responsabilidad por la transferencia/recepción de pagos de pensiones alimenticias en representación del acreedor?
- 13 ¿Qué reglas/procedimientos se aplican para la conversión de los pagos de pensiones alimenticias a la moneda del Estado del acreedor?
- 14 ¿Qué métodos de transferencia de fondos son menos costosos para el acreedor de la pensión alimenticia?
- 15 ¿Conoce usted algún caso en el que el personal de las Naciones Unidas, de otras organizaciones internacionales o de alguna embajada haya solicitado inmunidad conforme al Convenio? De ser así, ¿cómo se resolvieron estos casos?
- 16 ¿Qué facultades o procedimientos tiene su autoridad para ubicar el paradero o lugar de trabajo de un deudor/demandado por pensiones alimenticias?
- 17 ¿Cuál es su política en el caso de deudores o demandados por pensiones alimenticias cuyos ingresos totales consistan en pagos de asistencia pública?
- 18 ¿Tiene su autoridad el poder de ejecutar o solicitar medidas provisionales o preventivas?
- 19 ¿De qué facultades o procedimientos dispone su autoridad para determinar la cantidad de activos de un deudor/demandado por pensiones alimenticias?
- 20 ¿Cuáles son los principales problemas que usted experimenta al tratar con casos (a) como una agencia transmisora y (b) como una agencia receptora?
- 21 ¿Tiene usted estadísticas que indiquen el número y resultado de los casos presentados dentro del ámbito del Convenio de Nueva York? De ser así, ¿podría usted suministrarlos? Si es posible, por favor diferencie entre los casos recibidos y enviados, e indique los otros Estados involucrados.
- 22 ¿Tiene usted dificultades constantes con determinados Estados en relación a la aplicación del Convenio?

SECCIÓN B - PREGUNTAS DIRIGIDAS A LOS ESTADOS NO PARTES

- 1 ¿Existen razones especiales por las cuales su Estado no ha ratificado el Convenio de Nueva York?
- 2 ¿Qué modificaciones o mejoras podrían hacerse al Convenio de Nueva York, a fin de que su ratificación sea más atractiva para su Estado?
- 3 En la negociación de los acuerdos bilaterales u otros acuerdos en los que su Estado sea o vaya a convertirse en Parte, ¿cuáles de los puntos planteados en la Sección A resultan relevantes? ¿Existen otros temas que no hayan sido considerados en la Sección A y que sean relevantes?

PARTE II CONVENIOS DE LA HAYA DE 1958 Y 1973 SOBRE EL RECONOCIMIENTO Y LA EJECUCIÓN DE DECISIONES RELATIVAS A LAS OBLIGACIONES ALIMENTICIAS

Sección A - Preguntas dirigidas a los Estados partes de uno o ambos Convenios

- 1 ¿EXISTE UN TÉRMINO DE PRESCRIPCIÓN PARA PLANTEAR UNA ACCIÓN DE EJECUCIÓN DE OBLIGACIONES ALIMENTICIAS? ¿QUÉ LEY RIGE DICHO TÉRMINO DE PRESCRIPCIÓN?
- 2 ¿Existe un término de prescripción para ejecutar una decisión sobre el cobro de pensiones alimenticias? ¿Qué ley rige dicha prescripción?
- 3 ¿Pueden los deudores alegar incapacidad de pago en el curso de los procedimientos de ejecución?
- 4 De conformidad con sus procedimientos, ¿puede modificarse el contenido de una decisión registrada de conformidad con el Convenio de 1973?
- 5 ¿Puede el deudor iniciar procedimientos para modificar una decisión extranjera? De ser así, ¿sobre qué base jurisdiccional y con qué fundamentos?

SECCIÓN B - PREGUNTAS DIRIGIDAS A LOS ESTADOS NO PARTES

- 1 ¿Existen razones específicas por las cuales su Estado no ha ratificado o no se ha adherido a los Convenios de La Haya?
- 2 ¿Qué modificaciones o mejoras podrían hacerse a los Convenios de La Haya a fin de que su ratificación/accesión sea más atractiva para su Estado?

PARTE III CONVENIOS DE LA HAYA DE 1956 Y 1973 SOBRE LA LEY APLICABLE A LAS OBLIGACIONES ALIMENTICIAS

SECCIÓN A - PREGUNTAS DIRIGIDAS A LOS ESTADOS PARTES DE UNO O AMBOS CONVENIOS

- 1 ¿Qué ley aplican sus tribunales a las cuestiones incidentales/preliminares (por ejemplo, sobre la paternidad del menor) originadas en el curso de procedimientos sobre las pensiones alimenticias conforme a los Convenios de La Haya?
- 2 En una decisión del 21 de febrero de 1997 (*Nederlandse Jurisprudentie* 1988 No. 416) la Corte Suprema de los Países Bajos decidió que, a la luz de la historia y de la totalidad del texto del Convenio de La Haya de 1973, el artículo 8 de la misma no era incompatible con la posibilidad de que los cónyuges divorciados eligieran la ley aplicable, siendo dicha ley la de su residencia común habitual por un largo período y la del foro. (Se aplicó así la ley holandesa, la cual fue escogida por las partes, en vez de la ley iraní que regía el divorcio).

¿Coincide esta interpretación del artículo 8 con la interpretación que hacen los tribunales de su país? De no ser así, ¿piensa usted que sería conveniente la enmienda del artículo 8 para permitir expresamente la elección de la ley por parte de los cónyuges?
- 3 ¿Interpretan sus tribunales que el Convenio de La Haya de 1973 es aplicable a las obligaciones alimenticias por parte de un cónyuge para con los hijos del otro cónyuge, con respecto a quienes ella/él está en *el loco parentis*?
- 4 ¿Existen dificultades especiales derivadas de la aplicación/interpretación del Convenio de 1956 o el de 1973?

SECCIÓN B - PREGUNTAS DIRIGIDAS A LOS ESTADOS NO PARTES

- 1 ¿Existen razones específicas por las cuales su Estado no ha ratificado los Convenios de 1956 ó 1973?
- 2 ¿Qué modificaciones o mejoras podrían hacerse a los Convenios de 1956 ó 1973, a fin de que su ratificación/accesión sea más atractiva para su Estado?
- 3 Conforme a su ordenamiento jurídico, ¿pueden los cónyuges (u otras personas) escoger libremente la ley aplicable a sus obligaciones alimenticias?

ANEXO II

***Lista de Estados no miembros de la
Conferencia de La Haya de derecho internacional privado
que son Partes del Convenio de Nueva York del 20 de junio de 1956
sobre la obtención de alimentos en el extranjero***

Estados partes

Argelia
Barbados
Burkina Faso
Cabo Verde
República Centro Africana
Colombia
Ecuador
Guatemala
Haití
Níger
Pakistán
Filipinas
La Santa Sede
Túnez

ANNEXE / ANNEX IV

LISTE DES ETATS ET DES ORGANISATIONS QUI ONT REPONDU AU QUESTIONNAIRE

LIST OF STATES AND ORGANISATIONS WHICH HAVE RESPONDED TO THE QUESTIONNAIRE

ALLEMAGNE / GERMANY
 AUSTRALIE / AUSTRALIA
 AUTRICHE / AUSTRIA
 BULGARIE / BULGARIA
 CANADA
 CHILI / CHILE
 CHINE – REGION ADMINISTRATIVE SPECIALE DE HONG-KONG / CHINA – HONG KONG
 SPECIAL ADMINISTRATIVE REGION
 CHYPRE / CYPRUS
 CROATIE / CROATIA
 DANEMARK / DENMARK
 ESTONIE / ESTONIA
 ETATS – UNIS D'AMERIQUE - UNITED STATES OF AMERICA
 FINLANDE / FINLAND
 FRANCE
 ISRAEL
 JAPON / JAPAN
 LUXEMBOURG
 MALTE / MALTA
 NORVEGE / NORWAY
 NOUVELLE ZELANDE / NEW ZEALAND
 PANAMA
 PAYS – BAS / NETHERLANDS
 PHILIPPINES
 POLOGNE / POLAND
 REPUBLIQUE TCHEQUE / CZECH REPUBLIC
 ROUMANIE / ROMANIA
 ROYAUME – UNI – ANGLETERRE ET PAYS DE GALLES / UNITED KINGDOM – ENGLAND AND
 WALES
 ROYAUME – UNI – ECOSSE / UNITED KINGDOM – SCOTLAND
 SLOVAQUIE / SLOVAKIA
 SUEDE / SWEDEN
 SUISSE / SWITZERLAND

INTER-AMERICAN CHILDREN'S INSTITUTE
 INTERNATIONAL ACADEMY OF MATRIMONIAL LAWYERS
 LAW SOCIETY OF HONG KONG
 NATIONS UNIES / UNITED NATIONS