

**EXTRAITS DES REPONSES AU
QUESTIONNAIRE SUR LES OBLIGATIONS ALIMENTAIRES**

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**EXTRACTS FROM THE RESPONSES TO THE
QUESTIONNAIRE ON MAINTENANCE OBLIGATIONS**

*Document préliminaire No 3 à l'intention de
la Commission spéciale d'avril 1999*

*Preliminary Document No 3 for the attention of
the Special Commission of April 1999*

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INTRODUCTION

Le Questionnaire sur les obligations alimentaires¹ avait été soumis aux Etats parties aux Conventions de La Haye et de New York, de même qu'aux Etats non parties à ces Conventions mais qui sont Membres de la Conférence de La Haye. L'objectif était de mentionner tous les problèmes que continue à poser le fonctionnement des Conventions de La Haye et de New York², et de déterminer les raisons pour lesquelles les Etats qui ne sont pas parties à ces Conventions ne les ont pas encore ratifiées ou n'y ont pas encore adhéré.

Vingt-neuf des quarante-six Etats membres de la Conférence de La Haye de droit international privé ont répondu au questionnaire, de même que trois des dix-neuf Etats non-Membres de la Conférence de La Haye mais qui sont parties à la Convention de New York.

La compilation qui suit regroupe une sélection de réponses données à diverses questions. Elle est destinée à faciliter les discussions lors de la Commission spéciale qui se réunira du 13 au 16 avril 1999. Les réponses sont reproduites dans leur langue originale. Cette compilation de réponses n'est pas censée être complète. Elle ne comprend pas, par exemple, les réponses relatives aux documents exigés ainsi qu'aux procédures types. L'objectif est de souligner quelques points au sujet desquels le droit ou la pratique révèlent des différences significatives parmi les Etats. Le texte complet des réponses sera mis à la disposition pour consultation lors de la Commission spéciale.

¹ Document préliminaire No 1, Questionnaire sur les obligations alimentaires, novembre 1998.

² *Convention du 24 octobre 1956 sur la loi applicable aux obligations alimentaires envers les enfants;*

Convention du 15 avril 1958 concernant la reconnaissance et l'exécution des décisions en matière d'obligations alimentaires envers les enfants;

Convention du 2 octobre 1973 sur la loi applicable aux obligations alimentaires;

Convention du 2 octobre 1973 concernant la reconnaissance et l'exécution de décisions relatives aux obligations alimentaires;

Convention de New York du 20 juin 1956 sur le recouvrement des aliments à l'étranger.

INTRODUCTION

The Questionnaire on Maintenance Obligations¹ was submitted to States Parties to the Hague and New York Conventions in November 1998, and to non-Party States which are Members of the Hague Conference, with a view to identifying any continuing problems in the operation of the Hague and New York Conventions,² as well as to elucidate the reasons why States which are not Parties to these Conventions have not so far ratified or acceded to them.

Replies were received from twenty-nine of the forty-seven Member States of the Hague Conference on Private International Law, and from three of the nineteen non-Member States of the Hague Conference which are Parties to the New York Convention.

The following is a compilation of selected replies to some of the questions, designed to assist discussions in the Special Commission which is to take place from 13-16 April 1999. The replies are in their original language. This compilation of replies is not intended to be comprehensive. It does not, for example, include replies concerning documentation or standard procedures required. The objective has been to highlight some areas in which there exist significant differences in law or practice. The full texts of the replies will be available for consultation at the Special Commission.

¹ Preliminary Document No 1, Questionnaire on Maintenance Obligations, November 1998.

² *Convention of 24 October 1956 on the Law Applicable to Maintenance Obligations in Respect of Children;*

Convention of 15 April 1958 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations in Respect of Children;

Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations;

Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations;

New York Convention of 20 June 1956 on the Recovery Abroad of Maintenance.

PARTIE I – LA CONVENTION DE NEW YORK DU 20 JUIN 1956 SUR LE RECOUVREMENT DES ALIMENTS A L'ETRANGER / NEW YORK CONVENTION OF 20 JUNE 1956 ON THE RECOVERY ABROAD OF MAINTENANCE

Section A – Questions adressées aux Etats parties / Questions addressed to States Parties

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?

Note: La plupart des Etats ont répondu par l'affirmative. / *Most respondents replied in the affirmative.*

CHILE – No, they don't.

FRANCE – Oui, la Convention de New-York du 20 juin 1956 sur le recouvrement des aliments à l'étranger est complémentaire des autres traités multilatéraux dans la mesure où elle constitue l'une des voies ouvertes au créancier. Ce dernier peut préférer pour diverses raisons, les conventions de la Haye de 1958 et de 1973 ou les conventions de Bruxelles et de Lugano.

Mais, la Sous-Direction de la Coopération Internationale en Droit de la Famille du Ministère des Affaires Etrangères, n'est autorité centrale qu'au seul titre de la convention de New-York du 20 juin 1956. Il lui est donc impossible de prendre en charge des dossiers qui lui seraient présentés au titre d'une autre convention.

Cependant le recours par le créancier à un autre instrument juridique n'est pas un obstacle à la mise en oeuvre de la convention de New-York par le Ministère des Affaires Etrangères. Afin d'éviter toute confusion, il est cependant souhaitable que l'Autorité Expéditrice (qui est aussi l'institution intermédiaire) soit avertie.

ISRAEL – The authorities of the State of Israel do not treat the New York Convention as complementary to other international instruments, such as the ones noted in the question.

LUXEMBOURG – Le Luxembourg considère la Convention de New York comme complémentaire d'autres traités internationaux, et en particulier de la Convention de La Haye de 1973 concernant la reconnaissance et l'exécution de décisions relatives aux obligations alimentaires.

Dans cette optique, le Parquet Général du Grand-Duché de Luxembourg se reconnaît également compétent pour intervenir en tant qu'institution intermédiaire dans des affaires où l'autorité requérante étrangère base sa demande non pas sur la Convention de New York, mais p. ex. sur la Convention de La Haye de 1973. Cette hypothèse a été rencontrée avec des demandes émanant du Royaume-Uni et de la Norvège.

Si le Luxembourg ne considérait pas la Convention de New York comme complémentaire en particulier de la Convention de La Haye de 1973, le Parquet Général ne serait pas habilité à intervenir d'une quelconque manière pour le créancier d'aliments en cas de demande basée sur la seule Convention de La Haye de 1973.

MEXICO – No, our authorities treat the New York Convention as independent to any other international instruments.

POLAND – The Polish authorities treat the New York Convention as subsidiary to the Convention on the Enforcement of Decisions relating to Maintenance Obligations made in the Hague on 2 October 1973 and to the bilateral agreements concluded by Poland with e.g. Austria, Bulgaria, the Czech Republic, Slovakia, France, Romania, Hungary.

Besides, ratification procedure is under way in respect of the Convention on the Jurisdiction and Execution of Judgements in Civil and Commercial Matters signed in Lugano on 16 September 1998.

UNITED KINGDOM, ENGLAND AND WALES – England and Wales interprets the New York Convention (United Nations) as being an entirely separate convention to the Hague or Brussels Conventions. The New York Convention allows for the creation of a new maintenance order in the country where the respondent is said to reside, whereas the Hague and Brussels Conventions are used when the applicant is seeking to have an existing maintenance order registered and enforced against the respondent.

UNITED KINGDOM, SCOTLAND – No, Scotland uses the two Conventions in entirely separate circumstances. We shall carry out Central Authority functions under the Hague Convention (although there is no provision for this) without the New York Convention being invoked.

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?*

Note: La plupart des Etats ont répondu que tel n'était pas le cas. Les réponses de l'Allemagne et du Luxembourg sont caractéristiques. / *The majority of respondents replied in the negative. The replies of Germany and Luxembourg are typical of these.*

GERMANY – The transmission of a maintenance decision from the State of origin is not required before steps are initiated to recover maintenance. The German receiving agency attempts first of all to obtain voluntary payment of maintenance. If these efforts are unsuccessful, steps towards recognition and declaration of enforceability as well as compulsory enforcement on the basis of the decision are initiated when a decision relating to maintenance obligations is transmitted. If no decision is transmitted, an action is brought before the German courts if necessary.

LUXEMBOURG – Tel n'est pas le cas. L'institution intermédiaire luxembourgeoise a ainsi déjà été amenée à exercer l'action alimentaire pour compte du créancier d'aliments résidant à l'étranger contre le débiteur d'aliments résidant au Luxembourg, et à voir fixer en conséquence par les juridictions luxembourgeoises le montant de la pension alimentaire.

BELARUS – Yes. The court decision or a certified copy thereof and the official document concerning the decision's entry into force are the necessary supplement to the claimant's application for the recognition and execution of the court decision.

BELGIQUE – Les autorités belges considèrent qu'il ressort de la combinaison des articles 5 et 6 de la Convention que toute demande de recouvrement forcé de pension alimentaire doit impérativement se baser sur une décision judiciaire ou un acte judiciaire intervenus antérieurement devant un tribunal soit de l'Etat requérant, soit de l'Etat requis (en principe, la décision étrangère doit faire l'objet d'une procédure d'exequatur).

Une décision préalablement rendue dans l'Etat d'origine n'est toutefois pas nécessaire pour que l'Institution intermédiaire belge cherche à obtenir le paiement des aliments par la voie amiable.

FINLAND – The matter is best taken care of if there is an enforceable decision issued in the State where the child resides. The financial situation of the maintenance debtor will nevertheless be examined and efforts will be made to get voluntary payments of maintenance from the maintenance debtor or to reach a maintenance agreement.

FRANCE – Oui, le Ministère des Affaires Etrangères exige **qu'une décision ait fixé le montant de la pension alimentaire** (pour les enfants) ou de la prestation compensatoire (pour le conjoint) dues par le débiteur. Une décision provisoire est cependant valable dans l'attente d'une mesure définitive dès lors que les droits de la défense ont été respectés (principe du contradictoire, possibilité des voies de recours).

HUNGARY – If Hungary acts as a requested state, non-appealable and enforceable court judgement or other decision is required for the proceedings.

ISRAEL – The authorities of the State of Israel do require a "decision" from the State of origin before taking steps for the recovery of maintenance. The type of decisions accepted, by virtue of our domestic law on enforcement of foreign decisions, are judgments given by a foreign court or tribunal in civil matters.

ITALIE – Afin d'entamer la procédure pour le recouvrement des aliments, l'institution intermédiaire demande à l'Autorité expéditrice étrangère une copie de la sentence, ou un accord entre les parties apte à prouver l'obligation du débiteur de payer les aliments en faveur des ayant droit.

MONACO – Une décision exécutoire dans l'Etat d'origine est indispensable pour engager des procédures judiciaires de recouvrement, à défaut d'accord amiable.

MAROC – Pour l'autorité marocaine seule la décision judiciaire donne lieu à des mesures de recouvrement d'aliments.

ROUMANIE – Oui.

SLOVAK REPUBLIC – Yes. The Centre in principle requires a decision on maintenance from the State of origin.

UNITED KINGDOM, SCOTLAND – No previous decision is required unless application is for spousal only maintenance.

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"?*

Note: La plupart des Etats ont répondu par la négative. / *Most respondents answered in the negative.*

AUSTRALIA – Occasionally Australian authorities receive applications under the New York Convention from creditors seeking maintenance which is not child or spousal maintenance (eg applications from parents seeking support from adult children). Australian law imposes an obligation to pay maintenance only in relation to the debtor's children or spouse.

CZECH REPUBLIC – In the late 80's the German receiving agency refused to undertake cases with the self-supporting maintenance creditors from (the former) Czechoslovakia applying for recovery of the arrears.

ISRAEL – Issues concerning the categorisation of persons eligible to apply as "in need" and "dependent", do arise. In this regard we are guided by the felt need to be as flexible and as forthcoming as the law allows.

NEW ZEALAND – An issue, which often arises, is the age of the child for which maintenance is sought. There is no liability in New Zealand for the payment of maintenance for a child beyond the age of 20 years. In many of the applications particularly from Eastern Europe the child is over the age of 20 when the application is submitted.

ROUMANIE – Le Ministère de la Justice agissant en tant qu'Autorité expéditrice transmet aux institutions intermédiaires des Etats parties à la Convention de New York du 20 juin 1956 les dossiers des bénéficiaires d'aliments (enfants mineurs qui sont dans l'entretien de l'un des parents ou d'un tuteur; enfants majeurs qui sont en continuation de la formation, jusqu'à l'âge de 25 ans; enfants majeurs ayant des handicaps irréversibles; ex-époux qui ont le droit aux aliments).

Pour les enfants majeurs qui sont en continuation de leur formation, le Ministère de la Justice de Roumanie a fourni des informations législatives aux institutions intermédiaires qui ont demandé des précisions sur la législation roumaine concernant l'établissement du droit aux aliments.

SUISSE – Non, pas en tant qu'institution intermédiaire.

En revanche, des difficultés se présentent régulièrement pour des créancières qui sont dans le besoin selon les normes suisses, compte tenu des coûts de vie élevés, et qui ne bénéficient pas de l'aide judiciaire/juridictionnelle notamment en Belgique et en France, pratique que nous déplorons profondément et qui nous paraît inéquitable depuis longtemps.

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)?

Note: Une minorité des pays a répondu par la négative (par ex. Israël, Mexique, Monaco, Nouvelle-Zélande, Roumanie et Sri Lanka). Beaucoup de pays exigent une procuration signée par le créancier en faveur de l'autorité publique. / *A minority of respondents answered in the negative (e.g. Israel, Mexico, Monaco, New Zealand, Romania and Sri Lanka). Many respondents require a power of attorney granted by the creditor to the public authority.*

AUSTRALIA – Yes subject to the condition that the payments made to the creditor must have the character of maintenance payments made on behalf of the debtor.

AUSTRIA – Yes, if the public agency (eg child welfare authority) is acting as the representative of the child and if the maintenance claim is still a claim of the child. Under Austrian law advance payments of maintenance by the State are possible but despite of these advance payments the claim remains to be a claim of the child. Only if the child reaches the age of majority a cessio legis takes place in favour of the State (only concerning those arrears where advance payments have been made).

GERMANY – Public bodies can only use the procedures provided for under the Convention if they are acting as the claimant's authorised representative in order to recover maintenance for the claimant abroad. In Germany, youth welfare offices or the German institute for Guardianship Matters [*Deutsches Institut für Vormundschaftswesen*] often act as the claimant's authorised representative.

Public bodies may not use the procedures provided for by the Convention in order to recover their own maintenance (*cf.* also the discussion at the conference of states; Proceedings of the Eighth Session – E/Conf, 21/SR 8 pp. 8/9).

HUNGARY – The possibility for public bodies to start proceedings for the reimbursement of money already paid is not excluded by the law, though no cases have been brought up like this. However these claims can be enforced only secondarily after current support. The enforcement of these claims however may be made dependant on reciprocity.

LUXEMBOURG – Oui, des organismes publics intervenant en lieu et place du débiteur d'aliments pour avancer le montant de la pension alimentaire, sont admis à recourir aux procédures de la Convention, sous les réserves suivantes toutefois:

- le recours, par un organisme public étranger, aux procédures de la Convention de New York n'est admis que conjointement avec le recours du créancier d'aliments lui-même à ces procédures. D'où la nécessité, aux yeux de l'institution intermédiaire, d'une procuration du créancier d'aliments;
- il ne saurait être question de voir exercer l'action alimentaire. En d'autres termes, si l'organisme public étranger est intervenu en faveur du créancier d'aliments, sans que les droits alimentaires de ce dernier ne soient fixés par une décision susceptible d'exequatur au Luxembourg, il n'est pas possible à l'organisme public étranger de recourir aux procédures de la Convention de New York pour l'obtention d'un titre exécutoire à délivrer par les juridictions luxembourgeoises pour les prestations effectuées.

NETHERLANDS – Yes, subject to the condition that a power of attorney is signed by the maintenance creditor himself. Problems have been encountered where the creditor has no interest in obtaining maintenance payments. A recent change in the Netherlands legislation regarding public assistance allows public bodies concerned to make the payment of monies subject to the signature of such a power of attorney.

NORWAY – In Norway the maintenance creditor is entitled to advance maintenance payments from the State, subject to a refund in payments from the maintenance debtor. In the application for the advance payments, the custodial parent must give the State (The Maintenance Enforcement Centre) authority to collect the maintenance payments from the debtor.

The services of the New York Convention will be provided regardless of whether the creditor is public or private. No special requirements apply.

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.

SWEDEN – We have never got such an application from a public body. If it met the requirements of the Convention, we would however accept it. The applications we get are signed by the parent with a power of attorney for the public body, to which the money is sent.

SUISSE – La question a été débattue à la Haye en novembre 1995. Une minorité dont la Suisse estimait que le large texte de la Convention de New York permettait le recouvrement d'aliments avancés par un organe public, soit au nom des créanciers, soit même à son propre nom pour des montants qui lui ont été cédés. La majorité étant au contraire d'avis que la Convention de New York devait être révisée sur ce point, inconnu encore en 1956, il est actuellement toujours exigé une procuration des créanciers. Ceux-

ci peuvent cependant sans autre autoriser un organe public à encaisser les montants perçus du débiteur.

En revanche, l'encaissement d'arriérés apparaissant sans équivoque comme revenir uniquement à l'organe public qui agit seul et en son propre nom n'est guère possible dans le cadre de la Convention de New York, selon l'interprétation définie plus haut.

UNITED KINGDOM, SCOTLAND – Unlikely that court would make order in the name of a public authority. Possibly can make order in name of parent and then for money to be sent to public authority - providing that claimant is still residing in requesting state and public authority has authority of maintenance creditor to collect on his/her behalf.

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) Yes.
- (b) Legal Aid bodies in Australia provide legal representation for the creditor.
- (c) Australian authorities will only commence legal proceedings on behalf of the creditor if the proceedings have reasonable prospects of success in obtaining maintenance for the creditor. Once proceedings are commenced, the continuation of legal representation is dependant on the debtor's continuing co-operation and may be withdrawn if the creditor refuses a reasonable offer of settlement from the debtor.
- (d) No. However the Family Law Act 1975 sets down different criteria for assessing liability to pay spousal maintenance.

AUSTRIA

- (a) Yes. If free legal aid is not requested the competent court has to appoint an attorney-at-law on the expenses of the applicant. But in nearly all cases free legal aid is requested and granted.
- (b) The attorney-at-law fully represents the applicant in all proceedings.
- (c) There are only conditions to be fulfilled if free legal aid is applied for. These conditions are: By the proceedings the necessary maintenance of the applicant would - without free legal aid - be endangered. According to Austrian case law free legal aid will be granted if the monthly income of the applicant is not more than approximately 9.000 Austrian Schilling-ATS (approximately 1.400 hfl). A further condition is that the proceedings do not seem to be - from the very beginning - without any success.
- (d) No.

BELARUS

- (a) Yes (on his/her request).
- (b) Consultations, information.
- (c) No special conditions or limitations provided.
- (d) No.

BELGIQUE

- (a) Oui.
- (b) L'aide judiciaire prend la forme d'une intervention gratuite, en faveur du requérant, d'un avocat chargé de mener à bien la procédure en recouvrement forcé et/ou d'une dispense pour le requérant de payer certains frais inhérents à la procédure précitée (art. 455 et s. et art. 664 et s. du C.jud).
- (c) Conformément à l'article 9, § 1er, de la Convention, le créancier bénéficie du traitement et des exemptions de frais et dépense accordés aux créanciers qui résident dans l'Etat où l'action est intentée ou qui en sont ressortissant.
- (d) Non.

CZECH REPUBLIC

- (a) There is no term "legal assistance" under the Czech law; however the claimant benefits of the same possibilities as may be understood under legal assistance, regardless of his or her citizenship.
- (b) Free of charge legal counsel and assistance provided by the receiving agency based on a power of attorney given by the maintenance creditor (his or her legal representative) to it. The Czech receiving agency files with the court in its quality of creditors representative. When the creditor is a minor child, because in the proceedings where the possibility of a conflict of interests between the minor child and his or her legal representatives (parents) is given, the court appoints a special representative (curator) for the child who will represent him or her in the proceedings.

Proceedings in matters of the mutual maintenance obligation between parents and children are generally free of court fees. The applicant in the proceedings for ordering maintenance payments is free of the court fees as well. The same benefits apply to the proceedings for enforcement.

- (c) No, it is not.
- (d) No, they are treated in the same way.

ESTONIA

- (a) Officially no, but by the phone sometimes people ask any kind of questions concerning the maintenance obligations.
- (b) Answer: –
- (c) Answer: –
- (d) Answer: –

FINLAND

- (a) As the Receiving or Transmitting Agency the Ministry for Foreign Affairs does not provide legal assistance in court proceedings. If no maintenance decision has been issued in the case, the matter is referred to an attorney.
- (b) Advice is provided as regards the recovery of maintenance and applications.
- (c) Answer: –
- (d) In case the spousal and child support have been ordered by the same decision, the same procedure will be applied to both.

FRANCE

(a) Compte tenu du schéma procédural développé à la question 4, il apparaît que pour les procédures pour lesquelles la France est Etat requis il y a systématiquement attribution de l'aide judiciaire au demandeur. En effet, le mécanisme de la convention de New-York de 1956 n'est efficace en France que si l'aide judiciaire est octroyée.

Cette procédure permet alors la désignation d'auxiliaires de justice français, qui pour le compte du créancier étranger, vont mener à bien la procédure d'exequatur puis d'exécution forcée de la décision étrangère (que la pension ait été allouée au profit de l'époux (se) ou de (s) l'enfant (s)).

En cas d'échec de la procédure d'aide judiciaire, l'autorité expéditrice et l'institution intermédiaire française n'ont plus aucun moyen d'agir.

Ceci impose que les formulaires de demandes d'aide judiciaire soient parfaitement et scrupuleusement remplis.

Cette aide judiciaire est attribuée à titre exceptionnel en application de l'article 2 de la loi 10 juillet 1991 (Cf. Annexe 5).

Ainsi seules les personnes physiques peuvent bénéficier de cette aide, ce qui exclut toutes les institutions de droit étranger (Ex: Office de la jeunesse en Allemagne).

Dans une telle hypothèse, la totalité de la procédure devra, en France, être diligentée au nom de la personne physique (par exemple la mère de l'enfant) alors même qu'elle n'apparaît pas dans la procédure étrangère.

Ce système impose aussi aux enfants, bénéficiaires d'une pension, devenus majeurs de solliciter en leur nom le bénéfice de l'aide judiciaire.

(b) Les demandeurs doivent remplir un formulaire d'Aide judiciaire, joindre tous les justificatifs utiles (Cf. Annexe 6). Cette aide judiciaire entraîne la gratuité des prestations fournies par les auxiliaires de justice (avocats et huissiers).

(c) Des conditions sont imposées pour que l'aide judiciaire soit accordée.

Ce sont d'une part des conditions financières, en effet selon l'article 2 de la loi du 10 juillet 1991 "les personnes physiques dont les ressources sont insuffisantes pour faire valoir leurs droits en justice peuvent bénéficier d'une aide juridictionnelle".

Le demandeur à l'aide juridictionnelle doit justifier que ses ressources mensuelles sont inférieures à 4901 francs pour bénéficier de l'aide juridictionnelle totale et à 7353 francs pour bénéficier de l'aide juridictionnelle partielle. Ces plafonds étant affectés de correctifs pour charges de famille et revalorisés chaque année.

(d) S'agissant des règles d'attribution de l'aide judiciaire dans le cadre d'une demande d'aliments au profit d'enfants:

Pour un enfant il faut le montant exact des revenus du foyer fiscal, c'est-à-dire ceux du parent qui en a la charge.

Sauf disposition contraire de la décision ayant alloué une pension alimentaire pour un enfant mineur, cette pension ne prend pas fin à la majorité de celui-ci. Il appartient dès lors au débiteur de solliciter la suppression de la pension, l'enfant devenu majeur pourra s'y opposer en établissant qu'il est encore à la charge de ses parents.

GERMANY

(a) and (b) If the maintenance claim is asserted extra-judicially, the claimant is granted legal assistance by the receiving agency or by the authorities whose services have been brought in by way of administrative assistance.

In court proceedings, a lawyer is appointed where representation by the receiving agency or the youth welfare offices is not possible.

(c) When a lawyer is appointed, as well as when court proceedings are instituted, costs are incurred. The German receiving agency examines whether the applicant can be granted legal aid. Legal aid is granted if, due to his personal or financial situation, the applicant is not able to pay the costs of the litigation at all, only in part or only in instalments. If these conditions are fulfilled, the applicant can be exempted, either in full or in part, from paying court costs and his own lawyer's fees.

(d) There is no different treatment.

HUNGARY

- (a) In the proceedings instituted by a foreign person for the payment of support we do not charge the costs incurred either to the requesting state or to the creditor. This legal aid does not depend on the creditor's income and assets, it comes from the subject of the proceedings; thus a request to get legal aid is unnecessary.
- (b) Answer: –
- (c) Answer: –
- (d) No, they are both automatically free of charge for the creditor.

IRELAND

- (a) The Central Authority arranges free legal assistance, through the Legal Aid Board, in respect of incoming cases.
- (b) Assignment by the Legal Aid Board of a solicitor to act for the applicant. A barrister may, if necessary, be employed by the Board for court proceedings.
- (c) No.
- (d) No.

ISRAEL

- (a) Yes, we do provide legal assistance to the claimant.
- (b) The claimant is granted legal assistance equal to that of an Israeli citizen. In addition, the claimants special requirements (due to language and cultural difficulties, for example), are recognised whenever possible. A private, external lawyer is appointed to handle the claim. An English speaking lawyer is provided, where necessary.
- (c) Legal assistance is conditional upon: an ordinary financial need evaluation, the identification and location of the debtor, and the furnishing of minimum evidential and procedural requirements necessary to support the claim.
- (d) In principle and in practice applications for spousal and child support are treated in the same way. Our experience is mostly in the field of child maintenance. In addition, the working practice of our authorities is to be forthcoming towards the needy claimant, spousal or child.

ITALIE

- (a) Oui.
- (b) L'Italie fournit l'assistance judiciaire moyennant les services gratuits d'un avocat.

(c) Il faut que les ayant droit aux aliments ne soient pas à même de soutenir les frais du procès.

(d) Le traitement est le même, indépendamment du fait que la demande d'aliments soit présentée par un époux ou par un mineur.

LUXEMBOURG

(a) and (b) L'intervention de l'institution intermédiaire luxembourgeoise n'entraîne pas de frais à charge du créancier d'aliments ayant recours aux procédures de la Convention de New York.

Il en est de même en cas de transmission du dossier à un avocat. Les frais sont assumés par l'institution intermédiaire, sans recours pour ce faire au mécanisme de l'assistance judiciaire.

(c) L'aide judiciaire ainsi entendue se limite au seul créancier d'aliments. En sont donc exclus les organismes publics étrangers p. ex. Ceux-ci ne sont pas non plus admissibles au bénéfice de l'assistance judiciaire, réservée en droit luxembourgeois aux personnes physiques.

(d) Il n'y a pas de différence de traitement selon que le créancier d'aliments est un époux ou un enfant mineur.

MAROC

(a) Le bureau d'assistance judiciaire de la juridiction auprès de laquelle l'action judiciaire sera engagée, rend une décision sur la demande. Lorsque le demandeur fournit des documents justifiant l'insuffisance de ses ressources.

(b) L'aide judiciaire comprend l'exemption de taxes judiciaires et la désignation d'un avocat tenu de prêter gratuitement son ministère à l'assisté.

(c) Le bénéfice de l'assistance judiciaire est applicable à tout litige et aux actes conservatoires. L'assistance judiciaire s'étend de plein droit aux actes et procédures d'exécution à opérer à la suite des décisions judiciaires en vue desquelles elle a été accordée.

(d) Les demandes de la pension alimentaire sont traitées par la même procédure.

MEXICO

(a) Yes, we provide legal assistance to the claimant. Family judges and District Attorneys have the duty to intervene in family matters, including child support and paternity determination cases, without the request of any party involved.

(b) To accomplish those objectives the Mexican government created a special agency, the "National System for the Full Development of the Family" (D.I.F.), Who provides free legal assistance to families, minors, the handicapped and the elderly. Such assistance is provided in conjunction with the State District Attorney's Office.

(c) No, but special legal formalities are required. The petitioner can appear on his own behalf in court. No filing nor court fees are charged.

(d) No.

MONACO

(a) Oui.

(b) Assistance judiciaire gratuite pour l'exercice des voies de droit nécessaires au recouvrement d'aliments à Monaco.

(c) Non.

(d) Non.

NETHERLANDS

(a) Yes, legal assistance is provided in judicial proceedings.

(b) The claimant is represented by the central authority in judicial proceedings (recognition or declaration of enforceability). If the claimant cannot be represented by the central authority itself (the implementing legislation only allows such representation if the proceedings are initiated by a petition), an attorney is asked (and paid) to do so.

(c) No.

(d) No.

NEW ZEALAND

(a) No.

(b) In New Zealand the applicable law in respect of spousal maintenance orders is specified to be the same as under the New Zealand's law, sections 63 to 71 of the Family Proceedings Act 1980. In respect of an order for child maintenance, sections 145A to 145I apply. The Family Court has jurisdiction pursuant to section 145F.

NORWAY

(a) In Norway all services for determination and enforcement of maintenance payments are free of charge. The State pays all costs.

(b) Maintenance payments are mainly handled on an administrative level. If the debtor takes the case to court, the proceedings are undertaken by State attorneys.

(c) No.

(d) No.

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.

ROUMANIE – Pour aider les personnes – bénéficiaires des aliments (enfant ou ex-époux) qui n'ont pas de ressources financières ou qui ont de faibles revenus, le Ministère de la Justice (Autorité expéditrice) assure la traduction autorisée (dans la langue du pays du débiteur d'aliments) des documents qui doivent être transmis à l'institution intermédiaire.

En tant qu'institution intermédiaire le Barreau d'Avocats de Bucarest assure une aide judiciaire au demandeur, sous la forme d'un avocat gratuitement nommé.

SLOVAK REPUBLIC

(a) Yes.

(b) The Centre is acting as an attorney of the claimant, including the proceedings before the court, on the basis of the power of attorney.

(c) If the claimant authorises another person to act as his/her attorney, the Centre cannot continue representing the claimant.

(d) Yes, in the sense that the Centre would not provide legal assistance/representation to a spouse in the proceedings on the merits of the support.

SRI LANKA

(a) Where the income of a claimant is below a specified minimum the Legal Aid Commission and other Legal Aid agencies will provide Legal Assistance.

(b) The provision of counsel, no stamp fees are required from such a person.

(c) Claimant should have an income below a specified amount.

(d) No.

SWEDEN

- (a) Yes, according to the Swedish rules of legal assistance. The applicant according to the Convention has the same rights as Swedish residents in this respect.
- (b) It covers the fees of legal counsel.
- (c) Dependant on your incomes.
- (d) Same as (c).

SUISSE

- (a) En principe, oui.
- (b) Avance de frais de poursuite.

Théoriquement aussi pour une éventuelle procédure au fond.

- (c) Les frais de poursuite sont très modestes et dépendent de la somme mise en poursuite. S'agissant des frais de procédure civile, il existe des limitations en fonction du revenu des créanciers et des chances de succès. Ces limites peuvent différer d'un canton à l'autre (26 solutions...).
- (d) Non.

UNITED KINGDOM, ENGLAND AND WALES

- (a) No. The applicant will be entitled to legal aid to employ a solicitor if he or she meets the criteria laid down by legislation.
- (b) N/A.
- (c) N/A.
- (d) Applications for spousal and child support are treated in the same way.

UNITED KINGDOM, SCOTLAND

- (a) The claimant will receive cost-free legal advice and assistance from a private solicitor.
- (b) See above.
- (c) Claimant must be able to produce a certificate stating that he is entitled to legal aid or exemption from expenses in requesting country.
- (d) As regards legal assistance, such applications are not treated differently.

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)?*

Note: Presque tous les Etats ont répondu qu'ils ne chargent pas de frais. / *Almost all respondents answered that no costs are charged.*

FINLAND – As the Receiving Agency the Ministry for Foreign Affairs does not charge for services rendered under the New York Convention. The mother or the Social Welfare Office often charges the translation costs of documents, but those costs are usually difficult to recover.

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?*

Note: Dans la grande majorité des cas, une traduction certifiée des documents pertinents dans la langue de l'Institution intermédiaire est exigée. / *In the great majority of cases a certified translation of relevant documents is required, in the language of the receiving agency.*

BELGIQUE – La Convention ne prévoit pas d'obligation de traduction à charge de l'Autorité expéditrice et l'Institution intermédiaire belge n'a pas d'exigences en la matière.

HUNGARY – As a requested authority the Ministry provides for the translation of the submitted documents. If a lawsuit must be instituted for the collection, the Ministry may request the court to oblige the defeated debtor to repay the costs of translation to the Ministry.

ISRAEL – Our requirements with regard to the translation of documents submitted by the transmitting agency are that such documents be in Hebrew, Arabic or English and that the translation be properly authorised as being correct.

NETHERLANDS – So far the Netherlands central authority has been so kind as to accept letters and documents from many countries in their own language, whereas it sends letters and documents in English or German or - depending on the country concerned - even in the country's language. However, it is recommended that all correspondence and documents should be submitted in English, German or French.

NORWAY – We prefer that all forms are translated into English, but we do also accept German.

SUISSE – Les documents de base doivent être traduits dans la langue officielle du canton de domicile du débiteur. Pour la majorité des cantons (19), il s'agit de l'allemand. Pour les cantons de Genève (GE), Jura (JU), Neuchâtel (NE) et Vaud (VD), la langue requise est le français (les cantons de Fribourg (FR) et Valais (VS) étant bilingue). Enfin, les dossiers pour le canton du Tessin (TI) doivent être traduits en italien. La traduction est en particulier nécessaire pour la procédure de poursuite.

Pour la correspondance ultérieure (simples lettres etc., à l'exclusion toutefois de documents officiels ou attestations), la pratique est plus large: outre les trois langues précitées pour tous les cantons, l'anglais ou l'espagnol sont également acceptés.

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?

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?

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?

Note: Dans la grande majorité des Etats, les autorités déclinent toute responsabilité en cas de transfert/réception de paiements d'obligations alimentaires. / *In the great majority of States, the authorities do not accept responsibility for transfer/receipt of maintenance payments.*

AUSTRALIA

Question 13 – Australian authorities send cheques in Australian dollars to the creditor. Conversion into a foreign currency is a matter for the creditor or the transmitting agency.

AUSTRIA

Question 13 – If the (foreign) entitlement indicates amounts in a foreign currency the amounts (arrears) have to be calculated in the foreign currency if enforcement measures are requested (e.g. seizure of the debtor's salary). Regarding the conversion of the foreign currency into Austrian Schilling (ATS) the exchange rate of the day of the court order granting enforcement measures is relevant.

Question 14 – Transfer to a foreign bank account or transfer by post ("*internationale Postanweisung*").

BELARUS

Question 13 – Maintenance payments are converted as non-commercial payments.

Question 14 – Bank transfers from the bank accounts in hard currency.

BELGIQUE

Question 13 – En principe, le juge belge prévoit dans sa décision que le taux de change utilisé pour convertir la devise étrangère en francs belges sera le taux le plus élevé du marché au jour du paiement.

CHILE

Question 13 – Maintenance payments are made, via consular channels, in US dollars.

CZECH REPUBLIC

Question 13 – The conversion of the Czech currency is made by the banking operations.

Question 14 – It depends on the concrete case with concrete parties and concrete countries.

ESTONIA

Question 14 – Usually bank transfers are used.

FINLAND

Question 12 – The Ministry for Foreign Affairs does not assume responsibility for the transfer of maintenance payments. Maintenance payments from Finland are directed into the indicated foreign bank account and 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.

Question 13 – For the purpose of execution, a debt is updated in the currency that has been used for determining the amount of debt. The payments recovered in the Finnish currency will be converted into the currency indicated in the maintenance decision, by applying the exchange rate prevailing on the date of transfer. The converted amounts of payments are deducted from the total amount of debt. However, the payments are transferred into the bank of the creditor in the Finnish currency.

Question 14 – Bank transfer.

FRANCE

Question 12 – En principe non, mais exceptionnellement quand le montant de la pension est très faible, le Ministère des Affaires Etrangères transmet directement le versement de l'argent à l'étranger (afin d'éviter que la créancière ne perde en frais de change et commissions bancaires l'intégralité de la somme).

Question 13 – Les huissiers envoient les sommes en francs. Les conversions se font en France par les banques françaises moyennant commissions.

Question 14 – Pour les pays ayant comme monnaie commune l'euro, les frais de change ont en principe disparu depuis le 1er janvier 1999. Cependant, la méthode du transfert de fonds la moins coûteuse est le virement bancaire direct du compte du débiteur au compte du créancier.

La France souhaiterait vivement que ce mode de transfert de fonds soit systématiquement privilégié par rapport à tout autre (chèque, mandat postal). A cette occasion, la partie française souhaiterait rappeler que tous les frais liés aux transferts de fonds sont à la charge exclusive du débiteur.

GERMANY

Question 12

(a) The transmitting agencies are not usually involved in payment transactions. The payments are to be paid directly to the creditor or the creditor's authorised representative. This is the reason why the creditor also gives the foreign receiving agency his bank account details when making his application.

Where by way of exception maintenance payments are nevertheless made to a transmitting agency, these are passed on to the creditor. A claim of official liability against the Federal *Land* in question can exist pursuant to Article 34 of the Basic Law [*Grundgesetz*] in respect of neglect of duty by employees of the transmitting agency in forwarding payments which leads to a loss. The details and limitations of this claim are contained in the statutory provisions, in particular in section 839 of the Civil Code [*Bürgerliches Gesetzbuch*].

(b) The German receiving agency does not accept any responsibility whatsoever. If a case of neglect of duty by an employee exists, the information given under (a) applies.

Question 13

(a) Receipt of maintenance payments:

The conversion of maintenance payments into the currency of the creditor's state is usually carried out by the bank where the creditor has his account, and is made on the basis of the exchange rate on the day in question. The transmitting agencies do not have any special conversion procedures.

(b) Outgoing maintenance payments:

The debtor must make payment of the maintenance in the currency which is stipulated in the maintenance order. However, payments in a currency other than that which has been stipulated are in principle accepted. Payments are converted on the basis of the applicable foreign exchange rate. For practical reasons, the rate applicable in the middle of the month is always taken.

Question 14

(a) Receipt of maintenance payments:

See answer to question 13.

(b) Outgoing maintenance payments:

The method of payment is chosen by the debtor, who must also pay the costs of the transfer. To save costs, the debtor may pay several maintenance instalments in advance as a lump sum.

HUNGARY

Question 13 – Magyar külkereskedelmi Bank Rt. provides for the conversion of the amount of child support into the currency of the creditor's State in accordance with the rules relating to the Bank, and it charges costs of handling and conversion in the course thereof.

Question 14 – In accordance with the legal rules in force the dispatch of the amounts of money may only occur through bank remittance, and therefore the creditor cannot avoid the payment of the costs of handling and conversion incurred.

IRELAND

Question 12 – The Central Authority does not exercise any such responsibility. Maintenance payments are made through the District Court Clerk and are transmitted by the Clerk to the creditor even where the order is made by a higher court. Where the debtor defaults the clerk will initiate enforcement proceedings at the written request of the creditor or the Central Authority.

Question 13 – Maintenance payments must be made in the currency of the State i.e. Irish pounds.

ISRAEL

Question 12 – Our designated authority accepts responsibility for gathering, holding and transferring/receiving maintenance payments on behalf of the creditor.

Question 13 – Although we formally derogate from the application of Article 10 of the New York Convention of 20 June 1956 on the Recovery Abroad of Maintenance, in practice we do our utmost to ensure minimal expenses in the handling and transferring of maintenance payments. Further, we feel that the costs of conversion and transfer of maintenance payments should be kept to an absolute minimum, in order to preserve the fullest value of maintenance payment possible.

Question 14 – Tentatively, we propose that a diplomatic money transfer mechanism may be the least costly method of transferring maintenance payments to the creditor.

ITALIE

Question 12 – A l'issue de la procédure d'exécution, le crédit recouvré est encaissé par le Barreau du District de l'Etat et transféré à l'étranger par le Ministère de l'Intérieur, par l'entremise du «Ministero del Tesoro» et de l'«Ufficio Italiano Cambi». En certains cas, c'est le débiteur lui-même qui envoie les aliments directement au créancier; en d'autres cas les aliments peuvent également être mis au nom directement du Ministère de l'Intérieur et transférés au créancier selon la même procédure.

Question 13 – Pour ce qui est des procédures applicables au change de la devise étrangère, il faut s'adresser à l'«Ufficio Italiano Cambi» qui se charge directement de convertir le montant en lires italiennes en monnaie étrangère, au taux de change du jour de la demande.

Question 14 – Aucun coût n'est mis à la charge du créancier pour les opérations de transfert de fonds.

LUXEMBOURG

Question 12 – En principe l'institution intermédiaire luxembourgeoise n'assume pas de responsabilité des transferts/des réceptions de paiements d'aliments.

Soit le débiteur d'aliments paie directement sur le compte bancaire qui doit à cet effet être indiqué dans la demande de recouvrement. L'institution intermédiaire luxembourgeoise se limite dans ces cas à vérifier que le débiteur d'aliments s'acquitte régulièrement de ses engagements, en se faisant à cet effet remettre par le débiteur d'aliments les pièces justificatives.

Soit, lorsque le dossier a été transmis à un avocat, les paiements sont à effectuer à cet avocat qui les continuera alors au créancier d'aliments.

Question 13 – En principe les frais bancaires engendrés pour le transfert des paiements d'aliments au créancier d'aliments établi à l'étranger sont à charge du débiteur d'aliments.

Les paiements sont transférés dans la monnaie de l'Etat où est établi le créancier d'aliments. La conversion de la monnaie nationale en monnaie étrangère se fait donc aussi à charge du débiteur d'aliments.

Pour limiter les frais bancaires (notamment dans l'hypothèse où la situation financière du débiteur d'aliments est plutôt précaire) les paiements reçus ne sont parfois transférés que tous les 3 ou 6 mois, si le créancier d'aliments est d'accord avec cette façon de procéder.

MAROC

Question 13 – Le transfert des sommes dues par le créancier s'effectue par l'intermédiaire de l'administration de l'office de changes.

Question 14 – Le versement bancaire.

MEXICO

Question 14 – Mexico would recommend that the check be received by the obligee through its diplomatic representation in the requesting State.

MONACO

Question 13 – Le débiteur doit effectuer un virement libellé dans la monnaie de l'Etat du créancier.

Question 14 – Virement bancaire.

NETHERLANDS

Question 12 – Yes, it takes such responsibility in performing its duties as a public body.

Question 13 – Maintenance payments are booked in Dutch currency. The bank takes care of the conversion into foreign currency. The foreign authority receives the payments – from which eventual fluctuations and transferring costs are deducted – in its own currency.

Question 14 – If a foreign central authority accepts combined transfers, all funds for the country involved can be transferred at once, so that transfer rates are paid only once.

NEW ZEALAND

Question 12 – If the New Zealand Court makes an order the Child Support Agency will enforce the order. They will not receive maintenance from another Convention country.

Question 13 – The conversion rate is at the date of the order.

NORWAY

Question 12 – Our authorities handle the maintenance payments and keep the accounts. As mentioned above in No 7, this is a condition for receiving advance payments. Even if no advance payments are being paid, both parents may ask for public collection and distribution of the maintenance payments.

Question 13 – If the maintenance payment is fixed in foreign currency, it will be converted into Norwegian Kroner. This conversion takes place every month, based on the average rate of exchange the month before.

Payments abroad will be converted by the bank at the time of the transfer, based on the exchange rate that day.

Question 14 – Transferring funds from Norway is cost free for the creditor. At present, we don't know if some of the creditor's countries of residence charges the creditor with any transfer fee.

POLAND

Question 12 – 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.

Question 13 – 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.

Question 14 – 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.

ROUMANIE

Question 13 – Pour protéger le bénéficiaire d'aliments (étant donné la situation économique de la Roumanie et l'inflation) le paiement des aliments doit se faire dans la monnaie du pays du débiteur, éventuellement convertie dans la monnaie nationale de la Roumanie (« lei ») au cours valulaire officiel du jour du paiement.

Question 14 – Selon la législation roumaine, le paiement des aliments est une prestation successive qui doit se faire chaque mois, dans le compte bancaire indiqué par le créateur des aliments.

SLOVAK REPUBLIC

Question 12 – If the power of attorney authorises the Centre to accept the moneys on behalf of the creditor, the Centre accepts the sums paid by the debtor and transfers them to the bank of the creditor. The bank of the Centre does not withhold any transfer fees, but the Centre is not responsible for any fees withheld by the foreign banks. The payment of maintenance to the account of the Centre means legal fulfilment of the obligation of the debtor and any differences accrued through the exchange rate or bank fees must be borne by the creditor.

Question 13 – The maintenance is always converted by the bank which makes the transfer under current exchange rates. The (recognition) enforcement of a foreign judgement is always ordered in the currency of the decision.

Question 14 – The practice shows that the least costly way of transfer for the maintenance creditor is the cumulative transfer of sums for a longer period of time (6 to 12 months) or for multiple creditors in the same State. The transfer fees of foreign banks are the lowest in such cases (as stated above, the bank of the Centre does not withhold fees for transfer).

SWEDEN

Question 12 – Payment of maintenance from the debtor abroad should always be done through the SIO. Payment of maintenance from Sweden is done directly from the debtor or from The Enforcement Agency.

Question 13 – If payment arrives in foreign currency, it is transformed to the rate of the day at the receiving bank in Sweden, if the maintenance is payable in Swedish currency.

Question 14 – We have an agreement with the bank Nordbanken, containing that no bank fees are charged in Sweden. Payments to the Postgirot are also free from fees. We give this information in all cases.

SUISSE

Question 12 – Non. Les autorités locales s'en occupent.

Question 13 – Conversion au taux du jour. Pour le reste, ignoré.

Question 14 – Ignoré. Sans doute, un virement postal est quelque peu moins coûteux qu'un virement bancaire.

UNITED KINGDOM, ENGLAND AND WALES

Question 12 – We would prefer if all payments were either sent to the relevant court/foreign authority or paid directly into the applicant's bank account, although we will forward on payments sent to the REMO section.

Question 13 – The applicant pays the conversion rate cost. The exchange rate used is the rate on the day the order is registered by the court in England and Wales.

Question 14 – Depending on how much the maintenance payments are for, the applicant could receive her payments on a quarterly basis, as opposed to a monthly basis, which would mean that she would only have to pay the cost of conversion once every three months.

UNITED KINGDOM, SCOTLAND

Question 13 – The exchange rate used is the rate on the day the order is registered in Scotland.

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?

Note: Une grande majorité des pays a répondu par la négative. / *The great majority of respondents replied in the negative.*

AUSTRIA – With the assistance of the Ministry of Foreign Affairs.

NORWAY – Yes, in fact our National Office has experienced such cases and has not yet succeeded in solving them.

SWEDEN – Yes, we have in some cases asked for enforcement of maintenance when the debtor was a UN employee, living in Austria, France and Lebanon respectively. We asked both the UN and the receiving agency in the different countries, but they were not able or did not want to help.

SUISSE – Il en a été question lors de la Conférence à la Haye en novembre 1995. Ces dernières années, aucun cas de ce genre ne s'est présenté. Les rares cas de recouvrement contre de tels débiteurs n'ont pas abouti pour d'autres motifs (domicile flou, frontaliers etc.).

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) The principal problems Australian authorities experience are:
- a total lack of action by some Receiving Agencies;
 - a lack of promptness of replies from some Receiving Agencies;
 - a refusal by some countries to co-operate in determining disputes as to paternity;
 - lengthy delays in legal proceedings in courts in some Receiving countries.
- (b) Australian authorities experience problems with the following:
- a frequent inability to locate debtors in Australia;
 - a lack of promptness of replies from some Transmitting Agencies (particularly in providing documents required for court proceedings in Australia);
 - the failure of **creditors** to accurately and completely fill out required forms;
 - the failure of some creditors and Transmitting agencies to understand that applications under the New York Convention must be dealt with under Australian law rather than under the law of the Transmitting State; this failure leads to misunderstandings *e.g.* refusal to co-operate with parentage testing in Australia because there is an existing court order as to parentage in the Transmitting State; *e.g.* criticism of Australian court decisions not to order the debtor to pay maintenance because the debtor has insufficient income/assets in the light of standards of living in Australia;
 - excessive charges in some countries for conversion of currency.

AUSTRIA – (a) Big problems regarding free legal aid for applicants living in Austria with French authorities (complicated forms, request to renew the application for free legal aid every year and in each stage of the court proceedings-*e.g.* renewal for appeal proceedings); while the maintenance claim is a claim/ right of the child French authorities take the view that the economic situation of the custodian parent is relevant. There are problems with Belgium, too, because despite of free legal aid the attorney-at-law who is acting under the Belgian free legal aid scheme is entitled to payments by his client (= child in need); sometimes more money is requested by the Belgian attorney-at-law than maintenance payments have been collected from the debtor.

BELARUS

- (a) There is no sufficient data on the receiving agencies and their requirements from other States parties (even not all their are known to the depositary).
- (b) There is a very little experience in acting as a receiving agency.

BELGIQUE – Le principal problème rencontré en tant qu’Autorité expéditrice est la constitution d’un dossier complet. C’est également le principal problème rencontré par l’Institution intermédiaire belge.

CHILE – As Transmitting Agency, we have experienced some problems with the claims filed in France, Belgium and Portugal, which countries, given their particular construction of the Convention, request that the documentation submitted by the Transmitting Agency includes a judgement or court decision on maintenance, rendered by a court of the Requesting or Requested State. Failing such judgement or decision, the Receiving Agency in such countries can only seek an amicable solution to maintenance recovery.

We have also had some difficulties in Sweden, since, as from December 1997, it modified its laws on free legal aid and demands that spouses claiming maintenance bear counsel’s fees in Sweden.

As Receiving Agency, our main problems are to determine the whereabouts of the respondent and his/her place of work, and to remit maintenance payments, which never amount to the sum claimed.

CZECH REPUBLIC

- (a) inactivity of the receiving agencies in some responding states;
- (b) we have not had any principal problems.

ESTONIA – Problem is a lack of knowledge how the other countries deal with maintenance cases.

FINLAND – No reply.

FRANCE

- (a) En tant qu’Autorité expéditrice, il convient de relever que la convention est peu ou pas appliquée par un certain nombre d’États.
- (b) En tant qu’Institution intermédiaire, on peut noter:
 - des difficultés à obtenir des dossiers complets attestant du respect des droits de la défense c'est-à-dire du principe du contradictoire, du double degré de juridiction, la preuve est rapportée par la preuve des assignations en justice, des significations des jugements et des certificats de non-appel.;
 - les certifications des documents juridiques ne sont pas faites régulièrement.

Par ailleurs le traitement des dossiers présentés pourrait être amélioré dans les cas suivants:

- Lorsqu'une demande de recouvrement est formulée au titre d'une réévaluation de la pension, il est indispensable d'avoir communication des étapes antérieures de la procédure (notamment de la décision ayant fixé la pension).
- Une meilleure qualité des traductions permettrait une meilleure compréhension.

GERMANY

(a) Some transmitting agencies report significant problems with the recognition and declaration of enforceability of German maintenance decisions abroad. Other countries refuse to bring an action for the claimant. The transmitting agencies also complain that maintenance applications are often processed very slowly. Enquiries from the transmitting agencies as to the stage of processing are not infrequently either not answered at all or only answered after six months or more. These replies from the foreign receiving agencies often consist merely of the statement that the enquiry as to the stage of processing has been forwarded to a foreign court.

(b) The German receiving agency reports that some foreign transmitting agencies do not carry out an examination of the applications with respect to legal considerations, and that enquiries from the receiving agency are either not replied to or only replied to after several reminders. Questions from the receiving agency as to the law of the country in question are sometimes not answered at all, or passed on to the claimant, who is not able to answer the questions. Enquiries as to the facts of the case are often only answered after three to four months.

HUNGARY

(a) Our problem arose in connection with Sweden's practice. Though Sweden is a party both to the 1958 Hague and the New York Conventions, they are not ready to modify a Hungarian decision on maintenance having recognised in Sweden. Therefore the Hungarian creditor has to file a petition for raising the amount of maintenance at the Hungarian court, and only after the Hungarian decision becomes final (which takes considerable time, having in mind that in the Hungarian procedure the defendant living abroad has to be summoned, documents has to be served on him, and often legal assistance is necessary from the foreign court), the exequatur procedure can start in Sweden. This practice is much more cumbersome than those with other states, where the recognised Hungarian order may be modified by the foreign court directly in accordance with the New York Convention.

(b) As receiving authority we experience most often the problem that the debtor stays at an unknown place or has such a minimum income or eventually no property at all that the collection of the support is hopeless.

IRELAND

- (a) Lack of information concerning the procedures and documentary requirements in receiving agencies.
- (b) Insufficient information/documentation being received. However, in such cases a request would be made to the transmitting agency. It adds to delay.

ISRAEL – The principal problems which we experience are in the area of communications with other Contracting States and in delays caused by slow transfer of documents and response to correspondence.

ITALIE – Les principaux problèmes sont ceux relatifs à dans l'exercice de la fonction d'institution intermédiaire et consistent en la difficulté de recevoir, de la part de certaines Autorités étrangères, les pièces requises et surtout des traductions compréhensibles; par ailleurs le service est souvent compliqué par la multiplicité d'organes ayant le rôle d'Autorité expéditrice dans certains pays adhérant à la Convention de New York.

JAPAN – No reply.

LATVIA – No reply.

LUXEMBOURG – Le principal problème rencontré tient essentiellement à l'insolvabilité des débiteurs d'aliments (qu'elle soit organisée ou non).

A signaler toutefois que même des tentatives de recouvrement restées infructueuses, par suite de l'impossibilité matérielle de procéder à un quelconque recouvrement, peuvent profiter au créancier d'aliments, dans la mesure où sur le vu du résultat de la demande de recouvrement il y aura le cas échéant possibilité d'obtenir l'avance des aliments par un organisme public en lieu et place du débiteur défaillant.

MAROC

- (a) Lenteur de la procédure, insolvabilité du débiteur, transaction qui ne satisfait pas le créancier et problème de traduction des documents.
- (b) Localisation du débiteur, insolvabilité du débiteur et problème de reconnaissance de décisions étrangères.

MEXICO – The principal problem according with our experience in dealing with cases is that the documents that are usually not accompanied by their translation into Spanish. Other is that documents are not legalised or apostilled.

MONACO – Aucun précédent en tant qu'autorité expéditrice. Simples difficultés pratiques dans des cas isolés pour identifier le mandataire du créancier devant recevoir les règlements.

NETHERLANDS

(a) Some authorities still require (partial) legalisation / apostilles, or charge judicial or execution costs, or require translation of all documents in their language.

Some authorities can or will not obtain a decision recognising arrears or require new proceedings instead of obtaining the recognition and the enforcement of the decision by a Dutch court.

Some other authorities are not willing to start proceedings if there is no decision by a Dutch court.

NEW ZEALAND – The principal problems concern the non-standardisation of forms and the manner in which the information on which the application relies is presented. (For example, the New Zealand Courts will not accept evidence presented in a photocopied hand-written letter from the applicant.)

NORWAY

(a) The major problems that Norwegian authorities experience as the transmitting agency are as follows:

- paternity;
- the requested State does not accept confirmed copies, but demands the original form;
- the requested State claims an enclosed order, even if such an order does not exist;
- Norwegian authorities are dependent on an order or a written agreement in order to keep the accounts. In some cases the requested State will not make an order, but solely propose a monthly maintenance payment.

(b) As the receiving agency we have one major problem:

- In relation to States that are not members of the Hague Conventions, they do not accept that according to Norwegian legislation we may not recognise foreign orders unless this has as its basis an agreement that is in force for both States concerned. In such cases we make our own maintenance order in accordance with the Norwegian Children's Act. Then we are able to enforce the order according to the Norwegian Maintenance Enforcement Act and transfer the money to the requesting State.

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.

ROUMANIE

(a) En tant qu'Autorité expéditrice nous rencontrons des problèmes quand l'Institution intermédiaire ou l'instance de jugement de l'Etat du parent débiteur, ne reconnaît pas toujours l'arrêt de l'instance judiciaire roumaine d'obligation au paiement des aliments sous l'aspect du montant pour les valeurs supérieures de la pension (par exemple 500 ? 1000 DM par mois, ou 1000 FF par mois).

(b) En tant qu'institution intermédiaire on a des difficultés dûes aux longs délais de jugement, des difficultés concernant l'identification du domicile du débiteur, de son lieu de travail, de ses revenus.

SCOTLAND

- (a) Main problem is lack of information about what documents are required and about procedure in requested country.
- (b) Main problem is lack of knowledge about payer's whereabouts.

SLOVAK REPUBLIC

- (a) As the transmitting agency we would welcome more detailed information from our counterparts on the basic documents required to substantiate the claim of the Slovak claimants. The other observation is that the enforcement proceedings before the foreign courts sometimes seem unreasonably long.
- (b) As the receiving agency we do not experience substantial problems with our foreign counterparts.

SWEDEN

- (a) i) Some countries do not answer our applications or are very passive.
- ii) The interpretation of the Convention is not uniform:
 - some countries do not consider it possible to combine the New York Convention with the conventions of recognition and enforcement;
 - some countries claim unable to help establishing a new writ for recovering of maintenance; instead they request a Swedish writ in order to be able to act;
 - problems for us to have a foreign judgment enforced in that very country, i.e. France;
 - Poland does not recognize our judgments on parenthood or divorce. This leads to extra procedures in Poland before the recovering of maintenance can commence there.
- (b) Difficulties in obtaining the completations we ask for.

SRI LANKA – Maintenance claims reciprocals enforcement Act No 54 of 1998 was passed by Parliament and certified on 27.11.1998. The order required to make under section 2 of the Act gazeting countries to which the Act applies will be gazetted shortly.

SUISSE – Sans vouloir clouer tel ou tel Etat au pilori, nous établissons ci-joint une liste de problèmes que nous rencontrons davantage avec certains Etats qu'avec d'autres, et répondons ainsi simultanément à la question 22:

- (a) - trop longue procédure de recouvrement;
- procédure de recouvrement peu efficace, inefficace ou inexistente, peu ou pas de succès, même pour des montants modestes;
- aide juridictionnelle peu satisfaisante;
- réduction (trop) massive de la contribution d'entretien et des arriérés;
- problèmes de devises;
- traduction demandée pour la totalité du jugement, alors que l'on pourrait réduire les frais en ne demandant que la traduction du dispositif et év. les motifs strictement liés à la fixation du montant d'entretien.

Il nous paraîtrait essentiel d'être plus intransigeant auprès des débiteurs et d'utiliser davantage les moyens de la transaction sur les modalités de payment (art. 6 de la Convention de New York), si le montant fixé par un juge suisse s'avère être trop élevé au vu de la nouvelle situation du débiteur, examinée en détail; ou alors d'utiliser tous les moyens de saisie, voir d'action pénale disponible si le débiteur se montre récalcitrant. Le but étant que le débiteur verse TOUT ce qui lui est réellement possible pour ses enfants créanciers jusqu'à concurrence du montant fixé.

- b) - le montant de la contribution alimentaire n'a pas été fixé;
- le montant de la contribution alimentaire a été fixé en pourcentage du salaire du débiteur (une poursuite n'est alors pas possible selon notre loi);
- la traduction n'a pas été faite dans la langue correspondante;
- les autorités locales refusent, dans certains (rares) cas, de s'investir davantage pour les créanciers à l'étranger sur la base de la Convention de New York que pour les créanciers domiciliés en Suisse sur la base de la législation locale.

UNITED KINGDOM, ENGLAND AND WALES

(a) As a transmitting agency the most common problem that we experience is being told by the receiving agency that our application is incomplete, and that additional documents are needed. This inevitably causes a delay in the proceedings.

(b) As a receiving agency the most common problem that we experience is that part, if not all, the application has not been translated.

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

1995/96	52 applications received from other countries	12 applications sent to other countries
1996/97	45 applications received from other countries	19 applications sent to other countries
1997/98	62 applications received from other countries	23 applications sent to other countries
June-December 1998	33 applications received from other countries	29 applications sent to other countries

BELARUS

Incoming: Poland – 1 case. The result is positive.

Outgoing: Israel – 4.

Algeria – 2.

Finland – 1.

Yugoslavia – 1.

Italy – 1. Only the last one is positive. There is no reaction from other States parties.

BELGIQUE – See annex No 1.

CHILE

Incoming cases per year: About 40. Positive results: 1%

Outgoing cases per year: About 200. Positive results: 5%

ESTONIA – Yes, we have. In 1998 came in 1 case from Iceland and went out 3 cases : 1 to Canada and 2 to Germany.

FINLAND – See annex No 2.

GERMANY – Statistical information on the number of outgoing applications under the New York Convention has not been kept since 1995.

With respect to the number of incoming requests, see annex No 3.

HUNGARY – In 1998 381 outgoing cases under the New York Convention. Most of the cases concern Germany and Austria.

It is a time-consuming process to gather statistical data since the Ministry for Social Welfare and Family Affairs only acts as a receiving authority which then passes on the documents to the competent guardianship authorities. From here the case may pass onto the court enforcement phase in the event that the obligor fails to pay up voluntarily.

IRELAND

Incoming Cases - from 25/11/95

Transmitting Agency	No of Orders Recognised/ Established	No of Cases Withdrawn	No of Cases Ongoing	Total
Australia	2	1	1	4
Norway	-	-	2	2
	2	1	3	6

Outgoing Cases - 25/11/95

Transmitting Agency	No of Orders Recognised/ Established	No of Cases Withdrawn	No of Cases Ongoing	Total
Australia	1	-	3	4
Austria	1	-	-	1
Belgium	-	-	2	2
France	-	-	1	1
Greece	-	1	-	1
Germany	-	1	2	3
Netherlands	-	-	4	4
New Zealand	-	-	1	1
	2	2	13	17

Average No of cases per year – 7.

ISRAEL – We do have statistics indicating the number of cases brought under the New York Convention. In 1998 our receiving agency has handled eighteen (18) applications - to date not all have been brought to conclusion. Since the beginning of 1999 we have received seventeen (17) applications.

MAROC

Etats impliqués	Nombre de dossiers enregistrés de 1990 à 1998	En tant qu'autorité expeditrice		En tant qu'autorité intermédiaire	
		Dossiers en cours	Dossiers classés	Dossiers en cours	Dossiers classés
FRANCE	187	50	36	43	58
BELGIQUE	16	1	3	9	3
PAYS-BAS	12	0	0	8	4
ALLEMAGNE	6	0	0	4	2
POLOGNE	7	5	2	0	0
ROUMANIE	2	1	1	0	0
ESPAGNE	2	0	0	2	0
SUISSE	1	0	0	1	0
TUNISIE	1	0	0	1	0
ITALIE	1	0	0	1	0

NETHERLANDS – See annex No 4.

NEW ZEALAND – New Zealand receives very few cases from Convention countries. In 1998 11 applications were received from Convention countries. No requests were received for the transmission of an application to a Convention country.

ROUMANIE – Des 530 dossiers enregistrés par le Ministère de la Justice en tant qu'Autorité expeditrice, 120 dossiers sont déjà solutionnés.

La plupart des affaires concernent l'obtention des aliments de: l'Allemagne, l'Autriche, la France, la Suède, l'Australie, la Suisse, l'Italie, l'Espagne, la Grande Bretagne, la Grèce, la Turquie etc.

L'Institution intermédiaire n'a pas des statistiques.

SLOVAK REPUBLIC – Under the available statistics, in 1998 the Centre registered 425 applications under the New York Convention. From this number 73 were incoming application and 351 outgoing applications. As regards other States, the Centre dealt with 1.123 cases, from which 771 were outgoing and 352 were incoming applications.

There are no statistics available as to the outcome.

SWEDEN – See annex No 5.

SUISSE – See annex No 6.

UNITED KINGDOM, ENGLAND AND WALES – In the calendar year 1998, the REMO section received a total of 107 cases under the New York Convention. This figure includes both incoming and outgoing cases. We have no figure for the other states involved in these cases.

UNITED KINGDOM, SCOTLAND – During calendar year 1998, Scottish Courts Administration received 8 applications and transmitted 2 applications under the New York Convention.

Section B – Questions adressées aux Etats non parties / 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?

JAPAN – The domestic necessity for ratification is lacking, and the convention's scheme which national authority represents the claim of private party is incompatible with the domestic legal system.

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 US 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 aid.
- 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?

UNITED STATES OF AMERICA – Ratification of the New York Convention would be a more attractive proposition for the United States if:

- the Convention made it clear that all cases, including those cases where paternity was an issue, were included within its procedures with either recognition of an existing order or the obtaining of a new order as automatic alternatives;
- assistance in enforcing or obtaining an order, including legal assistance when necessary, was available without a means test;
- the Convention set forth required steps of procedure to ensure that the Parties would, through a designated agency or procedure, effectively take action to obtain or recognise and enforce.

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?

LATVIA – The most important issues in Section A are as follows:

A 1. –

A 2. –

A 3. In accordance with the bilateral agreements of the Republic of Latvia on judicial assistance and in accordance with Latvian Law on Civil Procedure (CPL) there is necessity for following documents:

- judgement with notice on its entry into force;
- court document proving that the debtor was duly informed about time and place of the proceeding;
- if judgement was partially enforced, than the document with information about date and time this judgement was enforced in this Contracting State;
- the above-mentioned documents have to be submitted in 2 copies;
- certified translation of these documents into Latvian or into language which is provide for by the international agreement.

A 4. –

A 5. –

A 6. –

A 7. –

A 8. –

(a) Claimant can get the legal assistance from attorney or from practice lawyer. Other judicial institutions have no right to give a legal assistance.

(b) There are different forms of legal assistance. For example, judicial consultations, preparation or drawing up of judicial documents etc.

(c) No.

(d) First we would like to remark that only adults from the age of 18 years have the civil procedural capacity in Latvia. It means that child may not himself submit in the court the claim on maintenance obligations. Than the claim may be submitted only by his legal representative (in accordance with art. 72 CPL).

If claimant wants to have support from defendant (usually from spouse or from ex-spouse) for child or for himself (or herself) than there is no necessity to submit two separate claims because in this case there are the same parties. In this situation claimant have a right to unite these claims (art 134 CPL). But, If claimant has submitted two separate claims than the judge can unite these cases in one proceeding.

A 9. In accordance with article 43 CPL the creditor in the maintenance obligation case is proceeding costs free.

A 10. The proceeding language in Latvia is Latvian (art. 13 CPL). Therefore the parties always shall submit certified translation of the foreign documents into Latvian.

A 11. In courts - only in Latvian (in accordance with CPL).

In state institutions - in foreign languages as well - in English, German, Russian and French (in accordance with the Law on Languages).

A 12. –

A 13. It is used in Latvia that the judge in the same time of carrying the resolution on recognition and enforcement of the foreign judgement changes the foreign currency into Latvian currency - lats.

A 14. –

A 15. –

A 16. –

A 17. –

A 18. –

A 19. In accordance with art. 63 Law on Credit Institutions the credit institution may inform the court about customer's account in maintenance obligation case only when there is no other wage or property against which the collection could be done.

A 20. –

A 21. –

A 22. Latvia has chronic difficulties in the field of implementation of the bilateral agreement between Latvia and Russia on judicial assistance and relations in civil, family and criminal matters. The problem is that Russia does not examine in normal time period the requests of Latvian creditors on recognition and enforcement of Latvian judgements in maintenance obligations. The statistics shows that: in 1998 from Latvia to Russia were sent 55 requests. During the year 1998 Russia examined none of them while Latvia has examined 50 from 71 requests sent by Russia.

PARTIE II – LES CONVENTIONS DE LA HAYE DE 1958 ET 1973 CONCERNANT LA RECONNAISSANCE ET L'EXECUTION DE DECISIONS RELATIVES AUX OBLIGATIONS ALIMENTAIRES / 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 / 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?

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?

AUSTRIA

Question 1 – Has no practical importance; the law that governs a limitation period is the law of the habitual residence of the child (Art.1 of the Hague Convention 1956 on the Law Applicable to Maintenance Obligations concerning Children) or - if the Convention is not applied - the law of the nationality of the child (according to Austrian private international law).

Question 2 – See question 1.

BELGIQUE

Question 1 – Seuls les délais de procédure, directement relatifs au déroulement de l'action, sont fixés par la loi belge. Les autres délais, et, en l'espèce, le délai pour engager une action en *exequatur*, sont rattachés à la loi applicable au fond.

Question 2 – La loi belge s'applique à la prescription de l'exécution forcée du recouvrement d'une obligation alimentaire. L'exécution forcée d'une obligation alimentaire ne peut avoir lieu en Belgique que si le créancier dispose d'un titre exécutoire belge à l'encontre du débiteur. Selon le droit belge, un titre garde, en principe, sa force exécutoire pendant trente ans.

Les arrérages des pensions alimentaires se prescrivent toutefois par 5 ans (art. 2277 Cciv.).

CZECH REPUBLIC

Question 1 – The limitation periods shall be governed by the Czech law. There is no limitation period in respect to the right of maintenance according to the Czech law (Family Code, Art. 98). However, this right can be granted only as of the day on which the respective judicial proceedings have been initiated; in the maintenance case of a minor child it may also be granted retroactively for the maximum period of three years back from that day.

There is a limitation period (three years) in respect to the periodical payments; however, in cases involving rights validly adjudged or acknowledged in written form, this limitation period shall apply only to the payments which became due after the order became final or after the acknowledgement (Civil Code, art. 110, par. 3).

Question 2 – See above. If the right is adjudged under a valid judicial order, a limitation period of ten years shall operate (Civil Code, art. 110, par. 1). *I.e.* in respect to the amounts payable until the order has become valid a limitation period of ten years and, in respect to the periodical payments after this day a limitation period of three years operates.

ESTONIA

Question 1 – Prescription shall not apply to claims arising from family relationships. The limitation period is regulated by the Law on the General Principles of the Civil Code and the Family Law Act.

Question 2 – The writ for the recovery of maintenance shall be executed immediately. The execution of judgements is regulated by the Code of Civil Procedure and the Code of Enforcement Procedure.

FINLAND

Question 1 – The limitation period is governed by the law concerning child maintenance. Maintenance may be ordered to be paid retroactively at most for the year preceding the bringing of action. In case action has been brought within one year from the establishment of paternity, the father of the child may be ordered to pay maintenance from the date on which the child was born, but not for more than five years from the bringing of action.

Question 2 – The liability to pay maintenance expires in five years from the beginning of the following year after the date on which the payment was due.

FRANCE

Question 1 – Cette prescription relève, selon la jurisprudence, de la loi française. C'est la règle générale, qui fixe le délai pour agir à trente ans, qui est appliquée.

Question 2 – Même réponse.

GERMANY

A civil law entitlement is in principle subject to a limitation period. Entitlement to arrears of maintenance payments is subject to a limitation period of four years (section 197 of the Civil Code). An obligation is in arrears if it has become due for payment and is still outstanding. The limitation period commences even if the amount in arrears has not yet been fixed.

Maintenance claims which are not geared towards periodic payments are, however, subject to a limitation period of 30 years (section 195 of the Civil Code). These are, in particular, the entitlement to payment of an advance on litigation costs and the general entitlement to performance for exceptional unusually expensive necessity (section 1613 subsection 2 of the Civil Code).

Legally established claims are also subject to a limitation period of four years (section 218 subsection 2 of the Civil Code).

Subject to certain conditions, the running of the limitation period is suspended (section 202 ff. of the Civil Code) or interrupted (section 208 ff. of the Civil Code). If the running of the limitation period is suspended, the limitation period ceases to run whilst the reason for suspension continues to exist. The running of the limitation period with respect to maintenance obligations between parents and children is, for example, suspended whilst the children are minors (section 204 of the Civil Code).

If the running of the limitation period is interrupted, the time which elapsed previous to the interruption is not taken into account; a new limitation period can only commence on termination of the interruption (section 217 of the Civil Code). The limitation period is interrupted by, for example, the filing of an action for maintenance (section 209 ff. of the Civil Code).

HUNGARY

Question 1 – The rules of prescription are contained in the Civil Code (Act IV of 1959). In civil law the debts are prescribed during 5 years, this is the general period of prescription. The prescribed claims may not be enforced through the judicial way. The rules of Hungarian law shall apply to the prescription.

Question 2 – The right of enforcement shall be prescribed, if the obligee fails to perform the act required for the proceedings of enforcement *during the period fixed for the prescription of the claim* serving as basis for enforcement. The prescription of the right of enforcement shall be interrupted by the obligee's application for the proceedings of enforcement. The Hungarian law shall be applied to the period of prescription.

ITALIE

Question 1 – La Cour de Cassation, par jurisprudence constante, a pendant longtemps retenu que l'action en exequatur d'une sentence étrangère tombe sous le délai de prescription décennal de l'*actio iudicati*: le fait que le droit soit exercé par l'Institution intermédiaire est sans influence; en effet cette dernière agit comme substitut judiciaire du titulaire du droit; par conséquent, aux fins de la prescription du droit à l'exequatur, il faut assumer comme délai initial celui en vigueur vis-à-vis du sujet substitué sur le plan

judiciaire, à savoir le moment où la sentence étrangère a acquis force de chose jugée (Cass. 1994 n. 7148; 1989 n. 4165).

Récemment les Chambres Unies de la Cour de Cassation, par référence à la situation législative précédente à la loi n. 218 de 1995 ont énoncé un principe différent, en estimant que l'action d'exequatur de la sentence étrangère ne tombait pas en prescription pour les instances (et délibérations s'ensuivant) relatives aux obligations alimentaires vis-à-vis de mineurs, et ceci au sens de la Convention de La Haye du 15 avril 1958, s'agissant «d'une procédure autonome visant à obtenir un prononcé avec des effets simplement procéduriers et dépourvue de caractère constitutif» et en tant que telle imprescriptible (Cass. n. 8590- 1996).

Par référence à la discipline introduite par la loi n. 218 de 1995 la Cour de Cassation a relevé qu'on ne peut même pas envisager une question de prescription de l'action d'exequatur, l'art. 64 de la loi disposant que la sentence étrangère est automatiquement reconnue sans besoin de procès juridictionnel. Toutefois des perplexités ont été soulevées par certains commentateurs par référence à la procédure par laquelle on demande la reconnaissance du verdict étranger de condamnation et sa qualification de titre exécutoire, car dans ce cas l'action serait de «caractère constitutif» et en tant que telle sujette à tomber en prescription.

Question 2 – La prescription de l'exécution forcée est régie par la loi du lieu d'exécution en application des critères fixés par la loi n. 218 de 1995.

LUXEMBOURG

Question 1 – Aux termes de l'article 2277 du code civil luxembourgeois «se prescrivent par cinq ans les actions de payement des arrérages des pensions alimentaires».

Il y a certains flottements dans la jurisprudence luxembourgeoise concernant la portée et la nature de cette prescription.

Concernant la nature de la prescription la dernière décision en date, connue du soussigné, est un arrêt du 10 juin 1998 rendu par la 1^{re} chambre de la Cour d'appel. Ledit arrêt retient que la prescription de l'article 2277 du code civil est essentiellement basée sur la considération d'ordre public que constitue la protection du débiteur contre le danger de l'accumulation des dettes. Même un aveu du non-paiement n'empêche pas le débiteur d'en bénéficier.

Pour ce qui est de la portée de la prescription, il y a lieu de relever que certaines décisions de justice:

(a) n'appliquent la prescription quinquennale de l'article 2277 du code civil qu'aux pensions alimentaires arrêtées par convention. Y échappent les pensions alimentaires établies par un jugement (Tr. arr. Diekirch 10.11.1987).

(b) n'appliquent la prescription quinquennale que quand la personne qui reçoit la pension en est créancière pour elle-même.

Partant du principe que la pension alimentaire est indisponible, parce que les droits alimentaires sont inséparables de la personne du créancier et considérés comme lui étant

indispensables, une renonciation pour autrui ne se conçoit pas (Justice de paix Esch-sur-Alzette 25.4.1986).

(c) n'appliquent la prescription quinquennale qu'aux créances qui sont invariables à chacune des échéances. Ne tombent pas sous l'application de l'article 2277 du Code civil les arrérages d'une pension alimentaire sujette à révision (Justice de paix Esch-sur-Alzette, 19.10.1983).

Il y a donc lieu de nuancer la réponse à la question 1. Il se recommande en tout cas de ne pas trop attendre avant d'entamer des poursuites judiciaires en recouvrement d'arrérages de pension alimentaire.

Question 2 – La seule limite à l'exécution forcée peut résulter de l'article 87 du nouveau code de procédure civile qui dispose que le jugement rendu par défaut est non avenu s'il n'a pas été notifié ou signifié dans les six mois de sa date.

NETHERLANDS

Question 1 – There is no case law on the issue. The Netherlands delegation agrees with the view taken by the 1995 Special Commission that the limitation period of an action for enforcement is governed by the law of the country of origin of the judgement (Cf. General conclusions of the 1995 Special Commission, par. 27). Under Dutch law this is 20 years, or 5 years in the case of periodical payments.

Question 2 – Having regard to a decision by the Supreme Court of 10 April, 1992, NJ 1992, 460, the Netherlands delegation agrees with the view that the limitation period for the execution of a writ is governed by the law of the place of recovery (cf. General conclusions of the 1995 Special Commission, par. 27). In Dutch law there is no specific provision. Consequently, the general provisions regarding limitation periods apply. The period is 20 years, or 5 years in the case of periodical payments.

NORWAY

Question 1 – If the creditor requests public assistance, according to the Enforcement of Maintenance Obligations Act, the National Enforcement Centre may, as a general rule, undertake to enforce maintenance payments which fell due during the last year before the application for enforcement was handed over to the Norwegian or foreign authorities. If special circumstances so warrant, the time limit may be extended to 3 years. These restrictions on the duties of the Maintenance Enforcement Center have mainly practical reasons. A maintenance order may still be enforceable during the general channels of enforcement.

In addition to the limitation on payments which may be enforced by the Maintenance Enforcement Center, Norwegian law prescribes time limits within which attempts must be made to enforce a maintenance order. Passivity in this respect means that the order becomes unenforceable.

The general limitation period for maintenance obligations is 10 years according to our Limitation Act. If the maintenance order is valid according to a foreign decision it will be normally be recognised and enforced in Norway. However, if the requesting state does not have any limitation period for maintenance obligations or the period of limitation is

extremely long-lasting, Norwegian authorities may consider the decision in question to be unenforceable due to our public policy.

If a maintenance order has become unenforceable due to inactivity during the prescribed limitation period according to Norwegian law, we may not send the decision to a receiving State even if the obligation might be valid according to the legislation of that State.

Question 2 – Ref. to No 1 above.

POLAND

Question 1 – 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.

Question 2 – See above.

SLOVAK REPUBLIC

Question 1 – Yes, the limitation period does operate under the Slovak law.

Question 2 – It is not quite clear what exactly is the substance of this question. If it means that once execution has been ordered, whether limitation period applies to the possibility of execution, then there is no such limitation period. Once execution has been decided upon, any limitation period (under Q.1. above) stops running.

SWEDEN

Questions 1 and 2 – Yes, there is a five year limit (Chapter 7, Section 9 of the Code of Parenthood and Guardianship). The limit is valid in court proceedings and in execution of a writ.

SUISSE

Question 1 – L'art. 148 al. 1 de la Loi fédérale sur de droit international privé (LDIP) dispose que le droit applicable à la créance en régit la prescription et l'extinction. De même, ce droit régit, selon la doctrine suisse, la prescription de l'action en reconnaissance et en exécution d'une décision étrangère; le for suisse applique la *lex causae*. Si par exemple, la *lex causae* était la loi suisse, on appliquerait l'art. 137 al. 2 du Code des obligations (CO), selon lequel la prescription, interrompue par la constatation judiciaire d'une obligation, recommence à courir dès l'interruption. Ce nouveau délai de prescription est toujours de dix ans.

Question 2 – *Cf.* réponse ad 1 ci-dessus. La Loi fédérale sur la poursuite pour dettes et la faillite (LP) ne prévoit pas de délai de prescription spécifique.

UNITED KINGDOM, ENGLAND AND WALES

Question 1 – All maintenance orders received should state the date that the order is due to cease. Maintenance orders made in England and Wales usually state that the order will cease on the child's 17th birthday, or until the child ceases full-time education. The reciprocal enforcement of maintenance in the United Kingdom is governed by the Maintenance Orders (Reciprocal Enforcement) Act 1972, and the Hague Convention falls under Part I of that Act.

Question 2 – Once an enforcement warrant has been issued, it remains in being until action has been taken. However, case law says that any arrears more than a year old must be written off unless it can be proved the defendant wilfully refused or culpably neglected to make payments.

UNITED KINGDOM, SCOTLAND

Question 1 – No limitation period.

Question 2 – No limitation period.

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?*

AUSTRIA – By a specific law suit according to Art.35 of the Enforcement Act if the inability has occurred after the granting of the foreign court order.

BELGIQUE – Outre les voies de recours ouvertes au débiteur dans le cadre des procédures d'exécution, la loi belge prévoit que certains ne peuvent, en aucun cas, faire l'objet d'une saisie.

CZECH REPUBLIC – They do not.

ESTONIA – At the request of a person paying support, a court may partially or fully release the person from payment of the arrears of support ordered by the court if the arrears arose due to illness of the person or upon other persuasive circumstances as established by the court and the financial situation of the person does not permit payment of the arrears.

FINLAND – In the enforcement procedure before the Court of Appeal, the maintenance debtor may not invoke his insolvency. Only at the execution stage may he invoke insolvency, if he is for example unemployed or W. There is a statutory amount of money, defined by the cost of living index, which is reserved for the maintenance of the debtor himself and his family and which thus cannot be executed.

FRANCE – Oui. Le débiteur peut solliciter un délai de grâce du juge de l'exécution.

GERMANY – Where the debtor does not have any income or assets which can be attached, compulsory enforcement is not possible for this reason; however, this does not have any effect on the continued existence of the maintenance claim itself.

HUNGARY – Compliance with child support obligation is mandatory. Enforcement legislation (Act LIII. of 1994) regulates cases of intermission in, and the restriction, suspending and termination of enforcement.

The court of law will suspend enforcement in the event that the party petitioning for enforcement so requests, provided that the said is not in violation of the rights of a third party. The court of law may also suspend enforcement upon the debtor's request, albeit the said will only be possible in exceptional cases, in the event that the circumstances of the case specifically justify such a decision.

There will be an intermission in enforcement in the event that

- the debtor possesses no assets that may be seized, or the seized assets could not be sold off;
- the debtor has been granted deferment, or the court of law granted permission for compliance in instalments.

ITALIE – A la suite de la procédure d'exécution, le débiteur peut s'opposer à l'exécution en vue de contester le droit de la partie demanderesse de procéder à l'exécution forcée (inexistence du titre, crédit tombé en prescription). Il ne peut toutefois pas faire valoir son incapacité à payer les aliments, s'agissant d'une question de fond couverte par la chose jugée.

LUXEMBOURG – En principe l'exécution forcée ne peut se heurter qu'à l'incapacité matérielle de payer du débiteur.

L'article 1244 du code civil prévoit toutefois la possibilité pour les juges, en considération de la position du débiteur, et en usant de ce pouvoir avec une grande réserve, d'accorder des délais modérés pour le paiement et de surseoir l'exécution des poursuites, toutes choses demeurant en l'état.

Au regard du fait que les créances alimentaires peuvent être récupérées, dans le cadre d'une saisie sur la rémunération ainsi que sur les pensions et rentes, même sur les portions inaccessibles et insaisissables des rémunérations, pensions, rentes et indemnités de chômage complet, il n'est guère de chances de voir un débiteur d'aliments obtenir en la matière des délais de grâce.

NETHERLANDS – The debtor can always try to have the original order modified, but in that case he should start proceedings again. Normally a debtor will not need to claim inability to pay, because of the statutory provisions that prevent a certain percentage of a debtor's income from being attached.

In a decision by the Supreme Court of 19 April, 1991, NJ 1991, 592, it is stated that the debtor, in the enforcement proceedings, may invoke circumstances implying that his debt has been wholly or partially extinguished or that he can no longer be reasonably required to pay.

When the central authority is trying to arrange payments with the debtor (before or after the recognition or a declaration of enforceability), his financial situation is always taken into account.

NORWAY – If the debtor can prove by legal documents that he is partially or entirely unable to pay, the collection of maintenance payments will be reduced or suspended for the period of economic difficulties. The debt will then increase and be subject to collection at a later stage.

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).

SLOVAK REPUBLIC – Yes.

SWEDEN – Yes. If, it turns out that the debtor's income is below a certain minimum level and that he has no attachable goods, enforcement cannot be performed. In that case, one has to rely on him paying voluntarily.

SUISSE – Avant qu'une telle procédure soit engagée, il peut le faire de manière informelle. Dans le cadre d'une poursuite, il ne pourra le faire valoir dans un premier temps. Il en aura la possibilité seulement au stade de la saisie des biens ou du salaire, ou lors d'une poursuite ultérieure.

UNITED KINGDOM, ENGLAND AND WALES – If a respondent is unable to comply with a maintenance order due to his financial situation, then it is open to him/her to apply to the court for a downward variation of the order.

UNITED KINGDOM, SCOTLAND – Order will be enforced if debtor has enough assets. Debtor may appeal against registration of order if he does not have enough assets. Alternatively he can apply to have the order varied.

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?*

AUSTRIA – No modification possible (Austria is not yet a State Party to the 1973 Hague Convention)

BELGIQUE – La Belgique n'a pas ratifié la Convention de 1973.

CZECH REPUBLIC – They do not.

ESTONIA – Our proceedings allow for the possibility mentioned in Your question.

FINLAND – No.

FRANCE – Non.

GERMANY – Where a maintenance decision is to be recognised or declared enforceable in accordance with the *Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations*, the order is admitted for compulsory enforcement in that an execution clause is added to it on application. The debtor can appeal against the admission of compulsory enforcement by lodging a complaint and, in lodging this complaint, raise objections to the claim itself, to the extent that the grounds on which the objections are based did not come into being until after the decision was issued (sections 11 and 13 of the Act on the Implementation of International Recognition and Enforcement Treaties in Civil and Commercial Matters [*Gesetz zur Ausführung zwischenstaatlicher Anerkennungs- und Vollstreckungsverträge in Zivil- und Handelssachen*] (AVAG) of 30 May 1988).

If leave is given for compulsory enforcement on the basis of the maintenance order, the debtor can raise objections to the claim itself by means of an action against enforcement (section 767 of the Code of Civil Procedure). The precondition for this is that the grounds on which the objections are based only came into being:

- 1 after the period during which he could have filed a complaint against admission of compulsory enforcement has expired, or
- 2 after proceedings were concluded, in the case of an objection having been filed (section 15 of the AVAG).

HUNGARY – The court of law may modify the child support order - upward or downward modification of the amount thereof - based on deliberation in the event that material change has occurred in the circumstances of the debtor or the beneficiary.

ITALIE – Notre droit ne consent pas de modifier une décision étrangère émanée en application de la Convention de la Haye de 1973.

LUXEMBOURG – Aux termes de l'article 681 du nouveau code de procédure civile "la requête (en exequatur d'une décision étrangère) ne peut être rejetée que si la décision étrangère ne remplit pas les conditions prévues par la convention invoquée pour pouvoir être reconnue et exécutée. En aucun cas la décision étrangère ne peut faire l'objet d'une révision au fond."

NETHERLANDS – Only if there is a change of circumstances which precludes a revision of the merits at the stage of recognition of the original decision (see the decision of the district court of Arnhem, referred to on pages 54-55 of the Note prepared by Michel Pelichet and the comments on page 58).

NORWAY – According to our Children's Act, both parents may claim amendments if relevant circumstances have changed considerably (debtor's economy or family responsibilities).

If the debtor's income seems to be permanently raised, reduced or ceased, the creditor or debtor may claim a new decision. The maintenance sum may, if the income has changed 10% or more, be amended relating to future terms.

According to the Children's Act art. 65, Norwegian authorities may amend the decision if one of the parents or the child is residing in Norway. This competence may however be limited by the Lugano Convention art. 5 (2).

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.

SLOVAK REPUBLIC – No.

SWEDEN – No, only in the way described under 3.

SUISSE – Non. Nous nous conformons à l'art. 12 de la Convention.

UNITED KINGDOM, ENGLAND AND WALES – At present, our legislation does allow a court to modify the amount of a reciprocating country's order. However, the Hague Convention Order 1993 is currently being amended in order to remove this power.

UNITED KINGDOM, SCOTLAND – Yes, but this is currently being revised.

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?*

AUSTRIA – No, with the exception mentioned under question 3.

BELGIQUE – Le débiteur ne peut intenter une action en modification de la décision étrangère que dans la mesure où cette décision a, au préalable, fait l'objet d'une procédure d'exequatur en Belgique.

CZECH REPUBLIC – In general he could file for modification with the foreign court. In some cases provided for under the Czech Act on the International Private and Procedural Law (when the minor child is Czech citizen) or bilateral Conventions he could apply with the domestic court.

ESTONIA – Debtor is entitled to bring such a modification proceedings. The legal basis for this is the same as in the case of debtor claiming inability to pay.

FINLAND – When Helsinki Court of Appeal orders a foreign maintenance decision to be enforced, it shall not review the merits of the decision (The Hague Convention of 1973, Article 12). Thus the Court of Appeal does not amend the decision. Under the domestic law of Finland (Child Maintenance Act, section 11), the maintenance debtor may bring separate action for reducing the amount to be paid, if his solvency has significantly deteriorated or the circumstances of the child have changed in such a way that the reduction of maintenance liability can be considered reasonable. As regards children residing abroad, the legal provisions concerning forum are inadequate.

FRANCE – Lorsque les Convention de Bruxelles de 1968 ou de Lugano de 1988 sont applicables, les juridictions compétentes sont celles de l'Etat du domicile ou de la résidence habituelle du créancier d'aliments, ou si la demande est accessoire à une action relative à l'état des personnes, les juridictions compétentes pour en connaître selon la loi du for, sauf si cette compétence est uniquement fondée sur la nationalité d'une des parties.

Hors de ce cadre, le débiteur français peut toujours saisir une juridiction française, eu égard au privilège de juridiction établi par les articles 14 et 15 du code civil.

Le fondement de l'action est déterminé par la loi applicable.

GERMANY – The modification of a maintenance decision is possible in accordance with section 323 of the Code of Civil Procedure. It is not significant here whether the maintenance decision to be modified is a German maintenance decision, or if it is a foreign maintenance decision which has been recognised and declared enforceable in Germany.

The requirement is that a German court has jurisdiction for the modification. German law contains only a small number of express provisions relating to international jurisdiction. The provisions relating to local jurisdiction of German courts do however indicate whether, under German law, litigation is subject to national jurisdiction and whether international jurisdiction can be deemed to apply. In this respect, German international jurisdiction depends above all on the connecting factor of whether the respondent is resident in Germany. In addition, the nationality of the parties involved as well as perhaps other connecting factors relating to the facts of the case on which the litigation is based can, if applicable, be decisive.

If the respondent does not have his place of residence in Germany, but is resident abroad, German courts can, in rare cases, have jurisdiction if a particular national venue is appropriate.

The particular venue of the place of residence could come into question (section 20 of the Code of Civil Procedure) as a particular venue which could nevertheless justify the jurisdiction of the German courts for the modification of a maintenance decision in the case of the respondent not being resident in Germany. In addition, German courts could have jurisdiction if the parties have agreed on a venue (section 38 subsection 2 of the Code of Civil Procedure) or if the respondent took part at an oral hearing without objecting to a lack of jurisdiction.

The question of applicable law is judged on the basis either of international treaties (e.g. the Hague Conventions of 1956 and 1973 on the Law Applicable to Maintenance Obligations) or in accordance with German private international law. In both cases, the law applicable at the place of residence of the claimant is in principle to be applied.

HUNGARY – The debtor may initiate proceedings before the Hungarian court for the amendment of the foreign decision alleging that an essential change occurred in his/her social circumstances since the decision was passed, and he/she is unable to meet his/her obligation of support. According to the law decree No 13 of 1979 on private international law Hungarian courts have jurisdiction for all cases except for the ones that belong to prohibited jurisdiction. Since support matters does not fall to the area of prohibited jurisdiction, Hungarian courts have the right to proceed for the modification. The court shall act in accordance with the child's personal law.

ITALIE – Le débiteur a le droit d'intenter une action visant non pas à modifier la décision étrangère qui aurait reconnu son obligation alimentaire, mais à obtenir à l'avenir un autre prononcé qui lui serait plus favorable. Il s'agit donc d'une procédure fondée sur des faits autres que ceux qui ont déjà fait l'objet d'évaluation dans la sentence étrangère. Pour qu'il y ait juridiction du juge italien, il faut qu'il y ait un des critères visés dans la loi n. 218 de 1995.

LUXEMBOURG – La pension alimentaire étant en droit luxembourgeois toujours sujette à révision, le débiteur d'aliments peut intenter une action en modification de la décision fixant la contribution alimentaire. La compétence juridictionnelle est régie par l'article 5, 2° de la Convention du 27 septembre 1968 concernant la compétence judiciaire et l'exécution des décisions en matière civile et commerciale, ou les dispositions des articles 7 et 8 de la convention de La Haye de 1973 concernant la reconnaissance et

l'exécution de décisions relatives aux obligations alimentaires, combinées à l'article 43 du nouveau Code de procédure civile aux termes duquel les demandes en paiement ou en révision de pension alimentaire (à l'exception de celle qui se rattache à une instance en divorce ou séparation de corps) peuvent être portées, au choix du demandeur soit devant la juridiction du domicile du défendeur, soit devant celle de son propre domicile.

La demande en révision d'une pension alimentaire, en toutes matières, doit être fondée soit sur un changement dans les besoins du créancier, soit sur un changement dans les facultés contributives du débiteur.

NETHERLANDS – Articles 5/2 and 2 of the Brussels/Lugano Convention preclude him from doing so. Reference is made to the case law dealt with in the Note by Michel Pelichet and mentioned under 4 above).

NORWAY – If one of the parents or the child is living in Norway, our authorities are competent to modify even a foreign decision according to our Children's Act art. 65. Both parents may apply for such modification. In respect of an earlier foreign maintenance decision, the application will however be considered as a first-time application. According to the Lugano Convention art 5 (2), the debtor must, however, claim modifications before the foreign authority if the creditor resides in a member State of the Lugano Convention.

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.

SLOVAK REPUBLIC – Yes. The grounds are „change of circumstances“ and jurisdictional basis is Section 39 par. 1 of the Law on the Private International Law and the Procedure relating Thereto. A claim can be brought before a Slovak court by a foreign minor creditor against a Slovak debtor or by the Slovak debtor against the foreign minor creditor.

SWEDEN – Yes, on the ground that a change in circumstances calls for a change of the maintenance, or that the level of the maintenance has remained unchanged for six years. A maintenance agreement may be changed by a court decision, if the agreement is considered unreasonable.

Swedish courts can, according to case law, assume jurisdiction in matters where the defendant or the maintenance creditor is habitually resident in Sweden. In some cases jurisdiction may be assumed also if only the maintenance debtor is resident here, especially if the opposite solution might lead to a denial of justice.

SUISSE – En principe, une telle action doit être ouverte devant le juge étranger.

UNITED KINGDOM, ENGLAND AND WALES – Yes. Under our current legislation the court that registers the foreign maintenance order has the power to treat the order as if it were one made by them. Again, this power will be removed when the Hague Convention Order 1993 is amended. Section 9 of the Maintenance Orders (Reciprocal Enforcement) Act 1972 makes provisions for the respondent to apply to the registering court for a variation. The most common ground for variation is ‘inability to pay’.

UNITED KINGDOM, SCOTLAND – Yes.

Section B – Questions adressées aux Etats non parties / *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?

AUSTRALIA – Australian authorities are currently examining the 1973 Hague Enforcement Convention with a view to ratification.

AUSTRIA – No substantive difficulties to ratify the 1973 Hague Convention

BELARUS – Little number of States Parties as compared to that of the New York Convention.

But given a little effectiveness of the New York Convention in practice the accession to the 1973 Convention is feasible.

BELGIQUE – La ratification de la Convention de 1973 a été envisagée il y a quelques années. Le processus a toutefois été interrompu en raison de l'élaboration d'un projet de code de droit international privé qui couvrirait entre autres matières la problématique des obligations alimentaires.

L'opportunité de ratifier la Convention sera réexaminée lorsque le code aura été adopté.

IRELAND – The 1958 and 1973 Conventions on the recognition and enforcement of decisions relating to maintenance obligations do not provide for administrative assistance. Also these Conventions, as presently framed, do not offer anything that is not already provided under other Conventions (such as the Brussels, Lugano and New York Conventions) operated in the State.

ISRAEL – The reasons why Israel has not signed to either of the Hague Conventions, of 1958 or 1973, relates to various significant incompatibilities between our domestic laws and the Hague Conventions. In particular, ratification of and accession to the Hague Conventions of 1958 and 1973 would encroach on the jurisdiction of our Religious Courts in matters of divorce and maintenance. At present, therefore, ratification and accession to the Hague Conventions of 1958 and 1973, would require substantial changes in sensitive areas of domestic law, which is problematic.

JAPAN – Under the current domestic law, foreign judgements regarding the maintenance obligation can be recognized and enforced under a certain requirements, therefore, the domestic necessity for ratification is lacking.

LATVIA – No, there is no particular reasons. Latvia has not acceded to these Conventions because there were no maintenance obligation cases with international component. Now the situation has changed (one reason is integration of Latvia in the EU). We foresee that Latvia could ratify the 1973 Hague Convention during the next 2 years.

MEXICO – Mexico in 1992 made the accession to the New York Convention due to its world wide cover.

NEW ZEALAND – There are no particular reasons that I am aware of for New Zealand's non-membership of the Hague Conventions. We receive very few UNCRAM claims and the process involved acceding to the Hague Conventions would be involved and time-consuming. There may well be an argument for the adoption of the enforcement convention only as we currently have no mechanisms for enforcing orders outside the Commonwealth.

SRI LANKA – This matter is under study by the relevant authorities.

UNITED STATES OF AMERICA – The United States has not ratified the 1958 and 1973 Hague nforcement Conventions in part because of Constitutional problems with 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?*

AUSTRALIA – Australia considers that the 1973 Hague Enforcement Convention should be clarified in relation to the procedure to be followed by a maintenance debtor who seeks a revision of a maintenance decision. The 1996 Special Commission rejected the option of review by authorities of the country in which the debtor is resident (except where a debtor's circumstances have changed). The second option is review by the authorities of the country in which the creditor is resident. The second option is impractical in those cases where the debtor is impecunious and the authorities of the country in which the creditor is resident refuse to provide assistance to overseas debtors in accordance with article 8 of the New York Convention.

IRELAND – The amendment of the Hague Conventions to comprehend the provision of administrative assistance on the lines of the New York Convention would make them a more attractive proposition. Clear obligations in relation to the provision of legal aid would be advantageous.

ROUMANIE – Les Conventions de la Haye de 1958 et 1973 concernant la reconnaissance et l'exécution des décisions relatives aux obligations alimentaires sont à l'attention de notre pays pour vérifier la compatibilité de leurs dispositions avec la législation roumaine.

UNITED STATES OF AMERICA – The bases of jurisdiction need to be more flexible, designed to accommodate substantially different systems. Using a fact-based approach (rather than a 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 / 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 / Questions addressed to States Party to one or both Conventions

1 Quelle loi vos tribunaux appliquent-ils aux questions préalables/incidentales (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?

AUSTRIA – Preliminary questions (eg establishment of paternity) are governed by the law applicable under Art.1 of the 1956 Hague Convention (Austria is not yet a State Party to the 1973 Hague Convention).

BELGIQUE – La loi appliquée par les tribunaux belges aux questions préalables est fonction du cas d'espèce.

FRANCE – Il n'existe pas de jurisprudence connue. Dans un domaine similaire la Cour de cassation a fait régir la désignation de la loi applicable à la question préalable par la règle de conflit du for.

GERMANY – Where a preliminary question concerns the paternity of an illegitimate child during maintenance proceedings, according to the prevailing opinion in Germany there will have to be a dependent connecting factor from this and internal substantive law of the applicable regime invoked by the Hague Convention must be applied.

In other respects, there is no uniformity of opinion on this problem of preliminary questions in Germany. In legal literature there is support for both an independent and a dependent connecting factor, as well as an alternative connecting factor *in favorem creditoris*; there are very few previous court decisions relating to this issue.

ITALIE – Les questions préalables (par exemple, la paternité d'un mineur qui demande les aliments) sont réglées selon la même loi applicable à l'obligation alimentaire.

JAPAN – There are no provisions in Horei(Law concerning Application of Laws in General) and no established judicial precedents with respect to applicable law regarding the incidental/preliminary question, however, leading opinion of scholars is that the incidental/preliminary question should be determined by the law designed by the private international law of the forum state.

NETHERLANDS – Although differing views have been taken in Dutch case law, the prevailing opinion is that the law applicable to the incidental question is the law governing the maintenance obligation. (See the note by Michel Pelichet, pages 30-31. An example: District Court Leeuwarden 26 November, 1981, NJ 279).

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.

SUISSE – La doctrine suisse se prononce dans sa majorité en faveur de la soumission de la question préalable du lien de filiation à la "lex obligationis", c'est à dire à la lex causae, en supprimant le rattachement distinct de la question préalable au droit international privé de la lex fori ou de la lex causae. Ainsi, la loi interne désignée par la Convention régit aussi bien l'obligation alimentaire que la question préalable de l'établissement du lien de filiation.

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?

FRANCE – Il n'existe pas de jurisprudence connue.

Il ne paraît pas souhaitable de réviser l'article 8. En tout état de cause l'article 11 permet de résoudre les situations choquantes qui pourraient résulter, en matière d'obligations alimentaires, de l'application de la loi qui régit le divorce.

GERMANY – According to what is, as far as can be ascertained, a unanimous opinion in German specialist literature on the subject of private international law, the parties do not have a choice of law as regards the rules on conflicts of law in maintenance matters. As far as can be ascertained, in Germany there are no previous decisions relating to the question ruled on by the Netherlands Supreme Court.

This indicates that this question cannot be accorded any particular practical significance. In this connection, it must also be pointed out that German private international law opens up possibilities of choice of law on a restricted and balanced scale as regards general legal effects of marriage, and, following from this, as regards the provisions on divorce, the application of which has an effect on the determination of the maintenance regime applicable in terms of Article 8 of the Hague Convention of 1973.

Therefore, from the German point of view, there is no need to amend the Convention in order to introduce choice of law only in relation to post-marital maintenance, whereby such choice of law would be severed from the determination of the law applicable to divorce.

ITALIE – En matière d'obligations alimentaires, l'article 8 de la Convention de 1973 permet de saisir l'autorité d'un Etat contractant quand les aliments sont dûs par effet d'un prononcé de séparation ou de divorce, ou de nullité ou d'annulation du mariage, pourvu que ce prononcé ait été émané par l'autorité de l'Etat reconnu compétent en la matière.

Le prononcé de séparation, divorce, nullité ou annulation émané par les autorités concernées représente en soi la condition requise pour l'application du critère prévu par la Convention en matière d'aliments.

Il y a donc lieu d'exclure la possibilité (à l'inverse retenue par le juge néerlandais, selon l'exemple reporté dans la question) que les époux divorcés puissent indiquer un autre critère autonome et différent, vu qu'il a été établi que la loi de la séparation et du divorce est applicable aussi en matière d'aliments et que ce critère est convergent avec les autres prévus par la Convention.

Sur ce point, toutefois, l'art. 8 pourrait être modifié moyennant un Protocole additionnel, en limitant cependant le choix aux critères déjà prévus par la Convention, afin d'offrir une solution à l'hypothèse (qui semble désormais classique) selon laquelle la loi de séparation/divorce ne prévoit pas une obligation alimentaire.

JAPAN – We can not find a view in Japan that the Article 8 of the convention regarding the maintenance obligation of divorced spouses allows them to choose the applicable law other than the law applied to the divorce. Horei allows party to choose the applicable law with respect to the matrimonial property regime, however, it needs careful consideration to treat the applicable law of the maintenance obligation of divorced spouses same way as the matrimonial property regime.

LUXEMBOURG – Le soussigné signale qu'un arrêt de la Cour d'appel du 1.4.1987 a retenu que la loi du divorce doit, en principe, être appliquée aux mesures accessoires, à moins que cette loi (en l'occurrence étrangère) ne soit contraire à l'ordre public interne.

La Cour d'appel a écarté dans le cas d'espèce la loi étrangère normalement applicable en vertu des dispositions de l'article 8 de la convention de 1973 sur la loi applicable aux obligations alimentaires et a appliqué la loi du for.

Dans cette perspective, la jurisprudence luxembourgeoise pourrait faire application de la loi choisie par les parties, si la législation ainsi choisie pour régir les rapports alimentaires est conforme aux principes régissant en droit luxembourgeois les pensions alimentaires, tandis que la loi normalement applicable en vertu de l'article 8 de la Convention de 1973 ne l'est pas.

NETHERLANDS – See the various comments on the decision, as supplied to the Permanent Bureau and referred to in the Note prepared for the 1999 Special

Commission. If no agreement is reached on the interpretation of Article 8, its amendment would be desirable.

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.

SUISSE – Dès lors qu'en Suisse la procédure civile est de la compétence des cantons, il nous n'est pas possible de refléter la pratique dans les 26 cantons suisses concernant l'art. 8 de la Convention de 1973; le Tribunal fédéral Suisse n'a pas encore dû se prononcer sur ce point. La doctrine suisse n'a pas traité cette question in extenso, mais il y a des critiques pertinentes à l'égard de l'art. 8 en général.

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?*

FRANCE – Un époux n'est tenu d'aucune obligation alimentaire envers les enfants de son conjoint.

GERMANY – There do not appear to be any past court decisions with respect to this question. This type of maintenance obligation is unknown under German internal substantive law. In specialist literature, however, a relationship giving rise to maintenance obligations between a step parent and step child is unequivocally made subject to the Hague Convention; this would thus be a case of application of Article 7.

ITALIE – Il s'agit d'obligations alimentaires qui ne sont pas expressément prévues par la Convention de La Haye de 1956. Il ne résulte pas de décisions de juges italiens sur l'applicabilité de la Convention de 1973 à ce cas d'espèce.

JAPAN – We can not answer this question, because we do not have the concept of "in loco parentis" in our legal system, and we can not find judicial precedents in which the "in loco parentis" is argued.

LUXEMBOURG – Aucune décision à ce sujet n'est à la connaissance du soussigné.

L'hypothèse paraît concevable, s'agissant des enfants naturels dont la filiation paternelle n'est pas établie. L'article 334-5 du code civil dispose en effet qu'en l'absence de filiation paternelle établie, le mari de la mère peut conférer, par substitution, son propre nom à l'enfant de celle-ci.

NETHERLANDS – There is no case law on the issue. The assumption is that Dutch courts would apply the Hague Convention, at least analogically.

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.

SUISSE – Selon la doctrine suisse, la Convention de 1973 est applicable pour toutes les obligations alimentaires, sans égard à la qualification juridique de leur base légale. Ainsi, les obligations alimentaires suivantes relèvent de la Convention: L'obligation d'entretien des parents envers l'enfant légitime ainsi qu'envers l'enfant naturel; des parents adoptifs envers l'enfant adoptif; des beaux-parents envers les enfants pré-nuptiaux; des parents nourriciers envers les enfants en nourrice; des parents en ligne directe. Il ressort de ce qui précède que particulièrement la constellation décrite ci-dessous peut être comprise dans la notion "in loco parentis", mutatis mutandis dans l'application de la Convention de 1973:

- L'obligation de l'époux d'assister son conjoint de façon appropriée dans l'accomplissement de son obligation d'entretien envers des enfants nés avant le mariage, art. 278 al. 2 CC et art. 159 al. 3 CC. Cette obligation tant qu'elle peut être demandée de l'époux, et que le parent naturel ne puisse pas s'acquitter de son obligation d'entretien pour son enfant lui-même. Ce droit revient à l'époux directement et sert à l'enfant que d'une façon indirecte; les paiements faits à ce titre doivent être restreints à une somme raisonnable, ces paiements sont de caractère subsidiaire par rapport aux cotisations du parent naturel.

En ce qui concerne les enfants adultérins, ceux-ci pourraient aussi être inclus dans la notion "in loco parentis". Bien que le Code Civil Suisse ne règle pas cette question, la doctrine suisse considère de manière unanime que ni l'épouse d'un père d'un enfant adultérin, ni l'époux d'une mère d'un enfant adultérin, dont sa paternité a été désavoué avec succès (cf. art. 256 CC), doivent participer aux frais d'entretien.

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?*

Note: La plupart des réponses ne mentionnent aucune difficulté particulière. / *Most respondents report no particular difficulties.*

GERMANY – From the German point of view, it would be interesting to learn whether, in other Contracting States, in the wake of developments in the law relating to non-marital cohabitation, relationships giving rise to maintenance obligations between partners during such cohabitation have been included in the scope of application of the Hague Convention of 1973.

LUXEMBOURG – La difficulté rencontrée le plus souvent est une difficulté d'ordre matériel, liée à l'absence de connaissance de la loi étrangère applicable le cas échéant selon l'article 8 de la Convention de 1973. Il y est pallié par le recours à la convention concernant l'information sur le droit étranger.

NETHERLANDS – see reply to question 2 above.

Section B – Questions adressées aux Etats non parties / 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?

AUSTRALIA – Traditionally in Australia the obligation of a debtor to pay maintenance has been determined according to Australian law. The difficulties facing a debtor in contesting a liability determined according to the law of another country may be significant. Nevertheless Australian authorities will in future give further consideration to ratification when a decision on ratification of the Hague Enforcement Convention 1973 has been made.

AUSTRIA – There are no substantial difficulties to ratify the 1973 Hague Convention.

BELARUS – Belarusian legislation in force on conflict of laws in this area opts for the application of the Belarussian law. There is no practice of participation of Belarus in any conflict of laws conventions.

BELGIQUE – La ratification de la Convention de 1973 a été envisagées il y a quelques années. Le processus a toutefois été interrompu en raison de l'élaboration d'un projet de code de droit international privé qui couvrirait entre autres matières la problématique des obligations alimentaires.

L'opportunité de ratifier la Convention sera réexaminée lorsque le code aura été adopté. Il est toutefois douteux que la Convention présente encore, à ce moment, une utilité suffisante. De plus, certains spécialistes de droit international privé craignent que la Convention puisse avoir des effets pervers lorsque des aliments sont demandés après reconnaissance d'une répudiation, problématique à laquelle nous sommes particulièrement attentifs.

CZECH REPUBLIC – There have not been any needs to ratify them. The jurisdictions provided for under art.3 of the Hague Convention of 1958 and under art. 7 and 8 of the Hague Convention of April 15, 1973 are flexible enough.

ESTONIA – Estonia is going to accede to the to last mentioned conventions by the end of 1999. Also the Convention on The Law Applicable to maintenance obligations will be acceded to by Estonia during 1999.

HUNGARY – According to our domestic legislation, law decree No 13 of 1979 on private international law the maintenance relationship is governed by the personal law of the creditor. Personal law is determined by the creditor’s nationality, or in case of more citizenship (where none of them are Hungarian) or without any citizenship – by the creditor’s residence. However in respect of children with Hungarian citizenship or Hungarian residence - maintenance may be governed by Hungarian law, if it is more favourable to the child.

Maintenance is decided by a Hungarian court in two cases:

- when the creditor resides in Hungary. In most of the cases it means that the creditor has Hungarian citizenship. Therefore both under the Hague Convention and our domestic law Hungarian law would apply. Also when the child has foreign nationality, but lives in Hungary, there is an opportunity to apply the Hungarian law under our legislation if it is more favourable – thus it may lead to the same result as is indicated in the Hague Convention.
- when the debtor resides in Hungary. Since the nationality and the residence of the creditor is identical in most cases – the applicable law would be the same under the Convention and our legislation.

In the final analysis, the Convention and the Hungarian system differs only in a very few cases, when the creditor’s nationality and residence is not the same. Also in this case there is the flexible rule of the more favourable law in the Hungarian law decree, which may lead to the law of the habitual residence of the child. In our view this slight difference does not make our accession to the Conventions necessary.

IRELAND – The question of applying the law of another jurisdiction has not been a major issue in maintenance cases before the Irish courts.

ISRAEL – Please see the response to question 1 Section B Part II - noted above. The rationale underlying that response applies, *a fortiori*, to Israeli ratification and accession to the Hague Conventions of 1956 and 1973 on the Applicable Law to Maintenance Obligations.

LATVIA – No, there are no particular reasons. Latvia has not ratified these both Conventions for the reason mentioned in the Part II question 1.

MEXICO – Mexico in 1992 made the accession to the New York Convention due to its world wide cover.

MONACO – Non, la question est à l’étude.

NEW ZEALAND – While there is no particular reason for not ratifying the Convention there is also no particular need as the Commonwealth scheme works satisfactorily and the majority of our cases originate or are transmitted to Commonwealth countries.

NORWAY – The main reasons would be reservations as to the possibility of resolving the differences of all legislations involved in a satisfactory manner. We find it difficult to provide a more detailed explanation within the time limit for returning the Questionnaire.

SLOVAK REPUBLIC – We are not aware of any. Simply, at the time of ratification of the Enforcement Conventions it was not felt necessary to ratify the Applicable Law Conventions.

SWEDEN – At the time when Sweden prepared to accede the 1958 Convention on recognition and enforcement, it was stated in our *travaux préparatoires* that a Swedish accession to the 1956 Convention on Applicable Law was not of immediate interest.

Accession to the 1973 Convention on Applicable Law has been contemplated. It has, however, been considered that some of the rules in the Convention fit less well with the Swedish system. Especially, reference has been made to the Convention rule saying that the law applicable to the divorce shall be applied also to the right to maintenance, including later re-examinations of maintenance. In Sweden, divorce is always determined by Swedish law. The Convention rule would therefore mean that the – very restrictive – Swedish rules on maintenance to a spouse after divorce would be applicable when that spouse is resident in a country with an entirely different social structure than the Swedish one. The connection with the deciding of the divorce case is very formal and the consequences of the rule are difficult to foresee.

Another Convention rule that does not fit in very well with the Swedish system is the one saying that, if maintenance cannot be had according to the law of the country of the creditor, this right shall instead be determined according to the law of the country where both parties are citizens, or according to *lex fori*.

UNITED STATES OF AMERICA – The United States has not ratified the 1956 and 1973 Hague Applicable Law Conventions because of the difficulty of requiring local courts to apply foreign law. While there are few problems in recognising and applying the law of the issuing State in interpreting and enforcing an order entered by that State, application of the law of 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?

NORWAY – To be more specific, we need more time to consider the Conventions in relation to our legislation in this field. We will consider possible improvements for the discussions at the meeting in April.

ROUMANIE – Les Conventions de la Haye de 1956 et 1973 sur la loi applicable aux obligations alimentaires sont à l'attention de notre pays pour vérifier la compatibilité de leurs dispositions avec la législation roumaine.

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?

Note: La plupart des pays ont répondu que tel n'était pas le cas (par ex. Australie, Autriche, Bélarus, Hongrie, Mexique, Monaco, République tchèque, Roumanie). / *Most respondents answer in the negative (e.g. Australia, Austria, Belarus, Czech Republic, Hungary, Mexico, Monaco, Romania).*

BELGIQUE – Selon les règles de droit international privé belge, la matière des obligations alimentaires échappe au principe de l'autonomie de la volonté des parties.

En ce que concerne les obligations alimentaires que découlent du mariage, de la parenté ou de l'alliance, c'est la loi nationale commune des parties qui s'applique. Quand le créancier et le débiteur d'aliments n'ont pas la même nationalité, c'est en principe la loi de la résidence habituelle du créancier qui s'applique.

En ce qui concerne l'obligation alimentaire que ne se fonde pas sur un rapport juridique de parenté ou d'alliance, et, en particulier, l'obligation d'un père à l'égard d'un enfant naturel non reconnu, c'est la loi nationale de l'enfant qui s'applique.

Dans l'hypothèse, toutefois, où les obligations en cause sont contractuelles, et dans la mesure où elles ont pour objet l'entretien d'une personne à l'égard de laquelle il n'existe pas d'obligation légale, on considère que les parties sont libres de choisir la loi qui leur convient.

ESTONIA – The duty to provide maintenance for a divorced spouse shall be determined by the law applicable to the divorce. At the choice of a person submitting a claim, the law of his or her country of residence or of the country of residence of the person against whom the claim is submitted applies to the duty to provide maintenance for parents, children or other family members.

IRELAND – Domestic law in relation to maintenance is governed by a series of statutes none of which make provision for the application of a law other than that of the forum. There are no statutory provisions regarding the law applicable to a maintenance agreement (contract).

LATVIA – If in this relationship between spouses or between parents and children does not appear international component, then legal relationship in the maintenance obligation matters is discussible under the law of the Republic of Latvia.

If the element of international component appears in the above-mentioned relationship, then in accordance with Article 13 and 15 of the Civil law of Latvia:

- personal and property relationship of spouses is regulated by the law of the Republic of Latvia, if the domicile of spouses is Latvia (principle of *lex domicilii*). If the property of spouses is in Latvia, then they are under the law of the Republic of Latvia even in cases when their domicile is not in Latvia (principle of *lex rei sitae*);
- personal and property relationship of parents and children are regulated by the law of the Republic of Latvia, if person who has parental power has domicile in Latvia (*lex domicilii*) . If the domicile of person that has parental power is not in Latvia, then the property placed in Latvia is regulated by the law of the Republic of Latvia (*lex rei sitae*).

If the international agreements of the Republic of Latvia have provided different order of law choice, then the international agreements are applied.

MAROC – L'état et la capacité des étrangers ne peuvent être régis que par leur loi nationale.

NORWAY – Yes.

SLOVAK REPUBLIC – No.

But if foreign spouses (none of them being Slovak national at the relevant time) choose the law applicable to their matrimonial personal and property regime and such choice was valid under the law applicable to the matrimonial personal and property regime of the spouses at the time, the Slovak court would most likely honour such choice if it can be proven that „maintenance obligation“ is a part and parcel of matrimonial personal and property regime in the respective country.

SWEDEN – The possibilities to choose applicable law on maintenance are not laid down in legislation. According to case law, parties are able, within the framework of a trial, to agree upon law applicable on maintenance, at least if that law has some natural connexion to the cause of the action.

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.

PARTIE IV – QUESTIONS GENERALES / GENERAL QUESTIONSK

1 Dans quelle mesure la fixation et l'exécution des obligations alimentaires deviennent-elles, dans votre Etat, des activités administratives plutôt que judiciaires?

1 To what extent has the assessment and enforcement of maintenance obligations in your State become an administrative rather than a judicial activity?

2 (Si pertinent) La tendance vers une approche administrative a-t-elle eu des implications dans des affaires internationales?

2 (If relevant) Has the movement towards an administrative approach had implications for international cases?

Note: La grande majorité des réponses indiquent que la fixation d'une obligation alimentaire (et, dans une moindre mesure, son exécution) demeure une activité essentiellement judiciaire. / *The great majority of respondents state that the assessment (and to a lesser extent, the enforcement) of maintenance obligations remains primarily a judicial activity.*

AUSTRALIA

Question 1 – The assessment of maintenance is rapidly becoming a matter of administrative rather than judicial activity in Australia. The Child Support Agency (an administrative body) issues child support assessments which establish the amount of a debtor's liability according to a statutory formula. The courts in Australia have jurisdiction to issue maintenance orders for limited categories of cases :

- cases in which the child was born, and whose parents separated, before October 1998;
- cases in which the child is aged 18 or above;
- spousal support cases.

The enforcement of maintenance obligations is now largely carried out by the Child Support Agency (an administrative body) rather than the courts.

Question 2 – At present international cases still tend to be dealt with by the courts in Australia because the Child Support Agency is restrained by statutory limitations on its power to issue and enforce assessments in relation to debtors or creditors resident overseas. However Australian authorities are examining changes to child support legislation to enable the Child Support Agency to play a greater role in international proceedings.

ESTONIA

Question 1 – The assessment and enforcement of maintenance obligations has become mostly administrative in respect of international cases. Domestic cases are usually reconciled by courts.

Question 2 – –

HUNGARY

Question 1 – Issuing a child support order and instructions for the enforcement thereof belong to the sphere of authority of a court of law.

In addition to court enforcement, however, public administration authorities may also proceed. A case in point is the guardianship authority which may call on the debtor to make a statement with respect to the causes of failure to comply with his/her child support obligation and to warn him/her about possible consequences. The guardianship authority may also appoint an ad hoc guardian, authorising him/her to institute enforcement procedure against the person under child support obligation in a court of law. The police may also participate in the said enforcement procedure.

Question 2 – The administrative proceedings are much quicker and simpler than the judicial way. As opposed to this, the court proceedings make possible to take efficient measures. The primary aim of administrative proceedings is to try to promote voluntary performance. In accordance with the position taken by us for the time being the administrative proceedings in themselves do not offer a satisfactory solution in the course of the collection of support in the overwhelming majority of the cases.

ITALIE

Question 1 – La fixation et l'exécution des obligations alimentaires tombent sous le coup de la juridiction toutes les fois qu'il y a un conflit entre les parties et que le débiteur se refuse de payer son dû.

Question 2 – On n'aperçoit pas en Italie une tendance visant à attribuer à ces questions un caractère administratif. L'éventuelle institution de Centres de médiation, auxquels les époux pourraient s'adresser au cours de la séparation ou du divorce pour mettre au point d'un commun accord de nouvelles règles et un nouveau projet de vie pour les enfants mineurs pourrait impliquer aussi la question des aliments. Mais on est loin de l'approbation de la loi qui prévoit l'institution de ces centres, et les quelques expériences en cours ne permettent pas d'esquisser les développements que cette initiative pourrait avoir à l'avenir.

JAPAN

Question 1 – In Japan, the party is responsible for the enforcement of a claim of maintenance in judicial proceeding. However, considering the special characteristics of the maintenance such as weak status of the maintenance creditor and the emergent need to be paid, other than the ordinary enforcement proceeding, the Family Courts have a proceeding for ensuring the payments of maintenance, etc. which were ordered to

pay by the Family Courts. Namely, from the standpoint of a kind of guardianship, the Family Courts may recommend the debtor to pay and/or order to pay with the background of sanctions of non-penal fine.

Question 2 – The proceeding for ensuring the payments described above is applied regardless of the international elements of the case insofar as the jurisdiction is granted by the Japanese Family Courts. However, it is a part of the judicial proceeding and needs the initiative of the party.

MEXICO

Question 1 – Maintenance obligations become an administrative activity when this are given voluntarily.

Question 2 – N/A.

NEW ZEALAND

Question 1 – The Child Support Act 1991 has moved the assessment and enforcement of maintenance obligations to an administrative authority although the Courts remain the appellate body.

Question 2 – International cases are still dealt with by the Court in New Zealand.

NORWAY

Question 1 – As mentioned above, this is chiefly an administrative activity. However, if the maintenance issue is part of a court administered divorce case, the maintenance obligation may also be decided in court.

The administrative body (the Maintenance Enforcement Centre) will enforce the maintenance obligation if one of the parents requests it. The Centre enforces about 90% of all the maintenance obligations in Norway.

Question 2 – In respect of cases where Norway is the requesting country according to the Hague Conventions, there have been no such problems.

SWEDEN

Question 1 – Yes, the involvement of the courts has diminished. The system for State Child Support (SCS) was changed in 1997. Now SCS is granted, by the SIO, when the parents of the child do not live together, regardless of where there is an obligation to pay maintenance according to the Code of Parenthood and Guardianship or not. The parent who does not live with the child has to pay back the SCS, or part of it, to the state. The amount payable is fixed as a percentage of that parent's income.

Question 2 – The SCS according to the new system is probably not recoverable from the parent who does not live with the child, according to the 1973 Hague Convention, the Brussels and Lugano Conventions or the 1962 Nordic Convention. So when the parent

lives abroad, the recovery has to be based on an agreement or a court decision on maintenance.

SUISSE

Question 1 – Selon le droit suisse, la fixation des obligations alimentaires est de la compétence du juge du domicile du demandeur ou du défendeur (cf. art. 279 al. 2 CC), soit qu'il agisse par un acte de souveraineté ou qu'il approuve une convention d'entretien passée entre les deux parties (art. 287 al. 3 CC). Toutefois, les compétences judiciaires déterminées par les dispositions sur la constatation de la filiation (art. 253 CC: le juge du domicile de l'une des parties au moment de la naissance ou au moment de la demande), sur le divorce (art. 144 CC: le juge du domicile de la partie demanderesse) et sur les mesures protectrices de l'union conjugale (art. 180 al. 1 CC: le juge du domicile d'un des époux) restent réservées. Dans une procédure extrajudiciaire, les parties peuvent aussi conclure un contrat d'entretien selon l'art. 281 al. 1 CC, lequel peut prévoir des paiements périodiques aussi bien qu'une indemnité unique; cependant un tel contrat n'oblige l'enfant qu'après avoir été approuvé par l'autorité tutélaire compétente.

En ce qui concerne l'exécution des décisions judiciaires ayant pour objet le paiement d'une somme d'argent, la loi fédérale sur la poursuite pour dettes et la faillite (LP) prévoit, pour l'exécution forcée, la procédure suivante:

La première phase de la procédure a lieu devant les autorités administratives: le créancier adresse une réquisition de poursuite auprès de l'office compétente (art. 67 LP). L'office des poursuites rédige ensuite un commandement de payer (art. 69 LP). Pour s'opposer au paiement de l'obligation, le débiteur doit faire une déclaration d'opposition auprès de l'office des poursuites, dans les dix jours à compter de la notification du commandement de payer (art. 74 LP).

Lors de la deuxième phase de la procédure, la poursuite ainsi suspendue (art. 78 LP) peut être continuée par le créancier en requérant la mainlevée de l'opposition du débiteur auprès du juge compétent (art. 80, 84 LP). En ce qui concerne les décisions étrangères, l'exequatur est généralement accordé en même temps que la mainlevée, pour répondre aux exigences d'économie de la procédure et de sécurité juridique.

La décision accordant la mainlevée de l'opposition mène à l'exécution forcée de la décision étrangère correspondante.

Question 2 – –

UNITED STATES OF AMERICA

Question 1 – There has been a substantial increase in the use of administrative procedures in both the assessment and enforcement of maintenance obligations in the United States. Hearing officers within the agencies may hear and determine the obligation rather than requiring a judicial proceeding. Mandatory guidelines are used. Federal legislation has established a number of mandatory procedures to be used by the states under the federal government program. Many states have supplemented these required procedures.

Question 2 – The use of administrative procedures has not had special implications for international cases.

4 **Merci de nous faire parvenir vos commentaires sur toute autre question que vous considérez comme pertinente et qui ne fait pas l'objet de ce questionnaire.**

4 ***Please comment on any other matters you consider relevant which are not covered by the Questionnaire.***

AUSTRALIA – No comment.

ISRAEL – Our sense is that there ought to be steps taken, at the international level, to provide a fuller, more effective legal framework, to deal with the issues and difficulties noted above.

In particular, our experience in this area of law points to the need for and sense in the Hague Conference making a functional differentiation between two categories of maintenance debt, namely:

- 1 An "ordinary" maintenance debt: a category of debt relating to non-payment of maintenance during a short period of time, or of a relatively small part of the whole amount due. This ordinary category of debt ought to be received and managed by the social welfare agencies of Contracting States; aided, perhaps, by bilateral arrangements between them.
- 2 An "Extra-ordinary" maintenance debt: a category the existence of which recognises the more severe and difficult cases of non-payment of maintenance, which cause special damage and/or are of special importance and urgency to claimants. It is suggested that the currently existing international legal framework is ineffective in dealing with these, especially severe cases.

ITALIE – On signale l'opportunité de préciser la nature et les pouvoirs de l'institution intermédiaire, notamment en cas de divergence avec le demandeur sur les initiatives à prendre.

NETHERLANDS – The Netherlands delegation submits that the operation of the New York Convention could be much improved if there were a focal point which would liaise among central authorities and which would monitor the setting up of central authorities in countries ratifying the Convention.

NORWAY – a) Some countries demand the original forms before they are willing to follow up their obligations under the applicable Conventions. As our authorities don't need the original form, it will often only exist a copy enclosed with the case. If it is an old case, it will be difficult to get hold of the original form.

b) Some countries do not accept a copy confirmed by the National Office for Social Insurance Abroad. They require a confirmation from the organ which has made the original form. Before 1992 we had a system of municipal maintenance officers, which do not exist anymore. It may therefore be difficult to get hold of the original forms in cases with a pre 1992 origin.

c) Recognition of paternity decisions is a problem, also between member states of the Hague Conventions.

UNITED KINGDOM, ENGLAND AND WALES – It would be helpful to take this opportunity to compile a list of the documents required by each member state of the Hague Conference when processing applications under the New York and Hague Conventions. We are not always certain which documents are required by each member state and this can considerably delay matters.

UNITED STATES OF AMERICA – The comments above are based on the enforcement system established pursuant to federal law, enacted and amended over the last 20 or so years (the IV-D program).

Individual states may provide other remedies and procedures. Enforcement is also possible outside this program through privately retained counsel. Some but not all of the program enforcement mechanisms are available for such cases.

ANNEXES