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APERÇU DES RÉPONSES AU QUESTIONNAIRE RELATIF À LA CONVENTION
DE LA HAYE DU 18 MARS 1970 SUR L'OBTENTION DES PREUVES À
L'ÉTRANGER EN MATIÈRE CIVILE OU COMMERCIALE (Doc. pré. No 4)

établi par le Bureau Permanent

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SYNOPSIS OF THE REPLIES TO THE QUESTIONNAIRE RELATING TO THE
HAGUE CONVENTION OF 18 MARCH 1970 ON THE TAKING OF EVIDENCE
ABROAD IN CIVIL OR COMMERCIAL MATTERS (Prel. Doc. No 4)

drawn up by the Permanent Bureau

*Document préliminaire No 7 (version définitive)
à l'intention de la Commission spéciale d'octobre / novembre 2003*

*Preliminary Document No 7 (final version)
for the attention of the Special Commission of October / November 2003*

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Aperçu des réponses au Questionnaire relatif à la Convention de La Haye du 18 mars 1970 sur l'obtention des preuves à l'étranger en matière civile ou commerciale (Doc. préI. No 4)

Synopsis of the replies to the Questionnaire relating to the Hague Convention of 18 march 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (Prel. Doc. No 4)

Afin d'éviter tout contresens, les réponses sont reproduites ci-dessous dans leurs langue et présentation originales (suppressions ou corrections indiquées par des crochets [] – texte en caractères gras sélectionné par le BP). Les réponses complètes sont disponibles sur le site Internet de la Conférence (www.hcch.net - sous « Travaux en cours ») ainsi qu'un rapport établi par ABA (American Bar Association)

In order to avoid any misrepresentation, the replies are reproduced below in their original form and language (withdrawals or corrections indicated by brackets [] – text in bold selected by PB). The full replies are available on the Conference's website (www.hcch.net - under "Work in progress") as well as a report drawn up by ABA (American Bar Association).

Question	Réponse / Reply	Etat / State																								
1. Case-law	<p style="text-align: center;"><i>See the full replies on the Conference's website Voir les réponses complètes sur le site Internet de la Conférence</i></p>																									
2. Statistical info	<p>[...] La France est liée avec certains pays par des conventions prévoyant un mode de transmission direct entre tribunaux : Allemagne, Italie, Luxembourg, Monaco, Suisse. On peut également ajouter l'Australie, le Canada et le Royaume-Uni. [...]. Le Portugal représente 60 % des demandes, et l'Espagne 22 %. Ainsi ces deux pays constituent à eux deux, plus de 82 % des demandes. On peut constater l'absence de saisine de certains pays, en particulier les Pays-Bas. En 2002, 499 dossiers ont été enregistrés[...]. - 194 [...] dossiers sont essentiellement des demandes transmises à l'étranger, ainsi que des demandes d'informations venant d'avocats, tribunaux. - 305 demandes reçues en provenance de :</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%;">- Argentine</td> <td style="width: 10%; text-align: right;">7</td> <td style="width: 50%;">- Pologne</td> <td style="width: 10%; text-align: right;">16</td> </tr> <tr> <td>- Bulgarie</td> <td style="text-align: right;">1</td> <td>- Portugal</td> <td style="text-align: right;">185</td> </tr> <tr> <td>- Espagne</td> <td style="text-align: right;">66</td> <td>- Russie</td> <td style="text-align: right;">2</td> </tr> <tr> <td>- Etats-Unis</td> <td style="text-align: right;">9 (dont 2 demandes d'autorisation de commissaires)</td> <td>- Slovénie</td> <td style="text-align: right;">1</td> </tr> <tr> <td>- Italie</td> <td style="text-align: right;">10</td> <td>- Tchèque</td> <td style="text-align: right;">7</td> </tr> <tr> <td>- Norvège</td> <td style="text-align: right;">1</td> <td></td> <td></td> </tr> </table>	- Argentine	7	- Pologne	16	- Bulgarie	1	- Portugal	185	- Espagne	66	- Russie	2	- Etats-Unis	9 (dont 2 demandes d'autorisation de commissaires)	- Slovénie	1	- Italie	10	- Tchèque	7	- Norvège	1			France
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	Under U.S. law, 28 United States Code 1782, foreign judicial authorities or parties to proceedings can request the assistance of U.S. courts for the taking of evidence in support of a civil action without filing a request through the Convention. No data are available to determine the number of such requests, but it may well be that most foreign requests are made in the United States without resort to the Convention. Indeed, there are no reported cases from the United Kingdom since 2000. A statistical table from the U.S. Department of Justice Civil Division (the U.S. Central Authority) is attached at Annex C covering the calendar years 2000 – 2003 [see the <i>annexe on the Conference's website</i>], showing total numbers of Hague Convention cases ranging from a high of 510 in 2000 to a low of 348 in 2002 [431 in 2001, 348 in 2002].	Etats-Unis																																																				
	<i>Nombre de demandes d'obtention des preuves adressées à l'Espagne</i> provenant des Etats parties à la Convention : 1999: 204, 2000: 92, 2001: 130, 2002 : 153, 2003 (1 ^{er} semestre) : 153. La plus part procèdent des pays européens (notamment, l'Allemagne, la Suisse le Portugal la France la Pologne et l'Italie), et depuis l'adhésion de ces pays, l'Argentine, le Venezuela et le Mexico.	Espagne																																																				
	Très peu de cantons ont des statistiques. Le canton de Bâle-Ville nous indique qu'il a reçu, en 2002, 9 requêtes relatives à des auditions de témoins et 4 requêtes relatives à la production d'actes ou à des demandes de renseignements. Du 1 ^{er} janvier 2003 au 15 septembre 2003, le canton de Vaud a reçu 11 requêtes en provenance du Portugal, 1 requête en provenance de l'Espagne, 1 requête en provenance de la Bulgarie et 1 requête en provenance de la Turquie. Le canton de Saint-Gall nous annonce 18 requêtes pour 2002 en provenance de la Slovaquie, de la République tchèque, de la Turquie, de l'Italie, de l'Espagne et du Portugal. Du 1 ^{er} janvier 2003 au 30 juin 2003, le canton de Saint-Gall a reçu 7 requêtes en provenance de la Slovaquie, de la Turquie, de l'Espagne et du Portugal. Le canton de Berne a reçu 14 requêtes en 2001 et en 2002. Enfin, le canton de Glaris estime recevoir entre 5 et 10 requêtes par année.	Suisse																																																				
	Yes, we have statistics relating to the number of requests to obtain evidence addressed to our state. On average we receive 50 requests per year. So far, since the 1 st of January 2003 and up to this date we have received 34 requests.	Suède																																																				
	Il n'y a pas de statistiques officielles disponibles. D'après les renseignements obtenus de source officieuse, le Luxembourg reçoit entre 30 et 40 demandes par an.	Luxembourg																																																				
	<table border="0" style="width: 100%;"> <thead> <tr> <th colspan="2" style="text-align: left;"><i>Requests received from States Parties in 2003</i></th> <th colspan="2" style="text-align: left;"><i>Requests by the Bulgarian Courts in 2003</i></th> </tr> <tr> <th style="text-align: left;"><i>State</i></th> <th style="text-align: left;"><i>Number</i></th> <th style="text-align: left;"><i>State</i></th> <th style="text-align: left;"><i>Number</i></th> </tr> </thead> <tbody> <tr> <td>GERMANY</td> <td>2</td> <td>ITALY</td> <td>1</td> </tr> <tr> <td>FRANCE</td> <td>3</td> <td>NORDRHEIN-WESTFALLIEN</td> <td>1</td> </tr> <tr> <td>POLAND</td> <td>2</td> <td>RHEINLAND-PFALZ</td> <td>1</td> </tr> <tr> <td>RUSSIA</td> <td>8</td> <td>ROUMANIA</td> <td>1</td> </tr> <tr> <td>TURKEY</td> <td>7</td> <td>HUNGARY</td> <td>1</td> </tr> <tr> <td>Total:</td> <td>22</td> <td>FRANCE</td> <td>5</td> </tr> <tr> <td></td> <td></td> <td>HESSEN</td> <td>1</td> </tr> <tr> <td></td> <td></td> <td>THE NETHERLANDS</td> <td>1</td> </tr> <tr> <td></td> <td></td> <td>THE CZECH REPUBLIC</td> <td>1</td> </tr> <tr> <td></td> <td></td> <td>SWITZERLAND</td> <td>1</td> </tr> <tr> <td></td> <td></td> <td>Total:</td> <td>14</td> </tr> </tbody> </table>	<i>Requests received from States Parties in 2003</i>		<i>Requests by the Bulgarian Courts in 2003</i>		<i>State</i>	<i>Number</i>	<i>State</i>	<i>Number</i>	GERMANY	2	ITALY	1	FRANCE	3	NORDRHEIN-WESTFALLIEN	1	POLAND	2	RHEINLAND-PFALZ	1	RUSSIA	8	ROUMANIA	1	TURKEY	7	HUNGARY	1	Total:	22	FRANCE	5			HESSEN	1			THE NETHERLANDS	1			THE CZECH REPUBLIC	1			SWITZERLAND	1			Total:	14	Bulgarie
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3. Practical difficulties?	<p>There are <i>no available statistics</i>. Until now, very few requests have been received and forwarded to obtain evidence under the Convention. It is roughly estimated that <i>16 requests</i> have been forwarded and received to obtain evidence.</p> <p>We do not have accurate statistics relating to the number of requests to obtain evidence addressed Norway. However, in 2002 we received <i>322 rogatory letters</i> in civil matters and <i>sent 339 rogatory letters</i> abroad. Up to 1 October 2003 we have received 239 rogatory letters from abroad and we have sent 299 rogatory letters. <i>This statistics include all rogatory letters, both requests regarding service of documents and taking of evidence</i>, both to and from states parties to the Hague Conventions, and also to and from other states.</p> <p>Although the Attorney-General's Department is the Central Authority competent to receive letters of requests from another Contracting State, in each State and Territory the Registrar or Prothonotary of the Supreme Court has been designated as an additional authority under Article 24 of the Convention. However in practice letters of request and other enquiries are referred to State or Territory law Departments. <i>Complete statistics are not held centrally</i>.</p> <p>For internal purposes, data provided by the <i>Länder</i> on the extent of the mutual legal assistance are compiled annually in an overview (service of process, mutual assistance and other requests). Since is <i>not possible to conduct a precise statistical analysis</i> without investing more than a reasonable degree of effort, the overview only contains a rough outline. I have attached the current overview as Annex 2 [see the full replies and annexes to the Service-Questionnaire on the website].</p> <p>No, As to the requests to obtain evidence abroad made in Dutch courts, generally speaking the ways offered by the Hague Evidence Convention <i>are seldomly used</i>. Attorneys prefer to examine witnesses in the courts where the proceedings in the Netherlands are held. Reasons for this preference are that these witnesses are examined by a member of the court dealing with the case, who is delegated to hearing the witnesses, and that in such case these attorneys have the opportunity to instantaneously add questions to the original ones, which allows them to disclose more information than through a letter of requests (commission rogatoire) which has to specify in advance the evidence to be obtained or the questions to be put to the persons to be examined. Court decisions show that even if attorneys agree in the examining of witnesses abroad, courts are often not willing to send letters of request and insist on the hearing of witnesses in their court room.</p> <p>Ukraine has not received requests from States Parties under this Convention [PB: The Convention is entered into force in Ukraine the 1st April 2001].</p> <p>[Le Canada n'est pas partie à cette Convention - Voir les réponses complètes sur le site Internet]. [Canada is not party to the Convention – See the full replies on the website].</p>	Chine (Macao)																																																								
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Question	Réponse / Reply	Etat / State
	The Swedish Central Authority has <i>not encountered any practical difficulties</i> connected with the application of the Convention. We have no clear picture about how the Convention works for our courts as requesting authorities. But our image is that the experience is that <i>it sometimes takes too long to get requests executed.</i>	Suède
	The reduced use of the Hague Evidence Convention is caused also by the fact that <i>the letters of request are differently dealt with by the different courts abroad.</i> An additional negative impact is due to the experience that this way of examining witnesses is <i>time-taking</i> ; it lasts relatively long between the sending of the letter of request and the reception of the answers. An impeding factor, too, is created by the many formal hurdles which may often result in <i>a refusal of the requested court after opposition of the witness to be heard.</i>	Pays-Bas
	<i>No difficulties have been encountered, except for particular cases connected with absence of strictly formulated questions for questioning and with specific requirements for the blood tests – to be taken, kept and transported in a certain manner, which requirements we cannot always fulfil strictly.</i> These, however, are rather difficulties of practical and not of legal character.	Bulgarie
	<i>L'application en soi de la Convention ne pose pas ou peu de problèmes.</i> Les requêtes ne sont toutefois pas toujours claires, souvent en raison de <i>mauvaises traductions.</i>	Suisse
	The practical difficulties encountered at the execution of the requests are:-(1) there is often <i>no translation</i> for certain requests not made in either of the official languages of Hongkong (Chinese and English); (2) <i>the appointment of agents to execute the request has not been clearly specified</i> even though that is often the intention of the requesting party.	Chine (Hongkong)
	Frequently, <i>the letter of request is not sufficiently specific to satisfy the provisions of Article 3(f) of the 1970 Convention, and reliance is often place more on the statement of the subject matter rather than the individual questions to be put to the persons to be examined.</i> Furthermore, there have been <i>instances of non-compliance with the requirements of Article 4</i> of the 1970 Convention (most commonly the translation of attachments to court orders) in view of Australia's declaration pursuant to Article 33, to exclude the operation of paragraph 2 of Article 4. In addition, for some States/Territories difficulties are posed by the <i>high costs of arranging evidence to be taken from witnesses who are geographically distanced</i> from the relevant court. On one occasion an expert witness required a certified interpreter of a high degree of competence in view of the complexity of the evidence, the costs of which were ordered to be paid by the requesting party. As the witness did not qualify as an expert witness according to the laws of the Contracting State from which the letter of request originated, the payment of the witness' costs as an expert witness were resisted and argued to be irrecoverable.	Australie
	A considerable <i>problem in international relations still exists in the consequences of the aerospace decision.</i> Consequently, situations have arisen which involve the repeated taking of evidence on the basis of U.S. law, whereby in our view the Convention would have been applicable (a) and b)). Besides this, problems involving costs (c) and in the carrying out of requests in Germany (d)) have arisen. <u>a) Pre-trial discovery of documents</u> - Consideration should be given, for one, to the issuance of documents found in Germany in the context of pre-trial discovery of documents, which are requested extraterritorially directly pursuant to U.S. law. Discovery of this kind not only circumvents the German Reservation on Article 23 of the Convention, it also leads to <i>extraordinarily high costs</i> for the companies concerned and to concerns regarding data protection. <u>b) Hearing of witness outside the provisions of the Convention</u> - Secondly, the hearing of witnesses in Germany by U.S. attorneys pursuant to U.S. civil procedural law should be mentioned. The taking of evidence in Germany for a U.S. civil proceeding and the preliminary discovery phase must, in our view, be conducted via international law channels; these offer sufficient possibilities. For one, a consular hearing can be conducted pursuant to the German-American exchange of diplomatic memoranda. Furthermore, the witness can be heard via avenues provided under mutual legal assistance. A request for mutual legal assistance for the hearing by a German court can be conveyed to the competent German Central Authority (Article 3 and 4 of the Convention). Finally, pursuant to Article 17 of the Convention, the commissioner of a U.S. court may hear a witness if the authorisation of the competent German Central Authority has been obtained beforehand. The commissioner may also be a	Allemagne

Question	Réponse / Reply	Etat / State
	<p>U.S. attorney. The declaration on Article 17 submitted by the Federal Republic of Germany upon entry of the instrument of ratification reads as follows (Federal Gazette 1979 II p. 780): <i>"A commissioner of the requesting court may only take evidence pursuant to Article 17 of the Convention, if the Central Authority of the Land, in which the taking of evidence is to be conducted, has given its consent. Such consent can include conditions. The local court, in whose district official business is to be conducted as a result of a request for mutual legal assistance, is authorised to supervise the preparation and conducting of the taking of evidence. Pursuant to Article 19 second sentence of the Convention, a member of such court may participate in such taking of evidence."</i> If a U.S. hearing is conducted without the knowledge of German judicial authorities, this constitutes a violation of German jurisdictional competency. This applies regardless of whether the witness concerned voluntarily took part in the hearing.</p> <p>c) <u>Costs incurred through the taking of evidence in the USA</u> - In one particular case, a German court requested the conducting of the taking of evidence in the USA. This was carried out by an attorney who acted as commissioner. The extraordinarily high costs were not presented to the German agency in advance. If it or the parties had had prior knowledge of the expected costs, the taking of evidence would possibly have been omitted. Here, <i>it is requested that any high costs which would be incurred due to the taking of evidence in the requested State be provided in advance.</i></p> <p>d) <u>Supplying of technical aids</u> - Requests sent to Germany often entail the desire of U.S. courts and lawyers to apply their national procedural law without modification (e.g. cross-examination by U.S. attorneys, drafting of a word transcript by a special stenographer, additional electronic recording of the hearing (video or audio), request made to those performing the hearing to verify all statements through the presentation of documents, language of the hearing English, taking of oaths pursuant to U.S. law). However, this has organisational limitations. The taking of evidence can certainly be performed by special means, but the preparation of the appropriate – often complicated – technical and actual aids is subject to limitations on availability. If the indication is then given that e.g. a special court stenographer and electronic recording – provided the consent of all those concerned has been given – can in fact be used, but that the requesting U.S. side and not the requested German side is obligated to provide such aids, the request is frequently no longer followed up on by the U.S. side. <i>Better coordination in advance is recommended.</i></p>	Etat / State
	<p>The U.S. Central Authority believes it is able to provide evidence in most circumstances in a form compatible with foreign legal systems. Evidentiary requests that are received by the Central Authority are typically referred to the United States Attorney's Office for the federal judicial district in which the evidence subject to the request is located. In most circumstances the United States Attorney's office will attempt <i>to obtain compliance of an evidentiary request through voluntary means</i>, without having to rely upon the <i>compulsory mechanisms available through the domestic judicial system</i>. In many cases, the <i>evidence can be obtained relatively quickly and with minimal difficulty</i>.</p> <p>Not all requests, however, can be easily complied with. In particular, when the requested entity to whom the evidentiary request is directed <i>refuses to provide voluntary compliance</i>, it becomes necessary to go to court in order to utilize mechanisms available only through court auspices, such as the issuance of an appropriate subpoena or the like to compel compliance. At times, <i>this can result in considerable delays in the United States' ability to respond to the evidentiary request</i>.</p> <p>In addition, other difficulties can arise, and compliance delayed, <i>when the request seeks information that may be subject to disclosure limitations or substantive privileges</i>. For example, requests that seek information involving company confidential information or privileged information may require significant litigation to ascertain whether it can be compelled. Beyond that, not all requests can be complied with. A complicated evidentiary request, such as a request for detailed banking information from a United States domestic entity, may be so difficult or time consuming that it will be significantly delayed if it can be accomplished at all. Other evidentiary requests seek to have the Central Authority or the U.S. Attorney's Office to which the requests are referred do more than obtain existing documents or physical evidence or to ask specific questions of a witness. Such requests <i>may ask the Central Authority to perform research or to hire experts to render opinions on complex matters</i>. We believe such requests go beyond the scope of the Convention, or may put unreasonable demands on the United States Attorney's Offices, and will usually be returned to the sending state. An example of such a request that must be returned to the requesting entity as beyond the scope of the Convention or being beyond what the Central Authority can be reasonably requested to perform, might include a request that an accounting expert be retained to render an opinion as to the</p>	Etats-Unis

Question	Réponse / Reply	Etat / State
	books and records of a corporation doing business within the United States.	
	<p>Bearing in mind that Polish Courts are requesting authorities, the Polish Ministry of Justice does not have a clear picture of application of the Convention. However, we have been informed by Polish courts about following practical difficulties:</p> <ol style="list-style-type: none"> 1. <i>Delays</i>: There are some Countries where the execution of requests to obtain evidence takes <i>too long time</i>. In several cases, letters asking for information whether the request to obtain evidence is to be executed or not have been disregarded. 2. <i>Problems involving costs</i>: In several cases <i>Polish courts have not been informed in advance about extraordinarily high costs</i> of the taking of evidence by the authorities of the requested Country. If Polish Court or the parties had a prior knowledge of the amount of extraordinarily high costs, the taking of evidence would possibly have been omitted. 3. <i>Sending documents from the requested Country</i>: In some cases, documents establishing the execution of requests of Polish courts to obtain evidence have been forwarded to Polish Embassies or to the Polish Ministry of Justice, instead of forwarding them directly to the requesting Court in Poland. Sometimes, in such cases, the information included is not sufficient to identify the case the above-mentioned documents refer to. In order to avoid such misunderstandings it is very important to specify the name of the requesting court and the reference number of the case. 4. <i>Translations</i>: In such cases, requests for taking evidence addressed to Poland have not been translated into Polish. 5. <i>Specific requirements</i>: <i>Sometimes the authorities of requested Countries require documents not foreseen by the Convention to be attached to the request</i>. In particular, requests to obtain evidence addressed to the USA need to be accompanied with an annex including detailed facts of the case. 	Pologne
	<p>[F] [Le Canada n'est pas partie à cette Convention] Nous éprouvons parfois des difficultés liées à l'exécution des commissions rogatoires, soit principalement que les <i>adresses des témoins sont incorrectes</i> et que le <i>remboursement des frais est long</i> à nous parvenir.</p> <p>[E] [Canada is not party to this Convention] We sometimes experience problems in executing rogatory commissions, the most common ones being that <i>the addresses of witnesses are incorrect</i> and that it takes a <i>long time for us to be reimbursed fees</i>.</p>	Canada (Québec)
4. Is the Conv. mandatory? exclusive?	No precedents or case law are available / Aucune jurisprudence.	Australie, Bulgarie, Chine (Macao), Danemark, Finlande, Norvège, Pays-Bas, Pologne, Portugal, Suède, Suisse
	Il n'existe <i>aucune jurisprudence à ce sujet</i> . Il convient de préciser qu'à partir du 1 janvier 2004, <i>le Règlement (CE) N° 1206/2001 du 28 mai 2001</i> , relatif à la coopération entre les juridictions des Etats membres dans le domaine de l'obtention des preuves en matière civile ou commerciale et entré en vigueur le 1 juillet 2001, s'appliquera dans les rapports entre les pays membres de l'Union européenne à l'exclusion du Danemark et prévaudra sur les dispositions contenues dans la Convention de La Haye du 18 mars 1970 pour la matière couverte par son champ d'application.	Luxembourg
	The application of the Convention is considered by Germany to be <i>mandatory and exclusive</i> . There is no new legislation on this.	Allemagne
	<i>La Convention est obligatoire</i> d'après les arts. 96.1 de la Constitution et, en matière de preuve, selon l'art. 323 du Code de Procédure Civile, les règles internes n'étant donc applicables qu'à défaut d'un instrument international sur cette matière. A la connaissance de l'autorité centrale espagnole, il n'existe <i>pas de jurisprudence sur le caractère "exclusif" de la Convention</i> .	Espagne

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	<p>The U.S. Supreme Court determined in the <i>Aerospatiale</i> case (see answer to question 1) that the Hague Evidence <i>Convention is neither exclusive nor mandatory</i>, and that evidentiary mechanisms available in the forum state may also be used on a case-by-case basis. <i>Nevertheless, state courts in New Jersey, Oregon and New York and a few federal courts (for instance, Connecticut and New York) have required first resort to the Convention.</i></p>	Etats-Unis
	<p>As far as we are aware, there has been <i>no case law</i> in Hongkong addressing the issue of whether the Convention is mandatory. Whilst the case mentioned in the response to question [see <i>the full replies on the Conference's website</i>] does not discuss the exclusiveness or the mandatory nature of the Convention, the reasoning of the Court, which was based on the inherent jurisdiction of the court, <i>would seem to suggest that the Convention would not be regarded as having mandatory effect</i> as between Hongkong and a party to the Convention. It is also to be noted that <i>the language used in Article 1(1) of the Service Convention is not used in the Convention.</i></p>	Chine (Hongkong)
	<p>A la connaissance de l'autorité centrale française, <i>il n'existe pas de jurisprudence</i> qui consacrerait le caractère "exclusif" ou "obligatoire" de la Convention. Au contraire, par un arrêt du 9 avril 1993, la <i>cour d'appel de Versailles</i> [...] a estimé qu'un tel recueil de preuves sur un territoire autre que le territoire national, était possible en dehors du cadre de la Convention. En effet, la Cour a considéré que <i>la Convention de la Haye du 18 mars 1970 sur l'obtention des preuves à l'étranger en matière civile ou commerciale, " loin d'appréhender l'administration de la preuve dans son ensemble, ne réglemen-[tait] que les commissions rogatoires "</i>. Poursuivant son raisonnement, la Cour a considéré qu' " <i>une mesure d'ordre probatoire peut être accomplie librement, dès lors qu'elle n'est pas de nature à porter atteinte à la souveraineté de l'Etat "</i>. <i>Cette jurisprudence a été très critiquée par la doctrine.</i></p>	France
5. Is reservation under Art. 23 asserted?	<p>En application de l'article 23, le Luxembourg n'exécute pas les commissions rogatoires qui ont pour objet une procédure « Pre-trial discovery of documents ». <i>Les rares commissions rogatoires internationales reçues par le Luxembourg, ayant eu pour objet une telle procédure, n'ont pas été exécutées.</i> Pour le reste, aucune commission rogatoire internationale n'a été refusée sauf pour des raisons d'inintelligibilité (<i>obscuri libelli</i>).</p>	Luxembourg
	<p>Le canton de Zurich nous indique qu'il <i>rejette les requêtes dont il estime qu'il s'agit d'une "fishing expedition"</i>. Le canton de Genève a, en 2003, dans un cas <i>demandé à l'autorité requérante de limiter une "pre-trial discovery" qui provenait des Etats-Unis et qui portait initialement sur toute la documentation concernant une société sur plus de trois ans.</i></p>	Suisse
	<p>Pursuant to the reservation on Article 23 of the Convention, Germany does not act on any requests for mutual assistance which involve the production of documents within the context of a pre-trial discovery of documents. In such cases, <i>requests are sent back to the requesting agency uncompleted with reference to the reservation.</i></p>	Allemagne
	<p>The Netherlands will not accept letters of request which are part of a pre-trial discovery.</p>	Pays-Bas
	<p>Pursuant to the reservation on Article 23 of the Convention Poland does not act on any requests for mutual assistance which involve the production of documents within context of a pre-trial discovery of documents. <i>Poland has received one request within context of a pre-trial discovery. The request was sent back to the requesting agency uncompleted with reference to Poland's reservation.</i></p>	Pologne
	<p>We have a reservation under Article 23. Letters of Request issued for the purpose of obtaining pre-trial discovery of documents as known in common law countries will not be executed. <i>This reservation has been applied towards some Common-law states, however, this has been of rare occurrence.</i></p>	Suède
	<p>[...] This reservation has been <i>rarely applied.</i></p>	Norvège
	<p>L'Espagne a fait une déclaration sur la non exécution des commissions rogatoires qui ont pour objet une procédure de "pre-trial discovery" dans les pays de <i>Common Law</i> et <i>cette réserve a été opposée afin de refuser l'exécution.</i> Néanmoins, compte tenu que les articles 328 à 332 du nouveau Code de Procédure Civile ont admis les demandes pour l'exhibition des documents déterminés rattachés à l'objet du procès qui sont en possession de l'autre partie et des tiers et, en plus, lesdites dispositions</p>	Espagne

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	ont établi les conséquences de la non présentation volontaire, la <i>doctrine a suggéré l'abandon de la réserve trop stricte faite par l'Espagne et sa substitution par une autre plus flexible.</i>	
	No [despite the reservation made under Art. 23] / <i>Non</i> [malgré la réserve faite en vertu de l'art. 23] <i>Chine (Hongkong)</i> : As far as we are aware, requests for "discovery" have not been made to the Hongkong courts.	Chine (Hongkong), Danemark, Finlande, France, Portugal
	<i>Not applicable.</i>	Etats-Unis
	Le 19 janvier 1987, la France a modifié la déclaration relative à l'article 23 comme suit : " <i>La déclaration faite par la République française conformément à l'article 23 relatif aux commissions rogatoires qui ont pour objet la procédure de "pre-trial discovery of documents" ne s'applique pas lorsque les documents demandés sont limitativement énumérés dans la commission rogatoire et ont un lien direct et précis avec l'objet du litige.</i> " Cette réserve n'a pas été opposée par l'autorité centrale française afin de refuser l'exécution d'une demande d'obtention de preuves.	France
	Bulgaria has stated a reservation under Article 23 of the Convention, but <i>we have not had a practical case of a request filed by another party under the Convention.</i> The question of what procedure would be applied, if such a precedent occurs, has not been discussed yet. The reservation stated does not mean that performance of the request for obtaining of evidence will be denied at all, but <i>it will probably be performed by another procedure, permissible under the Bulgarian legislation.</i> When applying the Convention, the Central Authority and the competent Bulgarian authorities follow the principle of rendering legal assistance to the Requesting Party to the maximum possible volume.	Bulgarie
	Australia declared pursuant to Article 23 that " <i>it will not execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents as known in common law countries</i> ". This policy is reflected in the legislation of some but not all Australian States and Territories. <i>Formal statistics are not kept of the occasions on which reliance has been placed on such a declaration.</i>	Australie
6. Is the recomm. of 1989 helpful and applied?	The Australian declaration under Article 23 does not cover every kind of discovery but only "pre-trial" discovery, without giving further definition by way of limitation to the term "Letter of Request". In practice, Australia's policy is concerned principally with <i>excluding an excessive train of enquiry.</i> For further information, visit: http://agnet.ag.gov.au/agd/Civil_Justice/International_Law/int_judicial_asst/taking_of_evidence_abroad/notes.html	Australie
	We consider that this recommendation is <i>useful</i> . Our arguments are expressed in the answer to the previous question.	Bulgarie
	Voir réponse apportée à la précédente question.	France
	We have a modified reservation under Article 23, see our letter dated 10 July 1980. But as stated above the reservation is <i>not very frequently used.</i>	Suède
	La recommandation <i>a certainement été utile.</i> La Suisse a par ailleurs limité sa réserve de l'article 23.	Suisse
	Voir réponse à la question précédente. La recommandation <i>semble utile</i> mais elle <i>n'a pas été appliquée en pratique.</i>	Espagne
	Courts in the United States are bound by the <i>Aerospatiale</i> decision. For that reason, the 1989 recommendation of the Special Commission that priority be granted to the procedures provided for under the Convention for evidence requests has not been followed except in a few state courts (e.g., New Jersey). All U.S. courts take into account the mechanisms available under the Convention in exercising their discretion with regard to the appropriate discovery mechanism to be applied to the foreign litigants or parties, and they will often intervene to limit discovery in ways that would not have been likely in purely domestic	Etats-Unis

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	<p>litigation. We believe <i>the recommendation that Article 23 reservations be limited in scope has been useful and urge states with such reservations to consider appropriate limitations</i> that would allow reasonably crafted and limited pretrial evidentiary requests to be executed. In some circumstances, states may have made a reservation under Article 23 as a result of <i>confusion with the term "pretrial"</i> when used in conjunction with the U.S. judicial system, and have erroneously assumed that it meant prior to the initiation of a judicial proceeding. Once understood as merely referring to the obtaining of evidence prior to a formal testimonial proceeding before a judicial officer, but subsequent to the initial filing of a complaint, states may find that their Article 23 reservations can be appropriately limited. In this regard we note that complex cases (or significant issues within such cases) pending in state and federal courts in the United States have with some frequency been finally adjudicated by the court without the need for a trial or other formal evidentiary hearing. In such cases, the court will adjudicate the case on the basis of summary judgment motions which often rely heavily upon the evidence obtained by the parties during pretrial proceedings. The U.S. Supreme Court has favorably viewed such summary dispositions. See generally, <i>Celotex Corp. v. Catrett</i>, 477 U.S. 317 (1986); <i>Anderson v. Liberty Lobby</i>, 477 U.S. 242 (1986); <i>Matsushita Electric Industrial Co. v. Zenith</i>, 475 U.S. 574 (1986).</p>	
	The reservation has been hardly ever used.	Pologne
	This recommendation <i>has not been applied in practice</i> for the reason stated above.	Portugal
	<i>We are not aware of the recommendation made in the Special Commission of 1989.</i> In any event, the Hongkong legal infrastructure implementing requests for taking of evidence from other jurisdictions excludes "discovery" altogether.	Chine (Hongkong)
	In practice, <i>a limitation of the reservation under Article 23 of the Convention would not be advisable.</i> Experience has shown that requests for pre-trial discovery may also not be completed if such requests are honoured under certain conditions (in particular, sufficient discovery of the documents requested) in the requested State. A pre-trial discovery of documents involves specifically a discovery, which causes problems to even the most minimal restrictions. What is ordinarily expected is a performance – unacceptable to Germany – pursuant to U.S. procedural law. Therefore, in practice, there has been only a limited application of the Convention in proceedings being conducted in the USA.	Allemagne
	Reservation is undiscussed.	Pays-Bas
	Le Luxembourg applique les procédures prévues par la Convention dans les limites de la réserve formulée à l'article 23.	Luxembourg
7. Arbitration proceedings?	<p><i>We share the opinion of the Permanent Bureau / Nous partageons la position suggérée par le Bureau Permanent.</i></p> <p><i>Bulgarie</i> : This possibility will also <i>facilitate the decision</i> of cases of commercial character with the presence of an arbitration clause, which, especially if they are of considerable property interest, are to be filed before arbitration. We have <i>not received requests</i> for obtaining evidence in relation to arbitration proceedings.</p> <p><i>Allemagne</i>: A private arbitration court is not considered a "court authority" within the meaning of Article 1(1) of the Convention. <i>It must have recourse to a domestic court, which handles the issuance of a request for mutual legal assistance.</i></p> <p><i>Chine (Macao)</i>: In fact, <i>the MSAR legal framework on arbitration allows the arbitration panel to request the court's assistance</i> in order to obtain evidence. According to the MSAR Civil Procedure Code, in order to obtain evidence abroad, a letter of request must be forwarded by the MSAR court to the foreign competent authorities. Until now, the MSAR competent authorities have not had any occasion to deal with requests to obtain evidence in the course of arbitration proceedings.</p> <p><i>France</i> : En pratique, <i>l'autorité centrale française n'a pas été confrontée à des demandes</i> d'obtention des preuves dans le cadre de procédures arbitrales.</p> <p><i>Pologne</i> : We share the opinion of the Permanent Bureau that arbitration panel cannot be treated as a judicial authority for the purpose of the Convention. <i>Poland has received one request</i> for taking of evidence within the framework of arbitration proceedings. First, <i>the arbitration panel had sent its request to a judicial authority of its State of origin. Then, the</i></p>	<p>Allemagne, Bulgarie, Chine (Macao), Espagne, Finlande, France, Pologne, Portugal, Suède, Suisse</p>

Question	Réponse / Reply	Etat / State
	<p><i>judicial authority of the State of origin sent the request of the arbitration panel to Poland. The request was fulfilled.</i></p> <p><i>Suède:</i> We have <i>not had occasion to deal with requests</i> to obtain evidence in the course of arbitration proceedings.</p> <p><i>Suisse:</i> Bâle-Ville nous signale un cas relatif à une audition de témoins. La requête a été formulée par une partie par le biais d'une "US District Court".</p>	
	<p>It is considered that the application of the Convention is limited to judicial authorities and judicial acts according Article 1(1) of the Convention. Australia notes, however, that there is <i>nothing within the Convention to prevent its use by two parties</i> in circumstances where both parties consent to it having such additional application.</p>	Australie
	<p><i>There are no U.S. court rulings regarding the application of the Convention to arbitration proceedings.</i> This question has arisen under 28 U.S.C. 1782, however. <i>That provision, which is independent of the Convention, allows "any interested person" to seek judicial assistance from a U.S. court in obtaining evidence.</i> "for use in a proceeding in a foreign or international tribunal." A few courts have had occasion to consider whether an arbitrator or arbitration tribunal may be considered a "foreign or international tribunal" within the meaning of Section 1782. The first court to consider the issue, a district court in New York, answered that question in the affirmative in 1994. That decision has been superseded, however, by a 1999 ruling of the Court of Appeals for the Second Circuit (which includes New York) that "Congress did not intend for [Section 1782] to apply to an arbitral body established by private parties." The Fifth Circuit Court of Appeals reached the same conclusion in another 1999 decision. See, Republic of <i>Kazakhstan v. Biedermann Int'l</i>, 168 F.ed 880 (5th Cir. 1999). <i>This issue continues to be the subject of scholarly debate</i> in the United States, and courts in other judicial circuits could conceivably reach a result that is contrary to the Second and Fifth Circuits. Nevertheless, even in that event, it is unlikely that evidentiary requests referred directly to the Central Authority by an arbitral panel would be considered subject to the Convention. In that regard, the term, "foreign or international tribunal", as used in Section 1782, would appear to be broader than the term "judicial authority", as used in the Convention. We are not aware of any U.S. Court rulings involving Convention letters of request that were issued by a judicial authority at the initiative of an arbitration panel."</p>	Etats-Unis
	<p>Hongkong <i>has not received any request</i> for taking of evidence by an arbitration panel. Yes, based on Hongkong case law defining/interpreting "foreign court" as used in the relevant local legislation, <i>we agreed with the Permanent Bureau's view that an arbitration panel cannot be regarded as a judicial authority</i> for the purposes of the Convention.</p>	Chine (Hongkong)
	<p>We can agree with the opinion of the Permanent Bureau that <i>an arbitration Panel cannot be treated as a judicial authority</i> for the purpose of the Convention.</p>	Norvège
	<p>Le Luxembourg <i>n'a pas encore été confronté à une demande d'obtention de preuves</i> dans le cadre de procédures arbitrales. Le fait d'inclure les procédures arbitrales dans le champ d'application de la Convention n'est pas sans danger alors que ces procédures échappent au contrôle des autorités. Il s'agit d'une <i>procédure de nature différente de celles visées</i> par la Convention de 1970.</p>	Luxembourg
	<p>The Ministry of Justice has not had the occasion to deal with requests to obtain evidence in the course of arbitration proceedings.</p>	Danemark
	<p>[F] [Le Canada n'est pas partie à cette Convention] Je doute qu'un groupe d'arbitrage étranger soit considéré comme un tribunal ayant compétence dans un pays étranger; par conséquent, les dispositions de la Loi sur la preuve ne s'appliqueraient pas, même si un tribunal étranger était l'intermédiaire entre le ou les arbitres et les cours de l'Ontario, comme on le propose dans la note du Secrétariat. <i>Je ne m'opposerais pas en principe à ce qu'une telle demande soit présentée d'une telle façon, mais je ne crois pas que nos lois en vigueur le permettent.</i></p> <p>[E] [Canada is not party to this Convention] I doubt that a foreign arbitral panel would be considered a "tribunal of competent jurisdiction in a foreign country", so the Evidence Act provisions would not apply, even if a foreign court was the intermediary between the arbitrator(s) and Ontario's courts, as proposed by the Secretariat's note. I would <i>not object in principle to such a request coming in such a manner, but I don't think our present law allows it.</i></p>	Canada (Ontario)

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8. Average time?	Regarding the requests addressed to Finland from other states the performance of the request takes <i>1-2 months</i> , approximately. The average time in outgoing cases is longer, up to one year.	Finlande
	We do not have accurate statistics indicating the average time elapsing between receipt of the request to its performance, but generally the average time performing the request is <i>1-3 months</i> .	Norvège
	Les autorités suisses exécutent les requêtes dans un délai de <i>un à trois mois</i> . Certains cas peuvent toutefois demander plus de temps (expertises).	Suisse
	Depending on the nature of the action necessary for execution of the request, the obtaining of evidence lasts <i>from 1 to 4 months</i> .	Bulgarie
	The average time elapsing between receipt of the request to obtain evidence and its performance is <i>around 1 month</i> but, in certain cases, <i>it can go up to 4 months</i> .	Chine (Macao)
	According to the Swedish Central Authority the average time elapsing between a receipt of a request to obtain evidence and its performance is <i>2-3 months</i> . We do not have statistics about the average time when our courts send requests to other states.	Suède
	The average time elapsing between receipt of the request to its performance takes <i>2-4 months</i> .	Pologne
	Typically the time taken to process a request is three to four months, with provision for expedition in appropriate cases. Given the necessity to follow procedures at both Federal and State/Territory level (see response to question 1), more intermediary stages are involved than with single jurisdiction State Parties. Delays may be incurred by requests being sent initially to the wrong Department within the Australian Government.	Australie
	The performance time depends on the requested court treatment. The most frequently requested hearing of parties and witnesses by German courts takes an average <i>four months</i> , plus mail delivery time. The provision of documents can also be made within this time or even sooner. In contrast, however, <i>the appointment of experts</i> and the preparation of expert opinions takes much more time, in individual cases – depending on the availability of the expert and the degree of difficulty of the work – <i>over twelve months</i> . However, this is not considerably longer than in domestic proceedings.	Allemagne
	The average time elapsing between receipt of the request to obtain evidence and its performance is <i>5 months</i> .	Danemark
	<i>Between 1 and 6 months.</i>	Portugal
	The time taken to process a request differs. In uncomplicated cases, it could be about <i>three months</i> . On average, the time elapsing between receipt of the request to obtaining of evidence and its performance is <i>around 6 months</i> .	Chine (Hongkong)
	Il n'existe au sein de l'autorité centrale française, <i>aucun indicateur objectif permettant de mesurer les délais</i> d'exécution des commissions rogatoires. Cependant, il peut être indiqué que le <i>délai moyen</i> entre la réception de la demande d'obtention des preuves et son exécution paraît être <i>très rarement inférieur à six mois</i> . En pratique, ces délais sont <i>très variables</i> : ils diffèrent sensiblement selon les juridictions qui sont saisies notamment en raison des difficultés auxquelles ces dernières sont confrontées, et particulièrement de leur charge de travail respective. Ils diffèrent encore, en fonction de la nature des opérations demandées : auditions de nombreux témoins, mesures d'expertises, etc.	France
	Les délais entre la réception de la demande et son exécution <i>varient</i> d'un cas à l'autre, en fonction notamment de la disponibilité des témoins. <i>Ils peuvent durer jusqu'à un an.</i>	Luxembourg
	Statistics on the amount of time between when a case is received and "opened" by the Central Authority and finally "closed" range <i>from 1 day to as many as two years or more</i> . However, no data exists on the reasons for closing the cases and therefore no useful conclusions can be drawn from the length of time indicated.	Etats-Unis
	No statistics.	Espagne,

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		Pays-Bas
	<p>[F] [Le Canada n'est pas partie à cette Convention] <u>Ontario</u>: Pas d'information. <u>Québec</u>: <i>Quelques semaines à quelques mois, parfois des années</i>. Cela dépend de la difficulté à localiser les personnes à interroger, aux délais pour que la demande soit complète (que les documents soient traduits et les questions précises indiquées) ainsi qu'au délai pour obtenir un engagement du requérant à l'effet qu'il remboursera les frais encourus.</p> <p>[E] [Canada is not party to this Convention] <u>Ontario</u>: No information. <u>Quebec</u>: <i>A few weeks, a few months and sometimes years</i>. This depends on the difficulty in locating the persons to be examined, the deadlines for fulfilling the request (translation of documents and the specific questions indicated) and the time it takes to obtain an undertaking from the requesting party to reimburse us for the costs incurred.</p>	Canada (Québec, Ontario)
9. Can representatives take part (Art. 8)?	<p>We consider the participation of representatives of the requesting Court in the execution of the request for obtaining of evidence as <i>completely permissible and even desirable</i>. On the one hand, the requesting Court is assisted in a more entire way, for instance, when participating in a hearing of a person, the personal apperception of the representative of the requesting Court of the behaviour of the person, the manner the person gives the answers, the possibility to ask additional questions as a result of the given answers, etc. will be of importance for the more complete clarification of the circumstances and for the settlement of the dispute. On the other hand, the requested authority will also be facilitated in the obtaining of evidence, because additional questions or circumstances may occur in the process of the execution, which in direct cooperation with the present representative of the requesting Court will be clarified without any waste of time for receiving additional information. If we take the same case of obtaining evidence – hearing of a person, the representative of the requesting Court <i>may clarify some facts with details</i> to the executing magistrate, or <i>to help in formulating the questions</i> for the hearing more strictly and more thoroughly, etc.</p>	Bulgarie
	<p>Yes, we allow members of the judicial personnel of the requesting authority of another Contracting State to be present at the execution of a Letter of Request <i>without prior authorization</i>.</p>	Suède
	<p>Yes / Oui</p>	Etats-Unis, Luxembourg, Portugal
	<p>Il semble que la demande de participer à la mesure d'exécution est <i>plutôt rare</i>. Les cantons qui ont eu de telles demandes les ont acceptées. De l'avis de l'Office fédéral de la justice, il n'y a <i>aucune raison pour refuser une telle demande</i> (voir la déclaration de la Suisse à cet égard).</p>	Suisse
	<p>Yes, upon permission / Oui, sous condition d'autorisation préalable.</p> <p><u>Espagne</u> : Dans la pratique, cette participation est largement admise.</p> <p><u>Pologne</u> : Poland allows representatives of a requesting Court to take part in the execution pursuant to Article 8 of the Convention upon prior permission of the Ministry of Justice.</p>	Allemagne Danemark, Espagne, Finlande, Pays-Bas, Pologne
	<p>En vertu des dispositions du droit interne français, les représentants d'une juridiction requérante <i>peuvent assister</i> à la mesure d'exécution dans le cadre de l'article 8 de la Convention. Ainsi, l'article 741 du nouveau code de procédure civile dispose que : " <i>Le juge commis est tenu d'informer la juridiction commettante qui en fait la demande des lieu, jour et heure auxquels il sera procédé à l'exécution de la commission rogatoire ; le juge étranger commettant peut y assister.</i> "</p>	France
	<p>Upon request, representatives from a requesting state may, as a main rule, be present at the execution of a request in Norway.</p>	Norvège
	<p>In some States representatives have been <i>allowed</i> to appear for the purposes of the examination <i>upon permission</i> being granted by the relevant State Court.</p>	Australie

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	<p>If the hearing of witnesses takes place before a judicial officer of the Court of First Instance, <i>Hongkong law does not provide for the participation by judicial officers</i> of the requesting court in the conduct of examination. It is not unusual, however, for a foreign court to nominate its own judicial officer as examiner to conduct the hearing. In such cases, <i>the Hongkong court will then appoint such examiner to sit outside the limits of the Court of First Instance</i>. The solicitor, being agent of the requesting party, will be informed of the hearing and is usually present. The witnesses will be ordered to appear before the examiner so appointed.</p>	Chine (Hongkong)
	<p><i>The representatives of a requesting court are not allowed to take part in the execution</i>, as no positive declaration has been made regarding the MSAR, under the terms of Article 8, allowing the representatives to do so.</p>	Chine (Macao)
	<p>[F] [Le Canada n'est pas partie à cette Convention] <i>Ontario: L'exécution est assez souple ici</i>. La réponse pourrait être Oui, selon ce qu'on entend par « participer ». Ils pourraient observer certaines formes d'exécution en personne. <i>Québec</i>: Il est arrivé que <i>la partie requérante soit représentée par avocat</i> lors de la commission rogatoire.</p> <p>[E] [Canada is not Party to this Convention] <i>Ontario: Execution is fairly flexible here</i>. The answer might be Yes, depending on what the question means by "take part in". They could observe some kinds of execution in person. <i>Quebec</i>: The <i>requesting party has sometimes been represented by counsel</i> during the taking of evidence.</p>	Canada (Québec, Ontario)
10. Do CAS accept e-requests?	Yes.	Danemark, Finlande, Suède
	<p>According to the MSAR Civil Procedure Code, <i>requests to obtain evidence can be transmitted by any means, including fax and e-mail</i>, under the terms foreseen in specific legislation. In what concerns the use of fax, <i>the existing law requires the original request and documents attached to be presented to the court afterwards</i>. In what concerns e-mail, no law has been enacted yet.</p>	Chine (Macao)
	<p>Requests by electronic means have <i>not been received to date</i>, however, <i>our domestic law recognises the validity of documents transmitted electronically as long as they have been digitally signed</i>.</p>	Portugal
	<p>Requests under the Convention are <i>not currently received electronically</i>. Such requests would be <i>acceptable in principle</i> although a degree of concern has been expressed concerning security and the transitional arrangements necessary to admit them in practice.</p>	Australie
	<p>En l'état, <i>non</i>. Dans les <i>cas urgents</i>, <i>il est toutefois possible d'envoyer la requête par fax ou e-mail</i> en faisant suivre par courrier l'original.</p>	Suisse
	<p>L'autorité centrale française considère <i>qu'un certain formalisme doit être respecté en la matière et est réticente à recevoir, en dehors de cas très exceptionnels, par voie électronique, des demandes d'obtention des preuves en provenance de l'étranger</i>.</p>	France
	<p>Poland <i>does not accept</i> requests for obtaining of evidence received by electronic means only. <i>However, informal correspondence – e.g. enquiries as to the status of the request – can also be conducted via e-mail</i>.</p>	Pologne
	<p><i>The Bulgarian legislation still does not contain provisions that allow accepting and executing requests for obtaining of evidence, received by electronic means only</i>.</p>	Bulgarie
	<p><i>Non</i>, bien que l'art. 162 du nouveau Code de la Procédure Civile admet la possibilité, sous certaines conditions, des "actes de communication par la voie électronique".</p>	Espagne
	<p><i>Non</i>. En l'absence de législation relative aux méthodes de transmission modernes, les demandes d'obtention de preuves doivent être transmises <i>en original sous forme papier</i>.</p>	Luxembourg
	<p>German Central Authorities <i>do not accept</i> any requests, which have only been sent electronically.</p>	Allemagne

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	The use of modern technology is a question that needs <i>to be considered more closely</i> .	Norvège
	No.	Chine (Hongkong), Etats-Unis, Ukraine
	<i>Unknown</i> . In the light of the restricted use of electronic means in Dutch civil procedure today, <i>it is unlikely</i> that such request will be accepted. <i>The Netherlands is actually discussing the introduction in domestic cases of interviewing witnesses at distance using modern devices like teleconferencing.</i>	Pays-Bas
	[F] [Le Canada n'est pas partie à cette Convention] <i>Ontario</i> : <i>Douteux à l'heure actuelle, mais probable à l'avenir</i> . La question principale serait l'authentification - comment pouvons-nous être sûrs d'où ou de qui la demande provient? Une télécopie poserait moins de problèmes qu'une transmission électronique, bien que certaines règles de la cour exigent des sceaux qui n'apparaissent pas facilement sur les télécopies. <i>Québec</i> : Nous n'en avons encore jamais reçu. [E] [Canada is not Party to this Convention] <i>Ontario</i> : <i>Doubtful at present, but likely in the future</i> . The main question would be authentication - how can we be sure where / who the request is coming from? A fax would be less problematic than an electronic transmission, though some court rules require seals that are not readily apparent on faxes. <i>Quebec</i> : We have not received any to date.	Canada (Québec, Ontario)
11. Taking of evidence by e-technology?	Requests to take evidence by <i>audio link and video link have been received and satisfied</i> in Australia. A <i>noticeable increase</i> in the requests to take evidence by video link has been observed. Similar requests have frequently been made by Australian judicial authorities of other Contracting States and these have not always been met.	Australie
	The Ministry of Justice can inform you that the <i>Danish law permits the use of new communication technology</i> in connection with requests to obtain evidence from abroad. However the Danish courts have limited access to the use of new communication technology.	Danemark
	The Finnish central authority has received a few requests to obtain evidence by using a <i>telephone conference</i> . These requests have been <i>fulfilled as requested</i> .	Finlande
	Le canton de Saint-Gall a <i>accepté dans deux cas d'exécuter une audition de témoins par vidéoconférence</i> . Le canton de Zurich nous indique un cas. De l'avis de l'Office fédéral de la justice, dans la mesure où les autorités suisses disposent de l'infrastructure nécessaire, <i>il n'y a pas de raison de refuser de donner suite</i> à une demande requérant l'utilisation de nouvelles technologies. L'Office fédéral de la justice a par ailleurs donné suite à ce genre de requête dans le cadre de l'article 17 CLaH 70.	Suisse
	Norway has received one request (in 2002) to obtain evidence (interrogation) by <i>the use of video-link</i> . <i>The request was complied with</i> .	Norvège
	No. The Judiciary in Hongkong will give <i>favourable consideration to a request to take evidence by video link</i> .	Chine (Hongkong)
	<i>U.S. courts allow many forms of electronic technologies, including videotaped depositions, teleconferencing, electronic filing, and electronic exchange of documents</i> . Whether an evidence request seeking the utilization of new technologies can be fulfilled <i>will depend upon the nature of the request, the availability and cost of the technology, whether the individual or entity with the evidence voluntarily submits to such techniques, and, to the extent such a request requires the intervention of a court, whether the procedure will be authorized by the appropriate judicial officer</i> .	Etats-Unis
	We believe that the usage of new information technologies will be <i>more frequently used in the future</i> . We are starting to see examples of such requests. Sometimes we see some practical problems since not all courts have equipment for	Suède

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	videoconference. We believe that telephone conference is a very useful method to obtain evidence abroad in certain cases.	
	À ce jour, l'autorité centrale française <i>n'a pas été destinataire de demandes</i> d'obtention des preuves requérant l'utilisation des nouvelles technologies de l'information, pas plus qu'elle n'a été amenée à en transmettre.	France
	German Central Authorities <i>do not send any requests electronically. However, informal notifications</i> – e.g. enquiries as to the status of the request – <i>can also be completed electronically.</i>	Allemagne
	Until now, the MSAR authorities <i>did not receive or forward requests to obtain evidence requiring the use of new information technology.</i>	Chine (Macao)
	<i>Non.</i> Toutes les demandes ont été reçues ou transmises en <i>original.</i>	Luxembourg
	We have <i>not received or forwarded any requests by electronic means.</i>	Pologne, Portugal, Ukraine
	There are <i>no such cases.</i> The new information technology has not been introduced for the authorities executing and forwarding requests for obtaining of evidence.	Bulgarie
	<i>Non,</i> en ce qui concerne la réception et la transmission des demandes d'obtention de preuves. Pourtant, <i>la plus part des autorités judiciaires ont accès à des systèmes de vidéoconférence,</i> largement utilisés dans le domaine pénale pour pratiquer des déclarations, et qui pourront faciliter l'exécution des preuves en matière civile.	Espagne
	[F] [Le Canada n'est pas partie à cette Convention] <i>Ontario:</i> J'en doute. <i>Québec:</i> Nous n'en avons encore jamais reçu ni transmis. [E] [Canada is not party to this Convention] <i>Ontario:</i> I doubt it. <i>Quebec:</i> We have never received or sent any to date.	Canada (Québec, Ontario)
12. Recomm. or new instrument for the use of NT?	<i>Yes, especially in relation to video and audio links from a witness in an overseas jurisdiction</i> but also to facilitate the response to requests from overseas judicial authorities. We are conscious that there will be implications in the taking of video evidence abroad for such matters as the location where evidence is deemed to be taken and given, whether perjury is actionable in the jurisdiction of the requesting judicial authority and whether privilege extends to such witness statements.	Australie
	We <i>definitely consider that the adoption of a Recommendation for the use of modern communication technologies is useful,</i> with a view of shortening the period for receiving the request for obtaining of evidence and for its execution, as well as for the returning of the execution. The introduce of such <i>new instrument is to consider the specific character</i> of these means.	Bulgarie
	<i>Yes. It would be useful if evidence may be taken by judicial officers of the requesting court through video link provided that such evidence is admissible under its law (lex fori).</i> There is no court rule in Hongkong against taking of evidence by electronic means by an examiner appointed by the court as they are sitting outside the limits of the Hongkong courts. <i>The requesting party should make it clear in the request to the authority in Hongkong that it wishes to use this special method of taking evidence.</i> Finally, the use of video link services is subject to the Rules, Practice Directions and fees imposed by the jurisdiction in which such services are required. <i>A recommendation will serve as a reminder that State Parties to the Convention should actively consider the ways and means of applying the Convention in a more effective and efficient manner, including the use of electronic media.</i>	Chine (Hongkong)
	The impact of new technologies and their potential use in the context of the Convention are considered important issues that should be addressed. As modern communication technologies are being introduced to the MSAR courts, the adoption of a recommendation for <i>the promotion of the use of such technologies is envisaged favourably as it could contribute to accelerate the domestic procedure for adoption of legislation on the use of electronic means.</i>	Chine (Macao)
	International civil procedure <i>needs speedy actions.</i> The use of modern communication technology <i>might be of great help.</i>	Pays-Bas

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	Les avis des cantons sur la question sont partagés. De l'avis de l'Office fédéral de la Justice, une <i>Recommandation</i> visant à promouvoir l'utilisation des technologies de communication modernes <i>pourrait être utile</i> . Il ne nous semble en revanche <i>pas nécessaire d'élaborer un nouvel instrument</i> qui aborderait ces questions plus spécifiquement.	Suisse
	<i>A recommendation would be useful</i> but we do not believe that a new instrument in the form of a convention should be developed. <i>A protocol between the authorities of the Contracting States could be envisaged</i> defining the conditions under which requests by electronic means to obtain evidence abroad could be accepted.	Portugal
	La portée de la recommandation visant à promouvoir l'utilisation des technologies de communications modernes n'est pas indiquée. Si elle doit s'étendre à l'ensemble des procédures de la Convention, il semble qu'une <i>telle recommandation ne serait pas suffisante</i> , les juges ayant besoin d'une règle admettant leur utilisation. Et si le but de la recommandation est celui de promouvoir un développement dans ce sens dans le droit de la procédure des Etats parties, des divergences entre ceux-ci peuvent certes surgir, affectant l'uniformité dans l'application de la Convention. Par conséquent, <i>l'élaboration d'un nouvel instrument international sera nécessaire</i> si on veut arriver non seulement à un traitement plus rapide de la demande d'obtention de preuves à l'étranger mais aussi à garantir la certitude des divers éléments de la transmission et de la réception. Notamment, l'authenticité de la communication et de son contenu, l'attestation de son transmission et réception intégrales et de son exécution, ainsi que du moment précis de ces actes, questions qui sont à étudier par une future Commission Spéciale.	Espagne
	<i>Yes, we support the promotion of the modern communication technology. Furthermore, we find that it would be useful to include these issues in a new instrument</i> that is found suitable for that purpose.	Finlande
	<i>Yes. In our opinion the use of modern technologies should be promoted.</i>	Norvège
	<i>Yes, we support the promotion of the modern communication technology.</i>	Pologne
	<i>The use of modern communication technologies should be promoted.</i> Perhaps a recommendation could have just as much impact as a completely new instrument. But this question could be looked into at more depth where also art 10.4 and 17.4 of Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters could serve as a basis for the discussions.	Suède
	<i>The United States recognizes that new technologies have an increasing role to play in the litigative process</i> both here and in other States, and, <i>indeed, many courts in the United States have begun to explore and implement the use of electronic technologies, for such purposes as electronic filing and serving of court documents, and the obtaining of evidence through various electronic means.</i> In any event, we would anticipate that any <i>new technology must be mutually compatible and acceptable to the requesting and forum States.</i> The form for such an arrangement or understanding would have to be considered based on its content and purpose.	Etats-Unis
	Faute de besoin avéré, <i>il ne paraît guère utile d'adopter une recommandation</i> visant à promouvoir l'utilisation des technologies de communication modernes. En effet, de telles modalités de transmission des commissions rogatoires ne pourraient pas complètement se substituer à la voie postale, notamment lorsque des pièces accompagnent la demande. Sur un plan pratique, il n'est pas certain qu'une saisine par télécopie ou courrier électronique favorise, en soi, un traitement plus rapide de la demande. En effet, les délais de transmissions par voie postale sont généralement très brefs, contrairement à ce qu'il en est des délais d'exécution. <i>Dans tous les cas, l'élaboration d'un nouvel instrument serait nécessaire afin d'aborder ces questions plus spécifiquement.</i>	France
	L'utilisation de technologies de communication moderne serait utile et envisageable pour l'avenir, à condition que l'identité et l'authentification de l'autorité expéditrice soient certaines (signature électronique). L'adoption d'une telle recommandation ou d'un <i>nouvel instrument aurait une utilité certaine alors qu'elle permettrait l'établissement d'un cadre légal uniforme notamment quant aux règles de sécurité et de validité juridique.</i>	Luxembourg

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	<p>In the use of modern telecommunications, a distinction must be made between a request and the performance thereof. <i>We do not see any benefit in the electronic transmission of requests.</i> This may be worthy of consideration for service of process, since this occurs en masse and is dependant upon a swift transmission, but these considerations usually do not apply to requests for mutual assistance. These requests comprise a comparably small quantity of the whole of judicial co-operation, are often quite voluminous, but are under less time constraints than service of process. Delivery by mail – if needed as a rush delivery by private courier – seems sufficient. Above all, a swift transmission by no means guarantees swift processing/completion. If the requested authority is not equipped with the necessary personnel, hardware and expertise, then this – and not the transmission – is the main reason for extensive processing. What is typical in these instances is that enquiries as to the status of the request – also submitted via fax or email – are not answered for months, and in some cases not at all. <i>The implementation of technical aids is however conceivable particularly in the completion of requests for hearings.</i> As it is however, under the existing Convention, the use of video and telephone conferences is possible, since German civil procedural law provides for this option and alternatively such technical methods require the taking of evidence in a special form. Due to high costs and limited technical provisions however, use must be limited to special circumstances. In view of existing possibilities, no need is seen for critical action to be taken here either.</p>	<p>Allemagne</p>
	<p>[F] [Le Canada n'est pas partie à cette Convention] <i>Ontario: Peut-être</i> - cela dépend de la mesure dans laquelle la résolution serait précise. Nous aimerions entendre plus d'arguments avant de déterminer si un nouvel instrument serait nécessaire, ou simplement un guide pour interpréter la Convention en vigueur à la lumière des nouvelles technologies. <i>Québec: Bien que le Québec ne soit pas partie à la Convention [...] le gouvernement du Québec est de façon générale favorable à promouvoir l'utilisation des nouvelles technologies de communication.</i> Dans le domaine plus particulier qui est ici abordé, le Comité de révision de la procédure civile, qui a rendu public son rapport le 28 août 2001, a indiqué être favorable à l'utilisation des technologies de l'information dont la fiabilité peut être assurée notamment pour échanger et communiquer certains actes de procédure.</p> <p>[E] [Canada is not party to this Convention] <i>Ontario: Possibly</i> - it depends on how specific the resolution was. We would like to hear more discussion before knowing if a new instrument would be needed, or merely a guide to interpreting the present Convention in the light of new technologies. <i>Quebec: Although Quebec is not a party to the Convention [...] the Government of Quebec is generally receptive to promoting the use of the new communication technologies.</i> In the particular area in question here, the committee to review the civil procedure, which made its report public on August 28, 2001, stated that it favoured the use of information technologies whose reliability can be assured particularly in exchanging and communicating certain procedural documents.</p>	<p>Canada (Québec, Ontario)</p>
	<p>[Swaziland is not party to this Convention] <i>Yes. Modern communication technologies enhances and speeds up communication. Development of a new instrument ought to be considered.</i></p>	<p>Swaziland</p>