GUATEMALA - revised

PART ONE – GENERAL INFORMATION AND STATISTICS

I. Questions for non-Contracting States

1) Please indicate why your State is not a Contracting State to the Evidence Convention (select as many answers as are relevant):

[ ] The availability of possibilities under internal law, bilateral or regional agreements, treaties or instruments means there is no added value in becoming a Party to the Evidence Convention

[ ] The number of cross-border litigation cases that require evidence to be taken from abroad is limited and does not require a global framework

[ ] There are legal obstacles in your domestic legal system that prevent your State from becoming a Party to the Convention – if so, please specify what these are:

[ ] Your State considers that there are specific issues arising out of the Evidence Convention (*e.g.*, the absence of deadlines for the execution of requests for the taking of evidence, rules as to the language of the Letter of Request to be used under the Convention, etc.) which dissuade your State from joining the Evidence Convention – please explain:

[ ] Your State does not have the means or resources to properly implement the Evidence Convention

[**x**] The question of becoming a Party to the Convention has never been examined in detail

[**x**] Other reason – please explain:

The text of the Convention is already being analyzed by the national competent authorities in order to soon be part of the said Convention

2) Please forward a list of any bilateral or regional agreements, treaties or instruments to which your State is a Party and that provide rules for the taking of evidence abroad:

- ***Inter-American Convention on the Taking of Evidence Abroad***
- ***Inter-American Convention on proof of and information on foreign law***
- **Inter-AmericaN Convention on Letters Rogatory**
- **Bustamante Code of Private International Law**

3) Is your State currently studying the Evidence Convention or does your State envisage studying it with a view to becoming a State Party in the near future?

[**x**] YES – please specify (status of considerations in your State, etc.):

The national competent authorities (Supreme Court of Justice, Society of Law and the Law Department of the Ministry of Foreign Affairs) are already analysing the text of the Convention. After their opinion, Guatemala will be prepared to the ratification of the said Convention.

[ ] NO

II. Questions for Contracting States

A. Contact details for designated Authorities

4) Please check the contact information as contained on the HCCH website with regards to the ***Central Authority(ies)*** designated by your State (Arts 2 and 24(2)). If one of the following categories of information is missing then please provide it below (please provide both a postal address and a street address, if these are not identical):

Name of Authority:
Address:
Telephone:
Fax:
E-mail:
Website:
Language(s) of communication:
Name of contact person:

If your State has designated several Central Authorities and one of the above categories is missing for more than one Central Authority designated, please provide separate details for each of those Central Authorities (copy and paste if necessary – also, please provide both a postal address and a street address, if these are not identical):

Name of Authority:
Address:
Telephone:
Fax:
E-mail:
Website:
Language(s) of communication:
Name of contact person:

5) Please also verify the contact information as contained on the HCCH website with regards to the following authorities in your State, *if applicable*. If one of the following categories of information is missing then please provide it below (please provide both a postal address and a street address, if these are not identical):

a. ***Other authorities*** that may be designated in addition to the Central Authority (Art. 24(1)):

Name of authority:
Address:
Telephone:
Fax:
E-mail:
Website:
Language(s) of communication:
Name of contact person:

b. For those States Parties with more than one legal system, the authorities of one such system that the Contracting State has designated to have exclusive competence to execute Letters of Request (Art. 25):

Name of authority:
Address:
Telephone:
Fax:
E-mail:
Website:
Language(s) of communication:
Name of contact person:

c. The designated ***competent authority*** that authorises members of the judicial personnel of the Requesting Authority to be present at the execution of a Letter of Request (Art. 8):

Name of authority:
Address:
Telephone:
Fax:
E-mail:

Website:
Language(s) of communication:
Name of contact person:

d. The ***appropriate authority*** that grants permission for the taking of evidence by a diplomatic officer or consular agent of nationals of a State that he or she represents (Art. 15(2)):

Name of authority:
Address:
Telephone:
Fax:
E-mail:
Website:
Language(s) of communication:
Name of contact person:

e. The ***competent authority*** that grants permission for the taking of evidence by a diplomatic officer or consular agent of nationals of the State in which he or she exercises his functions or of a third State (Art. 16):

Name of authority:
Address:
Telephone:
Fax:
E-mail:
Website:
Language(s) of communication:
Name of contact person:

f. The ***competent authority*** that grants permission for the taking of evidence by a commissioner (Art. 17):

Name of authority:
Address:
Telephone:
Fax:
E-mail:
Website:
Language(s) of communication:
Name of contact person:

g. The ***competent authority*** to which a diplomatic officer, a consular agent or a commissioner (according to Arts 15, 16 or 17), may apply to seek appropriate assistance to obtain evidence by compulsion (Art. 18):

Name of authority:
Address:
Telephone:
Fax:
E-mail:
Website:
Language(s) of communication:
Name of contact person:

B. Stati stics

Chapter I (Letters of Request – Incoming)

6) The following questions relate to the number of Letters of Request *addressed to your State* under the Evidence Convention:

a. Please complete the following table to indicate *how many incoming Letters of Request* the Central Authority(ies) of your State received in the past five years.

Please also note, if possible for each year, the country(ies) from which your State received the most Letters of Request.

2003	2004	2005	2006	2007
Number: State(s):	Number: State(s):	Number: State(s):	Number: State(s):	Number: State(s):

b. Of the total number of Letters of Request received in **2007**, please divide these depending on the nature of the evidence that was sought and complete the following table with respect to the *time that lapsed* between the Central Authority(ies) of your State receiving a Letter of Request and executing that request (*i.e.*, transmitting the evidence back to the requesting State).

For example, if your State executed 12 Letters of Request for the taking of oral evidence and that took between 4 and 6 months, please write the number "12"' in the relevant box. In the case of Letters of Request that requested more than one type of evidence, please provide a separate answer for each type of evidence that was sought (this also enables you to take into account any variations in execution times relevant to the different types of evidence sought):

Nature of Evidence Sought	Less than 2 months	Between 2 and 4 months	Between 4 and 6 months	Between 6 and 12 months	More than 12 months	Returned unexecuted (Art. 12)	Cases currently pending
Oral Evidence							
Documentary Evidence							
Bank records							
Written responses to written interrogatories							
Inspection of Personal Property							
Inspection of Real Property							
Blood tests							
Other evidence (please specify below the nature of the evidence sought)							
Performance of other judicial act (please specify below the nature of the act)							

Comments relating to "[o]ther evidence":

Comments relating to "[p]erformance of other judicial act":

c. How many of the total amount of these Requests sought evidence from a party?

d. How many of the total amount of these Requests sought evidence from a non-party witness?

e. If your State is not able, for whatever reason, to complete the above table in question 6 b., or to answer questions 6 c. and 6 d., please provide any other relevant statistical information that you may have:

Chapter I (Letters of Request – Outgoing)

7) The following questions relate to the number of Letters of Request *sent by your State* under the Evidence Convention. These questions are likely to require some consultation with the (main) courts in your State that (may) have previously forwarded Letters of Request:

a. Please complete the following table to indicate *how many outgoing Letters of Request* the judicial authorities of your State have sent to Central Authorities of other Contracting States in the past five years. Please also note the country(ies) to which your State sent the most Letters of Request.

2003	**2004**	**2005**	**2006**	**2007**
Number: State(s):	Number: State(s):	Number: State(s):	Number: State(s):	Number: State(s):

b. Of the total number of Letters of Request sent in **2007**, please divide these depending on the nature of the evidence that was sought and complete the following table with respect to the *time that lapsed* between the judicial authority of your State sending a Letter of Request and receiving the relevant evidence.

For example, if your State sent 17 Letters of Request for the taking of oral evidence and it took between 4 to 6 months to receive the evidence that was requested in each of those, please write the number "17" in the relevant box. In the case of Letters of Request that requested more than one type of evidence, please provide a separate answer for each type of evidence that was sought (this also enables you to take into account any variations in execution times relevant to the different types of evidence sought):

Nature of Evidence Sought	Less than 2 months	Between 2 and 4 months	Between 4 and 6 months	Between 6 and 12 months	More than 12 months	Returned unexecuted (Art. 12)	Cases currently pending
Oral Evidence							
Documentary Evidence							
Bank records							
Written responses to written interrogatories							
Inspection of Personal Property							
Inspection of Real Property							
Blood tests							
Other evidence (please specify below the nature of the evidence sought)							
Performance of other judicial act (please specify below the nature of the act)							

Comments relating to "[o]ther evidence":

Comments relating to "[p]erformance of other judicial act":

c. How many of the total amount of these Requests sought evidence from a party?

d. How many of the total amount of these Requests sought evidence from a non-party witness?

e. If your State is not able, for whatever reason, to complete the above table in question 7 b., or to answer questions 7 c. and 7 d., please provide any other relevant statistical information that you may have:

Chapter II (Taking of evidence by Diplomatic Officers, Consular Agents and Commissioners – Incoming and outgoing cases)

8) If your State has not objected to the application of Chapter II of the Evidence Convention (or part thereof):

   a. Please indicate how many times your State has been involved in incoming (evidence taken in your State) and outgoing (evidence taken in another State Party) cases for the taking of evidence under Chapter II since 2003:

      Incoming cases:

      Outgoing cases:

   b. Of these cases, if applicable, how many were executed? If a case(s) has (have) not been executed, please explain the reason(s) for this:

      Incoming cases:

      Outgoing cases:

   c. With respect to these cases, if applicable, please specify the average time required for their execution:

      Incoming cases:

      Outgoing cases:

   d. In how many of these cases, if applicable, was the evidence taken by (please note figures for both if relevant):

      Incoming cases:

      [ ] Diplomatic officers or consular agents – specify number of cases:
      [ ] Commissioners – if evidence was taken by Commissioners (specify number of cases:), please indicate if the Commissioner was designated by the State where the evidence was taken or the State where the evidence was produced:

      Outgoing cases:

      [ ] Diplomatic officers or consular agents – specify number of cases:
      [ ] Commissioners – if evidence was taken by Commissioners (specify number of cases:), please indicate if the Commissioner was designated by the State where the evidence was taken or the State where the evidence was produced:

e. If applicable, how many of these Requests sought evidence from a party?

Incoming cases:

Outgoing cases:

f. If applicable, how many of these Requests sought evidence from a non-party witness?

Incoming cases:

Outgoing cases:

g. Please indicate the nature of the main type of evidence that was sought in these cases if applicable (see the categories identified in questions 6) and 7)):

Incoming cases:

Outgoing cases:

C. General appreciation of the Evidence Convention

9) Please indicate below how your State rates the general operation of the Evidence Convention:

[ ] Excellent
[ ] Good
[ ] Satisfactory
[ ] Unsatisfactory

If your State considers that the general operation of the Evidence Convention is good, satisfactory or unsatisfactory, please indicate what particular aspects of the Convention your State considers require improvement or where your State has encountered difficulties. For any areas that require improvement, please also indicate whether your State considers that solutions could be developed in specific *Conclusions and Recommendations* to be adopted by the next Special Commission, a *Guide to Good Practice* and / or a *Practical Handbook* on the Convention or a *Protocol* to the Convention.

D. Case law and reference work

10) The Permanent Bureau invites States Parties to provide copies of any guides or practical information that may have been produced for the assistance of their judicial authorities or other authorities when sending or executing a Letter of Request under the provisions of the Evidence Convention.

11) The Permanent Bureau invites States Parties to provide copies of decisions rendered since 2003 (or from before this date if these have not already been provided to the Permanent Bureau) in relation to the Evidence Convention. If the decision is in a language other than English or French, a summary into either of these languages would be appreciated.

12) The Permanent Bureau invites States Parties to forward a list of references of articles or books in connection with the Evidence Convention that do not already appear on the bibliography tab on the website of the HCCH.

13) The Permanent Bureau invites States Parties to forward a citation for and / or a copy of the domestic legislation which implemented the Evidence Convention in their territory(ies), as well as any citations for and / or copies of any domestic laws which provide for the taking of evidence in aid of foreign proceedings.

14) The Permanent Bureau invites States Parties to forward a list of any other bilateral treaties and / or international instruments to which they are a party and that provide rules for the taking of evidence abroad.

PART TWO – SUBSTANTIVE ISSUES

I. Mandatory or no n-mandatory char acter of th e E vidence C onvention an d "blocking statutes"

A. Question as to whether or not the Convention is of mandatory character

The 2003 Special Commission noted that there were still diverging views as to whether or not the Evidence Convention is mandatory (see Conclusion and Recommendation No 37). The Permanent Bureau believes that this divergence is, at least partially, attributable to the lack of coherent use and understanding of the relevant terminology. With a view to further clarifying this important and sensitive matter, the Permanent Bureau would like to recall and firmly establish the precise meaning of the terminology employed.

The basic question at stake is the following: *Must a State Party (more precisely, a judicial authority, diplomatic officer, consular agent or commissioner of a State Party) have recourse* ***to the Convention*** *on each occasion that it intends to take evidence that is located in another State Party?* At the next Special Commission, this question as to whether a State Party may take evidence in the territory of another State Party *only pursuant to the Convention* or whether it may also take evidence in another State Party *by other means* (in particular, by those means provided for by its own domestic legislation) will be examined under the heading of whether or not the Convention is of a *mandatory* character. If the Convention is considered to be *mandatory*, evidence must always be taken pursuant to the means provided for by the Convention. If, however, the Convention is considered to be *non-mandatory*, a State Party may, in principle, also have recourse to means other than those provided for by the Convention.

If the Convention is considered to be *non-mandatory*, an additional question is whether a court may order evidence to be taken in another State Party by methods outside the Convention *even if the State in which the evidence is to be taken would consider that such actions violate its sovereignty, trade activities or secrecy policies*. These considerations (which in some jurisdictions are generally referred to as *comity issues* [4]) assume particular significance if and when the State where the evidence is to be taken has implemented legislation which in effect proscribes the taking of certain types of evidence in its territory by methods outside the Convention (see the comments and questions below under "B. Blocking statutes").

Unlike the Hague Service Convention, it serves no real and distinct purpose to discuss whether or not the Evidence Convention has the additional quality of being *exclusive*. Whilst the two concepts of whether the Convention is mandatory and exclusive serve clear and distinct purposes when describing the Service Convention,[5] this is not the case

---

[4] The term "comity" is not known or used in all jurisdictions; it refers to the courtesy among political entities or courts, involving especially mutual recognition of legislative, executive and judicial acts.

[5] See Permanent Bureau, *Practical Handbook on the Operation of the Hague Service Convention* (2006), paras 15-48; Conclusions and Recommendations Nos 73 and 74 of the 2003 Special Commission. A number of important differences exist between the Hague Service and Evidence Conventions. Most importantly, the Service Convention sets out in Art. 1 that it "shall apply in all cases […] where there is occasion to transmit a […] document for service abroad". The language "where there is occasion to transmit" has been taken to mean that the Service Convention is *non-mandatory* in the sense that it is a matter for the *law of the forum* to determine whether a document must be transmitted for service abroad. The use of the word "shall" has been taken to mean that the Service Convention is *exclusive* however, in the sense that once the law of the forum has determined that a document must be transmitted abroad for service, the channels of transmission expressly available or otherwise permissible under the Hague Service Convention are the only channels that may be used.

for the Evidence Convention. Under the Evidence Convention, only one question arises: whether or not evidence abroad *must always* be taken pursuant to the Convention.

Based on these comments, the Permanent Bureau would like to ask the following questions:

15) Does your State consider that the Evidence Convention is mandatory or non-mandatory?

[ ] Mandatory – please explain:

[ ] Non-mandatory – please explain:

a. If your State considers the Convention to be *non-mandatory*, does it nonetheless consider that "State interests" (such as sovereignty, trade or secrecy policies) of the State where the evidence is to be taken must be taken into consideration (see also question 16)?

[ ] YES – please explain:

[ ] NO – please explain:

B. Blocking statutes

16) In order to prevent foreign applicants from obtaining certain types of evidence, some States have enacted blocking statutes to prohibit persons from providing (and even sometimes from requesting) evidence within their territory when that evidence would ultimately be used by foreign authorities. Blocking statutes typically attempt to protect State interests such as sovereignty, trade activities or bank and secrecy policies. Has your State adopted any such laws?

[ ] NO

[ ] YES – please specify:

a. The purpose, nature and content of these laws (if these laws are in a language other than English or French, a brief summary into either of these languages would be appreciated):

b. Under what circumstances the blocking statute may prevent the execution of a request for the taking of evidence made under the Evidence Convention and / or in which circumstances or conditions (if any) the blocking statute may be lifted and the request for evidence executed:

c. Whether these blocking statutes have been applied by the courts of your State to "block" the taking of evidence in your State, and if so, under what circumstances (please provide references to and brief summary in English or French of relevant court decisions):

d. Whether the courts of your State have actually taken measures against (*e.g.*, fined) witnesses, experts, etc., for having given evidence in violation of a blocking statute?

[ ] YES – please specify:

[ ] NO

II. Scope of the Evidence Convention

A. Interpretation of the phrase "civil or commercial matters"

17) In Conclusions and Recommendations Nos 69 to 72, the 2003 Special Commission urged for a broad and liberal interpretation of the phrase "civil or commercial matters" (Art. 1) and reaffirmed the Conclusions adopted at the 1989 Special Commission regarding the scope of the Evidence Convention.

a. Has the interpretation of the phrase "civil or commercial matters" given rise to specific issues in your State (either as a requested or a requesting State) since 2003?

[ ] YES

(i) What were they and how have they been solved?

(ii) Have the authorities of your State followed the Conclusions and Recommendations of the 2003 Special Commission?

[ ] YES

[ ] NO

(iii) Please provide details and / or a copy of any relevant decision(s) (if these decisions are in a language other than English or French, a brief summary into either of these languages would be appreciated):

[ ] NO

b. Has (any of) the Central Authority(ies) of your State been in direct contact with an authority of another Contracting State to discuss the interpretation of this phrase (so as to decide whether or not to execute a Letter of Request)?

[ ] YES – please briefly explain the circumstances and modalities of any exchange:

[ ] NO – please explain why there was no communication on this issue:

18) Regardless of whether a matter has actually arisen, please indicate (by placing a "YES" or a "NO" in the relevant box) which of the following types of matters the authorities of your State consider as falling within the scope of the phrase "civil or commercial matters":

[ ] Bankruptcy or insolvency in general
[ ] Reorganisation under bankruptcy laws
[ ] Insurance
[ ] Social Security
[ ] Employment
[ ] Taxation
[ ] Anti-trust and Competition

[ ] Consumer protection
[ ] Regulation and oversight of financial markets and stock exchange (*e.g.*, in matters possibly involving insider trading)
[ ] Proceeds of crime
[ ] Other matters (please specify):

B. Interpretation of the terms "commenced or contemplated" (Art. 1(2)) and / or "commenced" (Arts 15(1) and 16(1))

19) In Conclusion and Recommendation No 36, the 2003 Special Commission recommended that States Parties submit information to the Permanent Bureau as to how Article 1(2) was being interpreted and, in particular, what domestic judicial proceedings would be regarded as "contemplated" for the purpose of this provision. If possible, please provide any relevant information in this respect:

20) Has the interpretation of the terms "commenced or contemplated" in Article 1(2) given rise to any difficulties in your State (either as a requested or a requesting State)?

[ ] YES – please specify:

[ ] NO

21) If your State has not objected to the application of Chapter II of the Evidence Convention (or part thereof), has the interpretation of the term "commenced" in Articles 15(1) and 16(1) given rise to any difficulties in your State (either as a requested or a requesting State)?

[ ] YES – please specify:

[ ] NO

22) Does your State agree that the term "commenced" should be given a uniform interpretation across Articles 1(2), 15(1) and 16(1)?

[ ] YES
[ ] NO – please specify:

C. Arbitration proceedings

23) The 2003 Special Commission noted that in some instances, and in accordance with the internal law of some States, the Evidence Convention has been made available for use in arbitration proceedings. The Special Commission stressed however that a request for the taking of evidence under the Evidence Convention in the context of arbitration proceedings would have to be presented by the relevant judicial authority of the State where those proceedings were taking place.

Has your State received or presented a request according to the abovementioned condition?

[ ] YES – has this condition given rise to any particular issues? Please specify:

[ ] NO

III. Taking of evidence by video-link

The Conclusions and Recommendations adopted by the 2003 Special Commission expressed general support for the use of modern technologies under the Evidence Convention, including the taking of evidence by video-link,[6] to further facilitate the efficient operation of the Evidence Convention (Conclusions and Recommendations Nos 4 and 42). The following questions are designed to provide the Permanent Bureau with specific information as to whether video-links are actually used in practice, and if so, by which States and under what circumstances.

A. Gener al legal framework

24) Does your State consider that there are *legal* obstacles to the taking of evidence by video-link under:

a. Chapter I of the Convention

[ ] NO – please explain what your State considers to be the legal basis for the taking of evidence by video-link under the Convention (*e.g.*, does your State base the use of video-link on the functional development and medium neutral interpretation of the Convention in light of modern technologies or do you base the use of video-link under the Convention on specific provisions such as Arts 7 or 8?):

[ ] YES – please specify what these obstacles are:

b. Chapter II of the Convention

[ ] NO – please explain what your State considers to be the legal basis for the taking of evidence by video-link under the Convention (*e.g.*, does your State base the use of video-link on the functional development and medium neutral interpretation of the Convention in light of modern technologies or do you base the use of video-link under the Convention on specific provisions such as Art. 19?):

[ ] YES – please specify:

B. Chapter I – Incoming Letters of Request

25) Since 2003, has (one of) the Central Authority(ies) of your State *received* any Letters of Request which required or otherwise involved the use of a video-link in their execution?

[ ] YES

a. How many Letters of Request of this nature were received?

b. Which States sent these Letters of Request?

---

[6] The reference to video-link includes all videoconferencing and any other modes of visual technology connections (including webcams).

c. Were all of these Requests in fact executed using video-links?

[ ] YES (please answer questions d. to f. below)

[ ] NO (please answer question g. below)

d. Please describe and comment on the nature of the technology that your authorities use to execute incoming Letters of Request via video-links (*e.g.*: Do they use a secured video-link operated on a private network or a (unsecured) webcam connection over the Internet? etc.):

e. Have there ever been any technical problems (*e.g.*, incompatibility of video systems used) in the execution of such a Letter of Request? Please explain further (*e.g.*, were the problems overcome and if so, how?):

f. Have there been any language barriers in the execution of these Letters of Request?

[ ] NO

[ ] YES

In particular, when a Letter of Request is executed in your State by video-link:

(i) Does the relevant authority of your State have to use professional accredited interpreters or does it rely on the parties or their counsel?

[ ] Professional accredited interpreters required

[ ] Parties or their counsel

(ii) Does the relevant authority of your State have to use simultaneous interpretation (voice over)?

[ ] YES

[ ] NO

(iii) Does the relevant authority of your State have to use in sequence interpretation (in order to hear the original language)?

[ ] YES

[ ] NO

(iv) Does the law of your State require that the proceedings be interpreted in both jurisdictions or only in your State?

[ ] Interpretation only required in your State

[ ] Interpretation required in both States

(v) Who pays for the cost of the interpretation?

g. If any Letter of Request which required or requested the use of a video-link was not ultimately executed in this way, please explain further why this was the case:

[ ] NO

26) If applicable, how did (or would) the relevant Central Authority and / or the relevant judicial authority handle a request that required or requested the use of a video-link if the witness was / is not willing to give evidence using such technology?

C. Chapter I – Outgoing Letters of Request

27) Since 2003, have the judicial authorities of your State *forwarded* Letters of Request abroad which required or otherwise involved the use of a video-link in their execution?

[ ] YES

a. How many Letters of Request of this nature were forwarded?

b. To which States were these Letters of Request sent?

c. Were all of these Requests in fact executed using video-links?

[ ] YES (please answer questions d. to f. below)

[ ] NO (please answer question g. below)

d. Please describe and comment on the nature of the technology that your authorities use when their Letters of Requests are executed abroad via video-link (*e.g.*: Do they use a secured video-link operated on a private network or a (unsecured) webcam connection over the Internet? etc.):

e. Have there ever been any technical problems (*e.g.*, incompatibility of video systems used) in the execution of such a Letter of Request? Please explain further (*e.g.*, were the problems overcome and if so, how?):

f. Have there been any language barriers in the execution of these Letters of Request?

[ ] NO

[ ] YES

In particular, when a Letter of Request is executed in another State by video-link:

(i) Does the relevant authority of your State have to use professional accredited interpreters or does it rely on the parties or their counsel?

[ ] Professional accredited interpreters required

[ ] Parties or their counsel

(ii) Does the relevant authority of your State have to use simultaneous interpretation (voice over)?

[ ] YES

[ ] NO

(iii) Does the relevant authority of your State have to use in sequence interpretation (in order to hear the original language)?

[ ] YES

[ ] NO

(iv) Does the law of your State require that the proceedings be interpreted in both jurisdictions or only in your State?

[ ] Interpretation only required in your State

[ ] Interpretation required in both States

(v) Who pays for the cost of the interpretation?

g. If any Letter of Request which required or requested the use of a video-link was not ultimately executed in this way, please explain further why this was the case:

[ ] NO

D. Chapter II – Evidence taken in your State

28) Provided that your State has not declared against the application of all or part of Chapter II of the Evidence Convention, has evidence in fact been taken (where applicable, after the relevant permission had been granted) in your State since 2003 under Chapter II by video-link?

[ ] YES

a. On how many occasions?

b. For the proceedings of which State(s) was the evidence taken?

c. Please describe and comment on the nature of the technology that is used in your State for the taking of evidence in your State under Chapter II by video-links (*e.g.*: Is it a secured video-link operated on a private network or a (unsecured) webcam connection over the Internet? etc.):

d. Have there ever been any technical problems (*e.g.*, incompatibility of video systems used) in the taking of evidence in your State under Chapter II by video-links? Please explain further (*e.g.*, were the problems overcome and if so, how?):

e. Have there been any language barriers in the taking of evidence in your State under Chapter II by video-links?

[ ] NO

[ ] YES

In particular, when evidence is taken in your State by video-links under Chapter II:

(i) Does the law of your State impose a requirement to use professional accredited interpreters or may one rely on the parties or their counsel?

[ ] Professional accredited interpreters required

[ ] Parties or their counsel

(ii) Does the law of your State impose a requirement to use simultaneous interpretation (voice over)?

[ ] YES

[ ] NO

(iii) Does the law of your State impose a requirement to use in sequence interpretation (in order to hear the original language)?

[ ] YES

[ ] NO

(iv) Does the law of your State require that the proceedings be interpreted in both jurisdictions or only in your State?

[ ] Interpretation only required in your State

[ ] Interpretation required in both States

(v) Who pays for the cost of the interpretation?

f. If the taking of any evidence which required or requested the use of a video-link was not ultimately executed in this way, please explain further why this was the case:

[ ] NO

29) Have there been Chapter II cases in your State that required or requested the use of modern technologies but that have ultimately not been executed in your State as a result of the witness not being willing to give evidence using such technology?

E. Chapter II – Evidence sought in another State

30) Since 2003, has evidence in fact been taken in another State by video-link under Chapter II for ultimate production in proceedings in your State (where applicable, after the relevant permission had been obtained)?

[ ] YES

a. On how many occasions?

b. For the proceedings of which State(s) was the evidence taken?

c. Please describe and comment on the nature of the technology that is used in your State for the taking of evidence in another State under Chapter II by video-links (*e.g.*: Is it a secured video-link operated on a private network or a (unsecured) webcam connection over the Internet? etc.):

d. Have there ever been any technical problems (*e.g.*, incompatibility of video systems used) in the taking of evidence in another State by video-links under Chapter II? Please explain further (*e.g.*, were the problems overcome and if so, how?):

e. Have there been any language barriers in the taking of evidence in another State by video-links under Chapter II?

[ ] NO

[ ] YES

In particular, when evidence is taken in another State by video-links under Chapter II:

(i) Does the law of your State impose a requirement to use professional accredited interpreters or may one rely on the parties or their counsel?

[ ] Professional accredited interpreters required

[ ] Parties or their counsel

(ii) Does the law of your State impose a requirement to use simultaneous interpretation (voice over)?

[ ] YES

[ ] NO

(iii) Does the law of your State impose a requirement to use in sequence interpretation (in order to hear the original language)?

[ ] YES

[ ] NO

(iv) Does the law of your State require that the proceedings be interpreted in both jurisdictions or only in your State?

[ ] Interpretation only required in your State

[ ] Interpretation required in both States

(v) Who pays for the cost of the interpretation?

f. If the taking of any evidence which required or requested the use of a video-link was not ultimately executed in this way, please explain further why this was the case:

[ ] NO

31) Is your State aware of Chapter II cases that required or requested the use of modern technologies but that have ultimately not been executed in the other State as a result of the witness not being willing to give evidence using such technology?

F. General questions regarding the use of modern technologies

32) What are the specific capabilities of your State with regards to the taking of evidence using modern technologies? In particular, are all or some of the Courts of your State equipped with computers, Internet access, videoconferencing equipment, audio recording devices to record oral evidence or testimony, etc.?

33) Does your State consider that the use of modern technology under the Evidence Convention should be further encouraged by adopting a common framework? If so, does your State believe that a *Guide to Good Practice* that addresses the use of modern technology under the Convention would be sufficient? Or does your State believe that an *Additional Protocol* to the Evidence Convention relating to the use of modern technologies is necessary?

[ ] No additional document required
[ ] Guide to Good Practice sufficient
[ ] Additional Protocol necessary

If necessary, please explain further:

PART THREE – OTHER OPERATIONAL ISSUES

I. Chapter I – Letters of Request

A. Preparation of Letter of Request

34) Has the (a) Central Authority of your State assisted a foreign judicial authority in preparing a Letter of Request for the taking of evidence within your State? In particular, has the Central Authority of your State provided information on the available possibilities for the taking of evidence under the law of your State?

[ ] YES – please specify:

[ ] NO – please specify if the (a) Central Authority of your State *would* provide this type of assistance if a request for such assistance was made in the future:

35) Has (or would) the (a) Central Authority of your State provided the same assistance to the representatives of the parties?

[ ] YES – please specify:

[ ] NO – please specify:

36) Under the laws of your State, do you require the Letter of Request to include *specific questions* that will be used during witness examination or only a list of *matters to be addressed*?

B. Recommended use of model Letter of Request form

37) The 1978 Special Commission recommended the use of a model for the Letter of Request form. This form was modified by the 1985 Special Commission and is currently the recommended model form available on the website of the HCCH. Do the judicial authorities of your State use the model Letter of Request form?

[ ] YES

[ ] NO – please specify why they do not use the model form:

C. Transmission of Letters of Request (Art. 2)

38) In your State, are Letters of Request:

a. Sent directly from a judicial authority in your State to the Central Authority of the requested State?

[ ] YES

[ ] NO

b. If no, are they first sent to the Central Authority of your State, or to any other authority of your State, in order for that authority to transmit the Letter of Request to the requested State?

[ ] YES – please explain the policy considerations behind this practice:

[ ] NO – please explain, if applicable, what other practices your State has developed in this context. Please explain what policy considerations are behind such other practices:

39) Does the Central Authority of your State accept Letters of Request that have been sent from abroad by (private) courier service?

[ ] YES

[ ] NO – please explain:

40) Does the Central Authority of your State accept Letters of Request that have been sent from abroad by electronic means (*e.g.*, e-mail or fax)?

[ ] YES

[ ] NO – please explain:

D. Contesting Letters of Request

41) Can the sending of a Letter of Request abroad be contested in your State as a *requesting* State?

[ ] YES – please explain how:

a. How often does such a challenge occur in practice?

[ ] Almost always
[ ] Often
[ ] Rarely
[ ] Never

[ ] NO

42) Can the execution of a Letter of Request received from abroad be contested in your State as a *requested* State?

[ ] NO

[ ] YES – please explain by what means:

a. How often does such a challenge occur in practice?

[ ] Almost always
[ ] Often
[ ] Rarely
[ ] Never

b. Which authority is responsible for informing the requesting authority or the parties concerned of the fact that the execution of a Letter of Request has been contested in your State?

[ ] Central Authority

[ ] Judicial authority competent to execute the Request

[ ] Other authority – please specify:

[ ] No information of challenge to execution is provided

c. Does the relevant authority in your State inform the *requesting authority* or the *parties concerned* of the fact that the execution of the Letter of Request has been contested in your State?

[ ] Requesting authority

[ ] Parties concerned

[ ] Other – please specify:

d. By what channel does the authority in your State inform the requesting authority or the parties concerned of the fact that the execution of the Letter of Request has been contested in your State?

[ ] Informal channel (letter, e-mail, fax, telephone, etc.)

[ ] Formal channel (*e.g.*, via the Hague Service Convention if applicable, or via diplomatic channels)

e. Is the foreign requesting authority or the interested party permitted to present counter arguments in favour of the execution of the Letter of Request?

[ ] NO

[ ] YES – please explain by what means:

[ ] Through legal representation in your State

[ ] Through written response filed directly from abroad from the requesting authority

[ ] Through written response filed directly from abroad from the interested party

[ ] Other – please explain

43) Does your State (as a *requested* State) allow a party who has already unsuccessfully contested the sending of a Letter of Request from the *requesting* State for the taking of evidence to then contest the execution of a Letter of Request for the taking of evidence under the laws of your State?

[ ] YES – please explain:

[ ] NO

E. Execution of the Request

44) Before whom is a hearing for oral examination under Chapter I convened in your State?

[ ] Judge / Magistrate / Special Master / Judicial officer – please explain:

[ ] Private examiner commissioned by the executing authority – please explain:

[ ] Notary – please explain:

[ ] Other – please explain:

45) Under the laws of your State, are Chapter I hearings public or private?

[ ] Public

[ ] Private

Comments:

46) Do the judicial authorities of your State (as the requested State) "blue-pencil" Requests, *i.e.*, rephrase, restructure and / or strike out objectionable questions or offensive wording so that a Letter of Request may be executed under the laws of your State?

[ ] YES (rephrase, restructure and / or strike out)

[ ] NO (the Request will simply be rejected)

47) Under the laws of your State, is the witness provided in advance with a copy of the questions / matters to be addressed as contained in the Letter of Request, so that he or she has an opportunity to prepare for the oral examination?

[ ] YES

[ ] NO

48) Under the laws of your State, are documents which are produced by a witness authenticated by the court? (Note: the term authentication refers to a chain of custody, not legalisation or issuance of an Apostille)

[ ] YES

[ ] NO

49) Under the laws of your State, is an oath generally administered to the witness?

[ ] YES

[ ] NO

50) Under the laws of your State, can the witness be made subject to further examination and recall?

[ ] YES – if so, must the recall be initiated through a second Letter of Request or can the first Request be re-invoked?

[ ] First Request may be re-invoked

[ ] Second Request necessary

[ ] NO

51) Under the laws of your State, if documents are to be presented to the witness during oral examination (*e.g.*, to refresh the memory of the witness), must these form a part of the Request itself and / or be pre-approved by the Court? Must they be authenticated in some way? Please explain:

52) Under the laws of your State, what are the sanctions for non-appearance of a witness?

53) Under the laws of your State, must interpreters who assist with the witness examination be court-certified?

[ ] YES

[ ] NO

54) Under the laws or practice of your State, how is testimony transcribed?

55) Under the laws or practice of your State, to whom is the final transcript delivered?

[ ] Representatives for the parties

[ ] Requesting authority

[ ] Other – please explain:

56) Under the laws of your State, how is a Letter of Request withdrawn (*e.g.*, in circumstances where a matter has been settled)? Must such a request for withdrawal come from the requesting authority or may it come from the representatives of the parties or the parties themselves?

[ ] Representatives of the parties

[ ] Parties themselves

[ ] Requesting authority

[ ] Other – please explain:

F. Presence of counsel or parties (Art. 7)

57) Which authority in your State (as a requested State) is responsible for informing the requesting authority of the time and place of execution of the Letter of Request in order for the parties and their representatives to be present if they so desire?

[ ] Central Authority

[ ] Judicial authority competent to execute the request

[ ] Other – please explain:

58) How often does such a request occur in practice?

[ ] Almost always

[ ] Often

[ ] Rarely

[ ] Never

59) Does the relevant authority in your State inform the *requesting authority* or the *parties concerned* of the time and place of execution of the Letter of Request?

[ ] Requesting authority

[ ] Parties concerned

[ ] Representatives of the parties

[ ] Other – please explain:

60) By what channel does the relevant authority in your State inform the requesting authority or the parties concerned or their representatives of the time and place of execution of the Letter of Request?

[ ] Informal channel (letter, email, fax, telephone, etc.)

[ ] Formal channel (*e.g.*, via the Hague Service Convention if applicable, or via diplomatic channels)

61) What are the remedies available in your State (as a *requested* State) for the foreign requesting authority, parties and / or their representatives when your State has failed to notify the requesting authority or the parties concerned or their representatives of the time and place of the execution of the Letter of Request, even though such notification was requested?

62) What are the remedies available in your State (as a *requesting* State) for the requesting authority, parties and / or their representatives, when the requested State has failed to notify the requesting authority or the parties concerned or their representatives of the time and place of the execution of the Letter of Request, even though such notification was requested?

63) Under the laws of your State, may the representatives of the parties who attend the hearing ask additional follow-up questions at the conclusion of the executing authority's examination? Or must these legal representatives speak through locally licensed counsel? Or, alternatively, must they present their follow-up questions in writing to the court? Or, alternatively will your State allow representatives for the parties to examine and cross-examine the witness directly in the presence of the executing authority? Please explain:

G. Presence of "members of the judicial personnel" (Art. 8)

64) Since 2004, has the competent authority designated by your State under Article 8 of the Convention authorised the presence of members of the judicial personnel of the requesting State at the execution of Letters of Request in your State?

[ ] YES

a. Please indicate which States have presented such requests:

b. To what extent are members of the judicial personnel of a foreign State actively able to participate and ask questions in the execution of a Letter of Request?

[ ] NO

H. Privileges (Arts 11 and 21 *e)*)

65) Since 2004, has the execution of a Letter of Request for the taking of evidence in your State involved a situation whereby the person concerned refused to give evidence as a result of a privilege or duty that that person claimed?

[ ] YES

a. On what frequency do persons claim such privileges in your State:

[ ] Almost always
[ ] Often
[ ] Rarely
[ ] Never

b. Please list below the most commonly claimed privileges or duties (if not necessary, do not complete all 5 spaces):

1.
2.
3.
4.
5.

c. For the privileges listed in b., please indicate in the correlating 5 spaces below (by inserting "(i)", "(ii)" or "(iii)"), whether the privilege(s) that were claimed were:

(i) under the law of the State of execution (Art. 11(1) *a)*);

(ii) under the law of the State of origin (Art. 11(1) *b)*);

(iii) under the law of States other than the State of origin and the State of execution (if your State has made a declaration under Art. 11(2)):

1.
2.
3.
4.
5.

d. As the State of execution, if the person concerned wishes to claim a privilege over evidence that was the subject of a Letter of Request sent to your State, what procedures governs that claim of privilege in your State?

[ ] NO

I. Translation (Art. 4(1))

66) Does your State consider that Article 4(1) also applies to the documents attached to a Letter of Request?

[ ] YES

[ ] NO

J. Costs

67) If your State has more than one official language, in the execution of a Letter of Request and in accordance with Article 4(3), has there ever been the need for your State to request that the costs of translation of the Letter of Request into the required language of your State be borne by the State of origin?

[ ] YES

[ ] NO

68) With respect to Article 14(2), has your State ever requested or received a request for the reimbursement of fees and costs occasioned by the use of experts, interpreters or any special procedures under Article 9(2)?

[ ] YES – please explain further and comment on how much these reimbursements have been:

[ ] NO

69) In the context of Article 14(3), if the law of your State obliges parties to secure evidence themselves and a suitable person is therefore required to be appointed to secure such evidence under the Convention, has your State previously sought the reimbursement of the costs of this process from the requesting authority (provided that the prior consent of the requesting authority to appoint a suitable person to secure such evidence was obtained)?

[ ] Not applicable (*i.e.*, the law of your State does not make such obligations)

[ ] YES – please comment on how much these reimbursements have been:

[ ] NO (*i.e.*, no reimbursement sought) – please comment on why no reimbursement was sought:

70) With respect to Article 26 and as a result of constitutional limitations in your State, has your State ever requested reimbursement from the requesting State for fees and costs associated with the service of process necessary to compel the appearance of a person to give evidence, the costs of attendance of such persons and the costs of any transcript of the evidence?

[ ] Not applicable (*i.e.*, no constitutional limits of this nature would apply in your State)

[ ] YES – please comment on how much these reimbursements have been:

[ ] NO (*i.e.*, no reimbursement sought) – please comment on why no reimbursement was sought:

K. Req uests for e-discovery

71) Have you received Letters of Requests for *e-discoveries* (*i.e.*, relating to electronically stored information)?

[ ] NO

[ ] YES

a. Have these Requests been executed?

[ ] YES

[ ] NO

b. Has your State been asked to follow specific rules or principles? If so, please provide a reference to the rules or principles followed:

[ ] NO

[ ] YES – please specify:

c. In particular, did the execution of these Requests raise any issue relating to the protection of privacy?

[ ] NO

[ ] YES – please specify:

d. When transferring the e-evidence to the requesting State, do you encounter compatibility problems with regard to the technology (software) used?

[ ] Almost always

[ ] Often

[ ] Rarely

[ ] Never

L. Requests that a special method or procedure be followed in the taking of evidence (Art. 9(2))

72) Has your State received or sent any Request that the taking of evidence follow a "special method or procedure"?

[ ] YES – please explain what these methods or procedures were and if such a Letter of Request was ultimately executed:

[ ] NO

73) Please indicate if your State has implemented any amendments to its domestic law in order to better accommodate foreign requests for special methods or procedures to be followed in the taking of evidence (*e.g.,* a verbatim transcript or the tape recording of oral evidence or questioning under cross-examination) in accordance with Article 9.

[ ] YES – please specify and provide copies or references to those relevant laws or articles that reflect any amendments to domestic law (if these excerpts are not in English or French, a summary into either of these languages would be appreciated):

[ ] NO

M. Pre-trial discovery of documents (Art. 23)

74) The 2003 Special Commission extensively discussed the history, purpose and meaning of Article 23 (see Conclusions and Recommendations Nos 29 to 34). It "recommended that States which have made a general, non-particularised declaration under Article 23 *revisit their declaration* by considering an amendment adopting terms such as those contained in the UK declaration or in Article 16 of the Inter-American Protocol[7]."

If your State still has a broad declaration on record, why has it not acted upon the 2003 Conclusions and Recommendations? Please explain:

[ ] Not applicable (*i.e.*, your State had not made a declaration under Art. 23)

75) Under the laws of your State, if the portion of a Letter of Request which seeks documents is too general and therefore cannot be honoured, will that also taint that portion of the Request which seeks oral testimony – *i.e.*, will the Request be rejected in its entirety?

[ ] Request for oral evidence will be executed

[ ] Request will be rejected in its entirety

---

[7] Additional Protocol of 1984 to the Inter-American Convention on the Taking of Evidence Abroad (Inter-American Protocol).

II. Taking of evidence by diplomatic officers, consular agents and commissioners (Chapter II)

76) Pursuant to Article 18, a Contracting State may declare that a diplomatic officer, consular agent or commissioner authorised to take evidence may apply to the competent authority designated by the declaring State for appropriate assistance to obtain evidence by compulsion. If your State has made such a declaration, please indicate whether the competent authority of your State has been asked to provide such assistance:

[ ] YES – please comment on what frequency such assistance has been provided:

[ ] Often
[ ] Sometimes
[ ] Rarely

a. Please indicate which methods of compulsion were most frequently used and whether they were effective:

b. Which of the following have been assisted by the competent authority to obtain evidence by compulsion (please select all if applicable):

[ ] Diplomatic Officers, Consular agents
[ ] Commissioners

[ ] NO

77) If your State has objected to the total or partial application of Chapter II, please indicate why:

Thank you!

* * *