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Effective:[See Text Amendments]

United States Code Annotated [Currentness](#)

Title 28. Judiciary and Judicial Procedure ([Refs & Annos](#))

▢ [Part V](#). Procedure

▢ [Chapter 117](#). Evidence; Depositions ([Refs & Annos](#))

→→ **§ 1781. Transmittal of letter rogatory or request**

(a) The Department of State has power, directly, or through suitable channels--

(1) to receive a letter rogatory issued, or request made, by a foreign or international tribunal, to transmit it to the tribunal, officer, or agency in the United States to whom it is addressed, and to receive and return it after execution; and

(2) to receive a letter rogatory issued, or request made, by a tribunal in the United States, to transmit it to the foreign or international tribunal, officer, or agency to whom it is addressed, and to receive and return it after execution.

(b) This section does not preclude--

(1) the transmittal of a letter rogatory or request directly from a foreign or international tribunal to the tribunal, officer, or agency in the United States to whom it is addressed and its return in the same manner; or

(2) the transmittal of a letter rogatory or request directly from a tribunal in the United States to the foreign or international tribunal, officer, or agency to whom it is addressed and its return in the same manner.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 949; Oct. 3, 1964, Pub.L. 88-619, § 8(a), 78 Stat. 996.)

HISTORICAL AND STATUTORY NOTES**Revision Notes and Legislative Reports**

1948 Acts. Based on [Title 28, U.S.C., 1940 ed., § 653](#) (R.S. § 875; Feb. 27, 1877, c. 69, § 1, 19 Stat. 241; Mar. 3, 1911, c. 231, § 291, 36 Stat. 1167).

Word “officer” was substituted for “commissioner” to obviate uncertainty as to the person to whom the letters or commission may be issued.

The third sentence of [section 653 of Title 28, U.S.C.](#), 1940 ed., providing for admission of testimony “so taken and returned” without objection as to the method of return, was omitted as unnecessary. Obviously, if the method designated by Congress is followed, it cannot be objected to.

The last sentence of [section 653 of Title 28, U.S.C.](#), 1940 ed., relating to letters rogatory from courts of foreign countries, is incorporated in section 1782 of this title.

The revised section extends the provisions of [section 653 of Title 28, U.S.C.](#), 1940 ed., which applied only to cases wherein the United States was a party or was interested, so as to insure a uniform method of taking foreign depositions in all cases.

Words “courts of the United States” were inserted to make certain that the section is addressed to the Federal rather than the State courts as obviously intended by Congress.

Changes were made in phraseology. 80th Congress House Report No. 308.

1964 Acts. Senate Report No. 1580, see 1964 U.S. Code Cong. and Adm. News, p. 3782.

Amendments

1964 Amendments. Pub.L. 88-619 substituted provisions authorizing the Department of State to transmit a letter rogatory or request by a foreign or international tribunal, or by a tribunal in the United States, to the tribunal, officer or agency in the United States or its foreign or international counterpart, to whom addressed, and to return it after execution, and providing that this section does not preclude direct transmission of letters rogatory or requests between interested tribunals, officers or agencies of foreign, international and of United States origin, for provisions authorizing United States ministers or consuls, whenever a United States court issues letters rogatory or a commission to take a deposition, to receive the executed letters or commissions from foreign courts or officers, endorse them with the place and date of receipt and any change in the deposition, and transmit it to the clerk of the issuing court in the same manner as his official dispatches, in the text, and “Transmittal of letter rogatory or request” for “Foreign witnesses” in the catchline.

TREATIES AND CONVENTIONS

CONVENTION ON THE TAKING OF EVIDENCE ABROAD IN CIVIL OR COMMERCIAL MATTERS

The States signatory to the present Convention,

Desiring to facilitate the transmission and execution of Letters of Request and to further the accommodation of the different methods which they use for this purpose.

Desiring to improve mutual judicial co-operation in civil or commercial matters.

Have resolved to conclude a Convention to this effect and have agreed upon the following provisions--

CHAPTER I--LETTERS OF REQUEST

Article 1

In civil or commercial matters a judicial authority of a Contracting State may, in accordance with the provisions of the law of that State, request the competent authority of another Contracting State, by means of a Letter of Request, to obtain evidence, or to perform some other judicial act.

A Letter shall not be used to obtain evidence which is not intended for use in judicial proceedings, commenced or contemplated.

The expression "other judicial act" does not cover the service of judicial documents or the issuance of any process by which judgments or orders are executed or enforced, or orders for provisional or protective measures.

Article 2

A Contracting State shall designate a Central Authority which will undertake to receive Letters of Request coming from a judicial authority of another Contracting State and to transmit them to the authority competent to execute them. Each State shall organize the Central Authority in accordance with its own law.

Letters shall be sent to the Central Authority of the State of execution without being transmitted through any other authority of that State.

Article 3

A Letter of Request shall specify--

- (a) the authority requesting its execution and the authority requested to execute it, if known to the requesting authority;
- (b) the names and addresses of the parties to the proceedings and their representatives, if any;
- (c) the nature of the proceedings for which the evidence is required, giving all necessary information in regard thereto;
- (d) the evidence to be obtained or other judicial act to be performed.

Where appropriate, the Letter shall specify, *inter alia*--

- (e) the names and addresses of the persons to be examined;
- (f) the questions to be put to the persons to be examined or a statement of the subject-matter about which they are to be examined;
- (g) the documents or other property, real or personal, to be inspected;
- (h) any requirement that the evidence is to be given on oath or affirmation, and any special form to be used;

(i) any special method or procedure to be followed under Article 9.

A Letter may also mention any information necessary for the application of Article 11.

No legalization or other like formality may be required.

Article 4

A Letter of Request shall be in the language of the authority requested to execute it or be accompanied by a translation into that language.

Nevertheless, a Contracting State shall accept a Letter in either English or French, or a translation into one of these languages, unless it has made the reservation authorized by Article 33.

A Contracting State which has more than one official language and cannot, for reasons of internal law, accept Letters in one of these languages for the whole of its territory, shall, by declaration, specify the language in which the Letter or translation thereof shall be expressed for execution in the specified parts of its territory. In case of failure to comply with this declaration, without justifiable excuse, the costs of translation into the required language shall be borne by the State of origin.

A Contracting State may, by declaration, specify the language or languages other than those referred to in the preceding paragraphs, in which a Letter may be sent to its Central Authority.

Any translation accompanying a Letter shall be certified as correct, either by a diplomatic officer or consular agent or by a sworn translator or by any other person so authorized in either State.

Article 5

If the Central Authority considers that the request does not comply with the provisions of the present Convention, it shall promptly inform the authority of the State of origin which transmitted the Letter of Request, specifying the objections to the Letter.

Article 6

If the authority to whom a Letter of Request has been transmitted is not competent to execute it, the Letter shall be sent forthwith to the authority in the same State which is competent to execute it in accordance with the provisions of its own law.

Article 7

The requesting authority shall, if it so desires, be informed of the time when, and the place where, the proceedings will take place, in order that the parties concerned, and their representatives, if any, may be present. This information shall be sent directly to the parties or their representatives when the authority of the State of origin so requests.

Article 8

A Contracting State may declare that members of the judicial personnel of the requesting authority of another Contracting State may be present at the execution of a Letter of Request. Prior authorization by the competent authority designated by the declaring State may be required.

Article 9

The judicial authority which executes a Letter of Request shall apply its own law as to the methods and procedures to be followed.

However, it will follow a request of the requesting authority that a special method or procedure be followed, unless this is incompatible with the internal law of the State of execution or is impossible of performance by reason of its internal practice and procedure or by reason of practical difficulties.

A Letter of Request shall be executed expeditiously.

Article 10

In executing a Letter of Request the requested authority shall apply the appropriate measures of compulsion in the instances and to the same extent as are provided by its internal law for the execution of orders issued by the authorities of its own country or of requests made by parties in internal proceedings.

Article 11

In the execution of a Letter of Request the person concerned may refuse to give evidence in so far as he has a privilege or duty to refuse to give the evidence--

- (a) under the law of the State of execution; or
- (b) under the law of the State of origin, and the privilege or duty has been specified in the Letter, or, at the instance of the requested authority, has been otherwise confirmed to that authority by the requesting authority.

A Contracting State may declare that, in addition, it will respect privileges and duties existing under the law of States other than the State of origin and the State of execution, to the extent specified in that declaration.

Article 12

The execution of a Letter of Request may be refused only to the extent that--

- (a) in the State of execution the execution of the Letter does not fall within the functions of the judiciary; or
- (b) the State addressed considers that its sovereignty or security would be prejudiced thereby.

Execution may not be refused solely on the ground that under its internal law the State of execution claims exclusive jurisdiction over the subject-matter of the action or that its internal law would not admit a right of action on it.

Article 13

The documents establishing the execution of the Letter of Request shall be sent by the requested authority to the requesting authority by the same channel which was used by the latter.

In every instance where the Letter is not executed in whole or in part, the requesting authority shall be informed immediately through the same channel and advised of the reasons.

Article 14

The execution of the Letter of Request shall not give rise to any reimbursement of taxes or costs of any nature.

Nevertheless, the State of execution has the right to require the State of origin to reimburse the fees paid to experts and interpreters and the costs occasioned by the use of a special procedure requested by the State of origin under Article 9, paragraph 2.

The requested authority whose law obliges the parties themselves to secure evidence, and which is not able itself to execute the Letter, may, after having obtained the consent of the requesting authority, appoint a suitable person to do so. When seeking this consent the requested authority shall indicate the approximate costs which would result from this procedure. If the requesting authority gives its consent it shall reimburse any costs incurred; without such consent the requesting authority shall not be liable for the costs.

CHAPTER II--TAKING OF EVIDENCE BY DIPLOMATIC OFFICERS, CONSULAR AGENTS AND COMMISSIONERS

Article 15

In a civil or commercial matter, a diplomatic officer or consular agent of a Contracting State may, in the territory of another Contracting State and within the area where he exercises his functions, take the evidence without compulsion of nationals of a State which he represents in aid of proceedings commenced in the courts of a State which he represents.

A Contracting State may declare that evidence may be taken by a diplomatic officer or consular agent only if permission to that effect is given upon application made by him or on his behalf to the appropriate authority designated by the declaring State.

Article 16

A diplomatic officer or consular agent of a Contracting State may, in the territory of another Contracting State and within the area where he exercises his functions, also take the evidence, without compulsion, of nationals of the State in which he exercises his functions or of a third State, in aid of proceedings commenced in the courts of a State which he represents, if--

(a) a competent authority designated by the State in which he exercises his functions has given its permission either generally or in the particular case, and

(b) he complies with the conditions which the competent authority has specified in the permission.

A Contracting State may declare that evidence may be taken under this Article without its prior permission.

Article 17

In a civil or commercial matter, a person duly appointed as a commissioner for the purpose may, without compulsion, take evidence in the territory of a Contracting State in aid of proceedings commenced in the courts of another Contracting State if--

(a) a competent authority designated by the State where the evidence is to be taken has given its permission either generally or in the particular case; and

(b) he complies with the conditions which the competent authority has specified in the permission.

A Contracting State may declare that evidence may be taken under this Article without its prior permission.

Article 18

A Contracting State may declare that a diplomatic officer, consular agent or commissioner authorized to take evidence under Articles 15, 16 or 17, may apply to the competent authority designated by the declaring State for appropriate assistance to obtain the evidence by compulsion. The declaration may contain such conditions as the declaring State may see fit to impose.

If the authority grants the application it shall apply any measures of compulsion which are appropriate and are prescribed by its law for use in internal proceedings.

Article 19

The competent authority, in giving the permission referred to in Articles 15, 16 or 17, or in granting the application referred to in Article 18, may lay down such conditions as it deems fit, *inter alia*, as to the time and place of the taking of the evidence. Similarly it may require that it be given reasonable advance notice of the time, date and place of the taking of the evidence; in such a case a representative of the authority shall be entitled to be present at the taking of the evidence.

Article 20

In the taking of evidence under any Article of this Chapter persons concerned may be legally represented.

Article 21

Where a diplomatic officer, consular agent or commissioner is authorized under Articles 15, 16 or 17 to take evidence--

(a) he may take all kinds of evidence which are not incompatible with the law of the State where the evidence is taken or contrary to any permission granted pursuant to the above Articles, and shall have power within such limits to administer

an oath or take an affirmation;

(b) a request to a person to appear or to give evidence shall, unless the recipient is a national of the State where the action is pending, be drawn up in the language of the place where the evidence is taken or be accompanied by a translation into such language;

(c) the request shall inform the person that he may be legally represented and, in any State that has not filed a declaration under Article 18, shall also inform him that he is not compelled to appear or to give evidence;

(d) the evidence may be taken in the manner provided by the law applicable to the court in which the action is pending provided that such manner is not forbidden by the law of the State where the evidence is taken;

(e) a person requested to give evidence may invoke the privileges and duties to refuse to give the evidence contained in Article 11.

Article 22

The fact that an attempt to take evidence under the procedure laid down in this Chapter has failed, owing to the refusal of a person to give evidence, shall not prevent an application being subsequently made to take the evidence in accordance with Chapter I.

CHAPTER III--GENERAL CLAUSES

Article 23

A Contracting State may at the time of signature, ratification or accession, declare that it will not execute Letters of Request issued for the purpose of obtaining pretrial discovery of documents as known in Common Law countries.

Article 24

A Contracting State may designate other authorities in addition to the Central Authority and shall determine the extent of their competence. However, Letters of Request may in all cases be sent to the Central Authority.

Federal States shall be free to designate more than one Central Authority.

Article 25

A Contracting State which has more than one legal system may designate the authorities of one of such systems, which shall have exclusive competence to execute Letters of Request pursuant to this Convention.

Article 26

A Contracting State, if required to do so because of constitutional limitations, may request the reimbursement by the State of origin of fees and costs, in connection with the execution of Letters of Request, for the service of process neces-

sary to compel the appearance of a person to give evidence, the costs of attendance of such persons, and the cost of any transcript of the evidence.

Where a State has made a request pursuant to the above paragraph, any other Contracting State may request from that State the reimbursement of similar fees and costs.

Article 27

The provisions of the present Convention shall not prevent a Contracting State from--

- (a) declaring that Letters of Request may be transmitted to its judicial authorities through channels other than those provided for in Article 2;
- (b) permitting, by internal law or practice, any act provided for in this Convention to be performed upon less restrictive conditions;
- (c) permitting, by internal law or practice, methods of taking evidence other than those provided for in this Convention.

Article 28

The present Convention shall not prevent an agreement between any two or more Contracting States to derogate from--

- (a) the provisions of Article 2 with respect to methods of transmitting Letters of Request;
- (b) the provisions of Article 4 with respect to the languages which may be used;
- (c) the provisions of Article 8 with respect to the presence of judicial personnel at the execution of Letters;
- (d) the provisions of Article 11 with respect to the privileges and duties of witnesses to refuse to give evidence;
- (e) the provisions of Article 13 with respect to the methods of returning executed Letters to the requesting authority;
- (f) the provisions of Article 14 with respect to fees and costs;
- (g) the provisions of Chapter II.

Article 29

Between Parties to the present Convention who are also Parties to one or both of the Conventions on Civil Procedure signed at the Hague on the 17th of July 1905 [99 British Foreign and State Papers 990] and the 1st of March 1954 [286 UNTS 265], this Convention shall replace Articles 8-16 of the earlier Conventions.

Article 30

The present Convention shall not affect the application of Article 23 of the Convention of 1905, or of Article 24 of the Convention of 1954.

Article 31

Supplementary Agreements between Parties to the Conventions of 1905 and 1954 shall be considered as equally applicable to the present Convention unless the Parties have otherwise agreed.

Article 32

Without prejudice to the provisions of Articles 29 and 31, the present Convention shall not derogate from conventions containing provisions on the matters covered by this Convention to which the Contracting States are, or shall become Parties.

Article 33

A State may, at the time of signature, ratification or accession exclude, in whole or in part, the application of the provisions of paragraph 2 of Article 4 and of Chapter II. No other reservation shall be permitted.

Each Contracting State may at any time withdraw a reservation it has made; the reservation shall cease to have effect on the sixtieth day after notification of the withdrawal.

When a State has made a reservation, any other State affected thereby may apply the same rule against the reserving State.

Article 34

A State may at any time withdraw or modify a declaration.

Article 35

A Contracting State shall, at the time of the deposit of its instrument of ratification or accession, or at a later date, inform the Ministry of Foreign Affairs of the Netherlands of the designation of authorities, pursuant to Articles 2, 8, 24 and 25.

A Contracting State shall likewise inform the Ministry, where appropriate, of the following--

- (a) the designation of the authorities to whom notice must be given, whose permission may be required, and whose assistance may be invoked in the taking of evidence by diplomatic officers and consular agents, pursuant to Articles 15, 16 and 18 respectively;
- (b) the designation of the authorities whose permission may be required in the taking of evidence by commissioners pursuant to Article 17 and of those who may grant the assistance provided for in Article 18;
- (c) declarations pursuant to Articles 4, 8, 11, 15, 16, 17, 18, 23 and 27;
- (d) any withdrawal or modification of the above designations and declarations;
- (e) the withdrawal of any reservation.

Article 36

Any difficulties which may arise between Contracting States in connection with the operation of this Convention shall be settled through diplomatic channels.

Article 37

The present Convention shall be open for signature by the States represented at the Eleventh Session of the Hague Conference on Private International Law.

It shall be ratified, and the instruments of ratification shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Article 38

The present Convention shall enter into force on the sixtieth day after the deposit of the third instrument of ratification referred to in the second paragraph of Article 37.

The Convention shall enter into force for each signatory State which ratifies subsequently on the sixtieth day after the deposit of its instrument of ratification.

Article 39

Any State not represented at the Eleventh Session of the Hague Conference on Private International Law which is a Member of this Conference or of the United Nations or of a specialized agency of that Organization, or a Party to the Statute of the International Court of Justice may accede to the present Convention after it has entered into force in accordance with the first paragraph of Article 38.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force for a State acceding to it on the sixtieth day after the deposit of its instrument of accession.

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession. Such declaration shall be deposited at the Ministry of Foreign Affairs of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.

The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the sixtieth day after the deposit of the declaration of acceptance.

Article 40

Any State may, at the time of signature, ratification or accession, declare that the present Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect on the date of entry into force of the Convention for the State concerned.

At any time thereafter, such extensions shall be notified to the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force for the territories mentioned in such an extension on the sixtieth day after the notification indicated in the preceding paragraph.

Article 41

The present Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 38, even for States which have ratified it or acceded to it subsequently.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Netherlands at least six months before the end of the five year period.

It may be limited to certain of the territories to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 42

The Ministry of Foreign Affairs of the Netherlands shall give notice to the States referred to in Article 37, and to the States which have acceded in accordance with Article 39, of the following--

- (a) the signatures and ratifications referred to in Article 37;
- (b) the date on which the present Convention enters into force in accordance with the first paragraph of Article 38;
- (c) the accessions referred to in Article 39 and the dates on which they take effect;
- (d) the extensions referred to in Article 40 and the dates on which they take effect;
- (e) the designations, reservations and declarations referred to in Articles 33 and 35;
- (f) the denunciations referred to in the third paragraph of Article 41.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed the present Convention.

DONE at The Hague, on the 18th day of March 1970, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Netherlands, and of which a certified copy shall be sent, through the diplomatic channel, to each of the States represented at the Eleventh Session of the Hague Conference on Private International Law. [Signatures omitted.]

Convention on the taking of evidence abroad in civil or commercial matters. Done at The Hague March 18, 1970; entered into force for the United States October 7, 1972. TIAS 7444; 23 UST 2555

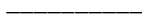
Annotations to the Convention

“Report of the U.S. Delegation on the Evidence Convention”, 8 Int'l Legal Materials 804 (1969).

Amram, “Explanatory Report on the Convention on the Taking of Evidence Abroad in Civil and Commercial Matters-Message from the President of the United States”, Sen.Exec. A, 92nd Cong., 2d Sess. (Feb. 1, 1972).

Edwards, “Taking of Evidence Abroad in Civil or Commercial Matters”, 18 Int'l and Comp.L.Q. 646 (1969).

Amram, “U.S. Ratification of the Hague Convention on the Taking of Evidence Abroad” 67 Am.J. Int'l L. 104 (1973).



Model for Letters of Request Recommended for Use in Applying the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters

Request for International Judicial Assistance Pursuant to the Hague Convention of 18 March 1970 on the Taking of Evidence in Civil or Commercial Matters

<N.B. Under the first paragraph of article 4, the Letter of Request shall be in the language of the authority requested to execute it or be accompanied by a translation into that language. However, the provisions of the second and third paragraphs may permit use of other languages.>

<In order to avoid confusion, please spell out the name of the month in each date.>

I. *(Items to be included in all Letters of Request.)*

1. Sender _____ *(identity and address)*

2. Central Authority of the Requested State _____ *(identity and address)*

3. Person to whom the executed request is to be returned _____ *(identity and address)*

II. *(Items to be included in all Letters of Request.)*

4. In conformity with article 3 of the Convention, the undersigned applicant has the honour to submit the following request:

- 5. a. Requesting judicial authority (article 3, a) _____ (*identity and address*)

- b. To the competent authority of (article 3, a) _____ (*the requested State*)

- 6. Names and addresses of the parties and their representatives (article 3, b)
 - a. Plaintiff

 - b. Defendant

 - c. Other parties

- 7. Nature and purpose of the proceedings and summary of the facts (article 3, c) _____

- 8. Evidence to be obtained or other judicial act to be performed (article 3, d) _____

- III. (*Items to be completed where applicable.*)
- 9. Identity and address of any person to be examined (article 3, e) _____

10. Questions to be put to the persons to be examined or statement of the subject-matter about which they are to be examined (article 3, f)

(or see attached list)

11. Documents or other property to be inspected (article 3, g)

(specify whether it is to be produced, copied, valued, etc.)

12. Any requirement that the evidence be given on oath or affirmation and any special form to be used (article 3, h)

(In the event that the evidence cannot be taken in the manner requested, specify whether it is to be taken in such manner as provided by local law for the formal taking of evidence.)

13. Special methods or procedure to be followed (articles 3, i and 9)

14. Request for notification of the time and place for the execution of the Request and identity and address of any person to be notified (article 7)

15. Request for attendance or participation of judicial personnel of the requesting authority at the execution of the letter of Request

16. Specification of privilege or duty to refuse to give

- evidence under the law of _____
the State of origin (article _____
11, b) _____
17. The fees and costs incurred _____
which are reimbursable un- _____
_____ (*identity and address*) _____

- der the second paragraph _____
of article 14 or under arti- _____
cle 26 of the Convention _____
will be borne by _____
- IV. (*Items to be included in all Letters of Request.*)
18. Date of request _____
19. Signature and seal of the _____
requesting authority _____

TREATIES AND CONVENTIONS

INTER-AMERICAN CONVENTION ON LETTERS ROGATORY

The Governments of the Member States of the Organization of American States, desirous of concluding a convention on letters rogatory, have agreed as follows:

I. USE OF TERMS

Article 1

For the purposes of this Convention the terms “exhortos” and “cartas rogatorias” are synonymous in the Spanish text. The terms “letters rogatory”, “commissions rogatoires”, and “cartas rogatórias” used in the English, French and Portuguese texts, respectively, cover both “exhortos” and “cartas rogatorias”.

II. SCOPE OF THE CONVENTION

Article 2

This Convention shall apply to letters rogatory, issued in conjunction with proceedings in civil and commercial matters held before the appropriate judicial or other adjudicatory authority of one of the States Parties to this Convention, that have as their purpose:

- a. The performance of procedural acts of a merely formal nature, such as service of process, summonses or subpoenas

abroad;

b. The taking of evidence and the obtaining of information abroad, unless a reservation is made in this respect.

Article 3

This Convention shall not apply to letters rogatory relating to procedural acts other than those specified in the preceding article; and in particular it shall not apply to acts involving measures of compulsion.

III. TRANSMISSION OF LETTERS ROGATORY

Article 4

Letters rogatory may be transmitted to the authority to which they are addressed by the interested parties, through judicial channels, diplomatic or consular agents, or the Central Authority of the State of origin or of the State of destination, as the case may be.

Each State Party shall inform the General Secretariat of the Organization of American States of the Central Authority competent to receive and distribute letters rogatory.

IV. REQUIREMENTS FOR EXECUTION

Article 5

Letters rogatory shall be executed in the States Parties provided they meet the following requirements:

- a. The letter rogatory is legalized, except as provided for in Articles 6 and 7 of this Convention. The letter rogatory shall be presumed to be duly legalized in the State of origin when legalized by the competent consular or diplomatic agent;
- b. The letter rogatory and the appended documentation are duly translated into the official language of the State of destination.

Article 6

Whenever letters rogatory are transmitted through consular or diplomatic channels or through the Central Authority, legalization shall not be required.

Article 7

Courts in border areas of the States Parties may directly execute the letters rogatory contemplated in this Convention and such letters shall not require legalization.

Article 8

Letters rogatory shall be accompanied by the following documents to be delivered to the person on whom process, summons or subpoena is being served:

- a. An authenticated copy of the complaint with its supporting documents, and of other exhibits or rulings that serve as the basis for the measure requested;
- b. Written information identifying the judicial or other adjudicatory authority issuing the letter, indicating the time-limits allowed the person affected to act upon the request, and warning of the consequences of failure to do so;
- c. Where appropriate, information on the existence and address of the court-appointed defense counsel or of competent legal-aid societies in the State of origin.

Article 9

Execution of letters rogatory shall not imply ultimate recognition of the jurisdiction of the judicial or other adjudicatory authority issuing the letter rogatory or a commitment to recognize the validity of the judgment it may render or to execute it.

V. EXECUTION

Article 10

Letters rogatory shall be executed in accordance with the laws and procedural rules of the State of destination.

At the request of the judicial or other adjudicatory authority issuing the letter rogatory, the authority of the State of destination may execute the letter through a special procedure, or accept the observance of additional formalities in performing the act requested, provided this procedure or the observance of those formalities is not contrary to the law of the State of destination.

Article 11

The authority of the State of destination shall have jurisdiction to determine any issue arising as a result of the execution of the measure requested in the letter rogatory.

Should such authority find that it lacks jurisdiction to execute the letter rogatory, it shall ex officio forward the documents and antecedents of the case to the authority of the State which has jurisdiction.

Article 12

The costs and other expenses involved in the processing and execution of letters rogatory shall be borne by the interested parties.

The State of destination may, in its discretion, execute a letter rogatory that does not indicate the person to be held responsible for costs and other expenses when incurred. The identity of the person empowered to represent the applicant for legal purposes may be indicated in the letter rogatory or in the documents relating to its execution.

The effects of a declaration in forma pauperis shall be regulated by the law of the State of destination.

Article 13

Consular or diplomatic agents of the States Parties to this Convention may perform the acts referred to in Article 2 in the State in which they are accredited, provided the performance of such acts is not contrary to the laws of that State. In so doing, they shall not perform any acts involving measures of compulsion.

VI. GENERAL PROVISIONS

Article 14

States Parties belonging to economic integration systems may agree directly between themselves upon special methods and procedures more expeditious than those provided for in this Convention. These agreements may be extended to include other States in the manner in which the parties may agree.

Article 15

This Convention shall not limit any provisions regarding letters rogatory in bilateral or multilateral agreements that may have been signed or may be signed in the future by the States Parties or preclude the continuation of more favorable practices in this regard that may be followed by these States.

Article 16

The States Parties to this Convention may declare that its provisions cover the execution of letters rogatory in criminal, labor, and “contentious-administrative” cases, as well as in arbitrations and other matters within the jurisdiction of special courts. Such declarations shall be transmitted to the General Secretariat of the Organization of American States.

Article 17

The State of destination may refuse to execute a letter rogatory that is manifestly contrary to its public policy (“ordre public”).

Article 18

The States Parties shall inform the General Secretariat of the Organization of American States of the requirements stipulated in their laws for the legalization and the translation of letters rogatory.

VII. FINAL PROVISIONS

Article 19

This Convention shall be open for signature by the Member States of the Organization of American States.

Article 20

This Convention is subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

Article 21

This Convention shall remain open for accession by any other State. The instrument of accession shall be deposited with the General Secretariat of the Organization of American States.

Article 22

This Convention shall enter into force on the thirtieth day following the date of deposit of the second instrument of ratification.

For each State ratifying or acceding to the Convention after the deposit of the second instrument of ratification, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 23

If a State Party has two or more territorial units in which different systems of law apply in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification or accession, declare that this Convention shall extend to all its territorial units or only to one or more of them.

Such declaration may be modified by subsequent declarations, which shall expressly indicate the territorial unit or units to which the Convention applies. Such subsequent declarations shall be transmitted to the General Secretariat of the Organization of American States, and shall become effective thirty days after the date of their receipt.

Article 24

This Convention shall remain in force indefinitely, but any of the States Parties may denounce it. The instrument of denunciation shall be deposited with the General Secretariat of the Organization of American States. After one year from the date of deposit of the instrument of denunciation, the Convention shall no longer be in effect for the denouncing State, but shall remain in effect for the other States Parties.

Article 25

The original instrument of this Convention, the English, French, Portuguese and Spanish texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States. The Secretariat shall notify the Member States of the Organization of American States and the States that have acceded to the Convention of the signatures, deposits of instruments of ratification, accession, and denunciation as well as of reservations, if any. It shall also transmit the information mentioned in the second paragraph of Article 4 and in Article 18 and the declarations re-

ferred to in Articles 16 and 23 of this Convention.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

DONE AT PANAMA CITY, Republic of Panama, this thirtieth day of January one thousand nine hundred and seventy-five.

[Signatures omitted]

Inter-American Convention on Letters Rogatory.

Done at Panama January 30, 1975; entered into force for the United States August 27, 1988.

ADDITIONAL PROTOCOL TO THE INTER-AMERICAN CONVENTION ON LETTERS ROGATORY

The Governments of the Member States of the Organization of American States, desirous of strengthening and facilitating international cooperation in judicial procedures as provided for in the Inter-American Convention on Letters Rogatory done in Panama on January 30, 1975, have agreed as follows:

I. SCOPE OF PROTOCOL

Article 1

This Protocol shall apply only to those procedural acts set forth in Article 2(a) of the Inter-American Convention on Letters Rogatory, hereinafter referred to as “the Convention”. For the purposes of this Protocol, such acts shall be understood to mean procedural acts (pleadings, motions, orders, and subpoenas) that are served and requests for information that are made by a judicial or other adjudicatory authority of a State Party to a judicial or administrative authority of another State Party and are transmitted by a letter rogatory from the Central Authority of the State of origin to the Central Authority of the State of destination.

II. CENTRAL AUTHORITY

Article 2

Each State Party shall designate a central authority that shall perform the functions assigned to it in the Convention and in this Protocol. At the time of deposit of their instruments of ratification or accession to this Protocol, the States Parties shall communicate the designations to the General Secretariat of the Organization of American States, which shall distribute to the States Parties to the Convention a list containing the designations received. The Central Authority designated by a State Party in accordance with Article 4 of the Convention may be changed at any time. The State Party shall inform the above-mentioned Secretariat of such change as promptly as possible.

III. PREPARATION OF LETTERS ROGATORY

Article 3

Letters rogatory shall be prepared on forms that are printed in the four official languages of the Organization of American States or in the languages of the State of origin and of the State of destination and conform to Form A contained in the Annex to this Protocol.

Letters rogatory shall be accompanied by the following:

- a. Copy of the complaint or pleading that initiated the action in which the letter rogatory was issued, as well as a translation thereof into the language of the State of destination;
- b. Untranslated copy of the documents attached to the complaint or pleading;
- c. Untranslated copy of any rulings ordering issuance of the letter rogatory;
- d. Form conforming to Form B annexed to this Protocol and containing essential information for the person to be served or the authority to receive the documents; and
- e. Certificate conforming to Form C annexed to this Protocol on which the Central Authority of the State of destination shall attest to execution or non-execution of the letter rogatory.

The copies shall be regarded as authenticated for the purposes of Article 8(a) of the Convention if they bear the seal of the judicial or other adjudicatory authority that issued the letter rogatory.

A copy of the letter rogatory together with Form B and the copies referred to in items a, b, and c of this Article shall be delivered to the person notified or to the authority to which the request is addressed. One of the copies of the letter rogatory and the documents attached to it shall remain in the possession of the State of destination; the untranslated original, the certificate of execution and the documents attached to them shall be returned to the Central Authority of the State of origin through appropriate channels.

If a State Party has more than one official language, it shall, at the time of signature, ratification or accession to this Protocol, declare which language or languages shall be considered official for the purposes of the Convention and of this Protocol. If a State Party comprises territorial units that have different official languages, it shall, at the time of signature, ratification or accession to this Protocol, declare which language or languages in each territorial unit shall be considered official for the purposes of the Convention and of this Protocol. The General Secretariat of the Organization of American States shall distribute to the States Parties to this Protocol the information contained in such declarations.

IV. TRANSMISSION AND PROCESSING OF LETTERS ROGATORY

Article 4

Upon receipt of a letter rogatory from the Central Authority in another State Party, the Central Authority in the State of destination shall transmit the letter rogatory to the appropriate judicial or administrative authority for processing in accordance with the applicable local law.

Upon execution of the letter rogatory, the judicial or administrative authority or authorities that processed it shall attest to the execution thereof in the manner prescribed in their local law, and shall transmit it with the relevant documents to the Central Authority. The Central Authority of the State Party of destination shall certify execution of the letter rogatory to the Central Authority of the State Party of origin on a form conforming to Form C of the Annex, which shall not require legalization. In addition, the Central Authority of the State of destination shall return the letter rogatory and attached documents to the Central Authority of the State of origin for delivery to the judicial or other adjudicatory authority that issued it.

V. COSTS AND EXPENSES

Article 5

The processing of letters rogatory by the Central Authority of the State Party of destination and its judicial or administrative authorities shall be free of charge. However, this State Party may seek payment by parties requesting execution of letters rogatory for those services which, in accordance with its local law, are required to be paid for directly by those parties.

The party requesting the execution of a letter rogatory shall, at its election, either select and indicate in the letter rogatory the person who is responsible in the State of destination for the cost of such services or, alternatively, shall attach to the letter rogatory a check for the fixed amount that is specified in Article 6 of this Protocol for its processing by the State of destination and will cover the cost of such services or a document proving that such amount has been transferred by some other means to the Central Authority of the State of destination.

The fact that the cost of such services ultimately exceeds the fixed amount shall not delay or prevent the processing or execution of the letter rogatory by the Central Authority or the judicial or administrative authorities of the State of destination. Should the cost exceed that amount, the Central Authority of the State of destination may, when returning the executed letter rogatory, seek payment of the outstanding amount due from the party requesting execution of the letter rogatory.

Article 6

At the time of deposit of its instrument of ratification or accession to this Protocol with the General Secretariat of the Organization of American States, each State Party shall attach a schedule of the services and the costs and other expenses that, in accordance with its local law, shall be paid directly by the party requesting execution of the letter rogatory. In addition, each State Party shall specify in the above-mentioned schedule the single amount which it considers will reasonably cover the cost of such services, regardless of the number or nature thereof. This amount shall be paid when the person requesting execution of the letter rogatory has not designated a person responsible for the payment of such services in the State of destination but has decided to pay for them directly in the manner provided for in Article 5 of this Protocol.

The General Secretariat of the Organization of American States shall distribute the information received to the States Parties to this Protocol. A State Party may at any time notify the General Secretariat of the Organization of American States of changes in the above-mentioned schedules, which shall be communicated by the General Secretariat to the other States Parties to this Protocol.

Article 7

States Parties may declare in the schedules mentioned in the foregoing articles that, provided there is reciprocity, they will not charge parties requesting execution of letters rogatory for the services necessary for executing them, or will accept in complete satisfaction of the cost of such services either the single fixed amount specified in Article 6 or another specified amount.

Article 8

This Protocol shall be open for signature and subject to ratification or accession by those Member States of the Organization of American States that have signed, ratified, or acceded to the Inter-American Convention on Letters Rogatory signed in Panama on January 30, 1975.

This Protocol shall remain open for accession by any other State that accedes or has acceded to the Inter-American Convention on Letters Rogatory, under the conditions set forth in this article.

The instruments of ratification and accession shall be deposited with the General Secretariat of the Organization of American States.

Article 9

This Protocol shall enter into force on the thirtieth day following the date on which two States Parties to the Convention have deposited their instruments of ratification or accession to this Protocol.

For each State ratifying or acceding to the Protocol after its entry into force, the Protocol shall enter into force on the thirtieth day following deposit by such State of its instrument of ratification or accession, provided that such State is a Party to the Convention.

Article 10

If a State Party has two or more territorial units in which different systems of law apply in relation to matters dealt with in this Protocol, it may, at the time of signature, ratification or accession, declare that this Protocol shall extend to all its territorial units or only to one or more of them.

Such declaration may be modified by subsequent declarations that shall expressly indicate the territorial unit or units to which this Protocol applies. Such subsequent declarations shall be transmitted to the General Secretariat of the Organization of American States, and shall become effective thirty days after the date of their receipt.

Article 11

This Protocol shall remain in force indefinitely, but any of the States Parties may denounce it. The instrument of denunciation shall be deposited with the General Secretariat of the Organization of American States. After one year from the date of deposit of the instrument of denunciation, the Protocol shall no longer be in effect for the denouncing State, but shall remain in effect for the other States Parties.

Article 12

The original instrument of this Protocol and its Annex (Forms A, B and C), the English, French, Portuguese and Spanish texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States, which will forward an authenticated copy of the text to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of its Charter. The General Secretariat of the Organization of American States shall notify the Member States of that Organization and the States that have acceded to the Protocol of the signatures, deposits of instruments of ratification, accession and denunciation, as well as of reservations, if any. It shall also transmit to them the information mentioned in Article 2, the last paragraph of Article 3, and Article 6 and the declarations referred to in Article 10 of this Protocol.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

DONE AT MONTEVIDEO, Republic of Uruguay, this eighth day of May, one thousand nine hundred and seventy-nine.

[Signatures omitted]

ANNEX TO THE ADDITIONAL PROTOCOL
TO THE INTER-AMERICAN CONVENTION ON LETTERS ROGATORY
FORM A

LETTER ROGATORY ¹

1	2
REQUESTING JUDICIAL OR OTHER ADJUDICATORY AUTHORITY Name Address	CASE: DOCKET No.:
3	4
CENTRAL AUTHORITY OF THE STATE OF ORIGIN Name Address	CENTRAL AUTHORITY OF THE STATE OF DESTINATION Name Address
5	6
REQUESTING PARTY Name Address	COUNSEL TO THE Name Address
PERSON DESIGNATED TO ACT IN CONNECTION WITH THE LETTER ROGATORY Name	
Is this person responsible for	

Address	costs and expenses? YES [] NO [] * If not, check in the amount of _____ is attached * Or proof of payment is
---------	--

The Central Authority signing this letter rogatory has the honor to transmit to you in triplicate the documents listed below and, in conformity with the Protocol to the Inter-American Convention on Letters Rogatory:

- * A. Requests their prompt service on:

The undersigned authority requests that service be carried out in the following manner:

- * (1). In accordance with the special procedure or additional formalities that are described below, as provided for in the second paragraph of Article 10 of the above-mentioned Convention; or

- * (2). By service personally on the identified addressee or, in the case of a legal entity, on its authorized agent; or
- * (3). If the person or the authorized agent of the entity to be served is not found, service shall be made in accordance with the law of the State of destination.

- * B. Requests the delivery of the documents listed below to the following judicial or administrative authority:

Authority _____

- * C. Requests the Central Authority of the State of destination to return to the Central Authority of the State of origin one copy of the documents listed below and attached to this letter rogatory, and an executed Certificate on the attached Form C.

Done at _____ this _____ date of _____, 19____.

 Signature and stamp of the
 judicial or other adjudicatory
 authority of the State of origin

 Signature and stamp of the
 Central Authority of the
 State of origin

Title or other identification of each document to be delivered:

(Attach additional pages, if necessary.)

¹ Complete the original and two copies of this form; if A(1) is applicable, attach the original and two copies of the translation of this item in the language of the State of destination.

* Delete if inapplicable.

ANNEX TO THE ADDITIONAL PROTOCOL
TO THE INTER-AMERICAN CONVENTION ON LETTERS ROGATORY

FORM B

ESSENTIAL INFORMATION FOR THE ADDRESSEE ¹

To (Name and address of the person being served) _____

You are hereby informed that (Brief statement of nature of service)

A copy of the letter rogatory that gives rise to the service or delivery of these documents is attached to this document. This copy also contains essential information for you. Also attached are copies of the complaint or pleading initiating the action in which the letter rogatory was issued, of the documents attached to the complaint or pleading, and of any rulings that ordered the issuance of the letter rogatory.

ADDITIONAL INFORMATION

I*

FOR SERVICE

A. The document being served on you (original or copy) concerns the following:

B. The remedies sought or the amount in dispute is as follows:

C. By this service, you are requested:

D. * In case of service on you as a defendant you can answer the complaint before the judicial or other adjudicatory authority specified in Form A, Box 1 (State place, date and hour):

* You are being summoned to appear as:

* If some other action is being requested of the person served, please describe: _____

E. If you fail to comply, the consequences might be:

F. You are hereby informed that a defense counsel appointed by the Court or the following legal aid societies are available to you at the place where the proceeding is pending.
Name: _____
Address: _____

The documents listed in Part III are being furnished to you so that you may better understand and defend your interests.

II *

FOR INFORMATION FROM JUDICIAL OR ADMINISTRATIVE AUTHORITY

To: _____

(Name and address of the judicial or administrative authority)

You are respectfully requested to furnish the undersigned authority with the following information:

The documents listed in Part III are being furnished to you to facilitate your reply.

III

LIST OF ATTACHED DOCUMENTS

(Attach additional pages if necessary.)

Done at _____ this _____ day of _____, 19__

Signature and stamp of the
judicial or other adjudicatory
authority of the State of origin

Signature and stamp of
the Central Authority
of the State of Origin

¹ Complete the original and two copies of this form in the language of the State of origin and two copies in the language of the State of destination.

* Delete if inapplicable.

ANNEX TO THE ADDITIONAL PROTOCOL
TO THE INTER-AMERICAN CONVENTION ON LETTERS ROGATORY

FORM C

CERTIFICATE OF EXECUTION¹

To: _____

(Name and address of judicial or other adjudicatory authority that issued the letter rogatory)

In conformity with the Additional Protocol to the Inter-American Convention on Letters Rogatory, signed at Montevideo on May 8, 1979, and in accordance with the attached original letter rogatory, the undersigned Central Authority has the honor to certify the following:

*A. That one copy of the documents attached to this Certificate has been served or delivered as follows:

Date: _____

At (Address) _____

By one of the following methods authorized by the Convention.

*(1) In accordance with the special procedure or additional formalities that are described below, as provided for in the second paragraph of Article 10 of the above-mentioned Convention, or

* (2) By service personally on the identified addressee or, in the case of a legal entity, on its authorized agent, or

* (3) If the person or the authorized agent of the entity to be served was not found, in accordance with the law of the State of destination: (Specify method used)

*B. That the documents referred to in the letter rogatory have been delivered to:

Identity of person _____

Relationship to the addressee

(family, business or other)

*C. That the documents attached to the Certificate have not been served or delivered for the following reason(s):

*D. In conformity with the Protocol, the party requesting execution of the letter rogatory is requested to pay the outstanding balance of costs in the amount indicated in the attached statement.

Done at _____ the _____ day of _____ 19__

Signature and stamp of Central Authority of the State of destination

Where appropriate, attach originals or copies of any additional documents proving service or delivery, and identify them.

¹ Complete the original and one copy in the language of the State of destination.

* Delete if inapplicable.


Additional Protocol to the Inter-American Convention on Letters Rogatory, with Annex. Done at Montevideo May 8, 1979; entered into force for the United States August 27, 1988.

CROSS REFERENCES

Persons before whom depositions may be taken in foreign countries, see [Fed.Rules Civ.Proc. Rule 28, 28 USCA](#).

LIBRARY REFERENCES

American Digest System

[Federal Civil Procedure](#)  1312.
Key Number System Topic No. 170A.

RESEARCH REFERENCES

ALR Library

[7 ALR, Fed. 2nd Series 329](#), Requirement that Summons and Complaint be Translated for Proper Service Under Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

[18 ALR, Fed. 2nd Series 185](#), When is Compliance With Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters, Art. 1 et Seq., Required.

[56 ALR, Fed. 2nd Series 307](#), Construction and Application of [28 U.S.C.A. § 1782](#), Permitting Federal District Court to Order Discovery for Use in Proceeding in Foreign or International Tribunal.

[1 ALR International 289](#), Construction and Application of Hague Convention on Taking of Evidence Abroad in Civil or Commercial Matters, March 18, 1970, 847 U.N.T.S. 231--Global Cases.

[76 ALR 4th 22](#), Forum Non Conveniens in Products Liability Cases.

[58 ALR 1263](#), Scope or Extent, as Regards Books, Records, or Documents to be Produced or Examined, Permissible in Order for Inspection.

[108 ALR 384](#), Power of Court to Issue or to Honor Letters Rogatory.

[130 ALR 327](#), Practice or Procedure for Testing Validity or Scope of the Command of Subpoena Duces Tecum.

[134 ALR 882](#), Relation of Treaty to State and Federal Law.

[41 ALR 436](#), Mandamus to Compel Court or Judge to Require Witness to Testify or Produce Documents.

[44 ALR 168](#), “De Minimis Non Curat Lex”.

Encyclopedias

[9 Am. Jur. Proof of Facts 3d 687](#), Invalidity of Judgment of Court of Foreign Country.

[113 Am. Jur. Proof of Facts 3d 219](#), Obtaining Child Support from Active Duty U.S. Military Personnel.

[115 Am. Jur. Proof of Facts 3d 419](#), Effect of Divorce on Immigration Status of Spouse Who Immigrated to U.S. Because of Marriage With U.S. Citizen.

[17 Am. Jur. Trials 501](#), Preparing a Ship Collision Case for Trial.

[71 Am. Jur. Trials 1](#), How to Conduct International Discovery.

[76 Am. Jur. Trials 1](#), Arbitration Evidence: Putting Your Best Case Forward.

[Am. Jur. 2d Depositions and Discovery § 17](#), Issuance and Enforcement of Letter Rogatory or Request.

[Am. Jur. 2d Federal Tax Enforcement § 776](#), Foreign Deposition.

[Am. Jur. 2d Process § 332](#), Service in Response to Letter Rogatory--Procedure.

Forms

[Federal Procedural Forms § 20:494](#), Subpoenas for Attendance of Witnesses.

[Federal Procedural Forms § 23:232](#), Depositions in Foreign Countries.

[Federal Procedural Forms § 23:234](#), Depositions in Foreign Countries--Transmittal of Letter of Request.

[Federal Procedural Forms § 23:236](#), Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters.

[Federal Procedural Forms § 23:237](#), Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters--Letters of Request Under Hague Convention.

[Federal Procedural Forms § 23:238](#), Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters--Letters of Request Under Hague Convention--Transmittal by Central Authority.

[Federal Procedural Forms § 23:239](#), Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters--Letters of Request Under Hague Convention--Contents of Letter.

[Federal Procedural Forms § 23:240](#), Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters--Letters of Request Under Hague Convention--Objections to Letter.

[Federal Procedural Forms § 23:241](#), Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters--Letters of Request Under Hague Convention--Execution of Letter.

[Federal Procedural Forms § 23:242](#), Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters--Letters of Request Under Hague Convention--Invoking Privileges.

[Federal Procedural Forms § 23:243](#), Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters--Letters of Request Under Hague Convention--Refusal of Execution.

[Federal Procedural Forms § 23:244](#), Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters--Taking of Evidence.

[Federal Procedural Forms § 23:245](#), Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters--Taking of Evidence--Compulsion or Assistance in Taking Evidence.

[Federal Procedural Forms § 23:246](#), Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters--Taking of Evidence--Request to Appear and Give Evidence.

[Federal Procedural Forms § 23:247](#), Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters--Manner of Taking Evidence.

[Federal Procedural Forms § 23:272](#), Request for International Assistance--Examination of Persons and Inspection of Documents in Foreign Jurisdiction [Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters...

[Federal Procedural Forms § 23:273](#), Transmittal of Letter of Request; Court Order for Discovery.

[Federal Procedural Forms § 23:275](#), Privileges; Voluntary Disclosure.

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[Nichols Cyclopedia of Legal Forms Annotated § 4:180](#), Apostille of the Hague Convention of October 5, 1961.

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[3A West's Federal Forms § 3358](#), Foreign Countries.

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[7A West's Federal Forms § 11792](#), Letter Rogatory--Witnesses Not Named.

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Treatises and Practice Aids

[Bankruptcy Procedure Manual § 7028:3](#), Depositions in a Foreign Country.

[Bankruptcy Procedure Manual Rule 9017](#), Evidence.

[Federal Procedure, Lawyers Edition § 22:421](#), Subpoena Directed to Witness in Foreign Country.

[Federal Procedure, Lawyers Edition § 26:895](#), Methods for Taking Deposition in Foreign Country.

[Federal Procedure, Lawyers Edition § 26:898](#), Transmittal of Letter of Request.

[Federal Procedure, Lawyers Edition § 26:924](#), Transmittal of Letter of Request.

[Federal Procedure, Lawyers Edition § 26:931](#), Privileges; Voluntary Disclosure.

[Federal Procedure, Lawyers Edition § 36:208](#), Transmittal of Letters Rogatory.

[Federal Procedure, Lawyers Edition § 36:209](#), Return of Executed Letter Rogatory.

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[Federal Procedure, Lawyers Edition § 65:201](#), Service in Response to a Letter Rogatory or Letter of Request--Service by United States Courts at the Request of Foreign Countries.

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[Restatement \(Third\) of Foreign Relations § 472](#), Service of Process in or for Use in Foreign State: Law of the United States.

[Restatement \(Third\) of Foreign Relations § 473](#), Obtaining Evidence in Foreign State.

[Restatement \(Third\) of Foreign Relations § 474](#), Obtaining Evidence in or for Use in Foreign State: Law of the United States.

[Restatement \(Third\) of Foreign Relations IV, 7, a IN NT](#), Introductory Note.

[Trademark Trial & Appeal Board Practice Procedure App 4](#), Discovery.

[Wright & Miller: Federal Prac. & Proc. § 1134](#), Manner of Service in Foreign Country.

[Wright & Miller: Federal Prac. & Proc. § 2081](#), Purpose and History of Rule.

[Wright & Miller: Federal Prac. & Proc. § 2083](#), Depositions in Foreign Countries.

[Wright & Miller: Federal Prac. & Proc. § 2105](#), Leave of Court--Special Notice in Lieu of Leave of Court.

[Wright & Miller: Federal Prac. & Proc. § 2435](#), Proof by Attested Copy--Foreign Records.

[Wright & Miller: Federal Prac. & Proc. § 7137](#), Subdivision (3)--Foreign Public Documents.

[Wright & Miller: Federal Prac. & Proc. § 2005.1](#), Exclusiveness of Procedures--Foreign Discovery.

NOTES OF DECISIONS

Admissibility of evidence, letters rogatory [5](#)

Comity, considerations governing use of conventions [12a](#)

Considerations governing use of Convention [12-18](#)

 Considerations governing use of Convention - Generally [12](#)


 Considerations governing use of Convention - Comity [12a](#)

- Considerations governing use of Convention - Delay [13](#)
- Considerations governing use of Convention - Extensiveness of interrogatories [14](#)
- Considerations governing use of Convention - Futility [15](#)
- Considerations governing use of Convention - Miscellaneous cases [18](#)
- Considerations governing use of Convention - Place of discovery [16](#)
- Considerations governing use of Convention - Violation of foreign law [17](#)
- Construction of Convention with Federal Rules [9](#)
- Courts empowered to issue letters rogatory [2](#)
- Delay, considerations governing use of convention [13](#)
- Demonstration of necessity for Convention method [21](#)
- Exclusive or mandatory method [10](#)
- Extensiveness of interrogatories, considerations governing use of convention [14](#)
- Futility, considerations governing use of convention [15](#)
- Hague Convention generally [8](#)
- Identity and qualification of witnesses [19](#)
- Jurisdiction of courts [22](#)
- Jurisdictional matters [20](#)
- Letters rogatory [1-7](#)
 - Letters rogatory - Generally [1](#)
 - Letters rogatory - Admissibility of evidence [5](#)
 - Letters rogatory - Courts empowered to issue letters rogatory [2](#)
 - Letters rogatory - Methods attempted to obtain testimony [4](#)
 - Letters rogatory - Miscellaneous cases [7](#)
 - Letters rogatory - Necessity of indictment [6](#)
 - Letters rogatory - Venue [3](#)
- Methods attempted to obtain testimony, letters rogatory [4](#)
- Miscellaneous cases, considerations governing use of convention [18](#)
- Miscellaneous cases, letters rogatory [7](#)
- Necessity of indictment, letters rogatory [6](#)
- Persons subject to Convention [11](#)
- Physical and mental examinations [23](#)
- Place of discovery, considerations governing use of convention [16](#)
- Privileged information [25](#)
- Protective orders [24](#)
- Venue, letters rogatory [3](#)
- Violation of foreign law, considerations governing use of convention [17](#)


[1. Letters rogatory--Generally](#)

In deciding whether to allow a letter of request under the Hague Evidence Convention, a court must consider international comity and demonstrate due respect for any special problem confronted by the foreign litigant on account of its nationality or the location of its operation, and for any sovereign interest expressed by a foreign state. [Seoul Semiconductor Co. Ltd. v. Nichia Corp., E.D.Tex.2008, 590 F.Supp.2d 832. Federal Civil Procedure !\[\]\(e78f798d4ea5c530c9db49e7d26e6b95_img.jpg\) 1312; Treaties !\[\]\(034433b90593e82e5460e34e3ed48e9b_img.jpg\) 8](#)


“Letters rogatory” are the medium whereby one country, speaking through one of its courts, requests another country,

acting through its own courts and by methods of court procedure peculiar thereto and entirely within the latter's control, to assist the administration of justice in the former country, and such request is usually granted by reason of the comity existing between nations in ordinary peaceful times. [The Signe, E.D.La.1941, 37 F.Supp. 819. Federal Civil Procedure](#)  1331


2. ---- Courts empowered to issue letters rogatory

The Court of Appeals, like all courts of the United States, has inherent power to issue letters rogatory. [U.S. v. Staples, C.A.9 1958, 256 F.2d 290. Federal Courts](#)  522


3. ---- Venue, letters rogatory



Party's burden on expense of using letters rogatory under Hague Convention did not reach requisite level of oppressiveness or vexatiousness to support dismissal on basis of forum non conveniens. [Anglo American Ins. Group, P.L.C. v. CalFed Inc., S.D.N.Y.1996, 940 F.Supp. 554. Federal Courts](#)  45

4. ---- Methods attempted to obtain testimony, letters rogatory

Defendant, who claimed that foreign government's failure to make certain witnesses available for trial impaired his right to compulsory process, did not use all means at his disposal to obtain needed testimony; defendant could have sought court permission to depose witnesses overseas, and could have asked court to issue letters rogatory addressed to foreign court seeking its assistance in gathering evidence from witnesses residing there. [U.S. v. Sensi, C.A.D.C.1989, 879 F.2d 888, 279 U.S.App.D.C. 42. Witnesses](#)  2(1)

5. ---- Admissibility of evidence, letters rogatory

Where answers sought by letters rogatory to question British officials about search of British-registered ship while ship was sailing on high seas were to show that British neither consented to search nor asked United States to check ship's registration, there was no error in court's denial of motion seeking letters rogatory in that evidence seized during search would have been admissible even if Britain had not consented to search and even if officers' motives in conducting search were pretextual. [U.S. v. Kincaid, C.A.1 \(Mass.\) 1983, 712 F.2d 1. Criminal Law](#)  627.2

Exclusion of questions from letters of request drafted by plaintiffs that allegedly sought answers that would be inadmissible at trial was not appropriate; Hague Evidence Convention did not require all such evidence to be admissible, as there was no distinction between discovery sought in United States and that sought abroad under Hague Evidence Convention. [In re Urethane Antitrust Litigation, D.Kan.2010, 267 F.R.D. 361. Federal Civil Procedure](#)  1312; [Treaties](#)  8

6. ---- Necessity of indictment, letters rogatory

Where a seaman was slain aboard an American vessel in a German harbor, a judge of appropriate German county court, which had before it results of an extensive police investigation, refused to issue a warrant of arrest for crime of murder sought by German prosecutor, defendant returned to the United States, the United States Coast Guard, acting for the FBI, requested appropriate German authorities to release to them records pertaining to the matter, and this request was denied,

federal district court did not exceed its jurisdiction in requesting from appropriate judicial authorities in Germany the records sought by the FBI and the Coast Guard through medium of letters rogatory, although a grand jury indictment had not yet been returned. [U. S. v. Reagan, C.A.6 \(Ohio\) 1971, 453 F.2d 165, certiorari denied 92 S.Ct. 2049, 406 U.S. 946, 32 L.Ed.2d 334. Criminal Law ↪ 627.8\(2\)](#)

7. ---- Miscellaneous cases, letters rogatory

Neither drug patent itself, nor any inequitable conduct during its prosecution in underlying action between American drug manufacturer, as licensee of patent holder, and competing French manufacturer's United States distributor, bore any immediate and necessary relation to enforcement of patents at issue, thus precluding discovery through letter rogatory as to underlying prosecution of patent in French manufacturer's action against American manufacturer for alleged sham litigation in violation of antitrust laws; patent in underlying action and patents at issue in French manufacturer's action were only temporally related, but there was no evidence that inequitable contact as to one patent necessarily meant that patent holder or its licensee acted improperly with regard to other patents. [Ethypharm S.A. France v. Abbott Laboratories, D.Del.2010, 748 F.Supp.2d 354. Federal Civil Procedure ↪ 1312](#)

Any inequitable conduct during prosecution of patent related to American manufacturer's cholesterol drug was not relevant to competing French manufacturer's antitrust claims alleging that American manufacturer exceeded its patent rights in underlying settlement agreement with French manufacturer's United States distributor, and thus letters rogatory to allow French manufacturer to depose foreign witnesses was unwarranted, in absence of any specific allegation of inequitable conduct related to that patent. [Ethypharm S.A. France v. Abbott Laboratories, D.Del.2010, 748 F.Supp.2d 354. Federal Civil Procedure ↪ 1312](#)

Failure of foreign defendants to do all that they could to locate and procure testimony of foreign witnesses, especially witness who was former principal of defendants at time of events at issue in case, during nearly two years that plaintiff spent attempting to take foreign witnesses' testimony through coercive means equitably precluded defendants from obtaining new letters rogatory in connection with evidentiary hearing on question of whether subject matter jurisdiction existed pursuant to commercial activity exception under Foreign Sovereign Immunities Act (FSIA), inasmuch as such efforts to obtain same witnesses' testimony would cause great delay and significant prejudice to plaintiff. [Reiss v. Societe Centrale Du Groupe Des Assurances Nationales, S.D.N.Y.2003, 246 F.Supp.2d 285. Federal Civil Procedure ↪ 1312](#)

District Court, in prosecution of two officials of pro-Israel lobbying organization, charged with, inter alia, Espionage Act violation of conspiring to transmit information relating to the national defense (NDI) to those not entitled to receive it, would not issue letters rogatory to request that Israeli courts compel three Israeli government officials to provide deposition testimony; forecasted testimony was not material since it was either not exculpatory or, when exculpatory, was cumulative, and the delay attending use of the letters rogatory process was not justified since they were not necessary to ensure a fair trial. [U.S. v. Rosen, E.D.Va.2007, 240 F.R.D. 204. Criminal Law ↪ 627.2](#)

8. Hague Convention generally

The Hague Evidence Convention, set out as a note under this section, employs a tripartite division of methods of obtaining evidence abroad: notice to appear before an American consulate officer or foreign officer; designation of a private commissioner; or a letter rogatory. [Pain v. United Technologies Corp., C.A.D.C.1980, 637 F.2d 775, 205 U.S.App.D.C.](#)

229, certiorari denied 102 S.Ct. 980, 454 U.S. 1128, 71 L.Ed.2d 116. [Federal Civil Procedure](#) 1271; [International Law](#) 10

There are three available methods of taking evidence pursuant to Hague Evidence Convention: (1) by Letter of Request or “letter rogatory” from U.S. judicial authority to competent authority in foreign state, (2) by American or foreign diplomatic or consular officer or agent after permission is obtained from foreign state, and (3) by private commissioner duly appointed by foreign state. [Tulip Computers Intern. B.V. v. Dell Computer Corp.](#), D.Del.2003, 254 F.Supp.2d 469. [Federal Civil Procedure](#) 1261; [Federal Civil Procedure](#) 1312; [Treaties](#) 8

The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters contemplates means of assisting parties to obtain evidence abroad from witnesses who will testify voluntarily, through notice to appear before an American consulate officer or foreign officer or the designation of a private commissioner before whom testimony is taken by the parties. [Reiss v. Societe Centrale Du Groupe Des Assurances Nationales](#), S.D.N.Y.2003, 246 F.Supp.2d 285. [Federal Civil Procedure](#) 1261; [Treaties](#) 8

9. Construction of Convention with Federal Rules

In determining whether Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, rather than rules of civil procedure, should control “jurisdictional discovery,” just as in determining whether Convention should control “merits discovery,” district court must balance particular facts, sovereign interests, and likelihood that resort to Convention will prove effective. [In re Automotive Refinishing Paint Antitrust Litigation](#), C.A.3 (Pa.) 2004, 358 F.3d 288. [Treaties](#) 8

When discovery is sought from a foreign party, there is no rule of first resort, compelling the discovering party to attempt to utilize the procedures of the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters before resorting to the Federal Rules of Civil Procedure; as such, the Federal Rules remain the *normal* method for federal litigation involving foreign national parties unless the facts of a given case indicate the optional or supplemental Hague Convention procedures prove to be conducive to discovery. [Schindler Elevator Corp. v. Otis Elevator Co.](#), D.N.J.2009, 657 F.Supp.2d 525. [Federal Civil Procedure](#) 1261; [Treaties](#) 8

Under “tripartite analysis,” Hague Convention procedures for requesting evidence, not federal civil rule, governed service of interrogatories in negligence and products liability action against West German manufacturer; discovery devices under federal rules were necessarily more offensive to sovereign interests of civil law country, and plaintiffs failed to establish that use of Hague procedures would frustrate their interests in making manufacturer answerable for its conduct in American court. [Hudson v. Hermann Pfauter GmbH & Co.](#), N.D.N.Y.1987, 117 F.R.D. 33. [Federal Civil Procedure](#) 1487

10. Exclusive or mandatory method

First resort to Hague Evidence Convention procedures is not required whenever discovery is sought from foreign litigant. [Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Court for Southern Dist. of Iowa](#), U.S.Iowa 1987, 107 S.Ct. 2542, 482 U.S. 522, 96 L.Ed.2d 461. [Federal Civil Procedure](#) 1261

The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters is not mandatory and serves only as a permissive supplement to the Federal Rules of Civil Procedure. [Schindler Elevator Corp. v. Otis Elevator Co., D.N.J.2009, 657 F.Supp.2d 525. Federal Civil Procedure ↪ 1261; Treaties ↪ 8](#)

First resort to Hague Evidence Convention procedures was not required when seeking discovery from foreign litigants relating strictly to jurisdictional issues in antitrust litigation, despite large number of discovery requests; conduct was generally prohibited under domestic laws applicable to most litigants, all litigants admitted their involvement in price-fixing conspiracy, and plaintiffs' allegations showed strong potential for findings of jurisdiction. [In re Vitamins Antitrust Litigation, D.D.C.2000, 120 F.Supp.2d 45, amended in part 2000 WL 33142129. Federal Civil Procedure ↪ 1261; Treaties ↪ 8](#)

The Hague Convention is not the exclusive avenue for obtaining discovery in a foreign country; rather, courts must determine based on the facts of each particular case whether it is more appropriate to take discovery abroad under the Hague Convention or under the Federal Rules of Civil Procedure. [Madanes v. Madanes, S.D.N.Y.2001, 199 F.R.D. 135. Federal Civil Procedure ↪ 1312; Treaties ↪ 8](#)

Holocaust survivor who sued German companies claiming they were successors of companies for whom he was forced to perform slave labor at concentration camps was not limited to Hague Evidence Convention in conducting discovery on defendants' claim that court lacked personal jurisdiction, where defendants did not identify any sovereign interests affected by requiring them to produce information bearing on their jurisdictional defense nor was there any unfairness to defendants. [Fishel v. BASF Group, S.D.Iowa 1997, 175 F.R.D. 525. Federal Civil Procedure ↪ 1272.1; Federal Civil Procedure ↪ 1275.5](#)

Domestic buyer, which alleged that Swedish steel manufacturers had conspired to misrepresent grade of steel sold, was not required to utilize Hague Convention discovery procedures, but could use discovery procedures under federal rules; manufacturers identified no special problem with responding to requested discovery because of their nationality, discovery could be accomplished efficiently under federal rules, manufacturers failed to explain how any discovery request violated any special sovereign interests of Sweden, and resort to Convention procedures would have delayed discovery. [Benton Graphics v. Uddeholm Corp., D.N.J.1987, 118 F.R.D. 386. Federal Civil Procedure ↪ 1261](#)

Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters provides alternative procedure for taking such evidence, its procedures are not exclusive or mandatory. [Compagnie Francaise d'Assurance Pour le Commerce Exterieur v. Phillips Petroleum Co., S.D.N.Y.1984, 105 F.R.D. 16. Federal Civil Procedure ↪ 1271](#)

Although, as corporation doing business within the court's jurisdiction, foreign corporation remains subject to any discovery orders which might issue, proper exercise of judicial restraint requires that the avenue of first resort be the Hague Convention. [Philadelphia Gear Corp. v. American Pfauter Corp., D.C.Pa.1983, 100 F.R.D. 58. Federal Civil Procedure ↪ 1292](#)

11. Persons subject to Convention

Issuance of Letters of Request pursuant to Hague Evidence Convention was appropriate in action brought by holders of

patents for pharmaceutical product against alleged infringers, in order to obtain discovery from patent inventors and declarants who resided in either Norway or Sweden; inventors and declarant subject to motion for issuance of Letters of Request were not parties to action, had not voluntarily subjected themselves to discovery, and were not otherwise subject to jurisdiction of District Court. [Pronova BioPharma Norge AS v. Teva Pharmaceuticals USA, Inc., D.Del.2010, 708 F.Supp.2d 450. Patents ↪ 292.2; Treaties ↪ 8](#)

Issuance of letters rogatory, pursuant to Hague Evidence Convention, was warranted in order to assist patent infringement defendant in obtaining discovery from Dutch plaintiff's former employees; employees were not otherwise subject to court's jurisdiction, evidence sought was relevant to issues of patent's validity and infringement, any issues of privilege could be decided by court, and any overbreadth in discovery requests under Dutch law could be addressed by Dutch court. [Tulip Computers Intern. B.V. v. Dell Computer Corp., D.Del.2003, 254 F.Supp.2d 469. Patents ↪ 292.2; Treaties ↪ 8](#)

Hague Evidence Convention's letter of request procedure specifically contemplates production of documents and reaches evidence from parties and nonparty "persons" to international civil lawsuits. [S & S Screw Mach. Co. v. Cosa Corp., M.D.Tenn.1986, 647 F.Supp. 600. Federal Civil Procedure ↪ 1261](#)

12. Considerations governing use of Convention--Generally

Factors relevant to court's decision to allow party to pursue discovery under Hague Evidence Convention include considerations of comity, relative interests of parties, including interest in avoiding abusive discovery, and ease and efficiency of alternative formats for discovery. [Tulip Computers Intern. B.V. v. Dell Computer Corp., D.Del.2003, 254 F.Supp.2d 469. Federal Civil Procedure ↪ 1261; Treaties ↪ 8](#)

12a. ---- Comity, considerations governing use of conventions

In performing a comity analysis in determining whether to allow a letter of request under the Hague Evidence Convention, a court should consider: (1) the importance to the litigation of the documents or other information requested; (2) the degree of specificity of the request; (3) whether the information originated in the United States; (4) the availability of alternative means of securing the information; and (5) the extent to which noncompliance with the request would undermine important interests of the United States, or compliance with the request would undermine important interests of the state where the information is located. [Seoul Semiconductor Co. Ltd. v. Nichia Corp., E.D.Tex.2008, 590 F.Supp.2d 832. Federal Civil Procedure ↪ 1312; Treaties ↪ 8](#)

Pursuant to comity analysis, federal rules, rather than Hague Evidence Convention, governed discovery in claims objection matter in Chapter 11 case as to documents and witness testimony in possession of Dutch claimant's agent in France, given that documents and depositions sought were central to dispute, which concerned claim for damages allegedly owed under agreement for which agent served as agent in charge, that requests were specific, that documents were created in the Netherlands or in France and were subject to claimant's control, that no efficient alternate means of obtaining information sought was available, that United States had substantial interest in orderly administration of case and French interest in case was particularly attenuated, and that claimant's hardship from complying with discovery requests was minimal, given unlikelihood of prosecution under French blocking statute. [In re Global Power Equipment Group Inc., Bkrtcy.D.Del.2009, 418 B.R. 833. Bankruptcy ↪ 3043; Bankruptcy ↪ 3044; Treaties ↪ 11](#)

13. ---- Delay, considerations governing use of convention

Alleged infringers of patent relating to a multilayer structure in semiconductor material, especially for a solid state laser, were not entitled to the issuance of a letter of request to the French government for discovery from an individual involved with the prosecution of the patent under the Hague Evidence Convention; alleged infringers' delay in filing their motion for the issuance of a letter of request indicated the information may not have really been crucial, and the alleged infringers had already obtained information from documents and depositions of the inventors of the patent and could have obtained additional information via the deposition of the lead attorney of the patent prosecution. [Seoul Semiconductor Co. Ltd. v. Nichia Corp., E.D.Tex.2008, 590 F.Supp.2d 832. Patents ↪ 292.2; Treaties ↪ 8](#)

Failure of foreign defendants to do all that they could to locate and procure testimony of foreign witnesses, especially witness who was former principal of defendants at time of events at issue in case, during nearly two years that plaintiff spent attempting to take foreign witnesses' testimony through coercive means equitably precluded defendants from obtaining new letters rogatory in connection with evidentiary hearing on question of whether subject matter jurisdiction existed pursuant to commercial activity exception under Foreign Sovereign Immunities Act (FSIA), inasmuch as such efforts to obtain same witnesses' testimony would cause great delay and significant prejudice to plaintiff. [Reiss v. Societe Centrale Du Groupe Des Assurances Nationales, S.D.N.Y.2003, 246 F.Supp.2d 285. Federal Civil Procedure ↪ 1312](#)

Where American federal district court has in personam jurisdiction over foreign national, whether corporate entity or individual, it is not required to mandate that parties follow Hague Evidence Convention procedures for pretrial discovery, nor is it required to exercise judicial restraint and defer to international comity where utilization of Convention procedures would lead to inordinate delay, even to extent that any pretrial discovery were accomplished or would be totally ineffectual; in such situation, court can, and should, mandate compliance by foreign party with [Federal Civil Rules 26, 33, 34 and 36](#) governing giving of oral depositions, answering interrogatories, producing of documents and records, and responding to requests for admissions. [Work v. Bier, D.C.D.C.1985, 106 F.R.D. 45, 226 U.S.P.Q. 657.](#)

Principles of comity did not require United States plaintiff to proceed under Hague Convention, set out as a note under this section, against West German manufacturer, where manufacturer had already answered two sets of interrogatories without raising Hague Convention issue, further unnecessary delay in already prolonged case would adversely affect judicial administration, and it appeared that request for production of documents under Convention would be futile. [Murphy v. Reifenhauser KG Maschinenfabrik, D.C.Vt.1984, 101 F.R.D. 360. International Law ↪ 10.1](#)

14. ---- Extensiveness of interrogatories, considerations governing use of convention

West German defendant was not entitled to order directing that all discovery of it in negligence and products liability action proceed in accordance with Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters; document request, as narrowed by agreement of parties, as well as outstanding interrogatories, were neither burdensome nor extensive, and it would have been inequitable to require that all parties seeking discovery of West German defendant, including parties against whom it brought claims, employ more complicated and expensive procedures of Hague Convention while defendant proceeded with discovery under federal rules. [Haynes v. Kleinwefers, E.D.N.Y.1988, 119 F.R.D. 335. Federal Civil Procedure ↪ 1271](#)

15. ---- Futility, considerations governing use of convention

Even if appropriate, a balancing analysis did not support conclusion that plaintiffs should be compelled to use the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters with respect to discovery addressed to German defendant, where plaintiffs asserted claims in case arising under First Amendment, requirement, under the Hague Convention, that plaintiffs seek cooperation of the German government was likely to be an act of futility, and Hague Convention machinery is quite slow and costly even when foreign government agrees to cooperate, while litigation in question had been pending for nine years. [International Soc. for Krishna Consciousness, Inc. v. Lee, S.D.N.Y.1984, 105 F.R.D. 435. Federal Civil Procedure ↪ 1471; Federal Civil Procedure ↪ 1571](#)

16. ---- Place of discovery, considerations governing use of convention

Writ of mandamus ordering district judge to recall order directing foreign defendant to answer interrogatories and produce documents was appropriate, where Supreme Court had granted certiorari for another action concerning whether Hague Convention applied to production of evidence in the United States by party subject to jurisdiction of district court pursuant to federal rules and concerning whether discovery takes place in the United States if interrogatories are served in the United States although evidence may be located in another country. [Daimler-Benz Aktiengesellschaft v. U.S. Dist. Court for Western Dist. of Oklahoma, C.A.10 \(Okla.\) 1986, 805 F.2d 340. Mandamus ↪ 32](#)

Subpoena duces tecum served on New York offices of potential lenders to now-insolvent British-based airline doing business in international commerce and seeking production from such nonparties of evidence allegedly relevant to airline's antitrust action pending in the District of Columbia were quashed because neither of the subjects' New York offices were in existence at time of alleged antitrust violations and subpoena required production of records regularly maintained at home offices in London, England and service of subpoenas in New York was a transparent attempt to circumvent the Hague Convention on Taking of Evidence Abroad in Civil or Commercial Matters and amend run around the English Protection of Trading Interest Act. [Laker Airways Ltd. v. Pan American World Airways, S.D.N.Y.1985, 607 F.Supp. 324 . Witnesses ↪ 16](#)

With regard to where discovery efforts occur, for purposes of determining whether Hague Convention [28 U.S.C.A. § 1781] applies to discovery efforts in the United States directed to a foreign national party, request for production of documents served on party in United States are held to occur in the United States, even though documents may be located in a foreign state. [Lowrance v. Michael Weinig, GmbH and Co., W.D.Tenn.1985, 107 F.R.D. 386. Federal Civil Procedure ↪ 1551](#)

The Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters does not prohibit the taking of discovery in United States from foreign corporations over whom court has personal jurisdiction, nor does it require an initial resort to the procedures of the Convention. [Slauenwhite v. Bekum Maschinenfabriken, GMBH, D.C.Mass.1985, 104 F.R.D. 616. Federal Civil Procedure ↪ 1266; Federal Civil Procedure ↪ 1271](#)

17. ---- Violation of foreign law, considerations governing use of convention

Where it was not clear that compliance with plaintiffs' discovery request would require a violation of German law or impinge upon sovereignty of Federal Republic of Germany, it was inappropriate to preclude plaintiffs, who brought products liability action against German tire manufacturer, from conducting any discovery except that obtainable through procedures provided in Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters. [Lasky v.](#)

[Continental Products Corp., E.D.Pa.1983, 569 F.Supp. 1227. International Law](#) 🔑 10

18. ---- Miscellaneous cases, considerations governing use of convention

District court properly declined to initially consign plaintiff in action arising out of collapse of bank to discovery procedures provided by Hague Convention on Evidence and enforced nonparty witness subpoena against United Kingdom accounting partnership; there was no collision between American discovery rules and British confidentiality laws, British courts had had opportunity to determine scope of their nondisclosure law and had concluded that it posed no obstacle to discovery and exclusive resort to Hague Convention would have unduly limited plaintiff's access to potentially critical documents. [First American Corp. v. Price Waterhouse LLP, C.A.2 \(N.Y.\) 1998, 154 F.3d 16. Federal Civil Procedure](#) 🔑 1261; [Treaties](#) 🔑 8; [Witnesses](#) 🔑 16

It was appropriate for patent holder to notice deposition of Swiss corporation in accordance with Federal Rules of Civil Procedure, rather than Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, as there was no affront to Swiss sovereignty by virtue of deposition in New Jersey or at some convenient location outside of Switzerland, there was certainty of prompt deposition under Federal Rules as compared to likelihood of delay under Hague Convention, there were legitimate concerns about sufficiency of deposition taken pursuant to Hague Convention, corporation was not restricted from appearing for deposition due to Swiss penal laws, and deponent waived any objection he had to question-and-answer deposition by stating he would testify competently if called as witness. [Schindler Elevator Corp. v. Otis Elevator Co, D.N.J.2009, 657 F.Supp.2d 525. Federal Civil Procedure](#) 🔑 1261; [Treaties](#) 🔑 8

Issuance of letters rogatory, pursuant to Hague Convention, was warranted in order to assist plaintiffs in products liability suit to obtain documents seized by Italian prosecutor in connection with action against pharmaceutical manufacturer, despite possibility that documents were not subject to production under Italian law, where Italian law did not clearly bar production of documents, documents were relevant and important to litigation in United States, and resort to Convention was only means available to obtain requested discovery. [In re Baycol Products Litigation, D.Minn.2004, 348 F.Supp.2d 1058. Federal Civil Procedure](#) 🔑 1312; [Treaties](#) 🔑 8


Failure to authenticate documents accompanying Swedish court's request that district court provide discovery assistance in connection with paternity action by ordering alleged father to provide blood sample in accordance with federal rules did not preclude granting of assistance; statutes governing such requests did not require authentication, insistence on authentication would be contrary to statutory intent to facilitate execution of letters rogatory, and father had ample opportunity to investigate authenticity and accuracy of documents. [In re Letter of Request From Boras Dist. Court, E.D.N.Y.1994, 153 F.R.D. 31. Federal Civil Procedure](#) 🔑 1312

Although production order requiring French export insurance agency to produce documents being sought by American company being sued by agency and French corporation on commercial matter would not be improper, in interest of comity and international law, court would defer issuance of production order, and direct American company to, in good faith, utilize procedure set forth in Hague Convention on the Taking of Evidence Abroad in Civil or Commercial matters to gather information currently in possession of French Ministry of Economy and Finance and Ministry of the Sea. [Compagnie Francaise d'Assurance Pour le Commerce Extérieur v. Phillips Petroleum Co., S.D.N.Y.1984, 105 F.R.D. 16. Federal Civil Procedure](#) 🔑 1636.1



19. Identity and qualification of witnesses


Plaintiffs' interrogatories seeking identity and qualifications of expert witnesses West German defendant intended to have testify at trial did not amount to obtaining evidence in West Germany, and thus, Convention on Taking of Evidence Abroad in Civil or Commercial Matters, set out as a note under this section, did not govern such interrogatories, and defendant would be required to respond to them fully. [McLaughlin v. Fellows Gear Shaper Co., E.D.Pa.1984, 102 F.R.D. 956.](#)

20. Jurisdictional matters


Federal Rules of Civil Procedure, and not Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters, controlled discovery in debtor's action against corporation that qualified as foreign state under Foreign Sovereign Immunities Act, where debtor only sought discovery of personal jurisdiction matters and there was no showing of any prejudice to sovereign interests. [In re Bedford Computer Corp., Bkrtcy.D.N.H.1990, 114 B.R. 2. International Law](#)  [10.35](#)



21. Demonstration of necessity for Convention method

Party which seeks application of Hague Evidence Convention procedures rather than Federal Rules of Civil Procedure bears burden of persuading trial court of necessity of proceeding pursuant to Convention; that burden is not great, however, since Convention procedures are available whenever they will facilitate gathering of evidence by means authorized in Convention. [Tulip Computers Intern. B.V. v. Dell Computer Corp., D.Del.2003, 254 F.Supp.2d 469. Federal Civil Procedure](#)  [1261](#); [Treaties](#)  [8](#)



Proponent of using Hague Convention has burden of demonstrating necessity for those procedures. [Doster v. Schenk, M.D.N.C.1991, 141 F.R.D. 50. Federal Civil Procedure](#)  [1271](#)



22. Jurisdiction of courts

Hague Evidence Convention did not deprive federal district court of the jurisdiction it otherwise possessed to order a foreign national party before it to produce evidence physically located within a signatory nation. [Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Court for Southern Dist. of Iowa, U.S.Iowa 1987, 107 S.Ct. 2542, 482 U.S. 522, 96 L.Ed.2d 461. Federal Civil Procedure](#)  [1551](#)




District court had subject matter jurisdiction over request by foreign tribunal to order blood test of putative father residing within district in which court sat; matter required interpretation of treaty of United States, Congress had expressly authorized federal district courts to consider foreign letter rogatory requests and court had personal jurisdiction over the subject of the requests under Convention on Taking of Evidence Abroad in Civil or Commercial Matters. [In re Letter Rogatory from Local Court of Ludwigsburg, Federal Republic of Germany in Matter of Smith, N.D.Ill.1994, 154 F.R.D. 196. Federal Courts](#)  [162](#); [Treaties](#)  [8](#)

23. Physical and mental examinations



Although Michigan law did not require a blood sample to establish paternity where the father voluntarily acknowledged paternity, court was required by Hague Convention to comply with letter rogatory of German court requesting assistance in obtaining a blood sample from acknowledged father to establish paternity of minor child born to German mother where father did not invoke his Fifth Amendment right against self-incrimination or assert that the blood test was an unreasonable search and seizure in violation of any rights under the Fourth Amendment. [In re Letters Rogatory From Local Court, E.D.Mich.1998, 29 F.Supp.2d 776. Children Out-of-wedlock](#)  58; [Treaties](#)  8

Section of Convention on Taking of Evidence Abroad in Civil or Commercial Matters addressing methods and procedures to be followed in acquiring evidence requested did not mandate denial of request for blood test sought in connection with paternity litigation on theory that request was incompatible with internal law of state to which request was made; article addressed methods and procedures to be followed in acquiring evidence requested, not substantive laws of state to which request was made, Federal Rules of Civil Procedure governed procedures to be used in acquiring evidence requested and test was authorized as physical examination permitted upon showing of good cause where test was relevant to issue of paternity. [In re Letter Rogatory from Local Court of Ludwigsburg, Federal Republic of Germany in Matter of Smith, N.D.Ill.1994, 154 F.R.D. 196. Treaties](#)  8; [Treaties](#)  11

24. Protective orders

Federal district court, in the exercise of its discretion and in accordance with the principles of comity among nations, would defer entry of an order on plaintiff's motion in antitrust action to require defendant German airline to produce documents and information from its offices in Germany and to delay the deposition of two officers of that airline for 30 days; such delay was intended to give German authorities both the time and opportunity to decide whether they wished to provide cooperation within the spirit both of the Hague Convention, set out as a note under this section, and of comity between nations and to allow the parties to attempt to come to an agreement regarding reasonable parameters of the discovery in Germany. [Laker Airways Ltd. v. Pan American World Airways, D.C.D.C.1984, 103 F.R.D. 42. Federal Civil Procedure](#)  1311; [Federal Civil Procedure](#)  1551; [Treaties](#)  8

25. Privileged information

Individuals to whom a Letter of Request is directed under Hague Evidence Convention have the right to refuse to give evidence to the extent they are protected by a privilege under either the law of the State of execution or the State of origin. [Pronova BioPharma Norge AS v. Teva Pharmaceuticals USA, Inc., D.Del.2010, 708 F.Supp.2d 450. Federal Civil Procedure](#)  1261; [Treaties](#)  8

28 U.S.C.A. § 1781, 28 USCA § 1781

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