

III.—TAKING OF EVIDENCE.

Article 6.

(a) When a judicial authority in the territory of one of the High Contracting Parties requires that evidence should be taken in the territory of the other High Contracting Party, such evidence may be taken in any one of the ways prescribed in Articles 7 or 8.

(b) It is understood that for the purposes of the present convention (i) the expression "taking of evidence" includes the taking of the statements of a plaintiff or defendant, on oath or otherwise, the submission to a plaintiff, defendant, expert, or any other person of any oath and the production, examination, and identification of documents, samples, and other objects with regard to any legal proceedings; (ii) the expression "witnesses" includes any person (whether plaintiff or defendant or other person) from whom any evidence as defined above is required to be taken.

Article 7.

(a) The judicial authority by whom the evidence is required may, in accordance with the provisions of its law, address itself by means of "Letters of Request" to the competent authority of the country where the evidence is to be taken, requesting such authority to take the evidence.

(b) The "Letters of Request" shall be drawn up in the language of the country where the evidence is to be taken, or be accompanied by a translation into such language. Such translation shall be certified as correct by a Diplomatic or Consular Officer of the High Contracting Party by whose judicial authority the request is issued. The "Letters of Request" shall state (i) the nature of the proceedings for which the evidence is required and the full names and descriptions of the parties thereto, and also (ii) either the full names, addresses, and descriptions of the witnesses to be called or the names and addresses of the agents of the party or parties in the country where the evidence is to be taken, who shall be responsible for informing the competent authority to whom the request is addressed of the names, addresses, and descriptions of the witnesses to be called. The "Letters of Request" shall be accompanied by a certified copy of the order or the judgment requiring the evidence to be taken, together with a translation thereof certified in the manner above mentioned. They shall also either be accompanied by the interrogatories or oaths to be put to the witnesses (or, as the case may be, a description of the documents, samples, or other objects to be produced) and a translation thereof certified as correct in the manner heretofore provided or shall request the competent authority to allow such questions to be asked *visu voce* as the parties or their representatives shall desire to ask.

(c) The "Letters of Request" shall be transmitted—

In England by the Consul-General of the Netherlands in London to the Senior Master of the Supreme Court of Judicature.

In the Netherlands by a British Consular Officer to the "Officier van Justitie" attached to the "Arrondissements Rechtbank" within whose jurisdiction the witnesses or the majority of the witnesses are resident, or, if the names and addresses of the witnesses are not stated, to the "Officier van Justitie" attached to the "Arrondissements Rechtbank" at The Hague.

In case the authority to whom "Letters of Request" are transmitted is not competent to execute them he shall forward the "Letters of Request" of his own motion to the competent authority of his own country.

(d) The competent authority to whom the "Letters of Request" are transmitted or forwarded shall give effect thereto and obtain the evidence required by the use of the same compulsory measures and the same procedure as are employed in the execution of a commission or order issued by the authorities of his own country, except that, if a wish that some special procedure should be followed is expressed in the "Letters of Request," such special procedure shall be followed in so far as it is not incompatible with the law of the country where the evidence is to be taken.

(e) The Consular Officer, by whom the "Letters of Request" are transmitted, shall, if he so desires, be informed of the date and place where the evidence will be taken, in order that he may inform the interested party or parties, who shall be permitted to be present in person or to be represented if they so desire by barristers or solicitors of the country where the evidence is being taken, or by any persons competent to appear before the Courts of either of the countries concerned.

(f) The execution of the "Letters of Request" can only be refused—

(1) If in the country where the evidence is to be taken the execution of the "Letters of Request" in question does not fall within the functions of the judiciary.

(2) If the High Contracting Party in whose territory the evidence is to be taken considers that his sovereignty or safety would be compromised thereby.

(g) In every instance where the "Letters of Request" are not executed by the authority to whom they are addressed, the latter will at once inform the Consular Officer by whom they were transmitted, stating the grounds on which the execution of the "Letters of Request" has been refused, or the authority to whom they have been forwarded.

Article 8.

(a) The evidence may also be taken, without any request to or the intervention of the authorities of the country in which it is to be taken, by a person in that country directly appointed for the purpose by the judicial authority by whom the evidence is required. A Consular Officer of the High Contracting Party whose judicial authority requires the evidence or any other suitable person may be so appointed.

(b) A person so appointed to take evidence may request the individuals named by the judicial authority appointing him to appear before him for the purpose of taking their evidence. He may take all kinds of evidence which are not contrary to the law of the country where the evidence is being taken and may request such persons to take an oath, but he shall have no compulsory powers.

(c) Requests to appear issued by such person shall, unless the recipient is a subject of the High Contracting Party for whose judicial authority the evidence is required, be drawn up in the language of the country where the evidence is to be taken, or be accompanied by a translation into such language.

(d) The evidence may be taken in accordance with the procedure recognized by the law of the country for whose judicial authority the evidence is required, and the parties will have the right to be present or to be represented by barristers or solicitors of that country or by any persons competent to appear before the Courts of either of the countries concerned.

Article 9.

The fact that an attempt to take evidence by the method laid down in Article 8 has failed owing to the refusal of any witness to comply with the request does not preclude "Letters of Request" being subsequently addressed in accordance with Article 7.

Article 10.

(a) Except as provided in the following paragraphs of this article, no fees or charges of any description shall be payable by one High Contracting Party to the other in respect of the taking of evidence.

(b) Where evidence is taken in the manner provided in Article 7, the High Contracting Party, by whose judicial authority the "Letters of Request" are addressed, shall repay to the other High Contracting Party any expenses incurred by the competent authority of the latter in the execution of the request in respect of any charges and expenses payable to witnesses, experts, interpreters, or translators, the costs of obtaining the attendance of witnesses who have not appeared voluntarily, and the charges and expenses payable to any person whom such authority may have deputed to act in cases where the law of his own country permits this to be done, and any charges and expenses incurred by reason of a special procedure being requested and followed. These charges and expenses shall be calculated in accordance with the scales in force for nationals in the country where the evidence is taken.

(c) The repayment of these expenses shall be claimed by the competent authority by whom the "Letters of Request" have been executed from the Consular Officer by whom they were transmitted when sending to him the documents establishing their execution.

IV.—GENERAL PROVISIONS.

Article 11.

Any difficulties which may arise in connection with the operation of this Convention shall be settled through the diplomatic channel.

Article 12.

The present Convention, of which the English and Dutch texts are equally authentic, shall be subject to ratification. Ratifications shall be exchanged in London. The Convention shall come into force one month after the date on which ratifications are exchanged and shall remain in force for three years after the date of its coming into force. If neither of the High Contracting Parties shall have given notice through the diplomatic channel to the other, not less than six months before the expiration of the said period of three years, of his intention to terminate the Convention, it shall remain in force until the expiration of six months from the day on which either of the High Contracting Parties shall have given notice to terminate it.