

The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters

In August 1985, the Commission published its Report on [*The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters \(LRC 16–1985\)*](#) which formed part of its First Programme of Law Reform. This Report recommended that Ireland should become party to this Hague Convention and that certain reservations and declarations should be made by Ireland at the time of ratification.

The Convention was adopted by the Hague Conference on Private International Law at its eleventh session in 1968. The Convention provides for the taking of evidence in civil and commercial matters by the competent authority of a State party to it pursuant to a letter of request received from the judicial authority of another Contracting State. Such evidence must be intended for use in judicial proceedings, commenced or contemplated. The Commission concluded that the Convention was likely to be most useful in cases where a witness abroad is unwilling to give evidence voluntarily to a commissioner appointed by an Irish Court. Moreover, it believed that it represented a form of international co-operation which was conducive to the just resolution of litigation and was worthy of support on this ground.

Adherence to the Convention would necessitate the amendment of the *Foreign Tribunals Evidence Act, 1856* governing the execution of letters of request in Ireland for proceedings before the courts of other States. The Commission concluded that the best approach would be to repeal the *Foreign Tribunals Evidence Act, 1856* and to enact a new statute on the lines of the General Scheme of a Bill set out in the Report. Under the proposed legislation

- (i) The right to apply to the High Court for the taking of evidence pursuant to a letter of request from a court in another State would be vested in the Minister for Foreign Affairs;
- (ii) The facility of obtaining evidence in Ireland pursuant to a letter of request would not be confined to States party to the Convention;
- (iii) The Minister for Foreign Affairs would be empowered to make application of the High Court for the taking of evidence in aid of proceedings before any court or other body which is pursuance of an international agreement to which the State or Government is a party exercises jurisdiction of a judicial nature as if they were proceedings before a court in another State;
- (iv) There would be provision enabling the Minister for Justice to apply to the High Court to make an order to give effect to letters rogatory from the Court of Justice of the European Communities;
- (v) The High Court would be empowered to order the taking of evidence in relation to criminal proceedings in a foreign country upon application by the Minister for Foreign Affairs;
- (vi) A diplomatic officer or consular agent representing a State party to the Convention would be empowered to administer an oath to a national of that State for the purpose of taking evidence from the national in aid of proceedings pending in the courts of the State he represents;
- (vii) A diplomatic officer or consular agent representing a foreign State would be empowered to administer an oath for the purpose of obtaining evidence in aid of

- proceedings pending in the courts of the State he represents, provided the consent of the Minister for Foreign Affairs is obtained;
- (viii) A commissioner appointed by a court in a foreign State would be empowered to administer an oath for the purpose of obtaining evidence in aid of proceedings pending in the courts of that State, provided the consent of the Minister for Foreign Affairs is obtained;
 - (ix) The Minister for Foreign Affairs would be empowered to apply to the High Court for an order requiring a person to give evidence before a diplomatic officer or consular agent of a foreign States or a commissioner appointed by a court in such a State;
 - (x) It would be provided that whenever evidence is taken by a diplomatic officer or consular agent of another State or by a commissioner appointed by a foreign State:
 - a. The parties to the proceedings and the person giving evidence would be entitled to be legally represented;
 - b. The request to a person to appear to give evidence would, unless the recipient is a national of the State where the action is pending for which the evidence is required, be drawn up in Irish or English or be accompanied by a translation into one of those languages;
 - c. The request would inform the person whose evidence is sought that he may be legally represented at the taking of such evidence and, where such is the case, that he is not compelled to appear or to give evidence; and
 - d. A person requested to give evidence would be entitled to refuse to give evidence in so far as he has a privilege or duty to refuse to give evidence either under the law of the State where the evidence is taken or the law of the State where the proceedings for which the evidence is required is pending.

Draft Legislation in Report

Not applicable.

Information on Implementation
