

Nevertheless, the Contracting Party making the request shall repay to the other Contracting Party 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 the competent judicial authority may have deputed to act in cases where his municipal law permits this to be done, and any charges and expenses incurred by reason of a special procedure being requested and followed.

The repayment of these charges and expenses may be claimed by the judicial authority by whom the "Letters of Request" have been executed, when sending to him the documents establishing their execution, from the diplomatic or consular officer by whom they were transmitted. These charges and expenses shall be such as are usually allowed in such case in the courts of the country where the "Letters of Request" have been executed.

ARTICLE 11

(a) The evidence may also be taken without the intervention of the authorities of the country in which it is to be taken, by a diplomatic or consular officer of the Contracting Party before whose Courts the evidence is to be used:—

Provided that this Article shall not apply to the taking of evidence of subjects or citizens of the Contracting Party in whose territory it is to be taken unless and until the German Government, at any time, by a notification* given through their Ambassador in London, signify their consent to the Article being so applied, in which case this Article shall, as from the date of such notification, apply to such subjects or citizens if they consent to their evidence being so taken.

(b) The diplomatic or consular officer appointed to take the evidence may request named individuals to appear as witnesses or to produce any document, and shall have power to administer an oath, but he shall have no compulsory powers.

(c) The evidence may be taken in accordance with the procedure laid down by the law of the country in which the evidence is to be used, and the parties shall have the right to be present and to be represented by counsel or solicitors of that country, or by any person competent to appear before the tribunals of either country.

ARTICLE 12

(a) The competent court of the Contracting Party applied to may also be requested to cause the evidence to be taken by a diplomatic or consular officer of the Contracting Party making the request.

The court applied to shall, in the case of subjects or citizens of the Contracting Party making the request, take the necessary steps to secure the attendance of and the giving of evidence by witnesses and other persons to be examined, and the production of documents, making use, if necessary, of its compulsory powers.

(b) The person thus nominated shall have power to administer an oath. The evidence shall be taken in accordance with the law of the country in which it is to be used, and the parties shall have the right to be present in person or represented by counsel or solicitors of that country or by any persons who are competent to act before the courts of either country.

ARTICLE 13

The fact that an attempt to take evidence by the method laid down in Article 11 has failed owing to the refusal of any witnesses to appear or to give evidence, or to produce documents does not preclude an application being subsequently made in accordance with Articles 9 or 12.

* This notification was made by the German ambassador on February 15, 1929.