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CONCLUSIONS ET RECOMMANDATIONS ADOPTEES PAR LA COMMISSION SPECIALE SUR LE FONCTIONNEMENT PRATIQUE DES CONVENTIONS APOSTILLE, OBTENTION DES PREUVES ET NOTIFICATION

(28 octobre au 4 novembre 2003)

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CONCLUSIONS AND RECOMMENDATIONS ADOPTED BY THE SPECIAL COMMISSION ON THE PRACTICAL OPERATION OF THE HAGUE APOSTILLE, EVIDENCE AND SERVICE CONVENTIONS

(28 October to 4 November 2003)

Document préliminaire No 11 de novembre 2003
à l'intention de la Commission spéciale d'avril 2004
sur les affaires générales et la politique de la Conférence

Preliminary Document No 11 of November 2003
for the attention of the Special Commission of April 2004
on General Affairs and Policy of the Conference

Permanent Bureau | *Bureau Permanent*
6, Scheveningseweg 2517 KT The Hague | *La Haye* The Netherlands | *Pays-Bas*
telephone | *téléphone* +31 (0)70 363 3303 fax | *télécopieur* +31 (0)70 360 4867
e-mail | *courriel* secretariat@hcch.net website | *site internet* http://www.hcch.net

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e-mail | *courriel* secretariat@hcch.net website | *site internet* http://www.hcch.net

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(28 October to 4 November 2003)

Conclusions and Recommendations of the Special Commission on the practical operation of The Hague Apostille, Evidence and Service Conventions *(28 October to 4 November 2003)*

1. A Special Commission met in The Hague from 28 October to 4 November 2003 to review the practical operation of the Hague Conventions of *5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents*, of *15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*, and of *18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters*. The Special Commission, which was attended by 116 delegates representing 57 Member States, States party to one or more Convention under review, and observers, unanimously approved the following conclusions and recommendations:

I. GENERAL COMMENTS

2. The Special Commission (SC) noted and emphasised the *continued importance* of the Hague Apostille, Evidence and Service Conventions.

3. In light of the value of the continued monitoring of the Conventions' practical operation, the need to promote uniform interpretation, foster mutual confidence and enhance the mutual benefits for States party to the Convention to exchange their respective experiences in operating the Conventions, as well as to promote the benefits of the Conventions to non-party States, the SC recommended to have *more frequent meetings* to review the practical operation of the Apostille, Evidence and Service Conventions. The Special Commission recommended that review meetings on the practical operation of these three Conventions be held *every five years*, subject to the availability of the additional resources needed. Also, consideration should be given to the possibility of reviewing the practical operation of the *Hague Convention of 25 October 1980 on International Access to Justice*.

4. The SC emphasised that the Apostille, Evidence and Service Conventions operate in an environment which is subject to important *technical developments*. Although this evolution could not be foreseen at the time of the adoption of the three Conventions, the SC underlined that modern technologies are an integral part of today's society and their usage a matter of fact. In this respect, the SC noted that the spirit and letter of the Conventions do not constitute an obstacle to the usage of modern technology and that their application and operation can be further improved by relying on such technologies. The Workshop held prior to the SC (*i.e.*, on 27 October 2003) clearly revealed the means, possibilities and advantages of using modern technologies in subject matters falling within the scope of the Conventions[1].

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[1] The Workshop was structured around the following presentations: MR THOMAS GOTTWALD & MR PETER FRANK (Federal Ministry of Justice, Austria): *eJustice – Datahighway to Austrian Courts – Electronic Legal Communication (ELC) – Transmission of Legal Documents*; MS JULIE NIND (Ministry of Justice, New Zealand): *Taking evidence by video link across Tasman*; MS DORY MCKENZIE & MR JAMES MASON (Foreign and Commonwealth Office, United Kingdom): *The issuance of Apostilles by the Foreign and Commonwealth Office*; MR OZIE STALLWORTH & MR KEVIN MENDELSON (National Notary Association, United States of America): *enjoa – The Electronic Notary Journal of Official Acts*.

II. APOSTILLE CONVENTION

General considerations

5. Examination of practice under the Apostille Convention confirmed its *very wide use and effectiveness*, as well as the absence of any major practical obstacle. Against this background, the SC recommended strongly that States party to the Convention should continue to *promote* it to other States. In particular, Member States of the Conference which are not already party to the Convention are encouraged to consider actively becoming party to the Convention.

6. The SC also stressed the *usefulness of linking the application of the Hague Adoption Convention of 1993 to the Apostille Convention*. In light of the high number of public documents included in a typical adoption procedure, the SC recommended that States that are party to the Adoption Convention but not to the Apostille Convention consider actively becoming party to the latter.

7. The SC emphasised that the *use of information technology (IT) could have a positive impact on the operation of the Convention*, in particular through lowering costs and increasing the efficiency of the creation and registration of Apostilles.

8. The SC noted the difficulties some States face with the recognition of Apostilles issued in States with numerous competent authorities (difficulties in identifying and verifying the competence of individual issuing authorities; differences in Apostilles issued within the same State). With a view to further promoting knowledge about the practical operation of the Convention, the SC recommended that States party send all *relevant information to the Permanent Bureau to be publicised on the Hague Conference's website, and that particular consideration to a FAQ-section be given.*

9. Furthermore, the SC recommended that a *Handbook* on the practical operation of the Convention be prepared by the Permanent Bureau, subject to adequate resources being available for the purpose.

Scope of the Convention

10. With regard to *commercial and customs documents*, which are excluded from the scope of the Convention, the SC noted that despite some isolated concerns there were no developments that would justify the need to reconsider this exclusion. The SC suggested that the matter be further explored in the Handbook (see recommendation 9 above).

11. Regarding the application of an Apostille on a *certified copy* of a public document, the SC concluded that Article 1 of the Convention applies. Individual States, however, may decline to issue an Apostille to the certified copy of a document on the grounds of public policy.

Competent Authorities

12. In addition to the obligation mentioned in Article 6 (of the Convention), the SC recommended that States party make available to the Permanent Bureau a list of *all* competent authorities to issue Apostilles, including their full contact details (postal address, telephone and fax numbers, e-mail). The SC noted the importance of keeping this information updated.

Formal requirements

13. The SC underlined the importance of the *principle that an Apostille that has been established according to the requirements of the Convention in the State of issuance must be accepted and produce its effects in any State of production*. With a view to further facilitating free circulation of Apostilles, the SC recalled the importance of the *Model certificate* annexed to the Convention. The SC recommended that Apostilles issued by competent authorities should conform as closely as possible to this model. However, variations in the form of an Apostille among issuing authorities should not be a basis for rejection as long as the Apostille is clearly identifiable as an Apostille issued under the Convention. *The SC firmly rejects, as contrary to the Convention, isolated practices among States party that require Apostilles to be legalised.*

14. The SC took note of some reports of *successful use of electronically or non-manually reproduced signatures of issuing authorities* and that the use of such signatures has not led to an increased incidence of fraud. At the same time, it was noted that most States party remained reticent towards the use of such signatures. The SC recommended the advantages of increased automation, but stressed the importance of applying appropriate anti-fraud measures to the production of automated signatures.

15. The SC agreed that it was important to maintain *mutual confidence* where electronically or non-manually reproduced signatures are used. In this respect, the SC underlined the important role that the *register* – which up to now has not often been called upon to verify the relevant information contained in a specific Apostille – could play in resolving any doubt in relation to an Apostille. The SC noted that maintenance of electronic registers could facilitate the process of verification.

16. The SC noted the *variety of means for affixing Apostilles* to the public document. These means may include rubber stamp, glue, (multi-coloured) ribbons, wax seals, impressed seals, self-adhesive stickers, etc.; as to an allonge, these means may include glue, grommets, staples, etc. The SC noted that all these means are acceptable under the Convention, and that, therefore, these variations cannot be a basis for the rejection of Apostilles.

17. As regards Apostilles to be issued for a *multi-page document*, the SC recommended that the Apostille be affixed to the signature page(s) of the document. When using an allonge, the Apostille may be affixed to the front or the back of the document.

18. The SC stressed that Apostilles may *not be refused in a State of production on the grounds that they do not comply with that State's national formalities and modes of issuance*. The only relevant consideration in this respect is that referred to in paragraph 13 above.

Language

19. The SC concluded that Article 4 of the Convention permitted the *use of more than one language* in the Apostille and that this might well assist in the circulation of documents. In the light of examples given by delegations it was clear that it was possible to create a form of Apostille with a number of languages and yet retain conformity with the model of the Apostille provided in the Convention. The SC recommended that States party give information on this to the PB for inclusion on the Hague Conference's website.

Costs

20. The SC recalled that the fees charged in connection with the issuing of the Apostille should be *reasonable*, particularly for situations like cross-border adoptions and maintenance procedures. One way of dealing with this could be to charge a single fee for a cluster of related documents rather than an individual fee for each document in a particular case.

Retention of records in a Register

21. As regards the issue of the retention and disposal of records in a register or card index established under Article 7, the SC did not suggest a minimum period during which records in a register should be kept. It concluded that it was a matter for each State party to develop *objective criteria* in this respect. The SC agreed that holding of information in electronic form would assist this process by making it easier to store and retrieve records.

Effects of an Apostille

22. The SC recalled that under the Convention, the effect of an Apostille is to "certify the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which it bears" (Art. 3). In particular, the *effect of an Apostille does not extend to the content of the public document* to which it is attached.

Use of IT in issuing Apostilles

23. The SC identified the following four stages in the issuing of an Apostille in respect of which the application of IT might be considered and thought that there was no reason in principle – as far as the use of IT proves to be cost-efficient – why IT should not be applied:

    1. maintenance of a secure electronic database of signatures for the purpose of verifying the signatures appearing on public documents for which an Apostille is requested;
    2. use of word-processing technology to complete the information to appear on the Apostille;
    3. use of electronically reproduced signatures of the issuing authority to be inserted through secure electronic means and printed on the Apostille;
    4. maintenance of an electronic register.

E-Apostille?

24. The SC recommended that States party and the PB should work towards the development of techniques for the generation of electronic Apostilles taking into account *inter alia* the UNCITRAL model laws on electronic commerce and on electronic signatures, both being based on the principles of non-discrimination and functional equivalence.

Multi-unit States and Regional Economic Integration Organisations (REIOs)

25. The SC took note of the position of one Member State that the existence of a Multi-unit State clause might assist that State to accede to the Convention, but there was insufficient priority for this to be the subject of a protocol on its own; if there were to be a Protocol on other issues, then such a clause might be considered.

26. The SC accepted that, at this point, there was no need to consider the application of the Convention to documents issued by REIOs.

III. EVIDENCE CONVENTION

General considerations

27. The SC recalled the importance of the Evidence Convention as a *bridge between common law and civil law* procedures relating to the taking of evidence in civil and commercial litigation.

28. With a view to overcoming some of the differences that have arisen among States party in interpreting the Convention, in particular the scope of a possible reservation under Article 23, the SC carefully reviewed some of the principles and practices relating to the Convention.

Reservations under Article 23

29. The SC recognised that the terms of Article 23, which permits a Contracting State to "declare that it will not execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents", are a continued source of misunderstandings. Having regard to the history of the provision, the SC agreed that Article 23 was intended to permit States to ensure that a request for the production of documents must be *sufficiently substantiated* so as to avoid requests whereby one party merely seeks to find out what documents may generally be in the possession of the other party to the proceeding. The SC noted that the wording of the particularised declaration submitted by the UK (*i.e.,* the proponent of the provision) reflected this purpose more adequately than the wording of Article 23. The UK declaration reads as follows:

> "In accordance with Article 23 Her Majesty's Government declare that the United Kingdom will not execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents. Her Majesty's Government further declare that Her Majesty's Government understand "Letters of Request issued for the purpose of obtaining pre-trial discovery of documents" for the purposes of the foregoing Declaration as including any Letter of Request which requires a person:
>
> a. to state what documents relevant to the proceedings to which the Letter of Request relates are, or have been, in his possession, custody or power; or
> b. to produce any documents other than particular documents specified in the Letter of Request as being documents appearing to the requested court to be, or to be likely to be, in his possession, custody or power."

30. Equally, the SC noted that Article 16 of the *Additional Protocol of 1984 to the Inter-American Convention on the Taking of Evidence Abroad* also more adequately reflects the concern of the proponents of Article 23 of the Evidence Convention. Article 16 of the Additional Protocol reads as follows:

> "The States Parties to this Protocol shall process a letter rogatory that requests the exhibition and copying of documents if it meets the following requirements:
>
> a. The proceeding has been initiated;
> b. The documents are reasonably identified by date, contents, or other appropriate information, and
> c. The letter rogatory specifies those facts and circumstances causing the requesting party reasonably to believe that the requested documents are or were in the possession, control, or custody of, or are known to the person from whom the documents are requested.

The person from whom documents are requested may, where appropriate, deny that he has possession, control, or custody of the requested documents, or may object to the exhibition and copying of the documents, in accordance with the rules of the Convention.

At the time of signing, ratifying or acceding to this Protocol a State may declare that it will process the letters rogatory to which this article applies only if they identify the relationship between the evidence or information requested and the pending proceeding."[2]

31. The SC noted that in some instances where States have made a general, non-particularised declaration under Article 23, they may have mistakenly believed that they are only objecting to evidence requests submitted prior to the *opening of a proceeding in the State of origin*. In fact, "pre-trial discovery" means evidence requests submitted after the filing of a claim but before the final hearing on the merits.

32. Compounding the misunderstandings that may have prompted Contracting States to make a general declaration under Article 23 denying the "pre-trial discovery of documents", the SC noted that in some cases the judicial authorities of a State of origin have concluded that no requests for the production of documents were permitted under the Convention in a State having made such a general declaration. This may result in the State of origin applying its own domestic law for the taking of evidence against foreign parties.

33. The SC took note of the fact that following the discussion of the same issue during the SC meeting in 1989, some States revised their declaration under Article 23 to reflect the more particularised terms on the UK declaration. At the same time, another State party informed the SC about changes in its internal law to further limit the scope of pre-trial discovery, including by increasing the control of judges over discovery proceedings.

34. Against this background, the SC recommended that States which have made a general, non-particularised declaration under Article 23 *revisit their declaration* by considering an amendment adopting terms such as those contained in the UK declaration or in Article 16 of the Inter-American Protocol. In this connection, the SC further recommended the production of a new edition of the *practical Handbook* on the operation of the Convention.

Scope of Article 23

35. The SC noted that Article 23 expressly refers to "documents" and that the scope of the provision should not be extended to oral testimony.

Article 1(2)

36. The SC recommended that States party submit information to the Permanent Bureau as to how Article 1(2) was interpreted and, in particular, what national judicial proceedings would be regarded as "contemplated" for purposes of this provision.

Mandatory and / or Exclusive character of the Convention

37. The SC noted that there were still differing views among States party as to the obligatory and/or exclusive character of the Convention.

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[2] Reference was also made to the treatment of pretrial discovery of documents under Art. 9 of the *Inter-American Convention of 1975 on the Taking of Evidence Abroad*.

Arbitration

38. The SC noted that in some instances, and in accordance with the internal law of some States, the Convention has been made available for use in arbitration proceedings. The SC stressed that a request for the taking of evidence under the Convention would have to be presented by the relevant judicial authority of the State where the arbitration proceedings take place.

Time issues

39. The SC recommended that requests for evidence be presented as soon as practically possible so as to provide sufficient time for their execution in the State addressed.

40. The SC also urged States party to communicate to their Central Authorities and to the authorities receiving letters of request, the importance of expeditious execution of the requests.

41. With a view to avoiding unnecessary delays where a letter of request is deficient, the SC recommended that Central Authorities or executing authorities encourage the requesting authority to reformulate and resubmit its letter of request. In cases where the request appears to be partially deficient, the executing authorities should, wherever appropriate, execute the portion of a letter that is not deficient rather than to reject the entire request.

Modern technologies

42. The SC expressed general support for the use of modern technologies to further facilitate the efficient operation of the Convention. The SC noted that there seems to be no legal obstacle to the usage of modern technologies under the Convention. However, the use of some techniques may be subject to different legal requirements in different States (*e.g.*, obtaining the consent of all parties involved in the execution). In this respect, the SC recommended that States party make relevant information on legal requirements relating to specific techniques available to the Permanent Bureau

43. The SC stressed where a special method or procedure is requested for the taking of evidence (Art. 9(2)), the *exception* for methods that are "incompatible with the internal law of the State of execution or […] impossible of performance by reason of its internal practice and procedure or by reason of practical difficulties" should be interpreted narrowly to permit, to the greatest possible extent, the use of modern information technology.

44. The SC stressed that early informal contact among appropriate authorities to coordinate the presentation and execution of Letters of request might be facilitated by the use of modern information technology such as e-mail.

Multi-unit States and Regional Economic Integration Organisations (REIOs)

45. The SC took note of the position of one Member State that the existence of a Multi-unit State clause might assist that State to accede to the Convention, but there was insufficient priority for this to be the subject of a protocol on its own; if there were to be a Protocol on other issues, then such a clause might be considered.

46. The SC accepted that, at this point, there was no need to consider the application of the Convention in relation to REIOs.

IV. SERVICE CONVENTION

Forwarding Authorities

47. The SC recalled that it is for the law of the requesting State to determine the competence of the forwarding authorities (Art. 3). Furthermore, the SC took note of information provided by number of experts about the position of forwarding authorities and concluded that most practical problems have been solved.

48. The SC invited all States party to provide information on the forwarding authorities and their competences to the Permanent Bureau for posting on the Conference's website. The SC also accepted a suggestion that such information be included on the Standard Form for a Request for Service[3].

49. The SC recommended that in any question of doubt as to the competence of the forwarding authority, rather than rejecting the request, the authorities in the State requested should seek to confirm that competence by either consulting the Conference's website or by making expeditious informal inquiries of the forwarding authorities, including by way of e-mail.

Designation of Central Authorities

50. The SC reaffirmed the requirement on States party to the Service Convention to designate a Central Authority under Article 2 and noted the serious difficulties which can arise in operating the Convention if such a designation is not made known to the depositary at the time of the deposit of the instrument of ratification or accession. The SC urged all States party which have not yet done so to designate, as soon as possible, a Central Authority. If delays may not be avoided in the designation of the Central Authority(ies), the SC urged that such States give full information to the Permanent Bureau about the arrangements provided to facilitate the functioning of the Convention pending such designation.

51. The SC requested all States party to provide to the Permanent Bureau complete contact information (postal address, telephone and fax numbers, e-mail and website addresses) for their Central Authorities, particularly for States that have designated more than one Central Authority or other authorities under Article 18. The SC noted the importance of regularly updating of this information on the Conference's website.

Functioning of the Central Authorities

52. The SC reaffirmed that it is for a State party to determine its own model for the organisation of the Central Authority functions. In particular, the SC noted that the terms of the Convention do not preclude a Central Authority from contracting activities under the Convention to a private entity, while retaining its status as Central Authority and ultimate responsibility for its obligations under the Convention[4].

53. The SC reaffirmed that according to Article 12(1), a State party shall not charge for its services rendered under the Convention. Nevertheless, under Article 12(2), an applicant shall pay or reimburse the costs occasioned by the employment of a judicial officer or other competent person. The SC urged States to ensure that any such costs reflect actual expenses and be kept at a reasonable level[5].

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[3] The Russian Federation did not support this recommendation and reserved its position.
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[5] The Russian Federation did not support this recommendation and reserved its position.

54. The SC invited States party to make available to the Permanent Bureau all relevant information relating to costs, the availability and modalities of service by delivery under Article 5(2), as well as information relating to the alternative modes of transmission under the Convention, for posting on the Conference's website.

Alternative channels of transmission

55. The SC reaffirmed its clear understanding that the term "send" in Article 10(a) is to be understood as meaning "service" through postal channels.

56. The SC considered the increasing use of private courier services for the expeditious transmission of documents in a variety of business settings and heard reports that such couriers have been used to serve process under Article 10(a) of the Convention. In light of that, the SC concluded that for the purposes of Article 10(a) the use of a private courier was the equivalent of the postal channel.

57. The SC noted the further clarification submitted by the Japanese delegation on its position regarding Article 10(a):

> "Japan has not declared that it objects to the sending of judicial documents, by postal channels, directly to addressees in Japan. As the representative of Japan made clear at the Special Commission of April 1989 on the practical operation of the Service and Evidence Conventions, Japan does not consider that the use of postal channels for sending judicial documents to persons in Japan constitutes an infringement of its sovereign power.
> Nevertheless, as the representative also indicated, the absence of a formal objection does not imply that the sending of judicial documents by postal channels to addressees in Japan is always considered valid service in Japan. In fact, sending documents by such a method would not be deemed valid service in Japan in circumstances where the rights of the addressee were not respected."

58. The SC noted that the UK confirmed its position expressed at the Special Commission meeting of 1989, indicating its preference for the use of direct service through English solicitors on residents of England and Wales.

Use of IT

59. The SC stressed that the operation of the Convention was to be considered in light of a business environment in which use of modern technology was now all pervasive, and that the electronic transmission of judicial communications is a growing part of that environment. In this light, conclusions could be reached as follows:

60. The Convention does not on its terms prevent or prescribe the use of modern technologies to assist in further improving its operation.

61. The Convention does not on its terms deal with internal procedures but there is a link between domestic law systems and the functioning of the Convention.

62. It can be concluded, however, that the transmission of documents internationally for the purposes of the Convention can and should be undertaken by IT-Business methods including e-mail; this is already happening and the SC recommends that States party to the Convention explore all ways in which they can use modern technology for this purpose.

63. In this light, the SC identified a variety of steps for which the use of electronic means may be immediately explored: communication between a requesting party and a forwarding authority, communication between a forwarding authority and a Central Authority of a requested State, and retransmission of the certificate of execution by the designated authority.

64. The SC also recognised that in many domestic legal systems the relevant legal procedures and technological conditions did not allow for service by electronic means, although in certain systems the use of e-mail and fax was permitted in certain circumstances, particularly where approved by judicial authority in advance or agreed by the parties. Nevertheless, the SC recognised that given the pace of technological developments, existing problems might well be overcome so as to enable service by these methods to become more widely used. States party to the Convention are therefore encouraged to explore ways in which such innovations can be achieved.

Translation requirements

65. The SC recognised that no translation is required, under the Convention, for transmission under alternative channels provided by the Convention; the SC noted, however, that in isolated cases such translation requirements are imposed by a State's internal law.

66. The SC noted that the vast majority of States party do not require a translation for service by way of informal delivery (Art. 5(2)).

67. As to the translation requirement for service under Article 5(1), the SC also noted the importance of respecting the various requirements provided in the national laws of States party.

68. The SC invited the States party to make available to the Permanent Bureau all relevant information (incl. any declaration) regarding the extent of any translation requirement for execution of requests under Article 5. The SC also invited States party to provide information as to the consequences under their domestic law when acting as requesting State of a refusal of an addressee to accept service under the Convention.

Scope of application

69. As to the meaning of the terms "civil or commercial matters", the SC urged for a broad interpretation of these terms and reaffirmed the following conclusions adopted in 1989:

    a. The Commission considered it desirable that the words "civil or commercial matters" should be interpreted in an *autonomous* manner, without reference exclusively either to the law of the requesting State or to the law of the requested State, or to both laws cumulatively.
    b. In the "grey area" between private and public law, the historical evolution would suggest the possibility of a more *liberal interpretation* of these words. In particular, it was accepted that matters such as bankruptcy, insurance and employment might fall within the scope of this concept.

70. In addition, the SC took note of the fact that while in some States tax issues were considered as falling within the scope of the Convention, in others this was not the case.

71. The SC also noted that in some States party, the Convention had been applied in proceedings relating to the recovery of proceeds of crime.

72. Finally, the SC cautioned that the meaning of "civil and commercial" appearing in other instruments should not be relied on for interpretation without considering the object and purpose of such other instruments.

Mandatory and/or exclusive character of the Convention

73. Recalling the conclusions and recommendations of 1989, the SC confirmed the prevailing view that the Convention was of a non-mandatory, but exclusive character as described in more detail in the provisional version of the new edition of the Practical Handbook, without prejudice to international law on the interpretation of treaties.

74. The SC recalled the purpose and fundamental importance of Article 15(2), which is designed to ensure actual notice to a defender in sufficient time to organise his or her defence.

Double-date

75. The SC considered and rejected a proposal that States party adopt a recommendation to implement a system of double-date, according to which the interests of the plaintiff (*e.g.*, limitation periods) and those of the defendant (*e.g.*, time to file his or her defence) have to be protected by assigning different dates. The SC took note that many legal systems have effective means to protect the interests of the plaintiff without having to rely on the actual date of service.

Exclusion of the application of the Convention between the parties

76. The SC took note of the practice reported in one State party to the Convention whereby contractual arrangements were entered into and upheld in the courts of that State which excluded the application of the Convention for service of documents as regards parties to such contracts, including parties outside that State.

77. Several experts commented to the effect that this would not be allowed in their States and be considered as contrary to their internal law. Some experts indicated, however, that a judgment rendered pursuant to service in accordance with any such contractual arrangements would not necessarily be refused execution.

Exequatur

78. The SC recalled that the Convention does not address the issue of recognition and enforcement of judgments. In addition, experts reaffirmed the need for the Convention to operate so as to sustain the procedural rights of the defender. In particular, the SC recalled again the principle that the defender should be given actual notice in sufficient time to allow him or her to organise a defence. This was significant notably where in the State addressed consideration was given to the validity of service.

Reservations and reciprocity

79. The SC noted that States party do not assert reciprocity against other States party that have made declarations under Articles 8 and 10.

Regional Economic Integration Organisations (REIOs)

80. The SC accepted that, at this point, there was no need to consider the application of the Convention in relation to REIOs.

Future Work: Form and Handbook

81. The SC accepted that future work on the forms be undertaken by the PB in conjunction with a representative group of experts to be designated by the Secretary General, in particular with a view to assessing the necessity of amending the forms and to develop guidelines for completing those forms.

82. The SC welcomed the draft version of the new edition of the Practical Handbook prepared by the Permanent Bureau. The SC invited the Permanent Bureau to finalise the new edition, taking into account the conclusions and recommendations adopted by the SC and emphasised the desirability of maintaining and enhancing the practical utility of the Handbook in conjunction with the information provided on the Conference's website.

The Hague / 20 November 2003