SC 1965 SERVICE & 1970 EVIDENCE & 1980 ACCESS TO JUSTICE

JULY 2024

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Title	Revised Draft of the Practical Handbook on the Operation of the Service Convention
Document	Prel. Doc. No 7 of May 2024
Author	PB
Agenda Item	VI, VIII
Mandate(s)	C&D Nos 47 and 49 of CGAP 2024 C&D No 36 of CGAP 2021 C&R No 39 of CGAP 2019
Objective	To seek approval, in principle, of the revised draft of the 5th edition of the Practical Handbook on the Operation of the Service Handbook
Action to be Taken	For Decision ☐ For Approval ☒ For Discussion ☒ For Action / Completion ☐ For Information ☐
Annexes	Annex – Revised draft of the 5th edition of the Practical Handbook on the Operation of the Service Convention
Related Documents	Prel. Doc. No 12B of December 2023 – 1965 Service, 1970 Evidence, and 1980 Access to Justice Conventions: Plans for the next meeting of the Special Commission

Revised Draft of the Practical Handbook on the Operation of the Service Convention

I. Introduction

1 As mandated by the Council on General Affairs and Policy (CGAP) at its 2019 meeting,[1] the Permanent Bureau (PB) has worked to prepare a new edition of the Practical Handbook on the Operation of the Service Convention (Service Handbook).

2 Since the publication of the current 4th edition of the Service Handbook in 2016, there have been important developments in case law and in the practice of Contracting Parties in relation to the *Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* (Service Convention). The PB has been monitoring these developments with a view to preparing the 5th edition of the Service Handbook.

3 The revised draft of the 5th edition of the Service Handbook (revised Service Handbook) will be considered at the upcoming meeting of the Special Commission (SC) on the practical operation of the Service Convention, the *Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters* (Evidence Convention), and the *Convention of 25 October 1980 on International Access to Justice* (Access to Justice Convention).[2] The revised Service Handbook is provided in the Annex. [3]

II. Timeline

4 The PB has carried out a range of work to prepare the revised Service Handbook, as outlined below.

5 In December 2022, the PB circulated the "Questionnaire relating to the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters"[4] (2022 Service questionnaire) to all HCCH Members and respective Central Authorities designated by Contracting Parties to the Service Convention. The responses to the 2022 Service questionnaire provided by Contracting Parties have informed the updates to the revised Service Handbook.[5] The PB is very grateful to all respondents for their time and effort devoted in preparing their responses.

6 An earlier version of the revised Service Handbook (available as a clean copy and with tracked changes and incorporating feedback provided) was circulated to Members and Central Authorities of Members for comment on 31 October 2023,[6] with a consultation period of 10 weeks (Consultation). The PB has further updated the revised Service Handbook in response to the feedback received from the Consultation. Please note that all feedback received from the Consultation will be made available on the Secure Portal of the HCCH website in due course.

7 Information collected through the PB's research and monitoring of the operation of the Service Convention has also been included in updates to the revised Service Handbook.

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1 See C&R No 39 of CGAP 2019. See also C&D No 36 of CGAP 2021, available on the HCCH website at www.hcch.net under "Governance" then "Council on General Affairs and Policy" then "Archive (2000-2023)".

2 To be held from Tuesday 2 to Friday 5 July 2024 in the Hague Academy Building, on the grounds of the Peace Palace, Carnegieplein, The Hague, the Netherlands.

3 A marked-up version of the revised Service Handbook, indicating the changes that have been made to the document since the Consultation, is available on the Secure Portal of the HCCH website under ''Special Commission Meetings" then "Special Commission on the 1965 Service, 1970 Evidence and 1980 Access to Justice Conventions".

4 Prel. Doc. No 1 of December 2022, available on the HCCH website at www.hcch.net under "Service Convention" then "Special Commission on the practical operation of the 1965 Service, 1970 Evidence and 1980 Access to Justice Conventions".

5 Prel. Doc. No 2 of April 2024, available on the HCCH website at www.hcch.net (see path indicated in note 4 above).

6 See Focused Circular No 58(23) available on the Secure Portal of the HCCH website at www.hcch.net.

8 Pursuant to CGAP's mandate at its 2024 meeting,[7] a Working Group (WG) consisting of representatives from a variety of geographical regions has been established to review and refine updates to the revised Service Handbook. The input and consideration of the WG will be of great value in addition to the significant engagement on the text that has been received through the Consultation. An online WG meeting will be held on 17 May 2024 to consider the revised Service Handbook. The results of the WG meeting, including any recommendations for further amendment and update to the revised Service Handbook will be reported back to the meeting of the SC. The revised Service Handbook annexed to this Prel. Doc. is subject to the consideration of the WG.

9 The WG will reconvene following the meeting of the SC to ensure that further updates, including relevant Conclusions and Recommendations (C&R) of the SC are incorporated into the final revised Service Handbook.

10 As decided by CGAP at its 2024 meeting,[8] following the meeting of the SC, and upon finalisation by the WG, the revised Service Handbook will be submitted to CGAP 2025 for approval. However, if the revised Service Handbook is finalised well in advance of CGAP 2025, CGAP decided that it could be approved through a written procedure and, in the absence of any objection within one month after the circulation, would be taken to be approved. It was further decided that in the case of one or more objections, the PB would immediately notify Members of any objection and the revised Service Handbook would be submitted to CGAP 2025.

11 Following the final approval, the revised Service Handbook will be prepared for publication. This will include the preparation of a foreword drafted by the Secretary General, an introduction, the insertion of cross-references, figures, annexes, and an index.

III. Proposal for the SC

12 The SC is invited to approve, in-principle, the revised Service Handbook, including recommendations of the WG following its 17 May 2024 meeting. The SC is invited to note that further amendments will be made to the text to reflect the discussions held at the meeting of the SC including relevant C&R, and that the WG will be engaged following the SC meeting to further consider the revised Service Handbook before its submission for final approval.

13 The SC is also asked to recommend that CGAP approve the revised Service Handbook for publication.

7 See C&D No 47 of CGAP 2024.
8 See C&D No 49 of CGAP 2024.

Annex

[Title Page]

Service Handbook

Practical Handbook on the Operation of the Service Convention

[Placeholder: Foreword]

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Introduction

Abbreviations

A.2d	Atlantic Reporter (United States)
A.C.W.S.	All-Canada Weekly Summaries (Canada)
A.D., A.D.2d, A.D.3d	Appellate Division Reports (United States)
AALCO	Asian-African Legal Consultative Organization (formerly AALCC: Asian-African Legal Consultative Committee)
ABCA	Alberta Court of Appeal (Canada)
ABQB	Court of Queen's Bench of Alberta (Canada)
AC	Appeal Cases (United Kingdom)
ACT	Australian Capital Territory (Australia)
AEDIPr	Anuario Español de Derecho Internacional Privado (Spain)
All E.R.	All England Law Reports (United Kingdom)
Alta. Q.B.	Court of Queen's Bench of Alberta (Canada)
Alta Reg	Alberta Regulations (Canada)
Am. Bar Ass. J.	American Bar Association Journal (United States)
Am. J. Comp. L.	American Journal of Comparative Law (United States)
Am. J. Int'l L.	American Journal of International Law (United States)
Ann. suisse dr. int.	Annuaire suisse de droit international (Switzerland)
Ariz. Ct. App.	Arizona Court of Appeal (United States)
Ariz. J. Int'l & Comp. L.	Arizona Journal of International and Comparative Law (United States)
Ariz. Sup. Ct.	Arizona Supreme Court (United States)
Art(s).	Article(s)
ATF	Arrêts du Tribunal fédéral (Switzerland)
ATS	Auto del Tribunal Supremo (Spain)
B.C. L. Rev.	Boston College Law Review (United States)
B.R.	Bankruptcy Reporter (United States)
Bankr.	Bankruptcy (Court) (United States)
BC Reg	British Columbia Regulations (Canada)
BCSC	Supreme Court of British Colombia (Canada)
BGH	Bundesgerichtshof (Germany)
BJM	Basler Juristische Mitteilungen (Switzerland)

Buff. L. Rev.	Buffalo Law Review (United States)
Bull. civ.	Bulletin civil (France)
BVerfG	Bundesverfassungsgericht (Germany)
BVerwG	Bundesverwaltungsgericht (Germany)
BvR	Richter des Bundesverfassungsgerichts (Germany)
C.D. Cal.	US District Court for the Central District of California (United States)
C.L.C.	Commercial Law Cases (United Kingdom)
C&D	Conclusions & Decisions (HCCH)
C&R	Conclusions & Recommendations (HCCH)
CA	Cour d'appel, Court of Appeals
Cal. App.	California Appellate Reports (United States)
Cal. Ct. App.	California Court of Appeal (United States)
Cal. Daily Op. Service	California Daily Opinions Service (United States)
Cal. Rptr.	California Reporter (United States)
Cal. Super. Ct.	Superior Court of California (United States)
CanLII	Canadian Legal Information Institute (Canada)
Cass.	Cour de cassation (France)
Ch. Civ.	Chambre civile (France)
Ch. Famille	Chambre de la famille (France)
Cir.	Circuit (United States)
Civ. Namur	Tribunal civil de Namur (Belgium)
CLR	Commonwealth Law Reports (Australia)
CodPC	Codice di Procedura Civile (Italy)
Colum. J. Transnat'l L.	Columbia Journal of Transnational Law (United States)
Conn. B.J.	Connecticut Bar Journal (United States)
Conn. Super. Ct.	Connecticut Superior Court (United States)
Cornell Int'l L.J.	Cornell International Law Journal (United States)
CPC	Code de procédure civile (France)
CQLR	Compilation of Québec Laws and Regulations (Canada)
Ct. Int'l Trade	United States Court of International Trade (United States)
Cumb. L. Rev.	Cumberland Law Review (United States)
Cyp. L.R.	Cyprus Law Reports (Cyprus)

D. Ariz.	US District Court for the District of Arizona (United States)
D. Colo.	US District Court for the District of Colorado (United States)
D. Del.	US District Court for the District of Delaware (United States)
D. Haw.	US District Court for the District of Hawaii (United States)
D. Kan.	US District Court for the District of Kansas (United States)
D. Mass.	US District Court for the District of Massachusetts (United States)
D. Me.	US District Court for the District of Maine (United States)
D.N.J.	US District Court for the District of New Jersey (United States)
D. Nev.	US District Court for the District of Nevada (United States)
D. Or.	US District Court for the District of Oregon (United States)
D.A.R.	Daily Appellate Reports (United States)
D.C. Cir.	District of Columbia Court of Appeals (United States)
D.C.S.I.	Diritto Comunitario e degli Scambi Internazionali (Italy)
D.P.R.	US District Court for the District of Puerto Rico (United States)
D.R.I.	US District Court for the District of Rhode Island (United States)
D.V.I.	US District Court for the District of the Virgin Islands (United States)
Del. Super. Ct.	Delaware Superior Court (United States)
Dept.	Department
E.D. Cal.	US District Court for the Eastern District of California (United States)
E.D. La.	US District Court for the Eastern District of Louisiana (United States)
E.D. Mich	US District Court for the Eastern District of Michigan (United States)
E.D. Mo.	US District Court for the Eastern District of Missouri (United States)
E.D. N.Y.	US District Court for the Eastern District of New York (United States)
E.D. Pa.	US District Court for the Eastern District of Pennsylvania (United States)
E.D. Tex.	US District Court for the Eastern District of Texas (United States)
E.D. Va.	US District Court for the Eastern District of Virginia (United States)
ECHR	European Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
EJS	e-Justice Service of Documents (European Chamber of Judicial Officers)
ERPL	European Review of Private Law (United Kingdom)

EU	European Union
EU:C	Court of Justice of the European Union (European Union)
EuZW	Europäische Zeitschrift für Wirtschaftsrecht (Germany)
EWCA	England and Wales Court of Appeal / Civil Division (United Kingdom)
EWHC (Admin)	England and Wales High Court / Administrative Court (United Kingdom)
EWHC (Ch)	England and Wales High Court / Chancery Division (United Kingdom)
EWHC (Comm)	England and Wales High Court / Commercial Court (United Kingdom)
EWHC (QB)	England and Wales High Court / Queen's Bench Division (United Kingdom)
EWiR	Entscheidungen zum Wirtschaftsrecht (Germany)
F.2d; F.3d	Federal Reporter (United States)
F. App'x	Federal Appendix (United States)
F.R.D.	Federal Rules Decisions (United States)
F. Supp.	Federal Supplement (United States)
F. Supp. 2d	Federal Supplement (United States)
Fam. Adv	Family Advocate (United States)
FCA	Federal Court of Australia (Australia)
Fed. Cir.	Court of Appeals for the Federal Circuit (United States)
Fed. Cts. L. Rev.	Federal Courts Law Review (United States)
Fed. R. Civ. Pro.	Federal Rules of Civil Procedure (United States)
FF	Feuille fédérale (Switzerland)
Fla. Dist. Ct. App.	Florida District Court of Appeal (United States)
FMCAfam	Federal Magistrates Court Australia (Australia)
Ga. L. Rev.	Georgia Law Review (United States)
Geo. J. Int'l L.	Georgetown Journal of International Law (United States)
G.O.Q.	Gazette officielle du Québec (Canada)
Harv. J.L. & Tech.	Harvard Journal of Law & Technology (United States)
HCCH	Hague Conference on Private International Law
HCPI	High Court of the Hong Kong Special Administrative Region, Court of First Instance, Personal Injuries List (People's Republic of China)
Hong Kong L.J.	Hong Kong Law Journal (People's Republic of China)

Hong Kong SAR	Hong Kong Special Administrative Region (People's Republic of China)
HR	Hoge Raad (Supreme Court of the Netherlands)
IBL	International Business Lawyer (United States)
ICLQ	International and Comparative Law Quarterly (United Kingdom)
Ill. App. Ct.	Illinois Appellate Court (United States)
I.L.M.	International Legal Materials (United States)
IT	Information Technology
Int'l Law.	International Lawyer (United States)
Int'l Litig. News	International Litigation News (United States)
Int'l Litig. Q.	International Litigation Quarterly (United States)
IPRax	Praxis des Internationalen Privat- und Verfahrensrechts (Germany)
IPRspr.	Die Deutsche Rechtsprechung auf dem Gebiete des Internationalen Privatrechts (Germany)
J.E.	Jurisprudence expresse (Quebec, Canada)
J.L. & Com.	Journal of Law and Commerce (United States)
J. Marshall L. Rev.	John Marshall Law Review (United States)
JCP E	Semaine juridique, édition Entreprise et affaires (France)
J.D.I	Journal de droit international (France)
JORF	Journal officiel de la République française (France)
JT	Journal des tribunaux (Belgium)
JZ	Juristenzeitung (Germany)
KG	Kammergericht (Germany)
Law & Contemp. Probs.	Law and Contemporary Problems (United States)
LG	Landgericht (Germany)
Loy. L.A. Int'l & Comp. L. Rev	Loyola of Los Angeles International & Comparative Law Review (United States)
Macao SAR	Macao Special Administrative Region (People's Republic of China)
M.D. Fla.	US District Court for the Middle District of Florida (United States)
M.D. La.	US District Court for the Middle District of Louisiana (United States)
Marq. L. Rev.	Marquette Law Review (United States)
Md. Ct. Spec. App.	Maryland Court of Special Appeals (United States)

Mich. Ct. App.	Michigan Court of Appeals (United States)
Minn. J. Int'l L.	Minnesota Journal of International Law (United States)
Mo. Ct. App.	Missouri Court of Appeal (United States)
N.D. Ala.	US District Court for the Northern District of Alabama (United States)
N.D. Cal.	US District Court for the Northern District of California (United States)
N.D. Fla.	US District Court for the Northern District of Florida (United States)
N.D. Ga.	US District Court for the Northern District of Georgia (United States)
N.D. Ill.	US District Court for the Northern District of Illinois (United States)
N.D. Ind.	US District Court for the Northern District of Indiana (United States)
N.D. Ohio	US District Court for the Northern District of Ohio (United States)
N.D. Tex.	US District Court for the Northern District of Texas (United States)
N.D. W. Va.	US District Court for the Northern District of West Virginia (United States)
N.E.2d	Northeastern Reporter (United States)
N.J. Super. Ct.	New Jersey Superior Court (United States)
N.J. Super. Ct. App. Div.	New Jersey Superior Court Appellate Division (United States)
N.W.2d	Northwestern Reporter (United States)
N.Y. App. Div.	New York Supreme Court, Appellate Division (United States)
N.Y. Civ. Ct.	New York City Civil Court (United States)
N.Y. L.J.	New York Law Journal (United States)
N.Y.S.2d, N.Y.S.3d	West's New York Supplement (United States)
N.Y. Sup. Ct.	New York Supreme Court (United States)
NB Reg	New Brunswick Regulations (Canada)
NCPC	Nouveau Code de procédure civile (Luxembourg)
Nev.	Nevada Reports (United States)
NILR	Netherlands International Law Review (Netherlands)
NIPR	Nederlandse tijdschrift voor internationaal privaatrecht (Netherlands)
NJ	Nederlandse Jurisprudentie (Netherlands)
NJW	Neue Juristische Wochenschrift (Germany)
NJW-CoR	Neue Juristische Wochenzeitung – Computerrecht (Germany)

NJW-RR	Neue Juristische Wochenzeitung – Rechtsprechungs-Report Zivilrecht (Germany)
NSW	New South Wales (Australia)
NSWCA	New South Wales Court of Appeal (Australia)
NSWDC	New South Wales District Court (Australia)
NSWLEC	New South Wales Land and Environment Court (Australia)
NSWSC	Supreme Court of New South Wales (Australia)
NWT Reg	Northwest Territories Regulations (Canada)
NZHC	New Zealand High Court (New Zealand)
OGH	Oberster Gerichtshof (Austria)
OIC	Orders-in-Council of Yukon (Canada)
OJEU	Official Journal of the European Union (previously European Communities)
OLG	Oberlandesgericht (Higher Regional Court, Germany)
OLGR	Oberlandesgericht Report (Germany)
ONCA	Court of Appeal for Ontario (Canada)
ONSC	Ontario Superior Court of Justice (Canada)
Or. Rev. Int'l L.	Oregon Review of International Law (United States)
P.2d; P.3d	Pacific Reporter (United States)
Pa. Super. Ct.	Pennsylvania Superior Court (United States)
Pace L. Rev.	Pace Law Review (United States)
Para(s)	Paragraph(s)
PB	Permanent Bureau
QCCQ	Cour du Québec (Canada)
QCCS	Cour supérieure du Québec (Canada)
QCTDP	Tribunal des droits de la personne (Human Rights Tribunal, Canada)
R.I.	Rhode Island Reports (United States)
RabelsZ	Zeitschrift für ausländisches und internationales Privatrecht (Germany)
Rb	Rechtbank (Court of First Instance, Netherlands)
RCA	Request for Civil Appeal (Israel)
RCADI	Recueil des cours de l'Académie de droit international de La Haye (Netherlands)

RDIPP	Rivista di diritto internazionale privato e processuale (Italy)
Rec.	Recueil de jurisprudence de la Cour de justice de l'Union européenne (previously European Communities)
REJB	Répertoire électronique de jurisprudence du Barreau (Quebec, Canada)
Rev. crit. d.i.p.	Revue critique de droit international privé (France)
Rev. Esp. d.i.	Revista Española de Derecho Internacional (Spain)
Rev. H.J.	Revue des huissiers de justice (France)
Rev. i.d.c.	Revue internationale de droit comparé (France)
RICO-Act	Racketeer Influenced and Corrupt Organizations Act (United States)
RIW	Recht der Internationalen Wirtschaft (Germany)
RRO	Revised Regulations of Ontario (Canada)
RTD civ.	Revue trimestrielle de droit civil (France)
Rutgers Computer & Tech L.J.	Rutgers Computer & Technology Law Journal (United States)
RvdW	Rechtspraak van de Week (Netherlands)
RZAIP	Rabels Zeitschrift für ausländisches und internationales Privatrecht (Germany)
S.C. L. Rev.	South Carolina Law Review (United States)
S. Ct.	Supreme Court Reporter (United States)
S.D. Fla.	US District Court for the Southern District of Florida (United States)
S.D. Ga.	US District Court for the Southern District of Georgia (United States)
S.D. Iowa	US District Court for the Southern District of Iowa (United States)
S.D. Miss.	US District Court for the Southern District of Mississippi (United States)
S.D.N.Y.	US District Court for the Southern District of New York (United States)
S.D. Tex.	US District Court for the Southern District of Texas (United States)
S.D. W. Va.	US District Court for the Southern District of West Virginia (United States)
S.E.2d	Southeastern Reporter (United States)
S.Q.	Statutes of Quebec (Canada)
SC	Special Commission (HCCH)
SJ	La Semaine judiciaire (Switzerland)
SJZ	Schweizerische Juristen-Zeitung / Revue suisse de jurisprudence (Switzerland)

SMS	Short Message Service (information technology)
So.2d	Southern Reporter (United States)
St. John's J. Legal Comment.	St. John's Journal of Legal Commentary (United States)
Sup. Ct. NY County	Supreme Court of New York County (United States)
Sup. Ct. Suffolk County	Supreme Court of Suffolk County (United States)
Sup. Ct. Wash.	Supreme Court of Washington (United States)
SZW	Schweizerische Zeitschrift für Wirtschaftsrecht / Revue suisse de droit des affaires / Swiss review of business law (Switzerland)
Temp. Int'l & Comp. L.J.	Temple International and Comparative Law Journal (United States)
Tex. App.	Texas Court of Appeals (United States)
Tex. Civ. Prac. & Rem. Code	Texas Civil Practice and Remedies Code (United States)
Tex. Int'l L.J.	Texas International Law Journal (United States)
TF	Tribunal fédéral (Switzerland)
Tul. J. Int'l & Comp. L.	Tulane Journal of International and Comparative Law (United States)
Tul. L. Rev.	Tulane Law Review (United States)
U. Chi. L. Rev.	University of Chicago Law Review (United States)
U. Pa. J. Int'l Econ. L.	University of Pennsylvania Journal of International Economic Law (United States)
U. Pitts. L. Rev.	University of Pittsburgh Law Review (United States)
U. Rich. L. Rev.	University of Richmond Law Review (United States)
U.S. Dist. LEXIS	United States Federal District Court Cases LEXIS (United States)
U.S.	United States Reports (United States)
U.S.C.	United States Code (United States)
UCLA L. Rev.	UCLA Law Review (United States)
UIHJ	Union internationale des huissiers de justice et officiers judiciaires (International Union of Judicial Officers)
Unif. L. Rev.	Uniform Law Review (Unidroit)
UPU	Universal Postal Union
US	United States of America
Vand. J. Transnat'l L.	Vanderbilt Journal of Transnational Law (United States)
Vill. L. Rev.	Villanova Law Review (United States)

VSC	Supreme Court of Victoria (Australia)
W. Va.	Supreme Court of Appeals of West Virginia (United States)
W.D. Ky.	US District Court for the Western District of Kentucky (United States)
W.D. La.	US District Court for the Western District of Louisiana (United States)
W.D. N.Y.	US District Court for the Western District of New York (United States)
W.D. Pa.	US District Court for the Western District of Pennsylvania (United States)
W.D. Tenn.	US District Court for the Western District of Tennessee (United States)
W.D. Tex.	US District Court for the Western District of Texas (United States)
Wash.	Washington Reports (United States)
Wis. Ct. App.	Wisconsin Court of Appeals (United States)
WL	Westlaw (United States)
Wm. Mitchell L. Rev.	William Mitchell Law Review (United States)
Wn.2d	Washington Reports, Second series (United States)
ZfIR	Zeitschrift für Immobilienrecht (Germany)
ZZP Int.	Zeitschrift für Zivilprozess International (Germany)

Glossary

The following key terms are used in this Handbook.

1954 Civil Procedure Convention

An international treaty developed and adopted under the auspices of the HCCH, the full title of which is the *Convention of 1 March 1954 on Civil Procedure*. The 1965 Service Convention replaces the provisions of the 1954 Civil Procedure Convention relating to the service abroad of judicial and extrajudicial documents (*i.e.*, Chapter I, Arts 1-7).

The full text of the 1954 Civil Procedure Convention is available on the HCCH website.

1965 Service Convention (or Convention)

An international treaty developed and adopted under the auspices of the HCCH, the full title of which is the *Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*. The full text of the Convention is set out at Annex 1 of this Handbook and is available on the Service Section of the HCCH website.

1970 Evidence Convention

An international treaty developed and adopted under the auspices of the HCCH, the full title of which is the *Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters*. The full text of the Convention is available on the Evidence Section of the HCCH website.

2020 EU Service Regulation

A regulation partially applicable as of 1 July 2022 among all European Union (EU) Member States on the service of judicial and extrajudicial documents in civil and commercial matters, the full title of which is *Regulation (EU) 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) (recast).*[1] Certain provisions relating to the creation of a decentralised IT system will apply from May 2025. This Regulation replaced the 2007 EU Service Regulation.

2007 EU Service Regulation

A regulation previously in force among all EU Member States on the service of judicial and extrajudicial documents in civil or commercial matters, the full title of which is *Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000*. This Regulation replaced the 2000 EU Service Regulation with certain provisions remaining applicable until the decentralised IT system is established in May 2025.

2000 EU Service Regulation

A regulation previously in force in EU Member States on the service of judicial and extrajudicial documents in civil or commercial matters, the full title of which is *Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters*. This Regulation was repealed by the 2007 EU Service Regulation.

1 [2020] OJ L405/40.

Acceding Party

A Contracting Party that has joined the 1965 Service Convention by accession.

Accession

An international act, whereby a State establishes its consent to be bound by a treaty, such as the 1965 Service Convention (see Art. 2 of the *Vienna Convention of 23 May 1969 on the Law of Treaties*).

Article 28 of the 1965 Service Convention stipulates that the Convention is open to accession by States which were not represented at the Tenth Session of the HCCH. A State accedes to the Convention by depositing an instrument of accession with the depositary of the Convention.

A State may accede to the Convention even if it is not a Member of the HCCH. More information on the accession procedure is available at Annex 8.

For an acceding State, the Convention only enters into force if no State that has ratified the Convention before the deposit of the instrument of accession has objected within a six-month period after the date on which the depositary has notified of such an accession. To date, no objections have been raised to an accession.

Addressee

The person upon whom the document is served. This should not be confused with the terms "receiving authority" or "Central Authority".

Alternative channel(s) of transmission

Channels of transmission under the 1965 Service Convention that are in addition to the main channel of transmission (system of Central Authorities). There are four alternative channels of transmission: consular or diplomatic channels (direct and indirect) (Arts 8(1) and 9), postal channels (Art. 10(a)), direct communication between judicial officers, officials or other competent persons of the State of origin and the State of destination (Art. 10(b)), and direct communication between a person interested in a judicial proceeding and a judicial officer, official or other competent persons of the State of destination (Art. 10(c)).

Applicant

A term used in both the 1965 Service Convention and the Model Form to refer to the forwarding authority. This Handbook uses the term "forwarding authority" instead of the term "applicant" for ease of reference and to provide a more functional description of this role.

Brussels Ia Regulation

A regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, in force as of 10 January 2015 in all Member States of the European Union. The full title of the Brussels Ia Regulation is *Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast)*. The Regulation also applies to Denmark as a result of an agreement that it concluded with the (then) European Community. This Regulation repealed *Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters*, which in turn replaced the *Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters* (better known as the

"1968 Brussels Convention").[2] Regulation (EC) No 44/2001 shall continue to apply to judgments given in legal proceedings instituted, to authentic instruments formally drawn up or registered, and to court settlements approved or concluded before 10 January 2015 which fall within the scope of that Regulation.

Central Authority

The authority designated by a Contracting Party pursuant to Article 2(1) of the 1965 Service Convention. Information about Central Authorities designated by Contracting Parties is available on the Service Section of the HCCH website.

Certificate

A document forming part of the Model Form used to certify whether or not the document has been served in the Requested State. This Certificate must be completed when using the main channel of transmission. The Certificate may also be completed when using the alternative channels of transmission. The Certificate is referred to as Part 2 of the Model Form in Annex 6 (Guidelines for completing the Model Form).

Civil or commercial matters

A term used to delimit the substantive scope of the 1965 Service Convention. The term "civil or commercial" matters is interpreted liberally and in an autonomous manner and applied consistently across both the 1965 Service and 1970 Evidence Conventions.

Conclusions & Decisions (C&D)

The form in which outcomes of specific HCCH meetings are developed, reflected, and adopted. Conclusions & Decisions are reserved for specific meetings of HCCH Members, such as the Council on General Affairs and Policy (CGAP), the governing body of the HCCH which meets annually to review progress and set the Work Programme of the Organisation.

Conclusions & Recommendations (C&R)

The form in which outcomes of meetings of the Special Commission (SC) are developed, reflected and adopted. Under the HCCH Rules of Procedure, Special Commission meetings adopt Conclusions & Recommendations. References to the Conclusions & Recommendations are made throughout this Handbook together with the year of the relevant meeting (*e.g.*, C&R of the 2014 SC refers to the Conclusions & Recommendations adopted by the 2014 meeting of the Special Commission). Conclusions & Recommendations are submitted to the Council on General Affairs and Policy for approval. Although not binding, Conclusions & Recommendations play an important role in ensuring the uniform interpretation and practical operation of the 1965 Service Convention.

Consular channel (indirect)

An alternative channel of transmission under the 1965 Service Convention, whereby the document to be served is transmitted from a consular representative accredited in the State of destination (which has been directed to do so by the Ministry of Foreign Affairs of the State of origin) to the authority designated by the State of destination for receiving such requests, which then serves the document on the addressee.

2 The 1968 Brussels Convention is still applicable to certain overseas territories.

Contracting Party

With reference to the 1965 Service Convention, a Contracting Party to the Service Convention, whether or not the Convention has entered into force for that Contracting Party (see Art, 2(1)(f) of the *Vienna Convention of 23 May 1969 on the Law of Treaties).* An updated list of all Contracting Parties, called the "status table," is available on the Service Section of the HCCH website.

Council on General Affairs and Policy (CGAP)

The principal governing body of the HCCH, composed of all HCCH Members and established under Article 4 of the HCCH Statute. CGAP meets to determine the Work Programme of the HCCH and oversees the effective operation of the HCCH by directing the activities of the Permanent Bureau.

Country Profile

The online profile containing practical and country-specific information about a Contracting Party to the Convention, which is available on the Service Section of the HCCH website.

Date of service

The date when service is deemed to have been effected.

Depositary

An authority charged with administering an international treaty. In the case of the 1965 Service Convention (and all other HCCH Conventions), the depositary is the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

In fulfilment of its duties, the website of the depositary provides the authoritative record of signatures, ratifications, accessions, and successions, as well as Convention notifications, designations and declarations. The website is available at: https://treatydatabase.overheid.nl/en.

The contact details of the depositary are as follows:

Treaties Division, Ministry of Foreign Affairs

Postal address:	DJZ/VE, PO BOX 20061 2500 EB The Hague The Netherlands
Telephone:	+31 70 759 9456
E-mail:	djz-ve@minbuza.nl
Website:	https://verdragenbank.overheid.nl/en

Derogatory channels

Channels of transmission other than those provided for under the 1965 Service Convention are referred to as derogatory channels. There are two types of derogatory channels: those provided in bilateral or multilateral agreements concluded among Contracting Parties (Arts 11, 24 and 25); and those provided by the domestic law of the State of destination (Art. 19).

Diplomatic channel (indirect)

An alternative channel of transmission under the 1965 Service Convention whereby the document to be served is transmitted through several authorities in both the State of origin and the State of destination

(generally involving the Ministries of Justice and Foreign Affairs of both States), and ultimately, the document is delivered to the authority designated by the State of destination which then serves the document on the addressee.

Diplomatic or consular channel (direct)

An alternative channel of transmission under the 1965 Convention whereby the diplomatic or consular officers of the State of origin may serve the document directly on the addressee in the State of destination without compulsion. The direct channel can be distinguished from the indirect channel. Under the indirect channel, the document is first transmitted to the designated authority of the State of destination and then served on the addressee.

Diplomatic Session

A specific meeting of HCCH that is convened by announcement of the Secretary General to negotiate and adopt new conventions and protocols on private international law matters. During a Diplomatic Session, representatives from Member States of the HCCH gather to negotiate and finalise the text. Diplomatic Sessions are crucial moments in the process of creating new instruments as they allow States to reach consensus on the provisions of the proposed treaty. Once an instrument is finalised at a Diplomatic Session, the participating States may sign the new Convention or Protocol, signalling their intention to be bound by its provisions. Previous Diplomatic Sessions include the 20th (2005) adopting the *Convention of 30 June 2005 on Choice of Court Agreements*, the 21st (2007) adopting the *Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance and the Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations*, and the 22nd (2019) adopting the *Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters*.

Exclusive character

A term used to describe the nature and applicability of the 1965 Service Convention. If, under the relevant law of a Contracting Party, it is determined that a document has to be transmitted abroad for service in another Contracting Party, the Convention will apply exclusively *(i.e.*, one of the methods of transmission under the Convention must be used). The Convention is described as non-mandatory but exclusive in character (see non-mandatory).

Explanatory Report

The report drawn up by V. Taborda Ferreira that provides an introduction to the 1965 Service Convention as well as an article-by-article commentary on its text. The Explanatory Report was published in *Actes et documents de la Dixième session* (Proceedings of the Tenth Session) (1964).[3] The Explanatory Report is not a comprehensive report as it builds on the preliminary report and the negotiations of the Convention. In addition, the Explanatory Report is silent on a number of important issues, which came to light after the negotiations. Furthermore, some of the comments in the Explanatory Report have been superseded by subsequent Conclusions & Recommendations of the meetings of the Special Commission. For these reasons, the Explanatory Report has not been reproduced as part of this Handbook.

3 HCCH, *Actes et documents de la Dixième session* (1964), Tome III, *Notification*, The Hague, Imprimerie Nationale, 1965, pp. 363-381.

Extrajudicial document

For the purpose of the 1965 Service Convention, a document that is not directly related to a trial but that requires the involvement of an authority or judicial officer.

Forum State

The State where legal proceedings have been initiated. Depending on the channel of transmission chosen, the forum State will be either referred to as the Requesting State (main channel of transmission) or the State of origin (alternative channels of transmission).

Forwarding authority

The authority or judicial officer competent under the law of the Requesting State to forward Requests for service to the Central Authority of the Requested State. While the term "forwarding authority" is not contained in the 1965 Service Convention or the Model Form, it was created on the basis of the English version of Article 3 of the Convention, which makes reference to an authority or judicial officer that must forward a request to the Central Authority of the Requested State. The first use of the term dates back to the 1977 meeting of the Special Commission and it has been widely used ever since. The forwarding authority is referred to in the Convention and the Model Form as the applicant and also as the requesting authority. However, the term forwarding authority encapsulates the terms applicant and requesting authority. For ease of reference, the term "forwarding authority" is used throughout this Handbook.

Hague Conference on Private International Law (HCCH)

A permanent intergovernmental organisation with a mandate to work for the progressive unification of the rules of private international law (Art. 1 of the HCCH Statute) and under the auspices of which the 1965 Service Convention was negotiated and adopted. In fulfilment of its mandate, the HCCH develops and adopts Conventions and Instruments and supports their promotion, implementation, and operation.

HCCH Conventions and Instruments

International treaties negotiated and adopted under the auspices of the HCCH. A complete list of HCCH Conventions and Instruments is available on the HCCH website. The 1965 Service Convention was the fourteenth HCCH Convention to be adopted (including the Statute of the HCCH).

Huissier de justice

A French term used in this Handbook to refer to a judicial officer. The role of a judicial officer, in the context of the Service Convention, is sometimes akin to that of a bailiff or sheriff in English-speaking States.

Inter-American Convention on Letters Rogatory and its Additional Protocol

A convention and a protocol in force among some Member States of the Organization of American States and Spain to deal with the transmission of documents for service abroad, and in the case of the Inter-American Convention, with the taking of evidence abroad.

Judicial document

For the purposes of the 1965 Service Convention, any document relating to litigation at any level of the court system (be it first instance, appeal or Supreme Court), including those emanating from contentious, non-contentious and enforcement proceedings.

Main channel of transmission

A channel under the 1965 Service Convention which involves the transmission of the document to be served from the forwarding authority of the Requesting State to the Central Authority of the Requested State for service in that State.

Member (of the HCCH)

Any State or Regional Economic Integration Organisation (REIO) may seek to become a Member of the HCCH (pursuant to Arts 2 and 3 of the HCCH Statute). Being a Member of the HCCH should not be confused with being a Contracting Party to the 1965 Service Convention (or any other HCCH Convention). A Member is not required to be (or become) a Contracting Party to the 1965 Service Convention and a Contracting Party to the Convention is not required to be (or become) a Member of the HCCH. Not all Members of the HCCH have joined the Convention.[4]

Model Form

The Model Form is annexed to the 1965 Service Convention and is comprised of three Parts: (1) the Request for Service; (2) the Certificate; and (3) the Summary, preceded by a Warning. Completion of the Model Form is mandatory if and when the main channel of transmission is used, and completion of Parts 2 and 3 of the Model Form is also recommended for the alternative channels of transmission.

National Organ (or Contact Organ)

An authority designated by a Member of the HCCH under Article 7 of the HCCH's Statute, primarily for the purpose of correspondence with the Permanent Bureau. National Organs are designated by Member States, and Contact Organs are designated by Member Organisations (which are Regional Economic Integration Organisations). In practice, National and Contact Organs are responsible for coordinating participation in the work of the HCCH on behalf of the Members they represent, and overseeing activities in relation to promotion, implementation, and operation of HCCH Conventions and Instruments.

Non-mandatory character

A term used to describe the nature and applicability of the 1965 Service Convention. The Convention will only apply when there is occasion to transmit a document for service abroad. It is generally accepted that a party seeking to serve a document will need to ascertain, as a first step and in accordance with the law of the State of origin, whether or not the document has to be transmitted for service abroad. In this way, the Convention can be described as non-mandatory (that is, it will only apply if it is determined under the internal law of the forum that there is occasion to transmit a document for service abroad). This approach has been expressly accepted by the Special Commission. If it is determined under the internal law of the forum that a document has to be transmitted for service abroad, the Convention will apply between Contracting Parties. In this way, the Convention is described as exclusive in character (*i.e.*, one of the methods of transmission under the Convention must be used).

Permanent Bureau (PB)

The secretariat of the HCCH. Among its responsibilities, the Permanent Bureau monitors the promotion, implementation, and operation of the 1965 Service Convention, as it does for all HCCH Conventions and Instruments. This includes supporting Members and Contracting Parties, as well as organising meetings of the Special Commission.

[4] For an updated list of Members of the HCCH, see the HCCH website under Members & Parties. For an updated list of Contracting Parties to the 1965 Service Convention, see the status table.

Postal channels

An alternative channel of transmission which permits the sending of judicial documents by postal channels directly to persons abroad.

Questionnaires

The Permanent Bureau prepares and circulates Questionnaires to Contracting Parties (as well as some non-Contracting Parties). These Questionnaires are generally circulated in preparation for meetings of the Special Commission on the operation of various HCCH Conventions, and at times, for other purposes. The purpose of Questionnaires is to collect data and information from Contracting Parties to ascertain how, from a practical perspective, the Conventions are operating. Relevantly for the 1965 Service Convention, the Permanent Bureau has circulated Questionnaires in July 2003, in preparation for the 2004 Special Commission meeting; in July 2008, in preparation for the 2009 Special Commission meeting; in November 2013, in preparation for the 2014 Special Commission meeting; in 2019, regarding the use of information technology, and in December 2022, in preparation for the 2024 Special Commission meeting. These Questionnaires, as well as a synopsis of responses, are available on the Service Section of the HCCH website.

Ratification

An international act whereby a State establishes its consent to be bound by a treaty, such as the 1965 Service Convention (see Art. 2 of the *Vienna Convention of 23 May 1969 on the Law of Treaties*).

In the case of the 1965 Service Convention, only States that were represented at the Tenth Session of the HCCH (*i.e.*, the meeting that adopted the final text of the instrument in 1964) could sign and ratify the Convention. Those States were: Austria, Belgium, Denmark, Germany, Finland, France, Greece, Ireland, Israel, Italy, Japan, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Türkiye, former United Arab Republic, United Kingdom, United States of America, and former Yugoslavia. All of these States have become Contracting Parties to the Convention, and any other State wishing to become a Contracting Party to the Convention must now do so by *accession*.

Receiving authority

See the term Central Authority. Contracting Parties may also designate additional authorities to receive requests for service under Article 18(1). However, in all cases the applicant shall have the right to send the request directly to the Central Authority (Art 18(2)).

Request for service

A document which forms part of the Model Form. This document is used by the forwarding authority to request the Central Authority of the Requested State to effect service of a judicial or extrajudicial document on the addressee. The request for service is referred to as Part 1 of the Model Form and is available to view in Annex 6 (Guidelines for completing the Model Form).[5]

Requested State

For the purposes of the 1965 Service Convention, the State to which a request for service is, or will be, addressed.

5 For more information, see paras 193-196 and Annex 6: Guidelines for completing the Model Form.

Requesting authority

A term used in the Model Form annexed to the 1965 Service Convention to refer to the forwarding authority. For ease of reference, throughout this Handbook the term "forwarding authority" will be used instead of the term "requesting authority" (see forwarding authority).

Requesting State

For the purposes of the 1965 Service Convention, the State from which a request for service is, or will be, issued.

Service

For a discussion of the term service, see paras 93 *et seq*.

Service section

A section of the website of the HCCH dedicated to the 1965 Service Convention. The Service Section can be accessed via a link on the home page of the HCCH website at www.hcch.net.

Special Commission (SC)

A Special Commission (SC) is a body established under Article 8 of the HCCH Statute and convened by announcement of the Secretary General to develop and negotiate new HCCH Conventions (or other instruments) or to review the practical operation of existing HCCH Conventions. In this Handbook, Special Commission refers to the Special Commission that meets periodically to review the practical operation of the 1965 Service Convention.

State of destination

When using the alternative channels of transmission, the State of destination refers to the State where service is, or will be, effected.

State of origin

When using the alternative channels of transmission, the State of origin refers to the State in which proceedings are commenced and from where the document to be served originates.

Status table

A list of Contracting Parties that is maintained by the Permanent Bureau based on information received from the depositary. The status table includes important information relating to each Contracting Party, including:

- the date of entry into force of the Convention for that Party;
- the method by which it joined the Convention (*e.g.*, signature / ratification, accession or succession);
- any extensions of application of the Convention;
- the authorities it has designated under the Convention; and
- any reservations, notifications or other declarations a State has made under the Convention.

Summary of the document to be served (or Summary)

A document which forms part of the Model Form. The Summary provides the addressee with essential information about the parties and the document to be served (*e.g.*, nature and purpose of the document, date and place for entering appearance and any relevant time-limits). The Summary, which includes a Warning, comprise Part 3 of the Model Form in Annex 6 (Guidelines for completing the Model Form).

Warning

A document forming part of the Model Form which explains the nature of the document to be served and informs of the availability of legal aid or advice in the Requesting State or State of origin. The Summary, and the Warning, are referred to as Part 3 of the Model Form in Annex 6 (Guidelines for completing the Model Form).

Writ of summons

A judicial document directing a person to appear in court to answer a complaint.

Frequently Asked Questions

This section is intended more particularly for persons wishing to obtain practical and speedy replies to the various questions that may arise in connection with application of the 1965 Service Convention. This is merely a succinct outline of the Convention's main provisions. Accordingly, readers are invited to consult the main part of the Handbook to which this section refers for further details (see also the Explanatory Charts following the FAQ). The most frequently asked questions in practice are:

I. Purpose and application of the Convention

1. *What is the purpose of the Convention?*
2. *Which States are Parties to the Convention?*
3. *When does the Convention apply?*

II. The channels of transmission of documents

4. *What are the channels of transmission provided for under the Convention?*
5. *Is there a hierarchy or otherwise an order of importance or difference in quality among the channels of transmission?*
6. *May channels of transmission other than those provided for under the Convention be used?*

A) The main channel of transmission

7. *What is the main channel of transmission?*
8. *Who may send the request for service?*
9. *To which Central Authority is the request for service to be addressed?*
10. *What should the request for service include and how is it to be transmitted to the Central Authority?*
11. *What is the Model Form?*
12. *Is use of the Model Form mandatory?*
13. *Who should complete the Model Form?*
14. *What formalities apply to the documents to be served?*
15. *Should the documents to be served be translated into (one of) the official language(s) of the Requested State?*
16. *What is the time for execution of the request?*
17. *How is the request for service executed?*
18. *What happens if the addressee refuses informal delivery of the document?*
19. *May the Central Authority refuse compliance with the request for service?*
20. *Is the forwarding authority informed of the proper execution or failure of execution of the request for service?*
21. *May the Central Authority require the reimbursement of costs connected with execution of the request?*

B) Alternative channels of transmission

22. *What are the alternative channels of transmission?*
23. *Should the Model Form annexed to the Convention also be used for the alternative channels of transmission?*
24. *Should the documents to be served be translated into (one of) the official language(s) of the State of destination?*

25. *What are consular or diplomatic channels?*

26. *May the documents to be served be sent directly to the addressee through postal channels?*

27. *What is direct communication to a judicial officer, official or other competent person?*

III. Protection of the plaintiff's and defendant's interests

28. *What substantive protection does the Convention provide for the defendant?*

A) Stay of entry of judgment (Art. 15)

29. *In what circumstances does the protection provided for under Article 15 (stay of entry of judgment) apply?*

30. *What are the conditions requiring a judge to stay entry of judgment?*

31. *Are there exceptions from the duty to stay entry of judgment?*

32. *May the judge order provisional or protective measures despite the duty to stay entry of judgment?*

B) Relief from expiry of the time for appeal (Art. 16)

33. *In what circumstances does Article 16 relating to relief from expiry of the time for appeal apply?*

34. *When does a judge have the power to relieve the defendant from the effects of the expiration of the time for appeal from the judgment?*

35. *Does the protection of the defendant provided for under Articles 15 and 16 apply regardless of the method of transmission?*

IV. Relationship with other Treaties, Regional Instruments, Internal law

36. *Are there other HCCH Conventions governing the transmission of documents for service?*

37. *Are there other international or regional instruments governing the transmission of documents for service? What are the relationships between these instruments and the 1965 Service Convention?*

38. *What is the relationship between the 1965 Service Convention and the internal law of Contracting Parties?*

I. Purpose and application of the Convention

1. What is the purpose of the Convention?

The Convention provides for the channels of transmission to be used when a judicial or extrajudicial document is to be transmitted from one Contracting Party to the Convention to another Contracting Party, for service in the latter. The terms used for "service" in the French text of the Convention are "*signifié ou notifié*" (Art. 1(1)). Unless stated otherwise, the French version of this Handbook uses the term "notification" for "service"; for further details on this issue, see paragraph 97.

The Convention deals primarily with the transmission of documents from one Contracting Party to another Contracting Party; the Convention does not address or comprise substantive rules relating to the actual service of process. However, there are two channels of transmission provided for by the Convention where the transmission includes service of process upon the ultimate addressee: the direct diplomatic or consular channels (see question 25) and the postal channel (see question 26). For all the other channels of transmission provided for by the Convention an additional step, not governed by the Convention, is required to serve process on the ultimate addressee (this step typically involves the Central Authority of the Requested State or a judicial officer, official or other competent person or authority of the State of destination, see question 4). Furthermore, the Convention contains two important provisions of substantive nature that protect the defendant. These operate prior to a judgment by default (Art. 15) and after a judgment by default (Art. 16). For further details on the purpose and nature of the Convention, see [para. 1 *et seq.*; on Articles 15 and 16, see questions 28 to 35].

2. Which States are Parties to the Convention?

A comprehensive and updated list of the Contracting Parties of the Convention is available on the Service Section of the HCCH website.

3. When does the Convention apply?

For the Convention to be applicable, the following requirements must be met:

1) A document is to be transmitted from one Contracting Party to the Convention to another Contracting Party for service in the latter (as regards the term "service", see paras 93 *et seq.*). The law of the State of origin (forum law) determines whether or not a document has to be transmitted abroad for service in the other State (the Convention is "non-mandatory", see paras 52 *et seq.*);

2) An address for the person to be served is known (where no address for the person to be served is known (see para. 155);

3) The document to be served is a judicial or extrajudicial document (see paras 120 *et seq*);

4) The document to be served relates to a civil and / or commercial matter (see paras 134 *et seq*).

If all these requirements are met, the transmission channels provided for under the Convention must be applied (the Convention is "exclusive", (see para. 91), except in the case of a derogatory channel (see para. 398).

II. The channels of transmission of documents

4. What are the channels of transmission provided for under the Convention?

The Convention establishes one main channel of transmission (see questions 7 to 21), and provides for several alternative channels of transmission (see questions 22 to 27). See Explanatory Charts following the FAQ.

5. Is there a hierarchy or otherwise an order of importance or difference in quality among the channels of transmission?

No. There is neither a hierarchy nor any order of importance among the channels of transmission, and transmission through one of the alternative channels does not lead to service of lesser quality. It is up to the party, judicial officer, the competent authority, or persons seeking to effect service to determine which mode of transmission it wants to use and which channels are available to use in a particular case (this choice is subject to the conditions imposed by the Convention, in particular the absence of objection by the State of destination in the case of some of the alternative channels of transmission). Thus, the alternative channels should not be regarded as "subsidiary" to the main channel (see para. 324).

6. May channels of transmission other than those provided for under the Convention be used?

Yes. Contracting Parties may provide for channels of transmission other than those provided for under the Convention (derogatory channels). There are two types of derogatory channels: those provided in bilateral or multilateral agreements concluded among Contracting Parties (Arts 11, 24 and 25; see para. 440 *et seq.* and 445 *et seq.*), and those provided by the domestic law of the State of destination (Art. 19; see paras 456-458).

A) The main channel of transmission

7. What is the main channel of transmission?

Under the main channel of transmission established by the Convention, the authority or judicial officer competent under the law of the Requesting State (State where the document to be served originates – see question 8) transmits the document to be served to a Central Authority of the Requested State (State where the service is to occur – see questions 9 and 17). For further details on the main channel of transmission, including electronic transmission see question 10, paragraphs 178 *et seq.*; see also the Explanatory Chart following the FAQ.

8. Who may send the request for service?

The Convention specifies that the forwarding authority must be an authority or judicial officer of the Requesting State. It is that State's law which determines which authorities or judicial officers are competent to forward the request for service. Thus, in certain countries, attorneys, solicitors or private process servers are authorised to send such a request. Under the Convention, private persons are not entitled to send a request for service directly to the Central Authority of the Requested State. For further details, see paragraphs 180 *et seq.*

9. To which Central Authority is the request for service to be addressed?

The request for service should be addressed to the Central Authority of the Requested State. Pursuant to Article 18(3), a federal State may designate more than one Central Authority. Also, under Article 18(1), a Contracting Party may designate "other" authorities, in addition to the Central Authority, and shall determine the extent of their competence. However, it should be noted that the applicant shall, in all cases, have the right to address a request directly to the Central Authority (Art 18(2)).

A comprehensive and updated list of Central Authorities and "other" authorities, designated by each Contracting Party under Articles 2 and 18, is available on the Service Section of the HCCH website.

10. What should the request for service include and how is it to be transmitted to the Central Authority?

The request for service transmitted to the Central Authority must:

1) comply with the Model Form annexed to the Convention (see questions 11 to 13); and

2) be accompanied by the documents to be served (the list of documents to be served is to be determined according to the law of the Requesting State; regarding formalities connected with the documents to be served, see question 14).

The Convention does not specify the method for sending the request to the Central Authority. Postal channels are commonly used (ordinary mail, registered mail with acknowledgment of receipt, express mail, private courier service, etc.). However, electronic transmission, where it can be used, is strongly encouraged. Electronic transmission is especially relevant when the document to be served is electronic, and / or when the service will be effected electronically. Certain Central Authorities do accept receipt of requests by fax, e-mail, and secure online platform. To determine what method can be used, it is advisable to consult the relevant information available in the Country Profile in the first instance. If there is still doubt, forwarding authorities are encouraged to contact the relevant Central Authority to determine in advance the methods for transmission of requests that it accepts. For further details, see paragraphs 211 and 212.

11. What is the Model Form?

In its Annex, the Convention provides a Model Form (reproduced in Annex 3 of this Handbook at pp. 171 *et seq.*; see comments in paras 188 *et seq.* and Annex 6, "Guidelines for completing the Model Form"). The Model Form consists of three parts: a Request for service (which is sent to the Central Authority of the Requested State), a Certificate (which is reproduced on the reverse side of the Request and which confirms whether or not the documents have been served), and a form entitled Summary of the document to be served (to be delivered to the addressee).

In addition, the Fourteenth Session of the HCCH recommended that the Summary be preceded by a Warning relating to the legal nature, purpose and effects of the document to be served (the Warning is reproduced in Annex 3 at pp. 171 *et seq.*).

12. Is use of the Model Form mandatory?

The Model Form is mandatory when the main channel of transmission is used (see para. 192). However, the Fourteenth Session of the HCCH also recommended that the part of the Model Form containing the Summary, accompanied by the Warning (see Annex 6 at pp. 184 *et seq.*), be used in all cases when a judicial or extrajudicial document in civil or commercial matters is to be served abroad, *i.e.*, not only for transmission through the main channel of the Central Authority, but also for transmission through the alternative channels provided for under the Convention. In practice, some Contracting Parties, as the State of destination, use the Certificate to inform the forwarding authority of whether the documents have been served, even if transmission of the request has been executed through the alternative channels provided for in Article 10(b) and (c).

13. Who should complete the Model Form?

The Request for service is to be completed and signed or stamped by the forwarding authority. The Certificate (which confirms whether or not the request for service has been executed) must be completed and signed or stamped either by the Central Authority of the Requested State or any other competent authority that the Requested State has designated for that purpose. This completed Certificate is then sent back to the forwarding authority directly. If the Certificate is not completed by the Central Authority or a judicial authority (*e.g.*, if it is completed by a *huissier de justice*), the forwarding authority may require that the Certificate be countersigned by one of these authorities (Art. 6(3)). The Summary of the document to be served is to be completed by the forwarding authority and delivered to the addressee with the documents to be served. The Summary should also be accompanied by the Warning (regarding the manner in which the Model Form is to be filled in, see paragraphs 188 *et seq.* and the instructions drafted by Mr Möller, reproduced in Annex 5, pp. 178 *et seq.*).

14. What formalities apply to the documents to be served?

Under Article 3(1) of the Convention, the request does not require legalisation or other equivalent formalities (*e.g.*, an Apostille under the 1961 Apostille Convention). This exemption equally applies to the documents to be served. The documents to be served and the Request are to be forwarded in duplicate. However, when the transmission is carried out by electronic means, the requirement of a copy or duplicate will be satisfied by sending a single message because the documents can be copied and printed out as necessary. They need not be originals. However, the law of a Requesting State may specify certain requirements regarding documents to be served. Regarding practices inconsistent with Article 3, see paragraph 209. Regarding translation of the documents to be served, see question 15.

15. Should the documents to be served be translated into (one of) the official language(s) of the Requested State?

Under Article 5(3), the Central Authority of the Requested State may request a translation (including a certified translation) of the documents to be served if they are to be served by a method prescribed by the internal law of the Requested State for the service of documents in domestic actions upon persons who are within its territory (Art. 5(1)(a)), or if service by a particular method is requested by the forwarding authority (Art. 5(1)(b)). For further details, see paragraphs 252 *et seq.*

In order to avoid undue delay connected with a return of the request for service by the Central Authority on the grounds of a missing translation, it is preferable to check the Service Section of the HCCH website, before sending the request, to determine whether or not the Requested State has made a general declaration in this respect. If information is not available, it may be prudent to consult the Country Profile and, if necessary, approach the Central Authority of the Requested State to make further enquiries.

Where translation is required, for States with several official languages, it is essential to consider the prevalent language of the region in question. In this regard, forwarding authorities are encouraged to consult the Country Profile and, if necessary, contact the Central Authority in order to verify language requirements and ensure that the translation is done in the correct language.

16. What is the time for execution of the request?

The Convention does not include time limits for the execution of a request. For comments on the time for execution in practice and the principle of speedy procedures, see paragraphs 279 *et seq.*; on the date of service in particular, see paragraphs 287-292 *et seq.*

Also, under Article 15(1), if the defendant does not appear and the service has not been performed in due time to enable the defendant to defend, the judge may be compelled to stay entry of judgment (see paras 401 *et seq.*).

17. How is the request for service executed?

The Central Authority in the Requested State will execute the request for service or cause it to be executed either:

1) by a method provided for under the law of the Requested State (formal service – see paras 237 *et seq.*); or

2) by a particular method requested by the applicant (*i.e.*, the forwarding authority), unless it is incompatible with the law of the Requested State (see paras 241 *et seq.*); or

3) by informal delivery to the addressee who accepts it voluntarily (see paras 245 *et seq.*).

The Request for service (Model Form) provides options for the methods of service. The forwarding authority should indicate a method by which service is to be executed in the Request for certainty and efficiency. If there is no indication, the Central Authority will have discretion to choose.

18. What happens if the addressee refuses informal delivery of the document?

The Central Authority may attempt formal service and subsequently return the Certificate (contained in the Model Form) to the forwarding authority, specifying the reasons for failure to execute the request (for further details, see paras 248 *et seq.*).

19. May the Central Authority refuse to execute the request for service?

The Convention provides for two situations in which the Central Authority may refuse execution of the request: temporary refusal if the Central Authority considers that the request does not meet the formal and substantive requirements of the Convention (Art. 4); and final refusal if the Central Authority considers that execution of the service would infringe the sovereignty or security of the Requested State (Art. 13). For further details, see paragraphs 306 *et seq.*

20. Is the forwarding authority informed of the proper execution or failure of execution of the request for service?

In all cases, the Certificate of service, in the form of the Model annexed to the Convention (see Annex 2 at pp. 167 *et seq.*), is returned to the forwarding authority by the Central Authority or any other authority designated for such purpose by the Requested State (Art. 6). If it has been possible to execute the request, the effect of the Certificate is a presumption that the service was valid; if it has not been possible to execute the request, the Central Authority or other competent authority must mention in the Certificate the grounds for failure to execute. For further details, see paragraphs 197, 198 and 293 *et seq.*

21. May the Central Authority require the reimbursement of costs connected with execution of the request?

A Contracting Party shall not charge for its services rendered under the Convention (Art. 12(1)). Thus, the services rendered by the Central Authority shall not give rise to any payment or reimbursement of costs. Under Article 12(2), however, a forwarding authority shall pay or reimburse costs occasioned by the employment of a judicial officer or other competent person or by the use of a particular method of service. A Central Authority may request that such costs be paid in advance. Against this background, forwarding authorities are advised to check the relevant Country Profile prior to sending the request for service in order to avoid any undue delay in execution of the request connected with the absence of an accompanying payment. For further details, see paragraphs 270 *et seq.*

B) Alternative channels of transmission

22. What are the alternative channels of transmission?

The alternative channels of transmission are:

- consular or diplomatic channels (direct and indirect) (Arts 8(1) and 9 – see questions 23 to 25);
- postal channels (Art. 10(a) – see questions 23, 24 and 26);
- direct communication between judicial officers, officials or other competent persons of the State of origin and the State of destination (Art. 10(b) – see questions 23, 24 and 27); and
- direct communication between an interested party and judicial officers, officials or other competent persons of the State of destination (Art. 10(c) – see questions 23, 24 and 27).

For further details on the alternative channels of transmission, see paragraphs 324 *et seq.*; see also Explanatory Chart 2 following the FAQ.

Caution: Before using an alternative channel of transmission, it should be ascertained that the State of destination has not objected to it. Declarations of objection, if any, made by Contracting Parties are

available on the Service Section of the HCCH website. On the question of whether an objection has a reciprocal effect, see paragraphs 333 *et seq.*

Additionally, failure of the State of destination to object to a particular alternative channel of transmission under Article 10 should not be imputed to mean that the State of destination will regard the resulting service to be sufficient for later enforcement of judgment in that State (for further details, see para. 379).

23. Should the Model Form annexed to the Convention also be used for the alternative channels of transmission?

The Model Form was originally designed for use under the main channel of transmission (see question 12). However, at the Fourteenth Session of the HCCH, it was recommended that the part of the form containing the Summary, accompanied by the Warning (see Annex 6 at pp. 184 *et seq.*), be used in all cases when a judicial or extrajudicial document in civil or commercial matters is to be served abroad, *i.e.*, not only for transmission through the main channel of the Central Authority, but also for transmission through the alternative channels provided for under the Convention. In practice, some Contracting Parties, as the State of destination, use the Certificate to inform the forwarding authority of whether the documents have been served, even if transmission of the request has been executed through the alternative channels provided for in Article 10(b) and (c).

24. Should the documents to be served be translated into (one of) the official language(s) of the State of destination?

The alternative channels of transmission do not, in principle, require a translation of the documents to be served under the Convention. However, there are inconsistent practices among Contracting Parties (see paras 371 *et seq.*). In addition, some Contracting Parties have made qualified objections or declarations to require a translation of the documents to be served under the Convention. For further details, see paragraph 267. Moreover, recognition and enforcement of a foreign decision may be refused when the documents served have not been translated.

25. What are consular or diplomatic channels?

These are channels of transmission whereby the request for service is forwarded by the Ministry of Foreign Affairs of the State of origin (forwarding authority) to the consul or diplomat representing the State of origin within the State of destination. Depending on the case, the latter will execute the request for service personally (direct channels) or will be required to forward it for execution to a competent authority of the State of destination (indirect channels). For further details, see paragraphs 341 *et seq.*

26. May the documents to be served be sent directly to the addressee through postal channels?

Under Article 10(a), judicial documents may be served by sending them directly to the addressee abroad through postal channels. Forwarding authorities should have regard to the following considerations prior to opting for service through postal channels:

1) whether the conditions set by the law of the State of origin (*lex fori*) for valid service by mail are met; and

2) whether the State of destination has objected to this channel of transmission (the table of declarations of objection made under Article 10(a) should be consulted on the Service Section of the HCCH website).

There is no doubt that the reference to postal channels includes the sending of letters by ordinary mail, registered post and registered post with acknowledgment of receipt. There is also an increased tendency by users of the Convention to engage private couriers under “postal channels”. In addition, due to the technological neutrality of the Convention, "postal channels" could be construed as including service by e-mail to the extent that documents are sent by postal agencies. (However, Contracting Parties have divergent views on this topic.)

For a more detailed analysis of service by mail, see paragraphs 361 *et seq.*

27. What is direct communication to a judicial officer, official or other competent person?

This is a channel of transmission whereby any person interested in the proceedings, including parties (Art. 10(c)) or any judicial officer, official or other competent person in the State of origin (Art. 10(b)) may directly approach a judicial officer, official or other competent person in the State of destination to serve the documents. This latter method allows, in particular, the transmission of documents to be served by a *huissier de justice* to another *huissier de justice*. A Contracting Party may object to the use of these channels of transmission (the declarations of objection made by Contracting Parties can be accessed on the Service Section of the HCCH website). For further details regarding this channel of transmission, see paragraphs 387 *et seq.*

III. Protection of the plaintiff's and defendant's interests

28. What substantive protection does the Convention provide for the defendant?

The Convention contains two key provisions which protect the defendant *prior* to a judgment by default (Art. 15) and after a judgment by default (Art. 16). Articles 15 and 16 require the judge to stay entry of judgment (Art. 15 – see questions 29 to 32) or allow the judge to relieve the defendant from the effects of the expiry of the time for appeal (Art. 16 – see questions 33 to 35), subject to certain requirements. See Explanatory Charts following the FAQ.

A) Stay of entry of judgment (Art. 15)

29. In what circumstances does the protection provided for under Article 15 (stay of entry of judgment) apply?

Article 15(1) applies in cases where a writ of summons or an equivalent document had to be transmitted for service abroad under the provisions of the Convention and the defendant has not appeared. For further details on the stay of entry of judgment, see paragraphs 401 *et seq.*

30. What are the conditions requiring a judge to stay entry of judgment?

Under Article 15(1), judgment shall not be given until it is established that:

1) the document was served in accordance with the law of the Requested State (or, in the case of an alternative channel of transmission, the State of destination) or actually delivered to the defendant or to the defendant's residence by another method provided for by the Convention; and

2) that, in either of these cases, the service or the delivery was effected in sufficient time to enable the defendant to defend.

31. Are there exceptions from the duty to stay entry of judgment?

Yes, the judge may rule by default, notwithstanding the fact that the requirements under the foregoing question are met, but only if:

1) the Contracting Party has made a declaration in this regard (see the table of declarations made under Art. 15(2) on the Service Section of the HCCH website);

2) the document was transmitted by one of the methods provided for in the Convention;

3) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the Requested State (or, in the case of an alternative channel of transmission, the State of destination); and

4) a period of time considered adequate by the judge, but of not less than six months, has elapsed since the date of transmission of the document (Art. 15(2)).

These conditions are to be satisfied concurrently.

32. May the judge order provisional or protective measures despite the duty to stay entry of judgment?

Yes, in cases of urgency, the judge may order provisional or protective measures (Art. 15(3) – see para. 422).

B) Relief from expiry of the time for appeal (Art. 16)

33. In what circumstances does Article 16 relating to relief from expiry of the time for appeal apply?

Article 16 applies when the defendant has not appeared, a decision not relating to personal status or capacity has been entered by default, and the time for appeal has expired. For further details on relief from expiry of the time for appeal, see paragraphs 423 *et seq.*

34. When does a judge have the power to relieve the defendant from the effects of the expiration of the time for appeal from the judgment?

A judge may relieve the defendant from the effects of the expiration of the time for appeal from the judgment if (Art. 16):

1) the defendant, without any fault on his or her part did not have knowledge of the document in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal (Art, 16(1)(a));

2) the defendant has disclosed a *prima facie* defence to the action on the merits (Art, 16(1)(b)); and

3) the defendant files the application for relief within a reasonable time after the defendant has knowledge of the judgment (Art. 16(2)) or within the time determined by the Contracting Party in its declaration to the depositary to this effect (however, in such a case this timeframe shall not be less than one year following the date of judgment) (Art. 16(3)). A list of declarations and a table recapitulating the declarations made by each Contracting Party are available on the Service Section of the HCCH website.

These conditions are to be satisfied concurrently.

35. Does the protection of the defendant provided for under Articles 15 and 16 apply regardless of the method of transmission?

These two provisions apply irrespective of which channel of transmission provided for by the Convention is used (*i.e.*, the main channel or any of the alternative channels of transmission).

IV. Relationship with other Treaties, Regional Instruments, Internal law

36. Are there other HCCH Conventions governing the transmission of documents for service?

Yes. Prior to the adoption of the 1965 Service Convention, there were two pre-existing HCCH Conventions governing matters including the transmission of documents for service: the 1905 Civil Procedure Convention and the 1954 Civil Procedure Convention.

Given all Contracting Parties to the 1905 Civil Procedure Convention have acceded to either the 1954 Civil Procedure Convention or the 1965 Service Convention, the 1905 Civil Procedure Convention is no longer applicable between its Contracting Parties.[1]

[1] With the accession of Iceland to both the 1954 Civil Procedure Convention and 1965 Service Convention in 2008, the 1905 Civil Procedure Convention is no longer applicable between its Contracting Parties.

Most Contracting Parties to the 1954 Civil Procedure Convention have also ratified or acceded to the 1965 Service Convention. However, a limited number of Contracting Parties to the 1954 Civil Procedure Convention have not ratified or acceded to the 1965 Service Convention.[2]

If supplementary agreements to the 1905 and / or the 1954 Civil Procedure Convention have been concluded by States that are also Party to the 1965 Service Convention, these agreements must be considered applicable to the Convention, unless the States have determined otherwise (Art. 24 of the Convention; see paras 441 *et seq*).

For further details and a regular update of the status of the 1905, 1954 and 1965 Conventions, see the Conventions and other Instruments Section of the HCCH website.

37. Are there other international or regional instruments governing the transmission of documents for service? What are the relationships between these instruments and the 1965 Service Convention?

Yes. There are other international or regional instruments governing the transmission of documents, such as the *Inter-American Convention on Letters Rogatory*, the *Minsk Convention on Legal Aid and Legal Relations in Civil, Family and Criminal Cases*, the 2020 *EU Service Regulation*, and the *Las Leñas Protocol on Jurisdictional Cooperation and Assistance in Civil, Commercial Labor, and Administrative Matters*. Unlike the 1965 Service Convention, these instruments only apply in their respective regions, areas and subject matters.

The 1965 Service Convention does not derogate from other international agreements to which States are or will become parties for the purposes of transmitting judicial or extrajudicial documents for service abroad (Art. 25). This means that any mechanisms or transmission channels provided for under such agreements between States may operate exclusively or alternatively with those established under the Convention.

For a general description of these instruments and their relationship with the 1965 Service Convention, (see para. 442 *et seq*).

38. What is the relationship between the 1965 Service Convention and the internal law of Contracting Parties?

The Convention does not prevent the internal law of Contracting Parties from permitting methods of transmission of documents coming from abroad other than those provided for under the Convention (Art. 19).

[2] The 1954 Civil Procedure Convention is still effective in the relations between, the Holy See, Kyrgyzstan, Lebanon, Mongolia, Suriname and Uzbekistan, as well as between these States and other States which are Parties to the 1965 Service Convention but are also still Party to the 1954 Civil Procedure Convention (*e.g.*, the Russian Federation, Switzerland and Macao SAR (China)). This information was current at the time of publication of this Handbook.

Explanatory Charts

Chart 1

Operation of the main channel of transmission

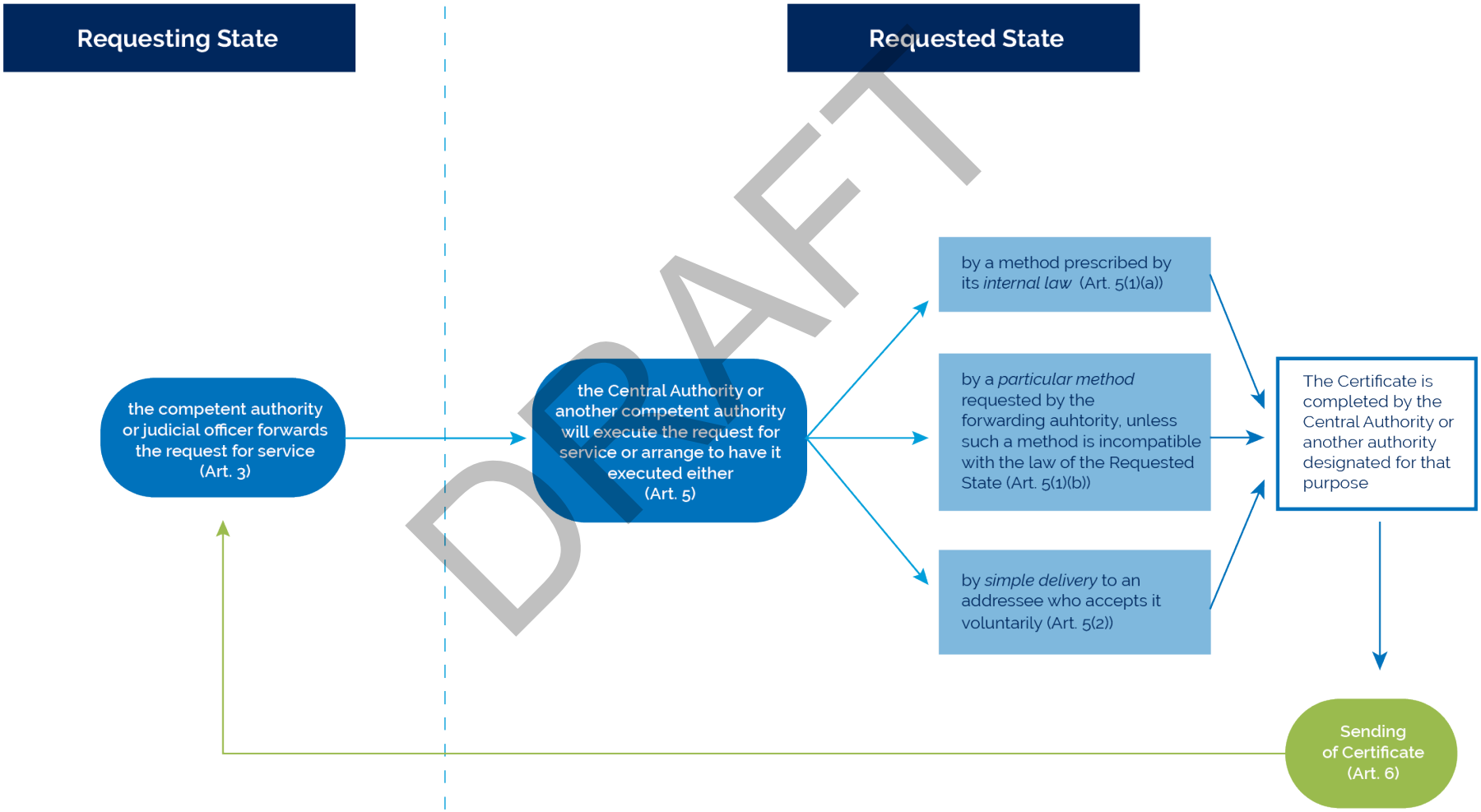


Chart 2

Operation of the alternative and derogatory channels of transmission

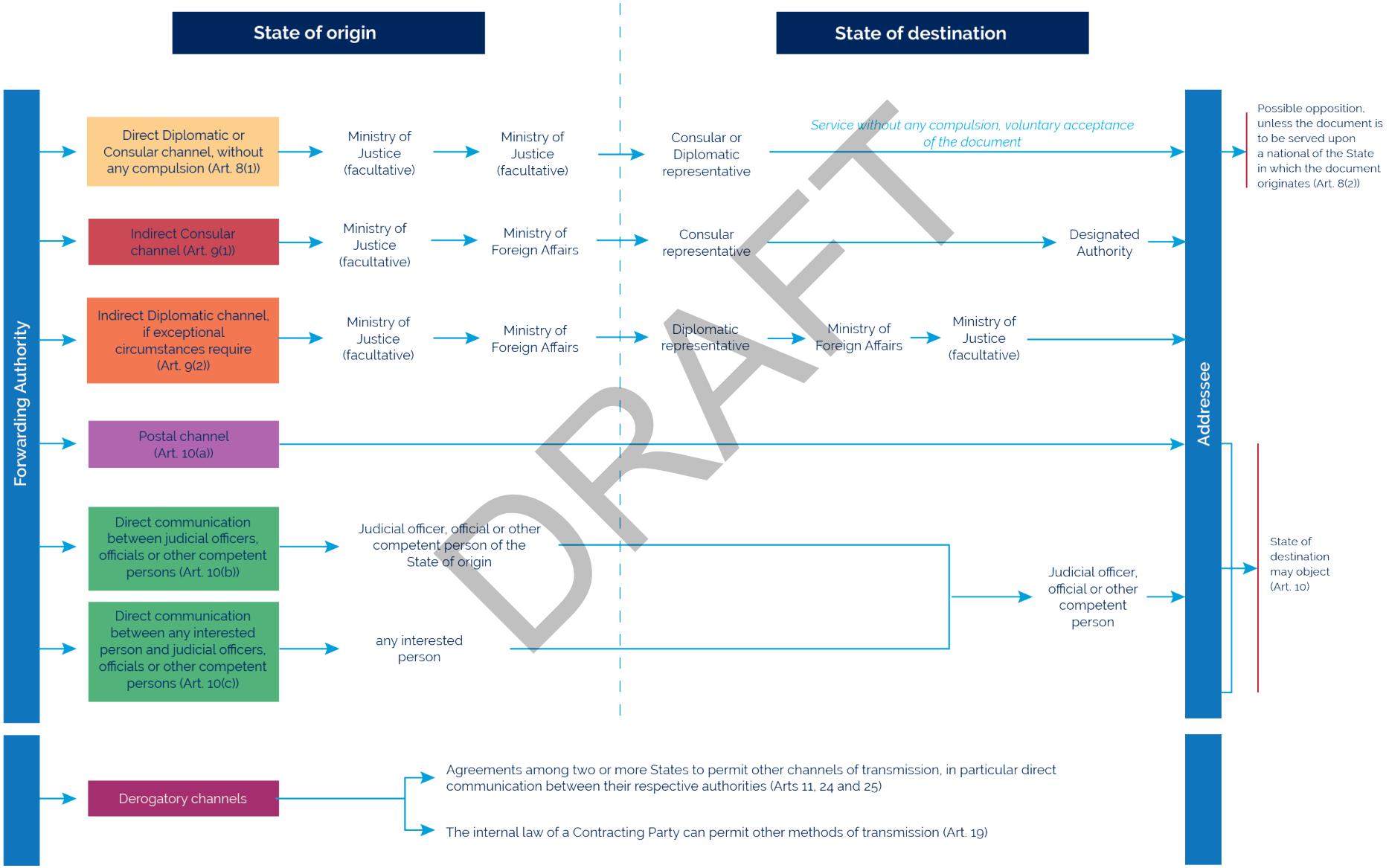


Chart 3

Article 15: protection of defendants prior to a judgment by default

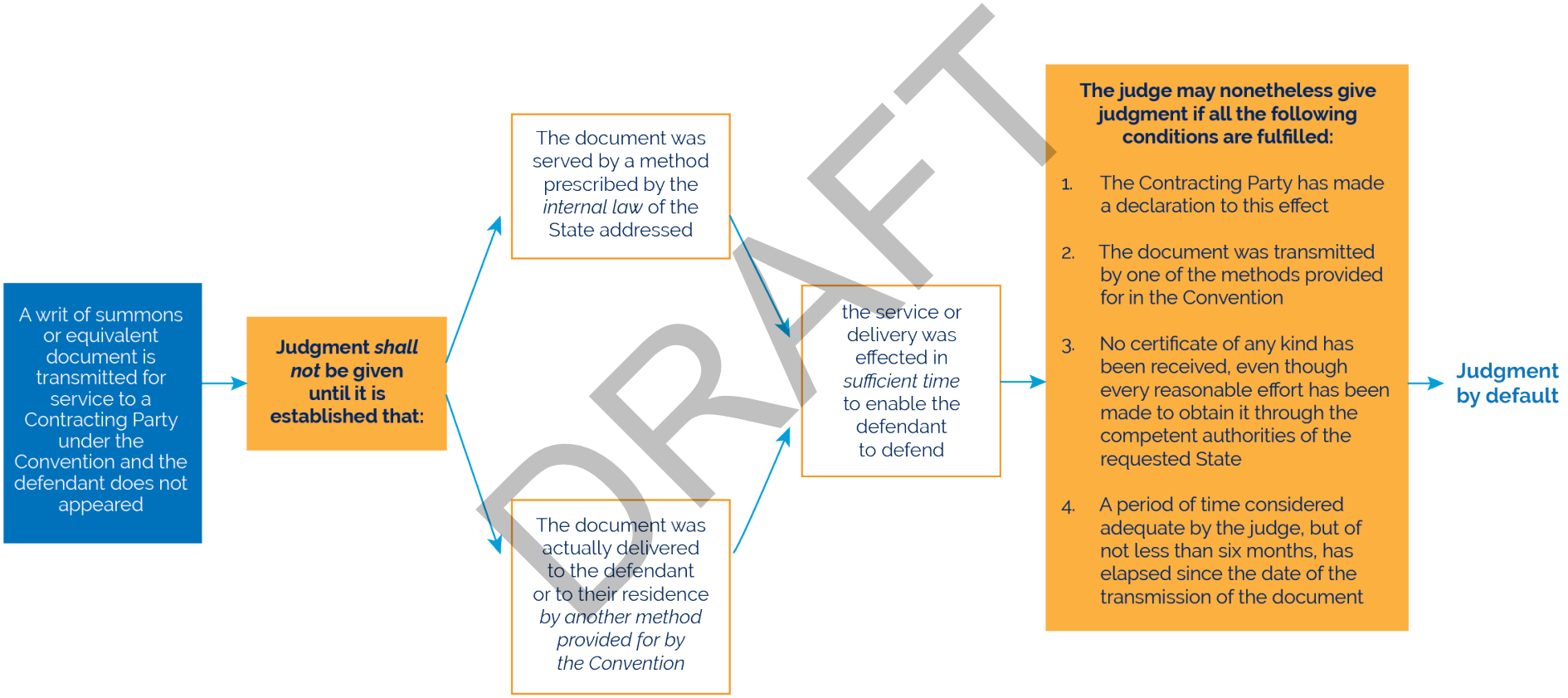
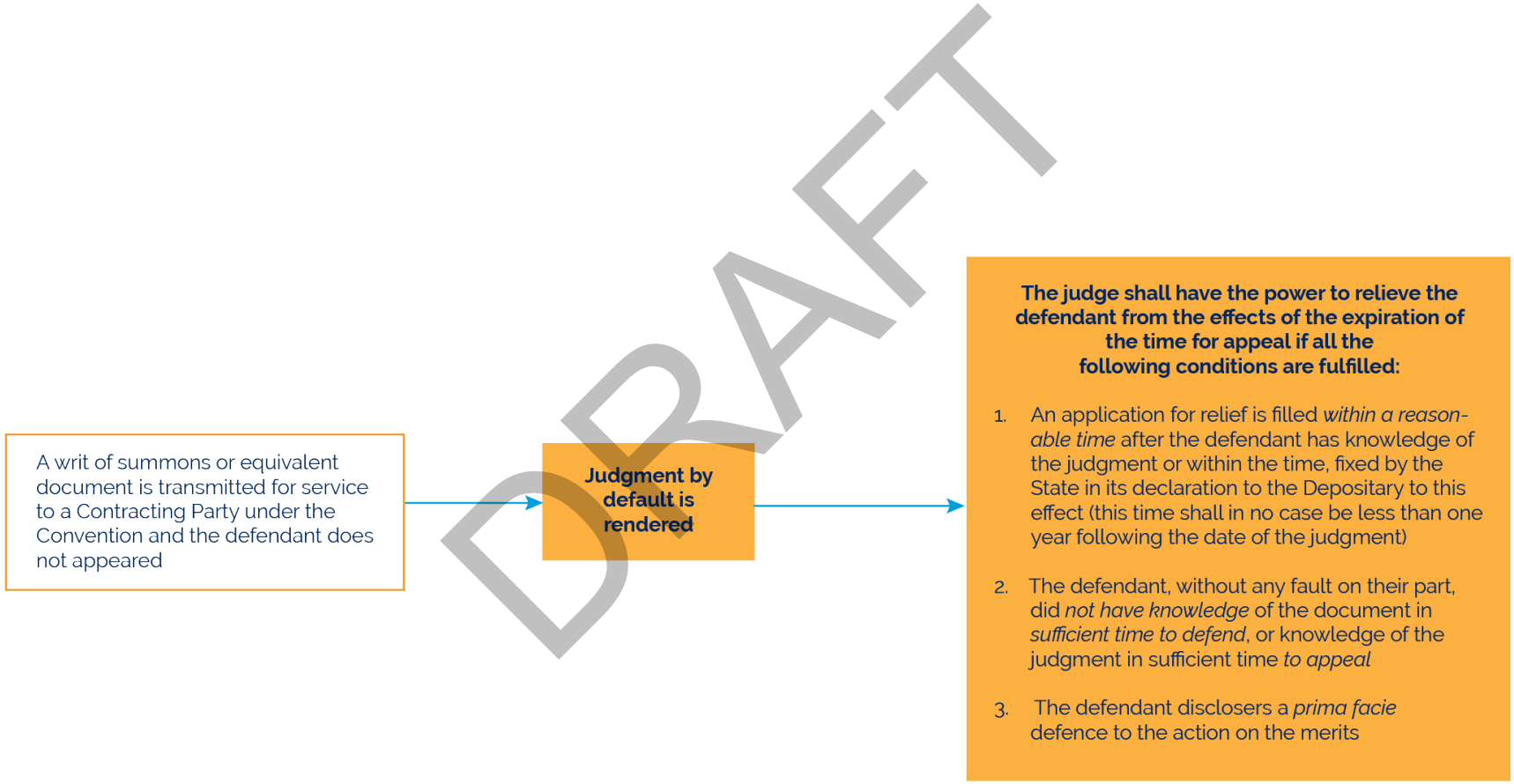


Chart 4

Article 16: protection of defendants after a judgment by default



Part 1 – Nature and Scope of the Convention

I. History, purpose, and monitoring

1. History

1. The final text of the *Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* (1965 Service Convention) was adopted by the Tenth Session of the HCCH.[1] Prior to the conclusion of the Convention, three pre-existing HCCH Conventions addressed matters pertaining to civil procedure, including the transmission of documents for service abroad. These were the *Convention of 14 November 1896 on Civil Procedure* (1896 Civil Procedure Convention), the *Convention of 17 July 1905 on Civil Procedure* (1905 Civil Procedure Convention), and the *Convention of 1 March 1954 on Civil Procedure* (1954 Civil Procedure Convention).[2]

2. In 1960, the International Union of Judicial Officers (UIHJ, taken from the French title of the organisation (*Union internationale des huissiers de justice et officiers judiciaires*)) published a memorandum describing the difficulties encountered in the transmission of documents abroad despite the progress made with the entry into force of the 1896, 1905 and 1954 Civil Procedure Conventions. The two main criticisms of the existing system related to the time-consuming and complex character of transmission through consular or diplomatic channels, and the survival of *notification au parquet*[3] and its detrimental consequences for defendants.[4]

3. Accordingly, at the Ninth Session of the HCCH, work commenced on an instrument relating to the transmission of documents to be served abroad.[5] A new Convention was drafted which was intended not only to be open to new States, but to replace Articles 1 to 7 of the 1905[6] and 1954[7] Civil Procedure Conventions (in relation to the transmission of documents for service abroad) for

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1 See HCCH, *Actes et documents de la Dixième session* (1964), Tome III, *Notification*, The Hague, Imprimerie Nationale, 1965, especially pp. 333 *et seq*. A preliminary draft Convention was adopted by the Special Commission in February 1964; the draft Convention was adopted by the Tenth Session of the HCCH in October 1964; on 15 November 1965, several States signed the Convention, and the final Convention therefore takes this date.

2 The 1896 Civil Procedure Convention was replaced by the 1905 Civil Procedure Convention. The 1905 Civil Procedure Convention has been replaced in relations between the Contracting Parties by the 1954 Civil Procedure Convention.

3 This permits service on a defendant by leaving documents at the public prosecutor's office in the forum State.

4 See paras 7-10. See also HCCH, "Note du Secrétaire général sur un mémoire de l'Union internationale des huissiers de justice et officiers judiciaires relatif à la signification d'actes à l'étranger", Prel. Doc. of September 1960 [in French only], in *Actes et documents de la Neuvième session* (1960), Tome I, *Matières diverses*, The Hague, Imprimerie Nationale, 1961, p. 165.

5 HCCH, "Procès-verbal de la séance plénière du 25 octobre 1960" [in French only], in *Actes et documents de la Neuvième session* (1960) (*ibid.*), p. 177.

6 See HCCH, "Protocole Final" [in French only], in *Actes de la Quatrième Conférence de La Haye pour le droit international privé* (16 mai – 7 juin 1904), The Hague, Van Langenhuysen Frères, 1904, pp. 205 *et seq.*; HCCH, "Propositions relatives à la procédure civile" [in French only], in *Documents relatifs à la Quatrième Conférence de La Haye pour le droit international privé* (*ibid.*), especially pp. 2-33. The 1905 Civil Procedure Convention was itself intended to replace the Convention of 14 November 1896 on Civil Procedure (1896 Civil Procedure Convention) and the additional Protocol of 22 May 1897: see HCCH, "Protocole Final" [in French only], in *Actes de la Deuxième Conférence de La Haye chargée de réglementer diverses matières de droit international privé* (25 juin – 13 juillet 1894), The Hague, Imprimerie Nationale, 1894, pp. 4-6. The text of the 1905 Civil Procedure Convention is available on the HCCH website [in French only].

7 See HCCH, "Projet de Convention relative à la procédure civile" [in French only], in *Actes de la Septième session tenue du 9 au 31 octobre 1951*, Tome I, The Hague, Imprimerie Nationale, 1952, p. 390; see also HCCH, "Projet de Convention relative à la procédure civile" [in French only], in *Documents relatifs à la Septième session tenue du 9 au 31 octobre 1951*, Tome II, The Hague, Imprimerie Nationale, 1952, p. 61. The text of the 1954 Civil Procedure Convention is available on the HCCH website.

any ratifying or acceding States which were Party to one or both of those Conventions.[8] However, the earlier Conventions remain relevant in certain circumstances.[9] For further information about the ongoing application of the earlier Conventions, see Part 4 of this Handbook.

2. Current status of the Convention

4. The 1965 Service Convention is the most important international instrument used for the transmission of documents for service abroad. With Contracting Parties spanning Europe, Asia, the Americas, Africa and Oceania, it is truly a global instrument providing a global framework. The Convention is being used effectively in the digital era and, as the use of information technology by Contracting Parties continues to increase, the ability to securely and swiftly transmit documents for service abroad will continue to increase.

5. The Convention now forms part of a comprehensive suite of HCCH Conventions and Instruments that facilitate and support transnational litigation and associated cross-border civil matters. In addition to the 1965 Service Convention, these Conventions include the 1961 Apostille Convention, the 1970 Evidence Convention, the 1980 Access to Justice Convention, the 2005 Choice of Court Convention, the 2015 Choice of Law Principles, and the 2019 Judgments Convention.[10] States are encouraged to adopt this suite of Conventions to ensure that, for citizens and businesses domestically and across the globe, there is an effective, robust and available framework in place to facilitate the resolution of cross-border civil and commercial matters. Further information about the above-mentioned Conventions can be found on the HCCH website.

6. Pursuant to Article 28 of the 1965 Service Convention, States that were not represented during the negotiations of the Tenth Session of the HCCH may join the Convention by accession.[11] For more information on the process of accession, see Annex 8.

3. Purpose and features

7. The Convention does not modify the substantive rules of service applicable in Contracting Parties, nor does it set the beginning of any notification or other period provided for under national procedural law.[12] The Convention establishes an international system for the transmission of

8 Art. 22 of the 1965 Service Convention. It is true that the French text of this provision only mentions States that have "ratified" the Convention, and not States that have "acceded" to the Convention. There is, however, no doubt that Art. 22 also refers to States which have acceded to the Convention. This interpretation is supported by the English text of Art. 22 which refers in general to the "Parties to the present Convention".

9 For example: where a State has not joined the 1965 Service Convention but is a Contracting Party to the 1954 Convention; for supplementary agreements to earlier Conventions concluded by States; and where a legal aid provision of the earlier Conventions is preserved.

10 Conventions and Instrument the full titles of which are: (i) *Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents*; (ii) *Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters*; (iii) *Convention of 25 October 1980 on International Access to Justice*; (iv) *Convention of 30 June 2005 on Choice of Court Agreements*; (v) *Principles on Choice of Law in International Commercial Contracts*; (vi) *Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters*.

11 The following States were represented at the Tenth Session of the HCCH: Austria, Belgium, Denmark, the Federal Republic of Germany, Finland, France, Greece, Ireland, Israel, Italy, Japan, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Türkiye, the United Arab Republic, the United Kingdom, the United States and the former Yugoslavia, see "Diplomatic Sessions of the Hague Conference on private international law, 1893-1993", in *Proceedings of the Seventeenth Session* (1993), Tome I, Second Part, *Centenary*, The Hague, SDU Publishers, 1995, p. 68.

12 For more information about service, see Rb Rotterdam (Netherlands), *Sturge et al. v. Naatra Rotterdam BV*, 25 March 1992, *NJ* 1993, p. 44; for France, *Milleman v. U Lee Johnson Inc.*, Cass., Ch. Civ. 1, 9 November 1993, Judgment No 1388, which also quite rightly recalls the procedural rules of Art. 15 of the 1965 Service Convention; for Luxembourg, see *Schimpf v. Helaba Luxembourg, Landesbank Hessen-Thueringen International*, CA of Luxembourg, 21 February 2001, No 24191. See also H. Schack, "Transnational Service of Process: A Call for Uniform and Mandatory Rules", (2001) 6 *Unif. L. Rev.*, pp. 827 *et seq*.

documents for service abroad. However, there are two channels of transmission provided for by the Convention where the transmission of process itself may comprise service of process upon the ultimate addressee: the direct diplomatic or consular channels, and the postal channel. For all the other channels of transmission provided for by the Convention an additional step, not governed by the Convention, is required to serve process on the ultimate addressee (this step typically involves the Central Authority of the Requested State or a judicial officer, official or other competent person of the State of destination).

8. The Convention has three key objectives:

   1) to the extent possible, to bring actual notice of the document to be served to the recipient in sufficient time to enable them to defend themselves;

   2) to simplify the method of transmission of documents from the Requesting State to the Requested State; and

   3) to facilitate proof that service has been effected abroad, by means of a Certificate contained in the uniform Model Form which is annexed to the Convention.[13]

9. The first two of the abovementioned objectives are expressly included in the Preamble of the Convention and should be borne in mind when interpreting the Convention.[14]

10. The Convention contains a number of features to achieve these objectives. The key innovation introduced by the Convention, designed to simplify transmission, was the establishment of the main channel of transmission via the system of Central Authorities. Central Authorities were designed to facilitate the streamlined and direct communication of requests between Contracting Parties, without resorting to the lengthy, burdensome, and protracted diplomatic or consular methods of transmission. In fact, while a number of HCCH Conventions also use Central Authorities, the 1965 Service Convention was the first Convention to introduce them.[15]

i. The system of Central Authorities

11. Pursuant to the Convention, Contracting Parties are required to designate a Central Authority which is typically established within an existing government Ministry or within the courts.[16] The Convention provides that Federal States shall be free to designate more than one Central Authority (Art. 18(3)). Contracting Parties may also designate additional authorities in addition to the Central Authority and shall determine their competence (Art. 18(1)). Under the main channel of transmission of the Convention, the Central Authority's function is to receive incoming transmitted documents and either serve them on the addressee or arrange to have them served (see paras 178 *et seq.*). This system of Central Authorities throughout Contracting Parties to the

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13 V. Taborda Ferreira, "Rapport explicatif", in *Actes et documents de la Dixième session* (1964) (*op. cit.* note 1), pp. 363 *et seq*. [translation by the Permanent Bureau] [hereinafter "Explanatory Report"].

14 Art. 31 of the *Vienna Convention of 23 May 1969 on the Law of Treaties* makes use of a traditional public international law principle: see in particular M.N. Shaw, *International Law*, 4th ed., Cambridge, Cambridge University Press, 1997, pp. 655-656.

15 The 1965 Service Convention is the first of the HCCH Conventions to have established a system of Central Authorities. Numerous other HCCH Conventions have since adopted the same system, including the 1970 Evidence Convention, 1980 Access to Justice Convention, 1993 Adoption Convention (*Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*); 1996 Child Protection Convention (*Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children*); 2000 Protection of Adults Convention (*Convention of 13 January 2000 on the International Protection of Adults*); 2007 Child Support Convention (*Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance*).

16 Art. 2 of the Convention.

Convention across the globe has greatly improved the efficient transmission and receipt of documents for service abroad.

12. The Convention also provides several alternative channels of transmission, which have been developed having regard to the special features of different legal systems (*e.g.*, direct communication between *huissiers* or postal channels; see paras 324 *et seq.*).

13. In addition to establishing the main channel of transmission, as well as allowing a range of alternative channels for transmission of documents for service abroad, the Convention also introduced a Model Form which consists of three Parts:

    1) a Request for service (which is sent to the Central Authority of the Requested State);

    2) a Certificate (which is completed by the Central Authority or other competent authority of the Requested State and which confirms whether or not the documents have been served); and

    3) a Summary of the document to be served (to be delivered to the addressee).

14. The Certificate facilitates proof that service has been effected.

ii. Use of the Certificate - a presumption about the performance of service

15. The Certificate can be used to confirm whether the rights of defendants have been protected by properly informing an addressee of the claim. In addition, in the majority of legal systems, where a defendant does not appear or defend their case within certain timeframes, a plaintiff may seek a default judgment. The ability for the plaintiff to do this assumes that the defendant has been properly notified of the claim against them.[17] In this context, the Certificate in the Model Form is relevant.

16. The effect of the Certificate, where it has been possible to execute the request for service, is to provide a presumption that the service was valid and that the document was brought to the addressee's notice in sufficient time to enable the addressee to organise a defence. This Certificate will be tendered as proof of service in proceedings in the State of origin. For more details on the Model Form, see paragraphs 293 *et seq*.

17. However, the Convention does not interfere with national law and does not define the conditions for effective service, including any existing practice of *notification au parquet*, but it does aim to protect a defendant from the potentially detrimental effects of such a system.

⇒ **A note about *notification au parquet***

18. In its original form, *notification au parquet* provides for legally effective service (even in the context of a procedure that is international in nature and where the address abroad of the recipient is known) by mere deposit of the relevant documents with the State attorney in the forum State or by putting up a notice on the notice-board of the court seised.[18] Even when the *notification au parquet* is followed by a transmission of the document (or, depending on the system, a copy of the document) to the addressee abroad, service is valid with the deposit of the document in the forum State. However, at the time of the *notification au parquet*, the addressee is obviously

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17 D. McClean, "Service of Process", in Beaumont P. & Holliday J. (ed.), *A Guide to Global Private International Law*, Hart Publishing, 2022, p 162.

18 See, among others, Explanatory Report (*op. cit.* note 13), pp. 364-365; T. Bischof, *Die Zustellung im internationalen Rechtsverkehr in Zivil- und Handelssachen*, Publications de l'Institut suisse de droit comparé 31, Zurich, Schulthess, 1997, pp. 89 *et seq.*, with numerous other references; O. Capatina, "L'entraide judiciaire internationale en matière civile et commerciale", *RCADI* 1983, I (Tome 179 of the collection), pp. 331-332; H. Schack, "Einheitliche und zwingende Regeln der internationalen Zustellung", in R. Schütze (ed.), *Einheit und Vielfalt des Rechts: Festschrift für Reinhold Geimer zum 65. Geburtstag*, Munich, Verlag C.H. Beck, 2002, p. 932.

unable to take notice of the document in question. It is not surprising that *notification au parquet* and, in particular, its potentially detrimental effects on a defendant abroad, occupied an important place in the negotiations of the Convention and that Articles 15 and 16 were included.

19. *Notification au parquet* is used in different forms in some States of civil law tradition, though in some States it has been abolished.[19] More recent moves to abolish this form of notice evidently take into account the objectives of the Convention (including Arts 15 and 16) and represent considerable and undeniable progress.[20]

20. The protections offered by Articles 15 and 16 of the Convention only operate when the Convention is applicable (when a document must be transmitted for service abroad to another Contracting Party).

iii. Protection of a defendant balanced against the legitimate interest of a diligent plaintiff

1. Protection prior to default judgment – Article 15(1)

21. The Convention serves to protect defendants from a default judgment regardless of the channel of transmission used under the Convention, unless it is established that service was effective under the Convention (Art. 15(1)).

22. Pursuant to Article 15(1), where a document was required to be transmitted under the Convention for service abroad, and the defendant did not appear, judgment shall not be given until it is established that the document has been served by a method prescribed by the internal law of the Requested State (or State of destination), or that the document was actually delivered to the defendant or their residence by another method provided for under the Convention, and that the service or the delivery was effected in sufficient time to enable the defendant to defend the case (see paras 401 *et seq.*).

2. Balancing plaintiff's interests – Article 15(2)

23. However, Article 15(2) takes into account the plaintiff's legitimate interest in seeing the case progress. Pursuant to this Article, a Contracting Party may make a declaration under the Convention. Such a declaration can permit a judge to enter a judgment without receipt of a certificate of service or delivery, provided that:

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19 See the Notice (*Circulaire*) CIV/20/05 of 1 February 2006 from the Ministry of Justice on International Service of Judicial or Extrajudicial Documents in Civil and Commercial Matters which is available at the following link: https://www.justice.gouv.fr/notifications-internationales-actes-judiciaires-extrajudiciaires-matiere-civile-commerciale-. Paragraphs 5 and 6 of the Notice were replaced by a Notice (*Circulaire)* of 10 November 2008 available at the following link: https://www.justice.gouv.fr/circulaire-dacs-11-08-d3-du-10-novembre-2008-relative-aux-notifications-internationales-actes-judiciaires. Note in *France* an important Decree dated 28 December 2005 abolished *notification au parquet* in relation to all States (not only those Parties to the 1965 Service Convention). Therefore, in all cases, actual service must take place *internationally*, that is, in the State addressed or of destination, and not fictitiously, *au parquet*, in France. Under this framework, and when the Convention applies, a document is to be transmitted abroad by the relevant authority (*huissier de justice* or registrar of the relevant jurisdiction, depending on the case) in conformity with the channels of transmission provided for by the Convention, and taking into account the declarations of the State addressed or State of destination.

20 It is interesting to note that the French Decree of 28 December 2005 integrates Art. 15 of the 1965 Service Convention into the domestic law of France (see Art. 688 of the CPC), thus extending the protection offered by this Article to all defendants irrespective of whether or not the Convention applies.

1) the document was transmitted by a method under the Convention;

2) a period of not less than six months and considered adequate by the judge has elapsed since transmission, and

3) no certificate of any kind has been received, even though reasonable efforts were made to obtain it through the competent authorities of the State addressed.

24. Declarations to this effect have been made by a majority of Contracting Parties.[21] Declarations made by Contracting Parties are available on the Service Section of the HCCH website.

3. Relief from expiry of period to appeal post-judgment – Article 16(1)

25. Article 16(1) also provides that if judgment has already been given, a judge shall have the power to relieve the defendant from expiry of the time for appeal if certain requirements are met. These requirements are that the defendant, without any fault on their part, did not have knowledge of the document in sufficient time to defend, or did not have knowledge of the judgment in sufficient time to appeal, and also that the defendant has disclosed a *prima facie* defence to the action on the merits (see paras 423 *et seq.*).

4. Balancing the plaintiff's interest – Article 16(2)

26. Article 16(2) provides that after a judgment has been given, a defendant's application for relief (from the expiration of the time for appeal) may only be filed within a reasonable time after the defendant has knowledge of the judgment. In this circumstance, the reasonable time period will commence from when the defendant has knowledge of the judgment.

27. It is open to each Contracting Party to make a declaration that the defendant's application will not be entertained if it is filed after the expiration of a certain period stated in the declaration, but which shall not be less than a period of one year following the date of the judgment. This declaration means that the period of time for the application will not be dependent on the defendant's knowledge, but on a specified period of time following the judgment date which cannot be less than one year. Declarations to this effect have been made by a number of Contracting Parties.[22]

iv. Resolving difficulties and promoting cooperation

28. In the day-to-day operation of the Convention, Contracting Parties can use a range of mechanisms to resolve difficulties. The choice of mechanism can depend on a range of factors, including the urgency and nature of the issue, sensitivity and political aspects, and the existing relationship between the Contracting Parties.

29. Article 14 of the Convention provides an avenue for diplomatic channels that can be used to resolve difficulties arising between Contracting Parties in connection with the transmission of judicial documents for service. The Explanatory Report notes that this provision may only be invoked for judicial documents as it was considered unreasonable to allow recourse to the diplomatic channels for extrajudicial documents. The wording of this provision was inspired by

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21 At the time of publication of this Handbook, Art. 15(2) declarations have been made by 57 Contracting Parties: Andorra, Antigua and Barbuda, Argentina, Australia, Austria, Azerbaijan, Belgium, Botswana, Bulgaria, Canada, China (Mainland), Croatia, Cyprus, Czech Republic, Denmark, Estonia, France, Georgia, Germany, Greece, Hungary, Iceland, India, Ireland, Japan, Kuwait, Korea, Latvia, Lithuania, Luxembourg, Marshall Islands, Mexico, Monaco, Montenegro, Netherlands, Nicaragua, North Macedonia, Norway, Pakistan, Portugal, Moldova, Russian Federation, Saint Vincent and the Grenadines, San Marino, Serbia, Seychelles, Slovakia, Slovenia, Spain, Sri Lanka, Tunisia, Türkiye, Ukraine, United Kingdom, United States of America, Venezuela and Viet Nam.

22 Further information on declarations can be found on the Status table on the Service Section of the HCCH website.

Article 1(2) of the 1954 Civil Procedure Convention but was amended to encompass all channels of transmission provided for by the Convention.[23]

30. Article 14 does not affect the ability of a Contracting Party to bring difficulties arising in connection with the transmission of judicial documents for service to the attention of the Special Commission, nor the very practical ability of Central Authorities to resolve such difficulties among themselves.[24] Moreover, it does not prevent the application of the Convention by a Contracting Party from being reviewed internally by way of appeal or judicial review. The key point is that there are a range of mechanisms available to Contracting Parties to resolve difficulties and promote cooperation.

⇒ Using information technology to cooperate

31. One of the Convention's essential objectives is to improve mutual judicial assistance (see the Preamble to the Convention). The use of information technology for the transmission of documents, and to swiftly resolve issues associated with requests for service, facilitates and improves cooperation between authorities of the Requesting State and authorities of the Requested State (for more information on electronic transmission, see paras 212 *et seq*). For example, when a request for service is incomplete, the receiving authority may use electronic means of communication such as e-mail to inform the forwarding authority immediately, and to enable the forwarding authority to take the necessary action swiftly (*e.g.*, providing the additional information required). Against this background, the Special Commission has recommended that once a request for service has been transmitted, any informal communication between forwarding authorities and Central Authorities (receiving authority) may be carried out by any appropriate means, including e-mail and fax.[25] In addition, when there is doubt as to the competence of the forwarding authority, the Central Authority (receiving authority) should seek confirmation of that authority's competence by directly checking with the forwarding authority, by referring to the Country Profiles, or by initiating informal and speedy contact, including by e-mail, with the Central Authority of the Requesting State.[26] Online language translation tools, where available, can also be used to facilitate e-mail communication between Central Authorities and / or forwarding authorities with increasingly positive results, addressing language barriers that previously created additional communication challenges and delays.

32. By adopting this informal and proactive approach to resolving issues and enhancing cooperation, Contracting Parties will better develop their networks and knowledge, and improve the effectiveness of the Convention.

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23 V. Taborda Ferreira, "Rapport de la Commission spéciale" [in French only], in *Actes et documents de la Dixième session* (1964) (*op. cit.* note 1), [hereinafter "Report of the 1964 SC"], p. 107.

24 At its meeting in 1989, the Special Commission noted that Art. 14 of the 1965 Service Convention "does not prevent Central Authorities from resolving among themselves difficulties arising in connection with the Convention's application and that it is not always necessary to use diplomatic channels first". See "Report on the work of the Special Commission of April 1989 on the operation of the Hague Conventions 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" (available on the HCCH website; this Report was also published in (1989) 28 *I.L.M.*, p. 1561) [hereinafter "Report of the 1989 SC"], para. 24.

25 See C&R No 24 of the 2009 SC.

26 See C&R No 49 of the 2003 SC; C&R No 21 of the 2009 SC.

4. Monitoring the practical operation of the Convention

▪ The Service Section

33. The Permanent Bureau maintains a section of the HCCH website that is dedicated to the 1965 Service Convention (the Service Section). The Service Section provides a wealth of useful and up-to-date information on the practical operation of the Convention, including:[27]

- the full text of the Convention (in the three official languages of the HCCH – English, French and Spanish – as well as translations into a variety of other languages)
- an updated list of Contracting Parties (status table)
- the name and contact details of each Central Authority designated by each Contracting Party (noting that some federal States have designated multiple Central Authorities)
- the name of all other authorities designated by each Contracting Party to perform particular functions under the Convention
- Country Profiles for all Contracting Parties
- fillable multilingual Model Forms in English, French, Spanish and a fourth language
- explanatory material on the Convention, including the recommendation to add a Warning and the accompanying Explanatory Report
- the instructions for filling out the Model Form
- documentation relating to the meetings of the Special Commission, including Conclusions & Recommendations and responses to Questionnaires prepared by the Permanent Bureau, and
- a link to this Handbook. In this regard, it is worth noting that this Handbook is widely cited and referred to by courts of Contracting Parties as a useful source of information.[28]

▪ Role of the Permanent Bureau

34. The Permanent Bureau conducts and coordinates various activities aimed at promoting the adoption and implementation of the Convention, supporting new and existing Contracting Parties, and monitoring the practical operation of the Convention. In particular, the Permanent Bureau develops explanatory documents, such as this Handbook, which is extensively reviewed and finally adopted by Members of the HCCH.

35. The Permanent Bureau also responds to queries from Contracting Parties concerning the application of the Convention. However, the Permanent Bureau has neither the mandate nor the power to police the operation of the 1965 Service Convention (or any other HCCH Convention).

36. The Permanent Bureau also prepares and organises meetings of the Special Commission.

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27 The Special Commission has noted that the Service Section is a very helpful source of information and has encouraged Central Authorities to publicise it. See C&R No 4 of the 2014 SC.

28 See, *e.g.*, in Australia: *Caswell v. Sony/ATV Music Publishing (Australia) Pty Ltd.* [2012] NSWSC 986. In Canada: *Metcalfe Estate v. Yamaha Motor Powered Products Co., Ltd.,* 2012 ABCA 240; *Khan Resources Inc. v. Atomredmetzoloto JSC*, 2013 ONCA 189. In Switzerland: *Tribunal fédéral des assurances*, Prozess, K 18/04; Kantonsgericht St. Gallen, Einzelrichterin in Rechtshilfesachen, RH.2008.64, 19 May 2008. In the United States: *Intercontinental Industries Corp. v. Luo*, 2011 WL 221880 (C.D. Cal. 2011); *Water Splash, Inc. v. Menon*, 137 S. Ct. 1504 (May 22, 2017) [hereinafter referred to as the *Water Splash* case or decision].

- **Special Commission**

37. The operation of the Convention (like several other HCCH Conventions) benefits from periodic review by the Special Commission. The Special Commission on the practical operation of the Convention has met on a number of occasions, in 1977, 1989, 2003, 2009 and 2014.[29]

38. The Special Commission is composed of experts designated by Members of the HCCH and by Contracting Parties to the Convention. It may be attended by representatives of other interested States (in particular those that are considering joining the Convention), and relevant invited Observers.[30]

39. Meetings of the Special Commission are prepared by the Permanent Bureau on the basis of information provided by Contracting Parties and other interested States and international organisations (generally in response to Questionnaires circulated by the Permanent Bureau). They allow for in-depth analysis of important issues relating to the contemporary operation of the Convention, including the definition of terms, good practices in respect of the transmission of documents for service abroad, and the use of information technology in the operation of the Convention. More specifically, Special Commission meetings offer a forum for Contracting Parties to raise issues about the practical operation of the Convention, including differences with other Contracting Parties, and for experts to discuss and devise solutions.

40. The Conclusions & Recommendations adopted by the Special Commission play an important role in the uniform interpretation and application of the Convention. The Conclusions & Recommendations are increasingly referred to by courts when called upon to interpret and apply the Convention. They may be seen as providing evidence of a subsequent practice in the application of the Convention, which establishes an agreement among the Contracting Parties regarding its interpretation (Art. 31(3)(b) of the *Vienna Convention of 23 May 1969 on the Law of Treaties*). The Special Commission has also encouraged Contracting Parties to publicise the Conclusions & Recommendations among users of the Convention, including judicial authorities, judicial officers, practitioners, and Central Authorities.[31]

II. Structure, Applicability and Scope

1. Operational structure of the Convention

i. Channels of transmission

41. The 1965 Service Convention provides one main channel of transmission between Contracting Parties, while preserving the flexibility to use alternative channels.

42. Under the main channel of transmission:

> An authority or judicial officer competent in one Contracting Party will transmit a request for service to the Central Authority of another Contracting Party in which service is to be effected (Arts. 3 and 5). This request must use the Model Form annexed to the Convention. The Central Authority shall then, under its own law,

29 Documentation relating to the meetings of the Special Commission is available on the Service Section of the HCCH website.

30 The HCCH Rules of Procedure provide that States, intergovernmental organisations and international non-governmental organisations may be invited to attend meetings as Observers. The Rules of Procedure can be viewed on the Rules of Procedure Section of the HCCH website.

31 C&R No 2 of the 2014 SC.

serve the document or arrange for service – the operation of the main Channel is the focus of Part 2.I of this Handbook.

43. The alternative channels of transmission available under the Convention are:

1) Diplomatic or consular channels (Arts 8 and 9)

2) Postal channels (Art. 10(a))

3) Direct communication between judicial officers, officials or other competent persons (Art. 10(b)), and

4) Direct communication between an interested party and judicial officers, officials or other competent persons (Art. 10(c)) – the operation of the alternative channels is the focus of Part 2.II of this Handbook.

44. There is no hierarchy of the channels of transmission, and transmission through one of the alternative channels does not lead to service of a lesser quality. The Convention also provides that derogatory channels can be used. There are two types of derogatory channels: those provided in bilateral or multilateral agreements concluded among Contracting Parties (Arts 11, 24 and 25), and those provided by the domestic law of the State of destination (Art. 19), and these are covered in Part 2.III of this Handbook.

ii. Objections to alternative channels

45. A Contracting Party may object to the use of the Convention's alternative channels. Information about objections is included in the status table on the Service Section of the HCCH website. These objections are the focus of Part 2.II.6 of this Handbook. These objections are the focus of Part 2.II.6 of this Handbook.

iii. Protection of the defendant

46. Regardless of the channel of transmission used, the Convention protects defendants from a default judgment. A default judgment shall not be given unless it is established that service was effective under the Convention (Art. 15). If judgment has already been given, a defendant may apply for relief (Art. 16). These protections are explained in Part 3 of this Handbook.

iv. Relationship with other Instruments

47. The relationship between the Convention and other Instruments is set out in Part 4 of this Handbook.

2. Applicability of the Convention

48. The Convention enables the transmission of documents for service abroad between Contracting Parties and will apply when there is (i) occasion to transmit documents for service abroad (paragraphs 49 and 331), (ii) where those documents are judicial or extrajudicial in nature (para. 120), (iii) relating to a civil or commercial matter (para. 134), and (iv) where the address of the person to be served is known (para. 155).

i. Occasion to transmit documents for service abroad

49. The Convention is silent on whether there is occasion to transmit a document for service abroad. To assess the applicability of the Convention, two questions must be addressed separately and in stages.

1) Which law determines whether a document must be transmitted for service abroad?

2) If, under the relevant law, it is determined that a document is required to be transmitted for service abroad, does the Convention necessarily have to be applied?

50. In addressing these two questions, the legal literature often uses a range of terminology, which either fails to properly distinguish the two stages in the analysis of the Convention's applicability or uses different terms for the same stage. As a result, it is often not clear what is meant by expressions describing the Convention as "binding" or "non-binding", "exclusive" or "non-exclusive", which are used in substitution or in combination with "mandatory" or "non-mandatory".

51. This Handbook suggests using the following:

> Question 1: Is the Convention of mandatory or non-mandatory character: Which law determines whether a document must be transmitted for service abroad? Is it the Convention itself, or is it the law of the forum that determines this?

> Question 2: Is the Convention of exclusive or non-exclusive character: If, under the relevant law, it is determined that a document must be transmitted for service abroad, must the Convention be used, meaning the Convention is of exclusive character?

1. Non-Mandatory nature of the Convention

- **The law of the forum**

52. It is now generally well established that it is the law of the forum that determines whether a document is required to be transmitted for service abroad. This has been confirmed in case law and by the Special Commission. In this sense, the Convention can be characterised as non-mandatory. That is, the Convention will only apply if it is determined under the law of the forum that there is occasion to transmit a document for service abroad. If, on the contrary, the law of the forum provides for a possible method of service of the document domestically (upon a designated representative, for example), and this method is chosen by the applicant, the Convention will not apply.

- **Case analysis: key historical judgments**

53. In the 1980s, the issue of whether or not a document has to be transmitted for service abroad (and therefore engaging the Convention) was explored by the Supreme Courts of two jurisdictions: the **Netherlands**[32] and the **United States**.[33] In both jurisdictions, it was held by the respective Supreme Courts that it is the law of the forum that determines whether or not a document is to be transmitted for service abroad. The first case was the Supreme Court of the Netherlands (*Hoge Raad*) in the *Mabanaft* case.[34] In this case, the plaintiffs served a writ of summons on the German-based defendant's attorney who was based in The Hague (where the lower court proceedings had taken place). They did so in accordance with the 1985 amendments of the *Code of Civil Procedure of the Netherlands*. Relevantly, the amendments to this Code enabled the service of notice, required upon appeal from a lower court judgment, to be made on an attorney

32 *Segers and Rufa BV v. Mabanaft GmbH*, HR 27 June 1986, *NJ* 1987, p. 764, *RvdW* 1986, p. 144 [hereinafter referred to as the *Mabanaft* case or decision].

33 *Volkswagen Aktiengesellschaft v. Schlunk*, 486 U.S. 694; *I.L.M.* 1988, p. 1093, annotated in: *Am. J. Int'l L.* 1988, p. 816; *IPRax* 1989, p. 313 [hereinafter referred to as the *Schlunk* case or decision].

34 *Segers and Rufa BV v. Mabanaft GmbH* (*op. cit.* note 32).

at whose office the addressee had elected domicile in the lower court proceedings. The Supreme Court had to determine whether this amended Code applied to strictly domestic cases or whether it also applied when the addressee resided abroad. The Court held that the issue of whether a document needed to be transmitted for service abroad must be examined and determined according to the law of the forum. However, it also held that the amendment of Dutch procedural law was not intended to displace the application of the 1965 Service Convention, and accordingly that the defendant, a company with its head office in Germany, should benefit from the protection provided by Article 15 of the Convention.

54. The second case was decided by the Supreme Court of the United States. In *Volkswagen Aktiengesellschaft v. Schlunk,* [35] the Court reached the same conclusion; that the law of the forum determines whether or not a document is to be transmitted for service abroad.

55. This case concerned a traffic accident in which the parents of Mr Schlunk were killed. In an Illinois court, Mr Schlunk brought a claim in damages based on product liability against Volkswagen of America (VWOA), incorporated under New York law (a wholly-owned subsidiary of the German car manufacturer *Volkswagenwerk Aktiengesellschaft* (VWAG)).

56. Mr Schlunk subsequently filed an amended claim, also bringing action against the German-based parent company VWAG. The amended claim was served on VWOA in the United States. The German-based defendant, VWAG, asserted the nullity of service on the grounds that it was inconsistent with the requirements of the 1965 Service Convention. Mr Schlunk's view, upheld by the Court at first instance and by the Court of Appeals, was based on the principle that VWOA was, owing to the extent of VWAG's control over its activity, the latter's agent for service in Illinois, even though it had not been expressly appointed for such a purpose. Since service on VWAG could be effected at VWOA's address in the United States under Illinois law, the Convention was not applicable.

57. The US Supreme Court held that "[i]f the *internal law of the forum state* defines the applicable method of serving process as requiring the transmittal of documents abroad, then the Hague Service Convention applies". [36] The Court then stated that in this particular case the Convention did not apply on the grounds that, under Illinois law (the law of the forum), VWOA was deemed to be an agent of VWAG for the purpose of receiving service of process directed at the latter, so that a transmission of the claim for service abroad was not required. [37] Under the law of the forum, there was accordingly no need to transmit a document abroad, and therefore no reason to apply the Convention.

58. In their dissenting opinions, some justices considered that the grounds for this decision, the outcome of which they approved, could lead to abuses detrimental to defendants. In their view, the Convention does not confer on each Contracting Party a discretionary power to decide whether or not documents should be served abroad, but on the contrary, sets boundaries – though admittedly not clearly defined ones – for this power.

59. It is important to emphasise that the *Schlunk* case does not allow plaintiffs to opt for service under state law as a way of circumventing the Convention's requirements; [38] nor does *Schlunk* stand for

35 486 U.S. 694; *I.L.M.* 1988, p. 1093, annotated in: *Am. J. Int'l L.* 1988, p. 816; *IPRax* 1989, p. 313 (*op. cit.* note 33).

36 *Ibid*. at 700 [emphasis added].

37 The Court held that "[w]here service on a domestic agent is valid and complete under both state law and the Due Process Clause, our inquiry ends and the Convention has no further implications. […] The only transmittal to which the Convention applies is a transmittal abroad that is required as a necessary part of service. And, contrary to VWAG's assertion, the Due Process Clause does not require an official transmittal of documents abroad every time there is service on a foreign national" (*ibid.* at 707).

38 *Buffalo Patents, LLC, V. ZET Corp,* No. W-21-CV-01065-ADA, 2022 WL 2055285 (W.E. Tex. June 3, 2022) (finding the

the broad proposition that service upon a subsidiary in the United States is always effective against a foreign parent corporation. *Schlunk* merely recognises that "when the law of the forum state deems the local subsidiary as the parent's agent, then service on the parent can be made locally thereby eliminating the need to transmit documents abroad. In such a case, where documents do not need be transmitted abroad, then the Convention, pursuant to its express terms, does not apply".[39]

- **Consideration by the Special Commission**

60. The *Mabanaft* and *Schlunk* decisions were discussed at length during the 1989 Special Commission meeting on the practical operation of the 1965 Service and 1970 Evidence Conventions. The meeting Report summarises the discussions as follows:

> "The principle that the forum is to decide this question [*i.e.*, whether documents should be transmitted for service abroad] under its own law was broadly accepted, although the danger of permitting domestic service upon a person who had not been expressly designated as an agent to receive service of process was recognized. Such service might not fulfil the purposes of the Convention which were to assure timely notice of the legal action to the person to be served".[40]

61. Certain experts expressed regrets at the outcome of the *Schlunk* ruling, that the Convention was not applicable. However, the Special Commission's view in 1989 was that the practical impact of that ruling on subsequent cases was likely to be limited.

- **Historical account of the negotiations of the Convention**

62. The approach adopted by the Netherlands and United States Supreme Courts, together with the 1989 Special Commission, appears to be in line with the history of the negotiations leading to the adoption of the Convention. The Report on the work of the Special Commission mandated to prepare the preliminary draft Convention provides a clear explanation:

> "Also, it was felt that the issue of whether the Convention should be applied in a particular case is indeed determined by the law of the court seized, and it would be unwise under this condition to limit the possibilities available to the judge in possession of the case".[41]

63. This position was confirmed during the Diplomatic Session in 1964, with several delegations expressing agreement for this:

Convention is implicated in the case of service on foreign entities when state law requires the transmittal of a document abroad as a part of the method of serving procedure).

39 US District Court for the Eastern District of Louisiana in *Blades v. Illinois Central Railroad*, No. 02-cv-3132, 2003 U.S. Dist. LEXIS 3823 (E.D. La. Mar. 12, 2003). For a further application of the *Schlunk* decision to a case with similar facts, see also *Rubicon Global Ventures, Inc. v. Chongquing Zongshen Group Import/Export Corp.*, 494 F. App'x 736 (9th Cir. 2012) (finding the Convention inapplicable where a Chinese corporation and its American entity "were so closely related" that the latter was deemed the foreign corporation's agent as a matter of law, although it had not been formally designated as such).

40 Report of the 1989 SC (*op. cit.* note 24), para. 13.

41 Report of the 1964 SC (*op. cit.* note 23), p. 81 [translation by the Permanent Bureau and emphasis added].

> "This Convention is applicable in all cases where, according to the law of the Requesting State, transmission abroad for service is required […]."[42]

64. The Rapporteur also emphasised that "it should be left to the Requesting State to determine whether a document is to be served abroad".[43]

- National practice

65. In the **Netherlands**, the principle laid down by the Supreme Court (*Hoge Raad*) in the *Mabanaft* case has not been challenged: when a party elects domicile in the Netherlands for the purpose of service, the Convention does not apply, even if that party lives or is established in another Contracting Party to the Convention.[44] However, in a subsequent case, the Supreme Court has laid down stricter requirements for the election of domicile: it must have been made in advance, expressly and in writing.[45]

66. In **Australia**, the Supreme Courts of two large state jurisdictions, Victoria and New South Wales, have confirmed that the Convention does not address or comprise substantive rules relating to the actual service of process, and have proceeded to apply the law of the forum in determining whether there is occasion to transmit a document abroad.[46]

67. Similarly, **Canadian courts** have had recourse to the law of the forum, the *lex fori*, to determine whether there is occasion to transmit a document abroad and whether the Convention applies.[47]

68. In **Germany**, in 1977 the Government, in an official document (*Denkschrift*) preparing the ratification of the 1965 Service Convention and the 1970 Evidence Convention, underlined the non-mandatory character of the Convention. This was confirmed in 1994 by the German Constitutional Court which held that the Convention applies only where domestic law requires service of process abroad.[48]

69. In the **United States**, the *Schlunk* decision has generally been followed by the courts. Most courts have relied on the relevant rules applicable in their respective fora to determine whether or not a

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42 "Procès-verbal No 3", Proposal Puhan, in *Actes et documents de la Dixième session* (1964) (*op. cit.* note 1), p. 167 [translation by the Permanent Bureau and emphasis added]. This proposal was followed by an intervention in the same sense by Mr Loeff.

43 "Procès-verbal No 8", in *ibid.*, p. 254 [translation by the Permanent Bureau].

44 *Wifac NV v. van Meerten*, Hof Amsterdam, 21 December 1989, *NJ* 1991, p. 485. In addition, Art. 63 of the Netherlands Code of Civil Procedure expressly provides the possibility of service at the offices of the lawyer in charge of the previous proceedings, in the event of objection, appeal, or appeal on a point of law in connection with that decision.

45 *Nieuwersteeg v. Colonia Versicherungen AG*, HR 2 February 1996, NJ 1997, p. 26.

46 See *Rio Tinto v English Datasystems LLC [2021] VSC 660* (Supreme Court of Victoria) and Gloucester (Sub-Holdings 1) *Pty Ltd v. Chief Commissioner of State Revenue* [2013] NSWSC 1419 (Supreme Court of New South Wales). In *Davenport & Rattray* [2012] FMCAfam 1097, the Federal Magistrates Court had the occasion to confirm that "[t]he law of the forum state determines whether or not a document has to be transmitted abroad for service in the other State" and that as such, "the Convention is not mandatory". Note that on 1 September 2021, the Federal Circuit and Family Court of Australia Act 2021 took effect and merged the Family Court of Australia and the Federal Circuit Court of Australia. It is now known as the Federal Circuit and Family Court of Australia (FCFCoA).

47 See, *e.g.*, *Zaniewicz v. Yungui Haixi Corp.*, 2012 ONSC 4904 and *Gray v. SNC-Lavalin Group Inc.*, 2012 ONSC 3735. In both cases, the courts held that the 1965 Service Convention did not apply because there was no need to transmit the documents to be served abroad and ordered substituted service on an authorised agent in Canada and on the defendant's lawyer, respectively.

48 BVerfG, 7 December 1994, *NJW* 1995, p. 649; *RIW* 1995, p. 320 (note Morisse, p. 370); *IPRax* 1996, p. 112 (note Tomuschat, p. 83); *EuZW* 1995, p. 218 (note Kronke, p. 221); *JZ* 1995, p. 716 (note Stadler, p. 218); *EWiR* 1995, p. 161 (note Geimer); *IPRspr.* 1994 No 160b. See also OLG München, Case number 7 W 3138/86, (judgment dated 30 December 1986), *NJW* 1987, p. 3086. The view of the mandatory character of the Convention as defended by the German Government in 1988 in "Brief for the United States as amicus curiae supporting respondent", Addenda A-D, in *Schlunk* (*op. cit.* note 33) has thus been overruled by the clear statement of the Constitutional Court.

transmission of documents for service abroad is required.[49] In many cases, the Convention has been held to apply.[50]

70. However, when the relevant forum rules have not required a transmission of documents for service abroad with service executed within the forum State, courts have held that the Convention is not applicable.[51]

71. In the case of service on a United States' state Secretary of State office or on another agent for service, a method often used in the United States, two lines of decisions have emerged. The first has held that if service is effected on the foreign defendant, upon the state Secretary of State's or agent's receipt of the document, which does not require transmission of the document abroad, the Convention does not apply.[52] Conversely, the other line of cases has held that service on the state Secretary of State office or another agent for service is only complete and effective with the transmission of the document (or a copy thereof) abroad to the addressee, and therefore the Convention will apply.[53]

⇒ **A note about service on a US domestic subsidiary of a foreign corporation**

72. While it is true that service of summons on an agent of a foreign defendant remains of great practical importance in the United States,[54] depending on the circumstances, service on an agent

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49 Service of process in a federal action is governed by *Fed. R. Civ. Pro.* 4. Pursuant to *Fed. R. Civ. Pro.* 4(f), a federal court may look to either a federal statute or to the law of the state in which it sits (which may or may not be a "long-arm" statute) to determine whether a defendant is amenable to service of process outside of the state.

50 See, *e.g.*, *Weinstein v. Volkswagen of America*, No. 88 C 1932, 1989 U.S. Dist. LEXIS 3809 (E.D.N.Y. Mar. 31, 1989); *McClenon v. Nissan Motor Corp.*, 726 F. Supp. 822 (N.D. Fla. 1989); *Raffa v. Nissan Motor Co.*, 141 F.R.D. 45 (E.D. Pa. 1991); *Borschow Hospital & Medical Supplies, Inc. v. Burdick-Siemens Corp.*, 143 F.R.D. 472 (D.P.R. 1992); *In re Hunt's Pier Associates*, 156 B.R. 464 (Bankr. E.D. Pa. 1993); *Golub v. Isuzu Motors*, 924 F. Supp. 324 (D. Mass. 1996); *Bowers v. Wurzburg*, 519 S.E.2d 148 (W. Va. 1999); *Schiffer v. Mazda Motor Corp.*, 192 F.R.D. 335 (N.D. Ga. 2000); *Broad v. Mannesmann Anlagenbau*, A.G., 10 P.3d 371 (Wash. 2000); *Denlinger v. Chinadotcom Corp.*, 2 Cal. Rptr. 3d 530 (Cal. Ct. App. 2003); *Uppendahl v. American Honda Motor Co.*, 291 F. Supp. 2d 531 (W.D. Ky. 2003); *Cupp v. Alberto-Culver USA, Inc.*, No. 03-2592-DV, 2004 U.S. Dist. LEXIS 4182 (W.D. Tenn. Feb. 9, 2004); *Loeb v. First Judicial District Court*, 309 P.3d 47 (Nev. 2013); *Norrenbrock Co., Inc. v. Ternium Mexico, S.A. De C.V.*, No. 3:13-CV-00767-CRS, 2014 WL 556733 (W.D. Ky. Feb. 12, 2014); *Buffalo Patents, LLC, V. ZET Corp (op. cit.* note 38) (finding that serving the state Secretary of State alone, who is not a defendant's subsidiary, is not proper service); *ACQIS LLC v. Lenovo Grp. Ltd.*, 572 F. Supp. 3d 291 (W.D. Tex. 2021) (finding that the Convention applied because the Texas long-arm statute required the Texas Secretary of State to mail service to the defendants abroad); *Howard v. Krull*, 438 F. Supp. 3d 711 (E.D. La. 2020) (finding that the Louisiana State statute required the plaintiff or the Secretary of State to send notice of service to a defendant abroad which implicated the Convention).

51 See, *e.g.*, *Kawasaki v. Guam*, No. 90-00024, 1990 WL 320758 (D. Guam Oct. 24, 1990); *Apollo Technologies Corp. v. Centrosphere Industrial Corp.*, 805 F. Supp. 1157, 1189 (D.N.J. 1992); *Daewoo Motor America, Inc. v. Dongbu Fire Insurance Co, Ltd.*, 289 F. Supp. 2d 1127 (C.D. Cal. 2001); *Eto v. Muranaka*, 57 P.3d 413 (Haw. 2002); *Rose v. Deer Consumer Products, Inc.*, No. CV 11-03701 DMG, 2011 WL 6951969 (C.D. Cal. Dec. 29, 2011); *James K. Donohue and Dryshod Int'l, LLC v. Wang*, No. A-22-CV-00583-LY, 2022 WL 4111924 (W.D. Tex. Sept. 7, 2022); *Meemic Ins. Co. v. Gree Zhuhai*, No. 19-13489, 2020 WL 2812769 (E.D. Mich. May 29, 2020).

52 For example, a court of the United States stated that "[s]ervice upon a foreign defendant's United States-based counsel is a common form of service ordered under 4(f)(3) […] [n]othing in the Hague Convention prohibits such service." See *Cadence Design Sys., Inc. v. Syntronic AB*, No. 21-CV-03610-SI, 2021 WL 4222040 (N.D. Cal. Sept. 16, 2021). For service upon an agent, see also *Voltage Pictures, LLC. v. Gussi, S.A. de C.V.*, No. 221CV04751FLARAOX, 2022 WL 18397525 (C.D. Cal. Dec. 6, 2022); *James K. Donohue and Dryshod International, LLC v. Wang*, No. A-22-CV-00583-LY, 2022 WL 4111924 (W.D. Tex. Sept.7, 2022); *Guiffre v. Andrew*, No. 21-CV-6702 (LAK), 2021 WL 4236618 (S.D.N.Y. Sept 17, 2021). The cases regarding service upon state Secretary, see *CPI Card Group v. Smart Packaging Solutions, SA,* No. 1:21-CV-482-HAB, 2022 WL 581011 (N.D. Ind. Feb. 25, 2022); *Melia v. Les Grands Chais de France,* 135 F.R.D. 28 (D.R.I. 1991).

53 *Buffalo Patents, LLC, V. ZET Corp* (*op. cit*. note 38); *Topstone Communications, Inc. v. Xu*, No. 4:22-CV-00048, 2022 WL 1569722 (S.D. Tex. May 18, 2022); *Howard v. Krull*, 438 F. Supp. 3d 711 (E.D. La. 2020); *ACQIS LLC v. Lenovo Grp. Ltd* (*op. cit*. note 50).

54 *Fed. R. Civ. Pro.* 4(h)(1) allows for service on a foreign corporation where service could be effected in the United States on the corporation's "officer, managing or general agent, or any other agent authorized by appointment or by law to

will be acceptable only if a sufficiently close link between the agent and the foreign addressee of the document is established. This is a major difference to *notification au parquet*, as that form of service disregards any links that the foreign addressee may or may not have with the forum.[55]

73. Numerous cases have addressed the question of whether or not a domestic subsidiary of a foreign corporation will be deemed to be the agent or alter ego of the foreign parent for service of process purposes. For example, in *Chung v. Tarom, S.A. et al.*,[56] a Court addressed the question of whether the service of a summons and complaint on the domestic United States-based subsidiary of a French corporation would be effective service on the French parent. Citing the *Schlunk* decision, the court first noted that "[i]f [...] service of process is accomplished entirely within the United States in accordance with state law and the Due Process clause, as is alleged in this case, then the service provisions of the Hague Convention do not apply".[57] The Court then addressed the question of whether the French corporation's subsidiary would be deemed to be its corporate parent's agent or alter ego for purposes of service of process. Recalling the general rule, according to which the mere existence of a parent-subsidiary relationship is insufficient to establish the close ties necessary for a subsidiary to be deemed a parent's agent for the service of process, the Court ultimately determined that the French parent exercised insufficient control over its domestic subsidiary to allow the subsidiary to be deemed an agent or alter ego of the parent. The Court concluded that the Convention had to be applied.[58]

74. However, in other cases, courts in various United States jurisdictions have found there to be an agency or alter ego relationship between a foreign parent and its United States-based subsidiary, so as to allow the United States-based subsidiary to be served on behalf of its foreign parent.[59]

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receive service of process". This means that a foreign corporation may be amenable to service in the United States, provided that service can be effected on an officer or agent of that corporation who is located within the United States. If no subsequent transmission to the foreign defendant is required, the Convention does not apply.

55 However, a court of Michigan found that service on a domestic subsidiary is not valid under the state law of Michigan, which requires corporations to be "personally" served, excluding service on a subsidiary or counsel. See *Michigan Motor Techs. LLC v. Volkwagen Aktiengesellschaft,* No. 19-10485, 2020 WL 3893038 (E.D. Mich. July 10, 2020).

56 990 F. Supp. 581 (N.D. Ill. 1998).

57 *Ibid.* at 584, n. 2. The same reasoning was applied, *e.g.*, in *Melia v. Les Grands Chais de France*, 135 F.R.D. 28 (D.R.I. 1991); *Sheets v. Yamaha Motor Co.*, 891 F.2d 533 (5th Cir. 1990); in *support, Rhodes v. J.P. Sauer & Sohn, Inc.,* 98 F. Supp. 2d 746 (W.D. La. 2000).

58 *Chung v. Tarom, S.A., et al.* (*op. cit.* note 56) at 584-587. See also *McClenon v. Nissan Motor Corp.* (*op. cit.* note 50); *Stone v. Ranbaxy Pharmaceuticals, Inc.*, No. JFM-10-CV-08816, 2011 WL 2462654 (S.D.N.Y. June 16, 2011); *Bays et al. v. Mill Supplies, Inc. et al.*, No. 1:10-CV-00432, 2011 WL 781464 (N.D. Ind. Feb. 28, 2011); *Fleming v. Yamaha Motor Co.*, 774 F. Supp. 992 (W.D. Va. 1991) (finding service of process on a domestic subsidiary to be inadequate absent sufficient evidence demonstrating that the parent and subsidiary failed to maintain separate corporate identities); *Blades v. Illinois Central Railroad* (*op. cit.* note 39) (stating that the plaintiffs did not submit evidence suggesting that the parent and its subsidiary "have done anything so as to deprive themselves of the legal distinctness to which they are otherwise entitled"). See also *Int'l Cultural Property Society v. Walter de Gruyter & Co.*, No. 99 Civ. 12329 (BSJ), 2000 U.S. Dist. LEXIS 9447 (S.D.N.Y. July 6, 2000) (laying down the conditions on which a branch office may be treated as an agent for service of a foreign company). In this latter case, the Court held that the plaintiff did not meet its burden of alleging facts sufficient to support a *prima facie* showing that the New York branch of the defendant was the foreign parent's general agent in New York or was so dominated by the foreign parent as to be a "mere department" of the parent. Therefore, service on the New York branch was held to be insufficient to effect service on the parent in Germany. See also *Michigan Motor Techs., LLC v. Bayerische Motoren Werke AG*, No. 22 CV 3804, 2023 WL 4683428 (N.D. Ill. July 21, 2023) (determining that the German defendant was improperly served because the plaintiff failed to demonstrate that the employee, who was personally served, was an authorised agent of the defendant's U.S. subsidiary, or that the subsidiary itself was an authorised agent of the defendant); *Crespl v. Zeppy, et al.*, No. A-2044-20, 2022 WL 815429 (N.J. Supper. Ct. App. Div. Mar. 18, 2022) (finding on appeal that the Superior Court erred in finding that service on a South Korean company's wholly owned Michigan subsidiary was sufficient, because the lower court judge did not conduct the necessary factual investigation to adequately determine if the subsidiary was an alter ego or agent of the principal such that service was complete without transmission of the documents aboard).

59 See, *e.g.*, *King v. Perry & Sylva Machinery Co.*, 766 F. Supp. 638, 640 (N.D. Ill. 1991) (finding that service on a Japanese corporation was accomplished by service on its US subsidiary because the subsidiary was deemed an "involuntary

Similarly, United States courts have also found that in certain circumstances, United States parent corporations could be served on behalf of their foreign subsidiaries.[60]

75. The above review of the practice of Contracting Parties confirms, subject to a few exceptions outlined in paragraph 76 below, the non-mandatory character of the Convention.

- **Some Contracting Parties may view the Convention as mandatory**

76. Some States do assert that the Convention should be considered mandatory in nature. This is the case in particular for **Switzerland**, which at the time of deposit of its instrument of ratification made a general declaration relating to Article 1 to stress that, in its view, the Convention was to apply on an *exclusive* basis (*i.e.*, in the terminology suggested by this Handbook: on a *mandatory* basis) among the Contracting Parties.[61]

77. However, the non-mandatory approach had been expressly accepted by the Special Commission.[62] Further, there is no indication that the Convention has been applied less in the aftermath of the *Schlunk* and *Mabanaft* rulings. However, other practices in Contracting Parties may also impact on whether the Convention is applied.

⇒ **Contracts and the Convention**

78. Can parties to a contract agree to exclude the application of the Convention when a defendant is located abroad?

79. At the outset, it should be noted that service is a key element of the right to a fair trial and is part of the procedural public policy of a number of Contracting Parties. The service of documents:

agent" of its Japanese parent); *Voltage Pictures, LLC v. Gussi, S.A. de C.V.*, No. 221CV04751FLARAOX, 2022 WL 18397525 (C.D. Cal. Dec. 6, 2022) (finding that service on a Mexican corporation was effected by service on its US subsidiary which had a sufficiently close relationship with the defendant); *Yamaha Motor Co. v. Superior Ct.*, 94 Cal. Rptr. 3d 494 (Cal. Ct. App. 2009); *United States v. Int'l Brotherhood of Teamsters*, 945 F. Supp. 609 (S.D.N.Y. 1996) (recognising both the "agency" and "mere department" theories of service but declining to exercise jurisdiction because the plaintiff had not presented sufficient evidence to support either theory); *Fundamental Innovation Sys. Int'l, LLC v. ZTE Corp.*, No. 3:17-CV-01827-N. 2018 WL 3330022 (N.D. Tex. Mar. 16, 2018) (applying the "alter ego" theory of service, but determining that the Chinese defendant's U.S. subsidiary was not an alter ego of the defendant.). See also *New York Marine Managers, Inc. v. M.V. Topor-1*, 716 F. Supp. 783 (S.D.N.Y. 1989); *Doty v. Magnum Research Inc.*, 994 F. Supp. 894 (N.D. Ohio 1997); *Sankaran v. Club Med, Inc.*, No. 97 Civ. 8318 (RPP), 1998 U.S. Dist. LEXIS 11750 (S.D.N.Y. July 29, 1998); *Primary Succession Capital, LLC, v. Schaeffler*, KG, No. 09 Civ. 735 (SCR), 2010 WL 4236948 (S.D.N.Y. Oct. 26, 2010). See also *Mills v. Ethicon, Inc.*, 406 F. Supp. 3d 363 (D.N.J. 2019) (stating that service on a wholly owned subsidiary of the Swedish defendant in New Jersey was insufficient to be valid service on the defendant since the plaintiff failed to show that the Swedish defendant "so dominated the [U.S. subsidiary] that it had no separate existence but was merely a conduit for the parent."); *Sucesores de Done Carios Nunez y Dona Pura Galves. Inc. v. Societe Generale, S.A.*, No. 19-CIV-22842-GAYLES, 2019 WL 5963830 (S.D. Fla. Nov. 13, 2019) (holding that even though US subsidiaries are "wholly-owned" by defendants, the plaintiff also had to show "such a degree of control [...] that the activities of the subsidiary were in fact the activities of the parent [....]").

60 See, *e.g.*, *Frazer v. Johnson Controls, Inc.*, No. 7:11-CV-3956-JHE, 2013 WL 5519831 (N.D. Ala. Sept. 30, 2013), finding that the plaintiff failed to show that the American parent corporation was an agent on behalf of its Mexican subsidiary for the purpose of accepting service, and thus, because the summons and complaint were required to be transmitted abroad to Mexico, the Convention applied.

61 The contents of that declaration are as follows: "Switzerland takes the view that the Convention applies exclusively to the Contracting States. In particular, it believes that documents which are effectively addressed to a person resident abroad cannot be served on a legal entity who is not authorised to receive them in the country in which they were drawn up without derogating from Articles 1 and 15(1)(b) of the Convention".

62 See C&R No 73 of the 2003 SC. In particular: "Recalling the conclusions and recommendations of 1989, the SC confirmed the prevailing view that the Convention was of a non-mandatory [...] character [...]". The 2003 Special Commission also recalled the fundamental importance of Art. 15, the object of which is to ensure that the defendant is actually informed in sufficient time to organise a defence (C&R No 74). C&R No 12 of the 2009 SC.

1) enables the issue in dispute to be brought to the notice of the defendant, respondent, or other interested party,

2) in a number of common law States, is also the basis for establishing the jurisdiction of the court, and

3) where not properly executed, may be a ground for refusal to the recognition and enforcement of a judgment.

80. Courts in the United States have considered whether service was effected in accordance with *due process* in evaluating the validity of service, *i.e.*, if service was performed in a form providing "notice reasonably calculated, under all circumstances, to apprise interested parties of the action and afford them an opportunity to present their objections".[63] It was in the light of the criteria laid down by state law and by the principle of due process that the District Court of Pennsylvania reviewed the validity of a service clause contained in a guaranty agreement. The clause provided that notice could be validly served on two guarantors in Germany at an address in the United States (Pennsylvania), even if no notice of that service was then given to the guarantors in Germany.[64] The US District Court held that the German guarantors had contractually appointed a domestic agent for service of process. The court concluded that "because service at the address in Indianapolis as provided in the guaranty agreements is acceptable under Pennsylvania law and comports with the due process clause, the Convention is not implicated".[65]

81. While the above decision has to be read against the background of the *Schlunk* decision, it raises the question of whether the parties to a contract may agree to establish their own regime of service, and whether such contractual agreements can and should circumvent the Convention.

82. In civil law systems, this approach would be unusual as rules of procedure (such as those relevant to service) are not subject to variation by the parties to a contract; this applies even more in jurisdictions where service is seen as an act of sovereignty. In other words, if the law of the forum provides for service abroad – and thus triggers the applicability of the Convention – the parties are not able to decide otherwise.

83. Recently, courts in the state of California in the United States have examined this issue.[66]

84. In the case of ***Rockefeller***,[67] the United States-based plaintiff entered into a contractual agreement with the China-based defendant, in which the parties agreed to the provision of notice

63 This criterion was laid down in the leading case of the Supreme Court of the United States, *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

64 *Pittsburgh National Bank v. Kassir*, 153 F.R.D. 580 (W.D. Pa. 1994). The German guarantors had agreed to the following provision: "Any legal action or proceedings with respect to this Guaranty Agreement against the Guarantor may be brought at the option of the Bank in the Federal or State Courts in or of the Commonwealth of Pennsylvania and by execution and delivery of this Guaranty Agreement, the Guarantor hereby accepts, for itself and in respect of its assets, generally and unconditionally the non-exclusive jurisdiction of the aforesaid courts, and hereby authorizes service of process in such jurisdiction in any legal action or proceedings with respect to this undertaking at [the following address], and agrees that failure by any such process agent to give notice of such service of process to the Guarantor shall not impair or affect the validity of such service or any judgment based thereon."

65 *Ibid*.

66 *Rockefeller Tech. Invs. (Asia) VII v. Changzhou SinoType Tech. Co.*, 460 P.3d 764 (Cal. 2020) [hereinafter referred to as the *Rockefeller* case or decision]; *Seagate Tech. v. Goel Super Ct*, No. G060036, 2022 WL 3571988 (Cal. App. Ct Aug. 19, 2022) [hereinafter referred to as the *Seagate* case or decision].

67 *Rockefeller Tech. Invs, (Asia) VII v. Changzhou Sinotype Tech. Co.* (Cal. 2020) (op. cit. note 66) (The Defendant, a company based in China (Mainland), and the Plaintiff entered into a contract providing that the parties would submit to the jurisdiction of California courts and to resolve disputes between them through California arbitration. The parties further agreed to provide notice and service of process to each other through Federal Express or a similar courier. The Plaintiff later sought arbitration. The Defendant neither responded nor appeared for the arbitration, and the arbitrator awarded the Plaintiff $414,601,200. The award was confirmed, and the judgment was entered without participation from the Defendant. The Defendant then moved to set aside the default judgment for insufficiency of service of process,

of disputes "via Federal Express or similar courier, with copies via facsimile or email": and "consent[ing] to service of process in accord with the [those] notice provisions."[68] Subsequently, the United States plaintiff served a summons and petition on the China-based defendant by Federal Express (FedEx) in China, a State that has objected to service of process by postal channels under the Convention. The California Supreme Court, which is the highest court in the state of California, considered whether the parties were permitted to agree to notification of the civil action by FedEx.

85. In *Rockefeller*, the Los Angeles County Superior Court and the California Court of Appeal[69] had diverging views on whether the 1965 Service Convention prohibited the parties from agreeing to service of process by FedEx or similar courier. The California Court of Appeal reversed the decision of the Los Angeles County Superior Court and held that the agreed method of communication between the parties was not permitted by the Convention. The Court of Appeal focused on giving effect to the Convention's terms and paying due regard to China's declared opposition to service by mail under the Convention. However, the United States Supreme Court of California, again reversed that position and held that the Convention did not apply because the parties' contract constituted a waiver of formal service under Californian law in favour of an alternative form of notification. When reaching this decision, the Supreme Court of California held that "the Convention applies only when the law of the forum State requires formal service of process to be sent abroad". In other words, the Convention will apply when the law of the forum requires the transmission of documents for service abroad.

86. In the context of the above case, it should be reiterated that upon its accession to the Convention, China objected to the application of Article 10(a). Therefore, service in China using the postal channel is contrary to this declaration. It would be deemed procedurally defective and would prevent a judgment from being recognised by a Chinese court.[70]

87. Using a similar line of reasoning, the Californian Court of Appeal in *Seagate*[71] held that the Convention would not apply in circumstances where parties had agreed to waive formal service of process under Californian law (the law of the forum) and instead use a method of informal notification. In this case, pursuant to an agreement between the parties that service would be effected by mail, a United States plaintiff attempted to serve an India-based defendant by post, even though India had opposed service by post under Article 10(a) of the Convention. The Court, citing *Rockefeller* and noting that the agreement constituted a formal waiver of service in favour of informal notification, upheld service on the defendant in this case.

88. It has been observed by commentators that the case of *Seagate* appears to permit parties to opt for a form of service, that looks exactly like service, and has the same purpose and effect as service, but is not described as service, in order to avoid the requirements of the Convention. The concern with this approach is that provisions of the Convention enable Contracting Parties to object to certain channels of transmission, including service by postal channels and can serve to

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arguing that the Plaintiff's failure to comply with the Convention rendered the judgment, confirming the arbitration award, void. The motion was denied, reversing the Court of Appeal's decision. The California Supreme Court held (1) the Convention applies only when the law of the forum state requires formal service of process to be sent abroad; and (2) because the parties' contract constituted a waiver of formal service under California law in favour of an alternative form of notification, the Convention does not apply.)

68 *Rockefeller Tech. Invs. (Asia) VII v. Changzhou Sinotype Tech. Co.*, 24 Cal. App. 5th 115, 121 (2018).

69 *Rockefeller Tech. Invs. (Asia) VII* v. *Changzhou Sinotype Tech. Co., Ltd.*, No. BS149995, 2014 WL 12669294 (Cal. Supper. Oct. 23, 2014); *Rockefeller Tech. Invs.* (Asia) VII v. *Changzhou Sinotype Tech.* Co, 24 Cal. App. 5th 115 (2018).

70 The Chinese Ministry of Justice has launched an online system to facilitate the submission of requests to China (Mainland) under the main channel of transmission.

71 *Seagate Tech. v. Goel. Super. Ct. No.* G060036, 2022 WL 3571988 (Cal. App. Ct. Aug. 19, 2022) (*op. cit*. note 66).

protect States from infringements on their judicial sovereignty. In other words, when a State objects to service by postal channels in its territory, it is asserting its own interests, not (just) the interests of people in its territory who may be served with process.[72]

89. At the 2003 meeting of the Special Commission, several experts confirmed that such arrangements would not be possible in their States. However, others pointed out that enforcement of a judgment entered pursuant to service performed according to such arrangements would not necessarily be denied as a result.[73]

90. In this regard, some commentators have observed that there is a tension between the Convention's purpose of bringing actual notice to the defendant in an efficient manner, and notions of sovereignty and territoriality.[74] The "efficiency" of service must also be assessed against the principles of legal certainty (ensuring that the decision issued will ultimately be capable of recognition and enforcement) and the rights of parties to a fair trial.

2. Exclusive character of the Convention

91. Despite recent developments in the United States, it remains undisputed that if the law of the forum determines that transmission of documents for service abroad is required, the Convention must be applied.

92. The exclusive character of the Convention has been broadly acknowledged by case law,[75] and by scholars,[76] as well as by the Special Commission.[77] Even States that still use the *notification au parquet* have supported this view.

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72 See "Case of the Day: Seagate Technology v. Goel", *The Blog of International Judicial Assistance*, Ted Folkman of Rubin and Rudman LLP (Webpage accessible at the following address: https://lettersblogatory.com/2022/08/22/case-of-the-day-seagate-technology-v-goel/) [last consulted on 5 May 2024].

73 C&R No 77 of the 2003 SC.

74 See Louise Ellen Teitz, "Is the Service Convention ready for early retirement at age fifty-five? Or can it be 'serviceable' in a world without borders?", in HCCH, *HCCH a|Bridged Edition 2019 – The HCCH Service Convention in the Era of Electronic and Information Technology*, The Hague, 2020, pp. 63 *et seq*.

75 This is particularly true in the United States, where the question was examined in relation with the supremacy clause in Art. VI of the United States Constitution; in *Kadota v. Hosogai*, 608 P.2d 68 (Ariz. Ct. App. 1980), an ***Arizona Court of Appeal*** held that under the supremacy clause the 1965 Service Convention prevails over inconsistent means of service provided for under state law. In the leading case of *Volkswagen Aktiengesellschaft v. Schlunk* (*op. cit.* note 35), the ***Supreme Court of the United States*** confirmed that the Convention applies on an exclusive basis (by employing the term "mandatory" rather than referring to "exclusive means for service") and therefore prevails over federal or state procedural law in all cases where it is applicable. See also *Gebr. Eikhoff Maschinenfabrik v. Starcher*, 328 S.E.2d 492 (W. Va. 1985); *Kreimerman, et al., v. Casa Veerkamp*, 22 F.3d 634 (5th Cir. 1994)). In **Canada**, several courts have confirmed that the 1965 Service Convention is exclusive, noting that this is the prevailing view in their respective provinces. See decisions in Ontario: *Pharm Canada Inc. v. 1449828 Ontario Ltd (c.o.b. Trinity Worldwide Services Inc.)*, 2011 ONSC 4808; *Khan Resources Inc. v. Atomredmetzoloto JSC* (*op. cit.* note 28); *Pitman v. Mol*, 2014 ONSC 2551 (following Khan Resources, the Court held that the Convention must be complied with in family law proceedings as well); in support of these decisions (the Court of Appeal of Alberta): *Metcalfe Estate v. Yamaha Motor Powered Products Co., Ltd.* (*op. cit.* note 28). One court in **Australia**, which joined the 1965 Service Convention in 2010, has held, in *Davenport & Rattray* (*op. cit.* note 46), that "[i]f all th[e] requirements are met [i.e., 'the document is to be transmitted from one State Party to the Convention to another State Party, for service in the latter […] [a]n address for the person to be served is known […] [t]he document to be served is a judicial or extrajudicial document […] [and t]he document to be served relates to a civil or commercial matter'], the transmission channels provided for under the Convention must be applied", and that as such, "the Convention is exclusive". In **Portugal**, a court held that a domestic code on insolvency could not override the 1965 Service Convention and that the Convention applied: Lisbon Court of Appeal (*Tribunal da Relação de Lisboa*), case No 3/2009-6,12 February 2009. The Court further noted that to hold the contrary would be in breach of general rules of international law and the principle that international law prevails over domestic law. See also, in the same sense, Coimbra Court of Appeal (*Tribunal da Relação de Coimbra*), case No 3327/12.5TBLRA-B.C1, 19 December 2012.

76 T. Bischof (*op. cit.* note 18), p. 251, who refers, however, to the Convention's "obligatory" character; B. Ristau, *International Judicial Assistance (Civil and Commercial)*, Washington, D.C., International Law Institute, Georgetown University Law Center, Vol. I, Part IV, 2000 Revision, p. 160.

77 C&R No 73 of the 2003 SC; C&R No 12 of the 2009 SC.

⇒ A note about the Concept of Service

93. The term "service" generally refers to the delivery of judicial and / or extrajudicial documents to the addressee, and the degree of formality of delivery varies from State to State. Service can be achieved through different methods in accordance with a State's internal law (*e.g.,* placing documents in the letter box, handing the document to someone present in a place with certain conditions, notifying documents to a third party designated by the respondent. Service of a document is a key component to the right to a fair trial, and in particular, the right to be informed that judicial proceedings have commenced or that a decision has been made.

94. The Convention itself does not define the term service.[78] The Convention's main function is to facilitate the transmission of documents from one Contracting Party to another Contracting Party; it does not address or comprise substantive rules relating to the actual service of process, nor does it determine the conditions or formalities of that service (see paras 7 *et seq.*). In other words, the Convention does not specify how service is to be effected under its Articles when documents are being transmitted under the main channel of transmission, nor does it specify how service is to be effected when using the alternative channels of transmission.

95. Furthermore, the Convention does not contain provisions relating to the validity of service (see, however, Arts 15 and 16). It therefore falls on the court of the State of origin to determine whether service has been validly performed according to the law of the Requested State (for requests for service under Art. 5), the law of the State of origin (for service by postal channels under Art. 10(a)), or the law of the State of destination (for transmissions under Art. 10(b) and (c)).

96. Likewise, the Convention cannot – and does not – determine which documents need to be served. There are a wide range of judicial and extrajudicial documents that may be served, the writ of summons being one of the most common (for more information, see paragraphs 120 *et seq.*). It is a matter for the law of the forum, the *lex fori*, to decide if a document needs to be served and which document needs to be served.[79] Thus, if the law of the forum states that a notice is to be somehow directed to one or several addressee(s), without requiring service, the Convention does not apply.

97. The terms used in the French text are *signifié ou notifié*. The use of the two terms in the French version of Article 1(1), while the English version refers only to service, reflects the distinction made between these two terms in States such as France or Belgium. Notification consists of service of a document in any cases and forms provided for by law, without necessarily involving a *huissier*.[80] Signification is a specific form of notification where service of the document is made by a *huissier* or judicial officer. Thus, in French, the term notification is broader and includes the term *signification*. As common law systems do not make this distinction,[81] the term service covers both

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78 The Code of Civil Procedure of Québec uses "notification" in both English and French versions. See Art. 494 for international notification and Art. 110 which sets out the basic rule for notification and Art. 110(2) which specifies that notification with a court bailiff, if required by law is called "service" in English and "signification" in French.

79 See, *e.g.*, P. *Volken, Die internationale Rechtshilfe in Zivilsachen*, Zurich, Schulthess, 1996, p. 61. See *Johns v. van Brunt Motors, Inc.*, 89 A.D.3d 1188 (N.Y. App. Div. 2011) where the defendant claimed that the service was defective under the Convention, because only a copy of the summons and notice without complaint were served. However, the Court stated that the lack of a copy of the complaint (and only providing a copy of the summons and notice) did not compromise the defendant's ability to defend that action. Upon the defendant's request, he received a copy of the complaint and summons in due time.

80 During the negotiations, the proposal from a German delegate to use only the term "*signifier*" ran up against opposition from the Spanish and Portuguese delegations, as these two States were unfamiliar with the concept of "*signification*". The compromise suggested by Belgium was to fuse those two concepts (*Actes et documents de la Dixième session (1964)* (*op. cit.* note 1), p. 159). Since then, Portugal has introduced the concept of "*signification*" into its procedural law.

81 Scots law does, however, make a distinction between "*signification*" and "*notification*". For further details, see R.J. Graveson, "The Tenth Session of the Hague Conference on Private International Law", *ICLQ* 1965, Vol. 14, p. 539.

signification and *notification*.[82] Notwithstanding this, the term *notification* has also been used in English as a synonym and in substitute for the term for service.[83]

⇒ **Substituted Service**

98. Substituted service may be one instance where the Convention applies, but where service may be impracticable or impossible. Additionally, substituted service may be employed when the address of the person to be served is unknown, thereby falling outside of the scope of the Convention according to Article 1(2), or when service does not occur within a Contracting Party.

99. Substituted service refers to the situation where a document is required to be served for the purpose of legal proceedings before a court, and that court directs that the use of some alternative means of bringing the document to the attention of the party to be served will constitute, or be treated as, valid service. Service is typically achieved through personal service, where a process server physically hands the documents to be served to the party to be served.[84] However, there are situations where personal service becomes difficult or impossible,[85] or for some other good reason it may be judged inappropriate to insist on personal service.

100. Some common scenarios in which substituted service may be authorised include where:

- the party is intentionally evading service to avoid legal responsibility;
- the party's current whereabouts is unknown, and traditional service attempts have failed.

101. In such cases, the court may permit substituted service as an alternative. Substituted service can be accomplished by methods including leaving documents with an agent, at the office of the relevant corporation or business, or posting them in a public place. Substituted service is usually subject to specific rules and requirements of a jurisdiction to ensure that the rights of the defendant are protected and that the alternative method of (substituted) service is fair and reasonable.

102. The English courts continue to make orders for service by alternative means in accordance with Civil Procedure Rule 6.15 in circumstances where the Convention applies. In so doing, the Court of Appeal of England and Wales has stated, "the Practical Handbook refers to the 'exclusive character' of the Convention (para. 51). However, at present, this is not the approach taken in England and Wales and it would require a significant shift to exclude, in particular, e-mail or other electronic forms of service on a party resident in a 1965 Convention State".[86]

103. There has been some degree of dispute as to the threshold that must be demonstrated in order to grant an order for alternative or substituted service in circumstances where the Convention applies. One strand of case law suggests a possible requirement of exceptional circumstances or

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82 Unless stated otherwise, in the French version of this Handbook the term "*notification*" refers to both these forms of service.

83 For instance, the Code of Civil Procedure of Québec (Canada) uses the term *notification* in both English and French versions. See Art. 494 of the Code of Civil Procedure of Québec, CQLR c-25.01. Available at the following address: https://canlii.ca/t/566wm [last consulted on 5 May 2024].

84 In some Contracting Parties, service can be achieved through different methods (*i.e.*, placing the document in the letterbox, or handing the document to someone present in the place of residence or in the place of work of the addressee).

85 *Lonestar Communications Corp LLC v. Kaye* [2019] EWHC 3008 (Comm).

86 *Wilmot v. Maughan* [2017] EWCA Civ 1668 per Moylan LJ at [132].

special circumstances to justify service by alternative means where the Convention applies.[87] Other cases indicate that the test is uniform, namely that good reason must be demonstrated for making the substituted service order, but the fact that the order would result in service by means not provided for by the Convention will be relevant to whether good reason has been shown.[88] Either way, it is recognised that there is a higher threshold where the Convention applies than in other cases. When the Convention does not apply, it must only be shown that the defendant is adequately informed of the contents of the claim form and the nature of the claimant's claim. [89]

104. As to the circumstances that will satisfy the test, it has been repeatedly emphasised that merely avoiding delay or inconvenience is insufficient to justify substituted service where the Convention applies.[90] However, as noted by Foxton J in *M v N*[91] there are now some clear examples of cases in which the circumstances are likely to be considered to justify an order for alternative service, including:

- Cases in which an attempt is being made to join a new party to existing proceedings, where the effect of delay in effecting service on the new party under the Convention will either substantially interfere with directions for the existing trial, or require claims which there is good reason to hear together, to be heard separately.[92]
- Cases where the proceedings have been begun with an injunction application, which is to be served immediately or in short order on the respondent.[93]
- Cases where an expedited trial is appropriate, and the order for alternative service is necessary to achieve the required expedition.[94]
- It has also been suggested that an order for alternative service might be appropriate when the order sought arises out of a hearing which has already taken place, and delay in service under the Convention might lead to the issues being determined over a prolonged period after the fact-finding has been undertaken or in cases in which the financial consequences of requiring service under the Convention might make pursuit of a low value claim financially unviable.[95]

105. Orders for alternative service are routinely made in the Commercial Court, even in Convention cases, in claims for relief under the Arbitration Act 1996, as part of the policy of English law to promote, where possible, the speedy finality of arbitration.[96]

87 *Celgard LLC v. Shenzhen Senior Technology Material Co Ltd* [2020] EWHC 2071 (Ch); *Protec International Ltd v. Stout* [2017] EWHC 1208 (Ch); *Marashen v. Kenvett* [2017] EWHC 1706 (Ch); *BVC v. EWF* [2018] EWHC 2674 (QB).

88 *Société Générale v. Goldas Kuyumculuk Sanayi and others* [2017] EWHC 667 (Comm); *Koza Ltd v. Akcil* [2018] EWHC 384 (Ch).

89 *Abela & Ors v. Baadarani* [2013] UKSC 44.

90 For example, see *Deutsche Bank AG v. Sebastian Holdings Inc. Vik* [2014] EWHC 112 (Comm); *M v. N* [2021] EWHC 360 (Comm) [hereinafter referred to as the *M v. N* case or decision].

91 *M v. N* case (mentioned *supra* in note 90).

92 *Avonwick Holding Limited v. Azitio Holdings Limited and others* [2019] EWHC 1254 (Comm); *Evison Holdings Limited v. International Company Finvision Holdings LLC* [2020] EWHC 239 (Comm).

93 *Griffin Underwriting Limited v. Varouxakis* [2021] EWHC 226 (Comm); *AXIS Corporate Capital UK II Limited v. ABSA Group Limited* [2021] EWHC 225 (Comm); *Abu Dhabi Commercial Bank PJSC v. Shetty* [2020] EWHC 3423 (Comm).

94 *Daiichi Chuo Kaisha v. Chubb Seguros Brasil SA* [2020] EWHC 1223 (Comm).

95 *Marashen v. Kenvett* (*op. cit.* note 87).

96 *Department of Civil Aviation of the Kyrgyz Republic v. Finrep GmbH* [2006] EWHC 1722 (Comm).

106. In addition to the categories of cases detailed in Foxton J's judgment,[97] it is evident that the courts are also willing to consider an order for alternative service in circumstances where numerous attempts to serve have been made, the defendant is aware of the proceedings, and is deliberately evading service.[98]

3. Scope

107. The Convention has a broad scope of application and applies to natural and legal persons, States and State agencies. It can be used to transmit judicial or extrajudicial documents which are terms that are broadly construed, in civil and commercial matters, a concept that has somewhat evolved in scope over time. The transmission must be between Contracting Parties to the Convention and in circumstances where the address of the person to be served is known.

108. The Convention does not refer to transmission to the defendant or to their place of domicile, residence or sojourn.[99] The addition that this transmission should be made to a person abroad (which was contained in the preliminary draft Convention) was removed from the final text.[100] In principle the key consideration is the place of service and not the domicile or the residence of the defendant.[101]

109. The place of service is not always abroad. For those States with a system of *notification au parquet*, service on a defendant located abroad is deemed to have been effected when the document is deposited with the public prosecutor's office or with another designated local official in the State of origin.[102]

110. According to civil procedure codes in some States, and case law examined previously when a person residing abroad has elected domicile in the State of the forum, there may be no need for the transmission of documents for service abroad and the Convention accordingly does not apply.[103]

111. Noting that it is always a matter for the law of the forum to determine, the mere fact that the addressee of a document to be served in the State of the forum owns an apartment in both the forum State and overseas is insufficient to request service to be effected abroad. In this regard, a German court held that when the addressee of a document had apartments (*Wohnungen*) both in Germany and abroad, they could not request service to be effected abroad on the basis that they had apartments there. The court concluded that service could be effected at one of the

97 *M v. N* case (*op. cit.* note 90).

98 *Lonestar Communications Corp LLC v. Kaye* [2019] EWHC 3008 (Comm).

99 The Special Commission which prepared the preliminary draft Convention expressly examined the possibility of using the notions of domicile, habitual residence or residence of the defendant, but decided against it; Report of the 1964 SC (*op. cit.* note 23), pp. 80-81. Art. IV of Protocol No 1 to the 1968 Brussels Convention (for the consolidated text, see *OJEU* C 27 of 26 January 1998, p. 1), and the parallel provision for the Lugano Convention 2007 (*Convention of 30 October 2007 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters*), which both refer to the 1965 Service Convention, mention "[…] documents which have to be served on persons in another contracting State […]". This provision was not included in the Brussels Ia Regulation.

100 Explanatory Report (*op. cit.* note 13), p. 366.

101 Some courts in the **United States** nevertheless retain the residence of the addressee, or even his nationality (citizenship) as the condition for application of the Convention; see, *e.g.*, *In re Hunt's Pier Associates* (*op. cit.* note 50); *Mommsen v. Toro Co.*, 108 F.R.D. 444 (S.D. Iowa 1985). While the Convention was applied in both of these cases, the conditions examined would nevertheless appear to be incorrect. See also, *Gray v. SNC-Lavalin Group Inc.* (*op. cit.* note 47) (where a ***Canadian court*** held that the Convention did not apply because the defendant was a resident of Canada although he was incarcerated in Switzerland and ordered substituted service on his lawyer in Canada).

102 On *notification au parquet*, see paras 18-20.

103 *Actes et documents de la Dixième session (1964)* (*op. cit.* note 1), p. 254.

addressee's apartments in Germany.[104] This jurisprudence would appear to be indisputable as otherwise any addressee with a second residence abroad would be able to invoke the invalidity of service effected in the State of the forum.

112. In circumstances where it is established that the law of the forum requires transmission for service abroad, the transmission channels of the Convention will apply. But to whom?

i. Natural and legal persons, States agencies and States

113. The Convention applies to service upon natural or legal persons in the private law sense, and upon legal persons in the public law sense: upon States, including a government, a governmental agency or any person acting for a State, consular or diplomatic agent, or a State-owned company or upon a territorial unit of a State. It is not possible from either the record of the negotiations or the wording of the Convention to deduce that the Convention is applicable only to private persons, as was notably asserted by **Germany**, when it was inferred that service upon a State or a government falls outside the scope of the Convention.[105] The ***Supreme Court of the Netherlands*** (*Hoge Raad*) therefore correctly determined the Convention to be applicable when service is to be effected upon a foreign State.[106] Courts in the **United States**, have held that while a foreign Central Authority may receive requests transmitted in accordance with the Convention for service on that State, transmission to the Central Authority does not equate to actual service on the State. Similarly, in the United States, under the Convention, the Central Authority is charged with receiving requests for service and would thus receive requests for service on the State transmitted in accordance with the Convention. However, the Central Authority is not the legal equivalent of the receiving sovereign State for purposes of accepting service directed to State. In general, service upon a foreign State should comply with the internal laws of that foreign state and in respect of the receiving State's sovereignty.[107] A United States court reached the same result when considering a case relating to service of documents upon a head of State.[108]

114. It should be noted that the Central Authority of the Requested State may refuse to effect the request for service if it considers that doing so would interfere with the sovereignty or the security of the Requested State (Art. 13, see paras 310 *et seq.*). In such circumstances, the decision is generally made in accordance with the rules of State immunity.[109]

104 OLG Köln, 16 August 1988, *RIW* 1989, pp. 814-815.

105 See T. Bischof (*op. cit.* note 18), pp. 246-247; B. Ristau (*op. cit.* note 76), pp. 154-156.

106 Service of a Dutch "dagvaarding" (originating summons) in the United States of America must be effected in accordance with the Convention; *VS v. Delsman*, HR, 3 October 1997, *NJ* 1998, p. 887.

107 See, *e.g.*, *Richardson v. Attorney General of the British Virgin Islands*, No. CV 2008-144, 2013 WL 4494975 (D.V.I. Aug. 20, 2013) (concluding that service was improper on the British Virgin Islands where the Convention was applicable but the summons and complaint had not been transmitted through the "designated authority" of that territory, the "Registrar of the Supreme Court"). Also, several United States courts have determined that service upon a foreign state could be transmitted via the Central Authority under Art. 5(1) or via diplomatic channels under Article 9 but transmission to the Central Authority does not equate to service, see *Saint-Gobain Performance Plastics Europe v. Bolivarian Republic of Venezuela,* 23 F.4th 1036, 1041 (D.C. Cir.), cert. Denied, 143 S. Ct. 113 (2022).

108 *Devi v. Rajapaksa*, No. 11 Civ. 6634 (NRB), 2012 WL 309605 (S.D.N.Y. Jan. 31, 2012) (holding that the 1965 Service Convention must be used to effect service upon the president of Sri Lanka and noting that a formal effort to serve the defendant through the Convention will ensure that the defendant has actual notice of the suit. Subsequently, the Department of State filed a suggestion recognising and allowing the immunity of the president of Sri Lanka while in office and on that basis, the court dismissed the action, see on appeal, *Devi v. Rajapaksa*, No. 11 CIV. 6634 NRB, 2012 WL 3866495 (S.D.N.Y. Sept. 4, 2012).

109 See in particular T. Bischof (*op. cit.* note 18), p. 247.

⇒ A note about service upon a foreign State or State official

115. Where service is to be effected upon a foreign State or State official, the Convention will apply because there will typically be a need to transmit a document abroad.[110] Accordingly, the channels of transmission provided for in the Convention must be used. In these types of cases, documents may be transmitted, for instance, via the Central Authority or via diplomatic channels under Article 9(2) of the Convention (see paras 341 *et seq.*).[111] It should be noted that service on a State through diplomatic channels constitutes one of the 'exceptional circumstances' under which this means of transmission remains in conformity with the Convention (Art. 9(2)).[112]

116. In practice, Contracting Parties have had recourse to the Convention to forward requests for service upon States or State officials via diplomatic channels under Article 9(2) of the Convention or via the Central Authority channel (albeit in some cases without success).[113] Others have resorted to diplomatic channels under customary international law.[114] Yet other States clarify or limit the serving of documents upon their respective States and State officials through declaration mechanisms, such as either declaring that it is highly desirable that service upon its State and State officials be transmitted by diplomatic channels;[115] or by declaring explicitly to exclude the application of the Convention in such cases and calling for the use of diplomatic channels;[116] or by opposing the use of the postal channels pursuant to Article 10(a) of the Convention.[117]

117. At the 2009 meeting of the Special Commission, it was noted that "some States Parties have reported difficulties using the main channel of transmission to serve documents upon another State Party, an official of another State Party or State-owned companies" and encouraged Contracting Parties to inform the Permanent Bureau about their practices in this regard.[118] As of this fifth edition of the Handbook, no such information has been received.

118. Among the issues that may arise when attempting service on government entities,[119] and Embassies or Consulates, is whether these entities are a separate juridical entity that may be

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110 In the **United States**, service upon a foreign State or a political subdivision of a foreign State must be made in accordance with the Foreign Sovereign Immunities Act, which provides for four exclusive and hierarchical methods of service (28 U.S.C. § 1608). For more information, see D. Epstein, J. Snyder & C.S. Baldwin IV, *International Litigation*: *A Guide to Jurisdiction, Practice, and Strategy*, 3rd ed., New York, Transnational Publishers, Inc., 2002, § 7.15.

111 T. Bischof (*op. cit.* note 18), p. 247.

112 *Ibid*.

113 In *Gurung v. Malhotra*, 279 F.R.D. 215 (S.D.N.Y. 2011), a ***United States court*** ordered alternative service on a State official by e-mail because the Central Authority of the Requested State refused to execute the request on Art. 13 grounds. The court further noted that diplomatic immunity is considered to be a "substantive" defence and courts may properly review questions of immunity once service has been completed.

114 See responses to Questions Nos 9 and 10 of the 2022 Questionnaire. The United States Central Authority has a publicly available memorandum (published in 6 languages) outlining the requirements for valid service on the United States. See OIJA Guidance on Service on the U.S. Government (HSC): https://www.justice.gov/civil/service-requests.

115 See the respective declarations of the Russian Federation and Azerbaijan, available on the Service Section of the HCCH website.

116 See the declaration of Austria available on the Service Section of the HCCH website.

117 See the declaration of Israel available on the Service Section of the HCCH website.

118 See C&R No 27 of the 2009 SC.

119 In the **United States**, service upon an agency or instrumentality of a foreign State can be made according to the following hierarchical methods: in accordance with a special arrangement for service in an agreement between the parties or by delivering a copy of the summons and complaint either to an officer, a managing or general agent of the agency or instrumentality, or in accordance with an applicable international convention, or by letter rogatory, or as directed by the court. See, 28 U.S.C. § 1608(b) of the Foreign Sovereign Immunities Act. For further information, see D. Epstein, J. Snyder & C.S. Baldwin IV (*op. cit.* note 110), § 7.15[3] and A.F. Lowenfeld, *International Litigation and Arbitration*, 2nd ed., St. Paul, Minn., American Casebook Series, West Group, 2002, pp. 628-635. Also, see I*saac Indus., Inc. V. Petroquimica de Venezuela, S.A., et al.,* No. 1:19-23113-CIVSCOLA/GOODMAN (S.D. Fla. Mar. 01, 2022) (finding that

served with documents, or whether the relevant State should be served instead. Under general principles of international law, it is accepted that Embassies and Consulates cannot be served directly with documents because of the inviolability and immunity of their premises. Accordingly, in such cases, service must be effected via the Ministry of Foreign Affairs of the relevant State.[120] As requests for service on sovereign defendants may include additional requirements beyond those for service on a private person, due to the applicability of customary international law, it is recommended to contact the Central Authority of the State on which service of process is sought to be effected prior to transmission, so as to ensure that the service request complies with all applicable requirements.

⇒ **A note about collective redress (class actions)**

119. A question has arisen as to whether the Convention applies to the service of documents in mass litigation for claims of "collective redress", most-commonly known as "class actions".[121] The Special Commission noted that no particular challenges arise with regard to this issue. It further noted that the Convention "is applicable to a request for service upon a defendant in a class action". It added that generally "the Convention does not apply to the sending of information regarding the constitution of a possible class (including notices sent abroad encouraging possible claimants to opt-in or opt-out of a particular class)".[122]

ii. Documents that are judicial or extrajudicial

120. The Convention applies to both judicial and extrajudicial documents (Art. 1(1)). Article 17 specifies that "extrajudicial documents emanating from authorities and judicial officers of a Contracting State may be transmitted for the purpose of service in another Contracting State by the methods and under the provisions of the present Convention". However, not all provisions of the Convention are applicable to extrajudicial documents. Most importantly, Articles 15 and 16 of the Convention refer only to judicial proceedings.

121. Characterisation as a judicial or extrajudicial document depends on the law of the Requesting State (State of origin). This seems to be indisputable since it is that law which determines the power of the authorities and judicial officers to issue a given document, and which determines whether there is occasion to transmit the document for service abroad. For example, in some States, a notary is treated as a judicial officer, provided that he or she is acting in a professional and not a personal capacity.[123] Therefore, notarial acts issued by notaries acting as judicial

service upon an instrumentality of a foreign State cannot be valid solely through a mere delivery of the documents to a Central Authority).

120 See Art. 22 of the Vienna Convention of 18 April 1961 on Diplomatic Relations and Art. 31 of the Vienna Convention of 24 April 1963 on Consular Relations. For further commentary on this point, see D. Gauthey & A.R. Markus, *L'entraide judiciaire internationale en matière civile*, Berne, Stämpfli Editions SA, 2014, pp. 160-161. See also *LArbG Berlin-Brandenburg*, dated January 10, 2020 – 15 Ta 2185/19 (ruling that, service of documents on the Embassy of Qatar in Berlin must be carried out through diplomatic channels. The court based its decision on the above provisions of the Vienna Convention on Diplomatic Relations, which prohibit acts of sovereignty by the host country, and the German Courts Constitution Act (GVG), which extends the application of inviolability even when the sending State is not a party to the Vienna Convention).

121 Due to the differences in legal systems and their mechanisms for pursuing mass litigation, the term "collective redress" is meant to encompass both the United States-style procedure of "class actions", whereby a suit is brought by one single claimant representing multiple subjects, and, the procedure of "collective actions", whereby certain organizations or associations (*i.e.*, consumers' protection groups) act on behalf of a number of persons. For a more detailed, comparative view of "class actions" and "collective actions" amongst the different legal systems, see D. Fairgrieve & E. Lein, *Extraterritoriality and Collective Redress*, 1st ed., United Kingdom, Oxford University Press, 2012.

122 C&R No 17 of the 2009 SC.

123 T. Bischof (*op. cit.* note 18), p. 263.

officers would be an example of a judicial document. The concept of judicial and extrajudicial documents is to be construed broadly.

122. Judicial documents for the purposes of the Convention are instruments of contentious or non-contentious jurisdiction, or instruments of enforcement.[124] In most jurisdictions, judicial documents include writs of summons,[125] a party's submission in the proceedings, decisions and judgments delivered by a member of a judicial authority, as well as witnesses summons (subpoenas).[126]

123. It is sometimes difficult to determine whether a summons sent to a third party, *e.g.*, a witness located abroad, is subject to the 1965 Service Convention or the 1970 Evidence Convention. Contracting Parties have noted that the 1965 Service Convention should not be used to serve subpoenas or other documents that require the recipient to produce evidence for use in the foreign court. Any requests seeking information, in the form of testimony or documents, or tangible evidence including a DNA sample, should be submitted through the 1970 Evidence Convention. There is a distinction between a request for the service of a summons and subpoena, and a request for the taking the evidence in fulfilment of a summons or subpoena, as these two different scenarios may have different legal implications for the witness. In this context, in the event of conflict between these two instruments, the 1970 Evidence Convention should prevail, because it secures protection for the witness.[127]

124. Characterisation as a judicial document does not depend on the level of the ruling; a relief of default, a statement of appeal, or an appeal to a supreme court on a point of law may all have to be transmitted for service abroad and thus fall within the scope of the Convention. In this respect, the statement of a ***Florida (United States)*** judge that only the writ of summons is within the scope of Article 1 of the Convention and not subsequent communications during the trial (including the statement of appeal), would appear inconsistent with the Convention.[128]

125. Extrajudicial documents differ from judicial documents, in that they are not directly related to a trial. They also differ from strictly private documents, in that they require the involvement of an

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124 In a decision dated 10 February 1999 (*op. cit.* note 154), the Cantonal Court of Fribourg (Switzerland) held that an act of prosecution (service of a notice of attachment on a debtor domiciled in France) is treated as a judicial document for the purposes of the Convention, at least when the prosecution relates to a receivable under private law (ruling received from the Central Authority; see also note 154).

125 The Appellate Court (*Oberlandesgericht*) of Munich (Germany) held that a United States "cross-complaint", *i.e.,* pleadings entered by a defendant against another defendant, is to be likened to a writ of summons and should therefore be served in accordance with the Convention, OLG München, 17 November 1994, *RIW* 1995, p. 1026.

126 In *Schneider v. Caesarstone Australia Pty Ltd.* [2012] VSC 126, the Supreme Court of Victoria (Australia) noted (at para. 11) that "[i]t is apparent that the phrase 'judicial documents' is intended to include subpoenas for witnesses to give evidence". This view was endorsed by the Supreme Court of New South Wales in *Caswell v. Sony/ATV Music Publishing (Australia) Pty Ltd.* (*op. cit.* note 28).

127 Art. 11 of the Evidence Convention states that in the execution of a Letter of Request, the person concerned may refuse to give evidence in so far as they have a privilege or duty to refuse to give the evidence under the law of the State of execution, or the law of the State of origin (where this has been specified in the Letter of Request or confirmed to that authority by the requesting authority).

128 *Chabert v. Bacquie*, 694 So.2d 805 (Fla. Dist. Ct. App. 1997) (in addition, the Court found that the appellant had failed "to establish that French law required service abroad of initial process for the French appellate proceeding". Therefore, it is not clear whether the Convention should have applied). See also, *S.E.C. v. Credit Bancorp, Ltd.*, No. 99 Civ. 11395 (RWS), 2011 WL 666158 (S.D.N.Y. Feb. 14, 2011) (holding that the Convention only applies to the initial service of process and not to subsequent documents because unlike *Fed. R. Civ. Pro.* 4, *Fed. R. Civ. Pro.* 5 "addresses the service of subsequent documents […] and does not mention the Hague Service Convention or provide special procedural requirements for international service"); *In re Jennifer O.*, 108 Cal. Rptr. 3d 846 (Cal. Ct. App. 2010) (where the Court held that the Convention did not apply, because it governs only "service of process in the technical sense" and there was no such service in dependency proceedings); and *Kern County Department of Human Services v. Superior Court*, 113 Cal. Rptr. 3d 735 (Cal. Ct. App. 2010) (where the Court found that service was not required, because the Convention does not apply to supplemental and subsequent juvenile dependency proceedings, and it had previously made a finding of proper notice to the parent).

"authority or judicial officer", in the words of the Convention. The Special Commission has noted that there are many kinds of extrajudicial documents, which are recognised by Contracting Parties to the Convention.[129] For the purposes of Article 17, extrajudicial documents include notarial documents,[130] demands for payment, notices to quit in connection with leaseholds or contracts of employment, protests with respect to bills of exchange and promissory notes, provided that they are issued by an authority or *huissier*, notice of dates of mediation hearings, notices served by creditors upon debtors, testamentary documents, notifications to beneficiaries of a deceased estate, decisions concerning child support payments and decisions concerning the granting of separation and divorce orders issued by an administrative entity, summons by *huissiers*, deeds, and documents related to the execution conducted by a bailiff.[131] Objections to marriage, consents for adoption, and acceptances of paternity are also in this class insofar as they imply compliance with certain formalities.[132]

126. At the 1977 meeting of the Special Commission, the very first meeting of the Special Commission on this Convention, discussion highlighted the fact that in certain systems, such as those of England and Ireland, private persons may serve certain extrajudicial documents themselves with identical legal effect. Accordingly, even though Article 17 was intended to exclude documents emanating from private persons, at the request of the United Kingdom and Irish delegations, the Special Commission encouraged Central Authorities to serve extrajudicial documents not emanating from an authority or judicial officer if those documents were of a type which normally would call for the intervention of an authority in their State.

127. According to responses received to the 2022 Questionnaire, it is uncommon for domestic laws to specifically define the term "extrajudicial documents". The majority of responding Contracting Parties, with the exception of a few, indicated that their laws do not include a definition. In practice, it seems a wide variety of documents are transmitted as extrajudicial.

128. While requests for service of extrajudicial documents may not be as common as requests for service of judicial documents, they are almost always executed.[133] Typically, extrajudicial documents are served by courts, *huissiers* or bailiffs.[134]

129. It is important for Central Authorities and, where applicable, forwarding authorities to communicate with each other when problems of interpretation arise. The Special Commission has invited Contracting Parties to encourage these relevant authorities to do so.[135]

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129 C&R No 15 of the 2009 SC.

130 By way of comparison, it should be noted that in *Roda Golf & Beach Resort SL*, C 14/08, EU:C:2009:395, the ***Court of Justice of the European Union*** held that a notarial act, in the absence of legal proceedings, is an "extrajudicial document" within the meaning of Art. 16 of the 2000 EU Service Regulation. It further noted that the concept of "extrajudicial document" is a Community law concept. The same provision has been included in the 2007 EU Service Regulation. For commentary on this case, see N. Fricero & G. Payan, *Le droit à l'exécution et le droit de la notification et de la signification dans la jurisprudence européenne*, Paris, UIHJ Publishing, 2014, pp. 215-218. The Court provided further guidance with regard to the interpretation of this concept in *Tecom Mican SL and José Arias Domínguez*, C-223/14, EU:C:2015:744 (noting that extrajudicial document includes "not only documents drawn up or certified by a public authority or official but also private documents of which the formal transmission to an addressee residing abroad is necessary for the purposes of exercising, proving or safeguarding a right or a claim in civil or commercial law").

131 See responses to Question No 24(i) of the 2008 Questionnaire and 2009 synopsis of responses, paras 107-115.

132 See "Report on the work of the Special Commission on the operation of the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (21-25 November 1977)", in *Actes et documents de la Quatorzième session (1980)*, Tome IV, *Judicial Co-operation*, The Hague, Imprimerie Nationale, 1983, p. 380 (also available on the HCCH website), at p. 388 [hereinafter "Report of the 1977 SC"].

133 See responses to Questions Nos 24(a)(iv) and 24(b) of the 2008 Questionnaire.

134 See responses to Question No 24(a)(iii) of the 2008 Questionnaire.

135 C&R No 15 of the 2009 SC.

⇒ **A note about arbitration proceedings**

130. Although a document issued in arbitration proceedings is not a "judicial" document for the purposes of the Convention, it may be considered an "extrajudicial" document within the meaning of Article 17 of the Convention. Contracting Parties are encouraged to serve extrajudicial documents not emanating from an authority or from a judicial officer (including arbitration documents) if these types of documents would call for the intervention of an authority in their States.[136]

131. Importantly, there are no provisions / Articles in the Convention that would prevent an arbitral body from presenting documents to the relevant forwarding authority where the arbitration proceedings are taking place, with a request for transmission under the Convention. In addition, any problems with the characterisation of the document may be resolved by communication between the forwarding authority of the Requesting State and the Central Authority of the Requested State. The fact that a document is issued by an arbitral tribunal has no impact on whether the matter is "civil or commercial".

132. Some States (such as **Germany**) allow arbitral bodies to request court assistance to serve documents abroad if the seat of arbitration is located in their State.[137]

133. However, requests for service of documents issued in arbitration proceedings appear to be uncommon in practice because such documents are typically served in accordance with arbitration rules chosen by the parties. Accordingly, a few courts have considered whether the Convention applied to arbitration proceedings, ultimately finding that it did not.[138]

iii. Civil or commercial cases

134. The Convention applies in "civil or commercial matters". These terms, which determine the scope of the Convention's subject-matter, are not defined in the Convention. The same terms are contained in several other HCCH Conventions, in particular the 1905 and 1954 Civil Procedure Conventions and the 1970 Evidence Convention. While some Contracting Parties tend to construe civil and commercial more strictly when applying the 1970 Evidence Convention, the Special Commission has recommended that these terms be applied consistently across both the 1965 Service and 1970 Evidence Conventions.[139]

135. Other multilateral or bilateral international instruments also refer to the concept of civil or commercial matters. Illustrations include the *European Convention of 4 November 1950 for the*

136 Report of the 1977 SC (*op. cit.* note 132), p. 8.

137 See Section 1050 of the German *Code of Civil Procedure* which reads as follows: "The arbitral tribunal or, with the consent of the arbitral tribunal, a party may file a petition that the court provide support *by taking evidence or by taking any other actions reserved for judges that the arbitral tribunal is not authorised to take.* [...]" [our emphasis]. For commentary on this issue, see D. Gauthey & A.R. Markus (*op. cit.* note 120), pp. 256-257.

138 In *Federation Francaise d'études et de sports sous-marins v. Société Cutner & Associates P.C.*, CA Paris, Chamber 1, 25 February 2010, No 08/22780, the ***Court of Appeal of Paris*** (France) rejected an argument that the execution of an arbitral award should be refused on the basis that, *inter alia*, the arbitration had not been notified according to the 1965 Service Convention. The Court of Appeal noted that parties had agreed by contract to resolve their disputes according to the rules of the American Arbitration Association (AAA), which included rules on service of documents, and that the Convention therefore did not apply. A similar outcome was reached in the **Greek case** Thessaloniki First Instance Court (single member), judgment 22340/2012, where the parties had agreed to apply the China International Economic and Trade Arbitration Commission (CIETAC) Arbitration Rules. The Court noted that the service by mail (with evidence of actual delivery) as provided by the CIETAC Arbitration Rules satisfied the requirement of proper notice of Art. 5(1)(b) of the *New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards* and the 1965 Service Convention did not apply (this case was mentioned by A.D. Tsavdaridis in an article published at the *International Law Office* website entitled "Hague Service Convention does not apply to arbitration documents", 22 August 2013). See also, in the same sense, the ***California (US)*** state court decision: *Lombard-Knight v. Rainstrom Pictures Inc.*, No. BS143076, 2013 WL 6839775 (Cal. Super. Ct. Nov. 19, 2013).

139 C&R No 40 of the 2014 SC.

Protection of Human Rights and Fundamental Freedoms (ECHR) (which in Art. 6(1) refers to "civil rights and obligations"), the *American Convention on Human Rights of 22 November 1969* (which in Art. 8(1) refers to "rights and obligations of a civil nature"), and, in the more specific area of private international law, the Brussels Ia Regulation (which, like its predecessors, uses the expression "civil and commercial matters"), and the 2020 EU Service Regulation (which uses the expression "civil or commercial matters"; on this Regulation, see also paras 453 *et seq.*). The interpretation of this concept by the Court of Justice of the European Union will be further reviewed below (see para. 153). The concept is also used in the HCCH 2005 Choice of Court Convention and the HCCH 2019 Judgments Convention.[140]

- **The 1977 Special Commission meeting**

136. The concept of "civil or commercial matters" was the subject of lively debate during the drafting of the Convention[141] and during the 1977 and 1989 meetings of the Special Commission on the practical operation of the Convention. During the 1977 meeting, experts realised that the interpretation of these terms could diverge significantly from one legal system to another. For instance, several common law States do not make the civil law distinction between private and public law. For those States, any matter that is not criminal is civil or commercial. In civil law States, it is customary to exclude criminal, tax and administrative law from civil or commercial matters. In the Egyptian interpersonal system, issues of personal status are not regarded as civil. Extensive differences also appeared regarding the question of which law should be applied to determine the content of these matters, some States referring to the law of the Requesting State (State of origin), and others to that of the Requested State (State of destination).

137. The experts found that, in practice, Central Authorities are very liberal and willing to serve documents that they would not be obligated to serve under the Convention, with a view to being of assistance to their recipients.

138. Most Central Authorities refuse to serve, or to have served, documents dealing with criminal or tax cases. Realising that it was not possible for the experts in earlier meetings to recommend a uniform solution acceptable to all States, the experts limited themselves to expressing the wish that the Convention be applied in the most liberal possible manner in respect of the scope of its subject-matter.

- **The 1989 Special Commission meeting**

139. The Special Commission meeting in 1989, which examined the practical operation of both the 1965 Service and 1970 Evidence Conventions, again reviewed the issue of the interpretation of the phrase "civil or commercial matters". Following the 1977 Special Commission, two courts of last resort had ruled on the issue in cases concerning the 1970 Evidence Convention:

- in the case of *Arcalon v. Ramar*,[142] the Supreme Court of the Netherlands (*Hoge Raad*) held that a request for evidence issued by a California bankruptcy court was within the ambit of

140 *Convention of 30 June 2005 on Choice of Court Agreements* and *Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters*. These Conventions use the expression "civil or commercial matters" (Art. 1(1)), noting that for the 2019 Judgments Convention, revenue, customs and administrative matters are specifically excluded from the scope of civil or commercial. For an analysis of the history of the phrase "civil and / or commercial", see the "Report of the Special Commission by Peter Nygh and Fausto Pocar", in HCCH, *Proceedings of the Twentieth Session (2005)*, Tome II, *Judgments*, Cambridge/Antwerp/Portland, Intersentia, 2013, p. 207 (available on the HCCH website). The replacement of "or" with "and" does not imply a change of the phrase's meaning. It is certainly not necessary for the matter to be both civil and commercial; though commercial matters frequently involve a civil aspect, certain civil matters have no commercial aspects.

141 The authors of the Convention eventually decided not to deal with this question, leaving its resolution to the Contracting Parties, see the Explanatory Report (*op. cit.* note 13), pp. 356-366, see also pp. 79-80, 159-161, 166, 305 and 307.

142 HR 21 February 1986, *NJ* 1987, p. 149; *RvdW* 1986, p. 50; English translation at *I.L.M.* 1989, p. 1578.

"civil or commercial matters" for the purposes of the Convention. According to the Supreme Court, the Convention's objective and scope justify an extensive construction of Article 1;

- in its ruling in *Re State of Norway's Application*,[143] the House of Lords (United Kingdom) had to consider whether a request for evidence, in a case presented as a civil action but involving a claim for inheritance taxes asserted by the State of Norway against the estate of a deceased person, was a "civil or commercial matter". The House of Lords held that a cumulative system of characterisation should be applied, *i.e*, the nature of the issue determined according to the law of both the requesting and the Requested States. In that case, the action for recovery of taxes was regarded as a civil or commercial matter in both Norway and the United Kingdom. Accordingly, the request for the taking of evidence lay within the scope of the 1970 Evidence Convention's subject matter.

140. In addition, the experts were informed that a **German** Central Authority had refused to execute requests for service issued by courts in the United States in liability claims (in particular product liability claims) for the award of punitive damages. The German Central Authority considered that the claim for "punitive" damages was not within the scope of "civil or commercial matters". This practice was discussed during the 1989 Special Commission meeting.[144] However, in a decision subsequent to the Special Commission meeting, the Appellate Court (*Oberlandesgericht*) of Munich (Germany) rejected the position adopted by the Central Authority and held that a claim for "punitive" damages was indeed a civil matter.[145]

141. The 1989 Special Commission meeting adopted the following conclusions regarding the "[s]cope of the two Conventions as to their subject-matter":

> "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.
>
> c. In contrast, other matters considered by most of the States to fall within **public law**, for example **tax** matters, would not yet seem to be covered by the Conventions as a result of this evolution.
>
> d. However, nothing prevents States Party from applying the Conventions in their **mutual relations to matters of public law**, though not necessarily in an identical manner for both Conventions".[146]

142. In this respect, the autonomous interpretation of treaties provided for under Article 31 of the *Vienna Convention of 23 May 1969 on the Law of Treaties*, a traditional principle of public

143 House of Lords, 16 February 1989, *All E.R.* 1989, p. 745; *I.L.M.* 1989, p. 693.

144 See Report of the 1989 SC (*op. cit.* note 24), paras 7-10.

145 OLG München, 9 May 1989, published in part in *RIW* 1989, p. 483; annotation *IPRax* 1990, p. 157 (Stürner/Stadler). An English translation by B. Ristau of the entire decision has been published in *I.L.M.* 1989, p. 1570.

146 Report of the 1989 SC (*op. cit.* note 24), C&R No 26 [our emphasis].

international law, should be remembered. Since the 1989 Special Commission meeting, a number of courts have ruled on the issue.

- The 2003 Special Commission meeting

143. In the light of the observations relating to the current practice reported above, the 2003 Special Commission (which examined the practical operation of the 1965 Service, 1970 Evidence and 1961 Apostille Conventions) sought to encourage an extensive interpretation of the phrase "civil or commercial matters", and reaffirmed the conclusions adopted in 1989 under letters a) and b) cited above (see para. 141).[147]

144. The 2003 Special Commission also added the following conclusions:

> "70. […] 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."

- The 2009 Special Commission meeting

145. The 2009 Special Commission meeting noted that the expression "civil or commercial matters" did not appear to have caused difficulties in the preceding five years and noted that C&R No 69 of the 2003 Special Commission meeting appeared to have been followed.

146. The Special Commission also added the following conclusions:

> "13. […] The SC reaffirms 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.
>
> 14. The SC takes the view that a liberal interpretation should be given to the phrase 'civil or commercial matters'. In doing so, one should focus on the nature of the cause of action and keep in mind that the Convention does not expressly exclude any particular subject matter from the scope of 'civil or commercial matters'. The SC invites States Parties to encourage their Central Authority to communicate with the forwarding authority when problems of interpretation arise. It recommends that States Parties encourage forwarding authorities to include in their requests for service some information about the nature of the cause of action, in particular where a request may give rise to doubts as to whether it falls within the scope of the Convention."

- The 2014 Special Commission meeting

147. As with previous meetings, the Special Commission recommended that the term "civil or commercial matters" be interpreted liberally and in an autonomous manner, and helpfully added

147 C&R No 69 of the 2003 SC.

that this term should be applied consistently across both the 1965 Service and 1970 Evidence Conventions.[148]

148. In addition, the Special Commission welcomed the flexible practice followed by Contracting Parties of not refusing to execute requests based solely on the entity making the request and to focus instead on the substantive nature of the matter referred to in the request.[149]

- Current practice

149. The liberal trend initiated by the Appellate Court (*Oberlandesgericht*) of Munich (Germany) in 1989 has been confirmed. In 1992, the same Court held that an action brought before a United States court for punitive damages is within the scope of the 1965 Service Convention's subject-matter, even though the amounts claimed are exorbitant, in its opinion. The disputed merit of the claim cannot serve as an appropriate criterion to distinguish civil matters from those that are matters for criminal law, insofar as claims in damages brought in the United States are frequently not quantified.[150] Likewise, the Appellate Court of Celle (Germany) held that a claim for treble damages based on the RICO-Act of the United States was a civil matter within the meaning of Article 1(1) of the Convention, and should therefore be served on the defendant in Germany.[151][152]

150. ***Swiss*** case law seems to be evolving in the same direction.[153] The Cantonal Court of Fribourg held that an enforcement instrument is a judicial document for the purposes of the Convention in any event where the prosecution relates to a receivable under private law.[154]

151. The Supreme Court of the Netherlands (*Hoge Raad*) reached the same conclusion and held that bankruptcy law was a matter within the scope of the Convention's subject matter. The Advocate-General's conclusion, to which the grounds for that ruling expressly refer, is based on an autonomous interpretation of the Convention.[155]

152. This brief review of case law suggests that the recommendations from the meetings of the Special Commission have been followed. The judges and Central Authorities of the Contracting Parties seem more often than not to make an autonomous, or at least liberal, interpretation of the concept of civil or commercial.

148 C&R No 40 of the 2014 SC.

149 C&R No 41 of the 2014 SC.

150 OLG München, 15 July 1992, *IPRax* 1993, p. 309, and the cited legal authors and precedents.

151 OLG Celle, 14 June 1996, decision received from the German Central Authority.

152 In *United States ex rel Bunk v. Birkart Globistics GmbH & Co.*, Nos. 1:02cv1168 (AJT/TRJ), 2010 WL 423247 (E.D. Va. Feb. 4, 2010) a US court noted that the Central Authority in Bavaria considered that a claim under the False Claim Act was only a civil or commercial matter in part and therefore, they refused to execute the request for service. The US Court held that in accordance with Art. 4 the authority to decide whether the request falls withing the scope of the Convention is a matter for the Central Authority of the requested State.

153 Although the case did not concern the application of the Convention, a Basel Court held that a judgment awarding "punitive" damages against the defendant was a civil matter, *BJM* 1991, p. 31.

154 Cantonal Court of Fribourg, 10 February 1999, decision received from the Central Authority (see also note 124). It seems, however, that this decision is based more on the precedents of the Federal Supreme Court of Switzerland, which considers that prosecution for debts and bankruptcy, based on civil claims, is within the concept of civil or commercial matters, than on a genuine autonomous interpretation of the Convention. However, in *Prozess* K 18/04 (*op. cit.* note 28), the Swiss Federal Insurance Tribunal (*Tribunal fédéral des assurances*) held that claims regarding insurance premiums that are part of the mandatory social medical insurance are considered to be within the scope of public law and are not "civil or commercial matters". The Court reasoned that this type of insurance is financed, like taxes, by global contributions and therefore, the Convention does not apply. It should be noted that the message from the Swiss Federal Council of 8 September 1993 relating to the ratification of the Convention recommends the autonomous interpretation of the Convention, in accordance with Art. 31 of the *Vienna Convention of 23 May 1969 on the Law of Treaties* and the recommendation from the 1989 SC.

155 HR 15 June 2000, *NJ* 2000, p. 642.

153. In this respect, it should be pointed out that several supranational courts have sought to provide an "autonomous" interpretation of the treaties within their jurisdiction. For instance, the ***Court of Justice of the European Union***, construing the phrase "civil and commercial matters" in the 1968 Brussels Convention (now superseded by the Brussels Ia Regulation) provided general criteria that as a first step, regard should be had to the objectives and scheme of the Convention, and secondly to the general principles which stem from the corpus of the national legal systems. Further, the Court indicated that where a public authority was acting in the exercise of its powers, this would not be civil or commercial.[156]

154. The absence of a supranational court as "guardian" of the uniform interpretation of the Convention emphasises the crucial importance of communication and exchanges between the authorities in charge of the Convention's application; such interaction is a basic condition to secure, as far as possible, a harmonious implementation of the Convention. Autonomous interpretation remains the best way of achieving this goal.

iv. Address of the person to be served is unknown

155. The Convention does not apply when the address of the person to be served is unknown (Art. 1(2)).

- **Preliminary remarks**

156. During the 1977 Special Commission meeting, it appeared that the practice of Contracting Parties' Central Authorities was very liberal when the address stated in the request for service was incomplete, inaccurate or fictitious, or in the event of a change of address. In such cases, the Central Authorities may seek to determine the correct address of the person to be served before asserting Article 1(2) of the Convention and refusing to execute the request or cause it to be executed. On a practical level, the Special Commission supported the suggestion of the expert of the United Kingdom, that the Request Form be supplemented by an additional statement specifying whom the Central Authority might approach to obtain additional information relating to the address of the person to be served in the event of difficulties.[157] It is preferable to ask for additional information rather than send back the file (see Annex 3 at pp. 171 *et seq.*).

- **Providing assistance in locating the person to be served**

157. At the 2014 meeting of the Special Commission, it was noted that while there is no obligation to provide assistance in locating the person to be served under the Convention, many Contracting Parties have reported providing assistance, as a Requested State, when the address is incomplete or incorrect. Some have even reported to assist when the address is unknown.[158] In addition, the Special Commission encouraged "Contracting States to provide such assistance consistent with their legal and structural capabilities, when able to do so"[159] and to provide

156 See judgment of the Court of 14 October 1976 in *LTU Lufttransportunternehmen GmbH & Co. KG v. Eurocontrol*, C-29/76, EU:C:1976:137 (regarding the 1968 Brussels Convention), and see judgment of the Court (First Chamber) of 11 June 2015, *Stefan Fahnenbrock and Others v Hellenische Republik,* C-226/13, ECLI:EU:C:2015:383 (regarding the EU Service Regulation).

157 For instance, in **Australia**, the Federal Court has accepted a print-out from an online telephone directory to satisfy itself that the address of the person to be served was known. See *Bell v. Steele* [2011] FCA 1390.

158 C&R No 23 of the 2014 SC.

159 *Ibid*. As an example of European Union initiatives, see *e.g.*, Art. 7 of the 2020 EU Service Regulation, which provides for assistance between EU Member States to find the address of a respondent. A specific form is dedicated to the request to determine the address of the person to be served. In addition, notifications made by Member States in relation to Article 7 are available on the Service webpage of the e-Justice Portal. A factsheet developed by the European Judicial Network in civil and commercial matters on service of documents also provides practical information on address enquiries between the Member States.

information with regard to such assistance for inclusion in the practical information charts on the Service Section of the HCCH website.[160]-[161]

158. Issues relating to the service of documents on military personnel stationed abroad and whose coded addresses remain secret were also raised. In such cases, it was suggested that the Central Authority of the Requested State entrust the document to be served either to the military authorities or to the Consul of that State who is in residence in the foreign State where the person in military service is stationed.

159. At the 2014 Special Commission meeting, experts stressed the importance of stating as accurately as possible the name of the person to be served, especially when this is a legal entity, company, non-profit entity or foundation. Any difference between the name stated in the request and the addressee's official name may make the service impossible or ineffective. If a difference is found between the names entered in the document to be served and the request for service, it is recommended that the name specified in the document to be served be taken into account.

- National practice

160. The courts of the Netherlands have ruled on several occasions on the scope of Article 1(2) of the Convention. In a first case,[162] the Supreme Court (*Hoge Raad*) had to consider whether an address, found to be incorrect on appeal, prevented the Convention's application although the respondent had appeared at first instance without asserting any irregularity relating to the address. The Supreme Court held that when a party has good cause to believe that the addressee of a document has its domicile or habitual residence at a certain address abroad, and on that basis, proceeds through channels provided by the Convention to serve that party at that address, the mere fact that this address is subsequently found to be inaccurate does not make the Convention inapplicable. The Supreme Court relied on Article 15(2), which provides an option for the judge to rule in the absence of any attestation of service on the defendant, provided that the conditions laid down under sub-paragraphs (a) to (c) of that provision are satisfied. The Supreme Court explained that the judge may, if he or she deems appropriate, order other action to make a document known to a defendant before issuing a default ruling. This may be, for instance, publication of the document in a newspaper published at the location of the defendant's last known address.

161. Two subsequent decisions followed the reasoning applied in this case. The Utrecht District Court ruled in default against a defendant whose spouse had refused informal delivery of the document sent to her husband at his latest known address in France and had stated that she was unaware of his whereabouts as he had left the family residence for an indeterminate duration.[163] In that case, the Court considered it pointless to seek to warn the defendant by other means. In another case, the Supreme Court (*Hoge Raad*) confirmed that the Convention remained applicable when

160 C&R No 24 of the 2014 SC. Pursuant to this C&R, Germany provided useful information for inclusion in the HCCH website.

161 *Regulation (EU) 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) (recast)*, which entered into force in July 2022, made a big step forward to provide for such assistance. Art. 7 specifies, "Where the address of the person to be served with the judicial or extrajudicial document in another Member State is not known, that Member State shall provide assistance in determining the address in, at least, one of the following ways: (a) providing for designated authorities to which transmitting agencies may address requests on the determination of the address of the person to be served; (b) allowing persons from other Member States to submit requests, including electronically, for information about addresses of persons to be served directly to domicile registries or other publicly accessible databases by means of a standard form available on the European e-Justice Portal; or (c) providing detailed information, through the European e-Justice Portal, on how to find the addresses of persons to be served."

162 *Charly Holding AG v. Giorgio Gomelsky*, HR 2 December 1988, *NJ* 1989, p. 374; *RvdW* 1988, p. 211.

163 *Van Zelm BV v. Martinus Bomas*, Rechtbank Utrecht, 6 December 1995, *NJ* 1996, p. 756.

the defendant's address in Germany was known at the time of the first procedural hearing but notice of the appeal on a point of law could not be served by the German Central Authority because the defendant had departed without leaving any address. However, before issuing a default ruling, the Supreme Court allowed the appellant time to publish the summons in a local newspaper at the respondent's last known address in Germany.[164]

162. In the **United States**, the issue has also arisen regarding the Convention's applicability where the address of the person to be served is not known. Forum rules generally provide that service may be made by means of publication in a daily newspaper when the address of the person to be served remains unknown throughout the period of publication of the notice, even though the plaintiff has used all reasonable diligence to locate the addressee.[165] In such a case, the Convention is not applicable, since there is no occasion to transmit a document abroad (see paras 49 *et seq.*). In *Kott v. Superior Court*,[166] a California Court held that the plaintiff had not displayed the expected diligence to ascertain the defendant's address in Canada, even though the plaintiff was aware of the defendant being a Canadian citizen. Service by publication was therefore denied and the plaintiff was required to proceed according to the Convention. Based on *Kott*, a ***second California Court*** held that the Convention was not applicable in a case where the address of the person to be served remained unknown throughout the period of publication of the notice.[167] It was only after the period of publication that the defendant was found to be residing in Spain.[168] A ***third California Court*** also followed these two earlier cases, finding that although no express language in Article 1 imposes a reasonable diligence requirement, there is no other reasonable interpretation of Article 1 without rewarding a party's wilful ignorance of the whereabouts of the party to be served.[169]

163. Federal courts have also ruled on this issue. In *Yates v. Yee Mei Cheung*,[170] the ***United States District Court for the Northern District of California*** acknowledged that although the plaintiff had learned that the defendants may be residing in China, he was unable to locate them, despite making exhaustive enquiries (such as conducting numerous database searches, attempting to contact agents of the defendants, hiring professional skip tracers and using reverse telephone searches). Therefore, the Court found that the Convention no longer applied and service by publication on the defendant was deemed valid. The decisions mentioned above imply that in the United States the application of the Convention is dependent on the judge's determination of the plaintiff's degree of diligence in attempting to locate the defendant.[171] These interpretations of

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164 *Malenstein v. Heymen*, HR 20 February 1998, *NJ* 1998, p. 619. Similarly, in *K.X. v. N.Y.*, Cass., Ch. Civ. 2, Arrêt No 2039 of 10 November 2010 (No 09-66214), the Cour de cassation of France held that service made at the last known address of the recipient in Switzerland in accordance with the 1965 Service Convention was valid despite the fact that the tribunal of Baden (Switzerland) could not serve the documents because of a change of address.

165 See, *e.g.*, California Code of Civil Procedure, § 415.50 subd. (a)-(b).

166 45 Cal. App. 4th 1126 (Cal. Ct. App. 1996) [hereinafter referred to as the *Kott* case or decision].

167 *The People v. Mendocino County Assessor's Parcel*, No. 056-500-09, 58 Cal. App. 4th 120 (Cal. Ct. App. 1997).

168 Likewise, the *French Cour de cassation* inferred that the defendant was domiciled in the forum State in a case where the writ of summons before the English High Court had been served at the defendant's last known address in London, the defendant not having subsequently notified a new address abroad (in Germany, in fact) either to the plaintiffs or to the English authorities, and that document having been, upon leave from the English Court, served again at different addresses in London and published in the international press. The Court drew the conclusion that Art. 15 of the 1965 Service Convention did not apply, and upheld the exequatur of the English default judgments: *Stolzenberg v. Sté Daimler Chrysler Canada Inc.*, Cass., Ch. Civ. 1, 30 June 2004, Juris-Data 2004-024353; Opinion of Mr Jerry Sainte-Rose, *JCP E*, 2005, II, 237.

169 *Lebel v. Mai*, 210 Cal. App. 4th 1154 (Cal. Ct. App. 2012).

170 No. C10-5404 TEH, 2012 WL 3155700 (N.D. Cal. Aug. 2, 2012).

171 See, *e.g.*, *Microsoft Corp. v. Does*, No. 12-CV-1335 (SJ)(RLM), 2012 WL 5497946 (E.D.N.Y. Nov. 13, 2012) (Convention did not apply in action against alleged cybercriminals where – even after months of investigation – defendants' personal

Article 1(2) once again reflects the Convention's non-mandatory but exclusive character in that the conditions for its application are dependent on the law of the forum (see paras 52 *et seq.*).

- A practical example from Brazil

164. The Brazilian Central Authority has developed practices for locating the person to be served.

165. In Brazil, the *Department of Assets Recovery and International Legal Cooperation* (Ministry of Justice and Public Security) performs the function of the Central Authority under all Conventions related to legal cooperation in civil matters. Accordingly, the Central Authority may resort to additional tools outside the 1965 Service Convention to locate a person to be served. One possible alternative is to issue an administrative request under Article 7 of the 2007 Child Support Convention, which provides for cooperation between Central Authorities to locate the debtor of child support and other forms of family maintenance. In other cases, the Central Authority advises the foreign authority to forward a request under the 1970 Evidence Convention, or under any bilateral or regional treaty available for that purpose.

166. For incoming requests, where the address provided by the forwarding authority is incomplete or inaccurate, the Brazilian authorities will try to complete it or correct it by including any missing postal code, performing internet-based research, checking available government databases, or even contacting other authorities, service providers and persons in the neighbourhood.

167. Additionally, according to the Brazilian Central Authority, requests transmitted electronically can be easily amended or reissued, which is not the case where the Central Authority of the Requested State accepts only requests in paper form. The use of information technology ultimately allows the authorities involved to provide additional addresses and information, or, if that is not possible, to immediately forward a new request for service with an alternative address.

168. For outgoing requests, when the person to be served cannot be located in the Requested State, the Brazilian Central Authority will attempt either to correct the address or to find an alternative address. In doing so, the Central Authority performs online research to obtain the person's address, seeking any additional and relevant information. The Central Authority may even request the assistance of foreign Central Authorities to locate the person to be served. Bilateral and regional treaties, as well as other HCCH Conventions, such as the 2007 Child Support Convention and the 1970 Evidence Convention referred to above may be used.[172]

169. These practices have largely improved the operation of the Convention in Brazil, both for incoming and outgoing requests, since issues with the address of the person to be served have always been the main reason for the non-execution of requests by the Central Authority.

identities and physical locations remained unknown); *Teller v. Dogge*, No. 2:12-CV-591 JCM (GWF), 2013 WL 508326 (D.Nev. Feb. 8, 2013) (Convention did not apply where defendant believed to be residing in Belgium had "purposefully gone underground in an attempt to subvert service"); *Compass Bank v. Katz*, 287 F.R.D. 392 (S.D. Tex. 2012) (Convention applied where plaintiff failed to make a showing that defendant's address in Mexico was unknown); *RPOST Holdings, Inc. v. Kagan*, No. 2:11-cv-238- RG, 2012 WL 194388 (E.D. Tex. Jan. 23, 2012) (granting substituted service on defendant only after plaintiff attempted service through the Convention and was also refused defendant's address by defendant's counsel); *Chanel, Inc. v. Song Xu*, No. 2:09-cv-02610-cgc, 2010 WL 396357 (W.D. Tenn. Jan. 27, 2010) (finding that where plaintiff hired a private investigator that was unable to locate defendants in China – and determined that the physical address provided by defendants did not identify street names, numerical street addresses or building numbers – the Convention did not apply); *Opella v. Rullan*, No. 10-21134-CIV, 2011 WL 2600707 (S.D. Fla. June 29, 2011) (concluding that an address will be considered unknown only after the plaintiff has exercised reasonable diligence to discover such address); *Sec. and Exch. Comm'n v. Nahata*, 19-CV-03628, 2022 WL 4010198 (N.D. Ga. Mar. 29, 2022) (granting service by publication and service by e-mail since the court determined that defendant's address was unknown, making the Convention inapplicable, after plaintiff's attempts at service on defendant via the Convention being unsuccessful with presumption on defendant's evasive approach).

172 These Conventions must be in force in other States and apply between that State and Brazil.

⇒ **Does Article 1(2) include the electronic address (e-mail) of the addressee?**

170. Today, using electronic communication technologies, the concept of address has taken on an entirely new dimension. Does the term used in Article 1(2) include the addressee's electronic address? It would seem that it does not. An e-mail address alone would seem incapable of allowing an authority to determine whether there is occasion to transmit a document abroad to another Contracting Party to the Convention and whether the Convention applies.

171. For instance, what is the effect of an electronic address that does not include any geographical nexus (e.g., miller@yahoo.com, miller@gmail.com), thus not allowing to determine whether the transmission is made to another State Party? Furthermore, the addressee may use an address with a geographical extension (e.g., .us, .nl, .ch, .fr) even though the addressee is not resident in that State or has never been there; or they may have acquired the address while they were travelling through that State but otherwise have no connection at all with that State – can this be sufficient to trigger the application of the Convention? In addition, are States ready to accept the validity of service at an electronic address only, having regard in particular to the protection of defendants under Article 15?

v. Between Contracting Parties to the Convention

172. The Convention applies between Contracting Parties.[173] However, in some cases it may be doubtful whether a State is indeed Party to the Convention. For example, a ***Dutch court*** considered that the Convention does not apply to a transmission of documents for service on a defendant in **Northern Cyprus**.[174]

173. The **Russian Federation** has declared that it will not apply the Convention in relation to Contracting Parties which charge for services rendered (with the exception of those contemplated in Art. 12(2)(a) and (b)).[175] In practice, this declaration has affected the operation of the Convention between the **United States** and the **Russian Federation**; in this regard, the United States Department of State and several United States courts have noted that the Convention is not operational between the United States and the Russian Federation.[176]

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173 The list of the Contracting Parties is available on the HCCH website. This list is regularly updated. With regard to the People's Republic of China, it should be noted that the Convention applies to both the Hong Kong SAR and Macao SAR. The relevant declarations are available on the HCCH website. On application of the Convention in Hong Kong SAR, see Zhang Xian Chu, "The Extraterritorial Service of Judicial Documents from Hong Kong", *Hong Kong L.J.* 1998, vol. 28, p. 356. On Taiwan's status, see the resolution 2758 (XXVIth Session) adopted by the General Assembly of the United Nations on 25 October 1971, available at https://digitallibrary.un.org/record/192054 [last consulted on 5 May 2024].

174 *Owel v. Staat der Nederlanden, Rb* 's Gravenhage, 22 December 1993, *NIPR* 1995, p. 418. In 1983, the Turkish-held area of Cyprus declared itself the "Turkish Republic of Northern Cyprus", but it is recognised only by Türkiye. Attempts to reunite the divided island have failed.

175 The declarations of the Russian Federation are available on the Service Section of the HCCH website. For more information on costs, see paras 270 *et seq.*

176 The US Department of State website (Russia – Judicial Assistance web page) notes that "[t]he Russian Federation refuses to serve letters of request from the United States for service of process presented under the terms of the 1965 Hague Service Convention or to execute letters rogatory requesting service of process transmitted via diplomatic channels", available at the following address: https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/RussianFederation.html [last consulted on 5 May 2024]. See also, *Nuance Communications, Inc. v. Abbyy Software House*, 626 F.3d 1222 (Fed. Cir. 2010); In *re Cyphermint, Inc*., 445 B.R. 11 (Bankr. D. Mass. 2011) and *Ambriz Trading Corp. and Ilya Lobanov v. URALSIB Financial Corp*., No. 11 Civ. 4420 (SAS), 2011 U.S. Dist. LEXIS 133928 (S.D.N.Y. Nov. 21, 2011) (acknowledging that Russia unilaterally suspended all judicial co-operation with the United States in civil and commercial matters and, as a result, courts have granted alternative service on Russian defendants pursuant to *Fed. R. Civ. Pro.* 4(f)(3)), *Fisher v. Petr Konchalovsky Foundation*, No. 15-cv-9831 (AJN), 2016 WL 1047394 (S.D.N.Y. Mar. 10, 2016) (granted substituted service via e-mail) . But see *Owen v. Sports Gymnastics Federation of Russia*, No. 1:12-cv-00034-NT, 2012 WL 346661 (D. Me. Jan. 31, 2012) (requiring plaintiff to either

- Extensions to overseas and other territories

174. According to Article 29(1), a State may extend the Convention to territories "for the international relations of which it is responsible". France, for example, has declared that, in the absence of a declaration to the contrary, the Convention applies to the entire territory of the French Republic.[177] Thus, besides Metropolitan France, the Convention applies to Guadeloupe, French Guiana, Réunion, Martinique, Mayotte, New Caledonia, French Polynesia, Saint Barthelemy, Saint Martin, Saint Pierre and Miquelon, the French Southern and Antarctic Lands and Wallis and Futuna. The Netherlands has extended the Convention to Aruba. The United Kingdom has extended the Convention to Anguilla, Bermuda, the Cayman Islands, the Falkland Islands, Gibraltar, the Bailiwick of Guernsey,[178] the Isle of Man, Jersey, Montserrat, Pitcairn, Saint Helena, the Turks and Caicos Islands, and the Virgin Islands.[179] The United States has extended the Convention to the Commonwealth of the Northern Mariana Islands.[180] Similarly, Australia has done so with respect to the Ashmore and Cartier Islands, the Australian Antarctic Territory, Christmas Island, the Cocos Islands, the Coral Sea Islands, Heard Island and McDonald Islands, and Norfolk Island.[181]

make additional attempts to serve defendant in Russia under the Convention, or alternatively, to produce evidence that the dispute between the United States and Russia continues and thus the Convention is not a viable means of service); *Dmitriev v. Mann*, No. 1:21-CV-40068-NMG, 2023 WL 2988644 (D. Mass. Mar. 10, 2023) (holding that as Russia has suspended all judicial cooperation with the United States in civil and commercial matters, the plaintiff must avail himself of *Fed, R. Civ. Pro.* 4(f)(3) for alternative service and "explain whether, and to what degree, the proposed manner of service comports with pertinent terms of the international agreements" (both the Convention and the Moscow Agreement). The court noted that before this procedure is completed, rendering a default judgment is premature); *LionHead Glob. No. 2, LLC v. Tpdd Reed, Inc.*, No. CV 19-7903 PA (AFMX), 2020 WL 4390389 (C.D. Cal. July 7, 2020) (recognising Russia's suspension of judicial cooperation with the United States and the evasive approach of the defendant, the court allowed alternative service to diverse e-mail addresses).

177 See the Notice (*Circulaire*) from the French Ministry of Justice, mentioned *supra* in note 19. For example, in *Int'l Maritime Services Pty Ltd v. PDG SNA Tuhaa Pae* [2013] FCA 92, the Federal Court of Australia used the Convention to transmit documents for service in French Polynesia.

178 The Bailiwick of Guernsey includes a number of islands in addition to Guernsey: Alderney, Sark, Herm, Jethou, Lihou. Furthermore, as the Isle of Brecqhou is politically part of Sark, the Convention also applies to Brecqhou.

179 The UK had also extended the Convention to other territories, which in the meantime achieved independence. Some of these newly independent States either declared that they consider themselves bound by the Convention or acceded to the Convention: ***Antigua and Barbuda***, ***Belize***, ***Saint Vincent and the Grenadines***, and the ***Seychelles***. The Convention thus is in force for these States. The following States, however, have neither declared to be bound by the Convention nor acceded to it (and thus the Convention is not in force for them): ***Fiji***, the Gilbert Islands and the Central and Southern Line Islands (now ***Kiribati***), Saint Christopher and Nevis (now ***Saint Kitts and Nevis***), ***Saint Lucia***, British Solomon Islands (now the ***Solomon Islands***), and the Ellice Islands (now ***Tuvalu***).

180 For more details on all these extensions, see the HCCH website.

181 Australia had also declared that the Convention shall extend that all the States and Territories of Australia including external territories.

Part 2 – Channels of Transmission

175. A channel of transmission is effectively a pathway that is set out in the 1965 Service Convention for the purpose of transmitting documents for service abroad.

176. The Convention provides for one main channel of transmission (see paras 178 *et seq.*) and several alternative channels of transmission (see paras 324 *et seq.*).

177. It is important to distinguish between the transmission of a document from one Contracting Party to another and the actual service of the document on the addressee. The Convention deals primarily with the transmission of documents for service abroad and does not contain substantive rules regarding the service of documents. However, there are two alternative channels of transmission under the Convention where the transmission of process itself includes service of process (direct diplomatic or consular channels and the postal channel).[182]

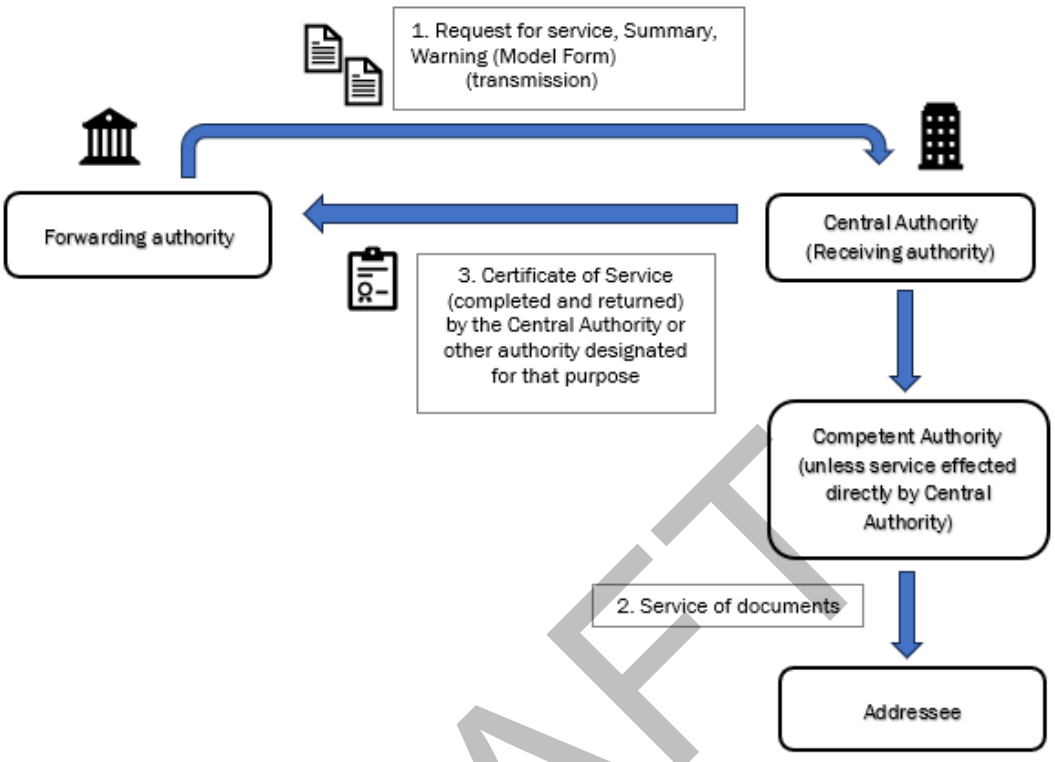
I. The main channel

178. The key feature of the main channel of transmission is the system of Central Authorities. Central Authorities are established in each Contracting Party; they may also be referred to as receiving authorities.[183]

182 Arts 8(1) and 10(a), respectively.

183 Under Article 18(1), other authorities that have been designated that are competent to receive letters of Request can serve as receiving authorities. However, applicants shall always retain the right to address a request directly to the Central Authority under Article 18(2).

The operation of the main channel of transmission



179. Under this channel:

- The forwarding authority of the Requesting State, which is generally an authority or a judicial officer that is competent to do so under the law of that State, prepares a request for service using the Model Form (Art. 3(1)).[184]
- The items printed on the Model Form must be either in French or in English. They may also be drafted in the official language or one of the official languages or the Requesting State (Art. 7(1)). The blanks corresponding to these items in the Request and Summary must be completed by the forwarding authority in either the language of the Requested State or in French or in English (Art. 7(2)). It is also recommended that the forwarding authority complete and include the Warning.[185]
- The forwarding authority then transmits the request for service and the documents for service abroad in duplicate (Art. 3(2)) where a requirement for a duplicate copy has not been dispensed with by a Contracting Party (Art. 20(a)) to the Central Authority of the

184 In some cases, a request may also be transmitted from a requesting party to the forwarding authority. This would be the case where the forwarding authority is not itself making the request.

185 The Warning relates to the legal nature of the document delivered. It was recommended by the Fourteenth Session of the HCCH that the Summary of the documents be preceded by a Warning. The Warning should also mention the addressee's identity and address as well as the person or authority that the addressee may approach to obtain information regarding legal aid. While the inclusion of the Warning remains optional, the Special Commission has urged Contracting Parties to widely encourage its use.

Requested State. There is no requirement for the request to be subject to legalisation or another equivalent formality and there is no requirement to send original documents.

- The Central Authority in receipt of the request will then verify that the request is properly filled in, that the matter relates to a civil or commercial matter, and that compliance with the request will not infringe the Requested State's sovereignty or security.
- If the Central Authority considers that the request does not satisfy the formal or substantial requirements of the Convention, it must inform the forwarding authority immediately (Art. 4). If the Central Authority considers that compliance with the request would infringe a State's sovereignty or security, the request for service may be refused (Art. 13).
- Having made these assessments, and content to proceed, the Central Authority will either serve the document or arrange for it to be served by the competent authority to the addressee (Art. 5). The service will either be a method provided for under the law of the Requested State or a particular method requested by the forwarding authority, unless that method is incompatible with the law of the Requested State.
- Following this, the Central Authority, or any other authority designated by that State for such a purpose, must complete the Certificate contained in the Model Form and must forward the Certificate directly to the applicant (Art. 6(4)).

1. The procedure for the Requesting State

- **The entity: the forwarding authority**

180. Pursuant to the Convention, a request for service under the main channel of transmission may only be forwarded to the Central Authority of the Requested State by an "authority or judicial officer competent under the law of the State in which the documents originate" (Art. 3). It is therefore a matter for the Requesting State to determine which entity qualifies as a competent authority or judicial officer for the purposes of the Convention.[186] However, this excludes private persons.[187] Since 1977, these competent authorities or judicial officers have been referred to, for the purposes of the Convention, as forwarding authorities.[188]

181. In practice, there is a great diversity of forwarding authorities competent to issue requests for service to a Central Authority. In most Contracting Parties, these are decentralised authorities, courts or tribunals, prosecutors, registrars, *huissiers*, process servers, solicitors, attorneys, and notaries, etc. Additionally, in some States such as **Croatia**, **Egypt**, **Finland**, **Latvia** and in a number of **Swiss cantons**[189] the requests are systematically channelled through the national Central Authority, which then sends them abroad.

182. The Requested State does not play a role in determining the competence of the forwarding authority in the Requesting State and cannot apply its own domestic rules to verify this. The

186 The relevant information is available on the Country Profile of a Contracting Party. Country Profiles can be accessed from the Service Section of the HCCH website.

187 Explanatory Report (*op. cit.* note 13), p. 368.

188 The term "forwarding authority" was first used in the 1977 Special Commission meeting and it has been widely used ever since. In the Convention and the Model Form, the forwarding authority is referred to as "applicant" and / or "requesting authority". However, for ease of reference, the term "forwarding authority" is used throughout this Handbook.

189 The relevant cantons are: Jura, Neuchâtel, Schwyz (for all requesting authorities, apart from courts), and Zurich. See Federal Department of Justice and Police, Federal Office of Justice, *International Judicial Assistance in Civil Matters, Guidelines*, 3rd ed., Berne, 2003. Examples of other States that do this are Albania, Argentina, Armenia, Brazil, Bulgaria, Cyprus, Estonia, Georgia, Hungary, Israel, Kazakhstan, China (only for Macao SAR), Nicaragua, Romania, San Marino, Türkiye, United Kingdom (except for Scotland), and Viet Nam.

Special Commission has recommended that where there is any question about the competence of a forwarding authority, rather than rejecting the request, authorities in the State requested should seek to confirm that competence by either consulting the HCCH website, or by making expeditious informal inquiries directly to the forwarding authorities, including by e-mail.[190] The Special Commission has also accepted a suggestion that information on the forwarding authorities and their competence be included in the Model Form for a request for service.[191]

183. The HCCH website contains a wealth of information on the Convention, including practical information. Contracting Parties are invited to keep Country Profiles up-to-date with information about their respective forwarding authorities and competences. Some Contracting Parties have also included this information as a declaration to the depositary *i.e.,* the Ministry of Foreign Affairs of the Netherlands, and the Permanent Bureau has made this information available on the HCCH website. The ability for officials in Contracting Parties to have access to up-to-date information will greatly facilitate the practical and efficient operation of the Convention and improve its success.

⇒ **Can solicitors or attorneys be forwarding authorities?**

184. According to the Explanatory Report, the drafters of the Convention accepted that **English** solicitors could be regarded as competent authorities or judicial officers.[192] In **Canada**, members of the law societies of all provinces and territories (*i.e.* lawyers) have been identified as forwarding authorities under the Convention. This practice aligns with Special Commission discussions in 1977, which pointed out that attorneys serve judicial documents under the supervision of a court and could accordingly be assimilated to judicial officers (*officiers ministériels*) in some legal systems.[193]

185. The question of whether **United States** attorneys are competent forwarding authorities has also been considered, including in a 1992 case decided in Florida.[194]-[195] In that case it was reiterated that the competence of the authority or judicial officer is to be determined by reference to the law of the Requesting State and not to the law of the Requested State.[196] Pursuant to United States procedural rules (*Fed. R. Civ. Pro.* and the rules of most states' courts), a private attorney is authorised to serve a judicial document in the United States, and therefore, has the authority to send a request for service to a foreign Central Authority.[197] However, in 1998, a Texas Court did go further than the Florida Court by recognising the authority to forward a request for service to a foreign Central Authority in any person aged 18 at least and not a party to the dispute.[198] This

190 C&R Nos 47-49 of the 2003 SC; C&R No 21 of the 2009 SC.

191 See note 3 of C&R No 48 of the 2003 SC: The Russian Federation did not support this recommendation and reserved its position.

192 Explanatory Report (*op. cit.* note 13), p. 368.

193 Report of the 1977 SC (*op. cit.* note 132), p. 386.

194 *Marschhauser v. The Travelers Indemnity Co.*, 145 F.R.D. 605 (S.D. Fla. 1992).

195 In its responses to the 2022 Questionnaire, the United States stated that "the persons and entities within the United States competent to transmit service requests pursuant to Article 5 of the Convention include any court official, any attorney, or any other person or entity authorised by the rules of the court".

196 *Marschhauser v. The Travelers Indemnity Co.* (*op. cit.* note 194). See also CR 14948/STJ (decision by a Brazilian court, holding that it considers the United States law conferring active legitimacy to any lawyer regarding Art. 3 of the Convention).

197 See also in support, *FRC Int'l, Inc. v. Taifun Feuerlöschgerätebau und Vertriebs GmbH*, No. 3:01 CV 7533, 2002 WL 31086104 at 9 (N.D. Ohio Sept. 4, 2002); and more recently, *Study Smarter UG*, No. 22CV471-LL-BGS, 2022 WL 2670649 (S.D. Cal. July 11, 2022) (denying the plaintiff's motion to appoint an international process server to transmit documents to Germany's Central Authority, holding no court order is required to satisfy Article 3 of the Convention. In this case counsel for the plaintiff, or another non-party to the case would be competent to transmit a request for service to the Central Authority pursuant to *Fed. R. Civ. Pro.* 4 (c)(2).

198 *Greene v. Le Dorze*, No. CA-3-96-CV-50-R, 1998 U.S. Dist. LEXIS 4093 (N.D. Tex Mar. 24, 1998). *Fed. R. Civ. Pro. 4(c)(2)*

broad interpretation is doubtful as it could lead to any private person who is at least 18 years old and not a party to the dispute addressing the requested Central Authority directly. This is precisely what the Convention seeks to avoid by specifying that the request has to be forwarded by an authority or judicial officer.[199]

186. However, it is noted that in the United States, attorneys representing the parties to a dispute are deemed to be officers of the court.[200] The information provided by the United States in response to the 2022 Questionnaire also states that court officials and attorneys can be competent to transmit service requests.[201]

187. Therefore, it is suggested that requests forwarded by United States attorneys or private process servers should be executed, particularly where the request makes specific reference to the Statute or Rule of Court providing that authority.

- **Preparing the request**

188. The request must conform to the mandatory Model Form and must be accompanied by the document to be served or a copy of this document. The request and the documents are generally required to be provided in duplicate.[202] However, Contracting Parties may agree to dispense with the need for duplicate copies. This will especially be the case where the transmission is done electronically.

189. The Model Form annexed to the Convention (Art. 3(1)), has three parts (see Annex 3 at pp. 171 *et seq.*):

1) a Request to the foreign Central Authority,

2) a Certificate to be completed and returned by that foreign Central Authority or other competent authority of the Requested State (the Certificate is printed on the reverse side of the Request), and

3) a form entitled Summary of the document to be served for the addressee.

190. If there are multiple addressees, a separated Form should be completed for each addressee.

191. The forwarding authority might perhaps find it logical to complete the Model Form in the order of Request, Summary and Certificate. However, the Special Commission pointed out the desirability of not changing the order of items on the Form, in order to avoid misunderstandings, and also recommended that the Model Form not be amended.[203] With this in mind, this Handbook follows the order of the Model Form as set out in the Convention (*i.e.* (i) Request, (ii) Certificate, and (iii) Summary of the document to be served).

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does provide that any person aged at least 18 and not a party to the dispute may serve a writ. It should be noted that in this case, the focus was not on the competence of a private person to forward requests under the Convention but rather on that of a private process server.

199 Explanatory Report (*op. cit.* note 13), p. 15.

200 *Holloway v. Arkansas*, 435 U.S. 475 (1978).

201 In its responses to the 2022 Questionnaire, the United States advised that "the persons and entities within the United States competent to transmit service requests pursuant to Article 5 of the Convention include any court official, any attorney, or any other person or entity authorised by the rules of the court".

202 The 1977 Special Commission observed that the second copy served an important need. The experts recommended its systematic return to the forwarding authority with the Certificate attesting service so as to enable the forwarding authority to identify accurately the document that had been served. This was felt to be particularly important when litigation gave rise to a series of procedural steps.

203 Report of the 1977 SC (*op. cit.* note 132), p. 386, C&R No 30 of the 2009 SC.

192. Use of the Model Form is mandatory under Article 3(1).[204] The Special Commission has strongly reaffirmed the mandatory nature of the Model Form and has urged all relevant authorities in Contracting Parties to use it.[205] While using the Model Form is not mandatory when making requests through alternative channels rather than the main channels, it is still advisable to do so.[206]

a. Components of the Model Form

I. The Request

193. The Request must be filled in by the forwarding authority of the Requesting State and must specify:

1) the identity and address of the forwarding authority;

2) the identity and address of the receiving authority;

3) the identity and address of the addressee;

4) the method for service selected under Article 5(1)(a), (b) or 5(2) (by deleting as appropriate and mentioning, if applicable, the particular method requested);

5) the presence or absence of one or more annexes to the document to be served (by deleting as appropriate); and

6) a list of the documents and annexes accompanying the Request.

194. The Request must be dated and signed by the forwarding authority.[207] In addition, the Special Commission has recommended including information about the competence of the forwarding authority in the Model Form. This might include reference to procedural rules or legislation of the Requesting State authorising that authority to send service requests.[208] Such information could easily be added in the box reserved for the forwarding authority's identity and address.

195. The Special Commission has further recommended that forwarding authorities include information about the nature of the cause of action, as well as the date of birth of the person to

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204 See, e.g., the decision by the Federal Supreme Court of Switzerland, *X. SA v. Y. AG*, 15 September 2003, ATF 129 III 750, 4C/132/2003, p. 755; see also the decision of the Supervisory authority on debt enforcement proceedings for the Canton of Schaffhausen (Switzerland) (*l'autorité de surveillance en matière de poursuites du canton de Schaffhouse*) dated 13 September 2002 (ABSH-2002-87 94), which considered as being defective service of a demand for payment without use of the Model Form, in particular of the Summary of the document. Accordingly, the authority decided to restore the period for objection specified in the demand.

205 See C&R No 29 of the 2009 SC and C&R No 25 of the 2014 SC. The usefulness of the Model Form has also been acknowledged in cases where bilateral agreements containing provisions that are more favourable to the transmission of documents for service than those under the Convention provide a form. The Federal Supreme Court of Switzerland has noted that the use of the Model Form in these cases does not render service invalid, particularly if the receiving authority has accepted to effect service despite a formal irregularity: Federal Supreme Court of Switzerland, 4 March 2008, 4A_392/2007 /len.

206 According to the 2022 Questionnaire responses, approximately 20 States indicated that, even for service requests made through alternative channels, they consistently or occasionally utilise the "Warning" and "Summary" sections (as the Requesting State) or the "Certificate" section (as the Requested State). In addition, the Fourteenth Session of the HCCH recommended that the part of the form containing the "Summary", accompanied by the Warning, be used in all cases including both main and alternative channels, when a judicial or extrajudicial document in civil or commercial matters is to be served abroad, However, the 2009 Special Commission meeting has noted that, "despite the Recommendation of the Fourteenth Session of the Hague Conference, the 'Summary' and 'Warning' of the Model Form rarely accompany requests for service when one of the alternative channels of transmission is used" and urged Contracting States "to widely encourage the use of the Model Form with the 'Summary' and 'Warning'" (see C&R No 31 of the 2009 SC).

207 See *Scheck v. the Republic of Argentina*, No. 10 Civ, 5167(TPG), 2011 WL 2118795 (S.D.N.Y. May 23, 2011), noting that the request for service was not defective when two methods of service had been selected and the signature on the request was not original.

208 C&R Nos 48 and 49 of the 2003 SC; C&R No 30 of the 2009 SC. See also comments in paras 180 *et seq.*

be served.[209] The former is especially relevant when a request raises doubts about whether it falls within the scope of the Convention.[210]

196. Some *huissiers de justice* (especially in Belgium and the Netherlands) have criticised certain aspects of the Request in the Model Form. In their view, the Request form does not provide sufficient information to foreign recipients of claims for payment (which account for a large proportion of documents served). In order for the defendant to be able to enter an appropriate defence, or on the contrary, to decide to pay the amount claimed, it was submitted the form should contain information as to the amount due, the location of and period for payment, the forms of defence and the consequences for the defendant of any defence.[211]

II. The Certificate

197. The Certificate is to be filled out by the Central Authority or other competent authority of the Requested State following service or where service has not been effected (Art. 6) (see also paras 293 *et seq.*). Once completed, the Certificate is returned to the forwarding authority identified in the Request for service. The Certificate should specify:

> (1) If it has been possible to execute the service request:

- the date and location of service;
- the form of service used (Art. 5(1)(a), (b) or 5(2), identified in the Certificate as a), b) or c)), by deleting as appropriate; and
- the identity of the person to whom the documents have been delivered, their capacity and, if applicable, the connection with the addressee of the document.

> (2) If the service request has not been executed, the reasons for the failure.

> (3) In all cases:

- whether reimbursement of costs is required under Article 12(2), by deleting as appropriate;
- a list of the documents returned with the Certificate; and
- if applicable, a list of the documents establishing the service.

198. Finally, the competent authority of the Requested State must sign and date the Certificate. If the Certificate has not been completed by the Central Authority or a judicial authority, the forwarding authority may require that the Certificate be countersigned by one of these authorities (Art. 6(3)). The Special Commission has also encouraged the authorities completing the Certificate to indicate the relevant provisions in the law of the Requested State under which service was effected.[212] For further information about the completion of Certificates, see para. 296.

209 C&R No 30 of the 2009 SC.

210 *Ibid.*, No 14.

211 See Royal Professional Association of Judicial Officers (*Koninklijke Vereniging van Gerechtsdeurwaarders*), "Betekening in het buitenland en de Europese Titel", *Proceedings of the Conference organised by the Dutch Royal Association of Bailiffs with support from the Hague Conference*, Arnhem, 1996.

212 See C&R No 30 of the 2009 SC.

III. Summary of the document to be served

199. The *Summary of the document* component of the Model Form is to be delivered to the addressee at the time of service. In order to provide the addressee with the most accurate information possible, instructions for filling out the form have been drawn up (see Annex 6 at pp. 184 *et seq.*). In addition, it is crucial to ensure the accuracy and adequacy of information in the Summary of the documents to mitigate the risk of requests being delayed or returned unexecuted due to discrepancies between the Summary of the documents and documents to be served. For example, it is important to ensure that response deadlines or hearing dates in the documents to be served are accurately recorded in the Summary. The Fourteenth Session of the HCCH[213] also recommended that the Summary of the document be preceded by a *Warning* relating to the legal nature of the document delivered. This Warning should also mention the addressee's identity and address, as well as information about the person or authority that the addressee can contact to enquire about the availability of *legal aid* or a *legal opinion* in the document's State of origin (see the Warning recommended for use by the Fourteenth Session of the HCCH, Annex 3 at pp. 171 *et seq.*). While the inclusion of the Warning remains optional, the Special Commission has urged Contracting Parties to widely encourage its use.[214]

⇒ Languages used in the Model Form

200. The items printed on the Model Form must be printed either in French or in English. They may also be written in the official language or one of the official languages of the Requesting State (Art. 7(1)).[215] The blanks corresponding to these items shall be completed either in the language of the Requested State, or in French, or in English (Art. 7(2)). Contracting Parties may, by agreement, provide for other requirements among themselves with respect to the language(s) to be used (Art. 20(b)). Unlike the first sentence of Article 7, the Fourteenth Session of the HCCH recommended that the items printed in the Summary of the document be drafted in both French and English.[216]

201. For example, **Mexico** and the **Russian Federation** have declared that it would be appreciated if the blanks of the Model Form are completed in Spanish and Russian, respectively.[217] However, this does not affect the right for Contracting Parties to fill out the Model Form in English or French.[218]

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213 Held from 6 to 25 October 1980.

214 See C&R No 31 of the 2009 SC.

215 See, *e.g.* the decision by the ***Federal Supreme Court of Switzerland***, *X. SA v. Y. AG*, 15 September 2003, ATF 129 III 750, 4C.132/2003, p. 756. In this case, the request was sent to France (to the relevant *Procureur de la République*), but at least some of the blanks were completed in German. The Federal Supreme Court of Switzerland concluded that the request was formally defective. However, the Court went on to state that a formal defect of the request does not necessarily lead to invalid service in the Requested State if the relevant Central Authority executes the request (or has it executed) despite the formal defect. The Court based its reasoning on Art. 4 of the Convention (see p. 756 of the decision), which requires the Central Authority to "promptly inform the applicant and specify its objection to the request" if the latter does not comply with the provisions of the Convention (temporary refusal of the request, see paras 228 and 229). Referring to T. Bischof (*op. cit.* note 18), pp. 279-280, the Court held that action under Art. 4 is only suitable where the formal defects render execution of the request temporarily impossible; according to the Court, this is not the case where the Central Authority understands the request in spite of the wrong language used to fill in the blanks of the Request Form. By executing the request, the Central Authority confirmed that it understood the request. The Court then examined whether service had been effected validly. Emphasising that service was effected by informal delivery, thus making the translation of the documents unnecessary, the Court concluded that service in France was valid (see p. 756 of the decision).

216 For more details on the Recommendation adopted by the Fourteenth Session of the HCCH (Annex 3 at pp. 171 *et seq.*), see the Explanatory Report drawn up by G. Möller and which is reproduced in Annex 5 at pp. 178 *et seq.*

217 See the Service Section of the HCCH website.

218 See C&R No 12 of the "Workshop on the Hague Service Convention Hosted by the Consultoría Jurídica of the Secretaría

202. While the language of the Model Form is governed by Article 7, the language of the document to be served is governed by Article 5(3). Therefore, in the case of formal service or service by a particular method, the receiving authority may require the document to be written in, or translated into, the official language or one of the official languages of the Requested State.[219] It is advisable that the forwarding authority provide a translation of the document to be served, unless the forwarding authority has valid reasons to believe that informal delivery will be accepted or that the addressee is likely to understand the language of the document. For further information about the translation of documents to be served see paragraph. 262.[220]

203. To improve the efficient and successful operation of the Convention, forwarding authorities are encouraged to consult the Country Profiles for country-specific information. and, if necessary, the relevant Central Authority or its domestic website to obtain further detailed information about translation requirements for the Model Form and the documents to be served.

⇒ **Electronic drafting**

204. The Special Commission has noted the importance of completing the Model Form in a full, correct and clear manner, preferably electronically and not by hand (see also Annex 6, 'Guidelines for completing the Model Form').[221] The Special Commission has further noted that the appropriate use of the Model Form can mitigate delays and avoid unnecessary costs.[222]

205. Use of the electronic version of the Model Form is encouraged. The Permanent Bureau has developed fillable bilingual and trilingual versions of the Model Form in both Word and PDF formats that facilitate completion in electronic form. This Form is available on the Service Section of the HCCH website. Contracting Parties are invited to submit copies of the Model Form in their languages to the Permanent Bureau for the purpose of developing trilingual forms.[223]

⇒ **Attachment of copies**

206. The Request must be accompanied by the *document to be served or a copy thereof*,[224] in duplicate (Art. 3(2)). However, Contracting Parties may agree to dispense with the necessity for duplicate copies of transmitted documents (Art. 20(a)).

207. The phrase "or a copy thereof, both in duplicate" in Article 3(2) of the Convention is to be construed functionally when transmission is carried out by electronic means.[225] This means that a single electronic message can fulfil the requirement of a copy or duplicate, as documents sent electronically can easily be duplicated and printed multiple times. For instance, the Central

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de Relaciones Exteriores (Ministry of Foreign Affairs)", Mexico City, 28 November 2011, which is available on the Service Section of the HCCH website at the following address: https://www.hcch.net/en/news-archive/details/?varevent=241 [last consulted on 5 May 2024].

219 If informal service is requested, a translation of the documents to be served may not be required.

220 To ensure compliance with the translation requirements, forwarding authorities are advised to refer to the Service Section of the HCCH website or directly contact the relevant Central Authority. By doing so, they can verify if there are any translation requirements in place before forwarding requests for service under Art. 5(1) of the Convention.

221 In practice, some Contracting Parties execute requests for service even though they contain minor mistakes in form, such as fields that have not been completed. See, *e.g.*, ***Federal Supreme Court of Switzerland***, 5A_840/2009, decision of 30 April 2010. However, inaccuracies, omissions, or errors in the request for service must be avoided.

222 See C&R No 25 of the 2014 SC.

223 See C&R No 27 of the 2014 SC.

224 In the case of *Northrup King Corp. v. Compania Productora Semillas Algodoneras Selectas, S.A.*, 51 F.3d 1383 (8th Cir. 1995), the Court of Appeals confirmed that a duplicate copy of the document is sufficient on the basis of this provision.

225 See "Electronic Data Interchange, Internet and Electronic Commerce", document drawn up by Catherine Kessedjan, Deputy Secretary General, Prel. Doc. No 7 of April 2000 for the attention of the Special Commission of May 2000 on general affairs and policy of the Conference (available on the HCCH website at www.hcch.net under "Governance" and "Council on General Affairs and Policy" then "Archive (2000-2022)".

Authority of China encourages foreign forwarding authorities to submit one original request for service in paper form along with a digital copy saved on a disc or transmitted via e-mail, aiming to streamline the processing of the service requests.[226] The Central Authority of Singapore also accepts the transmission of the requisite duplicate via e-mail, as the compliance with the duplicate requirement is satisfied through electronic submission, in accordance with its domestic legislation.

⇒ **No need for original document or legalisation**

208. Article 3 provides that a request conforming to the Model Form annexed to the Convention may be forwarded to the Central Authority of the Requested State without any requirement of legalisation or other equivalent formality. The most important example of an equivalent formality being, of course, the Apostille issued by a Competent Authority pursuant to the 1961 Apostille Convention.[227]

209. In certain cases, Central Authorities have incorrectly informed the forwarding authority that the accompanying documents must be original, requiring them to bear the seal and stamp of the issuing court. Furthermore, some courts have demanded full legalisation of the documents to be served. However, these practices are erroneous.

210. Both the request and its annex(es), including the documents to be served, should be exempt from legalisation requirements. It is true that, if one takes a very formalistic position, dispensation for legalisation in Article 3(1) only refers to the request, not to the document(s) to be served. However, the documents to be served are an annex to the Request (Art. 3(2)). It seems difficult to find a valid reason as to why the documents in the annex would have to be legalised (or require any equivalent formality) if the actual Request does not include any such obligation. Therefore, it is reasonable to extend the dispensation of legalisation to encompass both the request and its annex(es), which includes the documents to be served.

- **The transmission of the request**

a. Transmission by traditional means

211. The Convention does not specify how the request is to be sent to the Central Authority abroad. Commonly used postal channels include ordinary mail, registered post with notification of receipt, express mail, and private courier services such as DHL, FedEx, UPS, etc. The Special Commission has noted the practice of many Central Authorities accepting requests for service that have been forwarded by private couriers.[228]

b. Transmission by electronic means

212. To facilitate the expeditious execution of requests for service, the Special Commission has encouraged the transmission of requests by electronic means (such as e-mail).[229] At this point, it should be noted that the transmission of a document from one Contracting Party to another is distinguished from the *service* of the document on the addressee, and that the Convention deals

226 See the Frequently Asked Questions drawn up by the Ministry of Justice of China (available via the "Central Authority & practical information" link for China (Mainland) on the Service Section of the HCCH website). However, in the 2022 Questionnaire, regarding the question of whether they accept service requests when only an electronic copy is provided and a paper copy is not subsequently provided from the Requesting State, more than half of the respondent States answered that they do not accept such requests. Such practices need to be improved to align with the digital era.

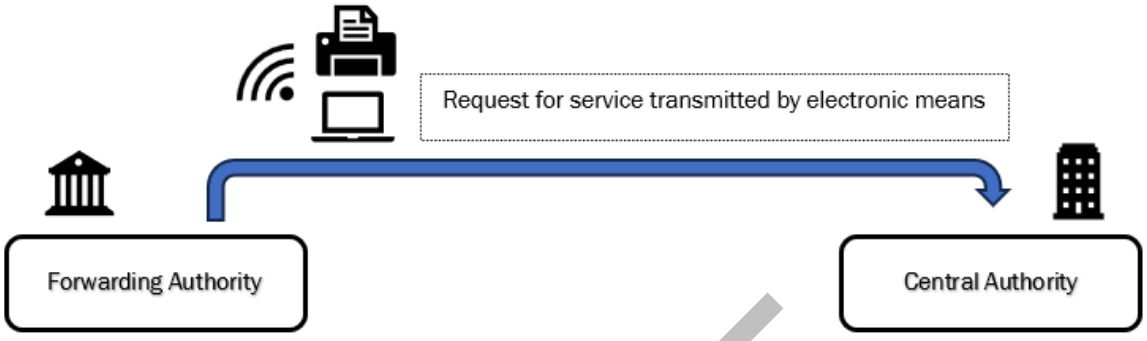
227 The rule has been strongly recalled by the Special Commission (see C&R No 34 of the 2009 SC).

228 See C&R No 18 of the 2009 SC. For instance, China (Mainland) has expressly indicated that it accepts requests for service forwarded by DHL, FedEx, etc. See Frequently Asked Questions (Q. 7) drawn up by the Chinese Ministry of Justice (available via the "China – Central Authority & practical information chart" of the Service Section of the HCCH website).

229 C&R No 39 of the 2014 SC.

primarily with the former (see para. 7). There is no doubt that the transmission of documents by electronic means significantly improves the usefulness and effectiveness of the Convention.[230]

The operation of the transmission by electronic means



213. The Convention's technology neutral language enables the integration of recent advancements in telecommunications for its effective implementation.[231] Indeed, the Special Commission found that the transmission of documents by electronic means was already taking place and encouraged Contracting Parties to transmit and receive requests by electronic means in order to facilitate expeditious execution.[232]

214. Forwarding authorities may either issue requests for service in electronic form using a digital signature, or may convert paper requests for service into electronic form by scanning and subsequently signing them digitally. Forwarding authorities may then transmit requests for service by electronic means to the Central Authority of the Requested State. Following receipt, the Central Authority may, if necessary, print the request. Upon receipt, the Central Authority will process the request for service in a manner that is consistent with its domestic law.[233]

215. States that are Contracting Parties to certain regional treaties are already using electronic transmission as a preferred method. For example, within the Ibero-American Network of Cooperation (IberRed) and the Conference of Ministers of Justice of the Ibero-American Countries (COMJIB). The *Treaty on the Electronic Transmission of Requests for International Legal Assistance among Central Authorities* (better known as the *Medellín Treaty*) which entered into force in May 2022,[234] specifies that the preferred method of transmission of service requests between the signatory States will be electronic, through the Iber@ platform. To have access to the Iber@ platform, States will need to designate and accredit users representing the Central Authorities. However, according to the *Medellín Treaty*, the use of electronic means will be

230 Regarding the possibility of the *service* of documents by electronic means, see para. 249.

231 This interpretation also corresponds to the *United Nations Convention on the Use of Electronic Communications in International Contracts*. Its Art. 8(1) provides, "A communication or a contract shall not be denied validity or enforceability on the sole ground that it is in the form of an electronic communication".

232 See C&R No 62 of the 2003 SC; C&R No 37 of the 2009 SC; C&R No 39 of the 2014 SC.

233 This may include printing and certifying the printed copies, or if this is not possible, requesting a hard copy of the documents.

234 It was signed by Argentina, Brazil, Colombia, Chile, Cuba, Spain, Paraguay, Portugal and Uruguay at the XXIst Plenary Assembly of the COMJIB in Medellín held in July 2019 and later by Andorra, Bolivia and Ecuador. The Treaty is open to accession by any State in the world.

optional. Also, the 2020 EU Service Regulation establishes a decentralised IT system using e-CODEX for the transmission of requests for service and the communication between transmitting and receiving agencies, courts and central bodies within the EU. The use of this IT system will become mandatory from May 2025.

216. The use of information technology requires that e-mail addresses and websites of the authorities designated under the Convention be known and widely distributed. For this reason, the Special Commission has consistently reminded States of the importance of communicating such information to the Permanent Bureau for publication on the HCCH website.[235]

217. The 2022 Questionnaire responses revealed that, when transmitting documents to foreign States under the Convention, a higher number of forwarding authorities in Contracting Parties are not yet using electronic means to transmit compared to those that do. Similarly, a higher number of Contracting Parties, as the Requested State, do not currently accept electronically transmitted requests when only an electronic copy is provided. The reasons for not accepting electronic requests included the absence of relevant laws, difficulties in verifying the authenticity of the transmitted request, conflicts with security regulations, data protection, practical difficulties in connection with the number of documents or cost, and liability risks, including through any requirement to print documents. Contracting Parties that responded affirmatively to conducting or accepting electronic transmission indicated that the most commonly used method is regular e-mail, followed by secured or encrypted e-mail and an online platform administered by the government. Online platforms administered by private sector providers were found to be used in conjunction with other electronic means, but only by a small number of States.[236]

2. The procedure for the Requested State

- **The entity: the Central Authority**

218. The 1965 Service Convention was the first of the HCCH Conventions to establish a system of Central Authorities. Subsequently, many other HCCH Conventions adopted this efficient system, which has proven to be very effective and an undisputed improvement on the diplomatic and consular channels of transmission.

219. Each Contracting Party is required to designate a Central Authority and determine the form of its organisation (Art. 2). This requirement, as well as the need to inform the depositary of this designation, was recalled by the Special Commission at its 2014 meeting.[237]

220. Central Authorities consist of offices with a variable number of people. It may be pointed out that the Central Authorities designated under the 1965 Service Convention frequently operate as Central Authorities for the purposes of the 1970 Evidence Convention. In some States, such as France, and Brazil, the officials of the Central Authority handle, in a centralised fashion, all matters relating to international judicial assistance in private law.

235 See C&R No 51 of the 2003 SC; C&R No 8 of the 2009 SC. Also, the Permanent Bureau has received European Union Action Grant funding to enhance the provision of information on HCCH Conventions through Country Profiles. This initiative includes the 1965 Service Convention, among other Conventions, and is projected to be finalised by August 2025. The Country Profiles can be completed online by national authorities and are therefore easily updated. Furthermore, Central Authority contact details on the HCCH website may be updated using input from the Country Profiles.

236 See responses to Questions Nos 29-30.2. of the 2022 Questionnaire.

237 C&R No 3 of the 2014 SC.

221. Most Contracting Parties have designated their Ministries of Justice or some organ within the Ministry.[238] Other States have placed the Central Authority within the courts service.[239] Relatively few have retained the Ministry of Foreign Affairs.[240] One State has designated the County Administrative Board.[241]

222. The United States has implemented an innovative system where the activities of the Central Authority have been outsourced to a private process server company called ABC Legal Services ("ABC Legal"). However, it is important to note that this arrangement does not formally designate a new Central Authority. The US Department of Justice formally remains the Central Authority for the purposes of the Convention. Nevertheless, ABC Legal is the only private process service company authorised to fulfil certain obligations of the United States Central Authority, in accordance with Articles 2 to 6 of the Convention, to receive requests for service from other Contracting Parties, proceed to serve the documents, and complete the Certificate in the Model Form annexed to the Convention.[242]

223. In Canada, the federal Central Authority's role, with respect to requests for service, is limited to receiving them and forwarding them to the relevant provincial or territorial authority. It is recommended that foreign forwarding authorities identify the relevant provincial or territorial Central Authority to avoid delay rather than sending their request to the federal Central Authority. The relevant Central Authority is located in the same province or territory as the person to be served, e.g. if the address of the person to be served is in Ontario, the request should be sent to the Central Authority for Ontario.

224. The Special Commission has expressly concluded 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.[243]

225. The Central Authority is a receiving authority, in charge of receiving requests for service from Requesting States and executing them or causing them to be executed. In principle, the sending of requests for service abroad is not within its purview, because this task lies with the forwarding authority which operates in a decentralised manner.[244] However, as mentioned above, some

238 See, *e.g.*, Australia, Belarus, Belgium, Bulgaria, China (Mainland), Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Iceland (although named the "Ministry of the Interior"), India, Kuwait, Latvia, Lithuania, Monaco, Morocco, Norway, Pakistan, Poland, Portugal, Republic of Moldova, Russian Federation, Slovenia, Sri Lanka, Ukraine.

239 See, *e.g.*, Barbados, Ireland, Israel, Italy, Luxembourg, Malawi, Netherlands, Republic of Korea, San Marino, Seychelles, United Kingdom.

240 See, *e.g.*, Argentina, Botswana, Colombia, Japan, Mexico, Venezuela.

241 Sweden.

242 ABC Legal is required to complete service of documents and the certificate for return to the forwarding authority within 30 business days of receipt of the request. Its responsibilities cover the following areas: the United States (the 50 states and the District of Columbia), Guam, American Samoa, Puerto Rico, the US Virgin Islands, and the Commonwealth of the Northern Mariana Islands. For more information on this matter, see the Country Profile for the United States, which is available on the Service Section of the HCCH website.

243 C&R No 52 of the 2003 SC; C&R No 22 of the 2009 SC; C&R No 31 of the 2014 SC. On the cost issue, see paras 270 *et seq.*

244 See *Katz v. Recettes des Contributions, Discount Bank et État du Grand-Duché de Luxembourg*, Court of Appeal (summary), 8 July 1997, ruling forwarded to the Permanent Bureau by the Luxembourg Central Authority. In this case, a copy of the document to be served was delivered to the public prosecutor's office at the Luxembourgian court handling the case. The defendant, domiciled in Israel, challenged the validity of the service by arguing that the copy should have been delivered to the General Public Prosecutor's office at the Superior Court of Justice of Luxembourg, which is the designated Central Authority under Art. 2 of the Convention. The Court of Appeal, however, rejected the appeal, stating that the General Public Prosecutor's office is designated to receive documents from other Contracting Parties for use within Luxembourg, not for receiving documents to be transmitted abroad.

Contracting Parties have structured arrangements so that the Central Authority also acts as a forwarding authority under Article 3.[245]

226. However, the Central Authority is only an authority in charge of transmitting documents to the recipient; it may not be treated as an agent of the defendant on whom the document may be served.[246]

227. With a view to ensuring the sound and effective operation of the Convention, it is essential that each Contracting Party designates a Central Authority and staffs it adequately. Furthermore, all Contracting Parties are requested to update Country Profiles with complete contact information (postal address, telephone and fax numbers, e-mail and, if applicable, website addresses) for their Central Authorities, as well as the language(s) spoken by and the particulars of the contact person(s). For further information regarding the Central Authorities of each Contracting Party (*e.g.*, their contact information), see the Service Section of the HCCH website.

⇒ **"other authorities" (Art. 18(1))**

228. In general, the organisation of Central Authorities is centralised. However, Article 18(1) permits Contracting Parties to designate other authorities in addition to the Central Authority and to determine the extent of their competence. The United Kingdom has made use of this option and designated, in addition to the Central Authority, other authorities for England and Wales, Scotland, Northern Ireland, as well as for the overseas territories to which the Convention has been extended (see the HCCH website). The Netherlands has designated the Public Prosecutors of all its District Courts other than that of The Hague as other authorities (see the HCCH website). Australia, China (for the Hong Kong and Macao SARs), Cyprus, Lithuania, Pakistan, and Poland have also designated other authorities (see the HCCH website).

229. However, this multiplicity of competent authorities should not impede the Convention's operation. Article 18(2) provides that the forwarding authority may in all cases address a request directly to the Central Authority.

⇒ **Several Central Authorities in federal States (Art. 18(3))**

230. Article 18(3) takes account of the specific organisation of federal States by providing that they may appoint several Central Authorities. Several federal States have made use of this option. **Canada** has appointed a federal Central Authority in Ottawa and a Central Authority for each Province and Territory. In **Germany**, each of the 16 *Länder* has its own Central Authority and there is also a federal Central Authority, the Federal Office of Justice. **Switzerland** has 26 cantonal Central Authorities, *i.e.*, one for each canton and half-Canton, and a federal Central Authority. For further information on the Central Authorities designated by each of the Contracting Parties, see the Service Section of the HCCH website.

- **Preliminary review of the Request**

231. The power of the Central Authority is limited to verifying that (i) the Request is properly filled in (including any language and / or translation requirements and duplicate copy if not dispensed with) (see paras 193 *et seq.*; see also paras 197 *et seq.*), (ii) the matter relates to a "civil or commercial matter" (see paras 134 *et seq.*), and (iii) compliance with the Request will not infringe the Requested State's sovereignty or security (Art. 13(1)). For more information on the refusal based on the infringement of sovereignty and security, see paras 310 *et seq*.

245 See para. 181.

246 *Broad v. Mannesmann Anlagenbau* (*op. cit*. note 50); *Saint-Gobain Performance Plastics Eur. V. Bolivarian Republic of Venezuela*, 23 F.4th 1036, 1041 (D.C. Cir.), cert. denied, 143 S. Ct. 113 (2022).

232. It is not for the Central Authority of the Requested State to determine if a document needs to be served and which document needs to be served – these are clearly matters for the law of the forum (*lex fori*) to decide (see paras 49 *et seq.* and paras 93 *et seq.*).

233. The Convention does not provide a mechanism by which the Central Authority of the Requested State is to accept or reject particular requests based on the content of the documents to be served – the Central Authority does not have the power to screen the documents and assess or appraise their content or the merits of the case.

234. If the Central Authority considers that the request does not satisfy the formal or substantial requirements of the Convention, a temporary refusal can be justified (Art. 4). In this case, the authority must inform the forwarding authority thereof immediately (see para. 308).[247]

235. Central Authorities have rejected requests for service on the basis that, for example, multiple service attempts for the same case with the same index number were not possible. Central Authorities have also rejected requests based on the kind of action brought before the court of the Requesting State, or because the law of the Requested State requires certain documents to be served, these practices are not allowed under Article 13 of the Convention.

- **The execution of the request**

a. Methods of service (Art. 5)

236. The Central Authority of the Requested State is required to execute the request for service or cause it to be executed either by (i) a method provided for under the law of the Requested State (formal service), or (ii) a particular method requested by the forwarding authority, unless it is incompatible with the law of the Requested State (service by a particular method), or (iii) delivery to the addressee who accepts the document voluntarily (informal delivery). The Central Authority has the discretion to choose between formal service and informal delivery, unless the forwarding authority has requested the use of a particular method.[248]

I. Formal service (Art. 5(1)(a))

237. To effect formal service, the Central Authority will serve the document or cause it to be served in accordance with the legislation and procedural requirements of the Requested State for service of documents issued in that State and intended for persons located on its territory. The Special Commission has recalled that execution of a request for service under Article 5(1)(a) is by a method prescribed by the internal law of the Requested State and chosen by that State.[249]

238. Contracting Parties have developed different practices in this respect.[250] In the **United States**, execution of service has been outsourced to a private process server company,[251] and personal service using the professional process server is the preferred method used on all requests. *Marshals* are no longer involved in the execution of requests for service. In other States, such as the **Netherlands**, the use of formal service, through *huissiers*, occurs only when the addressee has not accepted the document voluntarily or, in the case of **France,** at the request of the forwarding authority. Likewise, in **China (Macao SAR)**, the other authority which was designated under Article 18(1), after receiving a request for service, will forward it to the competent authority

247 Nevertheless, in practical terms, requested Central Authorities often directly rectify formal irregularities, such as the absence of a copy of the document or incomplete address details for the addressee (see paras 208 and 155).

248 Formal service may include a requirement of translation of the document into the official language or one of the official languages of the Requested State (see paras 252 *et seq.*) and a reimbursement of expenses (see paras 270 *et seq.*).

249 C&R No 19 of the 2009 SC.

250 See the information obtained by the Permanent Bureau from the Contracting Parties having responded to the 2003 and 2008 Questionnaires, available on the HCCH website.

251 See paras 222 *et seq.*

of China (Macao SAR). The latter authority first performs service by registered post with notification of receipt, and, if this method fails, personal service is then conducted by a court officer.

239. According to the responses to the 2022 Questionnaire, service under Article 5(1)(a) was overwhelmingly the preferred method for execution of both incoming and outgoing requests for service. The most common method of service under Article 5(1) was personal service, followed by postal service and court summons. In its response, **Viet Nam** replied that normally the documents were served personally by judicial officials, but during the pandemic, the competent authority might have executed the service request by post or via the person at charge in each quarantine site.[252]

240. A Central Authority may execute requests for service or cause them to be executed (*e.g.*, by a *huissier*) by electronic means provided that the domestic law of the Requested State allows. In practice, service may be effected on the addressee by e-mail or fax. This view has been confirmed by the Special Commission.[253] For more information on execution of service by electronic means, see paras 249 *et seq*.

II. Service by a particular method (Art. 5(1)(b))

241. In these circumstances, the Central Authority will serve the document or arrange to have it served by the particular method requested by the forwarding authority, unless it is incompatible with the law of the Requested State. This provision was adopted at the request of certain States concerned that service according to the law of the Requested State would not meet their own service requirements. Importantly, the absence of a particular method of service in a Requested State's domestic law is not sufficient to allow a Requested State to refuse to use it. It must be *incompatible* with its laws.[254]

242. The Special Commission has confirmed that requests for service under this provision may be executed by electronic means.[255] A forwarding authority may ask the Requested State to effect service by electronic means. The Central Authority must do so, unless this particular method would be incompatible with its domestic law or procedures. In practice, it would require the forwarding authority to send the request for service by electronic means and the Central Authority would in turn serve the documents on the recipient using such means. For more information on execution of service by electronic means, see paras 249 *et seq*.

243. In the responses to the 2022 Questionnaire, approximately half of the respondent States indicated that they had either requested or received requests with particular methods of service. The most requested method of personal service prevailed, followed by e-mail service, postal service, and publication service. In the majority of cases, except in situations where service by e-mail or other electronic methods were incompatible with national law, or not feasible due to the unavailability of necessary procedures, the requested method of service was able to be executed.[256]

244. In relation to costs, the Special Commission has noted that "[w]here the requested method is prescribed by the internal law of the Requested State and ordinarily used in that State for the

252 See responses to Question No 14 of the 2022 Questionnaire.

253 See C&R No 37 of the 2014 SC.

254 Explanatory Report (*op. cit.* note 13), p. 369.

255 *Ibid*.

256 See responses to Questions Nos 15 and 16 of the 2022 Questionnaire.

execution of requests, the Requested State is encouraged not to charge for the execution of the request, without prejudice to Article 12(2)(a)".[257]

III. Informal delivery (Art. 5(2))

245. Article 5(2) provides that, unless a particular method is requested, the document may always be delivered to an addressee who accepts it voluntarily. This method of informal delivery is flexibly utilised as there is no need for translation of the document to be served, unlike service under Article 5(1)(a) and (b).[258] Accordingly, a request for informal delivery should not be rejected on the basis that translations are not provided. For example, in **Swiss** cantons, the Central Authority will perform informal service in cases where the document is not drafted in or translated into the Authority's language, rendering formal service impossible.[259] Furthermore, in **France**, unless the forwarding authority has requested otherwise, requests for service are executed by informal delivery.

246. The domestic law of some Contracting Parties does not provide for informal delivery. However, the Special Commission has recognised that informal delivery is a valid form of service under the Convention when the documents are voluntarily accepted by the addressee, even if the domestic law of the Requested State does not provide for this method of service.[260] For example, informal delivery is used in **China** (Mainland) where Chinese procedural law does not provide for this form of service as specified under the Convention. In China (Mainland), court staff perform the service of process. Chinese courts will use a variety of methods, such as direct service, service by mail, and also asking the addressee to attend the court to collect it. As it is informal delivery, the need for translation of the document(s) to be served is dispensed with and service is rendered free of costs. A German court has held that delivery of the document in Germany to the secretary of the defendant company, in lieu of the managing partner, was a service by proxy (*Ersatzzustellung*) and hence could not be treated as informal delivery.[261] This is because the recipient did not have the opportunity to decide whether to accept or refuse service.[262] Another German court held that informal delivery in Germany could be effected to the addressee personally or to his or her representative for the purposes of service (*Zustellungsbevollmächtigter*) who accepts the document voluntarily.[263]

247. A document may be delivered by electronic means to an addressee who accepts the document voluntarily provided that the law of the Requested State does not prohibit service by electronic means.[264] This has been confirmed by the Special Commission.[265] For more information on execution of service by electronic means, see para. 249.

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257 See C&R No 20 of the 2009 SC.

258 See para. 237.

259 See T. Bischof (*op. cit.* note 18), pp. 286-287.

260 C&R No 29 of the 2014 SC.

261 *Isabelle Lancray SA v. Peters und Sickert KG* (BGH, 20 September 1990 (IX ZB 1/88)), *IPRspr*. 1990, No 200, pp. 409-411.

262 Informal delivery is only possible where the person to be served accepts the documents voluntarily or when documents are served to a person who is allowed to act on behalf of the person to be served (legal representative). If a service by proxy is carried out, the person to be served doesn't have the possibility to decide whether to accept or refuse service. Therefore, in Germany it is a requirement that documents to be served are handed to the recipient personally or to their legal representative, so that the recipient has the possibility to have a look at the document before deciding whether to accept service or not. If the forwarding authority wishes to avoid such procedure, it should request formal service.

263 OLG Düsseldorf, 12 March 1999, 3 W 13/99; ruling received from the German Central Authority.

264 See Prel. Doc. No 7 of April 2000 for attention of the Special Commission of May 2020 on General Affairs and Policy of the Hague Conference, p. 29 (*op. cit.* note 225).

265 See C&R No 37 of the 2014 SC.

248. The addressee may always refuse informal delivery of the document. In that case, depending on the context, the Central Authority will either attempt formal service if the conditions for formal service are met, or return the request to the forwarding authority, stating that it could not be executed.[266]

⇒ **A note about service by electronic means**

249. While the Convention governs the transmission of service of process abroad, the execution of service of process is determined by the law of the jurisdiction of the Requested State. Thus, following electronic transmission of the documents, the Central Authority of the Requested State will process the request in a manner that is consistent with its domestic law. It should be noted that the Convention does not prevent a Central Authority from effecting the service of documents to the addressee by electronic means under the main channel. Practically, to expedite service of documents and particularly when documents are transmitted electronically, it would be most efficient for the Central Authority to serve or arrange to have the document(s) served electronically where domestic laws permit this.

250. However, this option is not yet available in all Contracting Parties. According to the 2022 Questionnaire, of those Contracting Parties which responded, it was found that the number of Contracting Parties permitting execution of service via electronic means and the number of Contracting Parties not permitting this, was similar.[267] Certain Contracting Parties mentioned that electronic service is only feasible when the addressee has given prior consent, which is typically not possible for incoming service requests from foreign States. For Contracting Parties that do permit electronic service, the preferred methods were an online platform administered by the government, followed by regular e-mail, secured or encrypted e-mail, and an online platform administered by a private service provider. For Contracting Parties that do not yet permit such service, the main reasons were the absence of domestic legal provisions permitting or governing the use of information technology, or the lack of a compatible system.[268]

251. That being said, an increasing number of Contracting Parties are amending their laws to enable service by electronic means if certain conditions are met. Where e-service is not possible, a printout of the electronic document to be served can be provided.

- **The translation requirement (Art. 5(3))**

252. First, it is important to identify that the translation of **documents to be served** is governed by Article 5, and the language requirements of the **Model Form** are governed by Article 7.

253. Second, it is important to highlight that the translation of a document for service is only relevant to the methods of service set down in Article 5(1) of the Convention. That is, when the request is for service to be effected by the law and internal methods of the Requested State (Art. 5(1)(a)), or when the request is for service to be effected by a particular method stipulated by the forwarding authority, and where this is not incompatible with the law of the Requested State (Art. 5(1)(b)).[269] Translation of documents is not a requirement for informal delivery (Art. 5(2)) and a request for informal delivery cannot be rejected due to missing translations.

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266 See for instance in the **Netherlands**, *V. v. Raad voor de Kinderbescherming te Rotterdam*, HR 20 May 1994, *NJ* 1994, p. 589; *Van Zelm BV v. Martinus Bomas* (*op. cit.* note 163); HR 31 May 1996, *NJ* 1997, p. 29.

267 An example of Contracting Parties that permit execution of electronic service includes: Armenia, Austria, Brazil, Bulgaria, China, Czech Republic, Estonia, France, Germany, Hungary, Ireland, Poland, San Marino, Serbia, Slovakia, Slovenia, Sweden, Türkiye, the United States, and Viet Nam.

268 One Contracting Party replied that use of information technology was prohibited by their internal law. For more information, see responses to Question No 31 of the 2022 Questionnaire.

269 Art. 5(3) states that "[i]f the document is to be served under the first paragraph above, the Central Authority may require

254. As Article 5(3) only refers to Article 5(1) and not to Article 5(2), it follows that informal delivery consistent with Article 5(2) does not require translation of the document or the accompanying attachments into the language of the Requested State. Thus, the French Cour de cassation correctly held that:

> "the formality of translation is provided for only in the case where the requesting authority has requested service of the document in the form required, for the performance of similar service, by the domestic legislation of the requested authority, or in a special form, and not in the case of informal delivery to the person concerned".[270] [translation by the PB]

255. In this regard, the Special Commission has recalled that translation of the document(s) to be served is not required for informal delivery[271] and has in fact observed that a large majority of Contracting Parties do not require translation for service through informal delivery.[272]

256. Likewise, the alternative channels of transmission provided for under the Convention do not in principle require translation of the document to be served.[273] The Special Commission has confirmed this interpretation, while noting that in isolated cases, translation requirements are imposed by a State's domestic law.[274]

257. Some authors treat the phrase in Article 5(3) as a reference to Article 5(1)(a) only,[275] whereas others consider the first paragraph to include both Article 5(1)(a) (*i.e.,* formal service) and Article 5(1)(b) (*i.e.,* service by particular method).[276] The Special Commission is of the view that the latter is the correct interpretation.[277] The Central Authority[278] must be able to request a translation of the document when it performs service by a particular method requested by the forwarding authority: that particular method may seem peculiar to the person to be served. Protecting the latter's interests justifies the requirement of a translation in that case.

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the document to be written in, or translated into, the official language or one of the official languages of the State addressed".

270 *Richard Ott v. S.A. Montlev, Cass.*, Ch. Civ. 1, 25 April 1974, Clunet 1975, p. 547. In the same sense, *Direction générale d'exploitation des aéroports de l'Etat d'Ankara v. Julien Roche*, CA Paris, Chamber 1, Section C, 17 June 1994, No RG 92.24984; *Fessmann GmbH v. Réorganisation Modernisation de l'industrie alimentaire, CA Colmar*, Ch. Civ. 2, 25 February 1994, Juris-Data 044246. See also in the same sense the decision of the Federal Supreme Court of Switzerland (*op. cit.* note 215), and Federal Supreme Court, 30 April 2010, 5A_840/2009; OLG Saarbrücken (Germany), 5th *Zivilsenat*, 15 June 1992, *RIW* 1993, pp. 418-420; *Arrondissementsrechtsbank* Middelburg (Netherlands), 4 July 1984, *NIPR* 1984, p. 329; *Tribunal de Relaçao* (Porto) (Portugal), 8 November 1994, CJ Ano XIX, Vol. V, 1994, 208.

271 C&R No 28 of the 2014 SC.

272 C&R No 60 of the 2003 SC; C&R No 25 of the 2009 SC. See also responses to the 2008 Questionnaire.

273 In support, *Heredia v. Transport S.A.S. Inc.*, 101 F. Supp. 2d 158 (S.D.N.Y. 2000); *Harris v. NGK North American, Inc.* 19 A.3d 1053 (Pa. Super. Ct. 2011), where translation into Japanese was not required for service by postal channels.

274 C&R No 65 of the 2003 SC; C&R No 25 of the 2009 SC.

275 G.B. Born & P.B. Rutledge, *International Civil Litigation in United States Courts*, 4th ed., United States, Aspen Publishers, Kluwer Law International, 2007, pp. 861-862, and dicta in *Vazquez v. Sund Emba AB*, 152 A.D.2d 398 (N.Y. App. Div. 1989).

276 T. Bischof (*op. cit.* note 18), p. 305 in fine; see also D. McClean, *International Co-operation in Civil and Criminal Matters*, 3rd ed., Oxford, Oxford University Press, 2012, p. 39.

277 While the Special Commission has not made an express statement about this interpretation, it can be inferred by reading C&R Nos 67 and 68 of the 2003 SC.

278 It is indeed for the Central Authority to demand a translation, not the party addressed, see Liège CA, 26 May 1992, *Pasicrisie belge 1992*, II 73.

258. Where it is open for a Central Authority to require the translation of a document for service under the main channel of transmission in Article 5(1)(a) and (b), the requirement is discretionary. Article 5(3) states that the Central Authority *may* require a translation, not that it shall or must.[279]

⇒ **Practical considerations for the forwarding authority**

259. Where translation is required, for States with several official languages, it is essential to consider the official language of the region in question and if there is uncertainty, it is important to contact the Central Authority to verify language requirements to ensure that the translation is done in the correct language.[280]

260. An official translation may also be required. This refers to a translation carried out by a sworn, affirmed or accredited translator. In order to ensure that a request for service complies with the translation requirements of a given State, forwarding authorities are encouraged to consult the Service Section of the HCCH website and / or contact the relevant Central Authority to verify whether there are any translation requirements in place before forwarding requests for service under Article 5(1) of the Convention.

261. The Special Commission has noted the practices of some States not to require translation in certain cases, for example when the addressee is shown to understand the language in which the documents to be served are written.[281]

262. The Special Commission has stressed the importance of complying with the various translation requirements laid down by the domestic law of the Contracting Parties.[282] Against this background, it is prudent to recommend that, unless the forwarding authority has good reasons to believe that service by informal delivery will be accepted or that the addressee is likely to understand the language of the document, a translation should be provided. Otherwise, there is a risk of delay while the Central Authority reports that informal delivery has failed and requests a translation of the document.[283] Even if there is no formal translation requirement, the provision of a translation may be advisable.

⇒ **National practice**

263. It should be noted that a large number of States having responded to the 2003 and 2008 Questionnaires have stated that they required a translation of the document(s) to be served. Others (**Israel** and the **Netherlands**, for instance) do not require a translation of the document itself, provided that the Summary of the document to be served is drafted in the specified language. If a translation is required, at least one court held that the whole document must be translated, including any appended material treated by the law of the State of origin as an essential part of the document.[284]

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279 With the introduction of this discretionary power in favour of the Central Authorities, the negotiators of the Convention intended to provide more flexibility than in the 1954 Civil Procedure Convention when addressing translation requirements (see Art. 3(2) of the 1954 Civil Procedure Convention).

280 *E.g.*, Flemish in Antwerpen (OLG Hamm, 27 February 1985, 20 U 222/84, *IPRax* 1986, p. 104).

281 See C&R No 26 of the 2009 SC.

282 For this purpose, the Special Commission invited the Contracting Parties to provide the Permanent Bureau with any relevant information relating to the extent of the translation requirements for the execution of requests under Art. 5; C&R Nos 67 and 68 of the 2003 SC; C&R No 25 of the 2009 SC. The provided information is available on the Service Section of the HCCH website.

283 See D. McClean (*op. cit.* note 17), pp. 39-40.

284 *Ibid*., p. 39, note 80 and accompanying text, who refers to *Teknekron Management Inc. v. Quante Fernmeldetechnik GmbH*, 115 F.R.D. 175 (D. Nev. 1987).

264. Some Central Authorities are apparently prepared to serve documents in any language which the addressee is likely to understand[285] or where there is evidence that the addressee is fluent in the foreign language.[286] In **China (Hong Kong SAR)**, under provision 3(1) of Order 69 of the Rules of the High Court *(Chapter 4A, Laws of Hong Kong)*, a translation of the documents is required, unless a foreign court or tribunal certifies that the addressee understands the language used. One commentator has indicated that "a short document addressed to a commercial firm in English or a language similar to that of the Requested State (*e.g.*, a document in Norwegian for service in Sweden) will be accepted, but a long document addressed to a private individual in a relatively obscure language will not".[287]

265. In **France**, Article 688-6 of the Civil Procedure Code provides that the document shall be served in the language of the State of origin, but if the addressee does not know the language in which the document is drafted, he or she may refuse service and demand that it be translated or accompanied by a French translation (at the expense of the party requesting the service). As regards outgoing documents, French courts have ruled on many occasions on the consequences of the lack of a translation of French documents into the language of the Requested State. One court recognised service of a French summons performed in Germany as valid on the grounds that the lack of translation could not have affected the defendant's rights as the defendant had appointed counsel in due time and had been the manager of a company in France, which implied sufficient knowledge of the French language. The Court held that the translation requirement was a mere option for the implementation of which there was no evidence in the specific case.[288] A few years later, the same Court still considered that the Convention did not impose any translation obligation; accordingly, service in Germany of a document drafted in French was held to be valid (the decision does not specify if formal service or informal delivery was effected).[289] Similarly, in a case where a defendant domiciled in Türkiye refused a document not translated into Turkish, a French court held that, because Türkiye did not require that the document be translated into Turkish, the service had been made in accordance with the method prescribed by the Requested State's internal law for the service of documents in domestic actions upon persons who are within its territory.[290] In contrast, another court indicated that by virtue of Article 5 of the Convention, French writs of summons that were not translated into the languages of the addressees (in this case, a German company and a Turkish company) were invalid where the absence of a translation had infringed the rights of a defendant.[291]

266. In the United States, the principle of due process has been applied to the issue of translation requirements, although the specific case was not covered by the Convention. Some authorities asserted that service on a person who did not understand the language of the documents in

285 See, *e.g.*, **Slovakia** and **Ukraine**, where an addressee who is a national of the Requesting State is presumed to understand the language of the Requesting State.

286 See, *e.g.*, Czech Republic, Finland, Luxembourg, Norway, Spain, Sweden and the United Kingdom. See responses to Question No 30 of the 2008 Questionnaire.

287 See D. McClean (*op. cit.* note 17), p. 40, note 82 and accompanying text, who refers to *Arrondissementsrechtbank* Breda, 21 April 1981 (no translation requirements for service in Türkiye).

288 *Weber v. Sarl Alwelis*, CA Colmar, Ch. Civ. 1, 30 May 1984, Juris-Data 040920; by the same reasoning for service in Italy: *Delvis Int'l v. Seric,* CA Poitiers, Ch. Civ. 2, 30 October 1991, Juris-Data 050388.

289 *Sté Lorch Weingut Weinkellerei GmbH v. Sté Geyl et Bastian SA*, CA Colmar, Ch. Civ. 2, 18 January 1991, Juris-Data 043183.

290 *Erdogan v. Erdogan*, CA Metz, Ch. Famille, 29 June 2010, No 09/02294.

291 In effect, according to the *Court of Appeal of Paris*, as a question of defect of form, invalidity cannot be declared in the absence of any grievance. In that case, where the plaintiff, in appearing before the jurisdiction of a State that was not his own, took notice of the elements of the litigation to a point where he could draw a conclusion and submit pleadings, there was no justification for a grievance. *Delos v. Sté Yunsa*, CA Paris, Chamber 5, Section B, 19 March 1998, Juris-Data 021646. See also judgment of the German Federal Court of Justice, 20 January 2020, IX ZB 60/20.

question did not comply with the requirement of due process,[292] and this view has been taken up in subsequent Convention cases, though held unjustifiable on the facts.[293] On the other hand, one district court of the United States ruled that if the Central Authority of the Requested State did not object to the request for the service, which was subject to a potential dispute regarding whether it met the translation requirements, and served the summons, the service is valid regardless of Article 5(3) of the Convention.[294]

⇒ **A note about making translation of documents mandatory**

267. Several Contracting Parties have declared in advance that their authorities will only perform formal service if the document to be served is written in or translated into their official language (or one of their official languages), thereby depriving their Central Authorities of the discretion conferred by that provision (Art. 5(3) which states that the Central Authority *may* require a translation, not that it shall or must).[295] With the introduction of this discretionary power in favour of the Central Authorities, the negotiators of the 1965 Service Convention intended to provide more flexibility than in the 1954 Civil Procedure Convention when addressing translation requirements (see Art. 3(2) of the 1954 Civil Procedure Convention). Thus, the States which are Parties to the Service Convention but decide to remove this flexibility, effectively adopt the former, rigid status. It is important to note that, in certain circumstances, the requirement of a mandatory translation may pose a hinderance to efficient and speedy service. Declarations that require documents to be served to be written in or translated into an official language may also not be helpful to the addressee in certain circumstances. Take the example of a requirement to translate into German a writ of summons or a judgment written in Spanish that is to be served on a Mexican addressee who spent their entire life in Mexico but only recently established themself in Berlin and who is clearly more at ease with Spanish - an addressee who is clearly more at ease with the language used in the document to be served rather than that of the Requested State where they currently live.[296]

268. In any event, such a declaration might impose an additional burden on forwarding authorities by depriving their Central Authorities of the discretionary power provided by the Convention. This is

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292 *Julen v. Larsen*, 25 Cal. App. 3d 325 (Cal. Ct. App. 1972).

293 *Shoei Kako Co. Ltd v. Superior Court*, 33 C.A.3d 808 (Cal. Ct. App. 1973) (where due process was not violated when the Japanese defendant was fluent in English); see also *H. Saeki Inc. v. Y. Ozaki*, Tokyo District Court, 26 March 1990, Kin'yu-Shoji Hanrei (857) 39 [1991], summarised in M. Sumampouw, *Les nouvelles Conventions de La Haye – leur application par les juges nationaux*, Vol. V, The Hague, Martinus Nijhoff Publishers, 1996, p. 362. Also, one of the United States courts ruled that when documents are sent to the defendants in China (Mainland), service without a translation would not be considered valid regardless of whether counsel for the defendants can speak English, see *Topstone Commc/ns. Inc. v. Xu*, No. 4:22-CV-00048, 2022 WL 15697 (S.D. Tex. May 18, 2022). See also Spanish and German decisions finding that the absence of a translation of the documents to be served and of the service request was detrimental to the rights of the defence: Audiencia Provincial de Alicante, 5th section, 8 October 1997, AC 1997/2443; BGH, ECJ submission of January 20, 2022 – IX ZB 60/20.

294 *Conformis, Inc. v. Zimmer Biomet Holdings, Inc.*, No. CV 19-1528-RGA, 2022 WL 1909386 (D. Del. June 3, 2022).

295 *E.g.*, Argentina, Australia, Botswana, Bulgaria, Canada, China (of Macao SAR only), Croatia, Germany (see in this respect OLG Düsseldorf, 3rd *Zivilsenat*, 2 September 1998, *IPRax* 2000, pp. 289-291), Greece, Hungary, India, Luxembourg, Mexico, Republic of Macedonia, Republic of Moldova, Russian Federation, Serbia, Sweden, Switzerland (only in cases where the addressee does not voluntarily accept a document), the United Kingdom and Venezuela. For cases in which service was held to be invalid for failure to observe the German requirement, see *Vorhees v. Fischer & Krecke GmbH*, 697 F.2d 574 (4th Cir. 1983); *Harris v. Browning-Ferris Industries Chemical Services, Inc.*, 100 F.R.D. 775 (M.D. La. 1984); *Cipolla v. Picard Porsche Audi Inc.*, 496 A.2d 130 (R.I. 1985); *Brown v. Bellaplast Maschinenbau*, 104 F.R.D. 585 (E.D. Pa. 1985); *Isabelle Lancray SA v. Peters und Sickert KG* (*op. cit.* note 261); *Pennsylvania Orthopedic Association v. Mercedes-Benz AG*, 160 F.R.D. 58 (E.D. Pa. 1995). In many of these cases service was not only held to be invalid because of the lack of translation, but also because it was effected by mail rather than through the main channel of the Central Authority (Germany objects to the use of service by mail, see para. 367).

296 Under Art. 12(1) of the 2020 EU Service Regulation (see paras 453 *et seq.*), the addressee may refuse to accept the document to be served if it is not written in or accompanied by a translation into either: a language which the addressee understands or the official language of the Contracting Party addressed (or, if there are several official languages in that Contracting Party, the official language or one of the official languages of the place where service is to be effected).

especially significant considering that the Summary of the document to be served, which is included in the Model Form attached to the Convention, should already provide the Central Authority with all the necessary information to assess the nature and purpose of the document and determine if fulfilling the request would violate the sovereignty or security of the Requested State (Art. 13(1)).

269. Finally, it should be noted that Contracting Parties may deviate from any translation requirements by agreement among themselves (Art. 20(b)).[297]

- **Costs (Art. 12)**

270. The services rendered by the Central Authority shall not give rise to the payment or reimbursement of any costs.[298] However, a forwarding authority will be required to pay or reimburse the costs occasioned by the employment of a judicial officer or other competent person or by the use of a particular method (Art. 12(2)). The Special Commission has reaffirmed these rules; it has also urged States to ensure that the costs occasioned by the employment of a judicial officer or other competent person reflect actual expenses and be kept at a reasonable level.[299] Contracting Parties are invited to provide all relevant information relating to costs in their Country Profile which will be available on the Service Section of the HCCH website.[300]

271. Service by formal channels (Art. 5(1)(a)) may give rise to a refund of costs whenever it involves the intervention of a judicial officer or competent person.

272. For example, **Belgium** has noted that service of documents under Article 5(1)(a) and (b) implicates the use of a judicial officer and the costs must be paid in advance in accordance with Article 12 of the Convention.[301] In **Brazil**, a court has ruled that if the addressee is in custody in a prison unit, service through the Central Authority requires the intervention of an agent of the local Judiciary (*i.e.*, a bailiff) to carry out service, and in such circumstances, the forwarding authority must bear the cost.[302] On the other hand, several States have abolished certain costs imposed for the involvement of their officials, which is one of the welcome results of the 1977 Special Commission meeting. Other States have moved to increase transparency and have adopted and set out fees payable.[303] For instance, the **United Kingdom** has abolished all service costs except in special cases. Certain States, such as **Spain**, **Sweden** and **Switzerland**, do not demand a refund unless the service is performed by a particular method requested by the forwarding authority (Art. 12(2)(b)). The **Bahamas**, **Canada**, and **San Marino** have set fixed rates;[304] see also the payment scheme established by the **United States** as a result of the outsourcing of the activities

297 For instance, the application of the *Franco-Swedish Convention for mutual judicial assistance of 7 March 1965* affects the scope of the translation requirement laid down by Sweden. In that instance, service of a document drafted in French was considered to be valid under the bilateral agreement, despite the general declaration made by Sweden with respect to Art. 5(3) of the Convention. *Cie Union et Phénix espagnol v. Skandia Transport*, CA Paris, Chamber 5, Section A, 25 February 1987, Juris-Data 023490.

298 A Contracting Party shall not charge for its services rendered under the Convention (Art. 12(1)).

299 C&R No 53 of the 2003 SC; C&R No 22 of the 2009 SC; C&R No 31 of the 2014 SC.

300 C&R No 54 of the 2003 SC; C&R No 22 of the 2009 SC; C&R No 32 of the 2014 SC.

301 See the declarations made by Belgium under the Convention.

302 CR 18565/STJ.

303 In these cases, reimbursement of the costs must frequently accompany the service request.

304 It is interesting to note that Art. 15(2) of the 2020 EU Service Regulation (see paras 453 *et seq.*) has implemented a system of fixed fees when employing a judicial officer or a competent person to effect service. This Article reads as follows "Member States shall lay down a single fixed fee for recourse to a judicial officer or to a person competent under the law of the Member State addressed. That fee shall be in accordance with the principles of proportionality and non-discrimination. Member States shall communicate such fixed fees to the Commission".

conducted by the Central Authority. **Japan** has also established a system of flat-rate fees for the intervention of *marshals*.[305]

273. In the event of service by a particular method requested by the forwarding authority, it is implied in Article 5(1)(b) that the costs relating to the service are to be reimbursed by the forwarding authority whether or not it involved the intervention of a judicial officer or competent person. Thus in **France**, for the intervention of a *huissier de justice* at the forwarding authority's express request, a fixed charge is due.

274. However, the Special Commission has noted that "[w]here the requested method is prescribed by the internal law of the Requested State and ordinarily used in that State for the execution of requests, the Requested State is encouraged not to charge for the execution of the request, without prejudice to Article 12(2)(a)."[306]

275. With regard to informal delivery under Article 5(2), Contracting Parties do not appear to claim a reimbursement of expenses connected with informal delivery.

276. By way of example, at the 2003 Special Commission meeting, several delegations (*e.g.*, **China (Hong Kong SAR)**, **Finland**, **Lithuania** and **Luxembourg**) stated that they did not request the reimbursement of costs connected with service. In addition, bilateral agreements may have been made between certain States in order to exempt forwarding authorities from the reimbursement of such costs when the service concerns a case of a specific nature, such as the recovery of child maintenance.[307]

277. On the other hand, the **Russian Federation** has made a declaration under Article 12 of the Convention according to which it considers the collection of costs from Russia by any Contracting Party (with the exception of those provided for in Art. 12(2)(a) and (b)) as a refusal to uphold the Convention vis-à-vis the Russian Federation (see for more information para. 173).[308]

⇒ **Efficient payment of costs**

278. With a view to facilitating the payments for costs incurred under the Convention, and in response to concerns expressed by some Contracting Parties, the Special Commission has acknowledged the advantages of electronic payments. [309] Contracting Parties are invited to include relevant information in their Country Profiles.

- **Time of execution and the principle of speedy procedures**

279. The Convention has significantly shortened the time for execution of requests for service transmitted from abroad. However, there are still cases where execution of the request takes too long (in some cases up to a year).[310]

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305 In **Japan**, a fixed charge is specified, differentiated according to whether the *marshal* performs service during working hours or not, and to which are to be added the *marshal*'s travel expenses (fixed mileage allowance).

306 See C&R No 20 of the 2009 SC.

307 Thus, the United States has stated that it has entered into bilateral agreements with several States in order to enable applicants to send their service requests directly to the state agencies dealing with child maintenance.

308 The Russian Federation has declared the following: "[it] assumes that in accordance with Article 12 of the Convention the service of judicial documents coming from a Contracting State shall not give rise to any payment or reimbursement of taxes or costs for the services rendered by the State addressed. Collection of such costs (with the exception of those provided for by subparas a) and b) of the second para. of Article 12) by any Contracting State shall be viewed by the Russian Federation as refusal to uphold the Convention in relation to the Russian Federation, and, consequently, the Russian Federation shall not apply the Convention in relation to this Contracting State." This declaration is also available on the Service Section of the HCCH website.

309 C&R No 32 of the 2014 SC.

310 According to the responses to the 2013 Questionnaire, over 75% of incoming requests for service were executed in

280. Delays in the execution of the request for service can in turn entail considerable delay in the proceedings before the local court and thereby be in conflict with the principle of diligent proceedings, secured at the highest level by many treaties protecting human rights.[311] In **Europe**, the European Court of Human Rights (ECtHR) held that "[t]he reasonableness of the length of proceedings is to be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's case law, in particular the complexity of the case, the behaviour of the applicant and the conduct of the relevant authorities."[312] It is usually accepted that the international character of a case in litigation is a complicating factor. The need for cross-border service cannot, however, justify extending the proceedings by more than a few months. Likewise, the behaviour of the competent authorities must be taken into account to determine whether the duration of proceedings is still reasonable. The competent authorities referred to are first the judicial authorities, but also the other services of the State, which may thus be bound by a duty of strict liability.[313] States are accountable in this respect for the organisation and effectiveness of their Central Authorities. It cannot be ruled out that the prolonged delays in service due to the lack of diligence and inefficiency of Central Authorities or other competent authorities could be considered a violation of the principle of diligent proceedings.

281. The Convention itself does not set a time-limit within which the request for service is to be performed. However, the Request Form, which is a part of the Model Form annexed to the Convention, states that the applicant (forwarding authority) requests "prompt" service. Article 6(2) of the Convention also requires the Certificate, which is the reverse side of the Form, to include the date of service.

282. Practical experience has shown that the period for performance of the Request varies from one Contracting Party to another or even from one authority to another within the same State. In exceptional cases, an unduly long delay in executing the request for service has had the effect that important deadlines imposed by the procedural law of the Requesting State (for appearance, reply, or appeal) and which were specified in the document, have passed by the time of service on the addressee.[314] Obviously, such delays are unacceptable. Regardless of the time limits appearing out of date in a Request, the Central Authority should forward the document for service unless the forwarding authority has expressly specified otherwise.

- **Where date for appearance specified has passed**

283. It has happened that the date for appearance had already passed by the time the request for service reached the requested Central Authority. How a Central Authority should act when faced with this situation was first discussed at the 1977 meeting of the Special Commission. It was pointed out that deadlines for appearance are usually not final. It is uncommon for the court to rule on the merits at this time-limit for appearance, as most legal systems practice postponement of hearings. In addition, Article 15 requires a court not to give judgment until it is established that (i) the document was served in accordance with the law of the Requested State (or, in the case of

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less than two months in the year 2012. Importantly, the number of incoming requests for service executed in more than 12 months decreased significantly, by almost 18% compared to the data collected in responses to the 2008 Questionnaire. As a result, only ***0.5% of incoming requests*** are executed in more than 12 months, which is a welcome development.

311 Art. 6(1) of the ECHR provides that everyone is entitled to a hearing within a reasonable time. The *American Convention on Human Rights*, signed at San José on 22 November 1969, similarly provides, in Art. 8(1), that "[e]very person has the right to a hearing, with due guarantees and within a reasonable time […]". The African Charter on Human and Peoples' Rights of 27 June 1981 also guarantees, in Art. 7, that "[e]very individual shall have the right to have his cause heard. This comprises: […] (d) the right to be tried within a reasonable time […]".

312 *Case X. v. France*, No 18020/91, ECtHR, 31 March 1992, para. 32 and citations.

313 L.E. Pettiti, E. Decaux & P.E. Imbert, *La Convention européenne des Droits de l'Homme*, Paris, Economica, 1995, p. 268.

314 The date of service on the addressee is entered on the Certificate on the reverse side of the Model Request Form.

an alternative channel of transmission, the State of destination) or actually delivered to the defendant or to the latter's residence by another method provided for by the Convention, and (ii) that, in either of these cases, the service or the delivery was effected in sufficient time to enable the defendant to defend (see paras 401 *et seq.*).[315] In any event, experts considered that it was always in the defendant's interest to be informed of proceedings brought against them from abroad. This is why the Special Commission decided to recommend that even if the period for appearance specified in the document had passed, the document would always be served unless the forwarding authority expressly specified otherwise. The Special Commission supported the suggestion by the expert of the United Kingdom that the Request Form could include an additional statement indicating that the document is to be served before a certain date, and if this condition is not met, then the document should either be returned to the forwarding authority or nevertheless served as soon as possible.

⇒ **Recommendations for co-operation between Contracting Parties**

284. The Special Commission has adopted the following timelines with regard to the execution of requests for service:

> "Aiming at further enhancing cross-border judicial co-operation among Contracting States, the SC recommends:
>
> (a) If a forwarding authority has not received any acknowledgment of receipt of the request for service from the Requested State within 30 calendar days following the sending of the request, it is encouraged to contact the Central Authority in the Requested State to inquire about the status of the request. Such inquiry should be answered within a reasonable time.
>
> (b) Where the request for service cannot be executed as a result of inadequate information or document(s) forwarded, the Central Authority of the Requested State is encouraged to contact, as promptly as possible, the forwarding authority in order to secure the missing information or document(s).
>
> (c) Whenever the Central Authority of the Requested State is considering, under Article 4, whether the request complies with the provisions of the Convention, it is encouraged to take that decision within 30 calendar days of receipt of the request.
>
> (d) If at any time during the execution of the request for service, an obstacle arises which may significantly delay or even prevent execution of the request, the Central Authority of the Requested State is encouraged to communicate with the forwarding authority as promptly as possible.
>
> (e) A request for execution of service should be executed as promptly as possible and States are encouraged to take measures to further improve the effective operation of the Convention.
>
> (f) If the forwarding authority has not received a certificate confirming service or non-service from the relevant authority of the Requested State within a reasonable time after sending the request, it is encouraged to contact the Central Authority of the

315 Also, as regards periods for appeal or challenge, Art. 16 affords some protection to the defendant, who may be relieved from the expiration of time for appeal (see paras 423 *et seq.*).

Requested State to inquire about the status of the execution of the request and the inquiry should be answered within a reasonable time.

(g) The Central Authority of the Requested State is encouraged to take all reasonable and appropriate steps to execute the request until such time as the forwarding authority advises that service is no longer required.

(h) The forwarding authority is also encouraged to specify in the request a time after which service is no longer required or inform the relevant authority of the Requested State at any time that service is no longer required."[316]

285. The Special Commission then noted that once the request for service has been transmitted, any subsequent informal communication between the relevant authorities may be carried out by any appropriate means, including e-mail and fax.[317]

286. With regard to forwarding authorities being encouraged to contact the Central Authority for service status updates, the Special Commission has subsequently welcomed the practice followed by certain Contracting Parties of promptly answering enquiries from forwarding authorities and / or interested parties about the status of execution of requests for service, and encouraged all Contracting Parties to adopt this practice where possible. The Special Commission has also welcomed, more generally, the use of electronic tools to check the status of requests online, noting the importance of confidentiality and privacy considerations.[318]

- The date of service

287. The Convention does not include specific rules regarding the date of service. However, the issue of determining the date when the service takes effect can have implications for the interests of both the plaintiff and the defendant, and there are relevant cases that address this matter.

288. There might be situations in which the forwarding authority has forwarded a document for service abroad by using two different channels (*e.g.*, through the Central Authority and the postal channel), and where this could result in service of the document on the defendant on two occasions at two different times. A few questions may arise in such situations: which time, then, is to be taken into account, for instance, to determine whether the deadline to enter an appeal has been observed? According to the Belgian Cour de cassation,[319] the time for appeal runs from the first service on the defendant, whereas according to the French Cour de cassation,[320] the second service causes a second time for appeal to run. The absence of a conventional rule relating to the date of service may thus lead to the development of divergent practices.

289. The date of service is also important for the plaintiff. Certain national procedural laws require service to be performed within a certain time, under penalty of nullity or lapse of the right of action.[321] While most courts are not unduly formalistic and allow an exception to this rule to the

316 C&R No 23 of the 2009 SC.

317 *Ibid.*, No 24.

318 C&R Nos 11 and 30 of the 2014 SC.

319 Decision of 4 November 1993, *Pasicrisie belge*, 1993, 1st part, p. 927.

320 Decisions of 9 May 1990 and 3 March 1993, see R. Perrot, "Jurisprudence française en matière de droit judiciaire privé, B. Procédure de l'instance : Jugements et voies de recours. Voies d'exécution et mesures conservatoires", *RTD civ.* 1993, pp. 651-653, under "Voies de recours. Délai: point de départ en cas de notifications successives".

321 Certain domestic procedural laws provide for exceptions from this rule when the document is to be transmitted abroad. See, *e.g.*, *Fed. R. Civ. Pro.* 4(m) in the **United States** and for an explanation of that rule, *Frederick v. Hydro Aluminum*

plaintiff on the basis of the particular circumstances,[322] some apply these periods strictly.[323] In some cases, a drawn out time for effecting service may prevent plaintiffs from enforcing their rights, which in turn could incite the use of alternative means of transmission or even the evasion of the Convention. A **Swiss** court gave up trying to apply the Convention and accepted the service of procedural orders by means of publication in the official journal of the forum, on the grounds that service through the Spanish Central Authority was impracticable for each procedural instrument owing to the endless delay it involved.[324] The **Belgian** and **Luxembourg** courts have resolved the difficulty in the plaintiff's favour by holding that, as Belgian and Luxembourg law consider service to be complete as soon as the formalities required by their domestic laws have been performed, there is no reason to take account of the actual delivery of the document to its addressee residing abroad to determine whether that document was served within the statutory period.[325]

290. In order to resolve these problems, the former 2000 EU Service Regulation introduced the system of double-dates (or dual-dating) for the main method of transmission. In the current 2020 EU Service Regulation, this system has been maintained and is even applied to other methods of transmission (Art. 13). Under Article 13 of the 2020 EU Service Regulation, two dates are to be distinguished: for the purposes of the plaintiff, the date of service is the date the plaintiff completed the action required for service abroad as provided for under the law of the State in which the document originates. For the addressee (defendant), the date of service is determined in accordance with the domestic legislation of the Requested State. This system is intended to allow the interests of the plaintiff and defendant to be better taken into account. Thus, the plaintiff wishing to comply with a limitation period imposed by the law of the forum (*lex fori*) may comply with the requirements of that law only, without being subject to the complications and possible delays that may arise from serving documents abroad. However, that protection afforded to the plaintiff is not provided to the defendant's detriment, since for the defendant, the date of service is determined in accordance with their own law.

S.A., 153 F.R.D. 120 (E.D. Mich. 1994) (discussing previous *Fed. R. Civ. Pro.* 4(j), which was superseded in 1993 by the current *Fed. R. Civ. Pro.* 4(m)); *Pennsylvania Orthopedic Association v. Mercedes-Benz AG*, 160 F.R.D. 58 (E.D. Pa. 1995); *Nasuni Corp. v. ownCloud GmbH*, 607 F. Supp. 3d 82 (D. Mass. 2022); *Ho v. Pinsukanjana*, No. 17-cv-06520, 2019 WL 2415456 (N.D. Cal. June 7, 2019).

322 In the **United Kingdom**: *John Caygill v. Stena Offshore AS*, Court of Session, Outer House, 20 March 1996; in the **United States**: *Robillard v. Asahi Chemical Industry Co., Ltd*, No. CV 94-0539213-S, 1995 WL 681553 (Conn. Super. Ct. Nov. 7, 1995); *Broad v. Mannesmann Anlagenbau, A.G.* (*op. cit.* note 50); *Empire Indus., Inc. v. Winslyn Indus., LLC*, No. 18 C 698, 2020 WL 3100581 (N.D. Ill. June 11, 2020).

323 In the **United States**: *Prom v. Sumitomo Rubber Industries*, 592 N.W.2d 657 (Wis. Ct. App. 1999). In that case, the plaintiff had sought in vain to rely on the six-month period provided for under Art. 15(2)(b), which normally should have prevailed over domestic law, to have his service performed seven days after expiry of the 60-day period required by Wisconsin law.

324 *Obergericht Basel-Land*, 18 September 1995, *SJZ* 1996, p. 316.

325 In **Luxembourg**: see *inter alia*, *Faillite Breyer v. Sté Total Belgique*, Cour Supérieure de Justice de Luxembourg, 21 January 1981, *Rev. crit. d.i.p.* 1981, p. 708, note Georges Droz). Under Art. 156(2) of the NCPC, service is deemed to have occurred on the date of delivery of a copy of the document to the parquet, *Schimpf v. Helaba Luxembourg*, *Landesbank Hessen-Thueringen, International*, CA of Luxembourg (*op. cit.* note 12) and *Insinger de Beaufort v. Harm, Banque Populaire du Luxembourg et Stark*, CA of Luxembourg, 20 March 2001, No 24934; regarding delivery of a copy of the document to the postal service, see *Marty v. Basinco Group*, CA of Luxembourg, 30 November 1999, No 22952, according to which delivery of the document to the addressee is an element extrinsic to the formalities required and is immaterial to the validity and the effects of service. In **Belgium**: the courts consider that service has been performed on the date of receipt of the document by the Central Authority in the Requested State. See, by way of illustration, *HD Plastics Ltd v. SA Dematex*, *Cour de Liège* (7th Chamber), 9 May 1995, *JT* 1996, p. 82; *Monnet v. Laurent*, Civ. Namur (réf.), 3 May 1996, *JT* 1996, p. 763.

291. While the EU system operates for States within the EU, the introduction of double-dates into the framework of the 1965 Service Convention would undoubtedly give rise to challenging issues.[326] The 2003 Special Commission meeting excluded the proposal of such a system as follows:

> "The SC considered and rejected a proposal that States party adopt a recommendation to implement a system of double-date[s], 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."[327]

292. The 2009 Special Commission meeting has also noted that the absence of a specific rule on the date of service had not caused any major problems in practice.[328]

- The Certificate of service (Art. 6)

293. The Central Authority of the Requested State, or any other authority designated by that State for such purpose, is required to complete a Certificate of service. This Certificate is part of the Model Form annexed to the Convention (Art. 6(1); see also paras 197 *et seq.*). Authorities completing the Certificate that are not the Central Authority need not be a judicial authority.[329] However, they must be designated as a competent authority and this designation must be notified to the depositary, *i.e.* the Ministry of Foreign Affairs of the Netherlands. This notification must be done either at the time of the deposit of the instrument of ratification or accession, or at a later stage. The relevant information is available on the Country Profile of a Contracting Party.[330]

294. In an effort to mitigate the time taken for the service of documents abroad under the Convention, a number of States (*e.g.*, **Canada**, **Netherlands**, **Norway** and **Switzerland**) have designated either the authority or person actually serving the document, or a judicial authority of the district within which service has been executed, as the competent authority to complete the Certificate. However, it must be emphasised that if the Certificate is not completed by the Central Authority or a judicial authority, the forwarding authority may require that the Certificate be countersigned by one of these authorities (Art. 6(3)).

326 First, the 1965 Service Convention is not designed to amend the domestic rules of the Contracting Parties to the Convention. However, the determination in a conventional rule of the date of service would be an interference in those States' domestic laws. In addition, it is generally accepted that a court applies its own law (*lex fori*) to procedural issues. Yet under the double-dating system, the law of the Requested State determines the date of service for the addressee. This amounts to saying that a foreign law determines the time when a procedural action, with substantial consequences in the forum, is performed (in particular, that foreign law may cause the period for the entry of a challenge in the original State to run). Lastly, the double-dating system can effectively safeguard the plaintiff's interests only when the *lex fori* includes a mechanism to determine the date of service abroad for the plaintiff's benefit (as is the case, in particular, with Belgian and Luxembourg law, see, *supra*, para. 289). However, many States do not provide such rules.

327 C&R No 75 of the 2003 SC.

328 C&R No 36 of the 2009 SC. In light of the general acceptance that procedural matters are governed by the *lex fori*, the determination of the date of service for the addressee is established by the law of the Requesting State, and the French Cour de cassation has clarified the rule applicable to the date of service in specific cases. It has issued at least two judgments regarding the service of decisions at the last known address of the recipient (both at the time of transmission and as specified in the decision); in cases where service is successful, the date of service, for the purposes of the addressee, coincides with the date the foreign competent authority delivers the document to them; however, if the document cannot be delivered, the date of service is established as the date on which the foreign competent authority attempts service or, if this date is unknown, the date on which the foreign authority informs the French authority. See *Rabi v. Serrano et al*., Cass., Ch. Civ. 1, 23 June 2011, (No 09-11.066) and *Société La Comtesse du Barry v. Société Crédit Agricole des Savoie*, Cass., Ch. Civ. 2, 21 February 2013, (No 11-24.813).

329 Explanatory Report (*op. cit.* note 13), p. 370. This also follows indirectly from Art. 6(3).

330 Country Profiles can be accessed from the Service Section of the HCCH website.

295. The Certificate must contain certain items of specific information relating to the execution, or non-execution of the request (see paras 1 and 2 of the Certificate), as the case may be. However, the case law suggests that the practice is not overly formalistic in this respect. For instance, the ***Supreme Court of the Netherlands*** (*Hoge Raad*) has stated that Article 6 does not require the use of the Model Form itself; according to the Court, it was sufficient for the Certificate to contain the essential elements of the Model Form to meet the requirements of Article 6. The Court justified its decision by stating that the aim of the Certificate is not to protect the interests of the person to be served.[331] While there is no doubt that the lack of excessive formalism is to be welcomed, one also has to emphasise that because of the widespread use of the Convention, many courts tend to view the Certificate as an authoritative approval which confirms that service has been properly effected in conformity with the law of the Requested State. In other words, use of the Certificate annexed to the Convention is highly encouraged.

a. Completion of the Certificate

296. The competent authority must complete the Certificate whether the execution of the service request is successful or not. If service failed because the addressee refused service, this should also be mentioned in the Certificate. For particulars, see para. 248. The Certificate should be completed electronically or, if necessary, in neat legible writing either in the language of the Requested State, or in French, or in English (Art. 7(2)).

297. The Certificate should be dated and signed (signature or stamp) by the competent authority of the Requested State. If the Certificate has not been completed by the Central Authority or a judicial authority (*e.g.*, a *huissier de justice*), the forwarding authority may require that the Certificate be countersigned by one of these authorities (Art. 6(3)).

298. The Special Commission has encouraged the authorities completing the Certificate to indicate the relevant provisions in the law of the Requested State under which service was effected.[332]

299. Although the Certificate is annexed to the Convention, omitting certain details does not always seem to invalidate it. In **Switzerland**, the Federal Supreme Court has held that even if the Certificate does not contain information regarding the name and position of the person who received the document, service will be considered valid if the State of destination has stated that the document has been served.[333] Also, in a case where the competent authority did not specify the form of service, a United States court ruled that the service was not invalidated due to the good faith of the forwarding authority and the defendants being informed about the document.[334] However, as best practice it is prudent and recommended to include this information in the Certificate.

b. Return of the Certificate

300. The Certificate must be forwarded directly to the applicant (*i.e.* the forwarding authority; see Art. 6(4)). The Special Commission has stressed the importance of complying with this rule.[335] In practice, the Certificate is sometimes sent to the Central Authority of the Requested State, which in turn then transmits it to the forwarding authority. In this latter case, the Central Authority often countersigns the Certificate, in particular if the forwarding authority requested it in advance (see Art. 6(3)).

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331 *Willems v. Moser*, HR 10 May 1996, NJ 1997, p. 27.

332 See C&R No 30 of the 2009 SC.

333 Decision of 7 January 2011, 5A_160/2010.

334 *Greene v. Le Dorze* (*op. cit.* note 198).

335 C&R No 26 of the 2014 SC.

301. The Convention does not specify how the Certificate is to be sent to the forwarding authority. The Special Commission has noted that electronic means may be used for the transmission of the Certificate of service.[336]

302. The issue therefore arises as to whether an electronic document can be used in the proceedings to prove that the document has been served in compliance with the Convention. This issue is a matter solely for the rules of evidence applicable in the State where the proceedings are taking place.

303. Practice shows that Central Authorities do not always provide a Certificate; instead, they often return the entire case file to the forwarding authority, including instructions from judicial authorities at each level of the court system and any challenges to service made by the defendant in the Requested State. This file generally includes local proof of service in the form of a lengthy affidavit executed by a court bailiff or any other competent person. Even where this person executing service is very diligent in performing service and in specifying details of the notification, and also where the information contained in the local affidavit of service is quite useful for the plaintiff, a challenge persists: courts in the Requesting State still expect a Model Form Certificate in proper form as an authoritative approval.

304. Where the forwarding authority on the Request Form is a United States attorney, some Central Authorities have refused to return the Certificate directly to that forwarding authority. Instead, they return the Certificate through diplomatic channels to the Consulate or Embassy closest to the forum court, which in turn forwards the Certificate by mail to a court clerk in the United States. The problem arising out of this practice is that clerks, who are not accustomed to receiving unsolicited foreign documents by mail, frequently throw these away or lose them. The practice of refusing to return the Certificate directly to the forwarding authority is contrary to Article 6(4) of the Convention, as noted above in paragraph 300.

c. Effect of the Certificate

305. The Special Commission has noted that the Certificate constitutes authoritative confirmation that service was properly effected in conformity with the law of the Requested State and creates at least a rebuttable presumption that service was properly performed, allowing the proceedings to continue before the foreign court.[337] Further, the Special Commission has noted that "[t]he probative value of the Certificate in the Requesting State remains subject to that State's law".[338] This presumption is also important for the purposes of the recognition and enforcement of a

336 See C&R No 63 of the 2003 SC; C&R No 37 of the 2009 SC.

337 C&R No 33 of the 2009 SC. This has been the subject of litigation in some Contracting Parties, for example: In *Myrtle v. Graham*, No. 10-cv-1677, 2011 WL 446397 (E.D. La. Feb. 4, 2011), a United States court held that the return of a completed Certificate of service by a State's Central Authority is *prima facie* evidence that the service was made in compliance with the 1965 Service Convention procedures and that State's internal laws. To rebut the *prima facie* case established by the completed Certificate of service, a defendant must show lack of actual notice of the proceedings or prove that he was prejudiced in some way. See also *Platypus Wear, Inc. v. Bad Boy Europe LTD.*, No. 16-cv-02751-BAS-DHB, 2018 WL 3706876 (S.D. Cal. Aug. 2, 2018) (finding the signed certificate of service from the UK Central Authority, which indicated defendant was served in accordance with UK law, to be *prima facie* evidence of valid service. and defendant's sworn affidavit stating he had not been served did not satisfy the burden of "clear and convincing evidence establishing that service of process was insufficient."); *Joint Stock Co. Channel One Russia Worldwide v. Infomir LLC*, 16-CV-1318 (GBD) (BCM), 2018 WL 4681616 (S.D.N.Y. Sept. 11, 2018) (finding service of process to be sufficient because the German Central Authority issued a valid certificate of service); *Hunter v. Shanghai Huangzhou Mechanical Appliance Manufacturing Co.*, No. 5:17-cv-00052, 2020 WL 5258313 (N.D.N.Y. Sept. 3, 2020) (finding the certificate signed by China's Central Authority was *prima facie* evidence that service was completed in compliance with the Hague Convention and the country's internal law, and thus, the certificate of service may be used to request a default judgment). The High Court of England and Wales has also recognised this presumption in *Punjab National Bank (International) Ltd v. Vishal Cruises (Private) Ltd & others* and *Punjab National Bank (International) Ltd v. Passat Kreuzfahrten GmbH* [2020] EWHC 1962 (Comm) where it held that a certificate is not determinative, but offers at least a very strong presumption of service.

338 C&R No 33 of the 2009 SC.

default judgment under Article 15(2) of the Convention. However, the Certificate does not remedy service that is ineffective according to the law of the Requested State.[339]

- **Refusal to execute a request for service**

306. The Convention contains two provisions allowing the Central Authority of the Requested State to refuse execution of a request for service. In the first case, it is a temporary refusal (Art. 4); in the second case, it is a final refusal (Art. 13). As mentioned in paragraph 233, the Central Authority does not have the power to screen the documents and assess or appraise their contents or the merits of the case. The power of the Central Authority is limited to verifying that the request complies with the Convention requirements, that the matter relates to civil or commercial and that execution of the request will not infringe the Requested State's sovereignty or security.

a. Temporary refusal (Art. 4)

307. Temporary refusal to progress a request may occur where the request does not satisfy the requirements laid down by the Convention.

308. When a Central Authority receives a request from abroad, it performs a summary review to ascertain that the request satisfies the Convention's requirements. This review is limited to the Request Form, the Summary of the document to be served and, if needed, the document itself.[340] Mandatory use of the Request Form (Art. 3(1)) makes that review easier. If the Central Authority considers that the request does not satisfy the formal or substantial requirements of the Convention, it must inform the forwarding authority thereof immediately.[341]

309. The discussion at the 1977 Special Commission meeting showed that very few grievances were brought against requests. The practice of Central Authorities is indeed fairly liberal. Formal irregularities, such as the absence of a copy of the document (see paras 208 *et seq.*) or the mention of an incomplete address for the addressee (see paras 155 *et seq.*), are often remedied by the requested Central Authority itself. In other cases, the addressed Central Authority allows time to the forwarding authority to supplement or correct the application. As mentioned above (paras 281 *et seq.*), the fact that the time allowed for appearance has expired does not justify a refusal to execute the request.

b. Final refusal (Art. 13)

310. Article 13(1) of the Convention provides that the Requested State may refuse to comply with a request for service if it considers that such compliance would infringe the State's sovereignty or security. This is the sole ground on which the Requested State may refuse to comply with a request that complies with the terms of the Convention. The ground is only available where the Requested State considers that compliance with the request would infringe its sovereignty or security. The focus is therefore not on the action that gives rise to the document to be served.[342] The Special Commission has confirmed the exhaustive nature of the grounds for refusal set out in this Article.[343]

I. The concept of "sovereignty or security" (Art. 13(1))

311. The concept of infringement of sovereignty or security has an extensive history at the HCCH. It was proposed as a ground for refusal during negotiations on the 1896 Civil Procedure

339 BGH, 9th *Zivilsenat*, 18 February 1993, *IPRax* 1993, p. 396.

340 OLG Düsseldorf, 3rd *Zivilsenat*, 19 February 1992, *NJW* 1992, pp. 3110-3112. See, however, paras 233 *et seq*.

341 See also the decision of the Federal Supreme Court of Switzerland, *X. SA v. Y. AG*, 15 September 2003 (*op. cit.* notes 204 and 215).

342 See Explanatory Report (*op. cit.* note 13), p. 375.

343 C&R No 35 of the 2014 SC.

Convention.[344] Rejecting the inclusion of public policy as "too vague and ambiguous", the drafters instead opted for the more precise and limited grounds said to be embodied in the concept "sovereignty or security".[345] Courts and commentators agree that the concept sovereignty or security differs from public policy. Commentators have also pointed out that this concept must be read narrowly,[346] and that it has a convention-restricted meaning.

312. The understanding of the concept of sovereignty and security necessitates acknowledging its international nature, and domestic methods of interpretation should be avoided.[347] Consequently, it is reasonable that certain courts have ruled that sovereignty or security could be infringed when a request is obviously incompatible with indispensable or fundamental legal principles, encompassing indispensable principles of the rule of law[348] or certain constitutionally guaranteed rights. One commentary suggested that such incompatibility may only arise in extreme circumstances where the decision to comply would question or even contradict the identity or basis of the sovereign State.[349]

313. The Convention makes it clear that it is for the Requested State to determine whether compliance with the request would infringe its sovereignty or security. In this regard, the authorities of the Requested State have a discretion.[350] Accordingly, the authorities of the Requesting State should avoid reviewing a decision by the authorities of the Requested State to refuse compliance with a request for service pursuant to Article 13(1).[351] To do so would undermine the purpose of the Convention by rendering Article 13 pointless. Nevertheless, the decision to refuse compliance may be subject to review in accordance with the Requested State's administrative or judicial review processes. The scope of the review is a matter of domestic law, but it may be very limited, extending only to errors in the exercise of the discretion.[352]

344 This concept was subsequently also included in the 1970 Evidence Convention (Art. 12(1)(b)).

345 See "Rapport présenté au nom de la IIIème commission (procédure civile)" [in French only], in *Actes de la Deuxième Conférence de La Haye chargée de réglementer diverses matières de droit international privé* (*op. cit.* note 6), pp. 51-52.

346 H.E. Rasmussen-Bonne, "The Pendulum Swings Back: the Cooperative Approach of German Courts to International Service of Process", in P. Hay *et al.* (ed.), *Resolving International Conflicts*, Liber Amicorum Tibor Várady, Budapest-New York, Central European University Press, 2009, p. 248; see also OLG Frankfurt am Main (Germany), 13 February 2001, No 20 VA 7/00. The characterisation of sovereignty and security as a narrow subset of public policy is confirmed in the commentary and case law on Art. 12(1)(b) of the 1970 Evidence Convention. See, *e.g.*, L. Chatin, "Régime des commissions rogatoires internationales de droit privé", *Rev. crit. d.i.p.*, Paris, éditions Sirey, 1977, p. 615; the Supreme Court of the Canton of Zurich (Switzerland), decision of 21 April 2008, case No NV080003. See, generally, [requires update HCCH, Practical Handbook on the Operation of the Evidence Convention, The Hague, 4th Edition, 2020, paras 315 *et seq.* [hereinafter, the Evidence Handbook].

347 OLG Frankfurt am Main, 13 February 2001 (*op. cit.* note 346), at para. 12.

348 BVerfG, 7 December 1994, 91, 335, 343; BVerfG, 25 July 2003, 108, 238.

349 See W. zur Nieden, *Zustellungsverweigerung rechtsmissbräuchlicher Klagen in Deutschland nach Artikel 13 des Haager Zustellungsübereinkommens: zugleich ein Beitrag zum deutsch-amerikanischen Justizkonflikt*, Frankfurt am Main, Peter Lang Verlag, 2011, p. 141. Similarly, a German commentator suggested that Art. 13(1) conceivably could apply where compliance would be entirely contrary to the idea of the law (*Rechtsidee*), requiring the competent authority to be complicit in conduct contrary to international law or absolutely immoral. R. Geimer, "Entscheidungsrezension zu BGH NJW 1990, 2197", Beschluss vom 09.05.1990, in *Zeitschrift für Zivilprozess 1990*, Vol. 103, p. 477.

350 In this regard, German courts have confirmed the broad discretion provided by Art. 13(1) and have held that the decision can include considerations of expedience based on the maintenance of foreign relations. OLG Frankfurt am Main, 26 March 2008, No 20 VA 13/07; see also OLG Düsseldorf OLGR, 14 June 2006, 393 (2007); OLG Celle, 6 July 2007, NJW-RR 2008, 78 (2007).

351 This situation needs to be distinguished from other circumstances such as where the Requested State fails to act on a request. In this latter situation, alternative means of service may be allowed by the requesting court.

352 See also Evidence Handbook (*op. cit.* note 346), paras 285 *et seq.*

314. In **Germany**, the courts have held that the application of Article 13 is limited to particularly grave cases or narrowly defined circumstances.[353] However, the courts have held that sovereignty or security may be infringed where a request is obviously incompatible with indispensable or fundamental legal principles,[354] indispensable principles of the rule of law,[355] or certain constitutionally guaranteed rights.[356] In any event, the interpretation of the concept requires that credence be given to the provision's supranational character; domestic approaches to its interpretation should not be used.[357]

II. Limitation on discretion of refusal (Art.13(2))

315. Article 13(2) of the Convention identifies two grounds for refusal that are considered unacceptable.[358] They relate to the Requesting State's jurisdiction to issue the request for service.

316. According to the first ground, a Requested State may not refuse compliance only because, under its domestic laws, it claims exclusive jurisdiction over the subject-matter.[359] According to the second ground, the Requested State may not refuse compliance merely because it does not otherwise recognise the jurisdiction of the forwarding authority. The latter ground was included in the instrument to prevent refusals under Article 13(1) where parallel proceedings concerning the same subject-matter have also been commenced in the Requested State (*lis pendens*).

317. Furthermore, State practice has identified additional grounds for refusal that are considered unacceptable. These include:

- **Non-recognition of subsequent judgment**: refusal to comply cannot be based on the possibility that the claim to be served may lead to a subsequent judgment that could not be enforced in the jurisdiction of the Requested State, including on the basis of public policy. Compliance with the request for service does not prejudice the subsequent recognition and enforcement of a decision rendered in the Requesting State by the Requested State.[360] Noting the undesirability of a *revision au fond* ("substantive review" in English, as a synonym), **German** courts have held that under no circumstances should there be refusals based on anticipated outcomes.[361] As mentioned above (see para. 233), the Central Authority does not have the power to screen the documents and assess or appraise their content or the merits of the case.

353 OLG Dusseldorf, 6 June 2003, I-3 VA 6/2003, at para. 20.

354 Earlier commentary suggested that such incompatibility may only arise in extreme circumstances where the decision to comply would question or even contradict the identity or basis of the sovereign State. See note 349.

355 VberfG, 7 December 1994, 91, 335, 343, BverfG, 25 July 2003, 108, 238.

356 For example, although the German Federal Constitutional Court (*Bundesverfassungsgericht*) held that service of claims for punitive damages does not breach a party's constitutionally guaranteed freedom to act, the Court has not yet decided conclusively whether claims for punitive damages could limit inappropriately a party's constitutional right (the freedom to act in conjunction with basic principles of the rule of law). See BverfG, 9 January 2013, 2 BvR 2805/12. In the past, one case involving a claim for the award of punitive damages was brought before the Federal Constitutional Court, and as a result, the Constitutional Court did not rule on the merits of the appeal. See KG Berlin, 5 July 1994, *IPRspr.* 1994, p. 159, followed in BverfG, 7 December 1994 (*op. cit.* note 48).

357 OLG Frankfurt am Main, 13 February 2001 (*op. cit.* note 346), at para. 12.

358 It is substantially the same as Art. 12(2) of the 1970 Evidence Convention and both the Service and Evidence Handbooks should be read in conjunction.

359 In this regard, a German court's decision which deemed that a request may be refused where the action is considered completely foreign (*schlechthin wesensfremd*) to German law (OLG Frankfurt am Main, 26 March 2008, No 20 VA 13/07) raises questions about its compatibility with Art. 13(2) of the Convention.

360 C&R No 78 of the 2003 SC.

361 OLG Frankfurt am Main, 13 February 2001 (*op. cit.* note 346), at para. 11; OLG Düsseldorf, 6 June 2003, (*op. cit*. note 353) at para. 20.

- **On the basis of the entity making the request**: refusal to comply cannot be based solely on the characterisation of the entity making a request, and therefore assuming that a request for service is not within the meaning of the term civil or commercial matters. The Requested State should focus instead on the substantive nature of the matter referred to in the request; the Special Commission has welcomed the flexible practice adopted by some Contracting Parties in this regard.[362]
- **Time-limit has lapsed**: refusal should not be based on the time-limit for responding to the claim having lapsed (see paras 281 *et seq.*).
- **Time-limit is too short**: refusal to comply should not be based on the time-limit for responding to the claim being, in the view of the authorities of the Requested State, too short (although this does not prejudice the subsequent recognition and enforcement by the Requested State of the decision rendered in the Requesting State, or prejudice the subsequent operation of Arts 15 and 16 of the Convention).
- **Public policy**: refusal to comply cannot be based on the incompatibility of a claim with the Requested State's public policy. This is not, in itself, a sufficient ground for refusing a request for service under Article 13(1).[363]

⇒ **Specific cases – injunctions and damages**

318. Whether service of a so-called "anti-suit injunction" can be refused is controversial.[364] In 1996, a **German** court upheld a decision to refuse, noting that these injunctions interfere indirectly with a German courts' competency to hear a matter.[365] However, it is questionable in that an anti-suit injunction's effect is on a party, not a foreign court.[366]

319. With regard to other injunctions, a **Swiss** court held that serving an injunction requesting a Swiss employer to withhold part of the salary of an employee and to transfer it to his creditor in Austria was a violation of the territoriality principle because it was an enforcement measure. Accordingly, the court refused to execute the request for service.[367] However, in most cases injunctions are straightforward and should not pose any problems in practice for the purpose of service.

320. Whether punitive damages and class actions present unacceptable grounds seems to be an issue that must be dealt with on a case-by-case basis. As a basic rule, the **German Federal Constitutional Court** (*Bundesverfassungsgericht*) held that claims for punitive damages and class action proceedings are not a sufficient ground for a refusal under Article 13(1).[368] The Court

362 C&R No 41 of the 2014 SC.

363 OLG Frankfurt am Main, 13 February 2001 (*op. cit.* note 346), at para. 11.

364 Anti-suit injunctions are granted by courts to restrain parties from entertaining parallel proceedings in different jurisdictions. Anti-suit injunctions are thus designed to protect the orderly administration of courts. *CSR Ltd v. Cigna Insurance Australia Ltd* (1997) 189 CLR 345, 392. The test for granting anti-suit injunctions was developed in *Société Nationale Industrielle Aerospatiale v. Lee Kui Jak* [1987] AC 871, 892. See also *Airbus Industrie GIE v. Patel* [1999] 1 AC 119, 133.

365 OLG Düsseldorf, 10 January 1996, *IPRax* 1997, p. 260; R.A. Schütze, *Ausgewählte Probleme des Internationalen Zivilprozessrechts*, Berlin, De Gruyter, 2006, p. 56; W. Hau, "Zustellung ausländischer Prozessführungsverbote: zwischen Verpflichtung zur Rechtshilfe und Schutz inländischer Hoheitsrechte", (1997) 17(4) *IPRax*, p. 245; C.A. Heinze & A. Dutta, "Enforcement of Arbitration Agreements by Anti-Suit Injunctions in Europe – from Turner to West Tanker", in P. Volken & A. Bonomi (ed.), *Yearbook of Private International Law*, Munich, Sellier European Law Publishers, Vol. IX, 2008, pp. 415, 422.

366 W. zur Nieden (*op. cit.* note 349), pp. 124-125. See also, P.F. Schlosser, *EU Zivilprozessrecht*, Munich, C. H. Beck, 2009, p. 410.

367 Kantonsgericht St. Gallen, Einzelrichterin in Rechtshilfesachen, RH.2008.64, 19 May 2008.

368 BVerfG, 24 January 2007, 2 BvR 1133/04; see also OLG Düsseldorf, 6 June 2003 (*op. cit.* note 353); BVerfG, November 3, 2015 – 2 BvR 2019/09. See BVerfG 2 BvR, 9 January 2013 (*op. cit.* note 356), in relation to punitive damages.

pointed out that a refusal would run counter to the established principle that a foreign legal order and law must be respected even though a comparison with domestic law reveals their incompatibility.

321. However, the German Federal Constitutional Court has so far left open the question of whether the service of punitive damage and class actions may be refused in certain circumstances, especially with regard to violations of fundamental constitutional rights.[369] Additionally, as situations where service may be refused, the court provided examples including claims that aggressively pursue demands lacking substantial basis, cases against parties clearly unrelated to the proceedings, and actions where undue pressure is exerted to achieve unjustifiable settlements.[370]

322. In the 2022 Questionnaire, of those Contracting Parties that responded, only a minority of States indicated that they had either refused a request for service or that their outgoing request had been refused based on Article 13(1).[371] The **United States** indicated that their common grounds for refusal were, for example, garnishment of sovereign funds, claims relating to wartime activities, and attachment of sovereign assets.

III. Actions upon refusal (Art. 13(3))

323. The Requested State, through its Central Authority, must promptly inform the forwarding authority of its decision to refuse compliance with the request. It must also provide reasons for its refusal to comply. However, it is not necessary to provide express and detailed reasons. Rather, the recording of the grounds upon which the request was refused, *i.e.* that it infringed "sovereignty or security" under Article 13(1), seems sufficient. The reasons must be provided as part of the Certificate (of non-service), issued in conformity with Article 6(2).[372]

II. Alternative channels

324. In addition to the main channel of transmission (*i.e.*, the system of Central Authorities), the Convention provides for other channels (two of which include service) that can be used. These include:

- **Direct consular or diplomatic channels** – includes service (Art. 8(1))

325. Under direct diplomatic or consular channels, a diplomatic or consular agent from State A, who is accredited to State B may serve judicial documents on an addressee in State B. However, State B can make an objection to such service and restrict the operation of this channel to service upon nationals of State A who are located in State B (see para. 346).

- **Indirect consular or diplomatic channels** – transmission only (Art. 9)

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369 BVerfG, 9 January 2013 (*op. cit.* note 356), which held that service of claims for punitive damages does not breach a party's constitutionally guaranteed freedom to act. However, the Court did not decide conclusively whether claims for punitive damages could limit inappropriately a party's constitutional right, *i.e.*, the freedom to act in conjunction with basic principles of the rule of law. In the case of BVerfG, 3 November 2015 (*op. cit.* note 368), which references the above decision, the Court held "The Federal Constitutional Court (*Bundesverfassungsgericht*) has so far left open whether the service abroad under the Convention would have to be refused because of a violation of Article 2.1. of the Basic Law (*Grundgesetz*) in conjunction with the principle of the rule of law if the objective pursued by the action obviously violated indispensable principles of the free state under the rule of law, as they are also enshrined in international human rights conventions" (translated by the Permanent Bureau). In this specific case, however, the Court did not recognise such violations.

370 See BVerfG 2 BvR, 9 January 2013 (*op. cit.* note 356), at para. 13.

371 See responses to Questions Nos 26 and 27 of the 2022 Questionnaire.

372 Compare this with the 1970 Evidence Convention, which does not prescribe the form in which the reasons for refusal are to be given. See Evidence Handbook (*op. cit.* note 346), paras 359 *et seq.*

326. Consular or diplomatic channels can be used to transmit documents for the purposes of service to those authorities in another Contracting Party that have been designated for this purpose. These authorities can range from courts to traditional Central Authorities (para. 352 provides further information).

- **Postal channels** – includes service (Art. 10(a))

327. This channel permits the transmission of the documents through postal channels from the State of origin directly to the addressee, subject to a State of destination not objecting to this channel (paras 361-386 provide further information).

- **Direct communication between judicial officers, officials or other competent persons of the State of origin and the State of destination** – transmission only (Art. 10(b))

328. Using this channel, judicial officers, officials or other competent persons in the State of origin are able to effect service of judicial documents directly through judicial officers, officials and other competent persons of the State of destination (see para. 387).

- **Direct communication between an interested party and judicial officers, officials or other competent persons of the State of destination** – transmission only (Art. 10(c)).

329. This channel permits any person interested in a judicial proceeding to effect service of judicial documents directly through a judicial officer, official or other competent person of the State of destination. Information about this channel is at paragraph 394.

330. These alternative channels are sometimes referred to as "subsidiary channels".[373] This term does not appear in the Convention and implies that these channels are subordinated to the main channel (*e.g.*, that they may only be used if the main channel has failed) or that the other channels are somehow of lesser quality than the main channel. Yet this is in no way correct. There is neither a hierarchy nor any order of importance among the various channels of transmission. Transmission through one of the above channels does not lead to service of lesser quality. It is up to the party or the competent authority seeking to effect service to determine which of the Convention's channels of transmission it is permitted to use and which, of those available channels, is the most appropriate to use in the particular circumstances. Against this background, the other channels should not be regarded as subsidiary to the main channel.[374] Provided the relevant channel of transmission applies between the Contracting Parties, and no objections prevent its use, it may be used without any other restriction (See para. 331). This Handbook uses the term "alternative channels" rather than "subsidiary channels".[375]

1. Applicability of alternative channels

331. At the outset, any party seeking to transmit documents for service abroad via an alternative channel must first establish whether that channel of transmission is available. Contracting Parties may object (and indeed have objected) to certain alternative channels of transmission. Objections can be made in respect of:

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373 See, in particular, the Explanatory Report (*op. cit.* note 13), p. 372 ("*subsidiaires*" in French).

374 By way of comparison, it is interesting to note that in *Plumex v. Young Sports NV*, C-473/04, EU:C:2006:96, the ***Court of Justice of the European Union*** reached the same conclusion with regard to the methods of transmission established by the 2000 EU Service Regulation. For commentary on this case, see N. Fricero & G. Payan (*op. cit.* note 130), pp. 225-227.

375 The reason for using the term "subsidiary" in the Explanatory Report may have been the desire to stress the innovative nature of the main channel and the prospect of seeing it widely used in practice. The term "subsidiary" may also have been used to reflect the fact that a Contracting Party may, by way of declaration, object to the use of some of the other channels on its territory.

1) the direct service of judicial documents by diplomatic or consular agents, unless that document is to be served upon a national of the State of origin (Art. 8(2)).

2) transmission either:

   a. directly to persons abroad by postal channels (Art. 10(a));

   b. from judicial officer / officials / competent person in the State of origin directly through judicial officers / officials / competent persons in the State of destination (Art. 10(b)); and

   c. from a person interested in a judicial proceeding in the State of origin directly through judicial officers / officials / competent persons in the State of destination (Art. 10(c)).

332. Declarations of objections made by Contracting Parties, if any, are available on the Service Section of the HCCH website.

⇒ Effect on reciprocity to objections

333. A related consideration is whether a Contracting Party's objection to a method of transmission has a reciprocal effect. In other words, may a Contracting Party use a method of transmission even though it has objected to the use of that method of transmission? For instance, may China (Mainland), Germany, and Switzerland, which have objected to service on their territories through postal channels, use postal channels for service abroad?

334. It would appear that, in practice, there are different answers to this question. These depend on the approach applied by the objecting State of origin (in the examples mentioned: China (Mainland), Germany or Switzerland) and on the approach applied by the State of destination, which *ex hypothesi* has not objected to the method of transmission. The State of origin may claim that its own objection (reservation) is to be understood to be reciprocal. In **Germany**, the Appellate Court (*Oberlandesgericht*) of Düsseldorf has ruled that the German objection, according to which "[s]ervice pursuant to Article 10 of the Convention shall not be effected", should be interpreted to be reciprocal (*allseitig*).[376] However, this approach has not been followed by other German courts.[377] In cases where the State of destination has not objected to Article 10(a), and in the absence of a harmonised approach applied across Germany, German courts decide on a case-by-case basis whether or not the German objection has reciprocal effect. This is so unless the State of destination has expressed its willingness to accept service by postal channels coming from Germany.[378]

335. As far as the State of destination is concerned, it may assert the reciprocity of the objection made by the originating State. Thus, the State of destination may refuse service through postal channels emanating from the originating State, even if the State of destination did not itself object to this method of transmission. The principle of reciprocity of the objection asserted by the State of destination may be based on equity and traditional theory of public international law: if a State makes a reservation provided for under the terms of a treaty, it cannot require from the other Contracting Parties the respect of a Convention term or provision, the application of which it

376 See, OLG Düsseldorf, 3rd Zivilsenat, 8 February 1999, ZfIR 1999, pp. 324-326. Although that case concerned the method of transmission through a judicial officer under Art. 10(c) of the Convention (see para. 329), the developments of the court on the nature and effects of the German objection to the channels of transmission provided for under Art. 10 are of a general nature and accordingly also apply to postal channels.

377 See, LG Hamburg, 27. Zivilkammer, 7 February 2013.

378 For more information on international legal assistance in Germany, see the justice portal of North Rhine-Westphalia at http://www.ir-online.nrw.de/landliste.jsp [last consulted on 5 May 2024].

refuses itself.[379] However, this principle is not steadfast and, in accordance with a more modern approach, may be nuanced as follows: while a State which has made a reservation will not be able to require other Contracting Parties (which have not made the same reservation) to apply the treaty without reciprocity, these other States are in no way obliged to apply the treaty with reciprocity.[380] In other words, the other States have the possibility to waive the reciprocity.[381] Further specific information on the reciprocal effect of an objection to the postal channel is explored in that segment at para. 378.

2. Preparing a request for service

- **Model Form**

336. The Model Form consists of three parts (Request, Certificate, Summary and Warning) and is a mandatory requirement for transmission for service abroad under the main channel. While the use of the Model Form is not mandatory for requests made through alternative channels, its use is recommended. Use of the Model Form may also serve to ensure that all relevant information is included in the request for service. Information on the Model Form can be found at paragraph 189.

⇒ A note about translation

337. Translation of the document to be served is not, in principle, required under the alternative channels of transmission (see para. 256). The Special Commission has confirmed this interpretation, while noting that in isolated cases, translation requirements are imposed by a State's domestic law (*i.e.*, the State of destination).[382] In this regard, it should be noted that recognition and enforcement of a foreign decision may be refused when the documents served have not been translated. For specific information on translation requirements and postal channels, see paragraphs 368 *et seq*.

⇒ A note about using information technology

338. The Special Commission has identified two areas in which information technology (such as e-mail) may be useful for the operation of the Convention: for the transmission of documents, and for communication between the authorities of the Contracting Parties.

339. One of the Convention's essential objectives is to improve mutual judicial assistance. The use of information technology facilitates and improves cooperation between authorities of the Requesting State and authorities of the Requested State. This ability to swiftly communicate is vital in circumstances where a request for service is incomplete, or documents need to be transmitted or served in tight timeframes.

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379 See, *e.g.*, K. Ipsen, *Völkerrrecht*, 3rd ed., Munich, Verlag C.H. Beck, 1990, § 14, notes 11 *et seq.*; A. Verdross & B. Simma, *Universelles Völkerrecht: Theorie und Praxis*, 3rd ed., Berlin, Duncker & Humblot, 1984, § 733, note 5. This principle also seems to follow from Art. 21 of the *Vienna Convention of 23 May 1969 on the Law of Treaties*, which addresses the legal effects of reservations and objections to reservations.

380 See M. Kaum, "Ausländersicherheit für Briten – Inlandsbezug ausländischer Vorbehaltserklärungen", *IPRax* 1992, 1, Vol. 12, p. 18, with other references. See also "Note on reservations and options in the Hague Conventions", drawn up by the Permanent Bureau, Prel. Doc. C of June 1976, in *Actes et documents de la Treizième session (1976)*, Tome I, *Miscellaneous matters*, The Hague, Imprimerie Nationale, 1978, p. 102; G.A.L. Droz, "Les réserves et les facultés dans les Conventions de La Haye de droit international privé", *Rev. crit. d.i.p.* 1969, p. 381.

381 See in support, regarding Germany's objection to the consular channels of transmission provided for under Art. 8(1): ***Tokyo District Court***, Judgment, 24 February 1998: it is not inconsistent with the principle of reciprocity laid down by Art. 21 of the Vienna Convention for a State having objected to the use of consular channels to use that channel of transmission in relation to Japan, which has not issued such an objection.

382 C&R No 65 of the 2003 SC; C&R No 25 of the 2009 SC.

340. Service using information technology is also a key focus for users of the Convention and was discussed at the 2003 Special Commission meeting. For further information about e-Service please see paragraph 249.

3. Diplomatic and Consular communications in general

341. Under the 1905 and 1954 Civil Procedure Conventions, requests for service abroad of judicial and extrajudicial documents were transmitted primarily by consular representatives of the State of origin (Art. 1). Here, a request prepared in State A (the State of origin) was sent either directly to State A's Ministry of Foreign Affairs, or via the Ministry of Justice to the Ministry of Foreign Affairs. The Ministry of Foreign Affairs would then forward the request to its consular representatives in State B (the State of destination) for sending to the authority designated by State B under the respective Convention, which would then directly effect service on the addressee or send the relevant documents to the competent authority.

342. Alternatively, both Conventions contain provisions for (i) the transmission of documents through diplomatic channels, where the State of destination has made a declaration in that regard; and (ii) the direct service of documents on the addressee by diplomatic and consular representatives, provided that the State of destination has not objected to this method of service under the Convention.

343. The chain of transmission under both Conventions was a lengthy and complex one. While negotiating the 1965 Service Convention, States decided to maintain, although in slightly different terms, the diplomatic and consular communications as an alternative channel of transmission (Arts 8 to 9).

344. Similar to Article 6(3) of both Conventions, Article 8 of the 1965 Service Convention allows diplomatic and consular representatives of the State of origin to serve a document directly on the addressee in the State of destination, provided that such service is performed without application of any compulsion and that the State of destination has not objected to this method of service (see paras 346-351).

345. Article 9(1) of the 1965 Service Convention preserves entirely the use of consular representatives to transmit documents for service abroad. Conversely, in Article 9(2) of the Convention, States decided to limit the use of diplomatic channels to "exceptional circumstances" (paras 357-360), having regard to its lengthy and cumbersome character.[383]

1. Direct Diplomatic or Consular Channels (Art. 8(1))

346. Article 8(1) provides a channel of transmission for either diplomatic or consular agents to serve judicial documents upon persons abroad. Depending on who effects service, this channel of transmission is called the direct *diplomatic* channel or the direct *consular* channel. The diplomatic or consular officers of the State of origin accredited to the State of destination may serve a document directly on an addressee in that State of destination, provided that such service is performed without application of any compulsion, *i.e.*, by informal delivery (Art. 8(1)). Service may

383 See *Actes et documents de la Dixième session (1964)* (*op. cit.* note 1), p. 91, "It was decided that the diplomatic channel would only be allowed in exceptional cases. Although still in use by some States, the means of transmitting documents by diplomatic channels is extremely cumbersome […] To admit the use of diplomatic channels too freely could run the risk of invalidating the progress already achieved by the 1905 and 1954 Conventions […] However, it seemed impossible to prohibit recourse to diplomatic channels, which represent an ultima ratio always available to States" [translated by the Permanent Bureau].

therefore be performed by these means only if the addressee *voluntarily* accepts delivery of the document.[384]

347. A Contracting Party may declare that it is opposed to the transmission through direct diplomatic and direct consular channels on its territory, unless the document is to be served on a national of the State of origin (Art. 8(2)).[385] If the State of destination has made such an objection, these channels may only be used for service on nationals of the State of origin. For example, the Principality of Andorra has declared that it is opposed to the service of documents effected directly by the diplomatic or consular agents of the Contracting Parties on persons who are not nationals of those States.

348. As previously mentioned (see para. 7), the Convention primarily deals with the mere *transmission* of documents, while the actual *service* of document on the addressee is governed by the law of the Requested State (or State of destination). However, in the case of direct diplomatic or consular channels, service is also an integral part of transmission. Without service being effected by the diplomatic or consular officer, these channels of transmission are not completed. In this regard, within the Convention system of transmission, the *direct* diplomatic and consular channels are among the rare exceptions where service is possible.

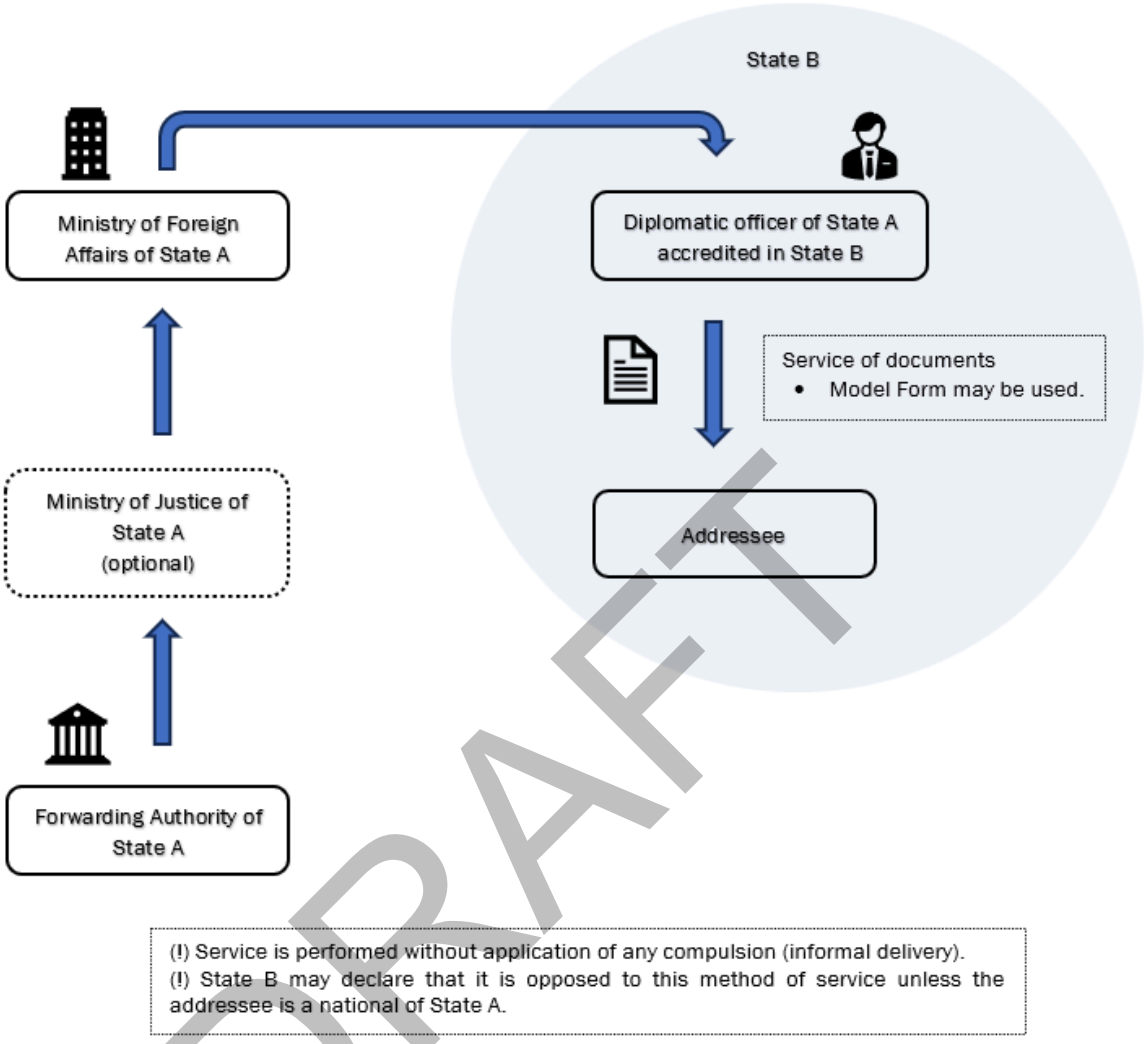
349. In responses received to the 2022 Questionnaire, respondent States generally replied that, in cases where service under Article 8(1) failed due to the addressee's rejection, a Certificate of non-service was issued by the diplomatic or consular agent.

350. The following diagram outlines the process generally involved in using **direct diplomatic** channels:

384 Ruling of the German Federal Administrative Court BVerwG, 20 May 1999, NJW 2000, pp. 683-684; this position had already been taken by a Swiss Court, the Cantonal Court of Valais, Civil Chamber, 1 September 1998, ruling received from the Valais Central Authority.

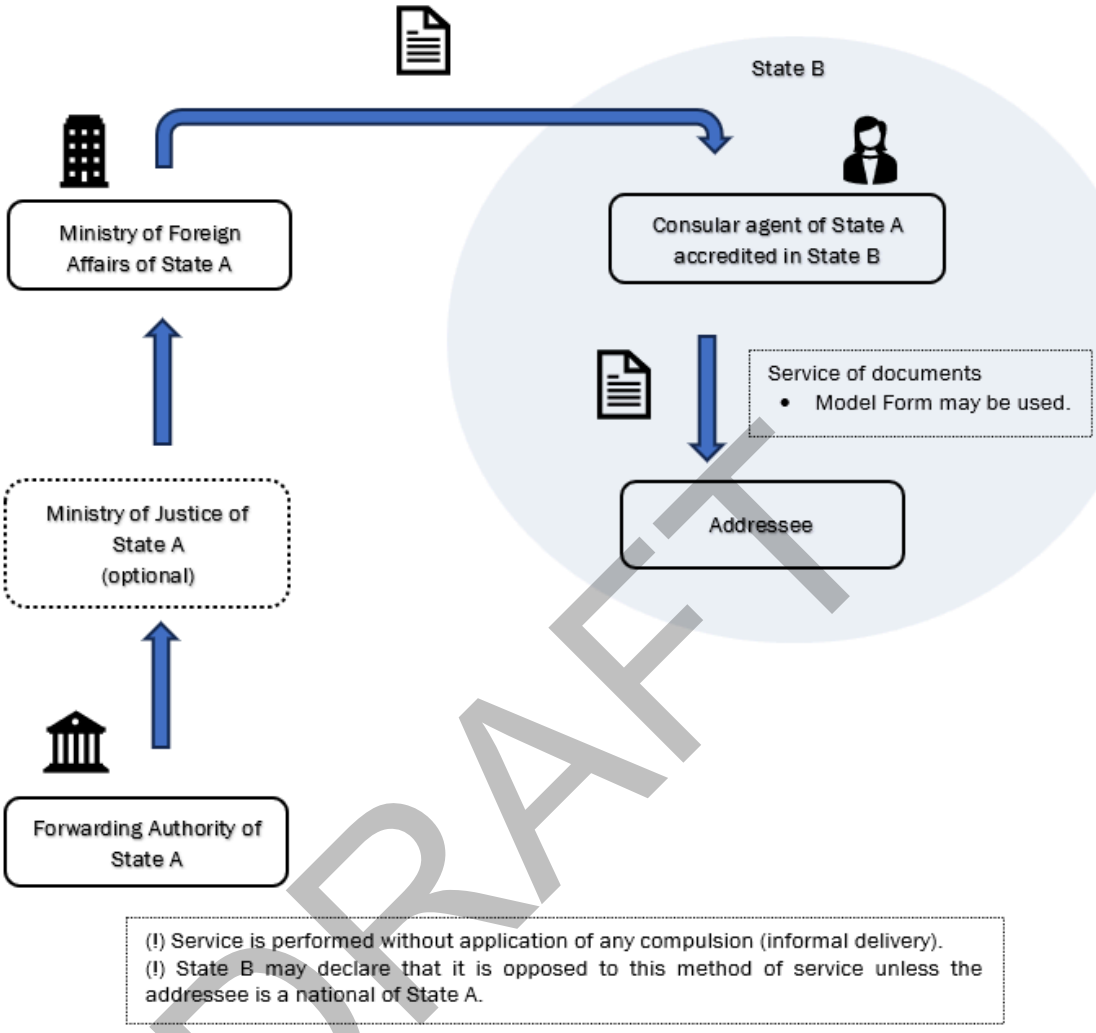
385 For a full list of the States which have objected to the use of direct diplomatic or consular channels, see the Service Section of the HCCH website. The list includes, France (accordingly, a court in **the Netherlands** held that the Netherlands Ministry of Foreign Affairs had acted in accordance with the Convention in refusing to accept a document intended for service through diplomatic channels on a defendant in France; *Gerechtshof Den Bosch*, 19 November 1980, *NJ* 1982, p. 416), Germany (accordingly, a Court in the **United States** held an attempted service through a Vice-Consul of the United States in Germany to be invalid; *Dr. Ing HCF Porsche AG v. Superior Court*, 177 Cal. Rptr. 155 (Cal. Ct. App. 1981)), and **Portugal** (thus, enforcement in Portugal of a Canadian judgment was denied on the grounds that service of the documents on the Portuguese addressee had been performed through the Canadian Ambassador to Portugal: Lisbon Court of Appeal (*Tribunal da Relaçao de Lisboa*), 13 May 1999). As to the issue of reciprocity of an objection in general, see paras 378 *et seq.*, and, as far as Art. 8(1) is concerned, see the Japanese decision of the *Tokyo District Court*, cited in note 381.

The operation of using the diplomatic channel



351. The following diagram outlines the process generally involved in using **direct consular** channels:

The operation of using the direct consular channel

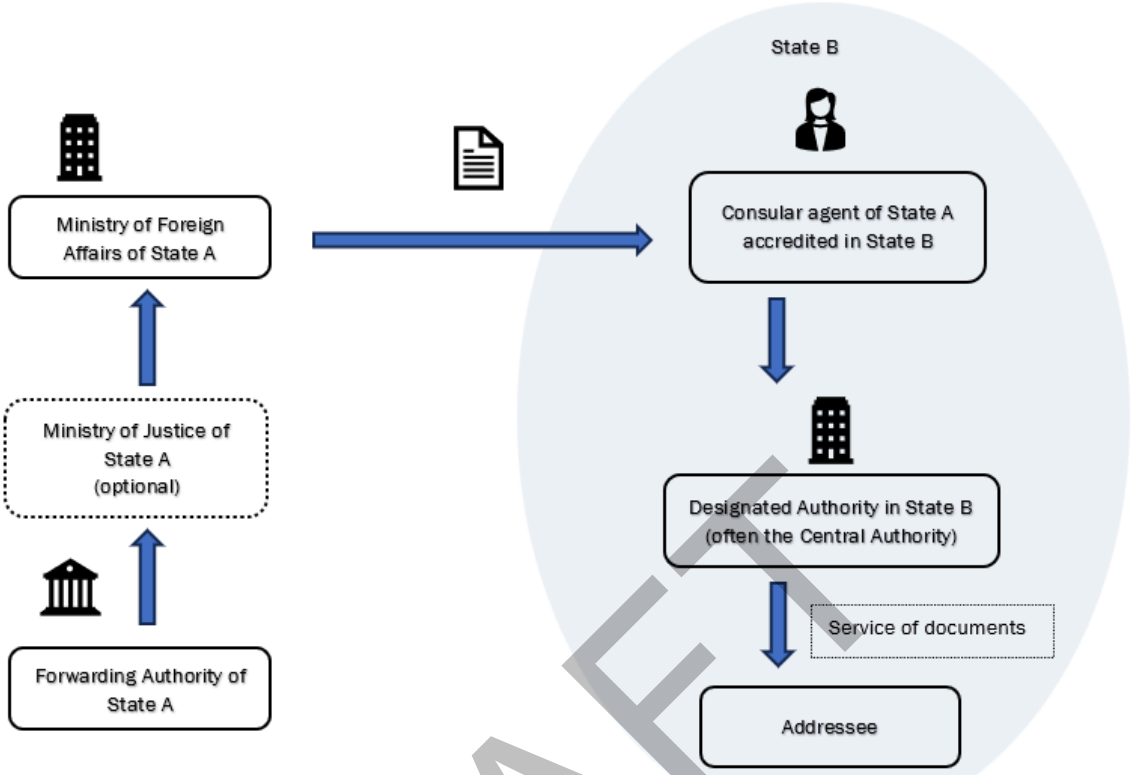


2. Indirect Consular Channels (Art. 9(1))

352. The Convention also allows indirect consular channels, *i.e.*, transmission of the document to be forwarded by the Consul of the State of origin to the appropriate authorities designated by the State of destination for the purpose of service on the addressee (Art. 9(1)).

353. The following diagram outlines the process generally involved in using **indirect consular** channels:

The operation of using the indirect consular channel



⇒ A note about the designation of authorities

354. Article 21 of the Convention requires Contracting Parties to designate certain authorities which will perform different functions under the Convention. This must be done either at the time of the deposit of the instrument of accession to the Convention, or at a later date. A Contracting Party will notify the depositary of the following authorities:

- A Central Authority (Art. 2), and any other authorities in addition to the Central Authority (Art. 18), including for Federal States which are free to designate more than one Central Authority (Art. 18(1)), and
- An authority that may complete the Model Form Certificate (in addition to a Central Authority) (Art. 6), and
- An authority that is competent to receive documents transmitted by consular channels (Art. 9). This relates to indirect consular-channels.

355. Despite the distinction in Article 21 between designating the competent authority for the main channel (*i.e.*, Central Authorities) and designating the competent authority for the consular channel (Art. 21(1)), most Contracting Parties have designated their Central Authority as the competent authority for the consular channel.

356. Such a designation not only makes indirect consular channels entirely superfluous, but also raises a question: if the Central Authority is acting as receiving authority under Article 9(1), is the service bound to satisfy the requirements laid down in Articles 5 and 6 of the Convention (translation and usage of the Model Form)? This question has not been discussed at meetings of the Special

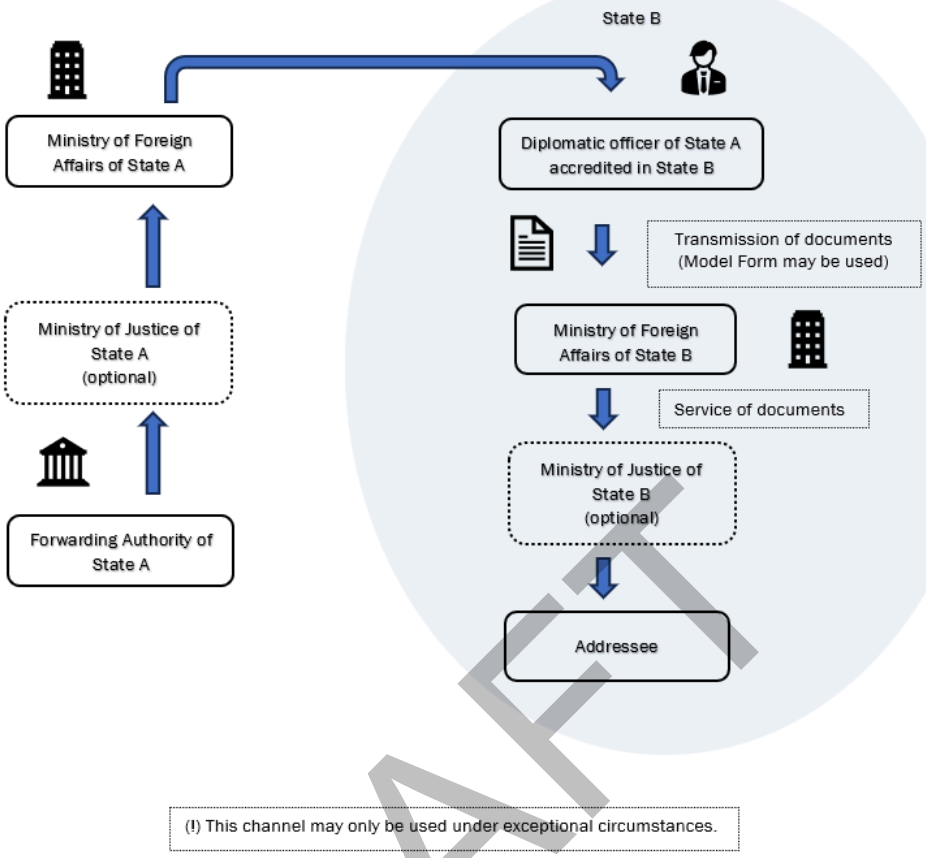
Commission and the Permanent Bureau is not aware of any cases where this issue has been addressed by any court up to the present. For reasons of certainty and predictability, a Central Authority should be subject to a single set of rules, and thus the question should be answered in the affirmative. This, in turn, means that in the Convention system, indirect consular channels only add value if the State of destination has designated under Article 21(1)(c) an authority or officer (court, prosecutor, registry or *huissier*) that is located in the area where service on the addressee is requested (see in particular the designations by ***Norway***, ***Denmark***, ***France***, ***Italy*** or the ***Netherlands***). For example, in Norway, the Central Authority is the Norwegian Civil Affairs Authority in Oslo. However, the authorities designated to receive documents transmitted by consular channels pursuant to Article 9 are the County or Town Courts in the district of which the person to be served is a resident or is staying. Finally, it should be noted that some Contracting Parties have not appointed any receiving authority, thereby *de facto* preventing the use of this method.[386]

3. Indirect diplomatic channels (the exceptional circumstances under Art. 9(2))

357. Indirect diplomatic channels may only be used if exceptional circumstances so require (Art. 9(2)). Here the document would be transmitted by the Ministry of Foreign Affairs in the State of origin to the diplomatic official of the State of origin accredited to the State of destination for forwarding to the appropriate authorities in the State of destination for the purpose of service on the addressee.

386 For the position of each Contracting Party on this issue, see the full status of the Convention accessible on the Service Section of the HCCH website [or Country Profile].

The operation of using the indirect diplomatic channel



358. One example of such exceptional circumstances where this channel may be used is service of a claim on a foreign sovereign State.[387] With regard to the service of documents upon their own State or State officials, some Contracting Parties have endeavoured to restrict the methods of transmission by stating their strong preference for using diplomatic channels,[388] or by excluding the application of the Convention and emphasising the use of diplomatic channels for such circumstances.[389]

359. It is worth recalling that at the 1977 Special Commission meeting, the opinion among the experts was divided as to the usefulness of the indirect diplomatic channels: while some considered that these channels could expedite transmission, others stressed that they caused substantial delay. Nevertheless, it is clear from responses received to the 2022 Questionnaire, that this channel is still being used by Contracting Parties where necessary.

360. In their responses to the 2022 Questionnaire, several States noted that they had used the diplomatic channel under Article 9(2) to effect service on States and State officials. Other reasons provided for using the Article 9(2) method included when other channels under the Convention were not available due to the pandemic or war; or due to a court's explicit request in cases, *e.g.*, involving notifications of individuals subject to substantial precautionary measures.

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387 T. Bischof (*op. cit.* note 18), p. 247. For more information on service on a foreign sovereign State, see paras 115 *et seq.*

388 See the respective declarations of the Russian Federation and Azerbaijan, available on the Service Section of the HCCH website.

389 See the declaration of Austria available on the Service Section of the HCCH website.

4. Postal Channels (Art. 10(a))

361. Under Article 10(a) of the Convention, provided a State of destination has not objected it will be possible to send judicial documents by postal channels directly to persons abroad. Pursuant to this channel, if all the relevant conditions are fulfilled, transmission of the documents through postal channels includes service of process on the addressee.[390] While this Article would appear to provide an easy pathway for service, there are a number of issues to consider, including (importantly) effective service.

- **What does a postal channel consist of?**

362. The Convention does not describe exactly what the postal channel is. The channel certainly covers sending the document by letter post, certified mail and registered deliveries within the meaning of the Conventions of the Universal Postal Union (UPU).[391] There seems little doubt that the transmission of a claim by a private courier service also falls within the scope of the postal channel. This is because of the historical links of privatised postal service to the State and the equivalence of the service provided.[392] In addition, private courier services offering postal services, often swiftly and at a premium, has increased the acceptance of transmitting documents via private courier.[393] This is confirmed by the 2003 Special Commission meeting that the use of such services has been deemed to be the equivalent of a postal channel for the purposes of Article 10(a).[394]

390 Thus, within the Convention system, the postal channel is one of the exceptions, as the Convention primarily deals with the transmission of documents. In the case of a transmission through the main channel (Central Authority), the service of the documents is not governed by the Convention but rather by the law of the Requested State; in the case of a transmission through one of the alternative channels (other than the postal channel and the direct diplomatic and consular channels (see paras 361 *et seq.*)), service of the documents is governed by the law of the State of destination. Service of process is also addressed in Arts 15 and 16 (see paras 0 *et seq.*).

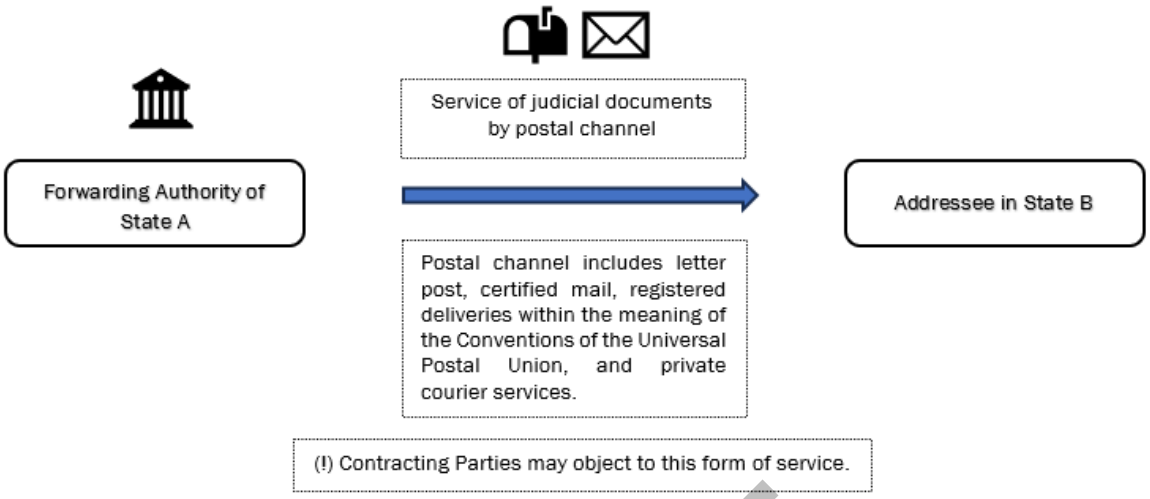
391 The Conventions adopted by the UPU are revised on a regular basis. The most recent version of the Universal Postal Convention is the one adopted in Abidjan in 2021 and which entered into force on 1 July 2022. On the Universal Postal Conventions, see also para. 362.

392 Consider, for example, the designated postal service providers in Japan, the Netherlands, and the United Kingdom. For more information on these and other designated postal service providers, see UPU, "Status of postal entities", available at https://www.upu.int/en/Members-Centre/Policies-Regulation/Status-of-Postal-Entities [last consulted on 5 May 2024].

393 Such as the international courier companies: FedEx corporation; Dalsey, Hillblom and Lynn (DHL) international GmbH; and United Parcel Services (UPS), Inc. US federal courts have commonly authorised service of process via FedEx or another international courier pursuant Rule 4(f)(3) on defendants located outside the United States. See, *e.g., Ehrenfeld v. Salim a Bin Mahfouz*, 2005 WL 696769 (S.D.N.Y. Mar. 23, 2005); *Mainstream Media, EC v. Riven*, 2009 WL 2157641 (N.D. Cal. July 17, 2009); *Marks v. Alfa Group*, 615 F. Supp. 2d 375, 380 (E.D. Pa. 2009); *Securities and Exchange Commission v. Int'l Fiduciary Corp., S.A.*, 2007 WL 7212109 (E.D. Va. Mar. 29, 2007); *Bank of Credit and Commerce Int'l (Overseas) Ltd. v. Tamraz*, 2006 WL 1643202, (S.D.N.Y. June 13, 2006); *TracFone v. Distelec*,268 F.R.D 687 (S.D. Fla. 2010).

394 C&R No 56 of the 2003 SC. By way of history, in a case of international child abduction within the meaning of the HCCH 1980 Child Abduction Convention, a New York Court held that transmission of a claim by a private courier service (DHL) did not fall within the meaning of Art. 10(a) of the 1965 Service Convention. To the contrary, different practice can be seen in the United States. For instance, the United States District Court for the District of New Jersey held that service via DHL constituted service through a postal channel within the meaning of the Convention: "Recognizing that the primary impetus for requiring service of process is 'to create appropriate means to ensure that judicial and extrajudicial documents to be served abroad' are 'brought to the notice of the addressee in sufficient time', this Court finds that [X]'s service upon [Y]'s Managing Director is in compliance with the Hague Convention."

The operation of using the postal channel



- **Valid service – the law of the forum**

363. Service by mail under Article 10(a) of the Convention is effective if (i) service by mail is allowed by the law of the State of origin and all the conditions imposed by that law for service by mail have been met, and (ii) the State of destination has not objected to the use of Article 10(a).

364. The validity of service of a document abroad through postal channels depends first on the law of the forum. This is clearly confirmed by the history of the Convention negotiations:

> "[…] in permitting the utilization of postal channels if the State of destination has not objected to it, the draft convention did not intend to pass on the validity of this mode of transmission under the law of the forum state: in order for the postal channel to be utilised, it is necessary that it be authorised by the law of the forum state."[395]

365. Thus, the law of the State of origin determines whether service through postal channels is admissible and, if it is, how service through postal channels is effected (*e.g.*, only by certified mail with registered delivery). For example, in a case of service of a writ of summons on a defendant in France, the ***Supreme Court of the Netherlands*** (*Hoge Raad*) held that the sending of certified mail is not direct transmission by postal channels valid under Article 10(a) of the Convention, unless such certified mail actually reached the addressee abroad. In that case, as the defendant had not received the mail sent by the Dutch plaintiff, the writ of summons had not been validly served.[396]

395 Report of the 1964 SC (*op. cit.* note 23), at p. 90, translation taken from B. Ristau (*op. cit.* note 76), para. 4-3-5. See also T. Bischof (*op. cit.* note 18), p. 269. This has been confirmed by courts in France, Switzerland and the United States; see in particular *Nuance Mode v. Alberto Baroni Spa*, CA Paris, Chamber 1, Section C, 14 January 1993, Juris-Data 023584; *Obergericht Basel-Land*, 18 September 1995 (*op. cit.* note 324); *Prom v. Sumitomo Rubber Industries* (*op. cit.* note 323); *Randolph v. Hendry*, 50 F. Supp. 2d 572, 575 (S.D. W. Va. 1999); *Brockmeyer v. May*, 383 F.3d 798 (9th Cir. 2004) [hereinafter referred to as the *Brockmeyer* case or decision]; *Water Splash, Inc. v. Menon (op. cit.* note 28*); Hashtroudi v. Haj-Azimi,* No. G059901, 2022 WL 842015 (Cal. Ct. App. Mar. 22, 2022). On the *Brockmeyer* and the *Water Splash* decisions, see para. 381.

396 HR 31 May 1996 (*op. cit.* note 266).

366. The negotiation history also confirms that Article 10(a) was conceived as a direct channel under the Convention,[397] meaning that transmission using postal channels is only completed once service itself is effected.[398]

- **No objection by the State of destination**

367. Under the express terms of Article 10 of the Convention, the validity of service through postal channels also depends on the absence of objection to this form of transmission by the State of destination.[399] A Contracting Party may notify its objection either when depositing its instrument of ratification or accession, or subsequently (Art. 21(2)(a)). Contracting Parties' practices differ in this respect. While some Contracting Parties have not objected to the service of judicial documents from other Contracting Parties directly through postal channels on their territories, several Contracting Parties have declared their objection to this method of service. The list of objecting States includes among others **China (Mainland)**,[400] **Germany**,[401] **Republic of Korea**,[402] **Mexico**,[403] **Norway**,[404] and **Switzerland**[405] (for a comprehensive list, see the Service Section of

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397 In both the Explanatory Report (*op cit.* note 13) and the Report of the 1964 SC (*op cit.* note 23), Art. 10(a) appears under a heading "*Autres voies directes*", which translates to "Other direct channels".

398 Therefore, no distinction is to be drawn between sending and serving in the context of postal channels. For the United States controversy over the meaning of sending in Art. 10(a), see para. 381.

399 See, *e.g.*, *Hui Suet Ying v. Sharp Corp. and Sharp-Roxy (Hong Kong) Ltd.*, ***Hong Kong SAR Court of First Instance***, 15 February 2000, HCPI 1269/1997 (ruling whereby in the absence of objection by Japan to Art. 10(a), service through the postal channel on an addressee in Japan was to be considered valid, despite the allegation that this method of service was not recognised in Japan). This ruling can be downloaded in English from the following address: http://www.hklii.hk/eng/hk/cases/hkcfi/2000/624.html [last consulted on 5 May 2024]. In addition, a court in Luxembourg noted that Iceland did not object to Art. 10(a) and, therefore, considered that service via postal channels was valid. Decision of 18 December 2012, No 37255.

400 See, *e.g.*, *Magma Holding Inc. v. Ka Tat Au-Yeung*, No.2:20-cv-00406-RFB-BNW, 2020 WL 5877821 (D. Nev. Oct. 2, 2020) (holding that service by mail was not permitted because China (Mainland)has affirmatively objected to serve by mail). The inadmissibility of service through postal channels in China has been recognised by a United States court in *Intercontinental Industries Corp. v. Luo* (*op. cit.* note 28).

401 The inadmissibility of service through postal channels in Germany has been recognised in the **United States**: *Lyman Steel Corp. v. Ferrostal Metals Corp.*, 747 F. Supp. 389 (N.D. Ohio 1990); *Pittsburgh National Bank v. Kassir* (*op. cit.* note 64); *Rhodes v. J.P. Sauer & Sohn, Inc.* (*op. cit.* note 57); *Advanced Aerofoil Technologies, AG v. Todaro*, No. 11 Civ. 9505 (ALC)(DCF), 2012 WL 299959 (S.D.N.Y. Jan. 31, 2012); in **France**: *Dahlgren GmbH v. SA Socatrem*, CA Reims, Ch. Civ. 1, Section 1, 25 November 1998, Juris-Data 049772; *Société Jucker GMBK v. Société L.O.I Thermoprocess GMBH*, CA Dijon, Ch. Civ. 1, Section 2, No RG 99/01730; Cass., Ch. Civ. 1, 28 March 2006, No 03-18284; in **Cyprus**: Supreme Court, 11 December 1995, Cyp. L.R., 1995, p. 1069; in **Israel**: *Israel Credit Lines Complementary Financial Services Ltd v. Roni Elad*, RCA 1056/10; in **Switzerland**: *Obergericht Aargau*, 2 June 2008, ZBE.2008.3/EG/SH/bl. See also the ***German decisions***: OLG München, 28 September 1988, *IPRax* 1990, p. 111 and further references in D. McClean (*op. cit.* note 17), p. 43, note 105.

402 The inadmissibility of service through postal channels in the Republic of Korea has been recognised in **Israel**: *Clal Insurance Company Ltd v. LTD CHEM LG*.

403 Mexico amended its declarations under the Convention in May 2011, noting *inter alia* that "[Mexico] is opposed to the use in its territory of the methods of transmission provided for in Article 10" (the declarations are available on the Service Section of the HCCH website). Until that date, the meaning of the declarations of Mexico was unclear, in particular with regard to Art. 10. See for example, *Cardona v. Kreamer*, 235 P.3d 1026 (Ariz. Sup. Ct. 2010) (recognising that "some confusion has [...] arisen regarding Mexico's reservations against the use of alternative service". It further acknowledged Mexico's blanket objection to Art. 10 and held that the only valid channel of transmission of documents to Mexico was via the Central Authority); *Mitchell v. Volkswagen Group of America*, 753 F. Supp. 2d 1264 (N.D. Ga. 2010). See also *In the Interest of T.M.E.*, 565 S.W.3d 383 (Tex. App. 2018) (recognising that Mexico has filed its declarations objecting to all alternative channels of service, and the only valid channel of transmission of documents to Mexico is through the Central Authority of Mexico); *Asension Gines Dominguez, et al. v. Leonidas Osorio, et al.*, No. CV 16-689 PSG (GJSX), 2018 WL 7458522 (C.D. Cal. Oct. 18, 2018). See also the commentary by C.B. Campbell, "No Sirve: The Invalidity of Service of Process Abroad by Mail or Private Process Server on Parties in Mexico under the Hague Service Convention", (2010) 19 *Minn. J. Int'l L.*, p. 107 and D. McClean (*op. cit.* note 17), p. 43, note 107.

404 The inadmissibility of service through postal channels in Norway has been recognised in the **United States**: *Jenco v. Martech Int'l*, No. 86-4229, 1987 WL 13793 (E.D. La. July 7, 1987); in **France**: Cass., Ch. Civ. 1, 4 November 2010, No 09-15913.

405 The inadmissibility of service through the postal channel in Switzerland has been accepted in **Hong Kong SAR**:

the HCCH website). It should be emphasised that the validity of service pursuant to Article 10(a) is not dependent on whether the domestic law of the State of destination permits service by postal channels. In other words, it is the declaration that matters, not the content of the internal law of the State of destination.[406]

- Translation

368. Do documents served through postal channels need to be translated into the language of the State of destination? Under Article 5(3) of the Convention, the Central Authority of the Requested State may require that the document to be served be written in or translated into the official language of the Requested State when it serves the document or has it served by a method prescribed by its internal law or a particular method requested by the forwarding authority. Informal delivery of the document avoids the requirement of translation (see para. 254). The opening words of Article 5 clearly reflect that this provision addresses the main channel of transmission only (*i.e.*, transmission through the Central Authority of the Requested State).

369. Thus, a grammatical and systematic interpretation of Article 5 leads to the conclusion that a translation of the document to be served, and *a fortiori* of its attachments, is not required for service through postal channels.[407] ***Several courts*** have held that service through postal channels of documents not translated into the language of the State of destination is not in breach of the Convention.[408]

370. However, it should be noted that both **Latvia** and **Slovenia** have made a qualified objection to Article 10(a) noting that documents forwarded under this provision must be in their official language (Latvian or Slovenian, respectively) or be accompanied by a translation into that language.[409] As a result, these language requirements must be satisfied when using the postal channel under Article 10(a) to serve documents in those States.

371. An ***Austrian*** judgment rendered under the 1954 Civil Procedure Convention deserves particular attention in this respect: The Supreme Court of Austria held that service through postal channels in Italy of an Austrian claim without a translation into the addressee's language was "ineffective", for being contrary to the principles of due process. The Austrian Court referred expressly to the principle of a fair trial guaranteed in Article 6(1) of the ECHR.[410] The ***ECtHR***, to the best of our knowledge, has not yet had to rule on the requirements of service in the addressee's language in the course of civil or commercial proceedings. In a criminal case, however, the Court recognised that the absence of a translation was a breach of Article 6(1) and (3)(a) of the ECHR.[411] In an

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Continental Mark Ltd v. Verkehrs-Club De Schweiz, Court of First Instance, 31 October 2001, HCA 7999/2000; in the **United States**: *Advanced Aerofoil Technologies, AG v. Todaro* (*op. cit.* note 401). See also the ***Swiss decision***: Federal Supreme Court, 5A_703/2007, judgment of 6 April 2009.

406 For more information, see note 432.

407 G.B. Born & P.B. Rutledge (*op. cit*. note 275), p. 870 and D. McClean (*op. cit.* note 17), p. 45.

408 *Shoei Kako Co., Ltd v. Superior Court*, 33 C.A. 3d 808 (Cal. Ct. App. 1973) (also holding that the absence of a translation into Japanese was not inconsistent with the requirement of due process since the defendant companies understood English); *Weight v. Kawasaki Heavy Industries, Ltd.*, 597 F. Supp. 1082 (E.D. Va. 1984); *Lemme v. Wine of Japan Import*, 631 F. Supp. 456, 464 (E.D.N.Y. 1986); *Sandoval v. Honda Motor Co. Ltd.*, 527 A.2d 564 (Pa. 1987); *McClenon v. Nissan Motor Corp*. (*op. cit.* note 50); *Heredia v. Transport S.A.S., Inc* (*op. cit.* note 273); *Denise Williams v. Jacqueline LeBrun et al.*, No. HHDCV096006062S, 2010 WL 3341482 (Conn. Super. Ct. July 30, 2010); *Atlantic Specialty Insurance Co. v. M2 Motor YachtsI*, No.14-62822-CIV-DIMITROULEAS/Snow, 2017 WL 11220337 (S.D. Fla. May 19, 2017). See also Paris CA (France), 6 April 1979, *JT* 1980, p. 156; OLG Hamm (Germany), 16 March 1981 (2 U 182/80).

409 For more information on qualified objections, see para. 377.

410 OGH, 16 June 1998, *IPRax* 1999, p. 260. The judgment relied on the 1954 Civil Procedure Convention, but Austria subsequently became a Contracting Party to the 1965 Service Convention in 2020.

411 ECtHR, *Brozicek v. Italie*, No 10964/84, ECtHR, 19 December 1989, cited by F. Matscher, "Sprache der Auslandzustellung und Art. 6 EMRK", (1999) 19(4) *IPRax*, p. 274. This case involved a person born in the former

Israeli judgment regarding serving a defendant in Japan, the court held that "[…] even in service according to the route established in Article 10(a) of the Convention, a translation of the documents into Japanese must be produced".[412] It is to be noted that Japan has made a declaration opposing the use of Art. 10(a).

- Translation and the Model Form

372. Finally, reference should be made to the recommendation of the Fourteenth Session of the HCCH, according to which the Model Form containing a Summary of the document to be served accompanied by a Warning should be used in all cases of service abroad, including in cases of transmission through postal channels (see Annex 3 at pp. 171 *et seq.*; on the language requirements relating to the Model Form, see para. 200).

- Postal channels as a supplement to other forms of service

373. An objection to postal channels as a means of service does not extend to a situation where the postal channels are used as a mere supplement to another form of service. The 1977 Special Commission meeting held that in such a case, the use of postal channels should not be treated as an infringement of the sovereignty of the State of destination, and thus should be accepted, notwithstanding an objection to Article 10(a).[413]

374. However, a declaration of objection does apply when, following a *notification au parquet*, a copy of the document is sent by mail to the addressee abroad. Here the transmission abroad is an integral part of the service of process and is required by the law of the forum; the Convention applies, together with all the relevant declarations.[414]

375. The same reasoning applies in relation to substituted service known to certain states in the **United States** and other common law jurisdictions: where in one example the state statute allows for substituted service upon the Secretary of State, but also requires the plaintiff to mail the notice directly to the defendant abroad. In this example, the Convention applies to the transmission abroad, together with all the relevant declarations.[415]

376. Interestingly, the ***Federal Supreme Court of Switzerland*** has held that only the service of the writ of summons by postal channels is considered to be a violation of Swiss public policy. While the service of other documents by postal channels is not in accordance with the objection made by Switzerland, the Court noted that it does not amount to a violation of Swiss public policy provided that service of process was valid and that the addressee did not contest such irregularity before the authorities of the State of origin.[416]

- Qualified objection

377. There is nothing in the Convention that would prevent a Contracting Party from submitting a qualified objection to Article 10(a). Indeed, the Special Commission has noted that "a Contracting State, rather than filling a blanket opposition to the use of postal channels under Article 10(a), is allowed to make a qualified declaration stating the conditions in which that State accepts

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Czechoslovakia and residing in Germany, who had been detained in Italy and who had informed the relevant Italian judicial authorities that because of his lack of knowledge of the Italian language he had difficulties in understanding the contents of their communications.

412 *Ltd. Hitachi v. Ran Mirom*, para. 66.

413 In such a case, only the date of the formal service should be taken into account for the purposes of Art. 15; see Report of the 1977 SC (*op. cit.* note 132), p. 387.

414 See paras 17 *et seq.*

415 See *Dupont de Nemours v. Rhodia*, 197 F.R.D. 112, 123 (D. Del. 2000) and *Quinn v. Keinicke*, 700 A.2d 147, 154 (Del. Super. Ct. 1996).

416 The decision of the ***Federal Supreme Court of Switzerland***, 14 April 2008, 5A_633/2007/bnm.

incoming transmissions, such as requiring registered mail with acknowledgment of receipt".[417] **Australia**, **Latvia**, **Slovenia**, and **Viet Nam** have made qualified declarations to Article 10(a) requiring that documents forwarded via postal channels be sent via registered mail with acknowledgment of receipt. Latvia and Slovenia have further noted that documents must be in their official language (Latvian or Slovenian, respectively) or be accompanied by a translation into that language (for more information on language requirements, see paras 368 *et seq.*). Israel has made a qualified declaration opposing the use of this transmission method under Article 10(a) with respect to documents addressed to the State of Israel, including its political subdivisions, agencies, authorities and instrumentalities, and to officials, or agents acting or who have acted on behalf of the Government of Israel.[418]

- **Reciprocal effect of objection to Article 10(a)**

378. As mentioned in paragraph 333, one further issue is whether an objection to Article 10(a) by a Contracting Party has the effect of reciprocity. Can a Contracting Party rely on Article 10(a) to serve when it has, itself, objected to this channel of transmission in respect of documents coming from abroad? In this regard, the action taken by the **Slovak Republic**, which objected to the service of documents on its territory through postal channels, is of particular interest. The Slovak Republic contacted other Contracting Parties, by way of the diplomatic channel, in order to request them to clarify their position, *i.e.*, to indicate whether they would assert reciprocity of the Slovak reservation or not. All Contracting Parties that replied declared that they would not assert reciprocity of the Slovak reservation. **Germany** has also enquired through its Embassies as to whether or not Contracting Parties would assert reciprocity with regard to Article 10(a). Among the other States which have objected to transmission through postal channels, not all of them have undertaken the same effort to contact the other Contracting Parties, but nevertheless avoid using this means of transmission for service of their documents abroad (this is notably the case with **Switzerland**[419]) except where the State of destination has expressly communicated that it accepts service through postal channels from the objecting State of origin.[420]

- **Recognition of a foreign judgment**

379. The fact that a State has not objected to service through postal channels does not necessarily imply that it will subsequently recognise a foreign judgment against a defendant who was served

417 C&R No 28 of the 2009 SC. Similarly, this type of concept has underlying applications in regard to domestic cases within the ***ECtHR***, which has expressed particular concerns over whether defendants have actually received notice of the lawsuit when dealing with allegedly defective postal channels. For example, in *Trudov v. Russia*, No 43330/09, ECtHR, Judgment of 13 December 2011, the ECtHR found – in the context of a domestic dispute – that "the mere sending of a summons/notification, without any [certainty] that it has been received by the addressee, would not be considered by the Court to be sufficient to show that the addressee has been duly informed as prescribed by the law" [translation by the Permanent Bureau]. Specifically, the addressee was served by postal channels, but the domestic court never received an acknowledgment of receipt, allegedly because of malfunctions in the postal service. As a result, the Court considered that Art. 6(1) of the ECHR had been breached. The Court further noted that in the interests of good administration of justice, each party in a case should be informed of the hearing so they can have sufficient time to prepare and to be present. For commentary on this case, see N. Fricero & G. Payan (*op. cit.* note 130), pp. 113-115.

418 See declarations made by Australia, Latvia, Israel, Slovenia and Viet Nam available on the Service Section of the HCCH website.

419 See, Federal Department of Justice and Police, Federal Office of Justice, Directives and aide-mémoire, which reads: "Under Article 21 paragraph 1 of the Vienna Convention on the Law of Treaties[…], the Swiss authorities must refrain from conducting proceedings abroad that are not authorised on Swiss territory (see Guideline, I.C.5)" available at https://www.rhf.admin.ch/dam/rhf/en/data/zivilrecht/wegleitungen/wegleitung-zivilsachen-e.pdf.download.pdf/wegleitung-zivilsachen-e.pdf [last consulted on 5 May 2024].

420 See ***Federal Supreme Court of Switzerland***, 7 July 2011, 5F_6/2010 (noting that Italy, as a State of destination, does not invoke reciprocity vis-à-vis States that have made a reservation in relation to Art. 10 of the Convention), Federal Supreme Court of Switzerland, 25 June 2015 4A_141/2015 (noting that postal delivery from Switzerland to another Contracting Party is permissible if the Requested State has not declared a reservation to Art. 10(a) and has waived the application of the principle of reciprocity, and also citing Italy, Spain, Sweden, and France, as States of destination which have waived the reciprocity of the reservation on Art. 10).

through those channels. The State of destination may refuse enforcement of the foreign judgment on the grounds that service by mail does not comply with its internal law. Plaintiffs contemplating the recognition and enforcement of a foreign judgment in the State of destination or a third State can only be advised to ascertain in advance whether service through postal channels is accepted by that State's domestic law.[421] Contracting Parties whose laws prescribe specific requirements in their internal law, are encouraged to provide relevant information in the Country Profile in order to enhance efficiency of service procedure.

380. In this respect, a ***Japanese statement*** is of particular interest. At the 2003 Special Commission meeting, which was held before Japan objected to Article 10(a) in 2018, the Japanese delegation clarified its position with respect to Article 10(a) as follows:

> "Japan has not declared that it objects to the sending of judicial documents, by postal channels, directly to addressees in Japan.[422] 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."[423]

- **United States case development – Article 10**

381. In the **United States**, Article 10(a) has given rise to more court rulings than all other provisions of the Convention. There was a long-standing split among circuit courts over the interpretation of Article 10(a), before the Supreme Court finally resolved it in 2017.

382. In 2017, the Supreme Court of the United States, in a unanimous decision, finally resolved the circuit split. In *Water Splash, Inc. v. Menon*, the Court held that Article 10(a) does not, of its own force, authorise but permits service of process by mail.[424] This opinion is consistent with the view advocated in this Handbook.

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421 See, *e.g.*, ***Federal Supreme Court of Switzerland***, 23 October 2012, 5A_230/2012 (an application to enforce a judgment of a court in the Netherlands (under the Lugano Convention 2007), in which a Russian defendant was served by private courier. In refusing to enforce the Dutch judgment, the Swiss Court observed that the Russian Federation had objected to the postal channels of transmission under the 1965 Service Convention and that therefore service by the private courier was insufficient as it did not draw the defendant's attention to the importance of the documents. In addition, the plaintiff was not able to prove the content of the documents sent or the identity of the person receiving them who had signed the return receipt). In *LLS America LLC (Trustee of) v. Grande*, 2013 BCSC 1745, a ***Canadian court*** held that service by registered mail was not valid for the purpose of registering (*i.e*, enforcing in British Columbia) the Order made by the United States Court, because the plaintiffs had not produced any proof of delivery. Therefore, it appeared that the defendants were deprived of the opportunity to be heard. The Court did not, however, rule on the validity of service from the perspective of the United States.

422 This statement is no longer true. In December 2018, Japan declared its opposition to Art. 10(a).

423 C&R No 57 of the 2003 SC. Japan had made a previous statement in this respect at the 1989 Special Commission meeting. For an example of denial of recognition and enforcement in Japan of a New York judgment on the grounds that service through postal channels and without a translation of a subpoena on a Japanese defendant was in breach of the defendant's rights, see Hachioji Branch of Tokyo District Court, Judgment, 8 December 1997.

424 *Op. cit.* note 395.

383. In the decision, the Supreme Court noted that "the scope of the Convention is limited to service of documents"[425] and that, "it would be quite strange if Article 10(a) – apparently alone among the Convention's provisions – concerned something other than service of documents". The Court also rejected the defendant's argument that Article 10(a) applied to "post-answer judicial documents" excluding service of process, by reasoning that, "[i]f the drafters wished to limit Article 10(a) to a particular subset of documents, they presumably would have said so – as they did, for example, in Article 15", while Article 10(a) uses the same phrase "judicial documents" as featured in Article 10(b) and (c). Additionally, invoking the explanation in the fourth edition of this Handbook, the Court referred to the French version of the Convention in which the word "*adresser*", the counterpart to the word "*send*" in Article 10(a), has been consistently interpreted as meaning service or notice.

384. Further, the Court held that the three extratextual sources – the Convention's drafting history, the views of the Executive Branch, and the views of other signatories – also supported the idea that the Convention allows service by mail. Indeed, as early as 1991, the State Department expressed its disagreement with *Bankston* in a letter addressed to the Administrative Office of the United States Courts and the National Center for State Courts. And numerous decisions of other States as well as meetings of the Special Commission expressly support the view that Article 10(a) allows service of process.[426] The Supreme Court's decision in *Water Splash* resolved the difficulties that United States courts have had with the interpretation of Article 10(a).

385. It should also be emphasised that this decision dealt with 'where the service by mail under Article 10(a) can be valid'. It ruled as follows:

> "[T]he traditional tools of treaty interpretation unmistakably demonstrate that Article 10(a) encompasses service by mail. To be clear, this does not mean that the Convention affirmatively authorizes service by mail. Article 10(a) simply provides that, as long as the receiving state does not object, the Convention does not "interfere with . . . the freedom" to serve documents through postal channels. In other words, in cases governed by the Hague Service Convention, service by mail is permissible if two conditions are met: first, the receiving state has not objected to service by mail; and second, service by mail is authorized under otherwise-applicable law."

386. In this respect, in cases where the *Fed. R. Civ. Pro*. is applied as the *lex fori*, service by mail is valid only if it is sent by the clerk of the court, using a form of mail requiring a signed receipt (*Fed. R. Civ. Pro* 4(f)(2)(C)(ii)), or if it is approved by the district court (*Fed. R. Civ. Pro.* 4(f)(3)).[427]

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425 For a critical view on this approach, see a commentary by T. Folkman, available at *Letters Blogatory* (the Blog of International Judicial Assistance) at the following address https://lettersblogatory.com/2017/05/23/case-of-the-day-water-splash-v-menon/ [last consulted on 5 May 2024].

426 Report of the 1989 SC (*op. cit.* note 24); for the 2003 SC, see para. 5. For decisions, see, *e.g.*, *Noirhomme v. Walklate*, Queen's Bench Division, London, 15 April 1991, reported in *The Times* dated 2 August 1991, p. 27, and the following decisions cited in *Brockmeyer* (*op. cit.* note 395): ***Court of Justice of the European Union*** (5th ch.) judgment in *ED Srl. v. Italo Fenocchio*, C-412/97, EU:C:1999:324; Alberta (Canada) Queens Bench, *Integral Energy & Envtl. Eng'g Ltd v. Schenker of Canada Ltd.*, (2001) 293 A.R. 233, 2001 WL 454163; *R. v. Re Recognition of an Italian Judgment*, Court of Appeal of Thessaloniki (Greece), 2000 WL 33541696.

427 See *Brockmeyer* (*op. cit.* note 395); *MG Freesites Ltd. v. ScorpCast LLC*, 651 F. Supp. 3d 744 (D. Del. 2023); *Huawei Tech. USA, Inc. v. Oliveira*, No. 4:19-cv-229-ALM-KPJ, 2019 WL 3253674 (E.D. Tex. July 19, 2019); *Wyndam Hotel Group Canada v. 683079 Ontario Limited*, No. 17-4000 (JMV), 2018 WL 2078704 (D.N.J. May 4, 2018).

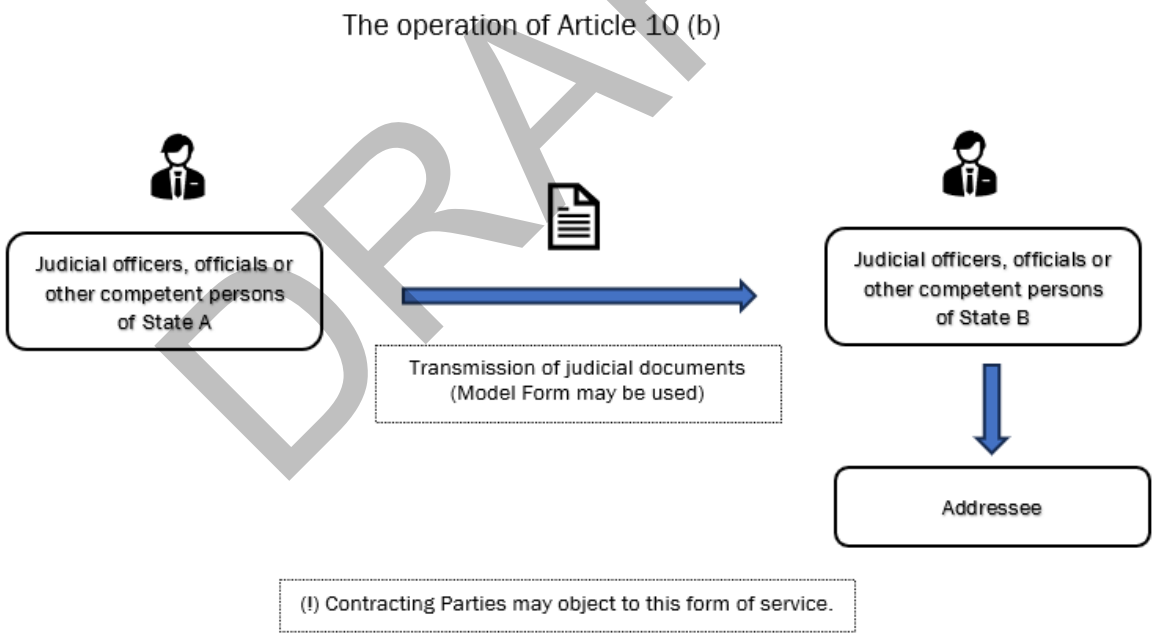
5. State of destination's competent personnel channels

1. Direct communication between judicial officers, officials or other competent persons (Art. 10(b))

387. Article 10(b) of the Convention allows judicial officers, officials and other competent persons of the State of origin to effect service of judicial documents directly through judicial officers, officials and other competent persons of the State of destination. The law of the State of origin determines who, in that State, are the judicial officers, officials and other competent persons that can forward a request for service under Article 10(b). Likewise, the law of the State of destination determines who, in that State, are the judicial officers, officials and other competent persons to receive and execute requests for service under that provision.[428]

388. According to the 2022 Questionnaire responses, the most common category of competent persons was found to be court officials, followed by attorneys or solicitors, bailiffs, *huissiers*,[429] notaries and process servers. Certain common law Contracting Parties indicated that any other official could be included as long as they obtained permission from the court. In most cases, such channels were associated with costs.[430]

389. The Special Commission has recommended that "persons forwarding requests for service under Article 10(b) [and] (c) inquire with authorities in the receiving State, before sending a request for service in order to properly identify to whom the request should be sent".[431]



428 Thus, the decision by the ***Supreme Court of Portugal*** dated 10 November 1993 (*Supremo Tribunal de Justiça*), 10 November 1993, CJ (STJ) Ano 1, Vol. III, 117) is to be approved. This decision explicitly invoked the 1965 Service Convention and Portuguese procedural law, rejecting the recognition of a judgment issued by an English court. The basis for this refusal was the fact that the service of documents on a Portuguese company through an attorney had not been carried out by a competent person.

429 In Scotland (United Kingdom), the function equivalent to a *huissier* is carried out by a "Messenger-at-Arms".

430 See responses to Question Nos 24.1. and 24.3. of the 2022 Questionnaire. Even though service through competent authorities is associated with costs, this method also provides a high level of services (location of the addressee, information and guidance to the applicant and the recipient of the document, efficiency and finally liability of the officer if service is not correctly effected).

431 C&R No 33 of the 2014 SC.

390. Contracting Parties may declare an opposition to this form of transmission (Art. 21(2)(a)). The declarations of opposition by Contracting Parties are included in the status table of the Convention, which is available on the HCCH website.[432]

391. The use of this channel of transmission presupposes that both the State of origin and the State of destination have a system of service through judicial officers, officials or other competent persons in place. In practice, such a system of direct communication between competent persons operates mainly in States with *huissiers de justice*.[433] The plaintiff or counsel for the plaintiff approaches a *huissier* in his or her State. The latter then sends the document to be served either directly to a colleague having territorial jurisdiction in the State of destination or to the national professional body of the State of destination, which forwards that request and the document to be served to the *huissier* having territorial jurisdiction. In order to facilitate this mechanism, some professional bodies have agreed that each State will have a single price for services from abroad.[434]

392. In the United Kingdom, there used to be an issue of the relationship between "service under Article 10(b) and (c)" and "service through a solicitor". At the time of ratification, the United Kingdom declared that, with reference to Article 10(b) and (c), "documents for service through official channels will be accepted in the United Kingdom only by the central or additional authorities, and only from judicial, consular or diplomatic officers of other Contracting States". This declaration led to the question as to whether the United Kingdom would still intend to allow direct service on its territory by a solicitor admitted to practice in the jurisdiction. In a letter dated 11 September 1980 addressed by the Foreign and Commonwealth Office to the Permanent Bureau, the United Kingdom Government stated that the declaration made at the time of ratification "does not preclude any person in another Contracting State who is interested in a judicial proceeding (including his lawyer) from effecting service in the United Kingdom 'directly' through a competent person other than a judicial officer or official, *e.g.*, a solicitor".[435] Thus, in *Tax Lease Underwriters v. Blackwall Green*,[436] a United States court accepted the validity of service effected on a United Kingdom resident through an English solicitor.[437] At the 1989 Special Commission meeting, the United Kingdom delegation in fact stated a preference for the use of

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432 It is the declaration that matters, not the content of a State's internal law. Accordingly, a court in the **United States** erroneously held that in order to determine whether a Contracting Party opposes a specific channel of transmission, the procedural law of that State should be reviewed to determine whether the proposed method of service would be valid in that State: *In re Hunt's Pier Associates* (*op. cit.* note 50). After a review of Ontario procedural law, the Court held that the methods of transmission provided for under Art. 10(b) and (c) of the Convention are not admissible, and accordingly, that Canada objects to them. Some United States courts have taken into consideration both the declarations under Art. 10(b) and the law of the State of destination: in *Marcus Food Co. v. DiPanfilo*, No. 09-1261-EFM, 2010 WL 3946314 (D. Kan. Oct. 5, 2010) (holding that in order to determine whether service on a defendant in Canada under Art. 10(b) was proper, it had to verify whether Canada had objected to Art. 10(b), which was not the case, as well as to review the internal procedural law of Ontario (Canada), the State of destination. Notwithstanding the analysis made by the court, and contrary to the holding in *In re Hunt's Pier Associates* (*op. cit.* note 50), the court concluded that service of process under Art. 10(b) by a process server is authorised in Canada). See also *Capozzo v. Mendal*, No. CV116021447S, 2011 WL 7029841 (Conn. Super. Ct. Dec. 22, 2011) (holding that service had been validly effected under Art. 10(b) because the Netherlands did not object to Art. 10(b) and service complied with Dutch law).

433 Art. IV of the Protocol annexed to the 1968 Brussels Convention provided for such a system of notice from *huissier to huissier* among Contracting Parties not having objected to this form of notice. This Protocol has not been included in the Brussels Ia Regulation.

434 The EU has developed a tool, e-CODEX (e-Justice Communication via Online Data Exchange), aiming at facilitating the cross-border electronic exchange of data in the area of judicial cooperation. For more information on e-CODEX, visit the website www.e-codex.eu.

435 An extract from the letter is available on the HCCH website.

436 Tax Lease Underwriters v. Blackwall Green, 106 F.R.D. 595 (E.D. Mo. 1985).

437 *Id*.

direct service through English solicitors on residents of England and Wales. This position was reaffirmed at the 2003 Special Commission meeting.[438]

393. In the case of Hong Kong SAR, China has declared that, with reference to Article 10(b) and (c), documents for service through official channels will be accepted in Hong Kong SAR only by the Central Authority or another authority designated, and only from judicial, consular or diplomatic officers of other Contracting Parties.[439] Regarding the operation of this channel, in the 2022 Questionnaire, China (for Hong Kong SAR) stated that requests for such service are forwarded to the competent authority of Hong Kong SAR (the Chief Secretary for Administration), as direct service through government officials is not available. However, private agents (usually solicitor firms) may be directly appointed for service by a party to the legal proceedings to effect service without going through the government or Judiciary of Hong Kong SAR. The Judiciary of Hong Kong SAR does not seek cost reimbursement, and the charge by solicitors for service vary based on tasks and time. This channel of transmission operates similarly to the main channel under Articles 3 and 5 of the Convention.[440]

2. Direct communication between "any person interested in a judicial proceeding" and "judicial officers, officials or other competent persons" (Art. 10(c))

394. Article 10(c) of the Convention allows any person interested in a judicial proceeding to effect service of judicial documents directly through a judicial officer, official or other competent person of the State of destination. This service can be effected by electronic means [when it is allowed by the applicable law in the Requesting State and] provided that the law of the State of destination allows it. Each Contracting Party may declare an opposition to this method of transmission (Art. 21(2)(a)). The declarations of opposition made by Contracting Parties are included in the status table of the Convention on the HCCH website. The comments made above with respect to Article 10(b), and in particular the special position of the United Kingdom and the practice in Hong Kong SAR, apply *mutatis mutandis* to Article 10(c). As noted above in paragraph 387, the Special Commission has recommended contacting the authorities of the receiving State in order to identify to whom the request should be sent.[441]

- **Specific cases**

395. The following transmissions have been held to have led to **valid** service under Article 10(b) and (c), in addition to the case of the English solicitor mentioned in paragraph 392 and note 436:

- transmission to an English "independent process server" for service on a defendant domiciled in the United Kingdom;[442]
- transmission to a California attorney for service on a defendant in the United States;[443]

438 C&R No 58 of the 2003 SC.

439 Several United States courts allowed for service of judicial documents directly in Hong Kong SAR through other competent persons, including private agents as Hong Kong SAR has not objected to Article 10(b), 10(c), See *Maxwell Holdings, Ltd. v. Amperex Tech. LTD.*, No. 6:@1-CV-34-ADA, 2022 WL 1176723 (W.D. Tex. Apr. 20, 2022); *Whyenlee Indus. Led. v. Superior Ct,* 33 Cal. App. 5th 364, (2019).

440 See the responses to Question No 24.2. of the 2022 Questionnaire.

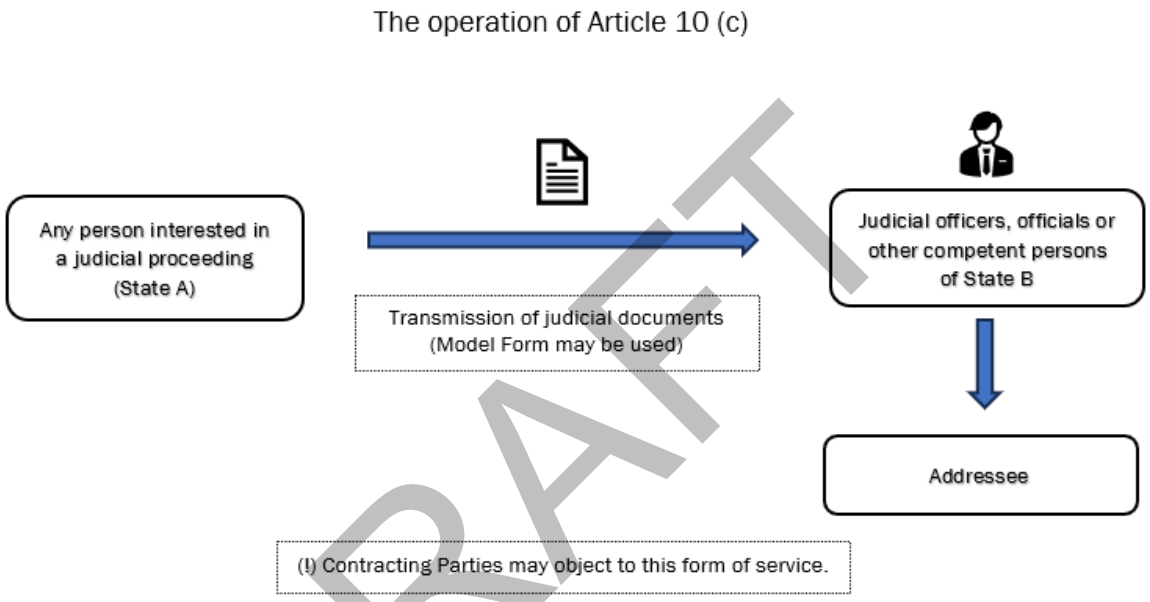
441 C&R No 33 of the 2014 SC.

442 *Balcolm v. Hiller*, 46 Cal. App. 4th 1758 (Cal. Ct. App. 1996); *White v. Ratcliffe*, 674 N.E.2d 906 (Ill. App. Ct. 1996); *St. Ventures, LLC v. KBA Assets and Acquisitions, LLC,* No. 1:12-cv-01058-LJO-SMS, 2013 WL 1749901 (E.D. Cal. Apr. 23, 2013); *Baskett v. Autonomous Research LLP*, No. 17-CV-9237 (VSB), 2018 WL 4757962 (S.D.N.Y. Sept. 28, 2018).

443 *La Belle Créole v. The GEMTEL Partnership*, Tribunal de Commerce de Paris, 2 August 1989.

- transmission by the head of the customs office of Buffalo, New York state, in charge of enquiries conducted by that office, of a request to his Canadian counterpart in Ontario;[444]
- transmission to a private process server in Bermuda for service on a defendant residing in Bermuda (where the UK declaration (see *supra*) also applies);[445]
- transmission to a Swedish notary for service on the manager of the Swedish defendant company;[446]
- transmission by the plaintiff to a private process server in the United States.[447]

396. In most cases, the request for service of the document originated with counsel for the plaintiff. Also, it appears that Article 10(b) has been used for a transmission between a United States attorney and a *huissier* in France.[448]



397. On the other hand, the following are examples of **invalid** transmissions under Article 10(b) and (c):

- transmission of a writ of summons translated into Japanese to a lawyer in Japan for service on a defendant in Japan (because Japan had opposed this method of transmission);[449]

444 *United States v. Islip*, 18 F. Supp. 2d 1047 (Ct. Int'l Trade 1998) (the ***United States Court of International Trade*** held that officials and competent persons had been involved on both sides of the border).

445 *Koehler v. Dodwell*, 152 F.3d 304 (4th Cir. 1998).

446 *Vazquez v. Sund Emba AB* (*op. cit.* note 275). It should be noted that the fact that the request had not been translated into Swedish was not an impediment in that case, as the Court held that the requirement of translation only applied to service through the Central Authority.

447 *Pitman v. Mol* (*op. cit.* note 75).

448 See D. McClean (*op. cit.* note 17), p. 45, note 125 and accompanying text, who refers to the decision in *Tamari v. Bache & Co. (Lebanon) SAL*, 431 F. Supp. 1226 (N.D. Ill. 1977).

449 *Kadota v. Hosogai*, 608 P.2d 68 (Ariz. Ct. App. 1980). This approach was upheld by the Supreme Court of Japan in a decision dated 28 April 1998; the Court was to rule on an application for recognition and enforcement of a ruling by a Hong Kong SAR Court for which service had been performed through a Japanese lawyer by means of direct delivery to the defendants located in Japan.

- transmission of a default judgment to a Turkish lawyer who then sought the assistance of a Turkish notary to serve the judgment on the alleged representative of the defendant (because Türkiye had objected to this channel of transmission);[450]
- direct service of a notarised deed from a plaintiff in Germany, who engaged a *huissier* in *the Netherlands*, on the defendant in Rotterdam (because the reservation made by Germany that opposes the transmission channel provided for under Art. 10(c) had a reciprocal (*allseitig*) effect, *i.e.*, both on services performed on German territory from a Contracting Party and on services from Germany for addressees abroad);[451]
- direct service by the person interested in the judicial proceedings (in this case the plaintiff) on the defendant (because Art. 10(c) requires the interested person to transmit the judicial document directly through judicial officers, officials or other competent persons of the State of destination, and may not serve the document directly).[452]

III. Derogatory channels

398. The Convention allows Contracting Parties to deviate from its main and alternative channels either by agreements among themselves (Arts 11, 24 and 25) or unilaterally (Art. 19). These additional channels are called derogatory channels. Information about derogatory channels is contained in Part 4 of this Handbook.

450 **Finnish Supreme Court**, *Finntyr Oy. v. Bio Dogadan AS.*, No KKO 2006:28. This case was mentioned in M. Norros, *Judicial Co-operation in Civil Matters with Russia and Methods of Evaluation*, Helsinki, Kikimora Publications, 2010, pp. 129-135.

451 OLG Düsseldorf, 3rd Zivilsenat, 8 February 1999, *ZfIR* 1999; see para. 394 above.

452 *Mitchison v. Zerona Int'l Inc.*, 2014 ONSC 4738.

Part 3 – Protection of the defendant (Arts 15 and 16)

399. The 1965 Service Convention contains two provisions which serve to protect the defendant prior to a judgment by default (Art. 15) and after a judgment by default (Art. 16).[453] Article 15 restricts the power of the judge to give a default judgment unless certain conditions have been met. Article 16 allows the judge to relieve the defendant from the effects of the expiry of the time for appeal from a default judgment, subject to certain requirements.

400. These two provisions serve to protect the defendant from a default judgment, regardless of the channel of transmission used under the Convention, while taking into account the plaintiff's legitimate interest in seeing the case progress.

I. Protection of the defendant prior to a judgment by default: Article 15

1. Stay of entry (Art. 15(1))

401. Where a writ of summons or an equivalent document has been required to be transmitted under the Convention for service abroad, and the defendant does not appear,[454] judgment shall not be given until it is established that (i) the document has been served by a method prescribed by the internal law of the Requested State (or State of destination) addressed for the service of documents in domestic actions upon persons who are within its territory, or (ii) that the document was actually delivered to the defendant or their residence by another method provided for under the Convention, and that in either of these cases the service or the delivery was effected in sufficient time to enable the defendant to defend.

402. The reference to an equivalent document includes all documents that have identical or equivalent effects to a writ of summons, such as a notice of appeal,[455] a third-party impleader or a cross complaint under United States law.[456] Ultimately, the characterisation of the relevant document as an equivalent document for the purpose of the Convention is a matter for the law of the Requesting State (or State of origin).

403. Article 15 is an Article of protection for the defendant; it does not provide the forum judge with the power to give judgment by default where the requirements of Article 15 are met. This issue will remain a matter for the forum court. Moreover, Article 15 establishes minimum safeguards for judgments by default, and the forum law may provide for additional requirements or conditions to protect the defendant who did not appear. Whether the defendant did effectively appear or not is also a matter subject to the law of the Requesting State.[457]

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453 These protections for the defendant did not exist in the former 1905 and 1954 Civil Procedure Conventions.

454 The issue of the defendant's appearance or non-appearance is determined by the law of the forum.

455 Report of the 1964 SC (*op. cit.* note 23), p. 93.

456 Decision rendered by a German court: OLG München, 17 November 1994, *RIW* 1995.

457 In a decision of 22 March 1989, *Solal v. Semasep* (not published), the French *Cour de cassation* (Ch. Civ. 3) held that the principles of adversarial debate and fair trial were observed, and that the defendant was accordingly not justified in claiming a breach of the Convention, since he had sent the judge letters calling for a postponement of the hearing, thereby demonstrating that he was aware of it, as well as an appeal brief. In *Wuxi Taihu Tractor Co., Ltd v. York Group, Inc.*, 766 F. Supp. 2d 803 (S.D. Tex. 2011), the Court was unable to apply either Art. 15 or 16 since the defendant had made a defective appearance to contest service, rather than following Texas forum rules which required a motion to quash, and thus, the Court found that the defendant had ultimately waived his challenge to service (It should be noted

i. First requirement: valid service or actual delivery

404. In order for Article 15 of the Convention to apply, the first requirement is that the document must have been served on the defendant by a method prescribed by the internal law of the Requested State (or State of destination) addressed for the service of documents in domestic actions upon persons who are within its territory (Art. 15(1)(a)); or must have been delivered to the defendant or their residence by another method provided for under the Convention (Art. 15(1)(b)).

405. For example, where a writ of summons is personally delivered to the defendant in the United States by a French Consul (as provided for under Art. 8 of the Convention – direct consular channel), the French forum judge is not required to stay judgment.[458] On the other hand, the judge would be prevented from delivering judgment where the document is served on a defendant in Germany by registered mail, since Germany has opposed service by postal channels within the meaning of Article 10(a). In the latter case, service will not be regarded as proper service under the Convention.[459]

406. For the purpose of Article 15, it is not sufficient to establish whether the defendant has personally received the writ of summons or was aware of the relevant document. As an additional step, it must be established that service was effected pursuant to the Convention: according to a method prescribed by the internal law of the Requested State, or by another method provided for under the Convention.[460]

407. Where the document is transmitted under the main channel of transmission, the Certificate (Art. 6) confirming service operates as a presumption of valid service,[461] which the defendant may rebut (see para. 305). However, whether the document was actually delivered is a matter of fact to be determined by the forum judge.[462]

ii. Second requirement: service was effected in sufficient time

408. Second, the writ of summons or equivalent document must have been served on or delivered to the defendant in sufficient time. The forum judge has a broad discretion to determine whether the defendant was allowed sufficient time to organise their defence.[463] For instance, the ***Court of Appeal of Milan*** ruled that a period of 28 days was insufficient to allow a Finnish defendant to appear and prepare his defence before an Italian court.[464] The ***Appellate Court of Illinois*** has held

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that the judgment was vacated for different grounds by 460 F. App'x 357 (5th Cir. 2012), but the rationale here may be worth considering).

458 *Zavala v. Banque nationale de Paris*, Cass., Ch. Civ. 1, 19 May 1981, *Rev. crit. d.i.p*. 1982, p. 564, note G.A.L. Droz.

459 *Dahlgren GmbH v. SA Socatrem*, CA Reims (*op. cit*. note 401). An order issued in breach of Art. 10(a) should accordingly be annulled: Ch. Civ. 1, Section 2, No RG 99/01730, *Société Jucker GMBK v. Société L.O.I Thermoprocess GmbH*, CA Dijon (*op. cit.* note 401).

460 G.A.L Droz, note to *Zavala v. Banque nationale de Paris* (*op. cit.* note 458).

461 In *White v. Ratcliffe* (*op. cit.* note 442), a ***United States Court*** treated an affidavit as equivalent to the Certificate of service for the purposes of that provision; *Saint-Gobain Performance Plastics Europe v. Bolivarian Republic of Venezuela*, 23 F.4th 1036 (D.C. Cir. 2022) (finding that Venezuela had not been properly served under the Hague Convention when the plaintiff sent the documents to the Central Authority but never received a certificate providing that the Venezuelan Attorney General was served).

462 For example, in *Gould Entertainment Corp. v. Bodo*, 107 F.R.D. 308 (S.D.N.Y. 1985), a United States District Court found that the address to which a summons and complaint were delivered was the residence of the defendant based on prior communications between the parties, and statements made by the defendant's cleaning lady on whom the documents were served at that address. In *White v. Ratcliffe* (*op. cit*. note 442), another ***United States Court*** determined that summons was delivered to the defendant based on an affidavit of the process server who served the documents.

463 This much was recognised by the Special Commission at its meeting in 1977 (Part I, Section 1 D).

464 *Alaska s.a.s. v. Amer Group Ltd* — Koho, 14 July 1987, *RDIPP* 1988, No 3, p. 537. In *Sarl on the Roc Production v. Napoleon Exchange World Inc.*, Judgment of 8 May 2013, the Court of First Instance of **Monaco** ruled that a period of

in a case involving service on a defendant in the United Kingdom that a period of 40 days (from the date of service to the date of the entry of the default judgment) was sufficient,[465] and in a case concerning service in Canada, a ***United States District Court*** has found that a period of approximately one month was also sufficient.[466]

409. The determination by the forum court of what constitutes sufficient time for the purpose of Article 15(1), and the subsequent entry of a default judgment is without prejudice to a different determination that might be required to be made by a court in another State where recognition and enforcement of the default judgment is sought.[467]

410. Although Article 15(1) requires the judge not to give judgment until certain requirements are met, the authors of the Convention agreed to admit that the judge could also "postpone the case to a subsequent session while granting the plaintiff additional time to inform the defendant of the action brought against the latter".[468]

[The flowchart below illustrates the transmission under the main channel (Art. 5) of a writ of summons or an equivalent document for service in a Contracting Party to the Convention. The document is forwarded by an authority in State A (1) to the Central Authority in State B (2). The Central Authority then serves the document or arranges for it to be served by the competent authority on the addressee (3). Following that, the Central Authority, or any other authority designated by State B for such a purpose, completes the Certificate and forwards it directly to the forwarding authority in State A (4). As a final step, judgment shall not be given until it is established that (i) the document has been served by a method prescribed by the internal law of State B, or that the document was actually delivered to the defendant or their residence by another method provided for under the Convention; and (ii) that the service or the delivery was effected in sufficient time to enable the defendant to defend. If all these requirements are met, the forum judge may give judgment by default (5).]

approximately four weeks (from the date of delivery to the date of the hearing), and the fact that it could not be ascertained that the defendant had received the letter, was insufficient time to enable a Canadian defendant to adequately defend the claim.

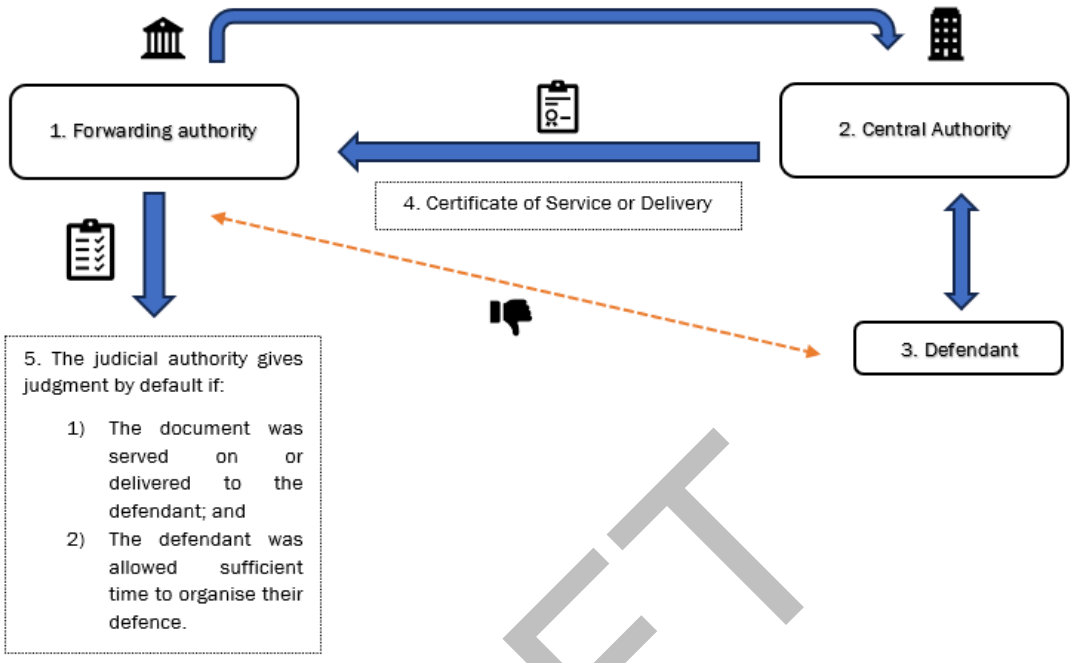
465 *White v. Ratcliffe* (*op. cit.* note 461).

466 *Marcus Food Co. v. DiPanfilo* (*op. cit.* note 432). See also *Wadleigh Industries, Inc. v. Drilling Rig Atlantic Tiburon*, No. H-13-3071, 2014 WL 1024019 (S.D. Tex. Mar. 17, 2014) (finding that a period of three months from the date the defendant was required to respond was a sufficient amount of time).

467 *Mahou v. Simons*, CA Metz, Ch. Civ., 19 March 1987, Juris-Data 041636. The Court of Appeal of Metz granted *exequatur* of a Dutch judgment, considering that a period of more than 15 days between the summons and the day of the hearing was sufficient to enable the defendant to enter a defence.

468 Explanatory Report (*op. cit.* note 13), p. 377 [translation by the Permanent Bureau].

Flowchart: the operation of Article 15(1) where the relevant judicial document is transmitted under the main channel (Art. 5):



2. Continuation of proceedings and, in particular, delivery of judgment (Art. 15(2))

411. Article 15(2) of the Convention takes into account the plaintiff's legitimate interest in seeing the case progress. Pursuant to this provision, a Contracting Party may make a declaration under the Convention to permit judges of that State to enter a judgment even without receipt of a certificate of service or delivery, provided that:

1) the document was transmitted by a method under the Convention;

2) a period of time of not less than six months and considered adequate by the judge has elapsed since transmission; and

3) no certificate of any kind has been received, even though reasonable efforts were made to obtain it through the competent authorities of the State addressed.[469]

412. Declarations to this effect have been made by a majority of Contracting Parties.[470]

413. The mechanism established under Article 15(2) operates as an exception to Article 15(1). It is designed to apply in certain cases where, for example, the defendant tries to evade service in bad faith.[471] Accordingly, where a certificate of service or delivery has been received, and a

469 Contrary to one decision of a United States District Court, fulfilling this condition depends on the effort made to obtain the Certificate, not on whether the Certificate has been obtained: *c.f. Marschhauser v. The Travelers Indemnity Co.* (*op. cit.* note 194), where the Court found that Art. 15(2) was satisfied partly on the basis that a letter, which had been received from an administrator in the requested State suggesting that the service request did not emanate from a proper source (and therefore presumably that the request did not comply with the terms of the Convention), was not a certificate issued under Art. 6 of the Convention, and therefore that no Certificate had been obtained.

470 For a snapshot of declarations made by all Contracting Parties pursuant to Art. 15(2), see "Table Reflecting Applicability of Articles 8(2), 10(a)(b) and (c), 15(2) and 16(3)" on the Service Section of the HCCH website.

471 See Explanatory Report (*op. cit.* note 13), p. 377.

Contracting Party has made a declaration under Article 15(2), the forum judge is still prevented from entering a judgment until the requirements provided for under Article 15(1) are met.[472] In a similar context, from the perspective of emphasising its exceptional character, a court in the United States decided that if a defendant appeared with an intention to defend an action, the motion for a default judgment under Article 15(1) would not be granted, even though the requirements of Article 15(2) had been met.[473]

i. First requirement: the transmission of documents under the Convention

414. The writ of summons or equivalent document must have been transmitted by a method under the Convention.[474] Where a Contracting Party has made such a declaration, Article 15(2) does not require the actual knowledge of the relevant document by the addressee, but simply that a period of time, not less than six months, has elapsed since the transmission. If however, under the law of a State which has made the Article 15(2) declaration, the validity of service is subject to the actual possibility of the defendant's being informed of the proceedings brought against them, the judge may not proceed by virtue of that law despite an Article 15(2) declaration.

ii. Second requirement: an adequate period of time since date of transmission

415. The judge has discretion to determine what constitutes an "adequate" period of time for the purpose of Article 15(2), depending on the particular circumstances of the case and any requirements provided for under the law of the forum. In any case, the period of time shall not be less than six months.[475]

416. If, at the time of the hearing, no Certificate is produced, certain courts tend to grant the plaintiff additional time to allow service on the defendant.[476]

417. By way of example, in the **Netherlands**, the German Central Authority returned the Certificate stating that the respondent had moved out without leaving an address. Before entering a default judgment, the Supreme Court of the Netherlands (*Hoge Raad*) set a further period for the appellant, allowing the appellant time to publish, at least one month before the date of the hearing, a notice of summons in the local newspaper at the respondent's former address in Germany.[477]

418. The Explanatory Report makes it clear that despite the discretionary nature of Article 15(2), "it can be a useful tool in the interpretation of the Convention, clarifying the underlying intention by reiterating the interests of ensuring, within reason, the rights of the defence".[478] In a similar vein, the Special Commission has recalled that "the purpose and fundamental importance of

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472 *C.f. Burda Media, Inc. v. Viertel*, 417 F.3d 292 (2nd Cir. 2005) (where a United States Court of Appeals found that as a certificate of service within the meaning of Art. 15(2) had been received, Art. 15 in its entirety could not "serve as a means to challenge the default judgment").

473 *Isaac Industries, Inc. v. Petroquimica de Venezuela, S.A. et al*, No. 1:2019cv23113 - Document 153 (S.D. Fla. 2023).

474 A United States court found that Article 15 requires the transmission of judicial documents in accordance with the procedures outlined in the Convention for the court to render a default judgment, see *Smart Study co. v. Acuteye-Us.,* No. 1:21-CV-5860-GHW, 2022 WL 2872297 (S.D.N.Y. July 21, 2022).

475 For instance, *exequatur* in France has been denied for Belgian default judgments delivered before the expiry of the six-month period. *Cristal France v. Soliver*, Cass., Ch. Civ. 1, 16 December 1980, *Rev. crit. d.i.p.* 1981, p. 713, note G.A.L. Droz; *Girault v. Denys*, CA Paris, 27 November 1986, Juris-Data 027200. Also, a court in Ohio, United States, denied the plaintiff's motion to permit alternative service, with one of the grounds being that the six-month period had not yet expired, see *AtriCure. Inc. V. Meng,* No. 1:19-CV-00054 2022 WL 13917934 (S.D. Ohio Oct. 24, 2022).

476 See the decision of the Supreme Court of the Netherlands, *Segers and Rufa BV v. Mabanaft GmbH* (*op. cit*. note 32).

477 *Malenstein v. Heymen*, HR 20 February 1998, *NJ* 1998.

478 Explanatory Report (*op. cit.* note 13), p. 378 [translation by the Permanent Bureau].

Article 15(2) [is] to ensure actual notice to a defender in sufficient time to organise his or her defence".[479]

iii. Third requirement: failure to obtain the Certificate

419. For the purposes of Article 15(2)(c) of the Convention, the type of certificate of service or delivery will depend on the channel used to transmit the document. If the main channel of transmission (Art. 5) was used, the certificate is the Certificate required under Article 6. However, a ***United States Court of Appeal*** has held that a police report documenting service attempts constituted a certificate under Article 15(2)(c), even though the document was transmitted via the main channel.[480] For the alternative channels of transmission, any proof of service might be qualified as a certificate.[481]

420. The Special Commission has expressly noted that the receipt of a certificate stating that no service could be effected is not an obstacle to a default judgment, in accordance with the domestic law of the Requesting State and when such State has made the relevant declaration.[482]

421. The requirement that every reasonable effort be made to obtain the Certificate has been considered by a number of **United States courts**. In one case, a District Court found that placing a single phone call to the Central Authority to obtain oral confirmation of service was insufficient to satisfy this requirement.[483] In another case,[484] a Court of Appeals found that in proceedings against a Consulate General of Mexico, notifying the defendant's counsel amounted to "every reasonable effort" in view of the fact that professional conduct rules under the law of the forum prohibited counsel for the plaintiff from communicating with the defendant other than through its counsel. The Court's decision was based on the assumption that the legal defendant's personality extended to all Mexican officials, including those of the Mexican Central Authority and therefore, by contacting the defendant's counsel, the plaintiff had taken "the only step ethically permitted".[485]

3. The operation of provisional or protective measures (Art. 15(3))

422. Article 15(1) and (2) of the Convention does not prevent the judge from granting, in case of urgency, provisional or protective measures, ordered either *ex parte* or in the course of adversarial

479 C&R No 74 of the 2003 SC.

480 *Burda Media, Inc. v. Viertel* (*op. cit.* note 472). At the same time, the Court cautioned against attempting to obtain a document that was less "complete and official" for the purposes of demonstrating compliance with Art. 15(2).

481 See *Marcus Food Co. v. DiPanfilo* (*op. cit.* note 432). In cases where e-mail service is permitted, a declaration setting out the facts should be sufficient (See T. Folkman's commentary at https://lettersblogatory.com/2022/08/02/case-of-the-day-smart-study-v-acuteye/ [last consulted on 5 May 2024]).

482 C&R No 35 of the 2009 SC.

483 *Universal Trading & Investment Co. v. Kiritchenko*, No. C-99-3073 MMC, 2007 WL 660083 (N.D. Cal. Feb. 28, 2007).

484 *Box v. Dallas Mexican Consulate General*, 487 F. App'x 880 (5th Cir. 2012).

485 See also *Scheck v. the Republic of Argentina* (*op. cit.* note 207) (finding that the Art. 15 requirements were satisfied where the plaintiff had properly transmitted the documents to the Argentine Ministry of Foreign Affairs, waited more than nine months without receiving a certificate and had made every "reasonable effort" to obtain such Certificate by contacting the Argentine Ministry); *Leger v. Rivers Edge Treestands, Inc.*, No. 1:13-CV-326, 2016 WL 09173 (E.D. Te. Feb. 9, 2016) (finding that "reasonable efforts" had been made to obtain a Certificate when the Chinese Central Authority had not responded to e-mails requesting a status update of the service after the expiration of a six-month period); *Aly v. Hanzada for Imp. Exp. Co.*, No. 12-CV-6069-SJ-DGK, 2014 WL 2829513 (W,D, Mo. June 23, 2014) (determining that "reasonable efforts" had been made to obtain a Certificate in the case where, after the return of a blank certificate, the plaintiff made a petition and even flew to Egypt to request the completion of the Certificate, but to no avail, only receiving a response from the Egyptian Central Authority that the documents would suffice as evidence for the attempt of service and a Certificate would not be completed).

proceedings. The assessment of whether the case constitutes an urgency is however left to the forum judge.

II. Protection of the defendant after a judgment by default: Article 16

423. Article 16(1) of the Convention provides that if judgment has already been given, a judge shall have the power to relieve the defendant from expiry of the time for appeal if certain conditions are met. These requirements are (i) that the defendant, without any fault on their part, did not have knowledge of the document in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal;[486] and (ii) that the defendant has disclosed a *prima facie* defence to the action on the merits.

424. The Convention further requires the defendant to file the application for relief within a reasonable time after the defendant has knowledge of the judgment.

425. A Contracting Party can make a declaration that the application will not be entertained if it is filed after the expiration of a time specified in the declaration. However, this time specified shall not be less than one year following the date of judgment.[487]

426. Article 16 does not apply to judgments concerning capacity or personal status. Article 16(4) seeks to avoid any uncertainty surrounding decisions of divorce or annulment of marriage, further avoiding any challenge to marriages celebrated after a divorce judgment delivered by default.[488]

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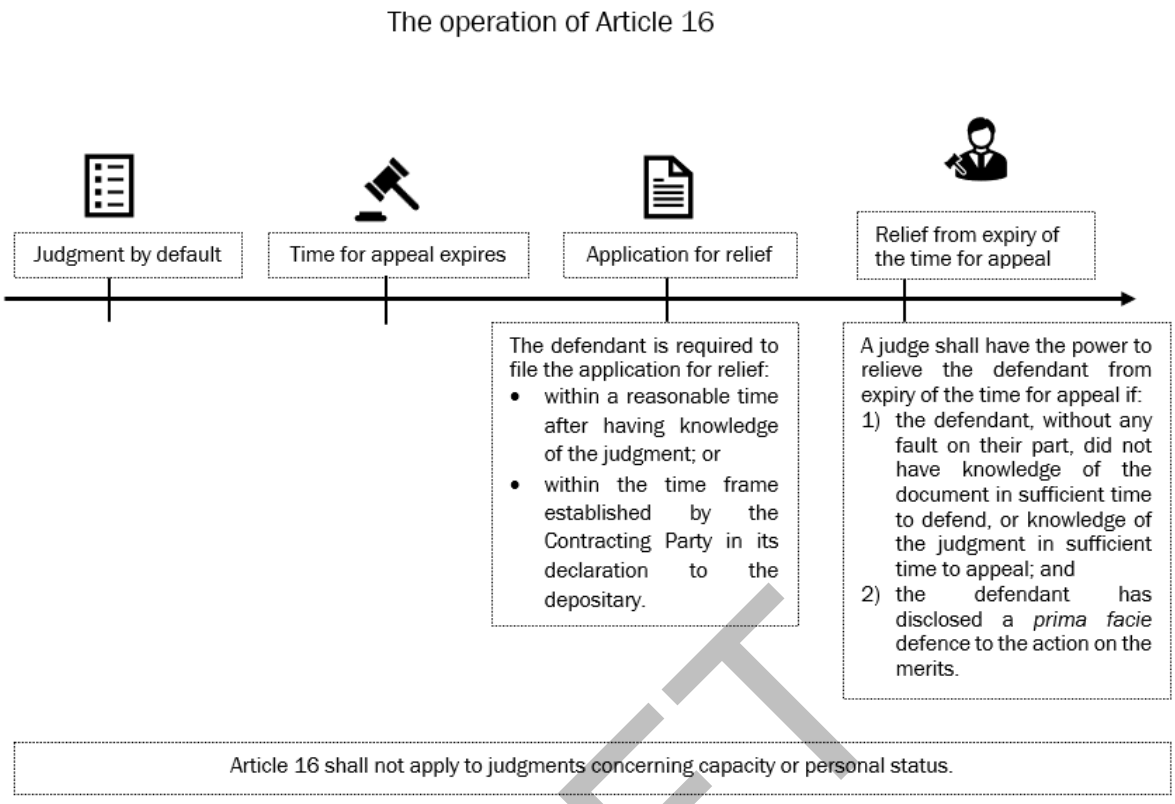
486 Accordingly, the protection provided for under Art. 16 is not available to a defendant deliberately keeping out of the proceedings; in support, *Audiencia Provincial de Huesca*, 30 June 1996, AC 1996/1448.

487 Some States have set a period of more than one year, while others (*e.g.*, Switzerland) have not set any period at all. In the latter case, relief is available at any time provided, however, that the application is made within a reasonable period after the defendant has knowledge of the judgment.

488 Explanatory Report (*op. cit*. note 13), p. 377, quoting P. Lagarde, "La Dixième session de la Conférence de La Haye de droit international privé", *Rev. crit. d.i.p.* 1965, p. 258.



427. The Special Commission has recognised that the types of relief against a default judgment under Article 16 are a matter for domestic law.[489] In this regard, "appeal" is used as an umbrella term in the Convention to encompass a variety of avenues of redress that may be provided for under the law of the forum State, including an appeal in the classic sense (*i.e.*, a legal proceeding by which a case is brought before a higher court for review of the decision given by a lower court) and an application to set aside the judgment (typically brought before the court that rendered the judgment).[490]

428. The ***Supreme Court of the Netherlands*** (*Hoge Raad*) stressed that the defendant needed to expressly apply for relief from the time-bar. In that case, as the defendant had not filed an application for relief, the Supreme Court held that the period of one month from delivery of the default judgment laid down by Dutch law should be observed, and could not be extended.[491] In **France**, the option granted to the defendant by Article 16 has been asserted by judges in the *exequatur* to recognise a foreign judgment despite certain irregularities in its service (in particular, the absence of specification of the nature and periods for appeal in the foreign judgment served).[492]

429. Finally, Article 16 does not impose an obligation on the forum judge to relieve the defendant from the relevant time-bar. It merely establishes the power for the judge to do so, and the forum judge

489 C&R No 34 of the 2014 SC.

490 See Report of the 1964 SC (*op. cit*. note 23), p. 99.

491 HR 15 June 2000 (*op. cit*. note 155), p. 642.

492 *Guigou v. SPRL Favel*, Cass., Ch. Civ., 3 June 1986, *Bull. civ. I*, 1986, No 149; *De Wouters d'Oplinter v. Janson*, CA Paris, Ch. Civ. 1, 5 October 1992, *Recueil Dalloz 1993*, Informations rapides, p. 38; *Falcon Cement Co. Ltd v. Pharaon*, CA Paris, Ch. Civ. 1, 25 March 1994, Juris-Data 022544.

has a broad discretion in exercising that power.[493] Moreover, Article 16 does not give the court the power to allow an appeal from (or to set aside) a judgment given in default, or allow the defendant an opportunity to appeal from (or apply to set aside) the default judgment; these remain matters for the law of the forum court, which may well afford the defendant with other opportunities to appeal from the judgment.[494]

493 See, *e.g.*, *Gould Entertainment Corp. v. Bodo* (*op. cit.* note 462) (holding that the defendant's motion to vacate the judgment filed two days before the expiration of the one-year deadline was untimely. In addition, the Court noted that the defendant had failed to disclose a *prima facie* defence to the action on the merits pursuant to Art. 16 of the 1965 Service Convention or otherwise demonstrate exceptional circumstances pursuant to *Fed. R. Civ. Pro.* 60(b)).

494 In **Australia**, legislation implementing the Convention in domestic jurisdictions gives the forum judge the power to set aside a default judgment in circumstances where the conditions in Art. 16(1)(a) and (b) are fulfilled. See, *e.g.* r 10.72 of *Federal Court Rules* (2011), and r. 11A.12 of the *Uniform Civil Procedure Rules* 2005 (NSW).

Part 4 – Relationship with other Treaties, Regional Instruments, Internal law

430. The 1965 Service Convention contains specific provisions which address the relationship between the Convention and (i) other HCCH Conventions and Instruments (Arts 22-23); (ii) supplementary or additional agreements on the transmission of judicial and extrajudicial documents for service abroad (Arts 11, 24-25); and (iii) the provisions of internal law of Contracting Parties establishing other methods of transmission (Art. 19).

I. Relationship between the 1965 Service Convention and other HCCH Conventions and Instruments (Arts 22-23)

1. 1905 Civil Procedure Convention provisions no longer applicable for transmission of documents for service

431. All Contracting Parties to the 1905 Civil Procedure Convention have acceded to either the 1954 Civil Procedure Convention or the 1965 Service Convention and therefore the 1905 Civil Procedure Convention is no longer applicable between its Contracting Parties.[495]

432. However, if supplementary agreements to the 1905 and 1954 Civil Procedure Conventions have been concluded by States that are also Party to the 1965 Service Convention, these agreements must be considered applicable to the 1965 Service Convention, unless the States have determined otherwise (Art. 24 of the Convention; see para. 441).

2. Ongoing application of the 1954 Civil Procedure Convention to the transmission for service provisions

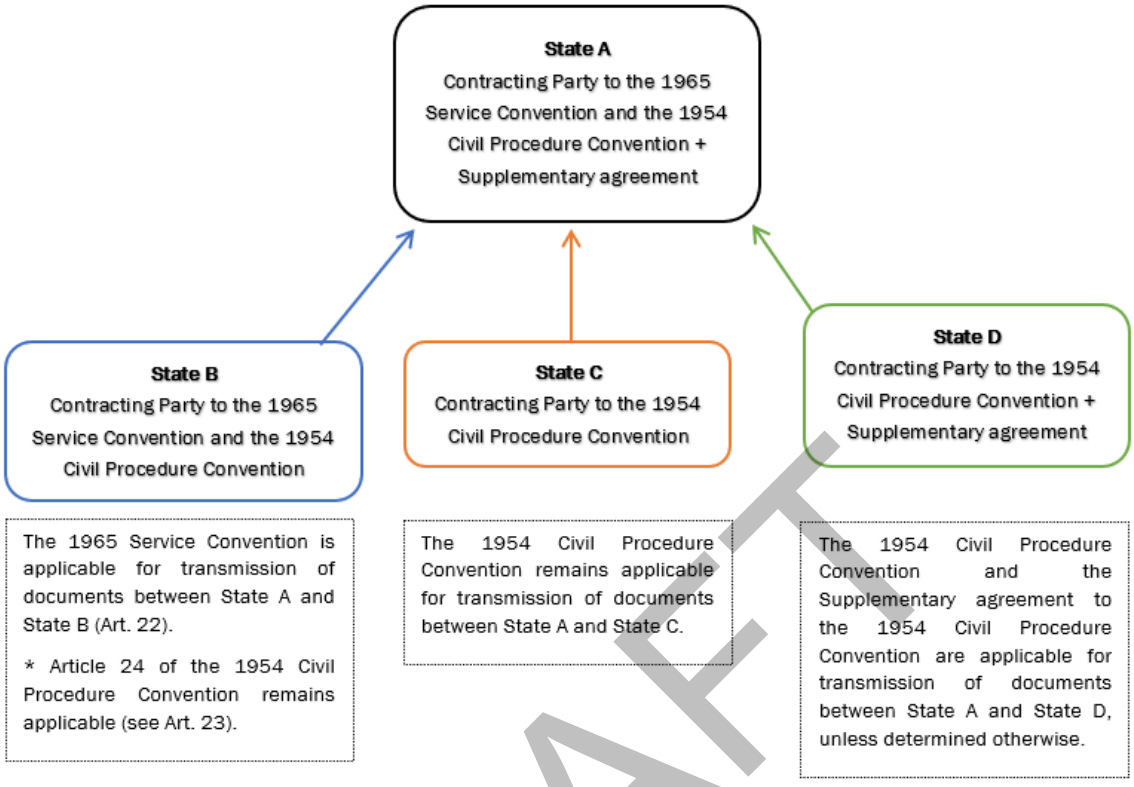
433. Most Contracting Parties to the 1954 Civil Procedure Convention have ratified or acceded to the 1965 Service Convention. As noted above, any supplementary agreements to the 1954 Civil Procedure Convention concluded by States which are also Contracting Parties to the 1965 Service Convention must be considered applicable to the 1965 Service Convention unless the States have determined otherwise (Art. 24 of the Convention).

434. A limited number of Contracting Parties to the 1954 Civil Procedure Convention have not ratified or acceded to the 1965 Service Convention. The 1954 Civil Procedure Convention is still effective in the relations between, the Holy See, Kyrgyzstan, Lebanon, Mongolia, Suriname and Uzbekistan, as well as between these States and other States which are Parties to the 1965 Service Convention, but which are also still Party to the 1954 Civil Procedure Convention (*e.g.*, the Russian Federation, Switzerland or the Macao SAR (China)).[496] For further details and a regular update of the status of the 1905, 1954 and 1965 Conventions, see the HCCH website.

495 With the accession of Iceland to both the 1954 Civil Procedure Convention and 1965 Service Convention in 2008, the 1905 Civil Procedure Convention is no longer applicable between its Contracting Parties.

496 This information was current at the time of publication of this Handbook.

Flowchart: the route for the transmission of documents for service abroad will depend on the applicable instruments between the Requesting State (State of origin) and the State addressed.



3. 1965 Service Convention preserves Article 24 of the 1954 Civil Procedure Convention

435. Article 23 of the 1965 Service Convention preserves Article 24 of the 1954 Civil Procedure Convention which relevantly provides that if legal aid has been granted to a national of one of the Contracting Parties, service of documents relating to their case in another Contracting Party shall not give rise to reimbursement of costs. Measures relating to legal aid are not expressly covered by the 1965 Service Convention but later formed the subject of the 1980 Access to Justice Convention.

4. Development of additional Conventions on Evidence and Access to Justice

436. Following the conclusion of the 1965 Service Convention, two other Conventions were developed to improve on the provisions of the 1954 Civil Procedure Convention. These Conventions are the 1970 Evidence Convention dealing with letters of request for obtaining evidence abroad in civil or commercial matters, and the 1980 Access to Justice Convention. This Convention ensures that nationals or habitual residents of a Contracting Party to the Convention have access to justice within all the Contracting Parties to the Convention on a non-discriminatory basis. It provides for non-discrimination with respect to legal aid, including the provision of legal advice, security for costs, copies of entries and decisions, and physical detention and safe conduct.

5. 1980 Access to Justice Convention application to legal aid

437. Article 22 of the 1980 Access to Justice Convention replaces Articles 17 to 24 of the 1905 Civil Procedure Convention and Articles 17 to 26 of the 1954 Civil Procedure Convention respectively

for those Contracting Parties which have joined the 1980 Access to Justice Convention and either the 1905 or the 1954 Civil Procedure Convention (or both).[497]

438. For States which are not Parties to the 1980 Access to Justice Convention but are Parties to either the 1905 or 1954 Civil Procedure Convention, these instruments will continue to apply.

II. Relationship between the 1965 Service Convention and supplementary or additional agreements (Arts 11, 24-25) – derogatory channels

439. The 1965 Service Convention is not the only treaty which provides for rules on the transmission of judicial and extrajudicial documents for service abroad. The Convention allows Contracting Parties to deviate from its main and alternative channels either by agreements among themselves (Arts 11, 24, 25) or unilaterally (Art. 19). Article 11 of the Convention does not prevent Contracting Parties from concluding additional agreements establishing channels of transmission other than those provided for under Articles 2 to 10, whereas Articles 24 and 25 provide Contracting Parties with the possibility to derogate from the provisions of the Convention by concluding supplementary agreements or entering into other international agreements, respectively. These agreements are often referred to as derogatory channels under the Convention.

1. Additional agreements concluded among Contracting Parties (Art. 11)

440. Under Article 11 of the Convention, two or more Contracting Parties may agree on the transmission of judicial and extrajudicial documents for service abroad via channels of transmission other than those provided for under Articles 2 to 10. The Convention expressly mentions, by way of example, the direct communication between the authorities of the respective States, such as the cases where the relevant document is transmitted directly from the forum judge to the foreign court.

2. Supplementary agreements to the 1954 Civil Procedure Convention (Art. 24)

441. Under Article 24 of the 1965 Service Convention, where supplementary agreements to the 1905 and 1954 Civil Procedure Conventions have been concluded by States that are also Party to the 1965 Service Convention, these agreements must be considered applicable to the 1965 Service Convention, unless the States have determined otherwise.

3. Other international agreements on the transmission of judicial and extrajudicial documents for service abroad (Art. 25)

442. According to Article 25, the Convention does not derogate from other international agreements to which States are or will become Parties for the purposes of transmitting judicial or extrajudicial documents for service abroad.[498] This means that any mechanisms or transmission channels

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497 Art. 22 of the 1980 Access to Justice Convention. For more information and a regular update of the status of this Convention, see the HCCH website.

498 There are several multilateral and regional instruments which contain provisions on the transmission of judicial and extrajudicial documents for service abroad, such as the *1974 Nordic Convention on Mutual Assistance in Judicial Matters* between Denmark, Finland, Iceland, Norway and Sweden (which establishes, in particular, a channel for direct communication between courts); the *1983 Riyadh Arab Agreement for Judicial Co-operation* among members of the Arab League; the *1992 Las Leñas Protocol on Judicial Co-operation and Assistance in Civil, Commercial, Labour and Administrative Matters* among members of Mercosur; and the *1993 Minsk* and *2002* Kishinev *Conventions on Legal*

provided for under such agreements between States may operate exclusively or alternatively with those established under the Convention.

443. For example, State A and State B may enter into bilateral or multilateral agreements permitting the transmission of documents for service abroad via postal channels, despite their objection under Article 10(a) of the Convention. Accordingly, while the use of postal channels will be permitted under the relevant agreement and between State A and State B, an objection raised under Article 10(a) will remain effective towards the other Contracting Parties to the Convention.

444. In parallel to the Convention, some regional organisations have adopted multilateral agreements pertaining to the transmission of documents for service abroad, including:

i. The Inter-American Convention on Letters Rogatory

445. The *Inter-American Convention on Letters Rogatory* was signed in Panama on 30 January 1975 during the first Inter-American Specialized Conference on Private International Law, and has been supplemented by an Additional Protocol in 1979.[499] This Inter-American Convention deals primarily with the transmission of documents for service abroad and the taking of evidence in civil or commercial matters.

446. Like the 1965 Service Convention, the Inter-American Convention establishes a system of Central Authorities and requires the use of model forms. Additionally, the channels of transmission provided for under the Convention are generally similar to those established under the 1965 Service Convention. However, unlike the 1965 Service Convention, the Inter-American Convention does not seem to be of exclusive character,[500] since it is limited to the mechanism of Letters Rogatory and there is nothing precluding the resort to alternative means of service.[501]

447. The 1979 Additional Protocol appears to have considerably modified the operation of the channels of transmission provided for under the Inter-American Convention. Accordingly, the Protocol defines "procedural acts", referred to in Article 2(a) of the Inter-American Convention, as only "acts [...] that are served and requests for information that are made by a judicial or administrative 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" (Art. 1 of the Protocol). Among States Parties to the Protocol, it seems that only the transmission of documents through Central Authorities will be permitted; and different channels of transmission are precluded as they might not meet the requirements provided for under Article 1 of the Protocol.[502]

Assistance and Legal Relations in Civil, Family and Criminal Matters among members of the Commonwealth of Independent States.

499 For the text and full status of this Convention, see the website of the Organization of American States (OAS) at: http://www.oas.org [in English and Spanish only]. The English text of the Convention is also reproduced in *I.L.M.* 1975, p. 339; the English text of the Additional Protocol is also reproduced in *I.L.M.* 1979, p. 1238. The texts in French may be obtained from the OAS website. Regarding the Inter-American Convention in general, see D. McClean (*op. cit.* note 17), pp. 62-68; L.A. Low, "International Judicial Assistance among the American States – The Inter-American Conventions", *Int'l Law* 1984, p. 705; see also G.B. Born & P.B. Rutledge (*op. cit.* note 275), pp. 824 and 895-896; R.D. Kearney, "Developments in Private International Law", (1987) *Am. J. Int'l L.*, p. 737.

500 For explanations on the terminology used in this respect, see paras 50 *et seq*.

501 *Kreimerman, et al., v. Casa Veerkamp* (*op. cit.* note 75), although the impact of the Protocol on this question is not examined here; the decision contains a comparison between the Inter-American Convention and the HCCH 1965 Service and 1970 Evidence Conventions ; see also *Laino v. Cuprum S.A. de C.V.*, 235 A.D.2d 25 (N.Y. App. Div. 1997), taking into account the Protocol and also referring to *Pizzabiocche v. Vinelli*, 772 F. Supp. 1245, 1249 (M.D. Fla. 1991). On the non-exclusive nature of the Inter-American Convention, see also G.B. Born & P.B. Rutledge (*op. cit.* note 275), pp. 895-896.

502 D. McClean (*op. cit.* note 17), pp. 66-67.

448. For example, where a United States court delivers a decision, the enforcement of which will take place in the Requested State (*e.g.*, in Mexico), parties are required to resort to the Inter-American Convention and the 1979 Additional Protocol to effect service by transmitting the relevant document through the Central Authorities of the respective States.[503] Otherwise, there is a risk that service will be considered defective during the enforcement proceedings in the Requested State.

449. The Inter-American Convention contains no provisions protecting the defendant both prior and after a judgment by default, as provided for in Articles 15 and 16 of the 1965 Service Convention (see paras 399 *et seq.*).

450. Where a document is required to be transmitted for service abroad, the question of which Convention applies may arise. Under Article 25, the 1965 Service Convention takes no priority over other international agreements to which States are Parties, including the Inter-American Convention. However, since the Inter-American Convention's Article 15 has a similar clause to Article 25 of the 1965 Service Convention, either of the two instruments may be applied.[504] In practice, the two Conventions often operate in parallel.[505]

451. Where the request is transmitted under the Inter-American Convention, one may enquire whether the defendant can invoke the safeguards provided for under Articles 15 and 16 of the 1965 Service Convention. Both provisions should apply whenever their requirements are met, regardless of whether the request was transmitted under the Inter-American Convention. If this were not the case, the applicant would be in a position to unilaterally decide the extent of protection afforded to the defendant.

ii. The Model Bilateral Convention drafted by the Asian-African Legal Consultative Organization

452. During the 1980s, the Asian-African Legal Consultative Organisation (AALCO) (formerly Committee) worked on the drafting of a multilateral Convention relating to service and the taking of evidence abroad in civil and criminal matters, using the HCCH 1965 Service and 1970 Evidence Conventions as models. This approach was regarded as rather too ambitious and the Twenty-Second Session of AALCO eventually decided to set up two separate model bilateral Conventions for service and the taking of evidence, one in civil matters and the other in criminal matters. Following a further meeting of a group of experts – a *Model for bilateral arrangements on mutual assistance for the service of process and the taking of evidence abroad in civil or commercial matters* was adopted during AALCO's Twenty-Third Session.[506]

503 This only applies where the parties decide to use the Inter-American Convention; they could also use the 1965 Service Convention, under which the full range of possible channels remains open (subject to a State's declaration); on the relationship between the Inter-American Convention and the 1965 Service Convention, see paras 445-451.

504 See also the Report of the 1977 SC (*op. cit.* note 132), p. 389, which, for Art. 25 in general, indicates that it is accepted in "the Contracting States that the parties may employ either the channels provided in the [HCCH] Convention or those provided for by the special agreement".

505 A Mexican Federal Court has held that the formal requirements set out in the Inter-American Convention do not apply to requests for service transmitted under the 1965 Service Convention, as these are two distinct treaties. *Tribunal Colegiado de Circuito* (Federal Circuit Courts), *Gaceta del Semanario Judicial de la Federación* (Gazette of the Weekly Federal Court Report), Book 2, January 2014, Tome IV, *tesis* No: VI.1o.C.40 C (10a.), p. 3025.

506 The text of this model Convention is available on the website of the AALCO at the following address: http://www.aalco.int (text in English only: Model for bilateral arrangements on mutual assistance for the service of process and the taking of evidence abroad in civil or commercial matters). The Model is followed by an explanatory text. The English text of the Model Convention is also published in *I.L.M.* 1984, p. 78.

iii. Regulation (EU) 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) (recast) (Regulation (EU) 2020/1784)

453. The 2020 EU Service Regulation (Service Regulation), which has been in force among all EU Member States since 1 July 2022,[507] provides for the service of judicial and extrajudicial documents in civil and commercial matters. It contains provisions on both the transmission of documents from one Member State to another and the actual service of process on the defendant.

454. Articles 5 and 37(2) of the Service Regulation and its implementing Regulation[508] oblige Member States to use a decentralised IT system for the transmission of requests for service and the communication between transmitting and receiving agencies, courts and central bodies. In addition to that, the Service Regulation has introduced (i) the possibility of effecting service by electronic means, when specific requirements are met (Art. 19); (ii) the use of electronic signatures on deeds, documents and forms (Art. 5(3)); and (iii) the provision of assistance in a Member State to determine the address of the person to be served (Art. 7).

455. Article 29 of the Service Regulation states that it takes priority over the HCCH 1965 Service Convention among EU Member States. Accordingly, and contrary to the Inter-American Convention, the Service Regulation will be applicable when a document is required to be transmitted among the EU Member States. The Service Regulation is mandatory in the sense that service abroad shall be carried out before the consideration of possible fictitious service (Recitals 6 and 7 of the Regulation).

III. Relationship between the 1965 Service Convention and the internal law of Contracting Parties (Art. 19)

456. The 1965 Service Convention does not prevent the internal law of Contracting Parties from permitting methods of transmission other than those provided for under the Convention. Article 19 has been included in the Convention following a request from the United States, which regarded the methods of transmission under the Convention as too restrictive. To date, this provision has mainly been applied by United States courts.

457. The interpretation of Article 19, particularly the term “permits”, is not uniform. Certain courts, based on a narrow construction of this provision, consider that only the methods of transmission expressly permitted by the Contracting Party are allowed,[509] whereas others, in contrast, consider

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507 *Regulation (EU) 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) (recast) (Regulation (EU) 2020/1784)*, which replaced *Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters, and repealing Council Regulation (EC) No 1348/2000*.

508 Commission Implementing Regulation (EU) 2022/423 of 14 March 2022 laying down the technical specifications, measures and other requirements for the implementation of the decentralised IT system referred to in Regulation (EU) 2020/1784 of the European Parliament and of the Council.

509 See *Humble v. Gill*, No. 1:08-cv-00166-JHM-ERG, 2009 WL 151668 (W.D. Ky. Jan. 22, 2009) (finding that the Ontario Rule of Civil Procedure, pursuant to which a plaintiff attempted service, was “not the type of law contemplated by Art. 19 because it does not authorize methods for international service in Canada”); In *re J.P.L.*, 359 S.W.3d 695 (Tex. App. 2011) (holding that while service was effected pursuant to the internal law of Mexico, Art. 19 could not apply, as there was no evidence provided as to how the internal law of Mexico authorises the service of documents specifically coming from abroad); HCA 1218/2019 [2020] HKCFI 3057 (ruling that, despite the wording "may be sent" in the local law of India regarding the method of service of foreign documents, it should be interpreted as a mandatory method. However, the court also ruled that, although service by a private person or agent did not comply with the mandatory procedure in

that Article 19 should be construed to allow for any mechanisms of transmission for service that the foreign domestic law does not expressly prohibit.[510]

458. Since the Convention does not preclude the use of other forms of transmission that are not provided for in the Convention, including the transmission by electronic means, Contracting Parties may allow service by e-mail or via other digital platforms of incoming judicial documents upon addressees within their territory, as long as this is consistent with the domestic law and policy of the State of destination.

India, this defect in service is cured considering that (1) leave for service was obtained, (2) the used method is not positively illegal or unlawful under Indian law, and (3) the defendants were fully aware of the proceedings).

510 See *Banco Latino, S.A.C.A. v. Gomez Lopez*, 53 F. Supp. 2d 1273 (S.D. Fla. 1999) (finding that personal delivery of a writ of summons by a detective on a United States defendant located in Spain constituted valid service since it was not prohibited by Spanish law). This decision also has a statement of the two possible constructions of this provision and a report on legal doctrine and case law on this issue.

ANNEXES

Annex 1 - Text of the Convention

CONVENTION ON THE SERVICE ABROADOF JUDICIAL AND EXTRAJUDICIAL DOCUMENTS IN CIVIL OR COMMERCIAL MATTERS

(Concluded 15 November 1965)

The States signatory to the present Convention,

Desiring to create appropriate means to ensure that judicial and extrajudicial documents to be served abroad shall be brought to the notice of the addressee in sufficient time,

Desiring to improve the organisation of mutual judicial assistance for that purpose by simplifying and expediting the procedure,

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

Article 1

(1) The present Convention shall apply in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad.
(2) This Convention shall not apply where the address of the person to be served with the document is not known.

CHAPTER I – JUDICIAL DOCUMENTS

Article 2

(1) Each Contracting State shall designate a Central Authority which will undertake to receive requests for service coming from other Contracting States and to proceed in conformity with the provisions of Articles 3 to 6.
(2) Each State shall organise the Central Authority in conformity with its own law.

Article 3

(1) The authority or judicial officer competent under the law of the State in which the documents originate shall forward to the Central Authority of the State addressed a request conforming to the model annexed to the present Convention, without any requirement of legalisation or other equivalent formality.
(2) The document to be served or a copy thereof shall be annexed to the request. The request and the document shall both be furnished in duplicate.

Article 4

If the Central Authority considers that the request does not comply with the provisions of the present Convention it shall promptly inform the applicant and specify its objections to the request.

Article 5

(1) The Central Authority of the State addressed shall itself serve the document or shall arrange to have it served by an appropriate agency, either –

a. by a method prescribed by its internal law for the service of documents in domestic actions upon persons who are within its territory, or
b. by a particular method requested by the applicant, unless such a method is incompatible with the law of the State addressed.

(2) Subject to sub-paragraph (b) of the first paragraph of this Article, the document may always be served by delivery to an addressee who accepts it voluntarily.

(3) If the document is to be served under the first paragraph above, the Central Authority may require the document to be written in, or translated into, the official language or one of the official languages of the State addressed.

(4) That part of the request, in the form attached to the present Convention, which contains a summary of the document to be served, shall be served with the document.

Article 6

(1) The Central Authority of the State addressed or any authority which it may have designated for that purpose, shall complete a certificate in the form of the model annexed to the present Convention.

(2) The certificate shall state that the document has been served and shall include the method, the place and the date of service and the person to whom the document was delivered. If the document has not been served, the certificate shall set out the reasons which have prevented service.

(3) The applicant may require that a certificate not completed by a Central Authority or by a judicial authority shall be countersigned by one of these authorities.

(4) The certificate shall be forwarded directly to the applicant.

Article 7

(1) The standard terms in the model annexed to the present Convention shall in all cases be written either in French or in English. They may also be written in the official language, or in one of the official languages, of the State in which the documents originate.

(2) The corresponding blanks shall be completed either in the language of the State addressed or in French or in English.

Article 8

(1) Each Contracting State shall be free to effect service of judicial documents upon persons abroad, without application of any compulsion, directly through its diplomatic or consular agents.

(2) Any State may declare that it is opposed to such service within its territory, unless the document is to be served upon a national of the State in which the documents originate.

Article 9

(1) Each Contracting State shall be free, in addition, to use consular channels to forward documents, for the purpose of service, to those authorities of another Contracting State which are designated by the latter for this purpose.

(2) Each Contracting State may, if exceptional circumstances so require, use diplomatic channels for the same purpose.

Article 10

Provided the State of destination does not object, the present Convention shall not interfere with –

a. the freedom to send judicial documents, by postal channels, directly to persons abroad,

b. the freedom of judicial officers, officials or other competent persons of the State of origin to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination,
c. the freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination.

Article 11

The present Convention shall not prevent two or more Contracting States from agreeing to permit, for the purpose of service of judicial documents, channels of transmission other than those provided for in the preceding Articles and, in particular, direct communication between their respective authorities.

Article 12

(1) The service of judicial documents coming from a Contracting State shall not give rise to any payment or reimbursement of taxes or costs for the services rendered by the State addressed.
(2) The applicant shall pay or reimburse the costs occasioned by –
   a. the employment of a judicial officer or of a person competent under the law of the State of destination,
   b. the use of a particular method of service.

Article 13

(1) Where a request for service complies with the terms of the present Convention, the State addressed may refuse to comply therewith only if it deems that compliance would infringe its sovereignty or security.
(2) It may not refuse to comply solely on the ground that, under its internal law, it claims exclusive jurisdiction over the subject-matter of the action or that its internal law would not permit the action upon which the application is based.
(3) The Central Authority shall, in case of refusal, promptly inform the applicant and state the reasons for the refusal.

Article 14

Difficulties which may arise in connection with the transmission of judicial documents for service shall be settled through diplomatic channels.

Article 15

(1) Where a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and the defendant has not appeared, judgment shall not be given until it is established that –
   a. the document was served by a method prescribed by the internal law of the State addressed for the service of documents in domestic actions upon persons who are within its territory, or
   b. the document was actually delivered to the defendant or to his residence by another method provided for by this Convention,

   and that in either of these cases the service or the delivery was effected in sufficient time to enable the defendant to defend.

(2) Each Contracting State shall be free to declare that the judge, notwithstanding the provisions of the first paragraph of this Article, may give judgment even if no certificate of service or delivery has been received, if all the following conditions are fulfilled –
   a. the document was transmitted by one of the methods provided for in this Convention,
   b. a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document,
   c. no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed.

(3) Notwithstanding the provisions of the preceding paragraphs the judge may order, in case of urgency, any provisional or protective measures.

Article 16

(1) When a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and a judgment has been entered against a defendant who has not appeared, the judge shall have the power to relieve the defendant from the effects of the expiration of the time for appeal from the judgment if the following conditions are fulfilled –
   a. the defendant, without any fault on his part, did not have knowledge of the document in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal, and
   b. the defendant has disclosed a prima facie defence to the action on the merits.

(2) An application for relief may be filed only within a reasonable time after the defendant has knowledge of the judgment.

(3) Each Contracting State may declare that the application will not be entertained if it is filed after the expiration of a time to be stated in the declaration, but which shall in no case be less than one year following the date of the judgment.

(4) This Article shall not apply to judgments concerning status or capacity of persons.

CHAPTER II – EXTRAJUDICIAL DOCUMENTS

Article 17

Extrajudicial documents emanating from authorities and judicial officers of a Contracting State may be transmitted for the purpose of service in another Contracting State by the methods and under the provisions of the present Convention.

CHAPTER III – GENERAL CLAUSES

Article 18

(1) Each Contracting State may designate other authorities in addition to the Central Authority and shall determine the extent of their competence.

(2) The applicant shall, however, in all cases, have the right to address a request directly to the Central Authority.

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

Article 19

To the extent that the internal law of a Contracting State permits methods of transmission, other than those provided for in the preceding Articles, of documents coming from abroad, for service within its territory, the present Convention shall not affect such provisions.

Article 20

The present Convention shall not prevent an agreement between any two or more Contracting States to dispense with –

a. the necessity for duplicate copies of transmitted documents as required by the second paragraph of Article 3,
b. the language requirements of the third paragraph of Article 5 and Article 7,
c. the provisions of the fourth paragraph of Article 5,
d. the provisions of the second paragraph of Article 12.

Article 21

(1) Each 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 following –
   a. the designation of authorities, pursuant to Articles 2 and 18,
   b. the designation of the authority competent to complete the certificate pursuant to Article 6,
   c. the designation of the authority competent to receive documents transmitted by consular channels, pursuant to Article 9.

(2) Each Contracting State shall similarly inform the Ministry, where appropriate, of –
   a. opposition to the use of methods of transmission pursuant to Articles 8 and 10,
   b. declarations pursuant to the second paragraph of Article 15 and the third paragraph of Article 16,
   c. all modifications of the above designations, oppositions and declarations.

Article 22

Where Parties to the present Convention are also Parties to one or both of the Conventions on civil procedure signed at The Hague on 17th July 1905, and on 1st March 1954, this Convention shall replace as between them Articles 1 to 7 of the earlier Conventions.

Article 23

(1) The present Convention shall not affect the application of Article 23 of the Convention on civil procedure signed at The Hague on 17th July 1905, or of Article 24 of the Convention on civil procedure signed at The Hague on 1st March 1954.
(2) These Articles shall, however, apply only if methods of communication, identical to those provided for in these Conventions, are used.

Article 24

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 25

Without prejudice to the provisions of Articles 22 and 24, the present Convention shall not derogate from Conventions containing provisions on the matters governed by this Convention to which the Contracting States are, or shall become, Parties.

Article 26

(1) The present Convention shall be open for signature by the States represented at the Tenth Session of the Hague Conference on Private International Law.
(2) It shall be ratified, and the instruments of ratification shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Article 27

(1) 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 26.
(2) 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 28

(1) Any State not represented at the Tenth Session of the Hague Conference on Private International Law may accede to the present Convention after it has entered into force in accordance with the first paragraph of Article 27. The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands.
(2) The Convention shall enter into force for such a State in the absence of any objection from a State, which has ratified the Convention before such deposit, notified to the Ministry of Foreign Affairs of the Netherlands within a period of six months after the date on which the said Ministry has notified it of such accession.
(3) In the absence of any such objection, the Convention shall enter into force for the acceding State on the first day of the month following the expiration of the last of the periods referred to in the preceding paragraph.

Article 29

(1) 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.
(2) At any time thereafter, such extensions shall be notified to the Ministry of Foreign Affairs of the Netherlands.
(3) The Convention shall enter into force for the territories mentioned in such an extension on the sixtieth day after the notification referred to in the preceding paragraph.

Article 30

(1) 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 27, even for States which have ratified it or acceded to it subsequently.
(2) If there has been no denunciation, it shall be renewed tacitly every five years.

(3) 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.
(4) It may be limited to certain of the territories to which the Convention applies.
(5) 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 31

The Ministry of Foreign Affairs of the Netherlands shall give notice to the States referred to in Article 26, and to the States which have acceded in accordance with Article 28, of the following –

a. the signatures and ratifications referred to in Article 26;
b. the date on which the present Convention enters into force in accordance with the first paragraph of Article 27;
c. the accessions referred to in Article 28 and the dates on which they take effect;
d. the extensions referred to in Article 29 and the dates on which they take effect;
e. the designations, oppositions and declarations referred to in Article 21;
f. the denunciations referred to in the third paragraph of Article 30.

In witness whereof the undersigned, being duly authorised thereto, have signed the present Convention.

Done at The Hague, on the 15th day of November, 1965, 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 Tenth Session of the Hague Conference on Private International Law.

N.B. On 25 October 1980, the Fourteenth Session adopted a Recommendation on information to accompany judicial and extrajudicial documents to be sent or served abroad in civil or commercial matters ("Acte final", in *Actes et documents de la Quatorzième session (Proceedings of the Fourteenth Session) (1980)*, Tome I, *Miscellaneous matters*, Recommendation G, pp. I-67; *idem*, Tome IV, *Entraide judiciaire*, p. 339; *Practical Handbook on the Operation of the Hague Service Convention*, Annex 3 at pp. 171 *et seq.*).

Annex 2 – Annexes provided for under Articles 3, 5, 6 and 7 of the Service Convention

ANNEX TO THE CONVENTION

Forms

REQUEST
FOR SERVICE ABROAD OF JUDICIAL OR EXTRAJUDICIAL DOCUMENTS

Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters,
signed at The Hague, the 15th of November 1965.

Identity and address of the applicant	Address of receiving authority

The undersigned applicant has the honour to transmit – in duplicate – the documents listed below and, in conformity with Article 5 of the above-mentioned Convention, requests prompt service of one copy thereof on the addressee, *i.e*:
(identity and address) .....
.....

a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of Article 5 of the Convention*.
b) in accordance with the following particular method (sub-paragraph (b) of the first paragraph of Article 5)*: .....
.....
.....
c) by delivery to the addressee, if he accepts it voluntarily (second paragraph of Article 5)*.

The authority is requested to return or to have returned to the applicant a copy of the documents – and of the annexes* – with a certificate as provided on the reverse side.

List of documents
.....
.....
.....
.....

Done at ....., the .....
Signature and/or stamp.

* Delete if inappropriate.

Reverse of the request

CERTIFICATE

The undersigned authority has the honour to certify, in conformity with Article 6 of the Convention,

1. that the document has been served*
   – the (date) .....
   – at (place, street, number) .....
   .....
   – in one of the following methods authorised by Article 5:
   a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of Article 5 of the Convention*.
   b) in accordance with the following particular method*: .....
   .....
   c) by delivery to the addressee, who accepted it voluntarily*.

The documents referred to in the request have been delivered to:
– (identity and description of person) .....
.....
– relationship to the addressee (family, business or other): .....
.....

2. that the document has not been served, by reason of the following facts*:
   .....
   .....

In conformity with the second paragraph of Article 12 of the Convention, the applicant is requested to pay or reimburse the expenses detailed in the attached statement*.

Annexes

Documents returned: .....
.....
.....

In appropriate cases, documents establishing the service: .....
.....
.....

Done at ....., the .....
Signature and/or stamp.

* Delete if inappropriate.

SUMMARY OF THE DOCUMENT TO BE SERVED

Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, signed at The Hague, the 15th of November 1965.

(Article 5, fourth paragraph)

Name and address of the requesting authority: .....
.....
.....
Particulars of the parties*: .....
.....
.....

JUDICIAL DOCUMENT**

Nature and purpose of the document: .....
.....
.....
Nature and purpose of the proceedings and, where appropriate, the amount in dispute: .....
.....
.....
Date and place for entering appearance**: .....
.....
Court which has given judgment**: .....
.....
Date of judgment**: .....
Time-limits stated in the document**: .....
.....

EXTRAJUDICIAL DOCUMENT**

Nature and purpose of the document: .....
.....
.....
Time-limits stated in the document**: .....
.....
.....

* If appropriate, identity and address of the person interested in the transmission of the document.
** Delete if inappropriate.

N.B. *The Fourteenth Session (1980) recommended that the "Summary of the document to be served" be preceded by a warning and that they be used not only for transmission through the Central Authorities but also through alternative channels. See also the Instructions for filling out the Notice and Guidelines for completing the Model Form, at Annexes 4 and 6.*

Annex 3 – Recommendation on information to accompany judicial and extrajudicial documents to be sent or served abroad in civil or commercial matters, adopted by the Fourteenth Session (25 October 1980)

The Fourteenth Session, [*]

Having taken cognizance of the Report prepared by the Council of Europe on "Information to accompany judicial and extrajudicial documents to be sent or served abroad in civil or commercial matters", transmitted to the Hague Conference by letter dated 31 October 1979;

Taking note of the benefits that have been derived, both for legal proceedings and for the information of litigants, from the creation of a model "Summary of the document to be served" by the *Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*;

Recognizing that it is highly desirable that such a form, capable of improvement, accompany any document of a judicial or extrajudicial nature in relation to a civil or commercial matter sent or served abroad in order to give the recipient a preliminary understanding of the nature and purpose of the document;

Being convinced that it is in the interests of good judicial administration that only one form of summary should be used, whether the service is effected through the channels of the Central Authorities created under the 1965 Convention or not;

Having taken into consideration that modification of the form of the "Summary of the document to be served" annexed to the 1965 Convention would require revision of that Convention, which it is not opportune to undertake;

I 1 Recommends Member States and States who are not Members but Parties to the 1965 Convention to take appropriate steps to ensure that any judicial or extrajudicial document in relation to a civil or commercial matter sent or served abroad – whether or not the service is effected through the channels of the Central Authorities created under the 1965 Convention – will always be accompanied by a summary in the form as annexed to the said Convention, the latter being supplemented by a warning, as set forth hereinafter;

2 Recommends these States to inform the Permanent Bureau from time to time where appropriate regarding any steps taken pursuant to the previous paragraph;

II 1 Expresses the Hope that all States and bodies and institutions whom it may concern, take appropriate steps to ensure that any judicial or extrajudicial document in relation to a civil or commercial matter sent or served abroad will always be accompanied by a warning and a summary of the document as set forth hereinafter;

2 Charges the Secretary General to make this Hope known, directly or where appropriate through competent international organizations, to all States, bodies and institutions whom it may concern.

* This document is reproduced in its original form. Thus, the terminology used in this document remains unchanged and has not been brought into line with the terminology used in the main part of this Handbook (General comments and practical operation of the Convention).

Identité et adresse du destinataire / *Identity and address of the addressee* / —:

TRÈS IMPORTANT

LE DOCUMENT CI-JOINT EST DE NATURE JURIDIQUE ET PEUT AFFECTER VOS DROITS ET OBLIGATIONS. LES "ÉLÉMENTS ESSENTIELS DE L'ACTE" VOUS DONNENT QUELQUES INFORMATIONS SUR SA NATURE ET SON OBJET. IL EST TOUTEFOIS INDISPENSABLE DE LIRE ATTENTIVEMENT LE TEXTE MÊME DU DOCUMENT. IL PEUT ÊTRE NÉCESSAIRE DE DEMANDER UN AVIS JURIDIQUE.

SI VOS RESSOURCES SONT INSUFFISANTES, RENSEIGNEZ-VOUS SUR LA POSSIBILITÉ D'OBTENIR L'ASSISTANCE JUDICIAIRE ET LA CONSULTATION JURIDIQUE SOIT DANS VOTRE PAYS SOIT DANS LE PAYS D'ORIGINE DU DOCUMENT.

LES DEMANDES DE RENSEIGNEMENTS SUR LES POSSIBILITÉS D'OBTENIR L'ASSISTANCE JUDICIAIRE OU LA CONSULTATION JURIDIQUE DANS LE PAYS D'ORIGINE DU DOCUMENT PEUVENT ÊTRE ADRESSÉES : …

IMPORTANT

THE ENCLOSED DOCUMENT IS OF A LEGAL NATURE AND MAY AFFECT YOUR RIGHTS AND OBLIGATIONS. THE 'SUMMARY OF THE DOCUMENT TO BE SERVED' WILL GIVE YOU SOME INFORMATION ABOUT ITS NATURE AND PURPOSE. YOU SHOULD HOWEVER READ THE DOCUMENT ITSELF CAREFULLY. IT MAY BE NECESSARY TO SEEK LEGAL ADVICE.

IF YOUR FINANCIAL RESOURCES ARE INSUFFICIENT YOU SHOULD SEEK INFORMATION ON THE POSSIBILITY OF OBTAINING LEGAL AID OR ADVICE EITHER IN THE COUNTRY WHERE YOU LIVE OR IN THE COUNTRY WHERE THE DOCUMENT WAS ISSUED.

ENQUIRIES ABOUT THE AVAILABILITY OF LEGAL AID OR ADVICE IN THE COUNTRY WHERE THE DOCUMENT WAS ISSUED MAY BE DIRECTED TO: …

Il est recommandé que les mentions imprimées dans cette note soient rédigées en langue française et en langue anglaise et le cas échéant, en outre, dans la langue ou une des langues officielles de l'Etat d'origine de l'acte. Les blancs pourraient être remplis soit dans la langue de l'Etat où le document doit être adressé, soit en langue française, soit en langue anglaise.

It is recommended that the standard terms in the notice be written in English and French and where appropriate also in the official language, or in one of the official languages of the State in which the document originated. The blanks could be completed either in the language of the State to which the document is to be sent, or in English or French.

ÉLÉMENTS ESSENTIELS DE L'ACTE / SUMMARY OF THE DOCUMENT TO BE SERVED / —

Nom et adresse de l'autorité requérante .....
Name and address of the requesting authority .....
--- .....

* Identité des parties.....
Particulars of the parties.....
--- .....

** ACTE JUDICIAIRE / *JUDICIAL DOCUMENT* / -----

Nature et objet de l'acte.....
Nature and purpose of the document.....
--- .....

Nature et objet de l'instance, le cas échéant, le montant du litige
Nature and purpose of the proceedings and, when appropriate, the amount in dispute
---
.....
.....
.....

** Date et lieu de la comparution .....
Date and Place for entering appearance.....
--- .....

** Juridiction qui a rendu la décision.....
Court which has given judgment .....
--- .....

** Date de la décision / *Date of judgment* / --- .....

** Indication des délais figurant dans l'acte .....
Time limits stated in the document.....
--- .....

** ACTE EXTRAJUDICIAIRE / *EXTRAJUDICIAL DOCUMENT* / -----

Nature et objet de l'acte.....
Nature and purpose of the document.....
--- .....

** Indication des délais figurant dans l'acte .....
Time-limits stated in the document.....
--- .....

---

* S'il y a lieu, identité et adresse de la personne intéressée à la transmission de l'acte
If appropriate, identity and address of the person interested in the transmission of the document
---

** Rayer les mentions inutiles / *Delete if inappropriate* / ---

Annex 4 – Instructions for filling out the notice established by the author of the Report on the Recommendation adopted by the Fourteenth Session, Mr Gustaf Möller (Finland)

a) **identity and address of the addressee [*]**

The *name* and *address* of the intended recipient should appear clearly on top of the warning.

In addition, where the document is not sent to or served upon the addressee in his private capacity, he should be informed that he is receiving it *e.g.*, in his capacity as director of a company, tutor, representative of an estate, trustee, receiver in bankruptcy, etc.

b) **enquiries about the availability of legal aid or advice in the country where the document was issued may be directed to …**

Here the *name*, *address* and where appropriate the *telephone number* should be given of the authority or organization in the country where legal action is to be taken which is most qualified to give the recipient full details on the availability of legal aid or advice (*e.g.*, court, legal aid bureau, law society).

c) **name and address of the requesting authority (where appropriate the words "or authority or person who caused the document to be issued" are to be added)**

Besides the *name* and *address,* it is also recommended to insert in the corresponding blank of this item the *telephone number* of the requesting authority or of the authority (or person) who caused the document to be issued, so that the recipient may in a speedy and informal way enquire there for further details.

In the event that further information is only available elsewhere, the name, address and telephone number of the authority or person concerned should be given in addition.

d) **particulars of the parties**

The corresponding blanks of this item should be completed with the names and addresses (perhaps sometimes also the *telephone numbers*) of the parties, *i.e*, the plaintiff and the respondent. Where an extrajudicial document is concerned, the name and address of the person interested in the transmission of the document should be stated. In the case of a judgment it will be the names of the person entitled to the judgment and the person against whom the judgment is given. If the addressee is one of the parties and the corresponding blank to the item "*identity and address of the addressee*" has been properly completed, it is of course unnecessary to complete this item with all the particulars of that party.

e) **judicial and extrajudicial documents**

The "SUMMARY OF THE DOCUMENT TO BE SERVED" distinguishes between a "JUDICIAL DOCUMENT" and an "EXTRAJUDICIAL DOCUMENT".

Any document relating to litigation, including summary proceedings or uncontested proceedings, *e.g.*, summons, judgment, order or application, is regarded as a judicial document. Any other legal document is to be classified as an extrajudicial document.

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* This document is reproduced in its original form. Thus, the terminology used in this document remains unchanged and has not been brought into line with the terminology used in the main part of this Handbook (General comments and practical operation of the Convention).

If the document to be sent or served is a judicial document, the capitals "EXTRAJUDICIAL DOCUMENT" should be deleted, and *vice versa*.

f) nature and purpose of the document

The nature and purpose of the document means the legal classification of the document, for example, writ of summons, judgment, order, etc. A brief summary of contents of the document (*e.g.*, claim or judgment for divorce, alimony or maintenance, or for damages) falls under the "purpose of the document". When the document relates to legal proceedings, the reference to the purpose of the document may be expressed very briefly since the nature and purpose of the proceedings will be described more in detail under the next item (g).

g) nature and purpose of the proceedings and where appropriate the amount in dispute

Under this item, which only relates to judicial documents, the remedy or relief sought by the claimant should be mentioned more in detail than under the preceding item. Thus, for instance, when a sum of money is claimed, the exact sum should be mentioned and, where appropriate, briefly the ground for the claim, *e.g.*, damages arising out of a traffic accident.

h) date and place for entering appearance

If inappropriate this item, which relates to judicial documents only, should be deleted.

If the recipient who is to take action on the document sent or served abroad is required to enter appearance before a court or an authority, the exact date and place for entering appearance should be mentioned under this item. In order to avoid any misunderstanding, the *month* should be written in *letters*. If possible it may moreover be appropriate to mention the possible qualifications which are required of a representative, *e.g.*, a lawyer authorised by the court concerned.

i) court which has given judgment and date of judgment

If inappropriate these items, which relate to judicial documents only, should be deleted.

These two items do not seem to present any problems which have to be dealt with in these instructions. In some cases it may, however, be appropriate to mention the *address* of the court, *e.g.*, when the judgment is a default judgment and the person against whom the judgment is given has the possibility to apply to that court for the re-opening of the judgment on the grounds of default.

j) time-limits stated in the document

If inappropriate this item, which may relate to both judicial and extrajudicial documents, should be deleted.

Any time-limit stated in the document for the institution of legal proceedings or review of a judgment or a decision, should be mentioned under this item.

Annex 5 – Explanatory Report on the Recommendation adopted by the Fourteenth Session drawn up by Mr Gustaf Möller

I. Introduction [*]

1 The Recommendation which is the subject of this Report may be seen as one of the fruits of co-operation between two international organizations, the Council of Europe[1] and the Hague Conference on private international law.[2]

2 It was in fact within the Council of Europe[3] that the idea was born of a *notice* which was to accompany any legal document sent or served abroad in civil or commercial matters. Such a notice, it was thought, would help the person (or body) for whom the document was intended first, to be aware of the legal nature of the document, second, to understand its contents and third, to know what action, if any, he might take in connection with it or what the consequences would be of his not taking action.

3 The Committee of Experts of the Council of Europe realized, however, that in a limited area such a notice existed already, this being within the framework of the transmission of legal documents through the system of Central Authorities set up under the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (hereinafter referred to as the "Service Abroad Convention"). This was why the Council of Europe decided to refer the subject to the Hague Conference and did so by letter of the Secretary General of the Council of Europe dated 31 October 1979, to which an extensive Report was attached. The larger geographical scope of the membership of the Hague Conference and of the Parties to the Service Abroad Convention could also be expected to enlarge the potential use and effectiveness of the notice.

4 A Special Commission of the Hague Conference met from 14-18 April 1980 to discuss the proposal of the Council of Europe. It adopted a draft Recommendation for the attention of the Fourteenth Session of the Hague Conference. The present author wrote the Report on the meeting of the Special Commission (Preliminary Document No 8 for the attention of the Fourteenth Session). After a final discussion on Monday 20 October 1980, the Fourteenth Session of the Hague Conference produced the final text of a "*Recommendation on information to accompany judicial and extrajudicial documents to be sent or served abroad in civil or commercial matters*". This Recommendation was prepared by its Commission II, of which Mr Christof Böhmer of the Federal Republic of Germany was Chairman and Mr Johannes Bangert of Denmark Vice-Chairman. The writer of this Report was Rapporteur. The text prepared by the Commission was adopted, after a minor improvement of the French text during the Plenary Session of 24 October 1980. On 25 October 1980 the delegates signed the Final Act of the Fourteenth Session, containing the Recommendation.

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* This document is reproduced in its original form. Thus, the terminology used in this document remains unchanged and has not been brought into line with the terminology used in the main part of this Handbook (General comments and practical operation of the Convention).

1 On 1 May 1981 the following States were Members of the Council of Europe: Austria, Belgium, Cyprus, Denmark, France, Federal Republic of Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey and United Kingdom. [For an updated list of the Member States of the Council of Europe, see < http://www.coe.int/ >].

2 On 1 May 1981 the following States were Members of the Hague Conference on private international law: Argentina, Australia, Austria, Belgium, Canada, Czechoslovakia, Denmark, Egypt, Finland, France, Federal Republic of Germany, Greece, Ireland, Israel, Italy, Japan, Luxembourg, Netherlands, Norway, Portugal, Spain, Suriname, Sweden, Switzerland, Turkey, United Kingdom, United States, Venezuela and Yugoslavia. [For an updated list of Member States, see the Hague Conference website].

3 In the Committee of Experts on Access to Justice (previously known as the Committee of Experts on Economic and Other Obstacles to Civil Proceedings, *inter alia*, Abroad). The Hague Conference on private international law participated in the work of this Committee as an observer.

5 The first object of this Report is to describe – in a concentrated way – the preparatory work and the final discussions which led to the adoption of the Recommendation. The reader who would like to make a more detailed study will, however, have to refer to the above-mentioned Report of the Special Commission's meeting and the *procès-verbaux* and documents to be published in the *Actes et documents* of the Fourteenth Session of the Hague Conference on private international law.

6 This Report offers, furthermore, short commentaries on the Recommendation. In order to assist persons and authorities filling out the notice, it was decided that the Rapporteur would also give certain examples and instructions. These instructions appear above, following the Recommendation. The commentaries and instructions are based upon the opinions prevailing during the Conference, and the Rapporteur has had the opportunity to have very valuable discussions about these matters with Mr J.H.A. van Loon, Secretary at the Permanent Bureau of the Conference. The Rapporteur has, however, to bear the full responsibility for the opinions expressed in this Report.

II. General Purpose of the Recommendation

7 The number of documents of a judicial or quasi-judicial nature in relation to a civil or commercial matter sent or served abroad has considerably increased and seems still to be increasing. The Hague Convention on civil procedure of 1954 and the Service Abroad Convention of 1965 provide for the service of such documents abroad.[4] Moreover, a large network of bilateral treaties provide, in various ways, for the service of documents, whether through judicial or administrative authorities, through consular or diplomatic channels or directly to the intended recipient.

8 Where service of a document is to be effected by a *central authority*, the recipient will usually be informed that this is a legal document and that it is a matter upon which he should take some action. Thus, as was already indicated above, the Service Abroad Convention includes a model form for an informative notice to be served on the addressee of a document transmitted abroad, in cases where service is effected within the framework of that Convention through the channels of the Central Authority created under the Convention. Most conventions, whether multilateral or bilateral, on service of documents abroad in civil or commercial matters, including the Service Abroad Convention, however, allow documents to be served in some *other* way. A method frequently used as an alternative is transmission through the *postal* services.

9 When service is effected through a central or judicial authority, the State where the service is to be effected may require a *translation* of the document if it is not written in the language of that State. Such a requirement may not be effectively imposed where service is made through the post.

10 The problem for the recipient in cases where service is not effected through a central authority is to understand the nature of the document he receives and what it requires him to do, so that he may either consult a lawyer or legal adviser, or take action on his own.

11 For the reasons given above, the Fourteenth Session shared the opinion of the Council of Europe that it was highly desirable that *any* legal document in relation to a civil or commercial matter sent or served abroad be accompanied by a notice containing certain information which would help the recipient in understanding the nature and purpose of the document.

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4 On the American continent the Inter-American Convention on Letters Rogatory signed in Panama on January 30, 1975 and its Additional Protocol signed in Montevideo on May 8, 1979 deal with these matters. [For an overview of the Inter-American Convention and other international instruments in this field, as well as their relationship with the Hague Service Convention, see para. **Error! Reference source not found.**].

III. Contents of the Recommendation

12 As mentioned before, the Service Abroad Convention[5] includes a model form for an informative notice ("*Summary of the document to be served*") to be served on the addressee of a document transmitted within the framework of that Convention through the system of Central Authorities (see also Articles 2 to 6 of the Convention, in particular Article 5, last paragraph). The Fourteenth Session took note of the benefits that had been derived both for legal proceedings and for the information of litigants from that form and recognized that it was desirable that such a form, though capable of improvement, accompany any document of a judicial or extrajudicial nature sent or served abroad, in order to give the recipient a preliminary understanding of the nature and the purpose of the document.

13 Further, the question was taken up as to whether the recommended use of the Summary should be extended to cover matters which were not civil or commercial, such as administrative, social and fiscal matters. A proposal to that end was, however, rejected. The main reason for this rejection was the fear that the Recommendation would have too broad an application if it were not limited to civil or commercial matters. In particular, a large number of extrajudicial documents would be covered by the Recommendation if it were to include administrative, social and fiscal matters.

On the other hand it was suggested that a provision be added to I (1) and to II (1) of the Recommendation to exclude the service of documents on nationals in a foreign country by adding the following wording: "unless the document is to be served upon a national of the State in which the document originates through diplomatic or consular channels". This proposal was however withdrawn, since it was found evident that it would not be necessary to apply the Recommendation in such cases.

14 It was unanimously agreed that it was in the interest of good judicial administration that only one form should be used, whether the service be made through the channels of Central Authorities under the Service Abroad Convention or not.

15 A modification of the form of the "Summary of the document" annexed to the Service Abroad Convention would, however, require a revision of that Convention. It was thought that such a revision was neither opportune to undertake nor necessary in order to improve its usefulness. Instead, the Fourteenth Session decided to recommend that the Member States of the Conference and other States party to the 1965 Convention take appropriate steps to ensure that any judicial or extrajudicial document in relation to a civil or commercial matter sent or served abroad – whether or not the service was effected through the channels of Central Authorities created under the Service Abroad Convention – would always be accompanied by a summary in the form as annexed to the said Convention, the latter being *supplemented* in the ways indicated under Nos 16-19, below.

16 a Following one of the suggestions made by the Council of Europe, the notice given to the recipient should state clearly the *identity* and *address* of the *intended recipient*. This will make it easier for the recipient of the document to know whether or not this document was intended for him personally or in some specific capacity, as this may not be clear from the document itself.

This may be of great importance. For example, the substantive laws of different States as to legal entities are very different, and the existing divergences may be of considerable importance in relation to any proceedings.

[5 For an updated list of the States Parties to this Convention, see the Hague Conference website.]

The recipient should therefore be enabled to know, at the earliest possible stage, in what capacity he is being required to take some steps or in what capacity a judgment has been given against him.

It was realized that this item might correspond to "particulars of the parties" on the Service Abroad Convention's Summary. It was thought, however, that this was not sufficient and that an *explicit* entry at the top of the warning would be useful. Moreover, the recipient might sometimes not be a party but, for instance, a witness.

17 b The Summary of the Service Abroad Convention neither contains an explicit warning that the document is a legal document which may affect the recipient's rights or obligations, nor a suggestion that he may need legal advice. According to the principles set out in the aforesaid document prepared by the Council of Europe, such a warning should accompany any judicial or extrajudicial document sent or served abroad in civil or commercial matters. The Fourteenth Session agreed that such a warning, coupled with the suggestion that legal advice may be needed, should be added to the Summary. In addition, the recipient is advised that the "Summary of the document to be served" will give him some information about the nature and purpose of the document, but it was found necessary to stress in the warning that the recipient should *read the document itself carefully*, since it is possible that all the facts of importance for him are not included in the Summary.

18 c Since the recipient may be a person in an economically weak position, it was found necessary to remind the recipient of the possibility of obtaining the benefit of *legal aid* or *advice*, above all *in the country where the document was issued*.

It may very often be difficult for the recipient to find out by himself where he can get information on the availability of legal aid or advice in the country where the document was issued. Therefore it was deemed appropriate that the possibility of giving the recipient information, identifying the authority or person to whom enquiries about the availability of legal aid or advice may be directed in the country where the document was issued, should be explicitly mentioned in the warning, in a separate paragraph.

19 d It was further agreed to recommend the use of *both* English and French for the standard terms in the notice (warning and summary). It was understood, however, that these terms might also be written in the official language, or in one of the official languages of the State in which the document originated. (The notice leaves space open for this purpose.)[6]

As to the corresponding blanks, it was decided that these should be completed either in the language of the State to which the document is to be sent, or in English or French.[7]

20 The question as to whether the notice should contain any further information on action to take on the document – besides information on the date and place for entering appearance – and on consequences to the recipient of his not taking action was raised.

It was thought, however, a) that in many cases it is almost impossible to mention all the possible, or even the immediate, consequences of not taking action; b) that an attempt to further identify legal consequences for the recipient tends to bring on the possibility of legal liability for the author of the form and c) that in any case the notice was to have a very general application. The notice

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6 According to Article 7(1) of the Service Abroad Convention, the standard terms in the model annexed to the Convention shall in all cases be written *either* in French *or* in English. They may also be written in the official language, or one of the official languages, of the State from which the document originates. To the extent, therefore, that the Recommendation requires the use of both French and English for the standard terms, it goes farther than the Convention.

7 This is in conformity with Art. 7(2) of the Service Abroad Convention.

should not replace, but rather supplement the more specific informative notices for certain types of writs and notices prescribed by some national systems of procedural law.

21 Furthermore the Fourteenth Session decided to recommend that Member States, as well as States party to the Service Abroad Convention, inform the Permanent Bureau from time to time, where appropriate, regarding any steps taken pursuant to the Recommendation. The aim of that provision was to provide one centre where information would be available if needed.

22 The Fourteenth Session also decided to extend the Recommendation in the form of a "Hope" to States who are neither Members of the Conference nor Parties to the Service Abroad Convention, and to bodies and institutions whom it may concern (international courts or bodies performing judicial tasks, etc.).

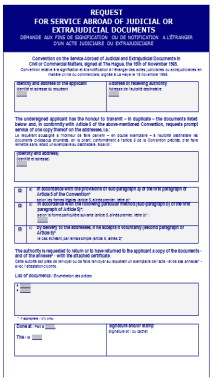
Annex 6 – Guidelines for completing the Model Form

GUIDELINES FOR COMPLETING THE MODEL FORM

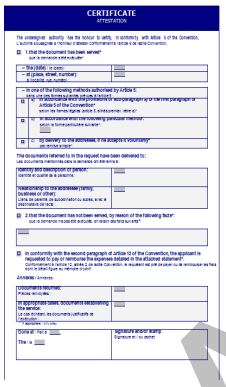
These guidelines will help you complete the Model Form annexed to the *Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*.

The Model Form is comprised of three (3) parts:

Part 1 – Request

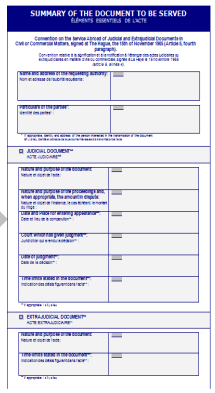

REQUEST
FOR SERVICE ABROAD OF JUDICIAL OR EXTRAJUDICIAL DOCUMENTS

Part 2 – Certificate


CERTIFICATE

Part 3 – Summary + Warning


WARNING


SUMMARY OF THE DOCUMENT TO BE SERVED

Which parts to complete?

If you are using the *main channel of transmission*…	If you are using an *alternative channel of transmission*…
↓	↓
The use of the Model Form is *mandatory*.	The use of the Model Form is *recommended* (but not mandatory).
Complete Part 1 (**Request**) and Part 3 (**Summary + Warning**). The use of the **Warning** is recommended (but not mandatory)	Complete Part 3 *only* (**Summary + Warning**).
Do *not* complete Part 2, which will be completed later by the Central Authority or other competent authority in the requested State.	Do *not* complete Part 1 and Part 2.

Choosing a bilingual or trilingual Model Form: The Permanent Bureau has developed several bilingual and trilingual fillable forms in both Word and PDF formats, which can be easily completed and saved (available on the Service Section of the Hague Conference website (www.hcch.net)). Check if there is a bilingual or trilingual form that would suit your needs. In the

absence of a trilingual form in the desired language, use the bilingual forms (English/French or French/English).

Filling out the fields: Complete the Model Form electronically using a word processor. Use plain, understandable language and avoid unnecessary legal or technical language. Do not change or rearrange the items in the Model Form. Write out dates in full (*e.g.*, 1 January 2014). If a particular item does not apply, insert "not applicable" or "n/a" or otherwise indicate that this item is not applicable. The **notes** accompanying this form provide further information on filling out each field.

Language: The fields in the Model Form must be filled out in English, French, or (one of) the official language(s) of the requested State (Art. 7(2)).

Copies: Part 1 of the Model Form (Request for service) and the document to be served must be furnished in *duplicate* (Art. 3(2)), except if service is made in electronic form.

No legalisation: The Request does not need to be legalised (or apostillised) (Art. 3(1)). This exemption also applies to the documents to be served.

Translation of the documents to be served: The requested State may require that the *documents to be served* be translated into (one of) its official language(s) (Art. 5(3)). To find out the requirements of the requested State, check the practical information chart for that State or contact the Central Authority of that State.

Costs: Although services rendered by the Central Authority are free of charge, you may be required to reimburse the costs occasioned by the employment of a judicial officer or other competent person to effect service, or for the use of a particular method of service requested by you (Art. 12(2)). To find out whether service in the requested State gives rise to these costs, and whether the requested State requires reimbursement of them, check the practical information chart for that State.

Terminology: In this Form:

Applicant means the forwarding authority (see below).

Central Authority means the authority designated by a Contracting State to receive requests for service from the requesting State and to execute them or cause them to be executed.

C&R of the SC refers to the Conclusions & Recommendations of the Special Commission.

Convention means the *Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial*

Documents in Civil or Commercial Matters, the full text of which is available on the Service Section of the Hague Conference website.

Forwarding authority means the authority or judicial officer competent under the law of the requesting State to forward requests for service to the Central Authority of the requested State.

Hague Conference on Private International Law (or *Hague Conference*) means the intergovernmental organisation under whose auspices the Convention was negotiated and adopted.

Model Form means the form annexed to the Service Convention.

Practical information chart means the chart for a given Contracting State, which is available on the Service Section of the Hague Conference website under "Central and other Authorities".

Requested State means the State to which the request for service is addressed.

Requesting authority means the forwarding authority (see above).

Requesting State means the State from which the request for service is issued.

Further information: For further information on serving documents abroad under the Convention, visit the Service Section of Hague Conference website, at < www.hcch.net >.

REQUEST
FOR SERVICE ABROAD OF JUDICIAL OR
EXTRAJUDICIAL DOCUMENTS

DEMANDE aux fins de signification ou de notification à l'Étranger
d'un acte judiciaire ou extrajudiciaire

Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, signed at The Hague, the 15th of November 1965.

Convention relative à la signification et à la notification à l'étranger des actes judiciaires ou extrajudiciaires en matière civile ou commerciale, signée à La Haye le 15 novembre 1965.

Identity and address of the applicant Identité et adresse du requérant 1. Insert the full name, complete postal address, telephone, fax number and email address of the applicant	**Address of receiving authority** Adresse de l'autorité destinataire 2. Insert the complete postal address of the Central Authority of the requested State

The undersigned applicant has the honour to transmit – in duplicate – the documents listed below and, in conformity with Article 5 of the above-mentioned Convention, requests prompt service of one copy thereof on the addressee, *i.e*:
Le requérant soussigné a l'honneur de faire parvenir – en double exemplaire – à l'autorité destinataire les documents ci-dessous énumérés, en la priant, conformément à l'article 5 de la Convention précitée, d'en faire remettre sans retard un exemplaire au destinataire, à savoir :

(identity and address) (identité et adresse) 3. Insert the full name and complete contact details of the addressee (the recipient or person to be served with the document) and description of his/her capacity

☐	a) **in accordance with the provisions of sub-paragraph a) of the first paragraph of Article 5 of the Convention*** selon les formes légales (article 5, alinéa premier, lettre a)*
☐	b) **in accordance with the following particular method (sub-paragraph b) of the first paragraph of Article 5)*:** selon la forme particulière suivante (article 5, alinéa premier, lettre b)* :
☐	c) **by delivery to the addressee, if he accepts it voluntarily (second paragraph of Article 5)*** le cas échéant, par remise simple (article 5, alinéa 2)*

The authority is requested to return or to have returned to the applicant a copy of the documents – and of the annexes* – with the attached certificate.
Cette autorité est priée de renvoyer ou de faire renvoyer au requérant un exemplaire de l'acte – et de ses annexes* – avec l'attestation ci-jointe.

List of documents */ Énumération des pièces*

List all the documents attached to the Request (e.g., summons, translations, decision, complaint, etc.)

CERTIFICATE
ATTESTATION

The undersigned authority has the honour to certify, in conformity with Article 6 of the Convention,
L'autorité soussignée a l'honneur d'attester conformément à l'article 6 de ladite Convention,

☐ 1. that the document has been served* que la demande a été exécutée*

the (date) / le (date):	1. Insert the date when the document was served
at (place, street, number): à (localité, rue, numéro) :	2. Insert the place, street and number where the document was served

in one of the following methods authorised by Article 5: dans une des formes suivantes prévues à l'article 5 :	
☐	a) in accordance with the provisions of sub-paragraph a) of the first paragraph of Article 5 of the Convention* selon les formes légales (article 5, alinéa premier, lettre a)*
☐	b) in accordance with the following particular method*: selon la forme particulière suivante* :
☐	c) by delivery to the addressee, if he accepts it voluntarily* par remise simple*

The documents referred to in the request have been delivered to:
Les documents mentionnés dans la demande ont été remis à :

Identity and description of person: Identité et qualité de la personne :	3. Insert the identity and description of the person who received the documents
Relationship to the addressee (family, business or other): Liens de parenté, de subordination ou autres, avec le destinataire de l'acte :	4. Insert the relationship to the addressee of the person who received the documents

☐ 2. that the document has not been served, by reason of the following facts*:
que la demande n'a pas été exécutée, en raison des faits suivants*:

5. Insert facts/reasons why the document has not been served

☐ In conformity with the second paragraph of Article 12 of the Convention, the applicant is requested to pay or reimburse the expenses detailed in the attached statement*. Conformément à l'article 12, alinéa 2, de ladite Convention, le requérant est prié de payer ou de rembourser les frais dont le détail figure au mémoire ci-joint*.

Annexes / Annexes

Documents returned: Pièces renvoyées :	Insert a list of the documents that are being returned
In appropriate cases, documents establishing the service: Le cas échéant, les documents justificatifs de l'exécution :	Insert a list of the documents that establish that service has been effected

* if appropriate / s'il y a lieu

Done at / Fait à Insert the location where you signed the Certificate, the / le Insert the date on which you signed the Request (spelt out in full)	Signature and/or stamp Signature et / ou cachet

WARNING
AVERTISSEMENT

Identity and address of the addressee
Identité et adresse du destinataire
1. Insert the name and address of intended recipient (and capacity, if not served in private capacity)

IMPORTANT

THE ENCLOSED DOCUMENT IS OF A LEGAL NATURE AND MAY AFFECT YOUR RIGHTS AND OBLIGATIONS. THE 'SUMMARY OF THE DOCUMENT TO BE SERVED' WILL GIVE YOU SOME INFORMATION ABOUT ITS NATURE AND PURPOSE. YOU SHOULD HOWEVER READ THE DOCUMENT ITSELF CAREFULLY. IT MAY BE NECESSARY TO SEEK LEGAL ADVICE.

IF YOUR FINANCIAL RESOURCES ARE INSUFFICIENT YOU SHOULD SEEK INFORMATION ON THE POSSIBILITY OF OBTAINING LEGAL AID OR ADVICE EITHER IN THE COUNTRY WHERE YOU LIVE OR IN THE COUNTRY WHERE THE DOCUMENT WAS ISSUED.

ENQUIRIES ABOUT THE AVAILABILITY OF LEGAL AID OR ADVICE IN THE COUNTRY WHERE THE DOCUMENT WAS ISSUED MAY BE DIRECTED TO:

TRÈS IMPORTANT

LE DOCUMENT CI-JOINT EST DE NATURE JURIDIQUE ET PEUT AFFECTER VOS DROITS ET OBLIGATIONS. LES «ÉLÉMENTS ESSENTIELS DE L'ACTE » VOUS DONNENT QUELQUES INFORMATIONS SUR SA NATURE ET SON OBJET. IL EST TOUTEFOIS INDISPENSABLE DE LIRE ATTENTIVEMENT LE TEXTE MÊME DU DOCUMENT. IL PEUT ÊTRE NÉCESSAIRE DE DEMANDER UN AVIS JURIDIQUE.

SI VOS RESSOURCES SONT INSUFFISANTES, RENSEIGNEZ-VOUS SUR LA POSSIBILITÉ D'OBTENIR L'ASSISTANCE JUDICIAIRE ET LA CONSULTATION JURIDIQUE, SOIT DANS VOTRE PAYS, SOIT DANS LE PAYS D'ORIGINE DU DOCUMENT.

LES DEMANDES DE RENSEIGNEMENTS SUR LES POSSIBILITÉS D'OBTENIR L'ASSISTANCE JUDICIAIRE OU LA CONSULTATION JURIDIQUE DANS LE PAYS D'ORIGINE DU DOCUMENT PEUVENT ÊTRE ADRESSÉES À :

2. Insert the name, address, telephone number and e-mail address of the authority or organisation in your State that is most qualified to give recipient full details on the availability of legal aid or advice

It is recommended that the standard terms in the notice be written in English and French and where appropriate also in the official language, or in one of the official languages of the State in which the document originated. The blanks could be completed either in the language of the State to which the document is to be sent, or in English or French.

Il est recommandé que les mentions imprimées dans cette note soient rédigées en langue française et en langue anglaise et le cas échéant, en outre, dans la langue ou l'une des langues officielles de l'État d'origine de l'acte. Les blancs pourraient être remplis, soit dans la langue de l'État où le document doit être adressé, soit en langue française, soit en langue anglaise.

SUMMARY OF THE DOCUMENT TO BE SERVED
ÉLÉMENTS ESSENTIELS DE L'ACTE

Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, signed at The Hague, the 15th of November 1965 (Article 5, fourth paragraph).
Convention relative à la signification et à la notification à l'étranger des actes judiciaires ou extrajudiciaires en matière civile ou commerciale, signée à La Haye le 15 novembre 1965 (article 5, alinéa 4).

Name and address of the requesting authority: Nom et adresse de l'autorité requérante :	3. Insert the name, address, telephone number and e-mail address of the forwarding authority

Particulars of the parties*: Identité des parties* :	4. Insert the name, address, telephone number and e-mail address of each party (e.g., plaintiff and respondent/defendant)

* If appropriate, identity and address of the person interested in the transmission of the document
S'il y a lieu, identité et adresse de la personne intéressée à la transmission de l'acte

☐ JUDICIAL DOCUMENT** ACTE JUDICIAIRE**

Nature and purpose of the document: Nature et objet de l'acte :	5. Describe the nature and purpose of the document
Nature and purpose of the proceedings and, when appropriate, the amount in dispute: Nature et objet de l'instance, le cas échéant, le montant du litige :	6. Describe the nature and purpose of the proceedings and, when appropriate, the amount in dispute
Date and place for entering appearance**: Date et lieu de la comparution** :	7. Insert the date and place for entering appearance
Court which has given judgment**: Juridiction qui a rendu la décision** :	8. Insert the name of the court which has given judgment
Date of judgment**: Date de la décision** :	9. Insert the date
Time-limits stated in the document**: Indication des délais figurant dans l'acte** :	10. Specify limits

** if appropriate / s'il y a lieu

☐ EXTRAJUDICIAL DOCUMENT**
ACTE EXTRAJUDICIAIRE**

Nature and purpose of the document: Nature et objet de l'acte :	11. Describe the nature and purpose of the document
Time-limits stated in the document**: Indication des délais figurant dans l'acte** :	12. Specify limits

** if appropriate / s'il y a lieu

NOTES ON THE MODEL FORM

Note 1: The blanks of the Model Form must be filled out in English or in French or in the language of the requested State.

Note 2: Where service is to be effected on multiple persons, a separate request for service may need to be issued for each person. If in doubt, contact the Central Authority of the requested State to check whether separate Requests for Service are needed.

NOTES ON PART 1 – REQUEST

Item 1: The name of the plaintiff, or of the counsel representing the plaintiff (when different from the forwarding authority), should not be included in this box. A current list of forwarding authorities is available on the Service Section.

Item 2: A comprehensive and updated list of contact details of Central Authorities is available on the Service Section.

Item 3: Fill out this field carefully. The Convention does not apply if the address of the person to be served with the document is not known (Art. 1(2)). Where available, insert the addressee's date of birth (C&R No 30 of the 2009 SC). For Requests addressed to Contracting States that use a writing system other than the Latin alphabet, it might also be helpful to include the name and address of the recipient in (one of) the official language(s) of that State.

Option a): Select this option (by checking the corresponding box) if you would like the documents to be served by a method prescribed by the internal law of the requested State (formal service) and chosen by that State. The most common methods of service are personal service or service by post. Costs may be incurred if a judicial officer or a person competent under the law of the State of destination is employed to effect service (Art. 12(2)(a)).

Option b): Select this option (by checking the corresponding box) if you would like the documents to be served by a particular method. Describe the specific method requested in the field. Note that costs may be incurred when a particular method is chosen (Art. 12(2)(b)).

Option c): Select this option (by checking the corresponding box) if you would like the documents to be served by delivery to an addressee who accepts it voluntarily (informal delivery). The available methods of effecting informal delivery vary among Contracting States and may include postal service, personal service in court in response to summons to attend for service, or service by procedural agents or police.

NOTES ON PART 2 – CERTIFICATE

Note 1: The Certificate is to be completed by the Central Authority or other competent authority of the requested State (Art. 6). As such, the forwarding authority should leave the Certificate blank.

Note 2: Properly completed Certificates should be returned to the forwarding authority (C&R No 26 of the 2014 SC).

The Certificate contemplates two main options depending on whether or not the documents have been served:

> Option 1: Select this option (by checking the corresponding box) if the documents have been served and proceed to answer items 1-4.
>
> Option 2: Select this option (by checking the corresponding box) if the documents have not been served and proceed to answer item 5. Do not complete items 1-4.

Item 1: The date of service is important to both plaintiff and defendant. Write out the date in full.

Item 2: The place where service has occurred should be indicated here. If your State uses a writing system other than the Latin alphabet, it might also be helpful to include the address in the Latin alphabet if this is used in the requesting State.

> Option a): Select this option (by checking the corresponding box) if the documents have been served by a method prescribed by the internal law of your State (formal service). Specify the provisions in the law of your State under which service was effected or include them by way of an attachment (C&R No 30 of the 2009 SC).
>
> Option b): Select this option (by checking the corresponding box) if the documents have been served by a particular method requested by the forwarding authority. If necessary, describe the specific method requested in this field.
>
> Option c): Select this option (by checking the corresponding box) if the documents have been served by delivery to an addressee who accepts them voluntarily (informal delivery).

Item 5: The facts/reasons why service failed are of great importance, because they will determine the course of action that the plaintiff/court will take. Where the defendant cannot be physically located, some States proceed to effect substituted service (*e.g.*, service by publication or by electronic means). Indicate in this field if the address of the defendant was no longer valid, fictitious or incorrect, or if the defendant could not otherwise be found. If informal delivery was attempted, specify if service failed because the defendant did not accept the documents voluntarily.

Item on costs: The requested State may require the forwarding authority to pay the costs associated with effecting service whether or not the document has been served in accordance with Article 12(2) of the Convention. Select this option if any costs need to be reimbursed and attach a statement with a breakdown of such costs if need be.

NOTES ON PART 3 – SUMMARY + WARNING

For the Warning

Item 1: When the document is not sent to or served upon the addressee in his or her private capacity, the addressee should be informed that he or she is receiving it in an alternative

capacity (*e.g.*, as director of a company, tutor, representative of an estate, trustee, receiver in bankruptcy, etc.).

Item 2: Examples of authorities or organisations that may be qualified to give details on the availability of legal aid or advice include the court seised, legal aid bureau, or law society.

For the Summary

Note: The Summary distinguishes between judicial documents and extrajudicial documents. Any document relating to litigation, including summary proceedings or uncontested proceedings, *e.g.*, summons, judgment, order or application, is regarded as a judicial document. Any other legal document is to be classified as an extrajudicial document.

Item 3: If you are using an alternative channel of transmission, insert the name, address, telephone number and e-mail address of the authority or person who caused the document to be issued.

Item 4: Where an extrajudicial document is concerned, the name and address of the person interested in the transmission of the document should be indicated. In the case of a judgment, the names of the person/party entitled to the judgment, and the person/party against whom the judgment is rendered, should be entered.

For requests to serve judicial documents

Item 5: The nature and purpose of the document refers to the legal classification of the document, for example, writ of summons, judgment, order, etc. A brief summary of the contents of the document (*e.g.*, claim or judgment for divorce, alimony or maintenance, or for damages) falls under the "purpose of the document". When the document relates to legal proceedings, the reference to the purpose of the document may be expressed very briefly, since the nature and purpose of the proceedings will be described more in detail under item 6.

Item 6: Under this item, the remedy or relief sought by the claimant should be mentioned more in detail than under the preceding item. Thus, for instance, when a sum of money is claimed, the exact sum should be mentioned as well as, where appropriate, a brief description of the grounds for the claim.

Item 7: If the recipient who is to take action on the document sent or served abroad is required to enter an appearance before a court or an authority, the exact date and place for entering the appearance should be mentioned under this item. If possible, it may be appropriate to mention the qualifications which are required for representation (*e.g.*, a lawyer authorised by the court concerned). If there is no need for the recipient to enter appearance, insert "not applicable" or "n/a" or otherwise indicate that this item is not applicable.

Items 8 and 9: In some cases it may be appropriate to mention the address of the court, *e.g.*, when the judgment is a default judgment and the person against whom the judgment was entered has the possibility to apply to that court for the re-opening of the judgment on the grounds of default. If no judgment has been rendered, insert "not applicable" or "n/a" or otherwise indicate that this item is not applicable.

Item 10: Any time-limit stated in the document for the institution of legal proceedings, or review of a judgment or a decision, should be mentioned under this item. If there are no time-limits in the document, insert "not applicable" or "n/a" or otherwise indicate that this item is not applicable.

For requests to serve extrajudicial documents

Item 11: The nature and purpose of the document refers to the legal classification of the document.

Item 12: If there are no time-limits in the document, insert “not applicable” or “n/a”, or otherwise indicate that this item is not applicable.

Annex 7 – Checklist for preparing a Request for service

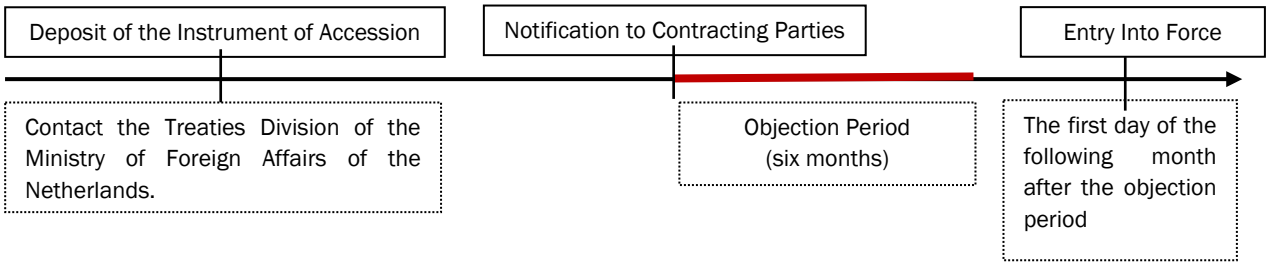
Model Form Checklist

To ensure that the Request for service is completed correctly, please **ensure** that:

- ☐ All relevant fields of the Model form are filled out in English, French, or the language of the requested State. Part 1 ('Request') and Part 3 ('Summary & Warning') should both be completed if using a main channel of transmission. If using an alternative channel of transmission, complete Part 3.
- ☐ Contact details of the forwarding authority have been provided (including telephone number, fax number, and e-mail address).
- ☐ Contact details of the receiving authority (Central Authority of the requested State) have been provided
- ☐ Complete contact details of the addressee have been provided.
- ☐ The method of service has been selected in the appropriate box on the Model Form.
- ☐ The Request is duly stamped and/or signed.
- ☐ Documents that will be served are listed and enclosed.
- ☐ Duplicates of the Request and documents that will be served are enclosed (unless the Request is submitted electronically).
- ☐ A translation (where required) of the documents to be served is provided.
- ☐ Payment (where required) for the service of the documents is enclosed.

Annex 8 – Joining the Convention

Procedure for joining the Convention:



Step One: Deposit of the Instrument of Accession

All new Contracting Parties must join the 1965 Service Convention by accession. To join by accession, a State must deposit its instrument of accession with the depositary. In the case of the 1965 Service Convention (and all other HCCH Conventions), the depositary is the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

To deposit its instrument of accession, a representative of the acceding State, for example a staff member of the Embassy of the acceding State, should contact the Treaties Division of the Ministry of Foreign Affairs of the Kingdom of the Netherlands. For full contact details, please see "Depositary" in the Glossary.

The instrument of accession shall be drawn up in English or French or should be accompanied by a translation into one of these languages. The instrument must be signed by the Head of State, Head of Government, or the Minister of Foreign Affairs of the acceding State.

States may contact the Permanent Bureau for a model instrument of accession.

Each Contracting Party shall, at the time of the deposit of its instrument of accession, or at a later date, inform the Ministry of Foreign Affairs of the Netherlands of the following:

a) the designation of authorities, pursuant to Articles 2 and 18;
b) the designation of the authority competent to complete the certificate pursuant to Article 6;
c) the designation of the authority competent to receive documents transmitted by consular channels, pursuant to Article 9.

Each acceding State shall similarly inform the depositary, where appropriate, of:

a) opposition to the use of methods of transmission pursuant to Articles 8 and 10;
b) declarations pursuant to the Article 15(2) and Article 16(3), and
c) all modifications of the above designations, oppositions and declarations.

The depositary encourages States to deposit their instrument of accession, where possible, in person. This is commonly done as part of a ceremony organised by the depositary at the Ministry of Foreign Affairs in The Hague. If depositing the instrument in person is not possible or not preferred by the acceding State, the instrument can be submitted to the depositary by post or courier.

Upon deposit of the instrument of accession, the depositary will provide a formal acknowledgement of receipt in the form of a *Procès-Verbal* (for instruments deposited in person) or a diplomatic note (for instruments deposited by post or courier).

Note: It is highly recommended that acceding States designate authorities at the time of accession. Without such designations, an instrument of accession will still be processed by the depositary, but the Convention will not operate in practice.

Step Two: Notification to Contracting Parties

The depositary will notify all other Contracting Parties of the new accession by means of a depositary notification in French and English, published on and distributed via the Treaty Database of the Kingdom of the Netherlands (https://verdragenbank.overheid.nl/en/Treaty/Details/004235_dn.html). The depositary notification will include: (i) the date on which the six-month objection period ends; and (ii) the date on which the Convention will enter into force for the acceding State, in the absence of any objection (please see "Step Three" below). The notification may also contain the designation of the Central Authority and other authorities under Articles 2, 6, 9 and 18 of the Convention, as well as any oppositions, declarations or extensions made by the acceding State.

Step Three: Entry into Force

If an existing Contracting Party that has *ratified* the Convention wishes to object to the new accession, this must be communicated to the depositary within the six-month period after the date on which the depositary has notified of such an accession. A Contracting Party that has *ratified* the Convention which wishes to object is not required to provide any reasons for their objection, but any objection raised outside the six-month period will have no effect.

The depositary will notify all Contracting Parties of any objections received to the new accession. In the event of an objection, the 1965 Service Convention shall not enter into force for the acceding State. In the absence of any objection, the Convention will then enter into force for the acceding State on the first day of the month following the expiration of the six-month objection period. At the time of the publication of this fifth Handbook, no objection has ever been raised to an accession to the 1965 Service Convention.

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