6 The Evidence WG was provided with (i) the current version of the Evidence Handbook, reflecting comments and suggestions received from Contracting Parties;[7] (ii) three tables of comments;[8] and (iii) the previous consultation version of the Evidence Handbook.[9]

7 The agenda of the Evidence WG meeting (Annex III) covered different topics including the delay for the execution of Letters of Request, use of the Model Form and electronic signatures, direct and indirect taking of evidence by video-link under Chapters I and II of the Evidence Convention, costs, and the terminology used in the revised draft Evidence Handbook. As in the meeting of the Service WG, delegates briefly addressed some of their comments and suggestions in relation to the use of IT in the operation of the Evidence Convention.

8 The Service and Evidence WGs addressed all topics listed in both agendas. The PB is very grateful to all delegations for the time devoted to, and their engagement in, these meetings.

II. Next steps

9 The PB took note of all the discussions, including different and new proposals made by delegations for improving the current text of the Service and Evidence Handbooks. These suggestions are being treated by the PB and will be incorporated into the next draft of the Handbooks.

10 Both the Service and the Evidence WGs agreed that some matters warrant a broad and further discussion at the SC. The WGs will reconvene following the meeting of the SC to ensure that further updates, including relevant Conclusions and Recommendations (C&R), are also incorporated into the final revised Service and Evidence Handbooks.

III. Proposal for the SC

11 The SC is invited to note the report on the WGs established to review and refine the Service and the Evidence Handbooks.

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7 "Revised Draft of the Practical Handbook on the Operation of the Evidence Convention", Prel. Doc. No 8 of May 2024, available on the HCCH website (see path indicated in note 3).

8 All comments and feedback received on the revised draft Evidence Handbook (Prel. Doc. No 8 of May 2024) will be available on the Secure Portal of the HCCH website at www.hcch.net. The comments and suggestions from Contracting Parties to the Evidence Convention that informed the agenda of the Evidence WG are available in Annex IV of this current document.

9 For the complete process of consultation, see Prel. Doc. No 8 of May 2024 (*op. cit.* note 3).

Annexes

Annex I: Agenda of the WG meeting on the Service Practical Handbook

Working Group on the Service Practical Handbook and Country Profile

Meeting of 17 May 2024

DRAFT AGENDA

At its 2024 meeting, the Council on General Affairs and Policy (CGAP) approved the establishment of a Working Group (WG) consisting of representatives from a variety of geographical regions to review and refine updates to the Practical Handbook and Country Profile relevant to the *Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* (Service Convention) (C&D No 47 of CGAP 2024). The WG will meet online for the first time on Friday 17 May to discuss the Revised Draft Service Practical Handbook (Service Handbook) and then on Tuesday 28 May to discuss the Country Profile.

The session on Friday 17 May begins at 1.00 p.m. (CEST) and ends at 5.00 p.m., with a tea break from 2.00 to 2.15 p.m.

The WG has been provided with:

(i) the current version of the Service Handbook, reflecting comments and suggestions made by Contracting Parties;

(ii) three tables of comments; and

(iii) the previous consultation version of the Service Handbook.

The key documents that will be used during the meeting are the Agenda, Table 1, and the current version of the Service Handbook.

The WG will report on this meeting and on any recommendations for the Service Handbook at the July 2024 meeting of the Special Commission (SC) on the Practical Operation of the 1965 Service, 1970 Evidence and 1980 Access to Justice Conventions. Following the meeting of the SC, the WG will reconvene online to discuss further updates needed to the Service Handbook. It is anticipated that this second meeting of the WG could be scheduled in late August / early September 2024.

Delegations may have other issues which they wish to address and, as such, this agenda will be treated with a degree of flexibility and may be modified in accordance with the requirements of the discussion.

Delegations may submit Working Documents (WD) on the text of the Handbook for discussion during the meeting if required. However, it is recommended that WDs be submitted in advance of the meeting, so that these may be circulated to the WG in advance of the meeting.

Friday 17 May 2024			
Time			Item
The Hague	Buenos Aires	Hong Kong	
1.00 p.m.	8.00 a.m.	7.00 p.m.	Opening remarks, introduction of WDs submitted to the WG, and administrative matters **Appointment of the Chair** **Adoption of the Agenda** **A) Intersection of the 1965 Service and 1970 Evidence Conventions** Items No 1-4 of Table 1, in response to comments and suggestions made by Australia, United States, and the European Union. **B) Service upon a foreign State or State official** Items No 5-6 of Table 1, in response to comments and suggestions made by the United States. **C) Contracting Out** Items No 7-9 of Table 1, in response to comments and suggestions made by Canada, China and the European Union. **D) Substituted Service** Items No 10-17 of Table 1, in response to comments and suggestions made by Canada, Australia, United Kingdom, and the European Union.
2.00 p.m.	9.00 a.m.	8.00 p.m.	**Tea Break** **(15 min)**
2.15 p.m.	9.15 a.m.	8.15 p.m.	**E) Use of electronic signature** Item No 18 of Table 1, in response to comments and suggestions made by the European Union. **F) Use of the Warning in the Model Form** Items No 19-20 of Table 1, in response to comments and suggestions made by the European Union. **G) Practices relating to the completion of the Certificate**

			Items No 21-22 of Table 1, in response to comments and suggestions made by the European Union. **H) Operation of Article 8 in cases of double nationality** Item No 23 of Table 1, in response to a comment made by Australia. **I) Reciprocity** Items No 24-25 of Table 1, in response to comments and suggestions made by the European Union and Australia. **J) Terminology** ➢ *Applicant*: item No 26 of Table 1, in response to a suggestion made by the United Kingdom. ➢ *Huissier de justice*: items No 27-28 of Table 1, in response to comments and suggestions made by Australia and the European Union. ➢ *Derogatory channels*: item No 29 of Table 1, in response to a comment made by the European Union. ➢ *Notification au parquet*: item No 30 of Table 1, in response to a comment made by the European Union. **K) Structure** Items No 31-34 of Table 1, in response to comments and suggestions made by Canada and the European Union. **L) Miscellaneous** Time permitting, the WG will discuss items No 35-50 of Table 1. These comments and suggestions refer to topics that will be addressed by the SC. WG Members are also invited to raise any points they wish to discuss.

Annex II: Table of comments and feedback for discussion of the WG on the Service Practical Handbook

Practical Handbook on the Operation of the Service Convention

Please note that in the first column indicating the paragraph and / or footnote reference, the reference in brackets is the reference from the **consultation version** of the Handbook. The reference above it is the reference in the new, **amended version** of the Handbook.

Extracts of the revised Handbook have been provided to assist discussions.

TABLE 1 Comments and Feedback for Discussion of the WG					
Agenda item	**Reference Number**	**Paragraph | Footnote Number**	**Contracting Party, incl. REIOs**	**Comment**	**Action / Notes**
Relevant text in revised Handbook: (distinction between a request for service / taking of evidence)				122. Judicial documents for the purposes of the Convention are instruments of contentious or non-contentious jurisdiction, or instruments of enforcement.1 In most jurisdictions, judicial documents include writs of summons,2 a party's submission in the proceedings, decisions and judgments delivered by a member of a judicial authority, as well as witnesses summons (subpoenas).3 123. 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	

1 In a decision dated 10 February 1999 (*op. cit.* note **Error! Bookmark not defined.**), the Cantonal Court of Fribourg (Switzerland) held that an act of prosecution (service of a notice of a ttachment 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 **Error! Bookmark not defined.**).

2 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.

3 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 **Error! Bookmark not defined.**).

				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.[4] 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.[5]	
A	1	Paras 122-123 [Para. 118]	**Australia**	In the context of requests under either the Service or Evidence Conventions relating to summons or subpoenas, it may be useful to note the distinction between a request for the service of a summons/subpoena (i.e. the authorities of the Requested State have limited involvement, they only need to serve it), as opposed to a request for the taking of evidence in fulfilment of a summons/subpoena to appear (i.e. the authorities of the Requested State are involved in actually obtaining the evidence by witness examination). These two different scenarios may also have different legal implications for the person being called to appear in each relevant State.	**PB**: The PB has amended the text in the Service Handbook and seeks the WG's views on the need to further develop this topic. In particular, the WG may wish to address practices relating to the use of the Service Convention for transmitting requests for the taking of evidence in fulfilment of a summons/subpoena to appear, as raised by Australia.

4 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).

5 *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).

A	2	Para. 123 [Para. 118]	**United States**	The United States views evidence gathering and service to be separate and distinct. Therefore, in the United States, the Hague Service Convention cannot 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 something tangible like a DNA sample, should be submitted through the Hague Evidence Convention. (We note that the United States has no objections to individuals providing evidence directly to a foreign court so long as they do so voluntarily. *See* 28 U.S.C. § 1782(b). Foreign subpoenas and court orders compelling production of evidence have no legal effect in the United States without domestication by a U.S. court).	**PB**: The PB has amended the text in the Service Handbook and seeks the WG's views on the need to further develop and/or strengthen this distinction and the issue of 'overlap' with the Service and Evidence Conventions.
A	3	Para. 122 [Para. 118]	**European Union**	The sentence "*requests for discovery of evidence sent to the parties even if these are orders delivered as part of evidentiary proceedings"* should be deleted as those requests are covered by the Evidence Convention.	**PB**: The PB has deleted the sentence from the Service Handbook and seeks the WG's views on the need to further develop this topic.
A	4	Para. 123 [Para. 118]	**European Union**	Concerning the last sentence, we suggest the following clarification: "*In the event of conflict between these two instruments, the 1970 Evidence Convention should prevail".*	**PB**: The PB has amended the text in the Service Handbook and seeks the WG's views on the need to further develop this topic.
Relevant text in revised Handbook 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.[6] 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.[7] It should be	

[6] 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.

[7] T. Bischof (*op. cit.* note **Error! Bookmark not defined.**), p. 247.

	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)).[8] 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).[9] Others have resorted to diplomatic channels under customary international law.[10] 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;[11] or by declaring explicitly to exclude the application of the Convention in such cases and calling for the use of diplomatic channels;[12] or by opposing the use of the postal channels pursuant to Article 10(a) of the Convention.[13] 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.[14] 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,[15] and Embassies or Consulates, is whether these entities are a separate juridical entity that

8 *Ibid*.

9 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.

10 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.

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

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

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

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

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

				may be 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.[16] 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.	
B	5	Paras 115–118 [Paras 111-114]	**United States**	In order for the U.S. Central Authority to execute a request for service on the U.S. government, the request must also comply with customary international law requirements. For example, the United States must be provided 60 days' notice before a hearing date, or before an initial response or appearance is required. As receipt by the U.S. Central Authority does not equate to service on the United States, the request must provide sufficient time for the U.S. Central Authority to serve the appropriate U.S. government office. It would be helpful if the Handbook stated that service requests on sovereigns may be subject to additional requirements. Accordingly, the U.S. Central Authority proposes that ¶ 110 be amended to include the following sentences: Requests for service on sovereign defendants 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	**PB**: The PB has incorporated the suggestion made by the United States into the Service Handbook. The PB seeks the WG's views on the need to further develop the discussion on service of documents upon a foreign State or State official.

16 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).

				process is sought to be effected prior to transmission, so as to ensure that the service request complies with all applicable requirements, including customary international law.	
B	6	Paras 115 – 118 [Paras 111 - 114]	**United States**	Requests to serve sovereign States. The U.S. Central Authority also notes that it has a publicly available memorandum (published in 6 languages) that outlines 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. The U.S. Central Authority would encourage the citation of this guidance as an example in a footnote to the proposed amendment to ¶ 110. It might be helpful were the upcoming Special Commission to discuss the application of customary international law for requests to serve sovereign States.	**PB**: The PB has incorporated the suggestion made by the United States into the Service Handbook. The PB seeks the WG's views on the need to further discuss the application of customary international law for requests to serve sovereign States.
Relevant text in revised Handbook 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: 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". 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. 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". 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. 84. In the case of Rockefeller, 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 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." 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 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. 87. Using a similar line of reasoning, the Californian Court of Appeal in Seagate 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 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. 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.

				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. 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.	
C	7	Paras 78 – 90 [Paras 76- 87]	**China**	Firstly, the description of the case of Rockefeller is incomplete, which doesn't reflect the letter from the Ministry of Justice of China to the Department of Justice of the United States. In the letter, the Ministry of Justice of China reiterates as follows. *The Chinese side holds that the Hague Service Convention is mandatory in terms of service abroad between the member states. As both China and US are members of the Convention, if any US judicial officers, officials or other competent persons need to serve any party in China, they have to follow the channel provided by the Convention*. (i) At the accession to the Convention, the Chinese government has declared to oppose methods of service provided in Article 10 of the Convention. Therefore, service in China directly attempted by judicial officers, officials or other competent persons of other member states through postal way is against Chinese declaration. Such service will be deemed procedural defect, and the following judgment, if any, will not be recognized by Chinese court. (ii) The Ministry of Justice of China has launched an online system to facilitate the submission of requests of service by other member states. Many US requesting parties have used this system which proves itself an efficient and reliable way of implementation of the Convention. This office takes this opportunity to call for more US requesting parties to use this system to	**PB**: The PB has developed the text of the Service Handbook to reflect part of the suggestions made by China. The relationship between the operation of the Service Convention and contractual agreements will be further developed in a Preliminary Document to the SC. The PB will reflect any discussions and recommendations adopted by the SC in the text of the Service Handbook.

				increase the efficiency of the Convention at www.ilcc.online. (iii) The Ministry of Justice of China is willing to make joint efforts with the Department of Justice of US to improve the judicial cooperation between the two countries. We suggest to add the above statement into the description of the case.	
C	8	Paras 78 - 90 [Paras 76 – 87]	**European Union**	This note seems to be exclusively about the US caselaw, which should be stated in the title of the note	**PB:** see comment above.
C	9	Para. 81 [Para. 79]	**Canada**	We do not agree with the characterization that such agreements circumvent the Convention. If such agreements are valid under the law of the state of origin, this means that there is no need to serve the document abroad and so the application of the Convention is not engaged. Perhaps this is a topic that could be discussed by the Special Commission. The cases that are described below do not give examples of situations where parties to a contract agree that service should be effected upon an agent in the forum state, thus removing the need to service abroad. It would be interesting to read about cases that examine this issue.	**PB:** see comment above.
Relevant text in revised Handbook 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. However, there are situations where personal service becomes difficult or impossible, 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". 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 special circumstances to justify service by alternative means where the Convention applies. 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. 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.

				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. However, as noted by Foxton J in M v N 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. Cases where the proceedings have been begun with an injunction application, which is to be served immediately or in short order on the respondent. Cases where an expedited trial is appropriate, and the order for alternative service is necessary to achieve the required expedition. 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. 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. 106. In addition to the categories of cases detailed in Foxton J's judgment, 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.	
D	10	Para. 98 [Para. 95]	**Canada**	In our view, the Convention would apply if the order for substitute or alternative service gave rise to service in a contracting state and the address of the person to be served is known.	**PB**: the WG may wish to discuss this further and consider whether further changes to the text is required.

				If the order does not give rise to service in a contracting state or if it does but the address of the person is not known, the Convention would not apply. It would be interesting to include a paragraph that discusses this.	
D	11	Paras 98–106 [Paras 95-102]	**Australia**	We agree that substituted service is an important aspect to include and would invite the PB to consider further elaborating on the legal and practical aspects of this issue. For example, it is not entirely clear which court is responsible for making orders for substituted service (i.e. the court in the requesting State before which the proceedings are pending or the court in the requested State that is being asked to effect service – and as an aside, which person/authority should apply for the orders if the authority competent to effect/arrange service is not a court?). We understand that depending on the circumstances of the case, orders may be made in either the Requested State or the Requesting State, but we believe it would be useful to clarify this. For example, of the common scenarios listed in paragraph 96, the first (the addressee is evading service) might be a situation where the court in the Requested State / requested authority makes orders for substituted service. In such a case, does the requested authority need to confirm that the requesting authority does not have any issues with this or it is sufficient that the documents will be served under the Requested State's law (albeit via substituted service). In the second of the common scenarios listed in para. 96, it may be that one or multiple attempts have failed to serve at the "known" address, in which case the Requesting Authority may request substituted service by particular method under Art. 5(1)(b), or alternatively may make an order for substituted service because the address that was thought to be known is	**PB**: see comment above.

				no longer accurate. In the latter case, the Convention would presumably no longer apply, but the question remains of how service should be effected between Contracting Parties in such a case and what are the relevant thresholds/considerations for when a previously "known" address is no longer deemed to be "known".	
D	12	Paras 98–106 [Paras 95-102]	**European Union**	The difference between this note and the note on the notification au parquet is not obvious. We propose a clearer and more logical order of events: service under the Convention and then substituted service etc.	**PB**: see comment above.
D	13	Paras 98–106 [Paras 95-102]	**United Kingdom**	(i) deletion of para 95 (ii) change para 96 to para 95 as follow 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 ordinarily to be achieved through personal service, where a process server hands the document to be served to the party to be served. P*ersonal service may, however, be difficult or impossible[1], or for some other good reason it may be judged inappropriate to insist on personal service.* (iii) Insert new para 97 (which was a part of para 96) as below: Some common scenarios in which substituted service may be authorised include where: > the party is intentionally evading service to avoid legal responsibility.	**PB**: The PB has incorporated the suggestion made by the United Kingdom into the Service Handbook. The PB would welcome the WG's views on the extent to which this topic should be covered by the Service Handbook.

				> the party's current whereabouts is unknown, and traditional service attempts have failed. (iv) Change para 99 as below: 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 *special circumstances* to justify service by alternative means where the Convention applies.[3] 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.[4] 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.[5] (v) Change para 100 as below: 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.[6] However, as noted by Foxton J in *M v. N*,[7] 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: [8]" (vi) Change para 101 as below 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" (vii) Change para 102 as below: In addition to the categories of cases detailed in Foxton J's judgment,[14] 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.[15]	
D	14	Paras 98–106 [Paras 95-102]	**European Union**	In addition, this paragraph should explain that substituted service may only be considered if a prior attempt for service under the Convention has failed. If this approach is not supported by the case law of England and Wales, we do not support an extensive presentation of that case law. The Handbook should clarify that substituted service, without a prior attempt for service under the Convention, is not compatible with the exclusive nature of the Convention where under the law of the forum, documents have to be served abroad in another Contracting State of the Convention.	**PB**: see comment above.
D	15	Paras 98 – 106 [Paras 95 – 102]	**European Union**	Finally, in many contracting parties, service can be achieved through different methods (placing the document in the letter box, handing the document to someone present in the place of living or in the place of work, notifying the document to a third party designated by the respondent etc.). Therefore, we request the following clarification of the second sentence of **para. 96**: "*service is typically achieved through* ***One of the most used methods of service*** *is personal service, where a process server physically hands the documents to the party*".	**PB**: see comment above.

D	16	Para 102 [Para 98]	**European Union**	In addition, the reference to email and other electronic forms of service in the last sentence, and the link to substituted service are not clear.	**PB**: see comment above.
D	17	Paras 102–106 [Paras 98-102]	**European Union**	Those paragraphs give too much emphasis (paras 98-102) to the case law from England and Wales, even though this case law contradicts the general view presented at the outset, namely that the Convention is exclusive. This contradiction is not even clearly acknowledged. We believe that where the Convention is applicable, substitute service can only be effected if (i) an attempt for service was made under the Convention and (ii) this attempt has been unsuccessful. In addition, if the recipient is allowed to refuse the service of a document, their refusal should not be a valid ground to order substitute service (for instance informal service without translation, service by consular agents). We would therefore propose deleting or limiting the references to this caselaw, and possibly placing it in a footnote.	**PB**: see comment above.
Relevant text in revised Handbook Who should complete the model form?				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.*).	

E	18	FAQ 13	**European Union**	In the first sentence, the words "*and signed or stamped*" could be added after "*completed*" to clarify that the request should be signed or stamped by the forwarding authority. The same goes for the second sentence concerning the certificate.	**PB**: The PB appreciates the suggestion made by the European Union and refers this topic to the WG for discussion. This issue is also relevant to electronic signatures.
Relevant text in revised Handbook What is the Model Form?				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*.).	
F	19	FAQ 11	**European Union**	We recommend adding the following sentence: "*As the warning is not mandatory, a request should not be returned unexecuted on the basis that the warning is not attached*".	**PB**: Before adding this suggestion to the HB, the PB would like refer this topic to the WG for discussion.
Relevant text in the revised Handbook Is the use of the Model Form mandatory?				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).	
F	20	FAQ 12	**European Union**	We propose to add after the first sentence that the warning is not mandatory. This is relevant here as well since Question 12 is about the mandatory nature of the whole form.	**PB**: Before adding this suggestion to the HB, the PB would like to refer this topic to the WG for discussion.
Relevant text in the revised handbook Certificate of Service (Art. 6)				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. 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.	
G	21	Para. 295 [Para. 287]	**European Union**	We suggest adding that the certificate helps to overcome the language barriers, and that, when filled in electronically, its content is clearer and easier to process.	**PB**: The PB appreciates the suggestion made by the European Union and refers this topic to the WG for discussion.
Relevant text in the revised Handbook Criticisms of the Model Form				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.	

G	22	Para. 196 [Para. 189]	**European Union**	The purpose of this paragraph is not clear, and we suggest deleting it. While this is an interesting basis for future discussions in the Special Commission, the Handbook should not refer to opinions of stakeholders, but only provide legal and practical guidance.	**PB**: The PB appreciates the comment made by the European Union and refers the topic to the WG for further discussion.
Relevant text in the revised Handbook Direct Diplomatic or Consular Channels (Art. 8(1))				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)). 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.	
H	23	Para. 347 [Para. 339]	**Australia**	It may be useful to clarify what happens in the case of addressees with multiple nationalities, for example is it sufficient if the addressee has nationality of the Sending State of the diplomatic/consular agent? Or is such a national ultimately protected by a declaration if they are also a national of the Host State?	**PB**: The PB appreciates the comment made by Australia and notes that the problem of multiple nationality has not been expressly studied, and does not seem to raise any known difficulties. However, the PB seeks the WG's advice on the need to further develop this topic.
Relevant text in the revised Handbook Reciprocity				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 refuses itself. 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. In other words, the other States have the possibility to waive the reciprocity. Further specific information on the reciprocal effect of an objection to the postal channel is explored in that segment at para. 378.	
I	24	Para. 335 [Para. 327]	**European Union**	We suggest adding to this paragraph that this approach (reciprocity) does not guarantee legal certainty and may be complex in practice, as it obliges the forwarding authorities to check their own requirements for incoming requests, and possibly the most recent caselaw of the requested State before being able to use a channel. This seems contrary to the objectives of the Convention and what has been achieved by the Permanent Bureau through the website (provide some readily available and reliable information on the possibility to use a specific channel).	**PB**: The PB has retained the text of this paragraph and seeks the WG's views on the requirements of reciprocity and the operation of alternative channels.
Relevant text in the revised Handbook Reciprocal effect of 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) except where the State of destination has expressly communicated that it accepts service through postal channels from the objecting State of origin.	
I	25	Para. 378 [Para. 370]	**Australia**	On the question of reciprocity with respect to Art. 10(a), we wonder whether a State would even be aware of the extent to which Art. 10(a) is used? For example,	**PB**: The PB notes the suggestion made by Australia and refers the discussion to the WG.

				Australian authorities have little to no oversight over incoming or outgoing requests that make use of postal channels, and we suspect many other countries would be the same.	
Relevant text in the revised Handbook 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.	
J	26	Glossary (Applicant)	**United Kingdom**	Insert “This will avoid any possible confusion, where relevant, with the litigating party seeking to have documents served pursuant to the Convention.", at the end of the sentence.	**PB**: The PB notes the suggestion made by the United Kingdom and refers the discussion to the WG.
Relevant text in the revised Handbook *Hussier 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.	
J	27	Glossary (Huissier de justice)	**Australia**	Recognising this is not a common term in English, we would suggest somehow explaining that the role of a judicial officer in this sense might be akin to a bailiff or sheriff in some English-speaking countries.	**PB:** The PB appreciates the suggestion made by Australia and refers the discussion to the WG.
J	28	General Comment	**European Union**	We suggest replacing the term huissier de justice by the corresponding English term, such as bailiff (with the relevant explanation in the glossary if necessary), to improve the readability of the Handbook.	**PB:** see comment above.
Relevant text in the revised Handbook 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).	
J	29	Glossary (Derogatory channels)	**European Union**	This term is new, and we wonder whether it is useful. The Handbook should be precise and rather refer to the methods of transmission provided for in multilateral or bilateral agreements or in national law. We don’t see	**PB**: The PB appreciates the comment made by the European Union and notes that the term “Derogatory channels” refers to

				the need for an umbrella term (which anyway appears less than 10 times in the handbook).	channels other than the main channel of transmission (Art. 5) and the alternative channels (Arts 8-10) that are provided by bilateral and other multilateral agreements or the domestic law of the State of destination. This has been used in the 4th edition of the Service Practical Handbook. The PB refers this comment to the WG for discussion.
Relevant text in revised Handbook *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. 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 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.	
J	30	Para. 18 (notification au parquet)	**European Union**	We wonder if this wording is understandable to all English speakers, and whether it should not be replaced or supplemented by a more general and clear term like “and other fictitious methods of service”.	**PB**: The PB has retained this term on the basis that the note sets out an explanation of what *notification au parquet* is. The PB notes the suggestion made by the European Union and seeks the WG’s advice on the need to replace the term *notification au parquet* or provide further explanation.

Relevant text in revised Handbook Structure of the Handbook				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. 77. However, the non-mandatory approach had been expressly accepted by the Special Commission. 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.	
K	31	Paras 76 – 77 [Paras 73-75]	**European Union**	We find that the current structure of the Handbook could be reassessed, to be more accessible to non-experts and provide clear practical guidance. The chapter is called "non-mandatory nature" and starts with a statement that there is a quasi-consensus on the non-mandatory nature of the convention. The historical background and the positions of some Contracting Parties are presented in different places. This note again called "non mandatory nature" like the entire point 1. of which it is a sub-part describes the position of contracting parties which consider the Service Convention as mandatory. And the rest will finally basically repeat what has already been stated above.	**PB**: The PB agrees that the structure of the Handbook could continue to be improved. The PB notes the suggestion made by the European Union and seeks the WG's advice on the need to provide further clarification on the non-mandatory and exclusive nature of the Convention.
Relevant text in revised Handbook A note about 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.	
K	32	Para. 93 [Para. 90]	**Canada**	This note is important and could be set out in its own section.	**PB**: The PB thanks Canada for this suggestion and welcome's the WG's

					views on the presentation of this topic in the Handbook.
K	33	Para. 93 [Para. 90]	**European Union**	We also question the position of this note in the Handbook, as it is not related to the chapter dedicated to the exclusive nature of the convention. This question should be discussed in the Working Group.	**PB**: The PB brings to the attention of the WG a comment made by the European Union and seeks the WG's advice as to the structure of the chapter and the position of the text currently sitting under the heading "A note about the Concept of Service".
Relevant text in revised Handbook Time of execution				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). 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.	
K	34	Para. 279 [Para. 271]	**Canada**	Consider starting with the text from para. 273 (now paragraph 281)	**PB**: The PB notes the comment made by Canada and advises this rearrangement can be done following the SC.
Relevant text in revised Handbook Civil or commercial				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 that this term should be applied consistently across both the 1965 Service and 1970 Evidence Conventions. 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.	

	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. 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. 150. Swiss case law seems to be evolving in the same direction. 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. 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. 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. 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.

				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.	
L	35	Paras 147-154 [paras 142–149]	**China**	We find that in para.64 of *the Evidence Handbook*, it adopts a broader interpretation to the term "civil or commercial" and recommend the Contracting Parties to endeavour for applying the Convention to these matters to the greatest extent possible. We recommend both Handbooks taking a similar positive interpretation to the term "civil or commercial", which can further promote cooperation.	**PB**: The PB appreciates the comments made by China, and notes that the scope of the 1965 Service and 1970 Evidence Conventions, including the interpretation of "civil and commercial matters" will be further developed in a Preliminary Document to the SC. The PB will reflect any discussions and recommendations adopted by the SC in the text of the Service Handbook. The PB welcomes any views that WG delegates may have.
Relevant text in revised Handbook The Service Section (HCCH Website)				The Service Section 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:[34] - 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.35	
L	36	Para. 33 [Para. 32]	**European Union**	We also wonder how this information will be articulated with the country profiles, which are not available on the website at the moment.	**PB**: The Country Profiles will be available as Preliminary Documents for the meeting of the SC. The PB has also updated the text of the Service Handbook to reflect the information contained in the Country Profiles. The PB will reflect any discussions and changes made to the Country Profile in the text of the Service Handbook.
L	37	General comment	**European Union**	In general, we recommend a thorough discussion of the use of electronic means of communication in the handbook. The Handbook should not in our view promote the use of emails and clouds for the transmission of requests, in view of the very serious security and data protection concerns, but rather the use of secure IT systems. For example, transmission of requests between authorities of Contracting Parties by simple email should not be presented as a good practice. Only transmissions through a secure IT system	**PB**: The use of IT-Business methods for the transmission and execution of requests under the 1965 Service and 1970 Evidence Conventions is the subject of a specific Preliminary Document, currently being drafted by the PB. The use of technology is also in the agenda for discussion at the meeting of the SC.

				should be encouraged. The requirements in terms of data protection and security should be systematically pointed out. This comment applies to all paragraphs where the Handbook refers to the use of email and electronic means of communication.	The PB will reflect any discussions and recommendations adopted by the SC in the text of the Service Handbook.
L	38	General comment	**European Union**	The same comment applies to the use of online translation tools, in terms of security and data protection safeguards (Para 30).	**PB:** see comment above.
Relevant text in revised Handbook What should the request for service include and how is it to be transmitted to the Central Authority?				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.	
L	39	FAQ 10	**Canada**	Regarding “However, electronic transmission, where it can be used, is strongly encouraged.” What is the source of this encouragement? The Special Commission C&R? I think the encouragement would have more weight if there was a reference to the source.	**PB:** see comment above.

L	40	FAQ 10	**European Union**	We suggested in a general comment above clarifying the question of the use of electronic means, or adding a reference to a para where it is clarified. There are certain conditions that should be explained, such as, that the forwarding authority and the requested authority have agreed in advance, that the security of the transmission as well as the required level of data protection is guaranteed.	**PB:** see comment above.
Relevant text in revised Handbook May the documents to be served be sent directly to the addressee through postal channels?				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*.	
L	41	FAQ 26	**European Union**	We don't agree with the following sentence: "*In addition, due to the technological neutrality of the convention, "postal channels" may be construed as including service by email to the extent that documents are sent by postal agencies*." Given the absence of consensus on that point, we would suggest presenting postal service by email as a discussed practice.	**PB:** see comment above.

L	42	FAQ 26	**Canada**	Is this statement the result of a Conclusion and Recommendation of a Special Commission? It would be good to have the source of this statement.	**PB**: This statement is not based on a C&R of the SC but has rather been extracted from former Annex 8 of the Service Handbook. The use of IT-Business methods for the transmission and execution of requests under the 1965 Service and 1970 Evidence Conventions is the subject of a specific Preliminary Document, currently being drafted by the PB. The use of technology is also in the agenda for discussion at the meeting of the SC. FAQ 26 could possibly be amended following the discussions of the SC. The PB welcomes the WG's views.
Relevant text in revised Handbook Electronic address (email) of the addressee				Does Article 1(2) include the electronic address (e-mail) of the addressee? 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. 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?	
L	43	Para. 169	**Australia**	We note the question at the end of the paragraph of whether an electronic address is sufficient to fulfil the	**PB**: The PB has amended the text in the Service Handbook and will

			G) Use of technology The WG will discuss items No 10-12 of Table 1. These comments and suggestions refer to topics that will be addressed by the SC. H) Judicial Authority – Administrative Authority Item 13 of Table 1, seeking input from WG on examples of administrative authorities that are covered by the term "judicial authority", in response to a suggestion made by the European Union. I) Not supplying Model Form Item 14 of Table 1, seeking input from WG on whether to include a point that a request may not be rejected on the sole basis that the Model Form has nott been used, in response to a suggestion made by the European Union. J) Other matters WG Members are also invited to raise any points they wish to discuss.

Practical Handbook on the Operation of the Evidence Convention

Please note that in the first column indicating the paragraph and/or footnote reference, the reference in brackets is the reference from the **consultation version** of the Handbook. The reference above it is the reference in the new, **amended version** of the Handbook.

Table 1 Comments and Feedback for Discussion of the WG					
Agenda item	**Reference Number**	**Paragraph | Footnote Number**	**Contracting Party, incl. REIOs**	**Comment**	**Action / Notes**
Relevant text in revised Handbook: Topic timing for execution				346. Letters of Request must be executed *expeditiously* (Art. 9(3)).	
A	1	Para. 346	**European Union**	We believe that the Handbook should be more ambitious and call for suggesting a goal shorter than 6 months for execution of Letters of Request. We would propose to add a footnote with an example of the deadlines provided for in Article 12(1) of the 2020 EU Evidence Regulation – "*The requested court shall execute the request without delay and, at the latest, within 90 days of receipt of the request.*"	**PB:** The PB appreciates the suggestion made by the European Union and refers this point to the WG for discussion.
Relevant text in revised Handbook: Electronic transmission of Letters of Request.				196. If a requesting authority wishes to issue a Letter of Request in electronic form (*e.g.*, as a PDF file),[1] it should check with the Central Authority in the Requested State that the Letter of Request will be accepted.[2] Although the Central Authority may not subject the Letter of Request to legalisation or any other similar formality to determine its authenticity (para. **Error! Reference source not found.**), and although the Convention does not require the Letter of	

[1] Whether a Letter of Request may be issued in electronic form is a matter for the law of the Requesting State (Art. 1(1)): see paras **Error! Reference source not found.**-**Error! Reference source not found.Error! Reference source not found.Error! Reference source not found.**.

[2] For some Contracting Parties, the Central Authority may be willing to accept an electronic Letter of Request, but the executing authority (*i.e.*, the requested authority) may require the Letter of Request to be in paper form. In these circumstances, it may be sufficient for the Central Authority to print out the Letter of Request and transmit it to the requested authority. If the requested authority requires the Letter of Request to be in a paper form and to bear the seal of the requesting authority, the Central Authority may request the requesting authority to reissue the Letter of Request accordingly.

				Request to be in a particular form (para. **Error! Reference source not found.**), the requesting authority should consider issuing the Letter of Request using an electronic signature so that the identity of the requesting authority can be readily verified.[3] It should be noted that the Convention itself does not stipulate that the request be signed or sealed, but the Model Form provides for a signature and seal of the requesting authority. In addition, it is recommended that consideration be given to data protection and security when using electronic transmission.	
B	2	Para. 196 [Para. 197]	**Brazil**	We suggest that, regardless of being a paper or an electronic letter of request, an electronic signature should be accepted, as long as it can be easily verified, and thus no wet signature or seal should be required.	**PB**: The PB appreciates the suggestion made by Brazil and refers this point to the WG for discussion.
Relevant text in revised Handbook: Authenticity of the Letter of Request				464. As noted at paragraph **Error! Reference source not found.**, the Requested State may not require a Letter of Request to be legalised or subjected to similar formality (Art. 3(3)) (*e.g.*, an Apostille under the 1961 Apostille Convention). Accordingly, the requested authority may not refuse to execute a Letter of Request on grounds alone that its authenticity has not been formally established. The drafters of the Convention were of the view that as long as the Letter of Request emanates from a judicial authority of the State of origin, its authenticity will be presumed.[4] If the requested authority has doubts as to the authenticity of the Letter of Request, it should resolve the issue directly with the requesting authority that purportedly issued the Letter of Request. As noted in paragraph **Error! Reference source not found.**, if the requested authority has doubts as to whether the Letter of Request has been issued by a "judicial authority", it may contact the Central Authority of the Requesting State to clarify the nature of the authority.	
B	3	Para. 464 [Para. 461]	**Brazil**	We suggest that, regardless of being a paper or an electronic letter of request, an electronic signature should be accepted, as long as it can be easily verified, and thus no wet signature or seal should be required.	**PB:** see comment above.

[3] See, *e.g.*, Art. 263 of the *Code of Civil Procedure* of Brazil, in force as of 2016, which provides for the issuance of letters rogatory using an electronic signature. See also Regulation (EU) No. 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC which provides the conditions for the acceptance of electronic signatures and seals.

[4] Report of the 1968 SC (*op. cit.* note **Error! Bookmark not defined.**), p. 59.

Relevant text in revised Handbook: Costs				542. The Convention does not explicitly address costs related to taking evidence under Chapter II. Consuls may be required by the law of their State to collect fees for the services they provide related to the taking of evidence.[5] In the case of Commissioners, costs are determined by internal law or by the terms of the commission.[6] The costs of taking evidence under Chapter II are generally borne by the party seeking the evidence to be taken.[7] Where costs are incurred by the State of execution for compulsion, that State may require reimbursement as a condition for the giving of permission or granting of an application for assistance (as the case may be).[8] Examples include the costs associated with the use of the facilities where a specific location is to be used, such as a courtroom, or other administrative costs.[9]	
C	4	Para. 542 [Para. 539]	**European Union**	With regards to the fourth sentence of the paragraph, it is up to the State of origin to determine whether the costs of taking evidence under Chapter II must be borne by the parties.	**PB:** The PB appreciates the suggestion made by the European Union and notes that this sentence has been taken from the Report of the 1968 SC. The PB refers this point to the WG for discussion, especially as to the need to revisit the conclusions drawn in the Report of the 1968 SC.
Relevant text in revised Handbook: Video-link				100. With regard to the legal basis of using video-link under the Convention itself, neither the spirit nor letter of the Convention constitutes an obstacle to the use of new technologies and the	

5 In the United States, the schedule for fees for consular services is set out in 22 CFR 22.1 (this Schedule promulgates fees for judicial assistance services in both Convention and non-Convention contexts).

6 See Explanatory Report, para. 162. For example, in England, the fees for a Commissioner are set out in Practice Direction 34B.

7 See, Report of the 1968 SC (*op. cit.* note **Error! Bookmark not defined.**), p. 72.

8 This is contemplated in the Explanatory Report, para. 163.

9 Response of Switzerland to Part VII, q. (w) of the 2017 Country Profile Questionnaire (*op. cit.* Glossary).

operation of the Convention can benefit from their use.[10]

101. The use of video-link is permissible in both the execution of a Letter of Request under Chapter I and the execution of a request under Chapter II of the Convention.[11]

102. Under Chapter I, a judicial authority of a Contracting Party may request another Contracting Party to obtain evidence. The competent authority in the Requested State conducts the examination. The requesting authority may request a special method or procedure to be followed. Chapter II provides for a Contracting Party to permit evidence to be taken in its territory by Consuls or Commissioners.

103. In particular, video-link may be used:

a. to facilitate the presence and possibly also the participation of the parties to the proceedings, their representatives, and judicial personnel at the taking of evidence; or

b. to facilitate the actual taking of the evidence (both direct and indirect taking of evidence).

104. The taking of evidence abroad using video-link was discussed by the Special Commission at its meetings in 2009 and 2014. The Special Commission concluded that video-link could be used to assist in the taking of evidence under the Convention, as set out in the following table:

Situation	Articles of the Convention

10 See C&R No 4 of the 2003 SC. See also, *e.g.*, C&R No 55 of the 2009 SC and C&R No 20 of the 2014 SC. 43. Contracting Parties remain divided as to whether the Convention is of a mandatory character (*i.e.*, whether the Convention needs to be applied whenever evidence is to be taken abroad, be it in person or by video-link) (for detailed discussion on the mandatory / non-mandatory nature of the Convention, see paras **Error! Reference source not found.** *et seq.*). This division of views notwithstanding, the Special Commission has recommended that Contracting Parties give priority to the Convention when evidence abroad is being sought (principle of first resort). Further, having resort to the Convention or other applicable treaties is generally consistent with the provisions of blocking statutes (for detailed discussion on blocking statutes, see paras **Error! Reference source not found.**-**Error! Reference source not found.**).

11 In response to the 2022 Questionnaire, most of the Contracting Parties indicated that they allow video link in the taking of evidence under Chapter I of the Convention. These Contracting Parties are: Albania, Andorra, Australia, Brazil, Croatia, Czech Republic, Estonia, Finland, France, Georgia, China (Hong Kong and Macao SARs), Hungary, Israel, Italy, Kazakhstan, Latvia, Montenegro, Nicaragua, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden, Netherlands, Türkiye, the United Kingdom and Viet Nam. In certain other States, such as Switzerland, video link in the taking of evidence under Chapter I of the Convention is not completely excluded, but it is determined by the requested judge on a case-by-case basis. As for Chapter II, in response to the 2022 Questionnaire, the majority of the Contracting Parties indicated that they allow the taking of evidence by video-link under Chapter II. These Contracting Parties are: Albania, Finland, France, Georgia, Germany, Hungary, Italy, Lithuania, Montenegro, Norway, Portugal, Slovakia, Sweden, Switzerland, the United Kingdom and the United States.

	Chapter I	**Presence and participation at the execution of the Letter of Request** Where the parties to the proceedings, their representatives and possibly also their judicial personnel of the requesting authority are located in the Requesting State and wish to be present by video-link during the taking of testimony and possibly also participate in the examination of the witness. Video-link established between: • location in the Requesting State (*e.g.*, premises of the requesting authority); and • location where the Letter of Request is being executed (*e.g.*, courtroom in the Requested State). **Competent Authority** in the Requested State (*i.e.*, the requested authority) conducts the examination following the methods and procedure under the law of the Requested State, subject to any special method or procedure requested by the requesting authority.[12]	Chapter I (Arts 7, 8 and 9)

	Situation	Articles of the Convention
Chapter II	**Testimony taken by Consul or Commissioner**[13] Where the Consul representing the State of origin exercising their functions in the State of execution, or a duly appointed Commissioner uses video-link to take testimony of a person located in the State of execution.	Chapter II (Arts 15, 16, 17 and 21)

12 The 2014 meeting of the Special Commission on the practical operation of the HCCH 1965 Service, 1970 Evidence and 1980 Access to Justice Conventions did not specifically discuss the direct taking of evidence under Chapter I of the 1970 Evidence Convention, *i.e.,* where the requesting authority requests that the examination be conducted by a judge of the Requesting State as a special procedure. This is distinct from the judge conducting the examination as an appointed Commissioner under Chapter II.

13 Under Art. 33 of the Convention, a Contracting Party may exclude, in whole or in part, the application of Chapter II. To view the declarations or reservations made by a particular Contracting Party, see the status table for the 1970 Evidence Convention, in column entitled “Res/D/N/DC”.

		Video-link established between: • location where the Consul is stationed (*e.g.*, embassy or consulate in the State of execution) or where Commissioner operates (*e.g.*, courtroom in the State of origin); and • location of witness in the State of execution (*e.g.*, office or courtroom). **Consul** or **Commissioner** conducts the examination in accordance with its own law and procedure unless forbidden by the law of the State of execution. A member of the judicial personnel of the court of origin (or other duly appointed person) acting as a **Commissioner** under Art. 17, who is located in one Contracting Party, may examine a person located in another Contracting Party by video-link.	
	Other treaties or Internal law or practice	**Other methods of taking of evidence** A Contracting Party may permit, by internal law or practice, methods of taking of evidence other than those provided for in the Convention. The Convention does not derogate from other conventions containing provisions regarding the taking of evidence abroad.	Arts 27(c) and 32

105. Evidence may be taken "directly" or "indirectly" using video-link depending on the authority that is taking the evidence. This is not only a semantic distinction, but one that has important consequences in practice.

106. In general, existing instruments provide for the use of video-link to examine witnesses abroad in two ways, "directly" and "indirectly":
   a. the authority before which proceedings are pending (or a member of judicial personnel of that authority or a representative) conducts the witness examination by video-link with the permission and assistance of an authority of the State in whose territory the witness is located – in this sense, evidence is taken "directly" by video-link;[208] and
   b. an authority of the State in whose territory the witness is located conducts the witness examination and permits the requesting court (as well as the parties and possibly their

				representatives) to be "present" at and possibly participate in (but not conduct) the examination by video-link – in this sense, evidence is taken "indirectly" by video-link.[209] 107. However, the 1970 Evidence Convention makes no mention of video-link or of the possibility of direct taking of evidence under Chapter I, having been drafted at a time when computer technology and global air travel were at earlier stages of development, and indirect taking of evidence was the norm. In addition, the drafters could not have envisaged that under Chapter II evidence would eventually be taken by Commissioners physically located in the State of origin using video-link. 108. With regard to the direct taking of evidence under the general provisions and operation of the Convention, and without the use of video-link, a question arises as to whether the Convention allows for this under Chapter I. While the direct taking of evidence is permitted under Chapter II, it is debatable whether it would be permitted under Chapter I of the Convention. From a strict reading of Article 1 of the Convention, Chapter I would not appear to allow direct taking of evidence as it specifically provides that a judicial authority of a Contracting Party may request the competent authority of another Contracting Party to obtain evidence. Consequently, while some Contracting Parties allow direct taking of evidence under Chapter I, others may consider its provisions to be a legal obstacle and therefore that the direct taking of evidence exceeds the scope of Chapter I of the Convention.	
D	5	General comment	**European Union**	Where it comes to the differentiation between direct and indirect taking of evidence under Chapter I, we would like to point out that the current Handbook was quite vague on direct taking of evidence and stated cautiously that direct taking of evidence might be requested for as special proceedings under Article 9 (2) of the Convention (para 220). Now the Handbook – for the first time differentiates between direct and indirect taking of evidence (para 105-118) – and gives this differentiation a lot of room. The matter was first discussed broadly during the Working Group on the Video-Link guide and therefore all explanations refer to the taking of evidence by video-link and the question has been discussed in that Guide with relation to videoconferencing only. The 2017 questionnaire	**PB**: The PB has amended the text in the Practical Handbook and added specific references to stress that the direct taking of evidence is relating to video-link. The PB seeks the WG's views as to whether further changes and clarifications are needed.

				of the Hague Conference also only relates to direct taking of evidence by video link under Chapter I. For some Member States that do not allow evidence being taken directly under Chapter I it remains unclear how exactly direct evidence could be taken under Chapter I. If the assumption is correct that direct taking of evidence under Chapter I is only discussed in relation to the use of video-link, this should be clarified in the Handbook and especially should be made clearer in Chapter III.2. (in particular paras 105-108) as well as in paragraphs 281 and 286 et seq. If it is however intended to expand Chapter I to direct taking of evidence some arguments should be provided. This matter should be discussed at this year's Special Commission.	

Relevant text in revised Handbook: Use of video-link				477. Other alternative scenarios may include, for example, instances (*e.g.*, in the case of geographically large areas) in which a Consul or Commissioner could use video-link to examine a witness located at a (distant) location which is nonetheless still within the State of execution. In some rare cases, another (albeit unlikely) scenario could be envisaged, in which a Consul or Commissioner is located neither in the State of origin nor the State of execution, but in a third State (a Contracting Party), and is charged with taking evidence of the witness / expert physically located in the State of execution (*e.g.*, where the diplomatic mission of the State of origin accredited to the State of execution is located in a third State, see para. **Error! Reference source not found.** below). Presumably in most such cases the Consul or Commissioner would travel to take the evidence, but it is possible that in some cases the evidence could be obtained via video-link.	
E	6	Para. 477 [Para. 474]	**European Union**	We are sceptical if all Contracting Parties can agree to the hypothesis that a Consul or Commissioner located in a Contracting Party other than the Requesting or Requested State could be required to execute a Letter of Request. This may in particular be problematic if the Requesting State has a consular or diplomatic representation / mission in the Requested State – in that case Consuls and Commissioners of the Requesting State located in a Contracting Party other than the Requested State should not be competent to take evidence in the Requested State. In addition, where a third State is involved in the execution of the Letter of Request, its prior permission should be sought for reasons of sovereignty, but also because that other Contracting Party may have objected to the application of all or part of Chapter II of the Convention. This is also relevant for Para 475.	**PB:** The PB appreciates the comment made by the European Union and notes that this paragraph has been extracted from the Video-link Guide. Therefore, the PB refers this point to the WG for discussion.

Relevant text in revised Handbook: Glossary: Blue-pencilling				**Blue-pencilling** The act of modifying or limiting a Letter of Request to make it compliant with the provisions of the 1970 Evidence Convention, or executable following the methods and procedures of the law of the Requested State. Blue-pencilling is usually performed by the Central Authority of the Requested State or the requested authority.	
F	7	Glossary (Blue-pencilling)	**European Union**	We are wondering if it would not be more understandable if instead of using the term "*blue-pencilling*" the following would be used in the main text of the Handbook: "*modifying or limiting*".	**PB**: The PB appreciates the suggestion made by the European Union and notes that this terminology has previously been used in HCCH's publications and on the website. The PB has included some clarification in the Handbook where possible. The PB seeks the WG's advice on the need to further amend the text.
F	8	Para. 178 [Para. 179]	**Canada**	The term "blue-pencil" is mentioned a few times in the Handbook (paras 179, 261(b), 293, 302, 402, 403, 404, 405). In paras 293 and 402, the following parenthesis accompanies the term "(i.e. modify or limit)". It may be helpful to include that in the first use of the term (i.e. para 179) instead of later on in the document.	**PB**: see comment above.

Relevant text in revised Handbook: Glossary: Moving Party				**Moving party** A party that applies to (or petitions) a judicial authority for a particular order. In the context of the 1970 Evidence Convention, this term most commonly refers to the party that applies to a judicial authority for the issuance of a Letter of Request. In jurisdictions where a Letter of Request may be executed by application of a party (*e.g.*, several common law jurisdictions), the term may also refer to that party.	
F	9	Glossary (Moving Party)	**European Union**	We are wondering if the term "*applicant*" or "*requesting party*" instead of "*moving party*" would not be more understandable.	**PB:** The PB appreciates the suggestion made by the European Union and refers this point to the WG for discussion.
G	10	General comment	**European Union**	In general, we recommend a thorough discussion of the use of electronic means of communication in the handbook. The Handbook should not in our view promote the use of emails for the transmission of requests, in view of the very serious security and data protection concerns, but rather the use of secure IT systems. For example, transmission of requests between authorities of Contracting Parties by simple email should not be presented as good practice. Only transmissions through a secure IT system should be encouraged. The requirements in terms of data protection and security should be systematically pointed out. This comment applies to all paragraphs where the Handbook refers to the use of email and electronic means of communication.	**PB**: The PB will reflect any discussions and recommendations adopted by the SC in the text of the Practical Handbook. The PB would welcome any views of the WG.

Relevant text in revised Handbook: Means of transmission				238. The Convention does not specify the means by which a Letter of Request is to be transmitted to the Requested State. In practice, the postal service (ordinary or registered mail) or a private courier service is commonly used.[14] In the case of electronic Letters of Request (para. **Error! Reference source not found.**), the Letter of Request may be transmitted by e-mail or be uploaded onto a designated online platform. The Special Commission has encouraged the transmission and receipt of Letters of Request by electronic means, adding that consideration should also be given to matters of security when evaluating such methods.[15] Similar consideration should also be given to data protection. For more on the execution and transmission of Letters of Request by electronic means, see paragraphs **Error! Reference source not found.** *et seq***Error! Reference source not found.**.	
G	11	Para. 238, footnote 368 [Para. 239, footnote 372]	**European Union**	In light of our general comment at the beginning, we would prefer to see the references to e-mail and designated online platform deleted.	**PB:** see comment above.

14 The Special Commission encourages the practice of many Contracting Parties in accepting Letters of Request sent by private courier: C&R No 49 of the 2009 SC.

15 C&R No 39 of the 2014 SC. See also C&R No 49 of the 2009 SC. Art. 3(1) of the 2010 *Additional Protocol to the Ibero-American Convention on the Use of Videoconferencing in International Co-operation between Judicial Systems* provides for the electronic transmission of requests made under the Ibero-American Convention ("[r]equests for videoconferencing may be transmitted by any electronic means that allows a written record of the transmission, provided that the requested Party is able to establish its authenticity") [translation by the Permanent Bureau]. Also, the *Medellin Treaty concerning the Electronic Transmission of Requests for International Legal Cooperation between Central Authorities* encourages its Contracting Parties to use the electronic platform established by the treaty, "Iber@", to transfer requests for international legal assistance. Also, in the context of the 2020 EU Evidence Regulation, the e-CODEX system is used (see also, Regulation (EU) 2022/850 of the European Parliament and of the Council of 30 May 2022 on a computerised system for the cross-border electronic exchange of data in the area of judicial cooperation in civil and criminal matters (e-CODEX system), and amending Regulation (EU) 2018/1726). For further discussion on these treaties, see paras **Error! Reference source not found.** *et seq*.

<table>
<tr><td colspan="4">Relevant text in revised Handbook:
E-mail transmission – Returning documents establishing execution</td><td colspan="2">396. The documents establishing execution may be drawn up in electronic format and transmitted to the requesting authority electronically (e.g., by e-mail), although the law of the Requesting State may require the documents to be in a particular format (e.g., paper). If the requesting authority requires the documents establishing execution to be in a particular format, this should be specified in the Letter of Request or subsequently confirmed with the authorities in the Requested State.</td></tr>
<tr><td rowspan="4">G</td><td rowspan="4">12</td><td rowspan="4">Para. 396
[Para. 393]</td><td rowspan="4">European Union</td><td>For the reasons set out in our general comment above, we would prefer to see the reference to e-mail deleted from the first sentence.</td><td rowspan="4">PB: see comment above.</td></tr>
<tr><td>Moreover, we would propose to add that in certain cases, the large number of documents obtained under the Letter of Request may be an obstacle to electronic transmission of documents, given the workload that this could impose a disproportionate administrative burden on the competent authority that sends the documentation.</td></tr>
<tr><td>In addition, data protection considerations may preclude the electronic transmission of documents where this is not sufficiently secure.</td></tr>
<tr><td>In addition, depending on the national requirements it may be necessary for the Central Authority to also return the original papers in addition to the electronic sending.</td></tr>
</table>

Relevant text in revised Handbook: Judicial authority – administrative authority				144. The term "judicial authority" may extend to certain administrative authorities. The Explanatory Report reveals that the drafters of the Convention could not reach a decision on whether administrative tribunals should be included within the meaning of the term "judicial authority", given the variation in powers and functions of administrative tribunals in the various legal systems.[16] Accordingly, the facts of each case must be examined with reference to the law of the Requesting State, in particular whether the authority exercises, in the case at hand, a function that is of an adjudicatory nature.	
H	13	Para. 144 [Para. 145]	**European Union**	We believe that adding in a footnote examples of administrative authorities that are covered by the term "judicial authority" would be useful.	The PB seeks input from the WG on examples of administrative authorities.
Relevant text in revised Handbook: Drafting tips for Letters of Request – including the Model Form				158. As much as possible, Letters of Request and their translations should be typed rather than drafted by hand.[17]	
I	14	Para. 158 [Para. 159]	**European Union**	In addition, we believe the addition of a reference to the Model Form in this could be helpful while stressing that the Model Form is not mandatory and a request may not be rejected for the sole reason that the Model form has not been used.	

16 Explanatory Report, para. 254.
17 C&R No 25 of the 2014 SC.