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CONCLUSIONS ET RECOMMANDATIONS DE LA COMMISSION SPÉCIALE SUR LE FONCTIONNEMENT PRATIQUE DES CONVENTIONS DE LA HAYE APOSTILLE, NOTIFICATION, OBTENTION DES PREUVES ET ACCÈS À LA JUSTICE

(2 au 12 février 2009)

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CONCLUSIONS AND RECOMMENDATIONS OF THE SPECIAL COMMISSION ON THE PRACTICAL OPERATION OF THE HAGUE APOSTILLE, SERVICE, TAKING OF EVIDENCE AND ACCESS TO JUSTICE CONVENTIONS

(2 to 12 February 2009)

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Conclusions and Recommendations of the Special Commission on the practical operation of the Hague Apostille, Service, Evidence and Access to Justice Conventions
(2 to 12 February 2009)

1. A Special Commission met in The Hague from 2 to 12 February 2009 to review the practical operation of the Hague Conventions of *5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* (Apostille Convention), of *15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* (Service Convention), of *18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters* (Evidence Convention), and of *25 October 1980 on International Access to Justice* (Access to Justice Convention). The Special Commission (SC), which was attended by 203 experts from 64 States and Organisations representing Members of the Hague Conference on Private International Law, States Party to one or more of the Conventions under review, non-Contracting States that are actively exploring the possibility of joining at least one of the Conventions under review, and observers, as well as from the Permanent Bureau, unanimously approved the following Conclusions and Recommendations.

I. General comments

2. The SC reaffirms the importance of effective cross-border judicial and administrative co-operation. In this regard, the SC notes with great satisfaction the continued practical importance of the Apostille, Service and Evidence Conventions. The SC also notes with great satisfaction that a number of States are examining accession to the Access to Justice Convention.

3. The SC recalls Conclusion and Recommendation No 4 of the 2003 Special Commission, and reemphasises that not only the Apostille, Evidence and Service Conventions but also the Access to Justice Convention all operate in an environment which is subject to important technological developments. Although this evolution could not be foreseen at the time of the adoption of the four Conventions, the SC underlines that modern technologies are an integral part of today's society and their usage is a matter of fact. In this respect, the SC reiterates that the spirit and letter of the Conventions do not constitute an obstacle to the usage of modern technology and their application and operation can be further improved by relying on such technology.

4. The SC notes and encourages co-operation among States and International Organisations in further exploring the use of modern technologies in relation to the Conventions so as to further improve their practical operation. The SC notes and warmly welcomes co-operation between the European Community and the Hague Conference in sharing their experiences in the field of e-Justice.

Successor States

5. The SC encourages States that are successors to a State Party to one of the above-mentioned Conventions to deposit an instrument of succession with the depositary in order to sustain, absent objections, treaty relationships with the other States Parties.

II. Service Convention

General considerations

6. The SC recalls that one of the fundamental purposes of the Convention is to ensure that judicial and extrajudicial documents are brought to the notice of the addressee in sufficient time.

7. The SC notes with satisfaction the great practical importance of the Service Convention as a means of providing channels of transmission of judicial and extrajudicial documents from one State Party to another State Party for service in the latter. Moreover, examination of the practice under the Service Convention confirms its wide use and effectiveness, as well as the absence of major practical difficulties. Against this background, the SC recommends strongly that States Party to the Service Convention should continue to promote the Convention to other States. In particular, Member States of the Hague Conference which are not already Party to the Service Convention are strongly encouraged to become Party to the Convention.

"Service Section" of the Hague Conference website

8. The SC notes that the "Service Section" of the Hague Conference website is a very helpful source of current practical information relating to the Service Convention. The SC strongly encourages States Parties to provide the Permanent Bureau with yearly updates of information relating to their State that is available in the "Service Section". The SC also encourages States Parties to take steps to promote the "Service Section" amongst relevant authorities.

Service Handbook

9. The SC welcomes the utility of the 2006 edition of the Practical Handbook on the Operation of the Service Convention prepared by the Permanent Bureau, and notes that it is a very useful resource for Central Authorities and practitioners alike. The SC encourages wide dissemination of the Practical Handbook.

10. The SC also notes with satisfaction that several translations of the Practical Handbook have either been completed (Russian) or are nearing completion (Chinese, Portuguese, Spanish).

11. The SC invites the Permanent Bureau to explore the possibility of making the Practical Handbook, or parts of it, available in the "Service Section" of the Hague Conference website.

Non-mandatory but exclusive character of the Convention

12. The SC recalls Conclusion and Recommendation No 73 of the 2003 Special Commission and confirms the view that the Service Convention is of a non-mandatory but exclusive character, as explained in paragraphs 24 to 45 of the Practical Handbook. The SC further notes with great satisfaction that the non-mandatory but exclusive character of the Service Convention has not caused any difficulties in the past five years.

Scope of the Convention

13. The SC is pleased to note that the expression "civil or commercial matters" did not appear to have caused many difficulties in the past five years and is pleased to note that Conclusion and Recommendation No 69 of the 2003 Special Commission appears to have been followed. The SC thus reaffirms that the words "civil or commercial matters" should be interpreted in an autonomous manner, without reference exclusively either to the law of the requesting State or to the law of the requested State, or to both laws cumulatively.

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

15. The SC notes that various States recognise many kinds of extrajudicial documents and invites the Permanent Bureau to continue to study the issue. The SC invites States Parties to encourage Central Authorities and, where applicable, forwarding authorities to communicate when problems of interpretation arise.

16. The SC encourages Central Authorities to inform the Permanent Bureau of any important development in relation to the scope of the Convention, so that the matter can be included in the "Service Section" of the Hague Conference website.

The Convention and class actions

17. The SC notes that no particular challenges arise in respect of the use of the Convention for the service of documents relating to class actions. The SC notes that the Convention is applicable to a request for service upon a defendant in a class action. The SC notes that, in the general case, the Convention does not apply to the sending of information regarding the constitution of a possible class (including notices sent abroad encouraging possible claimants to opt-in or opt-out of a particular class).

The main channel of transmission

18. The SC notes the practice of many Central Authorities to accept requests for service that have been forwarded by private courier.

19. The SC recalls that execution of a request for service under Article 5(1) *a)* is by a method prescribed by the internal law of the requested State and chosen by that State.

20. The SC recalls that Article 5(1) *b)* allows for the applicant to request a particular method of service that is not incompatible with the law of the requested State. Where the requested method is prescribed by the internal law of the requested State and ordinarily used in that State for the execution of requests, the requested State is encouraged not to charge for the execution of the request, without prejudice to Article 12(2) *a)*.

Forwarding authorities

21. The SC recalls Conclusions and Recommendations Nos 47 and 49 of the 2003 Special Commission and invites States Parties to provide information on their forwarding authorities and their competences to the Permanent Bureau, to facilitate the updating of the relevant information on the Hague Conference website.

Organisation of Central Authorities and cost matters

22. The SC recalls the Conclusions and Recommendations Nos 52 to 54 of the 2003 Special Commission meeting (including footnotes).

Prompt execution of requests

23. Aiming at further enhancing cross-border judicial co-operation among Contracting States, the SC recommends:

    (a) If a forwarding authority has not received any acknowledgement of receipt of the request for service from the requested State within 30 calendar days following the sending of the request, it is encouraged to contact the Central Authority in the requested State to inquire about the status of the request. Such inquiry should be answered within a reasonable time.

    (b) Where the request for service cannot be executed as a result of inadequate information or document(s) forwarded, the Central Authority of the requested State is encouraged to contact, as promptly as possible, the forwarding authority in order to secure the missing information or document(s).

    (c) Whenever the Central Authority of the requested State is considering, under Article 4, whether the request complies with the provisions of the Convention, it is encouraged to take that decision within 30 calendar days of receipt of the request.

    (d) If at any time during the execution of the request for service, an obstacle arises which may significantly delay or even prevent execution of the request, the Central Authority of the requested State is encouraged to communicate with the forwarding authority as promptly as possible.

    (e) A request for execution of service should be executed as promptly as possible and States are encouraged to take measures to further improve the effective operation of the Convention.

    (f) If the forwarding authority has not received a certificate confirming service or non-service from the relevant authority of the requested State within a reasonable time after sending the request, it is encouraged to contact the Central Authority of the requested State to inquire about the status of the execution of the request and the inquiry should be answered within a reasonable time.

    (g) The Central Authority of the requested State is encouraged to take all reasonable and appropriate steps to execute the request until such time as the forwarding authority advises that service is no longer required.

    (h) The forwarding authority is also encouraged to specify in the request a time after which service is no longer required or inform the relevant authority of the requested State at any time that service is no longer required.

24. Once a request for service has been transmitted, any subsequent informal communication between forwarding authorities and Central Authorities may be carried out by any appropriate means, including e-mail and fax.

Language and translation requirements

25. The SC recalls Conclusions and Recommendations Nos 65 to 68 of the 2003 Special Commission.

26. The SC notes the practice of some States not to require translations in certain cases, for example where the addressee is shown to understand the language in which the documents to be served are written. The importance of a properly completed Form, in particular the Summary, is stressed in this regard.

Service on States, State officials and State-owned companies

27. The SC notes 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. The States Parties are strongly

encouraged to inform the Permanent Bureau about their practice in this regard, for the purpose of making the information available in the "Service Section" of the Hague Conference's website.

Qualified opposition to Article 10 a)

28. The SC understands that a Contracting State, rather than filing a blanket opposition to the use of postal channels under Article 10 *a)*, is allowed to make a qualified declaration stating the conditions in which that State accepts incoming transmissions, such as requiring registered mail with acknowledgment of receipt.

Model Form

29. The SC strongly reaffirms that the use of the Model Form is mandatory (Art. 3(1)), and urges all relevant authorities in States Parties to use it. In this respect, the SC notes and welcomes the efforts of the Permanent Bureau in preparing multilingual fillable PDF versions of the Form (including the "Warning") that may be accessed on the website of the Hague Conference.

30. The SC recommends that the Model Form not be amended. The SC invites the Permanent Bureau to prepare, subject to available resources, guidelines for the completion of the Form. The SC also notes that the usefulness of the Form is further improved when forwarding authorities include, in particular, information about their competence and the nature of the cause of action, as well as the date of birth of the person to be served. Furthermore, the authority completing the Certificate is encouraged to indicate the relevant provisions in the law of the requested State under which service was effected.

31. The SC notes that, despite the Recommendation of the Fourteenth Session of 1980 of the Hague Conference, the "Summary" and "Warning" of the Model Form rarely accompany requests for service when one of the alternative channels of transmission is used. The SC urges States Parties to widely encourage the use of the Model Form with the "Summary" and "Warning".

32. The SC recalls that under Article 7(2) of the Convention, the blanks in the Model Form are to be completed in either English or French, or in (one of) the official language(s) of the requested State.

33. The SC notes that the effect of a Certificate certifying the execution of a request constitutes authoritative confirmation that service has been effected in conformity with the law of the requested State, and creates at least a rebuttable presumption that service was properly performed. The probative value of the Certificate in the requesting State remains subject to that State's law.

34. The SC strongly recalls Article 3(1) *in fine*, according to which there is no requirement for a completed Form to be legalised, or be made subject to any equivalent formality such as an Apostille.

Article 15(2)

35. The SC notes, with reference to Article 15(2) *c)*, that the receipt of a certificate that no service could be effected is not an obstacle to the giving of a judgment in accordance with the domestic law of the requesting State when such State has made the relevant declaration.

Date of service

36. The SC notes that the absence of a specific rule on the date of service has not caused any major problems in practice.

Modern technologies

37. The SC recalls Conclusions and Recommendations Nos 59 to 64 of the 2003 Special Commission relating to the use of modern technology and the Convention.

38. The SC notes that a small number of States Parties had revised their domestic law to make reference to service using modern technologies such as e-mail and fax. To date, there have been only a few cases where service was effected, typically as a last resort, by using such technologies.

39. The SC notes that further exploration of these issues is desirable. The Permanent Bureau is invited to continue studying how the issue of effecting service by use of modern technologies evolves and relates to the Convention. The SC recommends that these issues be considered by the Council on General Affairs and Policy of the Hague Conference, within the existing list of topics on the agenda for future work.

Relation with Evidence Convention

40. The SC notes that cases have arisen concerning the relationship between the Service and the Evidence Conventions and invites the Permanent Bureau, in particular, to study the issue of compelling persons under the threat of sanctions to provide evidence in the requesting State by use of a request for service under the Service Convention.

Future work

41. The SC encourages the Permanent Bureau to commence work, in due course and subject to available resources, on an updated edition of the Practical Handbook on the Operation of the Service Convention.

III. Evidence Convention

General considerations

42. The SC notes that the Evidence Convention is operating relatively smoothly and effectively, although a number of States Parties pointed to delays in the operation of the Convention in some States Parties.

43. The SC recalls that Article 9(3) requires that "[a] Letter of Request shall be executed expeditiously" and encourages States Parties to take measures to improve the effective operation of the Convention.

44. The SC encourages better communication between Central Authorities and between requesting authorities and the relevant Central Authority at all stages of the execution of a Letter of Request. Any informal communication may be carried out by any appropriate means, including e-mail and fax.

45. The SC notes that many Central Authorities provide informal assistance to requesting authorities to ensure that a Letter of Request conforms to the requirements of the requested State. The SC encourages this practice.

Scope

46. The SC notes that Conclusions and Recommendations Nos 13, 14 and 16 relating to the Service Convention (see above) apply *mutatis mutandis* to the Evidence Convention.

47. The SC notes the practice of States Parties that the expression "contemplated" in Article 1(2) includes proceedings for the taking of evidence before the main proceedings have been instituted, and where there is a danger that evidence may be lost.

48. The SC recommends that the word "commenced" should be given a uniform interpretation across Articles 1(2), 15(1) and 16(1).

49. The SC notes and encourages the practice of many States Parties to accept a Letter of Request that has been sent by private courier. The SC also encourages States Parties to consider the possibility of accepting Letters of Request sent in electronic form.

50. The SC notes that requests for discovery relating to electronically stored information are likely to increase, and recommends that such requests should be treated in the same manner as requests for hard copy documents.

51. The SC recalls the Conclusions and Recommendations Nos 29 to 34 of the 2003 Special Commission and recommends that States which have made a general, non-particularised declaration under Article 23 revisit their declaration taking into account terms such as those contained in the United Kingdom declaration or in Article 16 of the Additional Protocol of 1984 to the Inter-American Convention on the Taking of Evidence Abroad.

52. The SC notes and encourages the practice of many States Parties that, where a request for the taking of oral evidence is accompanied by a request for pre-trial discovery that cannot be executed because it is contrary to the State Party's Article 23 declaration, the request for the taking of oral evidence is executed rather than the entire request being rejected.

53. The SC notes that there are still differing views among States Parties as to the mandatory or non-mandatory character of the Convention. These differences, however, have not been an obstacle to the effective operation of the Convention.

Use of the Model Form

54. The SC strongly recommends that the Model Form developed by the Special Commission in 1978 and revised in 1985 be used. Recognising that this Form is not mandatory, the SC nonetheless considers that regular use of the Model Form would further enhance the practical operation of the Convention. The SC invites the Permanent Bureau to explore the possibility, subject to available resources, to develop multilingual fillable PDF versions of the Form that may be accessed on the Hague Conference website.

Use of video-links to assist the taking of evidence

55. The SC recalls the Conclusions and Recommendations Nos 42 to 44 of the 2003 Special Commission and notes that the use of video-links and similar technologies to assist the taking of evidence abroad is consistent with the current framework of the Convention. In particular, the SC notes that:

    (a) The Convention permits parties and their representatives to be present (Art. 7), and does not preclude judicial personnel of the requesting authority from being present (Art. 8), by video-link at the execution of the Letter of Request by the requested State, to the same extent as these persons could be physically present.

    (b) The Convention permits a video-link to be used to assist in the execution of a Letter of Request where the law of the requested State permits such use (Art. 9(1)).

    (c) A video-link may be used to assist in the execution of a Letter of Request in accordance with Article 9(2).

    (d) The Convention permits a video-link to be used to assist in the taking of evidence by a diplomatic official, consular agent or commissioner, provided that the practice is not forbidden by the State in which the evidence is to be taken, and provided that the relevant permission has been granted (Arts 15, 16, 17 and 21).

56. The SC notes that the use of a video-link to assist in the taking of evidence abroad under the Evidence Convention appears to raise a small number of new questions that arise from the interaction of the law of the requesting State and the law of the requested State. The SC expects that these issues can be solved within the existing framework of the Convention.

57. The SC encourages States to exchange information about their experience with use of video-link and other modern technologies to assist the taking of evidence abroad and to communicate this information to the Permanent Bureau for publication on the Hague Conference website as appropriate.

Future work

58. The SC invites the Permanent Bureau, subject to resources, and in close co-operation with interested States, to prepare a new edition of the Practical Handbook on the Operation of the Evidence Convention. The Permanent Bureau is encouraged to explore ways of making the next edition of the Handbook available in electronic form in a future "Evidence Section" on the Hague Conference website. While the preparation of a Guide to Good Practice on the use of a video-link to assist in the taking of evidence abroad under the Convention is considered to be a lower priority, the Permanent Bureau is invited to continue studying developments in video-link and other technologies and how they relate to the Evidence Convention.

IV. Access to Justice Convention

General considerations

59. The SC notes with satisfaction the interest of States in acceding to the Convention, an indispensable component of an efficient system of international legal co-operation.

60. The SC notes that the existence and implementation of similar instruments related to access to justice at regional or bilateral level should not deter States in their consideration of ratifying and acceding to the Convention.

Scope of application of the Convention

61. Notwithstanding other approaches in bilateral or regional instruments, the SC considers, in light of the Explanatory Report and the prevailing view in comparative law, that the wording of Article 1 does not accommodate the inclusion of legal persons within its scope of application.

62. The SC is of the view that the word "presence" in Article 2 is to be interpreted in a literal way.

63. The formulation of Article 14 leaves some uncertainty with regard to who is exempt from giving security for costs. Nevertheless, the SC is of the view that nationals of a Contracting State who are habitually resident in the State where the proceedings are brought fall within the scope of application of this provision.

Implementation tools

64. The SC considers that the creation of multilingual forms and the translation of the Convention in other than the official languages of the Hague Conference, as well as their uploading onto the Hague Conference website are to be encouraged. States Parties are encouraged to provide information in this regard to the Permanent Bureau.

Future work

65. Subject to further consideration by the Council on General Affairs and Policy of the Hague Conference, the SC suggests that further consideration be given to the possibility of preparing a feasibility study on the provision of enhanced legal assistance in particular categories of cases, such as small and / or uncontested claims.

V. Apostille Convention

General Considerations

66. The SC welcomes the Convention's very wide use and effectiveness, and the absence of any major obstacle to its practical operation. Against this background, the SC recommends strongly that States Parties to the Convention continue to promote the Convention to other States. In particular, Member States of the Hague Conference which are not already Party to the Convention are encouraged to consider actively becoming Party to the Convention.

67. The SC notes that some States have objected to some accessions and invites those States to continue assessing whether the conditions for withdrawing their objections are met.

68. The SC recalls Conclusion and Recommendation No 6 of the 2003 Special Commission and recommends that States that are Party to the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* but not to the Apostille Convention consider actively becoming Party to the latter.

69. The SC recalls that Article 9 does not permit legalisation by diplomatic or consular agents when the Apostille Convention applies. The SC reminds States Parties of their obligation to take the necessary steps to ensure compliance with the provisions of this Article.

"Apostille Section" of the Hague Conference website

70. The SC notes that the "Apostille Section" of the Hague Conference website is a very helpful source of current practical information relating to the Apostille Convention. The SC strongly encourages States Parties to provide the Permanent Bureau with yearly updates of information relating to their State which is available in the "Apostille Section". The SC also encourages States Parties to take steps to promote the "Apostille Section".

71. The SC invites the Permanent Bureau to include information as to previously designated Competent Authorities in the "Apostille Section". The SC invites the Permanent Bureau to explore the possibility of using automated e-mail alerts to inform Competent Authorities (or other designated contact points) about new Contracting States.

Scope

72. The SC notes that it is for the law of the State of origin to determine the public nature of a document. Keeping in mind the purpose of the Convention, the SC suggests that States Parties give a broad interpretation to the category of public documents. The SC recalls the statement in the Explanatory Report that "[a]ll the Delegates were in agreement that legalisation should be abolished for all documents other than documents signed by persons in their private capacity *(sous seing privé).*" Finally, the SC also recalls that the list of public documents identified in Article 1 is not exhaustive.

73. The SC notes that the domestic law of one State provides that simple photocopies of administrative documents are public documents for the purposes of the Convention if certain legal conditions are met.

74. As regards certified copies, the SC notes that States Parties have different approaches in addressing the following situations:

    (i) Where the certified copy is issued by the same authority that issued the original document, some States regard the certified copy as a duplicate original and others treat it as a certified copy. In the first instance, the Apostille relates to the authenticity of the original document, in the second instance, the Apostille relates to the authenticity of the certificate.

(ii) Where the certified copy is issued by a third party (such as a notary), most States regard the certificate as the public document to be apostillised; some States, however, do allow for an Apostille to be issued for the copied document itself.

These differences do not seem to cause problems in practice.

75. The SC notes that it is also for the law of the State of origin to determine who has the authority to issue public documents. The SC notes that translations and medical documents fall within the scope of the Convention if their execution by persons authorised by law makes them public documents.

76. The SC notes that the question whether and how to bring documents issued by Intergovernmental Organisations, including Regional Economic Integration Organisations, into the scope of the Convention, needs further study.

77. The SC recalls that the purpose of the Apostille Convention is to abolish the requirement of legalisation and to facilitate the use of public documents abroad. The SC also recalls that according to Article 3(2) no Apostille may be required when either the laws, regulations, or practice in force in the State of destination, or a treaty or other agreement in force between the State of origin and the State of destination has abolished or simplified the requirement of an Apostille or exempt the document from any legalisation requirement. The SC further reconfirms that the exception for "administrative documents dealing directly with commercial or customs operations" (Art. 1(3) *b)*) is to be interpreted narrowly. In this connection, the SC notes that some States issue Apostilles for documents such as import / export licenses, health certificates and certificates of origin or conformity.

Competent Authorities

78. The SC notes that it is for each State Party to designate and organise its Competent Authority(ies). The SC notes the different practices in this respect and recalls Conclusion and Recommendation No 12 of the 2003 Special Commission, inviting States Parties to make full contact details (including, where applicable, the URL of the e-Register) of the Competent Authorities available to the Permanent Bureau. States Parties are also invited to inform the Permanent Bureau about the specific competences of each Competent Authority.

Issuance of Apostilles

79. The SC invites States Parties to inform the Permanent Bureau about their procedures for issuing Apostilles, in particular whether or not intermediate certifications are needed before Apostilles would be issued (one-step vs multiple-step process). Recalling the purpose of the Convention to simplify the process of authentication, the SC invites States Parties to consider removing any unnecessary obstacles to the issuance of Apostilles while maintaining the integrity of authentications.

80. The SC recalls that, under the Convention, it is not the responsibility of the Competent Authorities to assess the content of public documents for which they are requested to issue an Apostille. Similarly, when asked to issue an Apostille for a notarial certificate, Competent Authorities should not consider or assess the content of the document to which the notarial certificate relates. At the same time, Competent Authorities may take steps outside the process of issuing an Apostille to deal with instances of fraud or other violations of relevant domestic law.

81. The SC recalls that the Convention applies to public documents "which have been executed in the territory of one Contracting State and which have to be produced in the territory of another Contracting State" (Art. 1(1)). In order to assist applicants and avoid unnecessary delays and complications in producing the public document abroad, the SC notes that it is often helpful for Competent Authorities to inquire about the State of destination of the public document to be apostillised.

Effect of an Apostille

82. The SC recalls the limited effect of an Apostille. An Apostille only authenticates the *origin* of the public document to which it relates and not its *content* (reliability or accuracy). The acceptance, admissibility and probative value of apostillised public documents, however, remain subject to the law of the State of destination.

Maintaining confidence in Apostilles

83. The SC reminds States Parties of the importance of assessing the genuine character of all documents presented as public documents to the Competent Authorities for the issuance of an Apostille.

84. The SC is deeply concerned about the real danger of damage to the Apostille Convention caused by the increasing use of Apostilles by diploma mills in attempts to legitimise themselves or to give an air of legitimacy or validity to their phoney diplomas. Recalling Conclusion and Recommendation No 80 above, the SC also notes that Competent Authorities may take steps outside the process of issuing an Apostille to deal with instances of fraud or other inappropriate uses of Apostilles, such as in relation to diploma mills.

Additional text outside the box of an Apostille

85. The SC recommends that Competent Authorities add a statement outside the box with the standard terms along the following lines to indicate the limited effect of an Apostille:

    This Apostille only certifies the signature, the capacity of the signer and the seal or stamp it bears. It does not certify the content of the document for which it was issued.

86. If a Competent Authority operates an e-Register which is accessible online, the SC recommends that the URL of the relevant website also be mentioned outside the box of the Certificate.

Formal requirements

87. The SC recalls the basic principle that an Apostille that has been issued according to the requirements of the Convention in the State of issuance must be accepted and produce its effects in any other Contracting State where it is produced.

88. The SC encourages Competent Authorities to use modern technologies as much as possible to fill out their Apostilles, as opposed to merely filling them out by hand.

89. The SC invites the Permanent Bureau, subject to available resources, to develop bilingual models of the Apostille Certificate (in English and French). The SC invites States Parties to send a copy of the Apostille Certificate in their own language to the Permanent Bureau, for the latter to develop multilingual versions of the Apostille Certificate. The SC suggests that these model Certificates be made available on a secured page of the "Apostille Section" of the Hague Conference website that is only accessible by Competent Authorities.

90. With a view to facilitating the circulation of Apostilles, and keeping in mind that an Apostille is designed to produce effects abroad, the SC encourages States to consider that, in addition to a language used by the State of origin, if not English or French, the information in Apostilles also be completed in one of these languages.

91. The SC notes the variety of means for affixing Apostilles to the public document as referred to in Conclusion and Recommendation No 16 of the 2003 Special Commission; without excluding any specific means of affixing an Apostille, the SC encourages the use of methods that would evidence any tampering with the method of affixation.

92. The SC stresses that variations in the form and size of Apostilles among Competent Authorities should not be a basis for rejection as long as the Apostilles are clearly identifiable as Apostilles issued under the Convention. In particular, Apostilles may not be refused in the State of destination on the grounds that they do not comply with that State's national formalities and modes of issuance. The SC further stresses that the addition of text outside the box on the Certificate is not a valid basis for rejection of a foreign Apostille.

93. The SC firmly rejects as contrary to the Convention isolated practices among States Parties that require Apostilles to be legalised.

Price of an Apostille

94. The SC notes that the price of an Apostille varies greatly among States Parties. The SC encourages States Parties to ensure that Apostilles are reasonably priced.

Register of Apostilles

95. The SC recalls the mandatory nature of the Register referred to in Article 7.

Electronic Apostille Pilot Program (e-APP)

96. The SC welcomes the continuing development of the e-APP, initiated by the Hague Conference and the National Notary Association of the United States of America, and notes with great satisfaction its entry into practical use in various jurisdictions (Belgium, Bulgaria, Colombia, Spain, Kansas, Rhode Island), in particular Spain where the e-Apostille component of the e-APP has been fully implemented (issuance of e-Apostilles for public documents executed in electronic form). The SC further notes with satisfaction that several States are actively pursuing implementation of one or both components of the Pilot Program. The SC invites States Parties who have not yet done so to consider implementation.

97. The SC invites the Permanent Bureau to further develop and promote the e-APP, including facilitating the exchange of technical and legal information among States Parties and Members of the Hague Conference.

98. The SC recognises that the implementation of the e-Apostille component of the e-APP presents questions that are not raised by traditional paper Apostilles and encourages States Parties, Members of the Hague Conference and the Permanent Bureau to continue considering these questions through the exchange of technical and legal information.

Future work

99. The SC encourages the Permanent Bureau to finalise, subject to available resources, a Practical Handbook on the Operation of the Apostille Convention, and to do so in consultation with States Parties and Members of the Hague Conference. The SC recommends that an electronic version of the Handbook be made available in the "Apostille Section" of the Hague Conference website.

100. The SC suggests that in the future the practical operation of the Apostille Convention not be considered in conjunction with the Service and Evidence Conventions or any other Hague Convention. The SC further suggests that the next Special Commission on the practical operation of the Apostille Convention be held in approximately three years' time.