

Table of Contents

INTRODUCTION.....	11
ABBREVIATIONS	15
GLOSSARY	25
FREQUENTLY ASKED QUESTIONS (FAQ)	39
EXPLANATORY CHARTS.....	57
PART 1 – NATURE AND SCOPE OF THE CONVENTION	63
I. History, purpose, and monitoring	65
1. History.....	65
2. Current status of the Convention	66
3. Purpose and features.....	67
i. Use of the Certificate – a presumption about the performance of service.....	69
ii. Protection of a defendant balanced against the legitimate interest of a diligent plaintiff	70
a) Protection prior to default judgment – Article 15(1)	70
b) Balancing plaintiff's interests – Article 15(2)	71
c) Relief from expiry of period to appeal post-judgment – Article 16(1).....	71
d) Balancing the plaintiff's interest – Article 16(2)	71
iii. Resolving difficulties and promoting cooperation	72
iv. Using IT to cooperate	72
4. Monitoring the practical operation of the Convention	73
i. The Service Section	73
ii. Role of the Permanent Bureau	74
iii. Special Commission	75
II. Structure, applicability and scope	76
1. Operational structure of the Convention	76
i. Channels of transmission.....	76
ii. Objections to alternative channels	76
iii. Protection of the defendant	76
2. Applicability of the Convention.....	77
i. The concept of service.....	77
ii. Occasion to transmit documents for service abroad	78
a) Non-mandatory character of the Convention	79
(i) The law of the forum	79
(ii) Case analysis: key historical judgments.....	79
(iii) Consideration by the Special Commission	81

	(iv)	Historical account of the negotiations of the Convention.....	81	
	(v)	National practice	82	
	b)	Exclusive character of the Convention.....	90	
3.		Scope	93	
	i.	Natural and legal persons, States and State agencies.....	94	
	ii.	Documents that are judicial or extrajudicial	98	
	iii.	Civil or commercial cases	102	
	a)	The historical evolution of the term "civil or commercial matters"	105	
		(i) The 1977 meeting of the Special Commission	105	
		(ii) The 1989 meeting of the Special Commission.....	106	
		(iii) The 2003 meeting of the Special Commission	108	
		(iv) The 2009 meeting of the Special Commission	108	
		(v) The 2014 meeting of the Special Commission	108	
		(vi) The 2024 meeting of the Special Commission.....	109	
	b)	Specific categories	109	
	iv.	Address of the person to be served is unknown	113	
	a)	Preliminary remarks	113	
	b)	Providing assistance in locating the person to be served	114	
	c)	National practice	115	
	v.	Between Contracting Parties to the Convention	119	
PART 2 – CHANNELS OF TRANSMISSION			121	
I.		The main channel.....	123	
	1.	The procedure for the Requesting State	125	
		i. The entity: the forwarding authority	125	
		ii. Preparing the request	128	
		a) Components of the Model Form.....	129	
			(i) The Request.....	129
			(ii) The Certificate	130
			(iii) Summary of the document to be served	131
		b) Languages used in the Model Form.....	132	
		c) Electronic drafting	133	
		d) Attachment of copies	134	
		e) No need for original document or legalisation	134	
		iii. Transmission of the Request.....	135	
		a) Transmission by traditional means	135	
		b) Transmission by electronic means	135	
	2.	The procedure for the Requested State	137	
		i. The entity: the Central Authority	137	
		ii. Preliminary review of the Request.....	140	

iii.	The execution of the Request.....	141
a)	Methods of service (Art. 5).....	141
(i)	Formal service (Art. 5(1)(a)).....	141
(ii)	Service by a particular method (Art. 5(1)(b))	142
(iii)	Informal delivery (Art. 5(2)).....	143
b)	The translation requirement (Art. 5(3))	145
c)	Costs (Art. 12).....	151
d)	Time of execution and the principle of speedy procedures	153
e)	The date of service	156
iv.	The Certificate of service (Art. 6)	158
a)	Completion of the Certificate.....	159
b)	Return of the Certificate.....	160
c)	Effect of the Certificate.....	161
v.	Refusal to execute a request for service	162
a)	Temporary refusal (Art. 4)	162
b)	Final refusal (Art. 13)	162
(i)	The concept of "sovereignty or security" (Art. 13(1)).....	163
(ii)	Limitation on discretion of refusal (Art. 13(2))	165
(iii)	Actions upon refusal (Art. 13(3)).....	167
II.	Alternative channels.....	167
1.	Applicability of alternative channels.....	169
2.	Preparing a request for service.....	171
3.	Diplomatic and consular communications in general.....	172
i.	Direct diplomatic or consular channels (Art. 8(1)).....	172
ii.	Indirect consular channels (Art. 9(1))	175
iii.	Indirect diplomatic channels (the exceptional circumstances under Art. 9(2)).....	177
4.	Postal channels (Art. 10(a))	179
i.	What does a postal channel consist of?	179
ii.	Valid service – the law of the forum.....	181
iii.	No objection by the State of destination.....	182
5.	State of destination's competent personnel channels.....	189
i.	Direct communication between judicial officers, officials or other competent persons (Art. 10(b)).....	189
ii.	Direct communication between "any person interested in a judicial proceeding" and "judicial officers, officials or other competent persons" (Art. 10(c))	192
III.	Derogatory channels	195

PART 3 – PROTECTION OF THE DEFENDANT (ARTS 15 AND 16)	197
I. Protection of the defendant prior to a judgment by default: Article 15	199
1. Stay of entry (Art. 15(1))	199
i. First requirement: valid service or actual delivery	200
ii. Second requirement: service was effected in sufficient time	201
2. Continuation of proceedings and, in particular, delivery of judgment (Art. 15(2))	202
i. First requirement: the transmission of documents under the Convention	203
ii. Second requirement: an adequate period of time since the date of transmission	203
iii. Third requirement: failure to obtain the Certificate	204
3. The operation of provisional or protective measures (Art. 15(3))	205
II. Protection of the defendant after a judgment by default: Article 16	205
PART 4 – RELATIONSHIP WITH OTHER TREATIES, REGIONAL INSTRUMENTS, INTERNAL LAW	209
I. Relationship between the 1965 Service Convention and other HCCH Conventions and Instruments (Arts 22-23)	211
1. 1905 Civil Procedure Convention provisions no longer applicable for transmission of documents for service	211
2. Ongoing application of the 1954 Civil Procedure Convention to the transmission for service provisions	211
3. 1965 Service Convention preserves Article 24 of the 1954 Civil Procedure Convention	213
4. Development of additional Conventions on Evidence and Access to Justice	213
i. 1970 Evidence Convention and the taking of evidence abroad	213
ii. 1980 Access to Justice Convention application to legal aid	215
II. Relationship between the 1965 Service Convention and supplementary or additional agreements (Arts 11, 24-25) – derogatory channels	216
1. Additional agreements concluded among Contracting Parties (Art. 11)	216
2. Supplementary agreements to the 1954 Civil Procedure Convention (Art. 24)	217
3. Other international agreements on the transmission of judicial and extrajudicial documents for service abroad (Art. 25)	217
i. The Inter-American Convention on Letters Rogatory	217
ii. The Model Bilateral Convention drafted by the Asian-African Legal Consultative Organization	219
iii. Regulation (EU) 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) (recast)	220
III. Relationship between the 1965 Service Convention and the internal law of Contracting Parties (Art. 19)	220

ANNEXES.....	223
ANNEX 1 - TEXT OF THE CONVENTION	225
ANNEX 2 – ANNEXES PROVIDED FOR UNDER ARTICLES 3, 5, 6 AND 7 OF THE 1965 SERVICE CONVENTION	235
ANNEX 3 – RECOMMENDATION ON INFORMATION TO ACCOMPANY JUDICIAL AND EXTRAJUDICIAL DOCUMENTS TO BE SENT OR SERVED ABROAD IN CIVIL OR COMMERCIAL MATTERS, ADOPTED BY THE FOURTEENTH SESSION (25 OCTOBER 1980)	241
ANNEX 4 – INSTRUCTIONS FOR FILLING OUT THE NOTICE ESTABLISHED BY THE AUTHOR OF THE REPORT ON THE RECOMMENDATION ADOPTED BY THE FOURTEENTH SESSION, MR GUSTAF MÖLLER (FINLAND)	247
ANNEX 5 – EXPLANATORY REPORT ON THE RECOMMENDATION ADOPTED BY THE FOURTEENTH SESSION DRAWN UP BY MR GUSTAF MÖLLER	253
ANNEX 6 – GUIDELINES FOR COMPLETING THE MODEL FORM	261
ANNEX 7 – CHECKLIST FOR PREPARING A REQUEST FOR SERVICE	275
ANNEX 8 – JOINING THE CONVENTION	279
BIBLIOGRAPHY	283
INDEX OF CITED CASE LAW	291