

<b>Title</b>	<b>Conclusions &amp; Recommendations of previous Meetings of the Special Commission on the practical operation of the 1965 Service, 1970 Evidence and 1980 Access to Justice Conventions</b>
<b>Document</b>	Prel. Doc. No 17 of June 2024
<b>Author</b>	PB
<b>Agenda Item</b>	Multiple agenda items
<b>Mandate(s)</b>	N/A
<b>Objective</b>	To assist the discussions at the meeting of the Special Commission (SC) by providing a list of previous Conclusions & Recommendations (C&R), organised thematically and according to the items listed in the revised draft Agenda To reaffirm previous C&R that remain relevant
<b>Action to be Taken</b>	For Decision <input type="checkbox"/> For Approval <input type="checkbox"/> For Discussion <input checked="" type="checkbox"/> For Action / Completion <input checked="" type="checkbox"/> For Information <input type="checkbox"/>
<b>Annexes</b>	Table listing previous C&R
<b>Related Documents</b>	N/A

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# Conclusions and Recommendations of previous Meetings of the Special Commission on the practical operation of the 1965 Service, 1970 Evidence and 1980 Access to Justice Conventions

- 1 In preparation for the upcoming meeting of the Special Commission on the practical operation of the 1965 Service, 1970 Evidence and 1980 Access to Justice Conventions (SC), taking place from 2 to 5 July 2024, the Permanent Bureau (PB) has prepared a compilation of Conclusions & Recommendations (C&R) of previous meetings of the SC.
- 2 Meeting participants can use this document to refer to relevant C&R that will be discussed during the meeting of the SC. The C&R have been arranged to follow the order of the meeting agenda as far as possible.
- 3 Additionally, given that over 10 years have elapsed since the last meeting of the SC, the PB has taken the opportunity to review previous C&R of the 1989,<sup>1</sup> 2003, 2009 and 2014 SC meetings. The PB submits that many C&R remain relevant and can be reaffirmed. Some C&R, due to their age or nature, do not appear to remain relevant, while other C&R would benefit from being updated. A similar updating process was undertaken at the meeting of the Special Commission on the Practical Operation of the 1980 Child Abduction and the 1996 Child Protection Conventions in 2023 (2023 SC) (see, e.g., Prel. Doc. No 1 of October 2022<sup>2</sup>). Reaffirming or restating previous C&R was also undertaken at the meeting of the Special Commission on the Practical Operation of the 1961 Apostille Convention in 2021 (2021 SC) (see, e.g., Work. Doc. No 1 of October 2021 and “Part VI” of the C&R from the 2021 Apostille SC).
- 4 Reaffirming relevant C&R would enable them to remain contemporary and would ensure that the advice of the SC is as up to date as possible. Reaffirming the C&R would also enable the PB to refer only to the most recent SC C&R in the new editions of the Service and Evidence Practical Handbooks, thereby future-proofing the publications and avoiding the need to recall the 2003/2009/2014 C&R (unless absolutely necessary).
- 5 The Annex to this document contains a compilation of all C&R from previous SC meetings, which aims to lay the foundation for the reaffirmation of these C&R. It is further anticipated that discussions at the upcoming SC will help to identify whether certain C&R can be affirmed or require modification as topics in the agenda are discussed.
- 6 An example of where an existing C&R may require modification is in relation to the introduction of new Country Profiles. Pursuant to the mandate of the Council on General Affairs and Policy in 2024, the PB has prepared draft Country Profiles for the Service and Evidence Conventions respectively, which will be further discussed during the SC.<sup>3</sup> The Country Profiles will contain a range of practical information. This information will be inputted into the Country Profile directly by Contracting Parties. Currently, Contracting Party practical information is provided to the PB for inclusion in practical information charts. Any current C&R inviting Contracting Parties to provide information to the PB may need to be modified with a C&R which invites or encourages Contracting Parties to input information directly into the relevant Country Profile.
- 7 As the upcoming SC meeting agenda does not include topics that address certain existing C&R, a brief segment has been included in the agenda to provide an opportunity to consider reaffirming

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1 The C&R from the April 1989 SC meeting are reflected in the “Report on the Work of the Special commission of April 1989 on the Operation of the Hague Conventions of 15 November 1965 on the Service Abroad of judicial and Extrajudicial Documents in Civil or Commercial Matters and of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters”, available on the HCCH website at [www.hcch.net](http://www.hcch.net) under “Service” section, then “Practical operation documents”.

2 “Draft Table of Conclusions and Recommendations of previous Meetings of the Special Commission (SC) on the practical operation of the 1980 Child Abduction and the 1996 Child Protection Conventions that are still relevant today”, Prel. Doc. No 1 of October 2022, available on the HCCH website at [www.hcch.net](http://www.hcch.net) under “Child Abduction” then “Special Commission Meetings” and “Eighth Special Commission meeting (October 2023)”.

3 “Draft Country Profile for the 1965 Service Convention”, Prel. Doc. No 9 of June 2024, and “Draft Country Profile for the 1970 Evidence Convention”, Prel. Doc. No 10 of June 2024, available on the HCCH website at [www.hcch.net](http://www.hcch.net) under “Service Convention” / “Evidence Convention” / “Access to Justice Convention” then “Special Commission on the practical operation of the 1965 Service, 1970 Evidence and 1980 Access to Justice Conventions”.

those additional C&R which remain relevant. These segments in the agenda are at the conclusion of discussions on each particular Convention.

## **ANNEX**

## I. Service, Evidence, and Access to Justice Conventions

### 1. Implementation, operation and general information

		<i>Description</i>
1	C&R No 2 of 2003	The Special Commission (SC) noted and emphasised the <i>continued importance</i> of the Hague Apostille, Evidence and Service Conventions.
2	C&R No 3 of 2003	In light of the value of the continued monitoring of the Conventions' practical operation, the need to promote uniform interpretation, foster mutual confidence and enhance the mutual benefits for States party to the Convention to exchange their respective experiences in operating the Conventions, as well as to promote the benefits of the Conventions to non-party States, the SC recommended to have <i>more frequent meetings</i> to review the practical operation of the Apostille, Evidence and Service Conventions. The Special Commission recommended that review meetings on the practical operation of these three Conventions be held <i>every five years</i> , subject to the availability of the additional resources needed. Also, consideration should be given to the possibility of reviewing the practical operation of the <i>Hague Convention of 25 October 1980 on International Access to Justice</i> .
3	C&R No 4 of 2003	The SC emphasised that the Apostille, Evidence and Service Conventions operate in an environment which is subject to important <i>technical developments</i> . Although this evolution could not be foreseen at the time of the adoption of the three Conventions, the SC underlined that modern technologies are an integral part of today's society and their usage a matter of fact. In this respect, the SC noted that the spirit and letter of the Conventions do not constitute an obstacle to the usage of modern technology and that their application and operation can be further improved by relying on such technologies. The Workshop held prior to the SC ( <i>i.e.</i> , on 27 October 2003) clearly revealed the means, possibilities and advantages of using modern technologies in subject matters falling within the scope of the Conventions. <sup>1</sup>
4	C&R No 2 of 2009	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.

<sup>1</sup> The Workshop was structured around the following presentations: Mr Thomas Gottwald & Mr Peter Frank (Federal Ministry of Justice, Austria): *eJustice – Datahighway to Austrian Courts – Electronic Legal Communication (ELC) – Transmission of Legal Documents*; MS JULIE NIND (Ministry of Justice, New Zealand): *Taking evidence by video link across Tasman*; Ms Dory Mckenzie & Mr James Mason (Foreign and Commonwealth Office, United Kingdom): *The issuance of Apostilles by the Foreign and Commonwealth Office*; Mr Ozie Stallworth & Mr Kevin Mendelson (National Notary Association, United States of America): *enjoa – The Electronic Notary Journal of Official Acts*.

		<i>Description</i>
5	C&R No 3 of 2009	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.
6	C&R No 4 of 2009	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.
7	C&R No 5 of 2009	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.
8	C&R No 1 of 2014	The SC reaffirms the importance of effective cross-border judicial and administrative co-operation in civil and commercial matters, and notes with great satisfaction that a number of States have become, or are considering becoming, party to the Service, Evidence and / or Access to Justice Conventions. The SC encourages States that are party to the <i>Hague Convention of 1 March 1954 on civil procedure</i> to consider becoming party to the Conventions. The SC welcomes the accession of Albania, Armenia, Australia, Belize, Brazil, Colombia, Croatia, Korea, Moldova, Montenegro, Morocco, Serbia and The former Yugoslav Republic of Macedonia to one or more of the Conventions since its last meeting in 2009.
9	C&R No 2 of 2014	The SC encourages Contracting States to publicise the C&R among users of the Conventions, including judicial authorities, judicial officers, practitioners, and Central Authorities.
10	C&R No 3 of 2014	The SC recalls the requirement for Contracting States to designate a Central Authority for each Convention, and to inform the depositary of this designation. The SC calls on Contracting States that have not done so to fulfil this requirement.
11	C&R No 4 of 2014	The SC notes that the Service Section and Evidence Section of the Hague Conference website are a very helpful source of information relating to the practical operation of the Conventions concerned, and encourages Central Authorities to publicise them. The SC encourages Contracting States to provide the Permanent Bureau with information to be published in the practical information charts available on these Sections, and to update this information as required, in particular the contact details for Central Authorities.



## II. Evidence Convention

### 1. Implementation and general information (Agenda II)

		<i>Description</i>
12	C&R No 34(a) of 1989	In the end, as a chapter of its “Conclusions on the most important points considered by the Special Commission” (a copy of which is attached as an Annex to this Report), this group adopted a balanced statement concerning the Convention on the Taking of Evidence Abroad expressed as follows: <i>a The Special Commission stressed that one of the principal objects of the authors of the Convention was to create a link between the system of taking of evidence of the civil law and that of the common law.</i>
13	C&R No 27 of 2003	The SC recalled the importance of the Evidence Convention as a <i>bridge between common law and civil law</i> procedures relating to the taking of evidence in civil and commercial litigation.
14	C&R No 28 of 2003 ( <i>restatement unnecessary</i> )	With a view to overcoming some of the differences that have arisen among States party in interpreting the Convention, in particular the scope of a possible reservation under Article 23, the SC carefully reviewed some of the principles and practices relating to the Convention.
15	C&R No 45 of 2003	The SC took note of the position of one Member State that the existence of a Multi-unit State clause might assist that State to accede to the Convention, but there was insufficient priority for this to be the subject of a protocol on its own; if there were to be a Protocol on other issues, then such a clause might be considered.
16	C&R No 46 of 2003	The SC accepted that, at this point, there was no need to consider the application of the Convention in relation to REIOs.
17	C&R No 8 of 2014	The SC recalls that, pursuant to Article 39(4), the Evidence Convention only applies between an acceding State and an existing Contracting State if the accession is accepted by that existing Contracting State. The SC urges all Contracting States to consider each accession with a view to its acceptance.

### 2. Nature of the Convention (Agenda II)

		<i>Description</i>
18	C&R No 34(b) of 1989	In the end, as a chapter of its “Conclusions on the most important points considered by the Special Commission” (a copy of which is attached as an Annex to this Report), this group adopted a balanced statement concerning the Convention on the Taking of Evidence Abroad expressed as follows:  <i>b The Special Commission took note of the fact that opinions remain divided as to whether or not the Convention is of exclusive application.</i>

<i>Description</i>		
19	C&R No 34(c) of 1989	In the end, as a chapter of its “Conclusions on the most important points considered by the Special Commission” (a copy of which is attached as an Annex to this Report), this group adopted a balanced statement concerning the Convention on the Taking of Evidence Abroad expressed as follows:  <i>c However, having regard to the object of the Convention, the Commission thought that in all Contracting States, whatever their views as to its exclusive application, priority should be given to the procedures offered by the Convention when evidence located abroad is being sought.</i>
20	C&R No 37 of 2003	The SC noted that there were still differing views among States party as to the obligatory and/or exclusive character of the Convention.
21	C&R No 53 of 2009	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.

### 3. Article 1(2) (Agenda II)

<i>Description</i>		
22	C&R No 36 of 2003 ( <i>restatement unnecessary</i> )	The SC recommended that States party submit information to the Permanent Bureau as to how Article 1(2) was interpreted and, in particular, what national judicial proceedings would be regarded as “contemplated” for purposes of this provision.
23	C&R No 47 of 2009	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.
24	C&R No 48 of 2009	The SC recommends that the word “commenced” should be given a uniform interpretation across Articles 1(2), 15(1) and 16(1).

### 4. Central Authorities and their functions (Agenda III.1)

<i>Description</i>		
25	C&R No 44 of 2009	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.
26	C&R No 45 of 2009	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.

27	C&R No 9 of 2014	The SC notes that the practical operation of the Evidence Convention would be further improved by more timely execution of Letters of Request, and better communication with Central Authorities, including by e-mail, at all stages of the execution of a Letter of Request.
28	C&R No 10 of 2014	The SC welcomes the practice reported by Contracting States whereby Central Authorities: <ol style="list-style-type: none"> <li>a. promptly acknowledge the receipt of Letters of Request to the Requesting Authority and / or interested parties;</li> <li>b. promptly respond to enquiries from Requesting Authorities and / or interested parties about the status of execution;</li> <li>c. communicate to the Requesting Authority and / or interested parties an indication of steps to be taken for execution.</li> </ol>
29	C&R No 11 of 2014	The SC welcomes the use of electronic tools that allow the status of requests to be checked online, noting the importance of taking into account considerations of privacy and confidentiality.

#### 5. Transmission of Letters of Request (Agenda III.1)

<i>Description</i>		
30	C&R No 49 of 2009	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.
31	C&R No 50 of 2009	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.

#### 6. Use of the Model Form (Agenda III.2.a)

<i>Description</i>		
32	C&R No 54 of 2009	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.
33	C&R No 12 of 2014	The SC recalls its recommendation for the Model Form to be used ( <i>cf.</i> C&R No 54 of the 2009 SC) and notes that many Central Authorities prefer Letters of Request to be issued using the Model Form, and welcomes the <i>Guidelines for Completing the Model Form</i> developed by the Permanent Bureau.

## 7. Expeditious execution of the requests (Agenda III.2.c)

<i>Description</i>		
34	C&R No 39 of 2003	The SC recommended that requests for evidence be presented as soon as practically possible so as to provide sufficient time for their execution in the State addressed.
35	C&R No 40 of 2003	The SC also urged States party to communicate to their Central Authorities and to the authorities receiving letters of request, the importance of expeditious execution of the requests.
36	C&R No 41 of 2003	With a view to avoiding unnecessary delays where a letter of request is deficient, the SC recommended that Central Authorities or executing authorities encourage the requesting authority to reformulate and resubmit its letter of request. In cases where the request appears to be partially deficient, the executing authorities should, wherever appropriate, execute the portion of a letter that is not deficient rather than to reject the entire request.
37	C&R No 42 of 2009	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.
38	C&R No 43 of 2009	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.

## 8. Costs for execution and reimbursement (Agenda III.2.d)

<i>Description</i>		
39	C&R No 13 of 2014	The SC notes that Article 14(2) of the Evidence Convention confers a right to require the reimbursement of “fees paid to experts and interpreters” and the “costs occasioned by the use of special procedure” requested under Article 9(2). The SC concludes that Article 14(2) does not provide for the Requested State to require advance payment of costs.
40	C&R No 14 of 2014	The SC concludes that a Requested State may require reimbursement of fees paid and / or costs occasioned pursuant to Articles 9(2) and 14(2) even if the evidence is no longer sought (e.g., where the Requesting Authority withdraws the Letter of Request).
41	C&R No 15 of 2014	The SC acknowledges that electronic payment facilitates reimbursement, and encourages Contracting States to provide the Permanent Bureau with relevant information for inclusion in the practical information charts on the Evidence Section.

## 9. Arbitration (Agenda III.2.e)

		<i>Description</i>
42	C&R No 38 of 2003	The SC noted that in some instances, and in accordance with the internal law of some States, the Convention has been made available for use in arbitration proceedings. The SC stressed that a request for the taking of evidence under the Convention would have to be presented by the relevant judicial authority of the State where the arbitration proceedings take place.

## 10. Use of IT (Taking evidence by video-link) (Agenda III.5)

		<i>Description</i>
43	C&R No 42 of 2003	The SC expressed general support for the use of modern technologies to further facilitate the efficient operation of the Convention. The SC noted that there seems to be no legal obstacle to the usage of modern technologies under the Convention. However, the use of some techniques may be subject to different legal requirements in different States (e.g., obtaining the consent of all parties involved in the execution). In this respect, the SC recommended that States party make relevant information on legal requirements relating to specific techniques available to the Permanent Bureau.
44	C&R No 43 of 2003	The SC stressed where a special method or procedure is requested for the taking of evidence (Art. 9(2)), the <i>exception</i> for methods that are “incompatible with the internal law of the State of execution or [...] impossible of performance by reason of its internal practice and procedure or by reason of practical difficulties” should be interpreted narrowly to permit, to the greatest possible extent, the use of modern information technology.
45	C&R No 44 of 2003	The SC stressed that early informal contact among appropriate authorities to coordinate the presentation and execution of Letters of request might be facilitated by the use of modern information technology such as e-mail.
		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:
46	C&R No 55 of 2009	<ul style="list-style-type: none"> <li>(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.</li> <li>(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)).</li> <li>(c) A video-link may be used to assist in the execution of a Letter of Request in accordance with Article 9(2).</li> </ul>

		<i>Description</i>
		(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).
47	C&R No 56 of 2009	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.
48	C&R No 57 of 2009	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.
49	C&R No 20 of 2014	The SC recalls that the use of video-links to assist the taking of evidence abroad is consistent with the framework of the Evidence Convention ( <i>cf.</i> C&R No 55 of the 2009 SC). The SC acknowledges that Article 17 does not preclude a member of judicial personnel of the court of origin (or other duly appointed person), who is located in one Contracting State, from examining a person located in another Contracting State by video link.
50	C&R No 21 of 2014 ( <i>restatement unnecessary</i> )	Further to a proposal by the delegation of Australia to consider an optional protocol to facilitate the taking of evidence, without compulsion, by video-link under the Evidence Convention, and with a view to promoting the further use of modern technologies, the SC recommends that the Council establish an Experts' Group at its next meeting to investigate the issues that may arise with the use of video-link and other modern technologies in the taking of evidence abroad. The SC further recommends that the Experts' Group study existing instruments and current practice, and explore potential ways to address these issues, including the desirability and feasibility of an optional protocol or any other instrument.

## 11. Grounds for refusal (incl. Art. 23)

		<i>Description</i>
51	C&R No 34(d) and (e) of 1989	<p>In the end, as a chapter of its “Conclusions on the most important points considered by the Special Commission” (a copy of which is attached as an Annex to this Report), this group adopted a balanced statement concerning the Convention on the Taking of Evidence Abroad expressed as follows:</p> <p><i>d With a view to facilitating the resort to the Convention as a matter of priority, the Commission encouraged any States which have made or contemplate making the reservation under Article 23 to limit the scope of such reservation.</i></p>

		<i>Description</i>
		<p>e Where nonetheless the judicial authorities of a Contracting State resort to measures of compulsion under their domestic rules of procedure for the purpose of obtaining documentary evidence located in another Contracting State, the Commission expressed the wish that such judicial authorities respect the spirit of a limited Article 23 reservation made by such other State.</p>
		<p>The SC recognised that the terms of Article 23, which permits a Contracting State to “declare that it will not execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents”, are a continued source of misunderstandings. Having regard to the history of the provision, the SC agreed that Article 23 was intended to permit States to ensure that a request for the production of documents must be <i>sufficiently substantiated</i> so as to avoid requests whereby one party merely seeks to find out what documents may generally be in the possession of the other party to the proceeding. The SC noted that the wording of the particularised declaration submitted by the UK (<i>i.e.</i>, the proponent of the provision) reflected this purpose more adequately than the wording of Article 23. The UK declaration reads as follows:</p>
52	C&R No 29 of 2003	<p>“In accordance with Article 23 Her Majesty's Government declare that the United Kingdom will not execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents. Her Majesty's Government further declare that Her Majesty's Government understand "Letters of Request issued for the purpose of obtaining pre-trial discovery of documents" for the purposes of the foregoing Declaration as including any Letter of Request which requires a person:</p> <ul style="list-style-type: none"> <li>a. to state what documents relevant to the proceedings to which the Letter of Request relates are, or have been, in his possession, custody or power; or</li> <li>b. to produce any documents other than particular documents specified in the Letter of Request as being documents appearing to the requested court to be, or to be likely to be, in his possession, custody or power.”</li> </ul>
		<p>Equally, the SC noted that Article 16 of the <i>Additional Protocol of 1984 to the Inter-American Convention on the Taking of Evidence Abroad</i> also more adequately reflects the concern of the proponents of Article 23 of the Evidence Convention. Article 16 of the Additional Protocol reads as follows:</p>
53	C&R No 30 of 2003	<p>“The States Parties to this Protocol shall process a letter rogatory that requests the exhibition and copying of documents if it meets the following requirements:</p> <ul style="list-style-type: none"> <li>a. The proceeding has been initiated;</li> <li>b. The documents are reasonably identified by date, contents, or other appropriate information, and</li> </ul>

		<i>Description</i>
		<p>c. The letter rogatory specifies those facts and circumstances causing the requesting party reasonably to believe that the requested documents are or were in the possession, control, or custody of, or are known to the person from whom the documents are requested.</p> <p>The person from whom documents are requested may, where appropriate, deny that he has possession, control, or custody of the requested documents, or may object to the exhibition and copying of the documents, in accordance with the rules of the Convention.</p> <p>At the time of signing, ratifying or acceding to this Protocol a State may declare that it will process the letters rogatory to which this article applies only if they identify the relationship between the evidence or information requested and the pending proceeding.”<sup>2</sup></p>
54	C&R No 31 of 2003	The SC noted that in some instances where States have made a general, non-particularised declaration under Article 23, they may have mistakenly believed that they are only objecting to evidence requests submitted prior to the <i>opening of a proceeding in the State of origin</i> . In fact, “pre-trial discovery” means evidence requests submitted after the filing of a claim but before the final hearing on the merits.
55	C&R No 32 of 2003	Compounding the misunderstandings that may have prompted Contracting States to make a general declaration under Article 23 denying the “pre-trial discovery of documents”, the SC noted that in some cases the judicial authorities of a State of origin have concluded that no requests for the production of documents were permitted under the Convention in a State having made such a general declaration. This may result in the State of origin applying its own domestic law for the taking of evidence against foreign parties.
56	C&R No 33 of 2003	The SC took note of the fact that following the discussion of the same issue during the SC meeting in 1989, some States revised their declaration under Article 23 to reflect the more particularised terms on the UK declaration. At the same time, another State party informed the SC about changes in its internal law to further limit the scope of pre-trial discovery, including by increasing the control of judges over discovery proceedings.
57	C&R No 34 of 2003	Against this background, the SC recommended that States which have made a general, non-particularised declaration under Article 23 <i>revisit their declaration</i> by considering an amendment adopting terms such as those contained in the UK declaration or in Article 16 of the Inter-American Protocol. In this connection, the SC further recommended the production of a new edition of the <i>practical Handbook</i> on the operation of the Convention.
58	C&R No 35 of 2003	The SC noted that Article 23 expressly refers to “documents” and that the scope of the provision should not be extended to oral testimony.

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



		<i>Description</i>
59	C&R No 51 of 2009	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.
60	C&R No 52 of 2009	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.
61	C&R No 16 of 2014	The SC recalls the exhaustive nature of the grounds for refusal set out in Articles 12(1) and 23 of the Evidence Convention.
62	C&R No 17 of 2014	In addition to providing the information specified in C&R No 4, the SC invites Contracting States to provide the Permanent Bureau with information concerning acts that typically do not fall within the functions of the judiciary in their State ( <i>cf.</i> Art. 12(1)(a)) for inclusion in the practical information charts on the Evidence Section.
63	C&R No 18 of 2014	Recalling the objective of Article 23 to “ensure that a request for the production of documents must be <i>sufficiently substantiated</i> ” ( <i>cf.</i> C&R No 29 of the 2003 SC and C&R No 51 of the 2009 SC), the SC recommends that States refrain from applying Article 23 to refuse the execution of Letters of Request for the production of documents that are specified in the request, or otherwise reasonably identified. The SC notes that one Contracting State that regards the Evidence Convention as mandatory, and that has revisited its Article 23 declaration, considers that the making of a “qualified declaration” has encouraged Requesting Authorities in States that do not regard the Evidence Convention as mandatory to use the Convention.
64	C&R No 19 of 2014	The SC notes that, while Article 23 only applies to Chapter I of the Evidence Convention, applications for permission to take evidence under Chapter II may be subjected to the same conditions of specificity.

### III. Access to Justice Convention

#### 1. Operation and application (Agenda IV)

		<i>Description</i>
65	C&R No 59 of 2009	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.

<i>Description</i>		
66	C&R No 60 of 2009	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.
67	C&R No 61 of 2009	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.
68	C&R No 62 of 2009	The SC is of the view that the word “presence” in Article 2 is to be interpreted in a literal way.
69	C&R No 63 of 2009	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.

## 2. Implementation tools (Agenda IV)

<i>Description</i>		
70	C&R No 64 of 2009	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.
71	C&R No 22 of 2014	Recognising the continuing importance and increasing use of the Access to Justice Convention, the SC recalls the usefulness of creating multi-lingual forms and further translations of the Convention, with a view to encouraging further accessions by States ( <i>cf.</i> C&R No 64 of the 2009 SC).

## IV. Service Convention

### 1. Implementation and general information (Agenda V)

<i>Description</i>		
72	C&R No 6 of 2009	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.
73	C&R No 7 of 2009	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

		<i>Description</i>
		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.
74	C&R No 8 of 2009	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.

## 2. Nature of the Convention (Non-mandatory but exclusive character of the Convention) (Agenda V)

		<i>Description</i>
75	C&R No 73 of 2003	Recalling the conclusions and recommendations of 1989, the SC confirmed the prevailing view that the Convention was of a non-mandatory, but exclusive character as described in more detail in the provisional version of the new edition of the Practical Handbook, without prejudice to international law on the interpretation of treaties.
76	C&R No 12 of 2009	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.

## 3. Application of the Convention

		<i>Description</i>
77	C&R No 75 of 2003	The SC considered and rejected a proposal that States party adopt a recommendation to implement a system of double-date, according to which the interests of the plaintiff (e.g., limitation periods) and those of the defendant (e.g., time to file his or her defence) have to be protected by assigning different dates. The SC took note that many legal systems have effective means to protect the interests of the plaintiff without having to rely on the actual date of service.
78	C&R No 79 of 2003	The SC noted that States party do not assert reciprocity against other States party that have made declarations under Articles 8 and 10.
79	C&R No 80 of 2003	The SC accepted that, at this point, there was no need to consider the application of the Convention in relation to REIOs.

		<i>Description</i>
80	C&R No 15 of 2009	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.
81	C&R No 17 of 2009	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).
82	C&R No 36 of 2009	The SC notes that the absence of a specific rule on the date of service has not caused any major problems in practice.

#### 4. Central Authorities (Designation and organisation) (Agenda VI.1)

		<i>Description</i>
83	C&R No 50 of 2003	The SC reaffirmed the requirement on States party to the Service Convention to designate a Central Authority under Article 2 and noted the serious difficulties which can arise in operating the Convention if such a designation is not made known to the depositary at the time of the deposit of the instrument of ratification or accession. The SC urged all States party which have not yet done so to designate, as soon as possible, a Central Authority. If delays may not be avoided in the designation of the Central Authority(ies), the SC urged that such States give full information to the Permanent Bureau about the arrangements provided to facilitate the functioning of the Convention pending such designation.
84	C&R No 51 of 2003	The SC requested all States party to provide to the Permanent Bureau complete contact information (postal address, telephone and fax numbers, e-mail and website addresses) for their Central Authorities, particularly for States that have designated more than one Central Authority or other authorities under Article 18. The SC noted the importance of regularly updating of this information on the Conference's website.
85	C&R No 52 of 2003	The SC reaffirmed that it is for a State party to determine its own model for the organisation of the Central Authority functions. In particular, the SC noted that the terms of the Convention do not preclude a Central Authority from contracting activities under the Convention to a private entity, while retaining its status as Central Authority and ultimate responsibility for its obligations under the Convention. <sup>3</sup>

<sup>3</sup> The Russian Federation did not support this recommendation and reserved its position.

## 5. Use of IT (Service by digital means) (Agenda VI.1.c)

		<i>Description</i>
86	C&R No 59 of 2003	The SC stressed that the operation of the Convention was to be considered in light of a business environment in which use of modern technology was now all pervasive, and that the electronic transmission of judicial communications is a growing part of that environment. In this light, conclusions could be reached as follows:
87	C&R No 60 of 2003	The Convention does not on its terms prevent or prescribe the use of modern technologies to assist in further improving its operation.
88	C&R No 61 of 2003	The Convention does not on its terms deal with internal procedures but there is a link between domestic law systems and the functioning of the Convention.
89	C&R No 62 of 2003	It can be concluded, however, that the transmission of documents internationally for the purposes of the Convention can and should be undertaken by IT-Business methods including e-mail; this is already happening and the SC recommends that States party to the Convention explore all ways in which they can use modern technology for this purpose.
90	C&R No 63 of 2003	In this light, the SC identified a variety of steps for which the use of electronic means may be immediately explored: communication between a requesting party and a forwarding authority, communication between a forwarding authority and a Central Authority of a requested State, and retransmission of the certificate of execution by the designated authority.
91	C&R No 64 of 2003	The SC also recognised that in many domestic legal systems the relevant legal procedures and technological conditions did not allow for service by electronic means, although in certain systems the use of e-mail and fax was permitted in certain circumstances, particularly where approved by judicial authority in advance or agreed by the parties. Nevertheless, the SC recognised that given the pace of technological developments, existing problems might well be overcome so as to enable service by these methods to become more widely used. States party to the Convention are therefore encouraged to explore ways in which such innovations can be achieved.
92	C&R No 37 of 2009	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.
93	C&R No 38 of 2009	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.
94	C&R No 39 of 2009	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.

<i>Description</i>		
95	C&R No 36 of 2014 ( <i>restatement unnecessary</i> )	The SC welcomes the study conducted by the Permanent Bureau on the use of information technology in the operation of the Service Convention as part of the Draft Revised Service Handbook.
96	C&R No 37 of 2014	The SC notes that, subject to domestic law of the Requested State, requests for service transmitted under the main channel of transmission (the Central Authority) may be executed by electronic means under Article 5. The SC also notes developments in the use of information technology under the alternative channels of Article 10.
97	C&R No 38 of 2014	The SC invites the Permanent Bureau to continue to monitor developments in this area and encourages States to report such developments to the Permanent Bureau.

## 6. Assistance in locating the person to be served (Agenda VI.1.d)

<i>Description</i>		
98	C&R No 23 of 2014	Recognising that there is no obligation to provide assistance in locating the person to be served under the Service Convention, the SC notes that many Contracting States have reported employing a variety of practices to assist, as a Requested State, in circumstances when the address is incomplete or incorrect. Some have even reported assistance when the address is unknown. The SC encourages Contracting States to provide such assistance consistent with their legal and structural capabilities, when able to do so.
99	C&R No 24 of 2014	The SC encourages Contracting States to provide the Permanent Bureau with information regarding such assistance for inclusion in the practical information charts on the Service Section of the Hague Conference website.

## 7. Main channel of transmission (Agenda VI.2)

<i>Description</i>		
100	C&R No 18 of 2009	The SC notes the practice of many Central Authorities to accept requests for service that have been forwarded by private courier.
101	C&R No 19 of 2009	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.
102	C&R No 29 of 2014	The SC notes that some Contracting States do not have domestic legislation providing for informal delivery. However, the SC recognises that informal delivery is a valid form of service under the Service Convention when the documents are voluntarily accepted by the addressee.

## 8. Use of the Model Form (Agenda VI.2.a)

		<i>Description</i>
103	C&R No 29 of 2009	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.
104	C&R No 30 of 2009	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.
105	C&R No 31 of 2009	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”.
106	C&R No 32 of 2009	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.
107	C&R No 33 of 2009	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.
108	C&R No 34 of 2009	The SC strongly recalls Article 3(1) <i>in fine</i> , 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.
109	C&R No 25 of 2014	The SC recalls C&R No 29 of the 2009 SC, reaffirming the mandatory use of the Model Form, and welcomes the <i>Guidelines for Completing the Model Form</i> developed by the Permanent Bureau. The SC also notes the importance of sending Model Forms that are fully, correctly and clearly completed, preferably with word processing technology and not by hand. The SC also notes that the appropriate use of the Model Form can mitigate delays and avoid unnecessary costs.
110	C&R No 26 of 2014	The SC stresses the importance of returning a properly completed certificate under Article 6 to the applicant ( <i>i.e.</i> , the forwarding authority).

<i>Description</i>		
111	C&R No 27 of 2014	The SC invites Contracting States to submit copies of the Model Form in their languages to the Permanent Bureau so that it can prepare trilingual Model Forms.

## 9. Forwarding authorities (Agenda VI.2.b)

<i>Description</i>		
112	C&R No 47 of 2003	The SC recalled that it is for the law of the requesting State to determine the competence of the forwarding authorities (Art. 3). Furthermore, the SC took note of information provided by number of experts about the position of forwarding authorities and concluded that most practical problems have been solved.
113	C&R No 48 of 2003	The SC invited all States party to provide information on the forwarding authorities and their competences to the Permanent Bureau for posting on the Conference's website. The SC also accepted a suggestion that such information be included on the Standard Form for a Request for Service <sup>4</sup> .
114	C&R No 49 of 2003	The SC recommended that in any question of doubt as to the competence of the forwarding authority, rather than rejecting the request, the authorities in the State requested should seek to confirm that competence by either consulting the Conference's website or by making expeditious informal inquiries of the forwarding authorities, including by way of e-mail.
115	C&R No 21 of 2009	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.

## 10. Language and translation requirements (Agenda VI.2.c)

<i>Description</i>		
116	C&R No 65 of 2003	The SC recognised that no translation is required, under the Convention, for transmission under alternative channels provided by the Convention; the SC noted, however, that in isolated cases such translation requirements are imposed by a State's internal law.
117	C&R No 66 of 2003	The SC noted that the vast majority of States party do not require a translation for service by way of informal delivery (Art. 5(2)).

<sup>4</sup> The Russian Federation did not support this recommendation and reserved its position.



<i>Description</i>		
118	C&R No 67 of 2003	As to the translation requirement for service under Article 5(1), the SC also noted the importance of respecting the various requirements provided in the national laws of States party.
119	C&R No 68 of 2003	The SC invited the States party to make available to the Permanent Bureau all relevant information (incl. any declaration) regarding the extent of any translation requirement for execution of requests under Article 5. The SC also invited States party to provide information as to the consequences under their domestic law when acting as requesting State of a refusal of an addressee to accept service under the Convention.
120	C&R No 25 of 2009	The SC recalls Conclusions and Recommendations Nos 65 to 68 of the 2003 Special Commission.
121	C&R No 26 of 2009	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.
122	C&R No 28 of 2014	The SC recalls that no translation of the documents to be served is required for informal delivery.

#### 11. Prompt execution of request (Agenda VI.2.d)

<i>Description</i>		
123	C&R No 23 of 2009	<p>Aiming at further enhancing cross-border judicial co-operation among Contracting States, the SC recommends:</p> <ul style="list-style-type: none"> <li>(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.</li> <li>(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).</li> <li>(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.</li> <li>(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.</li> <li>(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.</li> </ul>

<i>Description</i>		
		<p>(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.</p> <p>(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.</p> <p>(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.</p>
124	C&R No 24 of 2009	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.
125	C&R No 30 of 2014	The SC welcomes the practice reported by certain Contracting States whereby Central Authorities promptly respond to enquiries from Requesting Authorities and / or interested parties about the status of execution, and encourages all Contracting States to embrace this practice where possible.

## 12. Costs for service and reimbursement (Agenda VI.2.e)

<i>Description</i>		
126	C&R No 53 of 2003	The SC reaffirmed that according to Article 12(1), a State party shall not charge for its services rendered under the Convention. Nevertheless, under Article 12(2), an applicant shall pay or reimburse the costs occasioned by the employment of a judicial officer or other competent person. The SC urged States to ensure that any such costs reflect actual expenses and be kept at a reasonable level. <sup>5</sup>
127	C&R No 54 of 2003	The SC invited States party to make available to the Permanent Bureau all relevant information relating to costs, the availability and modalities of service by delivery under Article 5(2), as well as information relating to the alternative modes of transmission under the Convention, for posting on the Conference's website.
128	C&R No 20 of 2009	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).

<sup>5</sup> The Russian Federation did not support this recommendation and reserved its position.

<i>Description</i>		
129	C&R No 22 of 2009	The SC recalls the Conclusions and Recommendations Nos 52 to 54 of the 2003 Special Commission meeting (including footnotes).
130	C&R No 31 of 2014	The SC recalls C&R No 22 of the 2009 SC.
131	C&R No 32 of 2014	In response to concerns voiced by some Contracting States about difficulties with payments for costs incurred for service, the SC notes that the methods referred to in C&R No 15 (above) regarding the Evidence Convention are equally applicable to payments under the Service Convention.

### 13. Grounds for refusal (Agenda VI.2.f)

<i>Description</i>		
132	C&R No 35 of 2014	The SC recalls the exhaustive nature of the grounds for refusal set out in Article 13(1) of the Service Convention.

### 14. Alternative channels of transmission (Agenda VI.3)

<i>Description</i>		
133	C&R No 55 of 2003	The SC reaffirmed its clear understanding that the term “send” in Article 10(a) is to be understood as meaning “service” through postal channels.
134	C&R No 56 of 2003	The SC considered the increasing use of private courier services for the expeditious transmission of documents in a variety of business settings and heard reports that such couriers have been used to serve process under Article 10(a) of the Convention. In light of that, the SC concluded that for the purposes of Article 10(a) the use of a private courier was the equivalent of the postal channel.
135	C&R No 57 of 2003 ( <i>restatement unnecessary</i> )	<p>The SC noted the further clarification submitted by the Japanese delegation on its position regarding Article 10(a):</p> <p>“Japan has not declared that it objects to the sending of judicial documents, by postal channels, directly to addressees in Japan. As the representative of Japan made clear at the Special Commission of April 1989 on the practical operation of the Service and Evidence Conventions, Japan does not consider that the use of postal channels for sending judicial documents to persons in Japan constitutes an infringement of its sovereign power. Nevertheless, as the representative also indicated, the absence of a formal objection does not imply that the sending of judicial documents by postal channels to addressees in Japan is always considered valid service in Japan. In fact, sending documents by such a method would not be deemed valid service in Japan in circumstances where the rights of the addressee were not respected.”</p>

		<i>Description</i>
136	C&R No 58 of 2003	The SC noted that the UK confirmed its position expressed at the Special Commission meeting of 1989, indicating its preference for the use of direct service through English solicitors on residents of England and Wales.
137	C&R No 28 of 2009	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.
138	C&R No 33 of 2014	The SC recommends that persons forwarding requests for service under Article 10(b) (c) inquire with authorities in the receiving State, before sending a request for service in order to properly identify to whom the request should be sent.

#### **15. Parties' contractual agreements and the Convention (Agenda VI.5)**

		<i>Description</i>
139	C&R No 76 of 2003	The SC took note of the practice reported in one State party to the Convention whereby contractual arrangements were entered into and upheld in the courts of that State which excluded the application of the Convention for service of documents as regards parties to such contracts, including parties outside that State.
140	C&R No 77 of 2003	Several experts commented to the effect that this would not be allowed in their States and be considered as contrary to their internal law. Some experts indicated, however, that a judgment rendered pursuant to service in accordance with any such contractual arrangements would not necessarily be refused execution.

#### **16. Service on foreign States and State officials (Agenda VI.6)**

		<i>Description</i>
141	C&R No 27 of 2009	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.

#### **17. Relationship between Service and Evidence Conventions (Agenda VI.7)**

		<i>Description</i>
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142	C&R No 40 of 2009	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.
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## 18. Protection of defendants (Arts 15 and 16) (Agenda VI.8)

<i>Description</i>		
143	C&R No 74 of 2003	The SC recalled the purpose and fundamental importance of Article 15(2), which is designed to ensure actual notice to a defender in sufficient time to organise his or her defence.
144	C&R No 78 of 2003	The SC recalled that the Convention does not address the issue of recognition and enforcement of judgments. In addition, experts reaffirmed the need for the Convention to operate so as to sustain the procedural rights of the defender. In particular, the SC recalled again the principle that the defender should be given actual notice in sufficient time to allow him or her to organise a defence. This was significant notably where in the State addressed consideration was given to the validity of service.
145	C&R No 35 of 2009	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.
146	C&R No 34 of 2014	The SC recognises that the types of relief against a default judgment contemplated in Article 16 (incl. appeal and other forms of redress) are a matter for domestic law.

## V. Service and Evidence Conventions

### 1. Electronic transmission of request (Agenda VII.1)

<i>Description</i>		
147	C&R No 39 of 2014	The SC encourages the transmission and receipt of requests by electronic means in order to facilitate expeditious execution. Contracting States should consider security matters when evaluating methods of electronic transmission.

### 2. “Civil or commercial matters” (Agenda VII.2)

<i>Description</i>		
148	C&R No 26 of 1989	This discussion ultimately lent itself to the drafting of conclusions on the “scope of the two Conventions as to their subject-matter” which were included among the “Conclusions on the most important points considered by the Special

		<i>Description</i>
		<p>Commission” as adopted on the final day of the meeting. These Conclusions, so far as they deal with the interpretation of the term “civil or commercial matters” are set out below:</p> <p style="text-align: center;"><u><i>Scope of the two Conventions as to their subject-matter</i></u></p> <ul style="list-style-type: none"> <li>a The Commission considered it desirable that the words “civil or commercial matters” should be interpreted in an autonomous manner, without reference exclusively either to the law of the requesting State or to the law of the requested State, or to both laws cumulatively.</li> <li>b In the “grey area” between private and public law, the historical evolution would suggest the possibility of a more liberal interpretation of these words. In particular, it was accepted that matters such as bankruptcy, insurance and employment might fall within the scope of this concept.</li> <li>c In contrast, other matters considered by most of the States to fall within public law, for example tax matters, would not yet seem to be covered by the Conventions as a result of this evolution.</li> <li>d However, nothing prevents Contracting States from applying the Conventions in their mutual relations to matters of public law, though not necessarily in an identical manner for both Conventions.</li> </ul>
149	C&R No 69 of 2003	<p>As to the meaning of the terms “civil or commercial matters”, the SC urged for a broad interpretation of these terms and reaffirmed the following conclusions adopted in 1989:</p> <ul style="list-style-type: none"> <li>a. The Commission considered it desirable that the words “civil or commercial matters” should be interpreted in an <i>autonomous</i> 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.</li> <li>b. In the “grey area” between private and public law, the historical evolution would suggest the possibility of a more <i>liberal interpretation</i> of these words. In particular, it was accepted that matters such as bankruptcy, insurance and employment might fall within the scope of this concept.</li> </ul>
150	C&R No 70 of 2003	In addition, the SC took note of the fact that while in some States tax issues were considered as falling within the scope of the Convention, in others this was not the case.
151	C&R No 71 of 2003	The SC also noted that in some States party, the Convention had been applied in proceedings relating to the recovery of proceeds of crime.
152	C&R No 72 of 2003	Finally, the SC cautioned that the meaning of “civil and commercial” appearing in other instruments should not be relied on for interpretation without considering the object and purpose of such other instruments.

		<i>Description</i>
153	C&R No 13 of 2009	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.
154	C&R No 14 of 2009	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.
155	C&R No 16 of 2009	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.
156	C&R No 46 of 2009	The SC notes that Conclusions and Recommendations Nos 13, 14 and 16 relating to the Service Convention (see above) apply <i>mutatis mutandis</i> to the Evidence Convention.
157	C&R No 40 of 2014	The SC recalls its former C&R on the term “civil or commercial matters” ( <i>cf.</i> C&R Nos 13, 14 and 46 of the 2009 SC) and recommends that this term be interpreted liberally and in an autonomous manner, and applied consistently across both the Service and Evidence Conventions.
158	C&R No 41 of 2014	The SC welcomes the flexible practice reported by Contracting States, by not refusing to execute requests based solely on the entity making the request, but focussing instead on the substantive nature of the matter referred to in the request.

## VI. Handbooks (Agenda VIII)

		<i>Description</i>
159	C&R No 9 of 2009	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.
160	C&R No 10 of 2009	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).

		<i>Description</i>
	(restatement unnecessary)	
161	C&R No 11 of 2009	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.
162	C&R No 5 of 2014	The SC acknowledges the importance of the Practical Handbooks on the operation of both the Service and Evidence Conventions. The SC invites the Permanent Bureau to finalise the text of the draft versions presented at the meeting, incorporating the outcome of the discussions and case law and practice reported by States in response to the Questionnaires, in co-operation with the Drafting Committee. The SC notes that once finalised, these texts will be circulated to the SC for comment and endorsement before being submitted to the Council on General Affairs and Policy of the Hague Conference (“the Council”) for final approval.
163	C&R No 6 of 2014	Acknowledging the general invitation of the Council of Diplomatic Representatives that the Permanent Bureau attempt to increase revenue from the sale of its publications, the SC recommends that the Permanent Bureau identify ways in which the Service and Evidence Handbooks may be disseminated, and to whom, free of charge.
164	C&R No 7 of 2014	The SC encourages States to arrange for the translation of the Service and Evidence Handbooks into their languages, and expresses its gratitude to the People’s Republic of China and the American Association of Private International Law (ASADIP) for their offers to translate the Handbooks into Chinese (simplified and traditional) and Spanish, respectively.

## VII. Future Work

		<i>Description</i>
165	C&R No 81 of 2003 (restatement unnecessary)	The SC accepted that future work on the forms be undertaken by the PB in conjunction with a representative group of experts to be designated by the Secretary General, in particular with a view to assessing the necessity of amending the forms and to develop guidelines for completing those forms.
166	C&R No 82 of 2003 (restatement unnecessary)	The SC welcomed the draft version of the new edition of the Practical Handbook prepared by the Permanent Bureau. The SC invited the Permanent Bureau to finalise the new edition, taking into account the conclusions and recommendations adopted by the SC and emphasised the desirability of maintaining and enhancing the practical utility of the Handbook in conjunction with the information provided on the Conference’s website.
167	C&R No 42 of 2014 (restatement unnecessary)	The SC recommends that the Council consider, in approximately four to six years, the timing for the next SC meeting. In doing so, the Council may wish to take into account any substantive revisions to the Service and Evidence Handbooks, new or ongoing issues in the practical operation of the Service, Evidence and Access to Justice Conventions, the work



<i>Description</i>		
of any potential Experts' Group ( <i>cf.</i> C&R No 21), and other developments in the use of information technology in the context of cross-border civil procedure.		
<b>1. Evidence Convention</b>		
<i>Description</i>		
168	C&R No 58 of 2009 ( <i>restatement unnecessary</i> )	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.
<b>2. Access to Justice Convention</b>		
<i>Description</i>		
169	C&R No 65 of 2009 ( <i>restatement unnecessary</i> )	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.
<b>3. Service Convention</b>		
<i>Description</i>		
170	C&R No 41 of 2009 ( <i>restatement unnecessary</i> )	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.