

TABLE OF CONTENTS

FOREWORD _____	III
CONTENTS _____	VII
TABLE OF CONTENTS _____	IX
ABBREVIATIONS _____	XV
FREQUENTLY ASKED QUESTIONS (FAQs) _____	XXI
EXPLANATORY CHARTS _____	XXXV
GENERAL COMMENTS AND PRACTICAL OPERATION OF THE CONVENTION _____	1
I. PURPOSE AND SCOPE OF THE CONVENTION _____	3
1. Preliminary Remarks _____	3
2. Relationship to the 1896, 1905 and 1954 Conventions _____	3
3. Main objectives of the 1965 Convention _____	5
4. An “open” Convention _____	8
5. Scope and applicability of the Convention (Art. 1) _____	9
A. Personal and territorial scope _____	9
a) Place of service as determining factor _____	9
b) Between States party to the Convention _____	10
c) Natural and legal persons, State agencies and States _____	13
B. In all cases “where there is occasion to transmit a [...] document” _____	13
a) Terminology _____	14
b) Non-mandatory character of the Convention _____	14
(1) The problem and two key judgments _____	14
(2) The 1989 Special Commission on the practical operation of the Service Convention _____	16
(3) Historical account of the negotiations of the Convention _____	16
(4) National practice _____	17
(5) The concept of “due process” – validity of a service clause excluding application of the Convention? _____	21
c) Exclusive character of the Convention _____	22
C. “[F]or service abroad” _____	23

D.	"[I]n civil or commercial matters" _____	24
a)	Preliminary Remarks _____	24
b)	The 1977 Special Commission _____	25
c)	The 1989 Special Commission _____	25
d)	Current practice _____	27
e)	The 2003 Special Commission _____	28
E.	Judicial and extrajudicial documents _____	29
F.	Address of the person to be served is unknown _____	30
a)	Preliminary remarks _____	31
b)	National practice _____	31
c)	Does Article 1(2) include the electronic address (e-mail) of the addressee? _____	33
II.	CHANNELS OF TRANSMISSION PROVIDED FOR UNDER THE CONVENTION _____	35
1.	The main channel: Central Authorities _____	35
A.	Role and Organisation of a Central Authority _____	35
a)	In general (Art. 2) _____	35
b)	The "other authorities" (Art. 18(1)) _____	37
c)	Several Central Authorities in federal States (Art. 18(3)) _____	37
B.	Requests for service (Art. 3) _____	38
a)	The forwarding authority _____	38
(1)	General description _____	38
(2)	Specific cases _____	40
b)	Transmission of the Request to the foreign Central Authority _____	41
c)	The Request Form (Model Form) _____	42
(1)	The Request _____	42
(2)	The Certificate _____	43
(3)	The Summary of the document to be served _____	44
(4)	Languages used (Art. 7) _____	44
(5)	Mandatory use of the model form _____	45
C.	Request for service not subject to legalisation or other equivalent formality – no need to send "original" documents to be served _____	45
D.	No authority for the Central Authority of the requested State to screen the documents for service _____	46
E.	Execution of the request for service _____	46
a)	Methods of service (Art. 5) _____	46
(1)	Formal service (Art. 5(1)(a)) _____	47
(2)	Service by a particular method (Art. 5(1)(b)) _____	48
(3)	Informal delivery (Art. 5(2)) _____	48
b)	The translation requirement (Art. 5(3)) _____	49
(1)	General comments _____	49
(2)	National practices _____	51
(3)	Recommendations _____	53
c)	Costs (Art. 12) _____	54
d)	Time of execution and the principle of speedy procedures _____	55
e)	The date of service _____	57

f)	The system of double-dates for the Hague Convention? _____	58
F.	The Certificate of service (Art. 6) _____	59
a)	General comments _____	59
b)	Some judicial decisions _____	60
c)	Effect of the Certificate _____	61
G.	Refusal to execute a request for service _____	61
a)	Article 4 (temporary refusal) _____	61
b)	Article 13 (final refusal) _____	62
2.	Alternative channels _____	65
A.	Preliminary observation relating to terminology _____	65
B.	Consular and diplomatic channels (Arts. 8 and 9) _____	66
a)	The concepts in general _____	66
(1)	Diplomatic channels _____	66
(2)	Consular channels _____	66
b)	Direct diplomatic and direct consular channels (Art. 8) _____	67
c)	Indirect consular channels (Art. 9(1)) _____	68
d)	Indirect diplomatic channels (the "exceptional circumstances" under Art. 9(2)) _____	69
C.	Postal channels (Art. 10(a)) _____	69
a)	The notion of "postal channel" _____	69
b)	Criteria of validity _____	71
(1)	Lex fori _____	71
(2)	No objection by the State of destination _____	71
(3)	Effect of reciprocity in the event of objection? _____	73
c)	Recognition of the foreign judgment _____	74
d)	Special position of the United States: three interpretations of Article 10 _____	75
(1)	First category: "send" ≠ "serve" _____	75
(2)	Second category: "send" = "serve" _____	76
(3)	First reactions _____	77
(4)	Further evolution leading to a third category _____	77
(i)	<i>Brockmeyer: a welcome clarification</i> _____	77
(ii)	<i>Papir: a step backwards</i> _____	78
(5)	Conclusion _____	79
e)	Postal channels and the requirement of translation? _____	80
D.	Service through judicial officers, officials or other competent persons of the requested State _____	81
a)	Direct communication between "judicial officers, officials or other competent persons" (e.g., between huissiers, Art. 10(b)) _____	81
(1)	In general _____	81
(2)	Position of the United Kingdom (letter of 11 September 1980) _____	82
b)	Direct communication between a person interested in a judicial proceeding and a judicial officer, official or other competent person (e.g., a huissier, Art. 10(c)) _____	83
c)	Examples of valid transmissions under Articles 10(b) and 10(c) _____	83
d)	Examples of invalid transmissions under Articles 10(b) and 10(c) _____	83

3. Derogatory channels	84
A. Additional agreements among Contracting States (Art. 11)	84
B. Relationship with supplementary agreements to the Conventions of 1905 and 1954 (Art. 24) and with other conventions (Art. 25)	84
C. Unilateral derogation from the Convention (Art. 19)	85
4. The use of modern technologies	85
A. Introduction: The Geneva Round Table of 1999 and the 2003 Special Commission	85
B. Communication between authorities of the requesting State and authorities of the requested State	87
a) Transmission of the service request	87
b) Co-operation between authorities	88
c) Certificate relating to performance of the request (Art. 6)	89
C. Postal channels (Art. 10(a))	89
D. Execution of the service	90
a) Formal service or service by a special method (Art. 5(1))	90
b) By informal delivery (Art. 5(2))	92
c) Case law: international and domestic service by e-mail	93
d) Case law: international service by fax	95
E. Conclusions and Recommendations of the 2003 Special Commission	96
III. PROTECTION OF THE DEFENDANT (ARTS. 15 AND 16)	97
1. Protection prior to a judgment: Article 15	97
A. Stay of entry (Art. 15(1))	97
a) Valid service or actual delivery	98
b) In due time	98
B. Continuation of proceedings and, in particular, delivery of judgment (Art. 15(2))	99
C. Provisional or protective measures (Art. 15(3))	100
2. Protection after a default judgment: Article 16	100
IV. REGIONAL INSTRUMENTS	102
1. The Inter-American Convention on Letters Rogatory	102
A. General Remarks	102
B. Relationship with the Hague Convention	103
2. The Model Bilateral Convention drafted by the Asian-African Legal Consultative Organization (AALCO)	103

3. Regulation (EC) No 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters _____	104
A. General remarks _____	104
B. Relationship with the Hague Convention _____	108

APPENDIXES

APPENDIX 1	TEXT OF THE CONVENTION _____	113
APPENDIX 2	ANNEXES PROVIDED FOR UNDER ARTICLES 3, 5, 6 AND 7 ____	123
APPENDIX 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) _	129
APPENDIX 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) _____	135
APPENDIX 5	EXPLANATORY REPORT ON THE RECOMMENDATION ADOPTED BY THE FOURTEENTH SESSION DRAWN UP BY MR GUSTAF MÖLLER _____	141
APPENDIX 6	CONCLUSIONS AND RECOMMENDATIONS ADOPTED BY THE 2003 SPECIAL COMMISSION _____	149

BIBLIOGRAPHY _____	157
--------------------	-----

USEFUL LINKS _____	173
--------------------	-----

INDEXES

INDEX OF THE CITED CASE LAW _____	179
-----------------------------------	-----

INDEX BY SUBJECT _____	189
------------------------	-----