



**Workshop on the Hague Service Convention
Hosted by the *Consultoría Jurídica* of the *Secretaría de Relaciones Exteriores*
(Ministry of Foreign Affairs)**

Mexico City, 28 November 2011

Conclusions & Recommendations

On 28 November 2011, over 140 experts, judges, government officials, process servers, professors and members of the Permanent Bureau of the Hague Conference on Private International Law (Permanent Bureau) attended a workshop in Mexico City, Mexico, on the practical operation of the *Hague Convention of 15 November of 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* (Service Convention).

The workshop was hosted by the *Consultoría Jurídica* of the Ministry of Foreign Affairs of Mexico and organised in collaboration with the Permanent Bureau and the Central Authority of Mexico (Directorate-General of Legal Affairs of the Ministry of Foreign Affairs). The main purpose of the workshop was to review some aspects of the practical operation of the Service Convention in Mexico.

1. The participants welcomed with great satisfaction the modified declarations made by the Mexican Government under the Service Convention, published by Presidential Decree on 19 October 2011.¹ The modifications primarily concern declarations made pursuant to, or with reference to, Articles 5, 7 and 10 of the Service Convention and seek to clarify their meaning with a view to improving the operation of the Convention in Mexico.
2. The participants further welcomed the publication of the *Practical Handbook on the Operation of the Service Convention* (3rd ed.) in Spanish, which was launched at the Workshop, and thanked the Permanent Bureau for distributing copies to participants. The participants noted that additional copies of the Service Handbook in Spanish may be ordered via the "[Service Section](#)" of the Hague Conference website at < <http://www.hcch.net> >.
3. The participants recalled the importance and continuing relevance of the Conclusions & Recommendations (C&R) adopted by the Special Commissions (SC) on the practical operation of the Service Convention held in 2003 and 2009 respectively. These C&R are available on the "[Service Section](#)" of the Hague Conference website at < <http://www.hcch.net> >.

Forwarding Authorities under the main channel (via Central Authorities)

4. The participants acknowledged that the competence of forwarding authorities is determined by the law of the requesting State.

¹ Decreto por el que se dan a conocer las Modificaciones a las Declaraciones formuladas por el Gobierno de México al momento de adherirse al Convenio sobre la Notificación o Traslado en el Extranjero de Documentos Judiciales o Extrajudiciales en Materia Civil o Comercial, adoptado en La Haya, el 15 de noviembre de 1965, available online at < http://www.dof.gob.mx/nota_detalle.php?codigo=5214869&fecha=19/10/2011 >. See also the "[Service Section](#)" of the Hague Conference website at < <http://www.hcch.net> >.

5. The participants acknowledged that the Contracting States are not obliged to designate forwarding authorities under the Convention or notify other Contracting States of their identity or competence. It was recalled, however, that in response to C&R No 48 of the 2003 SC (which was confirmed in C&R No 21 of the 2009 SC), many Contracting States have provided information to the Permanent Bureau on the identity and competence of their forwarding authorities, which is made available on the "[Service Section](#)" of the Hague Conference website at < <http://www,hcch,net> >.
6. The participants recalled C&R No 49 of the 2003 SC that in the case of doubt as to the competence of the forwarding authority, the authorities in the requested State should seek to confirm that competence by either consulting the Hague Conference website or by making expeditious informal inquiries of the forwarding authorities, including by way of e-mail.
7. The participants acknowledged that where permitted by the law of the requesting State solicitors, attorneys and process servers are competent to forward requests for service to the Central Authority of the requested State, and recognised the benefits of forwarding authorities specifying their competence on the Model Form.
8. To avoid any misunderstandings, the participants were informed that the private contractor "Process Forwarding International" acts on behalf of the US Central Authority (*i.e.*, the U.S. Department of Justice) for *incoming* requests only. In contrast, there are multiple forwarding authorities in the United States for outgoing requests. Depending on applicable rules, forwarding authorities include any court official, any attorney, or any other person or entity (incl. process servers) authorised by the rules of the court.

Model form

9. The participants recognised the utility of using the trilingual (Spanish, English and French) request form available on the "[Service Section](#)" of the Hague Conference website at < <http://www,hcch,net> > and encouraged its use.
10. The participants noted that the Model Form is to be signed and/or stamped by the applicant, *i.e.* the *forwarding authority*. There is no requirement for the Model Form to be signed by the court seised.
11. The participants recognised the protections afforded to the person being served by the use of the "Summary of the document to be served" form (as mandated by Article 5(4) of the Service Convention) and the "Warning" on the top of the summary form (as recommended by the Hague Conference at its Fourteenth Session).
12. The participants noted that according to the modified declaration made by Mexico with reference to Article 7 of the Service Convention, Contracting States are encouraged to fill out the Model Form in Spanish. However, this does not affect the right for Contracting States to fill out the Model Form in English or French; a request form filled out in either of these languages must be received and, if it complies with the requirements of the Convention (Arts 4 and 13), executed by the Central Authority.



Documents to be served

13. The participants acknowledged that the law of the requesting State determines the type and content of documents to be served, including the number of documents as well as the inclusion of information relating to time limits for responses, regulations, practice or rules.
14. The participants acknowledged that time limits for responses by addressees are subject to the law of the *requesting* State, not the requested State.

No legalisation or equivalent formality

15. The participants acknowledged that request for service and the documents to be served annexed thereto are not subject to legalisation or any equivalent formality.

Central Authority

16. The participants acknowledged the role of the Central Authority as a facilitator for the service of documents and the importance of maintaining lines of communication between the Central Authority on the one hand, and the authorities in its State involved in the service of documents and the forwarding authorities in the requesting State on the other.
17. Regarding costs, the participants reaffirmed that pursuant to Article 12(2) *a*) of the Service Convention, the Central Authority may require a forwarding authority to pay or reimburse the costs occasioned by the employment of a judicial officer or other competent authority to serve the documents.

Verifying compliance of requests

18. Pursuant to Article 4 of the Service Convention, the Central Authority may verify whether a request complies with the Convention; however it may not condition compliance on requirements of its own internal law or existing judicial decisions. In particular, the participants noted that a request is not non-compliant by reason alone of any of the following:
 - a. The Model Form is filled out in English or in French;
 - b. The documents to be served are not "original";
 - c. There is a discrepancy between information on the Model Form and on the annexed documents;
 - d. The request does not include a document that is required by the internal law of the requested State;
 - e. The request does not include copies or extracts of the laws, regulations and procedures that relate to the proceedings;
 - f. The request does not specify the fee for filing documents;
 - g. The request does not specify the address of the court seised in the proceedings;
 - h. Time limits specified in the request are not formulated in terms of calendar days, business days, or other method that does not comply with methods used under the internal law of the requested State.
19. The participants recalled that Article 4 of the Service Convention obliges Central Authorities to promptly inform the applicant (*i.e.*, the forwarding authority) if it considers that a request does comply with the provisions of the Convention, and to

specify its objections thereto.

Execution of requests

20. The participants stressed that Central Authorities are obliged to execute requests that comply with the provisions of the Service Convention, and that the only exception to this obligation is if the requested State considers that execution would infringe its sovereignty or security.
21. The participants recalled that requests for service should be executed promptly.
22. To promote the proper functioning of the Service Convention, the participants recommended that Central Authorities adopt the following practices when handling requests:
 - a. Central Authorities should determine whether a request is compliant with the Convention within 30 calendar days after receipt.
 - b. Central Authorities should respond within a reasonable time to enquiries from forwarding authorities about the status of a request.
 - c. Where practicable, all informal communication between Central Authorities and forwarding authorities after receipt of a request should be carried out by e-mail.
 - d. If at any time during the execution of a request, an obstacle arises which may significantly delay or prevent execution, the Central Authority should inform the forwarding authority as promptly as possible about the obstacle and its likely impact on the execution of the request.
 - e. If execution is prevented or otherwise not possible, the Central Authority should ensure that the Certificate of service is completed and forwarded to the applicant as promptly as possible.

Judges

23. The participants recognised the great importance of completing the Certificate of service given the rebuttable presumption it confers and its wide recognition. Judges were encouraged to properly complete these Certificates in addition to sending domestic proof of service.

Inter-American Convention

24. The participants noted the different requirements under both the Hague Service Convention and the 1975 Inter-American Convention on Letters Rogatory and its Protocol. Given the different nature of the proceedings under both Conventions, it was acknowledged that the requirements under the Inter-American Convention should not be transposed to those of the Service Convention (and *vice versa*).

Return of the Certificate

25. The participants acknowledged that Certificates should be returned via the Central Authority to the applicant *i.e.* the forwarding authority. Diplomatic channels must be avoided.



Amparo

26. It was noted that *amparo* proceedings have impeded or suspended the execution of requests for service. Service of process may be contested via *amparo* proceedings since it is regarded as an act of an official authority. Taking Article 133 of the Mexican Constitution into account, the participants encouraged the dissemination of information of the Service Convention and the findings of this seminar to district court judges and other federal judges to make them aware of the requirements under the Service Convention.

Future seminars

27. Participants acknowledged the great usefulness of this workshop and expressed their hope that similar events will be held in future.