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U.S. Lawyers Practicing Abroad

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U.S. Lawyers Practicing Abroad

BAYO CALLENDER¹

I. Introduction

The U.S. Lawyers Practicing Abroad Committee (“USLAC” or Committee) is comprised of attorneys admitted in the United States but who reside or work in jurisdictions outside of the United States. Several years ago, the committee identified obstacles that impeded efforts to obtain consular and embassy notarial services in a range of geographic regions. In response, USLAC polled Committee members in 2007, calling for the identification of practical and procedural barriers to consular and embassy notarial service. Obstacles identified by Committee members included proximity to service centers, costly and time-consuming local consular procedure, limited hours of operation, limitations on access to services, and long turnaround times—all representing access to justice challenges. These factors were also described by members as being unduly burdensome, particularly for less affluent clients and served to inhibit the attorney’s ability to provide effective assistance to their client.

II. Attestation and Verification of Documents

The Hague Convention of October 5, 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents (The Hague Apostille Convention)² is a widely-accepted alternative to U.S. embassy and consular services for recognizing extraterritorial signature attestation of public documents. However, in many countries that are parties to the Hague Apostille Convention, services were not available for documents in foreign languages. Additionally, when available, services were often limited or cost-prohibitive. In countries that do not participate in the Convention, the certification process requires sub-

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2. Ninth Session of the Hague Conference on Private International Law, October 5, 1961, *Convention Abolishing the Requirement of Legalisation for Foreign Public Documents*, available at <http://www.hcch.net/upload/conventions/txt12en.pdf>. (The Hague Apostille Convention recognizes public documents, including signature attestation by means of an *apostille* or certification of signature, capacity of the signer, and seal on the documents by a government authority. The treaty entered into force in 1965 and as of March 5, 2015, there are 108 parties to the Convention). See also *U.S. Declaration on Accession to the Convention Abolishing the Requirement for Foreign Public Documents*, available at http://www.hcch.net/index_en.php?act=status.comment&csid=353&disp=resdn.

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sequent affirmation by a consular official from the country where the attestation will be used.

The Vienna Convention on Consular Relations of April 24, 1963 (“VCCR”)³ represents another widely used treaty framework that addresses cross-border recognition of attestation and signature verification. This Convention is limited, however, to recognizing notarial acts as a consular function and does not address the practical concerns raised in USLAC’s 2007 assessment of the issues. Further, neither The Hague Apostille Convention nor the Vienna Convention reflects contemplation of more modern forms of signature verification including electronic signatures.

In 2009, USLAC submitted to the Joint Editorial Board of the American Bar Association Section of International Law and the National Conference of Commissioners on Uniform State Laws⁴ a proposed amendment to the Uniform Law on Notarial Acts (ULONA).⁵ This proposal came after the passage of the Uniform Unsworn Foreign Declarations Act (UUFDA).⁶ The UUFDA allows for the use of unsworn declarations in state legal proceedings that have been made by declarants located physically outside of United States boundaries. The UUFDA eliminates the use of a notary by allowing an unsworn declaration made subject to penalties for perjury and follows a model legislated format to serve as an equivalent to a sworn declaration. Drawbacks of its application are that the UUFDA derogates from safeguards put in place by the notarial officer system and it had only been adopted in a few states, further diminishing broad utility.

USLAC’s proposed ULONA amendment⁷ articulated an alternative notarial service practice where U.S.-admitted attorneys lawfully residing and engaging in legal work in a foreign jurisdiction would be allowed to facilitate the acknowledgement, attestation, and certification of documents. Although USLAC’s proposal was not adopted, the National Conference of Commissioners of Uniform State Laws did revise the ULONA⁸ to include recognition of electronic notarial acts and provided an implementation structure.

In 2013, USLAC and the Europe Committee worked collaboratively to raise awareness through writing articles,⁹ engaging in discussions, and seeking feedback from various leadership and committee representatives within the ABA Section of International Law and the U.S. Department of State. After crafting a report comprised of background information in support of the Committee’s position a proposed resolution was presented to the ABA’s House of Delegates. At the ABA Section of International Law Council Meeting in

3. Vienna Convention on Consular Relations, April 24, 1963, 21 U.S.T. 77, 596 U.N.T.S. 261.

4. The Joint Editorial board serves as a coordinating entity between the American Bar Association Section of International Law and the National Conference of Commissioners on Uniform State Laws (also known as the Uniform Law Commission). The Uniform Law Commission drafts and proposes model statutes where uniformity among states is desired.

5. See REVISED UNIF. LAW ON NOTARIAL ACTS (2010), available at <http://www.uniformlaws.org/Act.aspx?title=Law%20on%20Notarial%20Acts,%20Revised>.

6. See UNIF. UNSOWN FOREIGN DECLARATIONS ACT (2008), available at http://www.uniformlaws.org/shared/docs/unsworn%20foreign%20declarations/uufda_final_08.pdf.

7. UNITED STATES LAWYERS PRACTICING ABROAD, PROPOSED REFORM LAW ON NOTARIAL ACTS, available at http://apps.americanbar.org/dch/thedl.cfm?filename=/IC916000/sitesofinterest_files/Proposed_Reform_of_Uniform_Law_of_Notarial_Acts.pdf

8. See ULNA, *supra* note 5.

9. Linda Strite Murnane, *A Call for a 21st Century Review Aimed at Legitimizing Documents in a Global Economy*, 4 A.B.A. SEC. OF INT’L L. 4, (2013) at 4.

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London on October 19, 2013, USLAC's Laurence Wiener presented the *Section Resolution and Report on Attestation and Verification of Signatures in Cross-Border Practice* co-authored with USLAC's Linda Strite Murnane and the Europe Committee's Patrick Del Duca, and Werner Kranenberg, among others.¹⁰

Following substantive discussions at the Section of International Law meetings in 2012 and 2013, the revised Report and Recommendation was vetted for further collaboration with the ABA's Science and Technology Committee. At the Mid-Year Meeting of the American Bar Association in February 2014 (Chicago), the ABA House of Delegates voted to approve Resolution 105, which culminated the seven-year effort to improve access to legal services by seeking to modernize the authentication of signatures process in a global context.

III. USLAC's 2014 Community Outreach Report

During the 2014 Section of International Law Fall Meeting in Buenos Aires, Argentina, USLAC continued its community outreach tradition.¹¹ On October 21, 2014, a diverse group of ABA members representing various ABA committees visited the impoverished shantytown of Villa 21 and met with students from this immigrant community attending the *Colegio Buen Consejo*. Members spoke about the power of education and the advantages of multi-lingual and multi-cultural skills in the legal profession. The brainchild of a long-standing member, Bruce Horowitz, USLAC has spearheaded the organization of community outreach projects associated with ABA Section of International annual meetings for several years. Past projects include helping in soup kitchens, donating blood to the American Red Cross, and speaking with high-school students representing first and second generation immigrants with multilingual skills. This year, USLAC also facilitated a donation to assist students with maintaining enrollment in the *Colegio Buen Consejo*.

10. Ann-Kristin Becker, et al., *Europe Update*, 4 A.B.A. SEC. OF INT'L L. (2013).

11. Marcelo E. Bombau, *November 2014 E-Update*, A.B.A. (Nov. 2014), https://www.americanbar.org/publications/international_law_eupdate/2014/11/issue.html.

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