

# **25<sup>TH</sup> INTERNATIONAL CONGRESS OF NOTARIES**

*Madrid, October 2007*

## **THE NOTARY: A WORLDWIDE INSTITUTION**

### **TOPIC I**

#### **“THE NOTARIAL ACT AS AN INSTRUMENT OF DEVELOPMENT IN SOCIETY”**

### **CONCLUSIONS**

The Task Force for Topic I of the Madrid Congress 2007, which has focused on “The notarial deed as an instrument for the development of society” puts forward the following conclusions:

1. As is well known, the Notary Public is a public official having received a delegated authority from the State to grant the character of "authentic" to documents of which he or she is the author, and to ensure their preservation, probatory effect and enforceability of such instruments.
2. The analysis of this Committee being mainly, albeit not exclusively, focused on the economic aspects of the notarial function, we note that, in the model of exercise of a public activity as an independent professional, it proves to be extremely efficient, since, on account of the former, it receives from the state a backing as to its effects, but also its control and supervision, and on account of the latter, it provides citizens with easier access and avoids bureaucratic risks, apart from the savings it entails in costs to the State, given that the work of the Notary Public is paid by those making use of his or her services.
3. The authorship of the document by the Notary Public and his or her control of its legality distinguish notarial deeds from other forms of deeds in which the activity of the professional is limited to confirming or legalizing the genuineness of signatures. The use of the name “notary” in this latter case devalues the content of our function and the prestige of our documents, and we should therefore carefully avoid this type of confusion.
4. The world is divided in two main types of legal systems, that of “civil law” and that of “common law”, and we belong to the former. Both systems are profoundly diverse, but have coexisted in a more or less peaceful manner, so that it does not seem appropriate to attempt a unification of both nor to promote one over the other, all the more so given the fact that their respective

areas of influence respond to very deeply rooted historical as well as cultural, political and social reasons.

5- Convinced of the suitability of our system, we accept the challenge that sometimes is posed by international bodies, rather influenced by a North American mindset, and we carefully review our efficiency and usefulness for development. For the above reasons, in this Congress we have analyzed the notarial function from an economic standpoint and have noted the following:

- On the one hand, our system of property conveyance bears the comparison well, even with a certain advantage, as to cost or price with other systems, such as title insurance or the participation of other legal or real estate professionals. The impartial Notary Public streamlines the contractual aspects of advice, compliance with applicable law and preservation of the document, whereas other systems distribute such responsibilities among different professionals, with the corresponding increase in cost.
- On the other hand, the features of the notary function make it suitable to help correct certain deficiencies in the operation of the market, such as asymmetries in information and lack of production of positive externalities or public goods.
- Asymmetries in information are balanced by the impartiality of the Notary Public and his or her obligation (frequently a legally binding obligation) to assist the weaker contracting party. The risks of “adverse selection” are also overcome, since the cost of the service and the homogeneity of its contents are established by regulation.
- The production of positive externalities also appears clearly since, with his or her activity, the Notary public provides certainty and security to relationships, increases the value of the regularized property, by expelling misleading properties from the system, and produces an important preventive effect on litigation, which alleviates the workload of courts.

In short, the Notary Public, as a professional of legal certainty, provides the market and development mainly with trust. Given the basic principle that the market operates in conditions of uncertainty, any advance in certainty is value creative.

6. The beneficial effects of legitimation, evidence and execution, attributed to the notarial deed by the legal system, are based on the quality of such instrument. Therefore, our main concern should be to maintain and improve such quality, by providing adequate mechanisms such as permanent training, corporate surveillance of compliance and ethics and an improved relationship with new technologies.

7. The notarial deed fosters social development not only in the economic area. We further contribute to other forms of development:
- To legal development, by setting in motion new institutions necessary to individuals, families and companies. Throughout this Congress, a number of examples have been provided in different countries: Self-help provisions, contracts on de facto life-partnerships or cohabitation, on organ donation, family protocols, notarial trusts and many others;
  - To social peace development, with the preventive effect on litigation above mentioned or the participation in modern alternative dispute resolution systems, such as mediation or arbitration; To the development of territorial credit, by providing adequate title deeds.
  - To developing international relations, since the implementation of notarial functions worldwide allows for documenting activity to enjoy relatively common rules and features, thus favoring document circulation and perhaps in the future the existence of a worldwide enforcement order in the same way as we now have a European enforcement order.
  - And last but not least, making a reference to sustainability, an essential element of any development, we further contribute to sustainable development, through our commitment with ecology and environmental issues, as was highlighted by this worldwide Congress in Cartagena de Indias (Colombia) in 1992.

In view of all the above, we proclaim our confidence in the future of our profession, which shall be all the brighter if we succeed in being attentive to what society is demanding from us.

Madrid, Spain, 5 October, 2007.