An Introduction To The Hague Convention On Service Of Process Abroad

By Larry M. Roth

Florida requires compliance with the Hague Convention on Service of Process when serving a non-U.S. corporation that is not registered in Florida. Often litigants do not realize that service by mail is not available in this situation. The following article provides an introduction to the Convention and an overview of the steps for perfecting service on a foreign corporation in compliance with the Convention's provisions.

Introduction.

The Hague Convention on Service of Process Abroad of Judicial and Extra-Judicial Documents in Civil and Commercial Matters ("The Hague Convention" or "Convention") is a treaty to which the United States is a signatory.[1] It is binding within the State of Florida. Therefore, it must be followed, even when its provisions contradict those of Chapter 48, Florida Statutes, the State's original service of process requirements applicable to individual and corporations.

For example, when serving a Japanese car manufacturer whose products proceed through lines of commercial distribution — wholesale distribution, retail car dealership — but which is located in Japan, the provisions of The Hague Convention must be followed. These provisions vary significantly from Chapter 48. Even as a defense counsel, if your client is contemplating an indemnification or third party action against a foreign corporation, you must comply with the provisions of The Hague Convention to properly perfect original service of process.

As discussed below, service of original process by mail is not available under The Hague Convention. If a party attempts to do so it should be challenged even though, in one section, the Convention mentions "sending" legal documents through postal channels. The Treaty deals with both judicial and extra-judicial documents, however, and the word "send" refers to the latter. Even though both Florida and Federal procedural rules allow for mailing of original process, the correct interpretation of The Hague Convention is simple — mailing of original process in a lawsuit will not be valid.

The Hague Convention: General Principles

The *Convention on Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters* was drafted in 1965 by an International Convention.[2] The United States ratified the Treaty on February 10, 1969.[3] Under the U.S. Constitution, the Convention then became the law of the land.

Provisions contained in the Convention are intended to be superior to that of any State and local law.[4] The United States Supreme Court has held "[t]he state law must yield when it is inconsistent with or impairs the policy or provisions of a treaty or of an international compact or agreement."[5] A "Convention" enjoys the same supremacy status as a treaty.[6] This supremacy was demonstrated when a subsidiary company here in this country of a German corporate defendant was served for the parent company. The U. S. Supreme Court held The Hague Convention was supreme, and overrode any other substituted method of service.[7] Numerous local jurisdictions considering the applicability of The Hague Convention have held it to be superior to any conflicting local rules or statutes.[8]

It was a specific goal of the Convention to establish an acceptable,

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efficient, but formalized method by which personal service of original process in a foreign country could be effectuated without offending the internal law of that country.[9] The Hague Convention created formalized procedures for service of original process within a foreign territory. To serve a foreign defendant, the Convention required each country to establish a Central Authority that would be the facility to accept process, and then ensure the party being served received that process issued out of the foreign jurisdiction.[10]

It is vital to remember that the intent underpinning the Convention, including the creating of this Central Authority, was to create an acceptable methodology by which original personal service of process, taking place within each signatory country, would be as valid as if the service originated within its own sovereign borders. Process could not violate local legal procedures. This is why, in essence, the adopted procedures are grounded more in diplomatic and political considerations than on judicial efficiency.

A Central Authority has the responsibility for receiving a foreign country's process and serving the original judicial documents, certifying receipt, and then returning the certificate of service back to the foreign country's origin of the process. (Chapter 1, Articles 2 - 6). This procedure can be accomplished by a Florida counsel utilizing prescribed forms which are part of the Treaty.

The complaint or third party action also has to be translated into the language of the foreign party being sued. Article 5 of the Convention states in part:

> If the document is to be served under the first paragraph above, the central authority may require the document to be written in, or translated into, the official language or one of the official languages of the state addressed.

Most countries signing the Convention specifically mandated an official translation in the language of the receiving country.[11] This helped to ensure the internal law of the receiving nation was not offended.

The terms of The Hague Convention manifest a respect for the internal sovereign law of the nation into which original service of process is sent.[12] Of course, the converse is also true if a U. S. citizen is sued by a foreign national from a country who is a Convention signatory.

The Hague Convention and Florida Law

1. *The Requirement of Substantial Compliance*

Intermediate Florida appellate courts have recognized that the requirements under The Hague Convention must be followed diligently if there is any attempt to serve original process on foreign nationals.[13] These cases have arisen where the foreign country is a signatory of the Convention. In general, there must be *substantial compliance* if the Florida party attempts to serve under The Hague Convention.

In *Koechli v. BIP Int'l, Inc.*,[14] the First District upheld service on a foreign citizen even though the citizen alleged some technical defects in service. The plaintiff had sought to serve Koechli, a Swiss citizen who lived on his sailboat, while the sailboat was docked in the Bahamas. The Bahamian Central Authority processed the suit papers served on Koechli.[15] This included a translation into German of the "Second Amended Complaint, with all attachments."[16] Koechli was personally served by a Bahamian police constable.

Koechli claimed that the constable did not have his address, there was no proof service was voluntarily accepted, and that the proof of service did not specify the method of service. The First District held that these defects did not vitiate the plaintiff's good faith attempt to comply with the Convention:

> Where a plaintiff has attempted *in good faith* to comply with The Hague Convention, and where a defendant receives sufficient notice despite a technical defect, it is within a court's discretion to declare service properly perfected. In addition, the return of the central authority's completed certificate of service is *prima facie* evidence of service by the central authority.[17]

Similarly, in *MacIvor v. Volvo Penta of America, Inc.*,[18] the Third District held that an affidavit of service of process abroad by the Central Authority superseded a contrary Florida affidavit. *Volvo Penta* established that Florida courts will require substantial compliance with The Hague Convention by the serving party, rather than absolute compliance, and that its provisions supersede Florida's internal laws.[19] In *Armet S.N.C. diFenonato Giovanni & Co. v. Hornsby*[20] the court stated that service was proper as it was performed under the auspices of, and in substantial compliance with, The Hague Convention.[21]

2. *Long-Arm Jurisdiction and The Hague Convention*

Long arm in personam jurisdiction under section 48.193 should not be confused with Convention compliance. They are two different concepts. For example, section 48.193 provides:

> Service of process upon any person who is subject to the jurisdiction of the courts of this state as provided in this section may be made by personally serving the process upon the

> defendant outside the state, as provided in S. 48.194. The service shall have the same effect as if it had been personally served within the state.

Section 48.193 might be relied on for constitutional minimum contacts under due process, but at subsection 3 the statute requires compliance with The Hague Convention by its reference to section 48.194. Section 48.194, entitled "Personal Service Outside the State," requires service of process on persons outside the United States to conform to the provisions of The Hague Convention.

The burden under Chapter 48 falls upon the party pursuing the service of process. It is also axiomatic that a court must strictly construe the State statute.[22] Thus, The Hague Convention requirements must be followed.

3. *Substituted Service of Process*

Several statutory subsections under Chapter 48 deal with service of process on a foreign corporation. These include sections 48.081, 48.161, and 48.181.

Section 48.081 requires personal service on a corporation, including a foreign corporation that has identified an individual to whom personal service is permitted. Under subsection 2 of section 48.081, a foreign corporation with no officers or agents in Florida can be served by personal service on "any agent transacting business for [the corporation] in the state."[23] The Hague Convention overrides this provision; as noted earlier, the U.S. Supreme Court in the *Schlunck* case rejected substituted service of process.[24] Other Florida statutes, such as sections 48.161 and 48.181, also permit substituted service of process within the State. For example, Section 48.181(1) allows service on the Secretary of State. This would likewise violate The Hague Convention. One federal court in Florida has held that The Hague Convention nullified service on a foreign corporate defendant when attempted pursuant to either section 48.161 or section 48.181.[25]

The Hague Convention Disallows Service of Process by Mail

An argument has been made that The Hague Convention permits original service simply by regular mail, or through normal postal channels. Most courts addressing this issue have been federal courts. The majority position is that original service by mail is not authorized by the Convention. The seminal case analyzing this issue was *Bankston v. Toyota Motor Corp.*[26]

In *Bankston* the plaintiff filed a products liability action against a Japanese automobile manufacturer. Original service of process on the foreign defendant was by U.S. registered mail to Japan. The documents mailed were sent in English, not including the required translation. The *Bankston* court decided that Article 10(a) of the Convention did not permit service of process by registered mail on a Japanese defendant in Japan.

> Article 10(a) states:
> Provided the State of destination does not object, the present Convention shall not interfere with...
>
> (a) the freedom to send judicial documents, by postal channels, directly to persons abroad.

Plaintiffs in *Bankston*, as well in other cases, argued that this provision should be interpreted to permit original service on a Japanese foreign defendant by "sending" it through the mail because the word "send" is expressly stated, and Japan did not object to Article 10(a).[27] Plaintiffs further argued that The Hague Convention should also be interpreted to allow them to avoid the necessity of translating documents, or resorting to any Central Authority.

Bankston rejected this interpretation of Article 10(a). That court found the word "send" as used in Subsection (a) was not the equivalent to "service of process" under Articles 10 (b) and (c). The court reasoned:

> If Article 10(a) was intended to designate a method for obtaining service of process, the drafters of the treaty would have used the word "service" instead of the word "send."[28]

The court further reasoned that Article 10(a) merely provided a method for sending documents *after* original service of process had been obtained, i.e., extra judicial documents, through the designated Central Authority, adding that it was:

> [i]nconceivable that the drafters of the Convention would use the word "send" in Article 10(a) to mean service of process, when they so carefully used the word "service" in other sections of the treaty.[29]

The courts holding that Article 10(a) does not permit original service by mail have based their decisions on both statutory construction and legislative intent. The Hague Convention repeatedly refers to the "service" of documents, but "send" is only used once. If the drafters had intended Article 10(a) to provide an additional method of original service of process, it stands to reason they would have used the word "service," not "send." Further, interpreting Article 10(a) to permit direct mail service of process would create a framework directly at odds with the formal procedures and underlying intent for original service established by The Hague Convention.[30] The fundamental rationale of the Convention's

signatories was to establish a formal mode of original service of process, and not to have any service which ran counter to the receiving country's internal laws.[31] If Article 10(a) allowed service by mail, then the entire sophisticated structure with a Central Authority under Article 5 would be superfluous, and unnecessary.

This rationale is further supported by the fact that service by mail is not routinely permitted within many foreign countries. For example, under internal Japanese law it is not allowed. This is consistent with Japan having specifically objected to the "much more formal" modes of service than just mailing available in Article 10(b) and (c) even though Japan did not object to 10(a).[32]

Gallagher v. Mazda Motor of America, Inc.[33] also involved a Japanese defendant. That court held "Paragraph (a) of Article 10 does not provide a basis for the service of process on foreign parties to a lawsuit" by mail. *Gallagher* followed another federal district court in *Raffa v. Nissan Motor Co.*,[34] which had also held that Article 10(a) did not allow for original service of process by registered mailing.

Finally, additional support for the conclusion that Article 10(a) does not authorize original service by mail is the French translation of this very Section. France was one of the signatories that did not object to Article 10(a). The French text of the Treaty uses "addresser," a term equivalent to the English word for "send," in Article 10(a). In Articles 10(b) and (c), where the English word "service" is used, the French translation of the freedom to effect service is "faire proceder a des signification ou notifications." This difference, even without a French language background, is obvious. Send is not equivalent to original service. This argument was also recognized by the Supreme Court in *Volkswagenwerk, A.G. v. Schlunck.*[35]

The majority of Florida federal district courts that have dealt with the issue of mailing original service of process are in accord with federal courts across the country, and have concluded that mailing original service of process is not substantial compliance with The Hague Convention. The main Florida case is *McClenon v. Nissan Motor Corp.*,[36] in which the plaintiffs attempted original service of process by mail under Chapter 48, Florida Statutes. The court in *McClenon* stated:

> The question of service by mail is not addressed by the Convention; it merely discusses the right to send subsequent judicial documents by mail. Any other process would be a rather illogical result, as the Convention sets up a rather cumbersome and involved procedure for service of process; and if this particular provision allowed one to circumvent the procedure by simply sending something through the mail, the vast bulk of the Convention would be useless.[37]

Other federal courts in Florida have ruled consistently with *McClenon.*[38]

There is one outlier Florida federal case, *Conax Florida Corp. v. Astrium Ltd.*,[39] which found that Article 10(a) allowed mailing of original service. *Conax* did not address, however, the issue of translating the documents to be served, and it is unknown from the record whether the documents were ever, in fact, translated. The plaintiff in that case used mailing under the substituted service of process statute as a basis for its Article 10(a) argument.

In Florida, *Conax* is out of step, and not persuasive. Most particularly, although the case involved a party in the United Kingdom, it does not appear that the party asserted section 48.194, which would have required substantial compliance with The Hague Convention: "the defendant does not contend that the plaintiff failed to comply with...provisions of Florida law. Accordingly, the plaintiff has properly effected service of process on the defendant."[40]

A Difference of Opinion: Reliance on State Department Political Comments

Many parties attempting to serve under The Hague Convention cite to a political interpretation of the Convention in a letter issued by the United States State Department in 1991. This statement related to Article 10(a) and Japan's failure to object to it, and was a direct response to the *Bankston* decision, discussed above. In a letter to the Administrative Office of United States Courts and the National Center for State Courts, the Department of State declared *Bankston* was decided incorrectly:

> We understand further that neither the plaintiff nor the Court of Appeals was aware of a statement made by the delegate of Japan in April, 1989 at a meeting of representatives of countries that have joined the Convention that appears to be relevant to the basic question addressed in the *Bankston* case. The Japanese statement in question was the result of efforts by the Departments of State and Justice to encourage the Government of Japan to clarify its position with regard to the service of process in Japan by mail from another country party to the Convention . . . . [The section of the report containing the Japanese statement appears at 28 I.L.M. 1561 (1989); the full text of the report from the Hague

meeting is reproduced at 28 I.L.M. 1556 (1989).]

> We consider that the Japanese statement represents the official view of the Japanese Government that Japan does not consider service of process by mail in Japan to violate Japanese judicial sovereignty and that Japan does not claim that such service would be inconsistent with the obligations of any other country party to the Hague Service Convention vis-a-vis Japan. The Japanese statement suggests, however, that it is possible, and even likely, that service in Japan by mail, which may be considered valid service by courts in the United States, would not be considered valid service in Japan for the purposes of Japanese law. Thus, a judgment by a court in the United States based on service on the defendant in Japan by mail, while capable of recognition and enforcement throughout the United States, may well not be capable of recognition and enforcement in Japan by the courts of that country.[41]

Subsequent to this political analysis, federal courts in Florida rejected the State Department's political intrusion. For example, in *Intelsat Corp. v. Multivision TV, LLC*,[42] the Southern District held that a defendant resident in Spain was not properly served with process. The *Multivision* court noted that other federal circuits have held that use of the word "send" was not equivalent to "service," and that "initial service of process by postal channels" is inadequate.[43] The court further stated: "[w]here a legislative body [not political] uses particular language [like "send"] in one place but not in another, 'it is generally presumed that the body acts intentionally.'"[44] The *Multivision* court added that, given the careful "wordsmithing that underpins treaty drafting in The Hague Convention's repeated use of the specific term 'service' throughout the treaty, had the drafter's intended Article 10(a) to allow service by postal channels, they would have so stated."[45]

Other federal courts outside of Florida have taken similar positions. *Utpendhal v. American Honda Motor Co., Inc.*[46] held that substituted service of process on the Kentucky secretary of state, followed by mailing to a Japanese defendant, did not comply with The Hague Convention. The *American Honda* case specifically addressed the political comments made by the State Department and found them unpersuasive:

> While we find the [political] commentary concerning the courts' diverse opinions interesting, the court simply cannot alter the text of the treaty to add matters not contained therein.[47]

Defense counsel should know there are contrary decisions about the State Department's comments, but none in Florida.[48]

Conclusion

In Florida state courts, a plaintiff or other party serving a foreign national corporation or foreign individual must comply with the provisions of The Hague Convention regarding original service of process. The cost of compliance is approximately $3,000–$5,000, which can be paid to specialized service agencies. The cost gives parties an incentive to draft a "bare bones" complaint or third party complaint — a short, plain statement.

In Florida federal courts the provisions of The Hague Convention should still be followed, despite the solitary Middle District case to the contrary. This author believes the persuasive value of that decision is low, and it is unlikely to be followed.

One might question why this expense and effort are necessary when Toyota or Honda vehicles are on the streets of every town in Florida. The answer is simple: as long as The Hague Convention is a duly executed treaty, it must be followed. Remember that the Convention also protects Floridians who are sued overseas. The issue is larger than one of convenience; litigants cannot pick and choose which treaties to follow. The Hague Convention is but one of many treaties to which the United States is a signatory. It should be treated no differently.

1 *See Martindale Law Digest* for the names of the 60-plus countries that have signed The Hague Convention, along with the reservations, or objections to various provisions, which certain countries have registered.
2 20 U.S.T. 361, T.I.A.S. No. 6638.
3 *See* Stephen F. Downs, *The Effect of The Hague Convention on Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters*, 2 Cornell Int'l L.J. 125 (1969).
4 *See, e.g., Zschernig v. Miller*, 389 U.S. 429 (1968); *Boehringer-Mannheim Diagnostics, Inc. v. Pan American World Airways, Inc.*, 737 F.2d 456, 459 (4th Cir.), *cert. denied*, 423 U.S. 877 (1975).
5 *United States v. Pink*, 315 U.S. 203, 230-231 (1942).
6 *See American Trust Co. v. Smyth*, 247 F.2d 149, 153 (9th Cir. 1957).
7 *Volkwagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 699, 108 S. Ct. 2103 (1988).
8 *See, e.g., Ormandy v. Lynn*, 122 Misc. 2d 954, 472 N.Y.S.2d 274 (N.Y. App. Div. 1984); *Dr. Ing H.C.F. Porsche A.G. v. Superior Court*, 123 Cal. App. 3d 755, 177 Cal. Rptr. 155 (Cal. 3d App. Div. 1981).
9 *See Downs, supra* note 3.
10 *See* 20 U.S.T. 361 through 367; T.I.A.C. No. 6668.
11 *See Comment*, 14 The Int'l Lawyer, 637, 648, 739 (1980).
12 *See generally* Hans Smit, *International Aspects of Federal Civil Procedure*, 61 Colum. L. Rev. 1031 (1961); Harry Jones, *International Judicial Assistance*, 62 Yale L.J. 515 (1953).
13 In addition to the cases discussed below, see generally Henry Trawick, *Florida Practice and Procedure*, §8:21, at 172-173, & n. 5 & 7 (2011 Edition) (citing the

Bankston case, *infra* note 26, which held that service of process by mail is not sufficient under The Hague Convention; service must be made in accordance with The Hague Convention) .

[14] 861 So. 2d 501 (Fla. 1st DCA 2003).

[15] *Id.* at 503.

[16] *Id.* at 502.

[17] *Id.* at 503 (emphasis added) (citations omitted).

[18] 471 So. 2d 187 (Fla. 3d DCA 1985).

[19] *Id.* at 188.

[20] 744 So. 2d 1119 (Fla. 1st DCA 1999).

[21] *Id.* at 1120.

[22] *See e.g.*, *Bank of America, N.A. v. Bornstein*, 39 So. 3d 500, 503-504 (Fla. 4th DCA 2010) (absent strict compliance with Chapter 48 court lacks jurisdiction); *Tores v. Arnco Construction, Inc.; Costin v. Pely Kado Onroerend Goed B. v. The Ruthenburg*, 635 So. 2d 1001, 1003-1004 (Fla. 5th DCA 1994) (service of process quashed; Chapter 48.181 must be strictly construed); *American Motors Corp. v. Abrhantes*, 446 So. 2d 240 (Fla. 4th DCA 1984); *S.T.R. Industries, Inc. v. Hivalgo Corp.*, 832 So. 2d 262, 263-264 (Fla. 3d DCA 2002) (improper service of process, service statutes must be strictly construed); *Robinson v. Cornelius*, 377 So. 2d 776, 778 (Fla. 4th DCA 1979) (service quashed, must be strictly construed in terms of service of process statutes); *Schringer v. Big Lots, Inc.*, 532 F. Supp. 2d 1335 (N.D. Fla. 2007).

[23] *See Youngblood v. Citrus Assoc. New York Cotton Exchange, Inc.*, 276 So. 2d 505, 509 (Fla. 4th DCA), *cert. den.*, 285 So. 2d 26 (Fla. 1973) (attempted service under section 48.081, service on corporation); *Thompson v. State Department of Revenue*, 867 So. 2d 603, 605 (Fla. 1st DCA 2004) (service quashed under section 48.081 on service on process generally; person who seeks to impose jurisdiction of court has the burden of proof); *Henzel v. Noel*, 598 So. 2d 220, 221 (Fla. 5th DCA 1992) (insufficiency of service of process; the person seeking jurisdiction has the burden of proof; mailing copies of the complaint was insufficient under section 48.081, service of process generally).

[24] *Volkswagenwerk Aktiengesell-Schaff v. Schlunck*, 486 U.S. 694, 699, 108 S. Ct. 2103 (1988) (service attempted by substituted means on a German corporation who signed The Hague Convention upon its American subsidiary was improper).

[25] *Vegas Glen v. Club Mediterranean S.A.*, 359 F. Supp. 2d 1356, 1359 (S.D. Fla. 2005).

[26] 123 F.R.D. 595 (W.D. Ark.), *aff'd*, 889 F. 2d 172 (8th Cir. 1989).

[27] Thirty four (34) countries did not specifically object to Article 10(a); *see* note 1, *supra.*

[28] 123 F.R.D. at 597.

[29] *Id.* at 599. *See also Lobo v. Celebrity Cruises, Inc*, 667, F. Supp. 2d 1324, 1337, 1339 (S. D. Fla. 2009) (service by mail attempted under section 48.161 not proper under The Hague Convention, and documents not translated in Japanese); *Pochop v. Toyota Motor Co., Ltd*, 111 F.R.D. 464, 467 (S.D. Miss. 1986) (service quashed if not under Hague, including by mail); *Mommsen v. Toro Co.*, 108 F.R.D. 444 (S.D. Iowa 1985); *Hanover, Inc. v.* Omet, 688 F. Supp. 1377, 1385 (W.D. Mo. 1985); Suzuki *Motor Co., Ltd. v. Superior Court*, 200 Cal. App. 3d 1476, 249 Cal. Rptr 376 (1988); *Ormandy v. Lynn*, 122 Misc. 2d 954, 472 N.Y.S. 2d 274 (N.Y. App. Div. 1984); *Reynolds v. Koh*, 109 A.D. 2d 97, 490 N.Y.S. 2d 295 (1985).

[30] *See Cooper v. Makita*, 117 F.R.D. 16, 17 (D. Me. 1987).

[31] *See Ormandy v. Lynn*, 472 N.Y.S. 2d 274, 275 (N.Y. App. Div. 1984); *Reynolds v. Koh*, 490 N.Y.S. 2d 195, 197 (App. Div. 3d Dep't. 1985) (service by postal channel cannot be permitted under Article 10(a)). *See also Pochop v. Toyota Motor Co.*, 111 F.R.D. 464, 466 (S. D. Miss. 1986) (better reasoned approach is that service by mail upon defendant in Japan is not permitted under The Hague Convention).

[32] *See Bankston*, 889 F. 2d at 174; *Reynolds*, 490 N.Y.S. 2d at 197 (holding service by postal channel cannot be permitted under Article 10(a)).

[33] 781 F. Supp. 1079, 1082 (E.D. Pa. 1992).

[34] 141 F.R.D. 45 (E.D. Pa. 1991).

[35] *See supra* note 24. This type of interpretation is also in accord with long standing American precedent. *See United States v. Perchman*, 32 U.S. 51, 88-89 (1833).

[36] 726 F. Supp. 822 (N.D. Fla. 1989). *Accord Wasden v. Yamaha Motor Co., Ltd.*, 131 F.R.D. 206, 208 (M.D. Fla. 1990) ("By virtue of the supremacy clause of Article VI of the Constitution of the United States, the Convention pre-empts inconsistent methods of service prescribed by state law in all cases to which it applies.").

[37] 726 F. Supp. at 826.

[38] In *Vega Glen v. Club Mediterranean S.A.*, 359 F. Supp. 2d 1352, 1356 (S.D. Fla. 2005) the court stated that compliance with The Hague Convention is mandatory in all cases to which it applies. In the *Vega Glen* case the plaintiff attempted to use the Florida substituted service of process, section 48.181. The *Vega Glen* court determined that the attempted substituted service of process on the Secretary of State, then mailing the process to the defendant, even in Cuba, did not comply with The Hague Convention. *See also Lobo v. Celebrity Cruises, Inc.*, 667 F. Supp 2d 1324 1327-1338 (S.D. Fla. 2009) ("service on the Union by direct mail was improper because the plaintiffs did not provide translated documents").

[39] 499 F. Supp. 2d 1287, 1291 & n. 4 (M.D. Fla. 2007).

[40] *Id.* at 1293. *Contra Progressive Insurance Co. v. Bombardier, Inc.*, in the Circuit Court in and for Okaloosa County, Florida, Case No. 2002-CA-1883-S-JT ("the Court finds that service has not been perfected in accordance with the requirements of The Hague Convention."); *Piper v. Kelsey Construction, Inc.*, in the Circuit Court of the Ninth Judicial Circuit, in and for Orange County, Florida, Case No. C10-02-2537 (granting a motion to quash with regard to a German corporation because of failure to comply with provisions of The Hague Convention); *Copeland v. Mazda Motor Corp.*, Case No. 05-2011-CA-032047 (18th Cir., Brevard Cty)..

[41] Excerpts of the Deputy Legal Adviser's letter [30 I.L.M. 260-261], 1991 WL 626488 (I.L.M.) (1991).

[42] 736 F. Supp. 2d 1334, 1342 (S.D. Fla. 2010).

[43] *Id.* at 1342. *See also, e.g., Nuovo, Pignone, Spav, Stoorman, Asia m/v*, 310 F. 3d 374, 384 (5th Cir. 2002) ("[B]ecause the drafters purposefully elected to use forms of the word 'service' throughout The Hague Convention while confining the use of the word 'send' to Article 10 we will not presume that the drafter's intent to give the same meaning to the word 'send' that they intend to give to single 'service'").

[44] 736 F. Supp. 2d at 1343. *See also Arco Elec. Control, Ltd. v. Core Int'l*, 794 F. Supp. 1144, 1147 (S.D. Fla. 1992).

[45] 736 F. Supp. 2d at 1342-1343. In 2005, the State Court of Fulton County, Georgia addressed these arguments in a case entitled *Printer v. Bridgestone/Firestone, et al.*, No. 03-VS-05720-C. In *Printer*, Bridgestone argued that the plaintiff's service of an untranslated copy of the complaint by registered mail on its Japanese corporate office was ineffective because it "[did] not comply with The Hague Convention." The Judge in that case noted The Hague Convention contains two distinct service of process provisions, one of which was Article 10(a), which permits the plaintiff to send an untranslated complaint directly to Bridgestone via registered mail. After reviewing the case law, including the cases relied upon by Bridgestone in support of its motion, the Court "adopt[ed] the view that Article 10 does permit service of process by mail."

[46] 291 F. Supp. 2d 531, 533-534 (W.D. Ky. 2003).

[47] *Id.* at 534 (referencing *special Commission Report on the Operation of The Hague Service Convention and the United States Department of State Opinion*). *Accord Knapp v. Yamaha Corp. USA*, 60 F. Supp. 2d 566, 569 N. 3, 570 (S.D. W. Va. 1999) (holding that sending original service of process under Article 10(a) did not constitute compliance with The Hague Convention).

[48] *See, e.g., Schiffer v. Mazda Motor Corp.*, 192 F.R.D. 335, 339 (N.D. Ga. 2000); *Zaboli v. Mazda Motor Corp.*, 1999 U.S. Dist. LEXIS 21756, *5 (N.D. Ga. July 14, 1999) (denying MMC's motion to dismiss the complaint for inadequate service, because service of process by registered mail to a defendant in Japan was permissible under The Hague Convention). *Accord Denlinger v. Chinadotcom Corp.*, 110 Cal. App. 4th 1396, 1403 (2003) ("the freedom to send judicial documents, by postal channels, directly to persons abroad" authorized service of process by mail. In this case the defendant was a citizen of Hong Kong which, just like Japan, had not objected to Article 10(a)); *Randolph v. Hendry*, 50 F. Supp. 2d 572, 578 (S.D. W. Va. 1999); *Eli Lilly and Co. v. Roussel Corp.*, 23 F. Supp. 2d 460, 471 (D.N.J. 1998); *EOI Corp. v. Medical Marketing, Ltd.*, 172 F.R.d. 133, 142 (D.N.J. 1997); *R. Griggs Group Ltd. v. Filanto Spa*, 920 F. Supp. 1100, 1104 (D. Nev. 1996); *Patty v. Toyota Motor Corp., 777 F. Supp. 956, 959 (N.D. Ga. 1991); Meyers v. ASICS Corp.*, 711 F. Supp. 1001, 1007 (C.D. Cal 1989); *Hammond v. Honda Motor Co.*, 128 F.R.D. 638, 641 (D.S.C. 1989).