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TRANSLATED DOCUMENTS AND HAGUE SERVICE CONVENTION REQUIREMENTS

*Christopher Cheng**

The comprehensive Convention On The Service Abroad Of Judicial And Extrajudicial Documents In Civil Or Commercial Matters (Hague Service Convention) governs service of documents abroad for a number of important signatory countries, including the United States, Germany, and Japan.¹ This Note addresses the translation requirements in Article 5 of the Convention.² Under certain circumstances, Article 5 permits a signatory state to require the serving party to translate the service documents into one of the official languages of the State.³ Parties can meet the requirement easily, but errors occur in practice due to attorney and judicial unfamiliarity with Article 5. These errors often delay judicial proceedings and lead to inconsistent rulings. This Note examines what Article 5 actually requires, and how parties serving process abroad can avoid delay and inconvenience over translation requirements.

Part I of this Note discusses translation requirement permitted under the Hague Convention, the provisions of the Convention governing service abroad, and when translation requirements apply to service abroad. Part II addresses complications arising from U.S. courts' strict interpretation of the requirements and their failure to consult the laws of the addressee state. Part III suggests practical methods which courts and attorneys can implement to avoid these complications. In general, both U.S. courts and attorneys must defer to foreign legal standards when applying Article 5. Because courts sometimes fail to consult foreign law, they have read national translation requirements more narrowly than necessary under the Convention, essentially creating standards unrelated the requirements of the receiving state. Attorneys and courts should not read Article 5 as a simple and strict translation requirement. Rather, they should view it as a more complex instrument which recognizes both the international community's

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1. Convention On The Service Abroad Of Judicial And Extrajudicial Documents In Civil or Commercial Matters, Feb. 10, 1969, 20 U.S.T. 361 [hereinafter Hague Convention].

2. *Id.*, art. 5. See also *id.* at art. 7, (document summary included with document served should be in English, French, or the addressed State's official language).

3. *Id.* art. 5.

need for uniform service procedures, and each signatory State's need to comply with its internal laws.

I. THE HAGUE CONVENTION'S TRANSLATION REQUIREMENT

The Hague Convention is a multilateral treaty designed to simplify and facilitate service abroad. The Convention's primary innovation requires signatory States to establish Central Authorities for processing document service requests.⁴ However, under the Convention, States retain certain powers to restrict or expand the methods of service used. The Convention also permits the Central Authority to require that parties translate any documents served. Part A discusses the basis of this language requirement. Part B examines the application of the requirement.

A. *The basis of the language requirement*

The Hague Convention preamble states its signatories' main goals:⁵

The States signatory to the present Convention,

Desiring to create appropriate means to ensure that judicial and extrajudicial documents to be served abroad shall be brought to the notice of the addressee in sufficient time,

Desiring to improve the organization of mutual judicial assistance for that purpose by simplifying and expediting the procedure,

Have resolved to conclude a Convention to this effect and have agreed upon the following provisions

Consistent with the notice clause of the preamble, Article 5 of the Convention includes a document translation provision:⁶

The Central Authority of the State addressed shall itself serve the document or shall arrange to have it served by an appropriate agency, either—

(a) by a method prescribed by its internal law for the service of documents in domestic actions upon persons who are within its territory, or

(b) by a particular method requested by the applicant, unless such a method is incompatible with the law of the State addressed.

Subject to sub-paragraph (b) of the first paragraph of this article, the

4. Article 2 of the Convention states:

Each contracting State shall designate a Central Authority which will undertake to receive requests for service coming from other contracting States and to proceed in conformity with the provisions of articles 3 to 6.

Each State shall organize the Central Authority in conformity with its own laws.

Id. art. 2; *see also* Volkswagenwerk Aktiengesellschaft v. Schlunk, 486 U.S. 694, 698-99 (1987).

5. Hague Convention, *supra* note 1, pmb1.

6. *Id.* art. 5.

document may always be served by delivery to an addressee who accepts it voluntarily.

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.

That part of the request, in the form attached to the present Convention, which contains a summary of the document to be served, shall be served with the document.⁷

The Convention gives the Central Authority the right to reject any requests for service which do not comply with the Convention.⁸ In the event that the Central Authority rejects the request, "it shall promptly inform the applicant and specify its objections to the request."⁹ Article 6 of the Convention requires a Central Authority to return a certificate confirming that the documents have been served along with the time, place, and method of service.¹⁰ If the document has not been served, the certificate must give the reasons for denial of service.¹¹

Thus, if service by method (a) is requested according to the internal service rules of the State, a Central Authority may insist that the requestor translate any documents before the Authority will serve them on its nationals, and it has the authority to decide whether the translated documents satisfy the State's translation requirement. If a State permits service by method (b), then its Central Authority cannot require translation of documents. This Note focuses primarily on the translation requirements associated with method (a).

B. *Application of the translation requirement*

The Convention generally applies only to service upon defendants living abroad who have no agent in the United States.¹² Consequently,

7. The Document Summary, contained in an Annex to the Convention, requires the serving party to identify the nature and purpose of the served documents, the purpose of the proceedings, along with the relevant dates for appearance and time limits stated within the document. *Id.* annex. The model documents in the Annex to the Convention — the request for service, the certificate of service, and the document summary — are all mandatory forms. BRUNO RISTAU, INTERNATIONAL JUDICIAL ASSISTANCE: CIVIL AND COMMERCIAL 125 (1990).

8. Hague Convention, *supra* note 1, art. 4.

9. *Id.*

10. *Id.* art. 6. The model form for this certificate is found on the reverse side of the model request form. *Id.* annex.

11. *Id.*

12. The Constitution's Due Process Clause covers foreign nationals, and those nationals are . . . assured of either personal service, which usually requires service abroad and triggers the Convention, or substituted service that provides "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Volkswagenwerk, 486 U.S. at 705 (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). See also Fed. R. Civ. P. 4 (West 1992); Foreign Sovereign Immunities Act, 28 U.S.C. § 1608 (1988).

if domestic service is possible, the Convention and its translation requirement do not apply. Rather, only when a party must personally serve a defendant abroad via the Central Authority mechanism does the Article 5 translation provision apply. The Central Authority in the State where the documents are served in turn decides whether service requires a translation. The foreign Central Authority makes its decision based on its nation's internal laws.¹³

The Articles of the Hague Convention govern only those "cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad."¹⁴ This language is mandatory, and the Convention preempts inconsistent methods of service abroad prescribed by the Federal Rules of Civil Procedure or state law.¹⁵ However, the Convention allows each signatory nation significant flexibility in choosing the methods of service that it will allow. Thus, variations in practice exist. Some signatories require document translations into national languages, and others require no document translations whatsoever. Additionally, different nations have designated different institutions as their Central Authority. For example, when the Convention was ratified, Japan designated its Minister for Foreign Affairs as the Japanese Central Authority, while Israel designated its Directorate of Courts as the Israeli Central Authority.¹⁶

The Convention never required contracting states to make formal designations regarding their language requirements at the time of treaty ratification. Nevertheless, when ratifying the Hague Convention, several nations stated explicitly that their Central Authorities would serve documents only after the documents were translated into those nations' official languages. Many other signatory nations, which did not designate a language requirement when they signed the Convention, also require translation as a matter of internal law or practice. Some states may attempt service of untranslated documents, but the served party must voluntarily accept the documents for service to be effective.¹⁷ If the Central Authority requires translation, and the

13. Hague Convention, *supra* note 1, art. 2; *Volkswagenwerk*, 486 U.S. at 699; *see also* RISTAU, *supra* note 7, at 133-38 (including a summary of each Convention member's translation requirements). For a comprehensive analysis of Convention service by mail and other means, *see* L. Andrew Cooper, Note, *International Service of Process by Mail Under the Hague Service Convention*, 13 MICH. J. INT'L L. 698 (1992); Gregory S. Richardson, *Notice Due to Stealth and other Foreign defendants after Volkswagenwerk Aktiengesellschaft v. Schlunk and under the Hague Service Convention*, 2 TRANSNAT'L LAW 641 (1989); Service of Process Abroad, *supra* note 1.

14. *Volkswagenwerk*, 486 U.S. at 699 (quoting 20 U.S.T. 362).

15. *See id.* 699 (citing *Société Nationale Industrielle Aerospatiale v. United States District Court*, 482 U.S. 522, 534 n.15 (1987)).

16. *See* RISTAU, *supra* note 7, at A-45, A-47.

17. Article 5 permits service regardless of translation requirements whenever the party vol-

served party refuses to accept the untranslated service documents, the Central Authority will return them to the serving party, pursuant to Article 4 of the Convention.¹⁸

II. COMPLICATIONS CAUSED BY TRANSLATION REQUIREMENTS

The wide variation in national translation requirements and the Central Authorities' interpretations of Article 5 create several potential legal problems when combined with the U.S. courts' strict interpretation of the Hague Convention. Part A examines the difficulties U.S. parties have experienced when serving abroad. Part B discusses problems involving service of United States defendants by foreign plaintiffs. Part C discusses complications involving service of United States citizens living abroad. Part D examines the common root of all of these problems - the courts' strict application of the Hague Convention without adequate consideration of the internal laws of Hague Convention members.

A. *Serving defendants abroad*

Occasionally, U.S. plaintiffs fail to realize that Article 5 may require them to send translations with any documents served abroad. Plaintiffs must strictly comply with the Convention's translation requirement, or U.S. courts will quash service.¹⁹ If a court quashes service, it can create inconvenience and delay for the plaintiff, but such a result is not as severe as a court dismissing a complaint for insufficient service.²⁰ To make matters worse, U.S. courts often interpret Article 5 using U.S. legal standards, which results in disagreement on the exact scope of the translation requirement.

In *Teknekron Management v. Quante Fernmeldetechnik*, 115 F.R.D. at 175, a U.S. plaintiff mailed a complaint through postal channels to a West German defendant. This initial attempt at service was inadequate, since West Germany requires that service take place through its Central Authority.²¹ The plaintiff, recognizing its error,

untarily accepts service. Some states may also accept documents in languages other than their national tongue. Norway and Sweden, for example, will accept documents in Norwegian, Swedish, or Danish. RISTAU, *supra* note 7, at 134-35.

18. For a secondary source listing convention members' language requirements, see *id.*

19. See, e.g., *Teknekron Management v. Quante Fernmeldetechnik*, 115 F.R.D. 175 (D. Nev. 1987); *Taylor v. Uniden Corp. of America*, 622 F. Supp. 1011 (E.D. Mo. 1985); but see, *Shoei Kako Co., Ltd. v. Superior Court, San Francisco*, 33 Cal. App. 3d 810, 109 Cal. Rptr. 402 (1973) (finding service of untranslated documents adequate in a service by mail case).

20. The courts are often generous to parties who fail to meet the translation requirement. See, e.g., *Voorhees v. Fischer & Krecke*, 697 F.2d 574 (4th Cir. 1983) (plaintiffs given a "reasonable opportunity" to effect valid service even though statute of limitations had run).

21. The Federal Republic of Germany designated each regional minister of justice as the

attempted service again in compliance with the treaty. In the second attempt, the plaintiff met the Convention service procedure in every way except that it attached an untranslated exhibit to the translated complaint. Noting that service abroad must comply strictly with the terms of the Hague Convention, the District Court found the entire service of the complaint defective. Basing its analysis only on the Federal and Nevada Rules of Civil Procedure, the court never discussed whether West Germany found the second attempt at service adequate.²² The court acknowledged that West German law required that all documents had to be translated, but addressed the question of whether an exhibit was included in the term "document" by referring to U.S. Federal and State law.²³ The District Court also denied the defendant's motion to dismiss for insufficient service, reasoning that when insufficient service exists, the court should quash the service and allow the plaintiff the opportunity to serve properly.²⁴

In *Taylor v. Uniden Corp. of America*, a plaintiff served a Japanese defendant, through the Japanese Central Authority, with a translated summons and complaint.²⁵ As required by Articles 5 and 7 of the Hague Convention, the plaintiff also attached an untranslated "request form" detailing "the names of the parties, the type of service requested, and a list and summary of documents to be served." The *Taylor* court held that under Article 5, "only the document to be served need be translated," and that "'document' refers only to the judicial document, not the request form."²⁶ Since the Japanese Central Authority found the form and documents acceptable, the court held the plaintiff's service adequate, and denied the defendant's motion to quash service. While Japan requires translation of "docu-

Central Authority for each *land*. Declaration of the Federal Republic of Germany accompanying Ratification of Hague Convention, reprinted in RISTAU, *supra* note 7, at A-42, A-43.

22. *Teknekron*, 115 F.R.D. at 176-77; see also Fed. R. Civ. P. 10(c) (West 1992) (exhibits as part of complaint).

23. *Teknekron*, 115 F.R.D. at 176-77; see also *Borschow Hospital & Medical Supplies v. Burdick-Siemens*, 143 F.R.D. 472 (D. P.R. 1992).

In *Borschow*, the District Court of Puerto Rico, rejecting the plaintiff's attempt to serve a Swedish defendant by mail, also addressed the requirement of translation. The court required the translation of all documents for any service abroad. While this may have in fact conformed with Swedish translation requirements, the court's requirement was based on U.S. concepts of adequate notice, and not on Swedish law. *Id.* at 480. In addition, the court applied its holding prospectively, covering service to any foreign recipient. From a U.S. perspective, this holding may comport with "adequate notice" jurisprudence, but it does not address cases where foreign State laws do not absolutely require translation of all documents.

Ironically, one such jurisdiction is the United States, which only requires translation of the document summary, not the documents themselves. RISTAU, *supra* note 7, at 135.

24. *Teknekron*, 115 F.R.D. at 177.

25. 622 F. Supp. 1011 (E.D. Mo. 1985).

26. *Id.* at 1016.

ments," the court properly noted that the Japanese Central Authority, as a matter of practice, did not consider the request form as part of the "document."²⁷ The Japanese Central Authority apparently accepted service of the untranslated request form.²⁸ The District Court deferred to this acceptance, noting that "if the Japanese authority found the form or documents inadequate, it could have objected under Article 4."²⁹

These two cases demonstrate how translation requirements confuse the courts. The Convention itself does not explain clearly whether "document" includes the summons, complaint, the summary of the document served, or any attached exhibits. The scope of the translation requirements are left to the internal laws of signatory States. Courts should leave the determination of which papers need translation to an addressee State's internal laws, as interpreted by the State's central authority. Nevertheless, at least in the *Teknekron* case, the court did not take foreign law into account, applying U.S. standards to a West German requirement. The court may have intended to enforce the translation requirement of West Germany strictly, but it may have overstated that requirement. Without examining the West German translation requirement, the court could not have known the actual substance of the requirement it purported to apply. A U.S. plaintiff attempting service abroad should be concerned about the lack of uniformity in the courts' application of the Hague Convention.³⁰

B. *Serving defendants in the United States*

When a foreign plaintiff serves a defendant in the United States via the U.S. Central Authority, the Hague Convention's translation requirement binds that plaintiff.³¹ However, Convention quirks and U.S. case law create the potential for serious legal complications.

In many ways, the United States tolerates greater variation in methods of service than other Convention signatories. For example, U.S. internal law allows service by mail.³² This creates the theoretical possibility, under the literal wording of Articles 5 and 7 of the Con-

27. *Id.*

28. *Id.* at 1015-16; RISTAU, *supra* note 7, at 134; *see generally*, Hague Convention, *supra* note 1.

29. *Taylor*, 622 F. Supp. at 1016.

30. Article 15 of the Convention speaks of "a writ of summons or an equivalent document," but other articles discuss service of "documents," "request conforming to the model annexed to the present convention," and "a summary of the document to be served, shall be served with document," and so forth. *See* Hague Convention, *supra* note 1, art. 15.

31. *Id.*

32. *See* Fed. R. Civ. P. 4 (West 1992).

vention, for a foreign plaintiff to mail a U.S. citizen a complaint, or other Convention documents, written entirely in French. Such service would not provide adequate notice to the U.S. citizen, as required by the Due Process Clause.³³ U.S. courts have held that documents served in the U.S. must be translated at least to the extent necessary to give the U.S. citizen adequate notice of the legal action to satisfy due process.³⁴ However, only sparse case law on the issue exists.³⁵

In *Julen v. Larson*, the California Court of Appeals affirmed the dismissal of an action to enforce a Swiss judgment against a U.S. defendant, based on lack of jurisdiction due to insufficient notice.³⁶ The court refused to enforce the Swiss judgment, since the defendant never received adequate notice before the Swiss legal action commenced. The plaintiff had served the defendant with documents written in German.³⁷ The California court held that these documents were invalidly served on the U.S. defendant, since the documents did not inform the defendant that a specific legal action was pending against him.³⁸ The court further held that at a minimum, such documents should disclose the location of the pending action, the amount involved, the date by which defendant must respond, and the consequences of failure to respond. The court used the document summary form in the Hague Convention as a standard for adequate notice, and did not require translation of the served documents themselves.³⁹ In this case, no document summary existed. Therefore, the court would not recognize the foreign judgment, and found the untranslated documents provided inadequate notice of the Swiss action.⁴⁰

33. U.S. CONST. amend. V; See RISTAU, *supra* note 7, at 137. See also, *Milliken v. Meyer*, 311 U.S. 457, 463 (1940) (substituted service is valid if reasonably calculated to give actual notice, an opportunity to be heard, and is consistent with fair play and substantial justice); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

34. The Hague Convention may have a more restrictive effect upon U.S. defendants than upon foreign ones — a nation like Japan or Germany forbids service by mail and service of untranslated documents. The United States does not have either restriction.

35. U.S. courts do require adequate notice to defendants served with foreign judgments. See *Julen v. Larson*, 25 Cal. App. 3d 325, 101 Cal. Rptr. 796 (1972); *Cooper*, *supra* note 13, at 709; *cf.*, *Dehart v. A.C. & S., Inc.*, 682 F. Supp. 792 (D. Del.1988) (Canadian-based, French companies did not state cause to extend time for removal on foreign instrumentality grounds where documents served were in English, not French, which is a Canadian official language).

36. *Julen v. Larson*, 25 Cal. App. 3d 325, 101 Cal.Rptr. 796 (1972).

37. The defendant submitted an affidavit stating that he did not speak German, which the plaintiff did not dispute. The court did not appear to consider this factor beyond mentioning it in the procedural history. *Julen*, 25 Cal. App. 3d at 327.

38. *Id.*

39. *Id.*; see Hague Convention, *supra* note 1, annex (Model Document Summary); the U.S. Central Authority has cited *Julen* as an example of adequate notice satisfying the Due Process Clause. RISTAU, *supra* note 7, at 155 & n. 25.

40. RISTAU, *supra* note 7, at 155.

The *Julen* court took a cautious step in the right direction. However, one step does not sufficiently address the problem. Even when parties translate Convention document summaries, the summaries may be unintelligible, and for all practical purposes fail to provide the U.S. party with adequate legal notice. Without more case law, it remains unclear how much translation provides adequate notice under U.S. due process requirements.⁴¹

Courts could require U.S. parties to translate, on their own, any documents written in a foreign language. However, the expense and delay would be sufficiently prejudicial against the U.S. parties that such a duty would deny the rights of the parties under the convention.⁴²

C. *Serving United States citizens abroad*

Service of United States citizens abroad involves notice issues related to those involved in service within the United States. Theoretically, a U.S. court could enforce a foreign judgment even if a plaintiff served the U.S. defendant living abroad with documents written in a foreign language.

In *Tahan v. Hodgson*,⁴³ the Court of Appeals enforced an Israeli judgment against an American defendant conducting business in Israel. The plaintiff personally served the defendant in Israel with Hebrew documents, in compliance with Israeli law. The Court of Appeals reasoned:

Even if defendant were unable to read Hebrew, he should have surmised that the papers being served upon him were legal in nature, and that he could ignore them only at his peril He showed bad judgment in not putting the matter in the hands of an Israeli lawyer. It would be insulting were we to require that the Israeli legal machinery adapt itself by translating the official language of that country, Hebrew, into any defendant's language.⁴⁴

The court did not consider Israeli law concerning translation when analyzing the case.⁴⁵ Nevertheless, *Tahan* reveals one possible mode

41. *See id.* at 137.

42. *Id.*

43. 662 F.2d 862 (D.C. Cir. 1981).

44. *Id.* at 865.

45. The court instead analogized to U.S. criminal proceedings against a non-English speaking defendant. *Id.* at 865 n.14. (citing *Commonwealth v. Olivo*, 369 Mass. 62 (1975)).

The court did note that Article 5 of the Hague Convention permitted Israel to require translation of all documents into Hebrew. While Article 5 did not apply to this case, it is interesting to note that Israel does not in fact require translation into Hebrew. Israel will serve untranslated documents so long as the attached summary is in English, French, Hebrew, or Arabic. RUSTAU, *supra* note 7, at 134.

Application of U.S. due process jurisprudence to translation requirements may be particu-

of thought regarding translation requirements and service process in general. Judges and attorneys in cases like *Tahan* develop their own standards for adequate service when service involves foreign language documents. In so doing, they ignore what the Convention or foreign courts require in terms of adequate service. This failure, combined with some courts' implicit assumption that Article 5 constitutes a translation requirement independent of national law, might someday lead a U.S. court to conclude that a plaintiff *must* serve the U.S. citizen living abroad with documents written in a non-English language. The court might also conclude that although the foreign nation involved, and the Convention itself, may allow service in English in order to ensure adequate notice to defendants, the U.S. court could enforce a foreign judgment despite a finding of inadequate notice under both the U.S. Due Process Clause and the foreign nation's internal law.

D. *The U.S. courts' strict application of the Hague Convention*

The problems discussed above exist mainly because the U.S. courts interpret Hague Convention requirements based upon a superficial reading of the treaty. The U.S. courts construct their own standards to satisfy the Convention, under ad hoc theories, without always evaluating the internal law and practice of Convention members—laws which the U.S. courts should be applying under Article 5. Strict compliance with translation requirements often renders reasonable results. In most situations, requiring a translation of served documents is consistent with U.S. due process standards and the served nation's internal laws.⁴⁶ However, U.S. courts do not interpret foreign translation requirements strictly because the foreign nation requires such strictness. The internal laws of the receiving nation, the proper source of the translation requirements, are replaced by the U.S. courts' own interpretation of the requirements, which are sometimes based on only a vague idea of the content of those requirements. The U.S. courts appear confused about what the Convention expects of them and rarely consider, in any depth, the actual policies of signatory nations when deciding the validity of service abroad.

The blame for this confusion lies with no one party. In *Tahan*, it is unclear whether the defendant ever raised the inadequate service issue in the Israeli courts, or whether the defendant asked the Court of Appeals to consider Israeli practice when reviewing the validity of ser-

larly inappropriate where the foreign jurisdiction has more than one official language, unlike the United States.

46. See RISTAU, *supra* note 7; see also *Volkswagenwerk*, 486 U.S. at 694.

vice. On the other hand, the Court of Appeals opinion suggests that the court never even considered the necessity of reviewing Israeli law and policy regarding translation requirements.⁴⁷

The *Teknekron* case represents the flipside of the problem. In *Teknekron*, the court held the service invalid because the untranslated exhibits attached to the translated complaint were considered part of the complaint under U.S. law. Thus, even though the West German Central Authority apparently did not object to the untranslated exhibit, the U.S. court still quashed service. In other words, the U.S. court applied U.S. legal notice standards when under the Hague Convention, the court should have complied with German standards.⁴⁸ In contrast, the *Taylor* court specifically held that since the Japanese authorities found the untranslated materials to be adequate, it too would find service valid.⁴⁹ This acceptance of the Central Authority's implicit approval of service as a validation of that service satisfies the Hague Convention, without extensive judicial investigation of the actual substantive law involved.

Courts have held historically that if a nation requires translation, parties to an action must comply with that requirement strictly. However, the courts have not always recognized that a nation's translation "requirement" is often unclear and complex.⁵⁰ The interpretation of Article 5 of the Convention may vary greatly depending on a nation's practice and law. Yet case law suggests that courts treat the translation question as a yes or no requirement, without examining how the foreign state has interpreted the scope of its translation requirement. The problems listed above suggest that judges and attorneys should analyze Article 5 and its interpretations and applications by foreign nations to avoid compounding these problems in the future.

III. OPTIONS

Several methods exist to ensure that U.S. courts fully consider a nation's internal laws when applying the Hague Convention. Part A discusses the self-help methods which practitioners can use to ensure

47. See *Tahan*, 662 F.2d at 865.

48. See *Teknekron*, 115 F.R.D. at 177.

49. See *Taylor*, 622 F. Supp. at 1016.

50. For example, Belgium does not require a translation except in specific cases, when the recipient requests it; Finland does not require a translation unless the recipient refuses the document; France requires a translation if the service is made at the request of a party. Japan requires a translation and will return untranslated documents; Norway may or may not return untranslated documents depending on a number of factors. See RISTAU, *supra* note 7, at 134 (citing THE HAGUE CONFERENCE ON INTERNATIONAL LAW, PRACTICAL HANDBOOK ON THE OPERATION OF THE HAGUE CONVENTION OF 15 NOVEMBER 1965 ON THE SERVICE ABROAD OF JUDICIAL AND EXTRAJUDICIAL DOCUMENTS IN CIVIL OR COMMERCIAL MATTERS (1983)).

proper application of the Convention's translation requirements. Part B suggests possible treaty-based options which could make the translation requirement less complicated. Part C concludes by asking whether any reform is necessary in the first place.

A. *Self-help*

Self-help provides the most basic option for remedying the problem. Practitioners should investigate a foreign nation's document translation policy before attempting service. A serving party could feasibly translate every document it serves abroad, although this practice may result in an unnecessary waste of personal and financial resources. Some nations do not require translations, others require it only in certain circumstances, and still others require translations all the time. These decisions are based upon a nation's internal law and policy.⁵¹ For instance, the Norwegian Central Authority would probably consider whether a party understood, in actuality, a document written in English, before deciding if a Scandinavian translation were required for valid service.⁵² What constitutes a "document" for the purpose of translation under Article 5 remains unclear, and will vary between jurisdictions. If a nation's Central Authority does not require translation of certain documents, the party attempting service abroad should bring that fact to the attention of the U.S. court if the defendant attempts to quash service.

Service by a non-Central Authority mechanism provides another self-help option for practitioners. For example, U.S. and foreign corporations could agree in advance that translation of legal documents is unnecessary in the event a dispute should arise between them. The corporations would define what they consider adequate service, and the U.S. courts would have to accept this agreement under Article 5(b) of the Hague Convention, unless the addressed State forbids such an agreement.⁵³ A plaintiff pursuing service without the assistance of the Central Authority sacrifices the assurance of acceptance and validation of the documents by a state institution, however. In these situations, particularly in the case of service by mail, U.S. courts will still have to address the sufficiency of the translation, ideally by applying the requirements of the addressee state, but possibly according to U.S. due process criteria.

51. See RISTAU, *supra* note 7, at 133-38.

52. *Id.* at 134-35.

53. Article 5(b) of the Convention allows service "by a particular method requested by the applicant unless such a method is incompatible with the law of the State addressed." See Hague Convention, *supra* note 1, art. 5.

Finally, parties sued abroad should consider raising the entire notice issue with the foreign court before that court enters a judgment.⁵⁴ If the U.S. court could examine the foreign court decision, it could apply the foreign translation requirement accordingly.

Practical difficulties arise from all of the above suggestions. A practitioner may not be able to easily determine a nation's translation policy easily. Some Convention members never designated a translation requirement in the Hague Convention, while others have a more detailed policy than one might expect. The amount of advice a Central Authority can provide may vary from member to member.⁵⁵ Effectively raising the notice issue abroad might require comprehensive study of foreign civil procedure and constitutional law, or even retention of foreign counsel. However, the self-help options probably avoid more problems than they create, and difficulties may not arise in routine cases.

B. Treaty-based Options

This section suggests three Convention-based options which U.S. institutions could adopt in order to avoid some of the problems discussed in Part II.

First, by following the Hague Convention's literal terms, courts can avoid interpreting the Convention's translation requirement in a manner even stricter than a served nation requires. Article 5's translation clause only requires a translation if the served nation's Central Authority demands it.⁵⁶ Read literally, this clause makes the U.S. courts' task much simpler. If a Central Authority does not object to an untranslated document submitted for service, the courts could treat service of the document as presumptively valid. The Central Authorities create the translation requirements for their states.⁵⁷ As the source of the requirement, a Central Authority would be more qualified to apply its own rules than U.S. courts unfamiliar with foreign law. Courts would not have to ask whether an attached exhibit must be translated if the Central Authority apparently did not consider the issue significant. Such a presumption could also help the courts avoid the tedium and difficulty associated with researching foreign law.

54. See *id.* art. 16 (allowing judges to relieve defendants from default judgments where the defendant can show no actual knowledge of the proceedings and can make a *prima facie* showing of the existence of a defense on the merits).

55. Presumably, one could always ask a Central Authority about its nation's translation policy and service procedure. See also *id.*, art. 5; *Volkswagenwerk*, 486 U.S. 694.

56. See Hague Convention, *supra* note 1, art. 5.

57. *Id.*

Second, the U.S. Central Authority should protect defendants who reside in the U.S. from service of documents written in foreign languages which fail to meet basic notice and due process standards. The courts have taken some small steps in this direction in decisions tying internal U.S. law with the Convention.⁵⁸ U.S. law already requires that documents, or at least document summaries, served from abroad be translated into English. It follows that the U.S. Central Authority should not serve any documents which do not meet these legal standards.⁵⁹

Finally, the United States could avoid the Article 5 translation requirement entirely through Article 20 of the Hague Convention.⁶⁰ If other states would agree to eliminate the translation requirements in some or all circumstances, then the Convention service procedure would be simplified and expedited. A tradeoff exists in that states which eliminate the translation requirement would have to address the complex issue of adequate notice even if a served document is untranslated.⁶¹

C. Conclusion

Article 5's translation requirement generally renders reasonable results. The requirement that a moving party supply translations of documents to be served abroad makes sense in light of the Hague Convention's goals. However, the Convention's seemingly clear translation requirement sometimes tempts courts to interpret the requirement so narrowly that unnecessary legal complications arise.

Self-help by attorneys would likely provide the best method of avoiding such complications. The attorneys have the greatest incentive to analyze the service procedures required by another nation's Central Authority. An attorney can easily demonstrate a foreign nation's notice and translation requirements to a court. Besides self-help by attorneys, the U.S. courts and Central Authority should develop a

58. See RISTAU, *supra* note 7. It is unclear whether the problem of defendants served with documents in another language is at all a real or significant problem.

59. The United States Central Authority apparently does not require translation of foreign service documents into English. See *id.* at 135.

60. Article 20 states:

"The present Convention shall not prevent an agreement between any two or more contracting states to dispense with . . .

(b) the language requirements of the third paragraph of article 5 and article 7." Hague Convention, *supra* note 1, art. 20.

61. Due process would still require adequate notice, and this condition would prevent service of documents that were not reasonably calculated to give notice of legal action and an opportunity to be heard. *Mullane*, 339 U.S. at 306. A less radical standardization of translation requirements through bilateral agreements, such as only requiring translation of the document summary, may be a more feasible approach.

greater awareness of the potential complications arising under Article 5.

Most of these complications exist on a theoretical level. A party that fails to comply with the translation requirement does so with minimal risk, since the courts will at most quash service, and give the party an opportunity to try again.⁶² Given that fact, wariness in adopting the recommendations discussed above is prudent. However, as the amount of international trade increases, the number of legal problems associated with the Convention will likely increase.⁶³ Given the courts' strict interpretation of the Hague Convention in general, a competent international lawyer should investigate translation requirements before the occasion for service arises.

62. See, e.g., *Voorhees*, 697 F.2d 574; see also *Lippus v. Dahlgren Mfg. Co.*, 644 F. Supp. 1473 (E.D.N.Y. 1986) (failure to include translation rendered service invalid under Foreign Sovereign Immunities Act, but plaintiff given 30 days to serve defendant validly). *But cf.*, *Dehart*, 682 F. Supp. 792. (Canadian companies' motion to enlarge time dismissed, even though their served "document" was not translated into French, an official language of Quebec).

63. As one author put it:

As international trade increases, international litigation will inevitably mushroom as well. American businesspeople may be more relaxed than their foreign counterparts. Then, when a dispute arises, they may be defeated by problems of service of process, depositions, or discovery of documents in a foreign country even when there would have been a decent chance of success on the merits.
Thomas J. Tallerico & Jan L. Herrick, *Discovery of Witnesses and Documents Located Abroad*, 69 MICH. B.J. 664 (1990).

