

THE LAW REFORM COMMISSION  
AN COIMISIÚN UM ATHCHÓIRIÚ AN DLÍ

Report  
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HAGUE CONVENTION ON THE SERVICE ABROAD  
OF JUDICIAL AND EXTRAJUDICIAL DOCUMENTS  
IN CIVIL OR COMMERCIAL MATTERS (1965)

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IRELAND  
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## INTRODUCTION

The Commission is grateful for observations received from the Rules Committees of the Superior Courts, the Circuit Court and the District Court, the Master of the High Court, the Chief Registrar of the High Court, Mr Caoimhín Ó hUiginn, Barrister-at-Law, Principal Officer, Department of Justice and Mr James Martin, Assistant Principal Officer, Department of Justice. However, it wishes to make it clear that it alone is responsible for the contents of the Report and the recommendations therein.

## THE PRESENT LAW AND THE CONVENTION

1. The Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (hereinafter the Hague Convention) was adopted at the Tenth session of the Hague Conference on Private International Law in 1964, at which Ireland was represented by Mr Patrick Terry of the Department of Justice. The Convention, the text of which is contained in Annex 2 to this Report, is designed to facilitate the service of documents abroad for the purposes of civil proceedings. To this end each Contracting State is required to designate a Central Authority to arrange for the service of documents coming from other Contracting States.<sup>1</sup> The Central Authority must serve or arrange to have served documents sent to it by the authority or judicial officer competent under the law of the State in which the documents originate.<sup>2</sup> Except in cases where the addressee accepts a document voluntarily, it must be served either

- (a) by a method prescribed by the internal law of the Central Authority 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.<sup>3</sup>

Except in cases where the addressee accepts the delivery of the document voluntarily, a Central Authority may require the document to be translated into the official language or one of the official languages of the State addressed.<sup>4</sup> When the documents are served, the Central Authority or any other authority designated by that State must forward a certificate to the applicant stating that the document has been served and this certificate (completed according to a model annexed to the Convention) must include the method, place and date of service and the person to whom it was delivered.<sup>5</sup> If the document has not been served, the certificate must set out the reasons which have

prevented service.<sup>6</sup> As regards method of service the model certificate annexed to the Convention merely requires a statement without elaboration either that the document has been served by the method prescribed by the internal law of the receiving state for the service of documents in domestic actions upon persons who are within its territory or that it has been served by the particular method requested by the applicant or that it was delivered to the addressee who accepted it voluntarily. The Central Authority may not claim any payment for the service it renders except in respect of costs occasioned by the employment of a judicial officer or by the use of a particular method of service requested by the applicant.<sup>7</sup> The State addressed may refuse to comply with a request for service if it deems that compliance would infringe its sovereignty or security.<sup>8</sup> It may not refuse to comply with such a request solely on the ground that under its internal law it claims exclusive jurisdiction over the subject matter of the action or on the ground that its internal law would not permit the action upon which the application is based.<sup>9</sup>

2. Under the Rules of the Superior Courts, which govern proceedings in the High Court (including the Central Criminal Court), the Court of Criminal Appeal and the Supreme Court, the general rule is that any document, whether it be a pleading, notice, affidavit or order, is served by leaving it (or a copy) at or sending it (or a copy) by registered pre-paid post to the residence or place of business in the State of the person to be served or the place of business of the solicitor (if any) acting for him in the proceedings to which the document relates.<sup>10</sup> Where the person to be served is out of the jurisdiction and has no solicitor within it so that it is impossible to comply with this rule, application may be made to the court "for substituted or other service or for the substitution for service of notice by advertisement or otherwise".<sup>11</sup> In that case the court has discretion to direct whatever form of notification or publicity is likely to bring the document to the attention of the person to be served. In any event the court may declare any service actually effected sufficient.<sup>12</sup> Where no appearance has been entered for a party or where a party or his solicitor, as the case may be, has omitted to give an address for service in documents he has served, any document which has not to be served personally or for which no other mode of service is directed, may be served by filing it in the Central Office.<sup>13</sup>

3. Personal service is required, where reasonably practicable, in the case of certain documents, notably an originating summons or other document initiating proceedings.<sup>14</sup> It is effected by delivering a copy of the document to the defendant in person and showing him the original or duplicate original.<sup>15</sup> Where a defendant is out of the jurisdiction an originating summons may not be served on him without the leave of the court.<sup>16</sup> This will be granted only in certain specified cases where the courts are empowered to assume jurisdiction as an exception to the general rule that no action will lie unless the defendant is in the jurisdiction and is served with a summons there. If leave is given to serve a summons out of the jurisdiction, it seems that it should be served personally on the defendant unless it is made to appear to the court that the plaintiff is unable to effect prompt personal service. In

that case the court is empowered to make an order for “substituted or other service or for the substitution for service of notice by letter, advertisement or otherwise”.<sup>17</sup> An application for substituted service within the jurisdiction will be granted, even if the defendant is out of the jurisdiction, provided the court is satisfied that it will in all reasonable probability be effective to bring him knowledge of the document.<sup>18</sup> Such substituted service usually takes the form of service or delivery by post to the defendant’s solicitor or agent in the jurisdiction.<sup>19</sup> In the case of a summons, as with other documents, the court has power to declare the service actually effected sufficient.<sup>20</sup> Where the defendant is not known or believed to be a citizen of Ireland, notice of the summons and not the summons itself must be served upon him.<sup>21</sup> This is because some States object to the service of a summons within their jurisdiction on their citizens as being an infringement of sovereignty.<sup>22</sup>

4. In the Circuit Court, the general rule is that a document must be served by delivering it to the person on whom it is to be served personally, or by delivering it at the residence or place of business of such person, or by sending it by pre-paid post, addressed to such person at his last known residence or place of business.<sup>23</sup> This rule differs from its equivalent in the Rules of the Superior Courts in several respects; it does not require registered post; it makes no provision for service on the solicitor of the person to be served; and it does not preclude service outside the jurisdiction. Where service in accordance with it is impracticable, the judge may make an order for substituted service, or for the substitution for service of notice by advertisement or otherwise as may be just.<sup>24</sup> The Rules of the Circuit Court make provision for other modes of service for certain classes of document. In the case of a Civil Bill or other originating document, the Rules provide for service of a copy by a Summons Server appointed by the County Registrar “upon the defendant personally wherever he is to be found within the jurisdiction or at the defendant’s residence within the jurisdiction personally upon the husband or wife of the defendant, or upon some relative or employee of the defendant over the age of sixteen years and apparently resident there”.<sup>25</sup> As in High Court proceedings, an originating document may be served out of the jurisdiction with the leave of the court. This may be granted only in certain cases specified in the Rules where the courts are empowered to assume jurisdiction as an exception to the general rule that no action will lie unless a defendant is in the jurisdiction and is served with a summons there. As the rules relating to the service of an originating document assume service within the jurisdiction, an application for an order for service out of the jurisdiction necessitates an application to the court for an order for substituted service, or for the substitution for service of notice by advertisement or otherwise as may be just.<sup>26</sup> Such an order could provide for service or notification outside the jurisdiction. As in High Court proceedings, where permission is given to serve a document out of the jurisdiction on a person who is not a citizen of Ireland, notice of the document and not the document itself must be served on him.<sup>27</sup> Personal service is also required in the case of a witness summons and for a notice to attend court to show cause against committal for

contempt for failing to comply with an order of the court.<sup>28</sup> But in either case the Court has discretion to allow some other form of service. In fact, no new Summons Servers have been appointed for over 20 years so that they are now to be found in only a few areas. In areas where no Summons Servers have been appointed, special rules have been established by statute.<sup>29</sup> These apply to any document by which proceedings in the Circuit Court are instituted and any other document relating to civil proceedings in the Court which is a notice, order or witness summons.<sup>30</sup> In such cases it is provided that service of a document may be effected by registered prepaid post in an envelope addressed to the person to be served at his last known residence or place of business in the State.<sup>31</sup> Where the person to be served is outside the State or his whereabouts cannot be ascertained or where the envelope containing the document is returned undelivered to the sender, the Court may then make an order for substituted service or for the substitution of notice by advertisement.<sup>32</sup> Such an order could make provision for service or notification outside the jurisdiction.

5. The District Court Rules contain no general provision relating to the service of documents. In areas where no Summons Server has been appointed, service of documents instituting proceedings and witness summonses are governed by the same provisions as apply in such circumstances in Circuit Court proceedings.<sup>33</sup> Otherwise, service of a Civil Process must be effected by a Summons Server on the defendant either personally or at his residence or place of business on his spouse, agent, clerk, servant or person in charge of his usual abode.<sup>34</sup> Where such service cannot be effected, provision is made for other forms of service, including, by order of the court, sending a copy of the civil process by pre-paid post addressed to the defendant at his last-known residence or place of business.<sup>35</sup> Where the Court gives leave to serve an originating document or notice of it out of the jurisdiction, service of it may be effected by registered post.<sup>36</sup> Save where the Court directs otherwise, a certificate of posting of the registered packet is sufficient evidence of its service.<sup>37</sup>

6. The Commission has noted that in its Eighth Interim Report published in 1968 the Committee on Court Practice and Procedure made recommendations for the simplification of the law relating to the service of documents. It recommended that any requirement of personal service or physical delivery should be abolished except for a notice of motion to commit or attach for contempt of court or a debtor's summons in bankruptcy and that provision should be made in the Rules of the Superior Courts for service of court documents, including witness summonses, by ordinary pre-paid post, without leave, directed to any address within the jurisdiction, enclosed in a sealed envelope marked on the outside "Court Document" and endorsed with the sender's name and address.<sup>38</sup> However, no specific recommendation was made in the Report in respect of service out of the jurisdiction.

7. The Hague Convention offers an official channel for the service of documents in other States and an authoritative confirmation from an official body in the State where the documents are served of the fact

that service has taken place. Under Article 5 of the Convention requiring the service of documents by the particular method requested by the applicant, the Central Authority in another Contracting State could be required to effect personal service in accordance with Irish law. In High Court proceedings this would enable personal service of an originating summons or other similar document to be effected by the Central Authority of another State, so saving the expense involved if a party had to arrange for personal service in another State himself and affording a better assurance that the summons has been received than if it had been sent by post. In Circuit Court and District Court proceedings, as has been noted, the document originating proceedings may generally be served by registered post. Service is proved by producing an official Post Office Certificate of Posting of the registered envelope to the last known residence or place of business of the persons to be served and a statement by the sender in a statutory declaration that the envelope has not been returned undelivered to the sender.<sup>39</sup> How good a guarantee this is that a document has actually reached the person to be served depends on whether the postal service in his country returns undelivered letters. Clearly, verified personal service by an Official Authority of that State affords a more reliable guarantee. Other methods of service by the Central Authority of another State under the Convention may be more reliable than sending a document by registered post from Ireland to certain countries. For this reason it is considered that it would be advantageous if service pursuant to the provisions of the Hague Convention were available in Circuit Court and District Court proceedings as well as in High Court proceedings.

8. The Commission has examined the obligations which would be assumed by the State if Ireland becomes party to the Hague Convention. At present, the Rules of the Superior Courts provide for the service of any process or citation at the request of a court or tribunal of a foreign country before which any civil or commercial matter is pending.<sup>40</sup> Such requests are sent through the Department of Foreign Affairs to the Master of the High Court. The letter of request for service must be accompanied by a translation into English and by two copies of the process or citation to be served also accompanied by translations. Such service must be effected in accordance with the practice and procedure of the High Court by the solicitor for the person suing out the process or citation, or, in the event of there being no such solicitor, by the Chief State Solicitor. Service is effected by delivery to and leaving with the persons to be served one copy of the process to be served, and one copy of the translation, in accordance with the rules and practice of the court. Orders for substituted service may be obtained from a Judge of the High Court where this is necessary. The person effecting service must provide an affidavit of service verified by notarial certificate and particulars of the charges for the cost of effecting such service. The correctness of the charges are certified by the Master of the High Court who completes a certificate stating that the service proved by the affidavit is such as is required by the law and practice of the High Court in Ireland. The Master sends this to the Department of Foreign Affairs for transmission to the requesting



court or tribunal. The Hague Convention imposes certain obligations over and above those specified in these provisions. Under its terms, it is obligatory to serve any judicial documents forwarded by an "authority or judicial officer competent under the law of the State in which the documents originate" or any extrajudicial document emanating from the authorities and judicial officers in another State.<sup>41</sup> This would cover a wider range of documents than the processes and citations covered by the present rule. It would also cover requests emanating from bodies or persons other than courts and tribunals and might extend to those emanating from individual lawyers in countries where they are competent to serve judicial or extrajudicial documents. Under the Convention it may not suffice to serve a process in accordance with the practice and procedure of the High Court as the Central Authority designated by a State is obliged to serve documents by the particular method requested by the applicant unless this method is incompatible with its law.<sup>42</sup> Where service is not effected in accordance with its provisions, the reasons which have prevented service must be set out in the certificate.<sup>43</sup> Under the Convention it is not permissible to make any charge for service except in respect of costs occasioned by

- (a) the employment of a judicial officer or a person competent under the law of the State of destination,
- (b) the use of a particular method of service.<sup>44</sup>

In the Commission's view none of these considerations should inhibit adherence to the Convention. *Accordingly it is recommended that Ireland should become party to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.*

9. The Commission would also draw attention to the fact that the operation of the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters of the European Communities (the Judgments Convention) which is to be given the force of law in Ireland under the Jurisdiction of Courts and Enforcement of Judgments (European Communities) (No. 2) Bill, 1987 would be facilitated by adherence to the Hague Convention. A State may decline to enforce a foreign judgment under the Judgments Convention if documents required to be served in its jurisdiction have not been served in accordance with its law. In some States it is contrary to law, as being an infringement of sovereignty, for a court or official or litigant in a foreign country to serve a judicial document on a person within its jurisdiction. The Hague Convention would be of assistance in facilitating service in accordance with the internal law of the person to be served in such cases. Also, under Article 20 of the Judgments Convention, where a defendant domiciled in one Contracting State is sued in the court of another Contracting State and does not enter an appearance, the court must stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end. It goes on:

“The provisions of the foregoing paragraph shall be replaced by those of Article 15 of the Hague Convention of 15th November, 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters, if the document instituting the proceedings or notice thereof had to be transmitted abroad in accordance with that Convention.”

All the other Parties to the Judgments Convention are party to the Hague Convention and the adherence of Ireland to the Hague Convention would achieve a desirable uniformity.

10. Each State which is party to the Hague Convention must designate a Central Authority to receive requests for service coming from other contracting States. As a request for service may be refused on the ground that it infringes the sovereignty or security of the State it seems appropriate that such requests should be channelled through the Department of Foreign Affairs so that it can deal with any policy questions which arise. This is in line with the existing procedure under which a letter of request from a foreign court for the service of a process or citation in a case pending before it is transmitted to the Master of the High Court from the Minister for Foreign Affairs with an intimation from the latter that it is desirable to give effect to it.<sup>45</sup> The Commission considered whether it would be desirable to appoint the Master as the Central Authority and thus short-cut the process. In dealing with applications for the enforcement of foreign judgments under the Maintenance Orders Act, 1974 and the Jurisdiction of Courts and Enforcement of Judgments (European Communities) (No. 2) Bill, 1987 the Master has power to decide whether they infringe public policy before making an order for enforcement. There is something to be said for centralizing in one office all matters relating to international judicial co-operation. However, the Commission has noted that most of the states party to the Convention have designated a department of government to be their Central Authority. Having regard to this and the existing role of the Minister for Foreign Affairs, *the Commission recommends that the Minister for Foreign Affairs should be designated as the Central Authority for Ireland under Article 2 of the Convention. It also recommends that in line with the present rule relating to the service of a process or citation pursuant to a letter of request, the Minister should transmit requests for service of documents under the Convention to the Master of the High Court who should order that the Chief State Solicitor effect service in accordance with the practice of the High Court. It is further recommended that the Master should be designated as an authority for the purpose of completing a certificate that a document has been served under Article 6 of the Convention. Under the existing rules he provides a certificate that the documents which are the subject of the letter of request have been served.*<sup>46</sup>

11. Article 9 of the Convention provides that a Contracting State is to be free to use consular channels to forward documents for the purpose of service to those authorities of another Contracting State which are designated by the latter under this Article for this purpose. *It is recommended that the Central Authority should alone be designated*

by Ireland under Article 9 to receive documents forwarded through consular channels from another Contracting State. This would avoid any confusion arising from a multiplicity of channels.

12. The Convention does not provide for the specific designation by Contracting States of the authorities or judicial officers who are competent under their laws and so, under Article 3, entitled to forward documents to another Contracting State for the purposes of service. As a result, some difficulty has arisen as to whether documents should be served at the request of lawyers in other jurisdictions. The United Kingdom authorities have indicated that documents for service will be accepted only from judicial, consular, or diplomatic officers of other Contracting States. But in this they differ from other States and it has been doubted whether the practice fully accords with the Convention. In the United States, for instance, foreign lawyers' requests are accepted as it is regarded as highly improbable that a lawyer with no genuine interest in a case would initiate a request. It is largely a question of proof. *It is recommended that it should be the responsibility of the Central Authority designated by the Government of Ireland to decide in the individual case, under Article 3, on the competence under the law of the State in which the documents originate of the authority or judicial officer requesting service.* Conversely, to assist parties in proceedings before the Irish courts, *it is recommended that the Central Authority should undertake to forward documents whose service is required for legal proceedings in Ireland to the Central Authority of the State where those documents are to be served pursuant to the Convention.*

13. Under Article 8 of the Convention each Contracting State is free to effect service of judicial documents upon persons abroad without application of any compulsion directly through its diplomatic or consular agents. However the Article goes on to provide that any State may declare that it is opposed to such service within its territory, unless the documents are to be served upon a national of the State in which the documents originate. As no restrictions are placed in Ireland on the service of documents in aid of foreign legal proceedings it is not considered that any such declaration need be made under Article 8 of the Convention. For similar reasons it is not considered that Ireland should make an objection pursuant to Article 10 of the Convention interfering with the freedom to send judicial documents by postal channels directly to persons abroad. However, as it is considered that all requests for service in Ireland should be channelled through the Central Authority, *it is recommended that Ireland should object pursuant to Article 10 to*

- (i) *the freedom of judicial officers, officials or other competent persons of the State of origin to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination,*
- (ii) *the freedom of any person interested in judicial proceedings to effect service of judicial documents directly through judicial officers, officials or other competent persons of the State of destination.*

*However it is also recommended that it should be stated in the Declaration that it does not preclude a person interested in judicial proceedings in another jurisdiction (or his lawyer) from effecting service through a solicitor in Ireland.*

14. Reference has already been made to Article 15 which is designed to protect defendants who may not have received notice of the institution of proceedings against them. Under the existing law in this jurisdiction this protection is afforded by the fact that proceedings cannot be legally instituted unless a document is served on the defendant in accordance with the relevant rules of court. If the defendant fails to appear in response to a summons or other originating document, judgment by default may be given against him on proof that the requisite service of the summons has taken place.<sup>47</sup> In cases where some form of substituted service is allowed it is conceivable that a defendant will never actually learn of the proceedings. To guard against injustice arising in such cases, it is provided that where final judgment is entered in default, it is open to the court to set aside or vary such a judgment upon such terms as may be just.<sup>48</sup> The Convention contains provisions on this matter which are more specific. Article 15 provides that where a writ of summons or an equivalent document is transmitted abroad for the purpose of service under its provisions, and the defendant has not appeared, judgment shall not be given until it is established that

- (a) the document was served by a method prescribed by the internal law of the State addressed for the service of documents in domestic actions upon persons who are within its territory, or
- (b) the document was actually delivered to the defendant or to his residence by another method provided for by this Convention, and that in either of these cases the service or the delivery was effected in sufficient time to enable the defendant to defend.

It was anticipated that these provisions could give rise to difficulties as it might be impossible to obtain judgment where a defendant who is abroad evades service or where the Central Authority in another Contracting State fails to effect service or to certify that it has done so in accordance with the Convention. To meet these eventualities, Article 15 contains a further provision allowing a Contracting State to declare that a judge may give judgment even if no certificate of delivery or service has been received if all the following conditions are fulfilled -

- (a) the document was transmitted by one of the methods provided for in this Convention;
- (b) a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document;
- (c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed.

*The Commission recommends that Ireland should make the declaration permitted by Article 15. Otherwise an Irish court might be debarred from entering a judgment by default in cases where the Central Authority in another Contracting State fails to effect service or fails to carry out its obligations under Article 6 of the Convention to provide a certificate of service. The majority of States party to the Convention, including the United Kingdom and the United States, have made a declaration under this Article.*

15. The effect of Article 20 of the Judgments Convention is that upon ratification of the Hague Convention by Ireland, Article 15 thereof will have the force of law in the State for proceedings within the scope of the Judgments Convention as regards service on persons domiciled in other member states of the Communities. To cover service in other states party to the Hague Convention, or in proceedings not falling within the scope of the Judgments Convention, *the Commission recommends that the text of Article 15 should be incorporated as nearly as possible in the rules of court.* This will have the advantage of preserving consistency in the application of Article 15.

16. Where judgment is entered against a defendant who fails to appear in response to a summons served under the Convention, Article 16 provides that the judge in such a case is to have power to relieve the defendant from the effects of the expiration of the time for appeal from the judgment if

- (a) the defendant, without any fault on his part, did not have knowledge of the document in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal, and
- (b) the defendant has disclosed a *prima facie* defence to the action on the merits.

It is further provided that an application may be filed only within a reasonable time after the defendant has knowledge of the judgment. Contracting Parties are permitted to make a declaration to the effect that an application for relief will not be entertained if it is filed after the expiration of a time to be stated in the declaration which shall be not less than one year. The Commission does not recommend that a declaration under Article 16 should be made as it would limit the existing discretion of the courts to set aside judgments which is not subject to a rigid time limit. It is not considered that any legislative action in the form of amendment of the rules of court is necessary to give effect to Article 16. The Article does not purport to state exhaustively the grounds on which a judgment in default of appearance may be set aside. It merely specifies one set of circumstances in which a judge must have power to take this action. Under our existing law a judge has such power in these circumstances if an application is made in a reasonable time.<sup>49</sup>

17. To avail of the facilities offered by the Hague Convention for the service of documents in other jurisdictions it will be necessary to amend the rules of court so that the service of documents in accordance

with the internal law of the State where they are served pursuant to the provisions of the Convention is deemed to be sufficient service for the purpose of domestic legal proceedings. The Commission has considered whether it should be mandatory to use the channels and methods of service for which provision is made in the Hague Convention. An advantage of so doing is that some States party to the Judgments Convention will not enforce a judgment unless proceedings have been served in accordance with its internal law and this is facilitated by the Hague Convention. On the other hand service by the method prescribed by Irish law may be quicker and afford a more reliable guarantee that the document has reached the addressee than service in accordance with the Convention. This would be the case, for instance, where personal service is required by Irish law and service by post suffices under the internal law of the State where the document is to be served. In view of this it is considered that the leave of the court should be necessary where personal service is required for the service of a document under Irish law and service by some other method is proposed. *Accordingly the Commission recommends that documents in a civil or commercial matter pending before the courts should be served in another State party to the Convention either by the method prescribed for the service of the document within the jurisdiction or, with the leave of the court, in accordance with the provisions of the Convention by a method prescribed by the internal law of that State for the service of documents in domestic actions upon persons within its jurisdiction; however, no leave should be required except where personal service is prescribed for the service of the document in question within the jurisdiction.* A draft rule to give effect to the provisions of the Convention along the lines recommended is contained in Part 1 of Annex 1 of this Report. The rule contains provisions affording protection to defendants who have not received adequate notice of the institution of proceedings against them as the requirements of the Convention in this regard are more specific than the existing law. It also contains a general provision applicable to States not party to the Convention that a document should be served there by the method prescribed for the service of such a document upon a person within the jurisdiction.

18. If Ireland is to become party to the Hague Convention it will also be necessary to amend Order 121, Rule 9 of the Rules of the Superior Courts providing for the service in this jurisdiction of foreign judicial and extrajudicial documents. It is considered that it would be most convenient to repeal the existing rule and to adopt a new rule. *Accordingly, it is recommended that Order 121, Rule 9 should be replaced by a provision along the lines of the draft contained in Annex 1, Part II of this Report covering all requests for service of documents in aid of foreign legal proceedings, whether or not they are made pursuant to the Convention.* In recognition of the status of the Irish language under the Constitution, provision is made for the translation of documents into Irish as well as English. Provision has also been made for the authentication of the translation. It was considered appropriate to follow the provisions for translation of foreign documents in Section 9 of the Jurisdiction of Courts and Enforcement of Judgments

(European Communities) (No. 2) Bill, 1987. The draft rule also differs from the present rule in that the Master may exercise the jurisdiction to order substituted service now reserved to a judge.

19. The Commission desires to draw attention to the provision in Article 12 of the Convention that the service of judicial documents coming from a Contracting State shall not give rise to any payment or reimbursement of taxes or costs for services rendered by the State addressed. In *State (Gilliland) v The Governor of Mountjoy Prison*,<sup>50</sup> the Supreme Court held that a clause in an Extradition Treaty with the United States that "the requested State shall make no pecuniary claim against the requesting State arising out of the arrest, detention, extradition proceedings and surrender of the person sought under this Treaty" involved a charge upon public funds. On this basis it would appear that the Hague Convention with its requirement in Article 12 that service of judicial documents coming from a contracting State shall not give rise to any payment or reimbursement of taxes or costs for the services rendered must be regarded as one which involves a charge on public funds. It would therefore be necessary to have its terms approved by Dail Eireann prior to Ireland becoming bound by it in accordance with Article 29.5 of the Constitution unless the view is taken that it is of a technical and administrative character. *The Commission recommends that the opinion of the Attorney General should be obtained by the Government on the question whether the terms of the Convention need to be approved by the Dail under Article 29 of the Constitution prior to ratification.*

## FOOTNOTES

- <sup>1</sup> Hague Convention, Article 2.
- <sup>2</sup> *Ibid.*, Articles 3 and 5.
- <sup>3</sup> *Ibid.*, Article 5.
- <sup>4</sup> *Ibid.*
- <sup>5</sup> *Ibid.*, Article 6.
- <sup>6</sup> *Ibid.*
- <sup>7</sup> *Ibid.*, Article 12.
- <sup>8</sup> *Ibid.*, Article 13.
- <sup>9</sup> *Ibid.*
- <sup>10</sup> Courts Act, 1971, Section 23; Rules of the Superior Courts, Order 121, Rule 2.
- <sup>11</sup> Rules of the Superior Courts, Order 121, Rule 7.
- <sup>12</sup> *Ibid.*, Order 9, Rule 15.
- <sup>13</sup> *Ibid.*, Order 121, Rule 5.
- <sup>14</sup> *Ibid.*, Order 9, Rule 2; Order 41, Rule 8 (Service of judgments or orders); Order 70, Rule 7 (citations in matrimonial cases must be served personally "when this can be done"); Order 74, Rule 49 (Notice of motion on persons against whom an order is sought under sections 184, 297, 298 and 391 of the Companies Act, 1963); Order 76, Rules 19, 48, 82 (Service of a debtor's summons and some other notices in bankruptcy proceedings); Order 79, Rule 53 (Service of citations in probate cases); Order 84, Rule 1 (Orders of habeas corpus, certiorari, mandamus, prohibition and attachment); Order 86, Rule 16 (Order to produce documents, exhibits and other things to the Court of Criminal Appeal); Order 97, Rule 13 (Service of an election petition). Order 121, Rule 6 provides:  
 "Where personal service of any document is required by these Rules or otherwise, service shall be effected as nearly as may be in the manner prescribed for the personal service of an originating summons."
- <sup>15</sup> *Ibid.*, Order 9, Rule 3. There are special rules governing service on infants, lunatics and corporations aggregate (*Ibid.*, Order 9, Rules 5-7). A document may be served on a company by leaving it or sending it by ordinary pre-paid post to the registered office (Companies Act, 1963, Section 379).
- <sup>16</sup> Rules of the Superior Courts, Order 11.
- <sup>17</sup> *Ibid.*, Order 121, Rule 7. See also Order 9, Rule 2 which also governs substituted service but which contains no reference to notice by letter.
- <sup>18</sup> *Shelswell-White v O'Connor and Ors.* (1961) 95 I.L.T.R. 113.
- <sup>19</sup> *Ibid.*; Also *Walsh v Kennedy*, (1934) 68 I.L.T.R. 238.
- <sup>20</sup> Rules of Superior Courts, Order 9, Rule 15; *Alcock v Condon*, (1933) 67 I.L.T.R. 232; *Stubbs v Bromfield*, (1936) Ir. Jur. Rep. 74.
- <sup>21</sup> *Ibid.*, Order 11, Rule 8.
- <sup>22</sup> However, it should be noted that the latest revision of the Rules of the Supreme Court in England does not contain any provision for serving notice of documents where a defendant is abroad.
- <sup>23</sup> Rules of the Circuit Court, 1950, Order 10, Rule 20.
- <sup>24</sup> *Ibid.*, Order 10, Rules 9, 10.
- <sup>25</sup> *Ibid.*, Order 10, Rule 4. Special rules govern service on infants and lunatics; see Order 10, Rules 12, 13.
- <sup>26</sup> *Ibid.*, Order 10, Rules 9, 10.
- <sup>27</sup> *Ibid.*, Order 11, Rule 7.
- <sup>28</sup> *Ibid.*, Order 21, Rule 3; Order 36, Rule 3.
- <sup>29</sup> Courts Act, 1964, Section 7.
- <sup>30</sup> *Ibid.*
- <sup>31</sup> *Ibid.*, Section 7(3).
- <sup>32</sup> *Ibid.*, Section 9(5).
- <sup>33</sup> *Ibid.*, Section 7.
- <sup>34</sup> District Court Rules, 1948, Rules 47 (2), 127 (2). A new Rule 46 was substituted by the District Court Rules (No. 1), 1962. For service on corporations and other bodies see District Court Rules, 1948, Rule 48.
- <sup>35</sup> *Ibid.*, Rules 128, 129. Formerly, under the special default procedure for debt and liquidated money demands, a Civil Process had to be served personally on the defendant but now the ordinary rules of service apply in such cases. [District Court (Summary Judgment) Rules, 1963, Rule 4(3), Second Schedule which annulled Rules 160 and 165 of the District Court Rules, 1948.]



- <sup>36</sup> District Court Rules (No. 1), 1962, Rule 4(4).
- <sup>37</sup> Ibid.
- <sup>38</sup> Committee on Court Practice and Procedure, Service of Court Documents by Post (Prl. 218), para. 28.
- <sup>39</sup> Rules of the Circuit Court (No. 1) 1965, Rule 4.
- <sup>40</sup> Rules of the Superior Courts, Order 121, Rule 9.
- <sup>41</sup> Hague Convention, Articles 3, 17.
- <sup>42</sup> Ibid., Article 5.
- <sup>43</sup> Ibid., Article 6.
- <sup>44</sup> Ibid., Article 12.
- <sup>45</sup> Rules of the Superior Courts, Order 121, Rule 9.
- <sup>46</sup> Ibid., Order 121, Rule 9(6).
- <sup>47</sup> Rules of the Superior Courts, Order 13; Rules of the Circuit Court, 1950, Orders 23, 24; District Court Rules, 1948, Rules 129, 160, 165.
- <sup>48</sup> Rules of the Superior Courts, Order 13, Rule 11; Rules of the Circuit Court, 1950, Order 27; District Court Rules, 1948, Rules 162, 163.
- <sup>49</sup> Rules of the Superior Courts, Order 13, Rule 11. In proceedings before the Circuit Court or the District Court, the person against whom judgment in default of appearance or defence has been given has 10 days from the time he has knowledge of the judgment to move to have it varied or set aside (Rules of the Circuit Court, 1950, Order 27, Rule 1; District Court Rules, 1948, Rules 162, 163). But the Court has a general power to enlarge time limits (Rules of the Circuit Court, 1950, Order 59, Rule 6; District Court Rules, 1948, Rule 13).
- <sup>50</sup> [1987] I.L.R.M. 278.

## RECOMMENDATIONS

1. Ireland should become party to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1965): para. 8.
2. The Minister for Foreign Affairs should be designated as the Central Authority for Ireland pursuant to Article 2 of the Convention. In line with the present rule relating to the service of a process or citation pursuant to a letter of request, the Minister should transmit requests for service of documents under the Convention to the Master of the High Court who should order that the Chief State Solicitor effect service in accordance with the practice of the High Court: para. 10.
3. The Master of the High Court should be designated as an authority for the purpose of completing a certificate that a document has been served under Article 6 of the Convention: para. 10.
4. The Central Authority should alone be designated by Ireland under Article 9 to receive documents forwarded through consular channels from another Contracting State: para. 11.
5. The Central Authority designated by the Government should have responsibility to decide in the individual case under Article 3 on the competence under the law of the State in which the documents originate of the authority or judicial officer requesting service: para. 12.
6. The Central Authority should undertake to forward documents whose service is required for legal proceedings in Ireland to the Central Authority of the State where those documents are to be served pursuant to the Convention: para. 12.
7. When ratifying the Convention Ireland should object pursuant to Article 10 to

- (i) the freedom of judicial officers, officials or other competent persons of the State of origin to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination,
- (ii) the freedom of any person interested in judicial proceedings to effect service of judicial documents directly through judicial officers, officials or other competent persons of the State of destination.

However it should be stated in the Declaration that it does not preclude a person interested in judicial proceedings in another jurisdiction (or his lawyer) from effecting service through a solicitor in Ireland: para. 13.

8. When ratifying the Convention Ireland should make a declaration pursuant to Article 15 of the Convention that a judge may give judgment in proceedings before an Irish court even if no certificate of service or delivery in accordance with the Convention has been received if

- (a) the document was transmitted by one of the methods provided for in the Convention,
- (b) a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the transmission of the document, and
- (c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed: para. 14.

9. The provisions of Article 15 of the Convention relating to obtaining a judgment in default of appearance by the defendant should be incorporated as nearly as possible in the Rules of the various courts: para. 15.

10. To avail of the facilities provided by the Convention the rules of the various courts should be amended in accordance with the draft contained in Annex 1, Part 1 to this Report. Under the proposed rule it should be provided that documents should be served in another State party to the Convention either by the method prescribed for the service of such a document upon a person within the jurisdiction or, with the leave of the court, in accordance with the Convention by a method prescribed by the internal law of that State for the service of documents in domestic actions upon persons within its jurisdiction; however, no leave should be required except where personal service is prescribed for the service of the document in question within the jurisdiction. The rule should also include a general provision applicable to all other States that a document should be served there by the method prescribed for the service of such a document upon a person within the jurisdiction: para. 17.

11. To discharge the obligations imposed by the Convention, Rule 9 of Order 121 of the Rules of the Superior Courts should be replaced by a provision along the lines of that contained in Annex 1, Part II of this Report covering all requests for service of documents in aid of foreign legal proceedings whether or not they are made pursuant to the Convention: para. 18.

12. The advice of the Attorney General should be sought on whether the terms of the Convention need to be approved by the Dail under Article 29 of the Constitution prior to ratification: para. 19.

## ANNEX 1

## DRAFT REVISIONS IN RULES OF COURT

## PART 1

*Additional Provisions in Rules of the Superior Courts,  
the Rules of the Circuit Court and the District Court Rules*

1. Where any document for use in civil or commercial proceedings is to be served upon any person outside the jurisdiction that document shall, unless the addressee agrees in advance to accept service otherwise, be served by the method prescribed for service of such a document within the jurisdiction.

“The method prescribed for service within this jurisdiction” shall not include a requirement that a document shall be served by a particular person but shall include a method decreed in an order for substituted service, including the substitution for service of notice by advertisement or otherwise.

2. Where any document for use in civil or commercial proceedings is to be served upon any person in any other State which is party to the Convention that document may be served by a method prescribed by the internal law of that State for the service of documents in domestic actions upon persons within its jurisdiction provided always that the leave of the court be obtained if the document is of a class for which provision is made for personal service when it is served within the jurisdiction.

3. A certificate by the Central Authority or other authority designated in respect of a country under the Convention as to how a document has been served or stating that it has been served in accordance with the internal law of that country shall be evidence of the facts stated.

4. A document purporting to be such a certificate as is mentioned in the previous paragraph shall, unless the contrary is proved, be deemed to be such a certificate.

5. Where a person wishes to have a document served pursuant to the Convention, he may lodge with the Central Authority designated by the Government for the purpose of that Convention,

- (a) a request for service of the document in the form specified in the Annex to the Convention;
- (b) a summary of the document to be served, in the form specified in that Annex;
- (c) two copies of the document and an additional copy thereof for each person to be served;

- (d) a translation of the document into the official language of the country in which service is to be effected, or, if there is more than one official language of that country, in any of those languages which is appropriate to the place in the country where service is to be effected;
- (e) an undertaking to pay the expenses, payment or reimbursement of which is claimed under the Convention by the Central Authority designated thereunder in respect of the country in which service is to be effected.

6. Where a document instituting proceedings has to be transmitted abroad for the purpose of service, under the provisions of the Convention and the defendant has not appeared [or given notice to defend] judgment shall not be given until it is established that —

- (a) the document was served by a method prescribed by the internal law of the State addressed for the service of documents in domestic actions upon persons who are within its territory, or
- (b) the document was actually delivered to the defendant or to his residence by another method provided for by the Convention,

and that in either of these cases the service or the delivery was effected in sufficient time to enable the defendant to defend.

7. The Court may give judgment even if no certificate of service of delivery, as provided by the Convention, has been received, if all the following conditions are fulfilled,

- (a) the document was transmitted by one of the methods provided for in the Convention,
- (b) a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document,
- (c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed.

Notwithstanding the provisions of this sub-section the judge may order, in case of urgency, any provisional or protective measures.

8. For the purposes of this Order “the Convention” means the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

**PART II***Draft Rule to replace Order 121, Rule 9 of the  
Rules of the Superior Courts*

When a document in any civil or commercial matter pending before a court or tribunal of a foreign country is transmitted to the Master by the Minister for Foreign Affairs with an intimation that it is desirable that effect should be given to the same, the following procedure shall be adopted:

- (1) The request for service shall be accompanied by a translation thereof in the Irish language or the English language, and by two copies of the document to be served, and two copies of the translation thereof in the Irish language or the English language, such translations to be certified as correct by a person competent to do so.
- (2) Service of the document shall be effected, by the method requested unless such method is incompatible with the law of the State. Save as aforesaid it shall be effected in accordance with the practice and procedure of the Court by the Chief State Solicitor.
- (3) Service in accordance with the practice and procedure of the Court shall be effected by delivering to and leaving with the person to be served one copy of the process to be served, and one copy of the translation thereof, in accordance with the rules and practice of the Court.
- (4) After service has been effected the process server shall return to the Master one copy of the process, together with the evidence of service by affidavit of the person effecting the service or stating the reason for not effecting service and particulars of charges for the cost of effecting or attempting to effect such service.
- (5) Particulars of charges for the cost of effecting service shall be submitted by the solicitor aforesaid to the Taxing Master who shall certify the correctness of the charges, or such other amount as shall be properly payable for the cost of effecting service. A copy of such charges and certificate shall be forwarded to the Minister for Finance by the Master.
- (6) The Master shall transmit to the Minister for Foreign Affairs evidence of service or the reason why service could not be effected and a copy of the charges and the Taxing Master's certificate, duly certified for use out of the jurisdiction.
- (7) The Master may make all such orders for substituted service or otherwise as may be necessary to give effect to this rule.

ANNEX 2

CONVENTION ON THE SERVICE ABROAD OF  
JUDICIAL AND EXTRAJUDICIAL DOCUMENTS  
IN CIVIL OR COMMERCIAL MATTERS

*(Concluded November 15, 1965)*

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 organisation 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:

Article 1

The present Convention shall apply in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad.

This Convention shall not apply where the address of the person to be served with the document is not known.

CHAPTER 1 — JUDICIAL DOCUMENTS

Article 2

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 organise the Central Authority in conformity with its own law.

Article 3

The authority or judicial officer competent under the law of the State in which the documents originate shall forward to the Central Authority of the State addressed a request conforming to the model annexed to the present Convention, without any requirement of legalisation or other equivalent formality.

The document to be served or a copy thereof shall be annexed to the request. The request and the document shall both be furnished in duplicate.

Article 4

If the Central Authority considers that the request does not comply with the provisions of the present Convention it shall promptly inform the applicant and specify its objections to the request.



#### Article 5

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 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.

#### Article 6

The Central Authority of the State addressed or any authority which it may have designated for that purpose, shall complete a certificate in the form of the model annexed to the present Convention.

The certificate shall state that the document has been served and shall include the method, the place and the date of service and the person to whom the document was delivered. If the document has not been served, the certificate shall set out the reasons which have prevented service.

The applicant may require that a certificate not completed by a Central Authority or by a judicial authority shall be countersigned by one of these authorities.

The certificate shall be forwarded directly to the applicant.

#### Article 7

The standard terms in the model annexed to the present Convention shall in all cases be written either in French or in English. They may also be written in the official language, or in one of the official languages, of the State in which the documents originate.

The corresponding blanks shall be completed either in the language of the State addressed or in French or in English.

#### Article 8

Each contracting State shall be free to effect service of judicial documents upon persons abroad, without application of any compulsion, directly through its diplomatic or consular agents.

Any State may declare that it is opposed to such service within its territory, unless the document is to be served upon a national of the State in which the documents originate.

Article 9

Each contracting State shall be free, in addition, to use consular channels to forward documents, for the purpose of service, to those authorities of another contracting State which are designated by the latter for this purpose.

Each contracting State may, if exceptional circumstances so require, use diplomatic channels for the same purpose.

Article 10

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,
- (b) the freedom of judicial officers, officials or other competent persons of the State of origin to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination,
- (c) the freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination.

Article 11

The present Convention shall not prevent two or more contracting States from agreeing to permit, for the purpose of service of judicial documents, channels of transmission other than those provided for in the preceding articles and, in particular, direct communication between their respective authorities.

Article 12

The service of judicial documents coming from a contracting State shall not give rise to any payment or reimbursement of taxes or costs for the services rendered by the State addressed.

The applicant shall pay or reimburse the costs occasioned by —

- (a) the employment of a judicial officer or of a person competent under the law of the State of destination,
- (b) the use of a particular method of service.

Article 13

Where a request for service complies with the terms of the present Convention, the State addressed may refuse to comply therewith only if it deems that compliance would infringe its sovereignty or security.

It may not refuse to comply solely on the ground that, under its internal law, it claims exclusive jurisdiction over the subject-matter of the action or that its internal law would not permit the action upon which the application is based.

The Central Authority shall, in case of refusal, promptly inform the applicant and state the reasons for the refusal.

#### Article 14

Difficulties which may arise in connection with the transmission of judicial documents for service shall be settled through diplomatic channels.

#### Article 15

Where a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and the defendant has not appeared, judgment shall not be given until it is established that —

- (a) the document was served by a method prescribed by the internal law of the State addressed for the service of documents in domestic actions upon persons who are within its territory, or
- (b) the document was actually delivered to the defendant or to his residence by another method provided for by this Convention,

and that in either of these cases the service or the delivery was effected in sufficient time to enable the defendant to defend.

Each contracting State shall be free to declare that the judge, notwithstanding the provisions of the first paragraph of this article, may give judgment even if no certificate of service or delivery has been received, if all the following conditions are fulfilled —

- (a) the document was transmitted by one of the methods provided for in this Convention,
- (b) a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document,
- (c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed.

Notwithstanding the provisions of the preceding paragraphs the judge may order, in case of urgency, any provisional or protective measures.

#### Article 16

When a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of

the present Convention, and a judgment has been entered against a defendant who has not appeared, the judge shall have the power to relieve the defendant from the effects of the expiration of the time for appeal from the judgment if the following conditions are fulfilled —

- (a) the defendant, without any fault on his part, did not have knowledge of the document in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal, and
- (b) the defendant has disclosed a *prima facie* defence to the action on the merits.

An application for relief may be filed only within a reasonable time after the defendant has knowledge of the judgment.

Each contracting State may declare that the application will not be entertained if it is filed after the expiration of a time to be stated in the declaration, but which shall in no case be less than one year following the date of the judgment.

This article shall not apply to judgments concerning status or capacity of persons.

## CHAPTER II — EXTRAJUDICIAL DOCUMENTS

### Article 17

Extrajudicial documents emanating from authorities and judicial officers of a contracting State may be transmitted for the purpose of service in another contracting State by the methods and under the provision of the present Convention.

## CHAPTER III — GENERAL CLAUSES

### Article 18

Each contracting State may designate other authorities in addition to the Central Authority and shall determine the extent of their competence.

The applicant shall, however, in all cases, have the right to address a request directly to the Central Authority.

Federal States shall be free to designate more than one Central Authority.

### Article 19

To the extent that the internal law of a contracting State permits methods of transmission, other than those provided for in the preceding articles, of documents coming from abroad, for service within its territory, the present Convention shall not affect such provisions.

### Article 20

The present Convention shall not prevent an agreement between any two or more contracting States to dispense with —

- (a) the necessity for duplicate copies of transmitted documents as required by the second paragraph of article 3,
- (b) the language requirements of the third paragraph of article 5 and article 7,
- (c) the provisions of the fourth paragraph of article 5,
- (d) the provisions of the second paragraph of article 12.

#### Article 21

Each contracting State shall, at the time of the deposit of its instrument of ratification or accession, or at a later date, inform the Ministry of Foreign Affairs of the Netherlands of the following —

- (a) the designation of authorities, pursuant to articles 2 and 18,
- (b) the designation of the authority competent to complete the certificate pursuant to article 6,
- (c) the designation of the authority competent to receive documents transmitted by consular channels, pursuant to article 9.

Each contracting State shall similarly inform the Ministry, where appropriate, of —

- (a) opposition to the use of methods of transmission pursuant to articles 9 and 10,
- (b) declarations pursuant to the second paragraph of article 15 and the third paragraph of article 16,
- (c) all modifications of the above designations, oppositions and declarations.

#### Article 22

Where Parties to the present Convention are also Parties to one or both of the Conventions on civil procedure signed at The Hague on 17th July 1905, and on 1st March 1954, this Convention shall replace as between them articles 1 to 7 of earlier Conventions.

#### Article 23

The present Convention shall not affect the application of article 23 of the Convention on civil procedure signed at The Hague on 17th July 1905, or of article 24 of the Convention on civil procedure signed at The Hague on 1st March 1954.

These articles shall, however, apply only if methods of communication, identical to those provided for in these Conventions, are used.

#### Article 24

Supplementary agreements between parties to the Conventions of 1905 and 1954 shall be considered as equally applicable to the present Convention, unless the parties have otherwise agreed.

## Article 25

Without prejudice to the provisions of articles 22 and 24, the present Convention shall not derogate from Conventions containing provisions on the matters governed by this Convention to which the contracting States are, or shall become, Parties.

## Article 26

The present Convention shall be open for signature by the States represented at the Tenth Session of the Hague Conference on Private International Law.

It shall be ratified, and the instruments of ratification shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

## Article 27

The present Convention shall enter into force on the sixtieth day after the deposit of the third instrument of ratification referred to in the second paragraph of article 26.

The Convention shall enter into force for each signatory State which ratifies subsequently on the sixtieth day after the deposit of its instrument of ratification.

## Article 28

Any State represented at the Tenth Session of the Hague Conference on Private International Law may accede to the present Convention after it has entered into force in accordance with the first paragraph of article 27. The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force for such a State in the absence of any objection from a State, which has ratified the Convention before such deposit, notified to the Ministry of Foreign Affairs of the Netherlands within a period of six months after the date on which the said Ministry has notified it of such accession.

In the absence of any such objection, the Convention shall enter into force for the acceding State on the first day of the month following the expiration of the last of the periods referred to in the preceding paragraph.

## Article 29

Any State may, at the time of signature, ratification or accession, declare that the present Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect on the date of entry into force of the Convention for the State concerned.

At any time thereafter, such extensions shall be notified to the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force for the territories mentioned in such an extension on the sixtieth day after the notification referred to in the preceding paragraph.

#### Article 30

The present Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of article 27, even for States which have ratified it or acceded to it subsequently.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Netherlands at least six months before the end of the five year period.

It may be limited to certain of the territories to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other contracting States.

#### Article 31

The Ministry of Foreign Affairs of the Netherlands shall give notice to the States referred to in article 26, and to the States which have acceded in accordance with article 28, of the following —

- (a) the signatures and ratifications referred to in article 26;
- (b) the date on which the present Convention enters into force in accordance with the first paragraph of article 27;
- (c) the accessions referred to in article 28 and the dates on which they take effect;
- (d) the extensions referred to in article 29 and the dates on which they take effect;
- (e) the designations, oppositions and declarations referred to in article 21;
- (f) the denunciations referred to in the third paragraph of article 30.

In witness whereof the undersigned, being duly authorised thereto, have signed the present Convention.

Done at The Hague, on the 15th day of November, 1965, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Netherlands, and of which a certified copy shall be sent, through the diplomatic channel, to each of the States represented at the Tenth Session of the Hague Conference on Private International Law.

ANNEX TO THE CONVENTION

Forms

REQUEST FOR SERVICE ABROAD OF JUDICIAL OR EXTRAJUDICIAL DOCUMENTS

Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, signed at The Hague, the 15th of November 1965

Identity and address of the applicant | Address of receiving authority

The undersigned applicant has the honour to transmit — in duplicate — the documents listed below and, in conformity with article 5 of the above-mentioned Convention, requests prompt service of one copy thereof on the addressee, i.e.,

- (identity and address)
(a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of article 5 of the Convention\*.
(b) in accordance with the following particular method (sub paragraph (b) of the first paragraph of article 5)\*:
(c) by delivery to the addressee, if he accepts it voluntarily (second paragraph of article 5)\*.

The authority is requested to return or to have returned to the applicant a copy of the documents — and of the annexes\* — with a certificate as provided on the reverse side.

List of documents

Done at . . . . . , the . . . . .

Signature and/or stamp.

\*Delete if inappropriate.



**Reverse of the request**

**CERTIFICATE**

*The undersigned authority has the honour to certify, in conformity with article 6 of the Convention,*

- 1) that the document has been served\*
  - the (date).....
  - at (place, street, number) .....
  - in one of the following methods authorised by article 5:
    - (a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of article 5 of the Convention\*:
    - (b) in accordance with the following particular method\*:
    - (c) by delivery to the addressee, who accepted it voluntarily\*

The documents referred to in the request have been delivered to:

- (identity and description of person) .....
- relationship to the addressee (family, business or other): .....

- 2) that the document has not been served, by reason of the following facts\*:  
 .....  
 .....

In conformity with the second paragraph of article 12 of the Convention, the applicant is requested to pay or reimburse the expenses detailed in the attached statement\*.

*Annexes*

Documents returned:.....  
.....

In appropriate cases, documents establishing the service: .....

Done at ..... , the.....

Signature and/or stamp

\*Delete if inappropriate.

**SUMMARY OF THE DOCUMENT TO BE SERVED**

Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, signed at The Hague, the 15th of November 1965

(Article 5, fourth paragraph)

Name and address of the requesting authority:.....  
.....  
.....  
Particulars of the parties\*.....  
.....  
.....

**JUDICIAL DOCUMENT\*\***

Nature and purpose of the document:.....  
.....  
Nature and purpose of the proceedings and, where appropriate, the amount in dispute:.....  
.....  
Date and place for entering appearance\*\*.....  
.....  
Court which has given judgment\*\*.....  
.....  
Date of judgment\*\*.....  
Time-limits stated in the document\*\*.....  
.....

**EXTRAJUDICIAL DOCUMENT\*\***

Nature and purpose of the document:.....  
.....  
Time-limits stated in the document\*\*.....  
.....  
.....

\* If appropriate, identity and address of the person interested in the transmission of the document.  
\*\* Delete if inappropriate.

**ANNEX 3**  
**STATES PARTY TO THE CONVENTION**

State	Date of ratification or accession	Date of entry into force
BARBADOS	27 September 1969 <i>accession</i>	1 October 1969
BELGIUM	19 November 1970	18 January 1971
BOTSWANA	28 August 1969 <i>accession</i>	1 September 1969
CYPRUS	15 May 1983 <i>accession</i>	1 June 1983
CZECHOSLOVAKIA	9 May 1982 <i>accession</i>	1 June 1982
DENMARK	2 August 1969	1 October 1969
EGYPT, Arab Republic of	12 December 1968	10 February 1969
FINLAND	11 September 1969	10 November 1969
FRANCE	3 July 1972	1 September 1972
GERMANY, Federal Republic of	27 April 1979	26 June 1979
GREECE	20 July 1983	18 September 1983
ISRAEL	14 August 1972	13 October 1972
ITALY	25 November 1981	24 January 1982
JAPAN	28 May 1970	27 July 1970
LUXEMBOURG	9 July 1975	7 September 1975
MALAWI	25 November 1972 <i>accession</i>	1 December 1972
NETHERLANDS	3 November 1975	2 January 1976
NORWAY	2 August 1969	1 October 1969
PORTUGAL	27 December 1973	25 February 1974
UNITED STATES	24 August 1967	10 February 1969
<i>Extensions:</i> Guam Puerto Rico Virgin Islands	24 August 1967	10 February 1969

State	Date of ratification or accession	Date of entry into force
UNITED KINGDOM	17 November 1967	10 February 1969
<i>Extensions:</i> Anguilla Bermuda Cayman Islands Falkland Islands and Dependencies Gibraltar Guernsey Hong Kong Isle of Man Jersey Montserrat Pitcairn Saint Helena and Dependencies Turks and Caicos Islands Virgin Islands Saint Christopher and Nevis	3 August 1982	2 October 1982
	20 May 1970	19 July 1970
	2 March 1983	1 May 1983
SEYCHELLES	18 June 1981 <i>accession</i>	1 July 1981
SPAIN	4 June 1987	3 August 1987
SWEDEN	2 August 1969	1 October 1969
TURKEY	28 February 1972	28 April 1972