No. 16-254

In the Supreme Court of the United States

WATER SPLASH, INC., PETITIONER

v.

TARA MENON

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF TEXAS, FOURTEENTH DISTRICT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

The Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Hague Service Convention), *done* Nov. 15, 1965, 20 U.S.T. 361, 658 U.N.T.S. 163, authorizes transmission of judicial and extrajudicial documents for service of process from one contracting state to another contracting state. The question presented is whether Article 10(a) of the Hague Service Convention authorizes service of process by mail.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Treaties, statutes and rules:

Treaties, statutes and rules—Continued: Page

Statutes and rules—Continued: Page

Miscellaneous:

Miscellaneous—Continued: Page

Miscellaneous—Continued: Page

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INTEREST OF THE UNITED STATES

This case concerns the proper interpretation of Article 10(a) of the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Convention or Hague Service Convention), *done* Nov. 15, 1965, 20 U.S.T. 363, 658 U.N.T.S. 169. As a party to the Convention, the United States has a vital sovereign interest in ensuring that the Convention is construed in accordance with its terms and with the intent of the United States and the Convention's other contracting states. The Department of State participated in the Convention's negotiation and in the process of securing the Senate's consent to its ratification in 1967. As contemplated by Article 14 of the Convention, the Department of State continues to work through diplomatic channels to resolve difficulties arising in the Convention's opera-

tion. The Office of International Judicial Assistance in the Department of Justice serves as the United States Central Authority in accordance with Article 2 of the Convention and is therefore responsible for administration of the Convention in this country. Thus, the United States has both a strong interest in and an important perspective on the question presented.

TREATY PROVISIONS INVOLVED

Pertinent portions of the Hague Service Convention are reprinted in the appendix to this brief. See App., *infra*, 1a-7a.

STATEMENT

1. The United States and Canada are among the 71 contracting states that have ratified or acceded to the Hague Service Convention,[1] which was formulated at the Tenth Session of the Hague Conference on Private International Law in 1964 and signed in 1965. See 1 Bruno A. Ristau, *International Judicial Assistance: Civil and Commercial* § 4-1-1, at 145 (2000) (Ristau). As its preamble recites, the Convention was intended "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," and "to improve the organisation of mutual judicial assistance for that purpose by simplifying and expediting the procedure." App., *infra*, 1a. The Convention applies "in all cases, in civil or commercial matters, where there is occasion to transmit a judicial

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[1] See Hague Conference on Private Int'l Law, *Status Table: Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*, https://www.hcch.net/en/instruments/conventions/status-table/?cid=17 (last visited Jan. 24, 2017).

or extrajudicial document for service abroad" and the address of the person to be served with the document is known. *Ibid.* (Art. 1).

The Convention provides for what has been called "one main channel of transmission" and for "several alternative channels of transmission." Hague Conference on Private Int'l Law, *Practical Handbook on the Operation of the Service Convention* ¶ 110, at 40 (4th ed. 2016) (2016 *Handbook*).[2] Under the main channel, described in Articles 2 through 6, an "authority or judicial officer" in the country "where the document to be served originates" will "transmit[] the document to be served to a Central Authority" of the country "where the service is to occur." *Id.* ¶ 111, at 40. Unless the Central Authority finds that the request does not comply with the Convention, see Art. 4, 20 U.S.T. 362, 658 U.N.T.S. 167, the Central Authority will "itself serve the document or shall arrange to have it served by an appropriate agency," Art. 5, 20 U.S.T. 362, 658 U.N.T.S. 167, and will prepare a certificate of service that "shall be forwarded directly to the applicant," Art. 6, 20 U.S.T. 363, 658 U.N.T.S. 169.

The Convention's alternative channels of transmission include direct and indirect "consular or diplomatic channels" (addressed in Articles 8 and 9), and three channels identified in Article 10. 2016 *Handbook* ¶ 237, at 76. Article 10 enumerates those three channels as follows:

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[2] Those categories are something of a misnomer, as "[t]here is neither a hierarchy nor any order of importance among the various channels of transmission, and transmission through one of the other channels does not lead to service of lesser quality." 2016 *Handbook* ¶ 236, at 75-76.

> 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.

App., *infra*, 2a-3a. Article 21 further specifies that a contracting state that objects to any of the methods of transmission in Article 8 or 10 "shall * * * inform" the Ministry of Foreign Affairs of the Netherlands. *Id.* at 6a.

This case concerns whether Article 10(a)'s reference to "the freedom to send judicial documents, by postal channels, directly to persons abroad" should be read to pertain to the transmission of such documents for purposes of service of process.

2. From 2011 to 2013, petitioner, a Delaware corporation with its principal office in New York State, employed respondent, a citizen of Canada who resides in Québec, as a regional sales representative. J.A. 40, 50. Petitioner alleged that respondent began working for a competitor that used some of petitioner's designs and drawings when submitting a bid to the City of Galveston, Texas. J.A. 50. Petitioner sued respondent

(and the competitor) in Texas state court for unfair competition, conversion, tortious interference with prospective business relations, and conspiracy. *Ibid.*

Claiming it was unable to serve respondent in Texas, petitioner moved for authorization to use substituted service of process. J.A. 20, 50. A state procedural rule permits service on a party in a foreign country "pursuant to the terms and provisions of any applicable treaty or convention." Tex. R. Civ. P. 108a(1)(d). Contending that "the use of postal channels is a proper means of service under Article 10(a) of the Hague [Service] Convention," petitioner requested permission to serve respondent by "first class mail, certified mail, and Federal Express to [respondent's] address" in Québec and "by email to each of [respondent's] known email addresses." J.A. 19-20. The trial court granted the motion. J.A. 37-38.

Respondent did not file an answer or otherwise enter an appearance, and petitioner obtained a default judgment after the trial court found that respondent had been given proper notice of the suit and of the motion for default judgment and a hearing. J.A. 39-45. Respondent later moved to vacate the default judgment, contending that service had not been accomplished "pursuant to the terms of [A]rticle 10(a) of the Hague Service Convention." J.A. 51. The trial court denied the motion. J.A. 48.

3. The Court of Appeals of Texas (Fourteenth District) reversed and remanded. J.A. 49-58.

a. The court of appeals concluded that service by mail to a defendant in Canada is not permitted by the Hague Service Convention. J.A. 52-58. The court recognized that "Canada has not objected to the use of the mail for service of process." J.A. 55 n.1. It con-

cluded, however, that Article 10(a) of the Convention "prohibits service of process by mail." J.A. 55. In doing so, the court acknowledged that it was siding with the minority of state and federal courts to have considered the question, but it considered that view to be "the better-reasoned approach" because it "adheres to and applies the meaning of the specific words used in [A]rticle 10(a)." *Ibid.* In particular, the court emphasized that Article 10(a) uses the word "send," while other provisions throughout the Convention "use forms of the word 'service.'" *Ibid.* (quoting *Nuovo Pignone, SpA* v. *STORMAN ASIA M/V*, 310 F.3d 374, 384 (5th Cir. 2002)). It agreed with the Fifth Circuit's decision not to "presume that the drafters intended to give the same meaning to 'send' that they intended to give to 'service.'" *Ibid.* (quoting *Nuovo Pignone*, 310 F.3d at 384). The court further found its restrictive reading of Article 10(a) to be consistent with the Convention's "purpose" of "'ensur[ing] that plaintiffs deliver notice to foreign addressees in sufficient time to defend the allegation,'" because it would be "'unlikely that the drafters would have put in place'" the methods of service through Central Authorities or diplomatic channels "'while simultaneously permitting the uncertainties of service by mail.'" J.A. 56 (quoting *Nuovo Pignone*, 310 F.3d at 384-385).

b. Justice Christopher dissented. J.A. 59-93. In her view, the majority failed to follow this Court's "directions on the construction of treaties" and failed to "address the reasoning of courts that have reached a conclusion contrary to that of the Fifth Circuit." J.A. 60, 89-90. Justice Christopher considered, in turn, the purpose of the Convention (J.A. 70-72); the expectations of the parties to the Convention, as reflected in

its English and French texts, its negotiating and drafting history, and the understanding of the delegates (J.A. 73-75); the "unwavering[]" view of the Executive Branch that "Article 10(a) permits service by mail" (J.A. 75); the post-ratification interpretations of Article 10(a) by other parties to the Convention (J.A. 76-78); and the views of leading scholars (J.A. 78-79). In her view, all of those considerations pointed strongly away from the majority's reading of Article 10(a). She also elaborated on what she identified as flaws in the Fifth Circuit's reasoning in *Nuovo Pignone*. J.A. 80-87.

4. Petitioner was unsuccessful in seeking rehearing en banc by the court of appeals and discretionary review by the state supreme court. J.A. 95-98.

SUMMARY OF ARGUMENT

Although Article 10(a) of the Hague Service Convention does not affirmatively authorize service of process by mail, it is properly construed as permitting service of process by postal channels where such service satisfies otherwise applicable law.

A. The text of Article 10(a) must be read in the context of the rest of the Convention, which this Court has already held was intended to "appl[y] only to documents transmitted for service abroad." *Volkswagenwerk Aktiengesellschaft* v. *Schlunk*, 486 U.S. 694, 701 (1988). In that light, Article 10(a)'s reference to "send-[ing] judicial documents," App., *infra*, 2a, is readily understood as referring to the sending of documents through postal channels for purposes of service, rather than for some unspecified reasons that are disconnected from the Convention because they do not involve service. That reading is supported by the negotiating history of Article 10(a), which includes a report de-

scribing a materially identical earlier draft that discussed its applicability to "service." It is further supported by the derivation of the parallel phrase in the French version of the Convention, which had, in the context of earlier conventions, been consistently interpreted as applying to service. Finally, just a few months before the Convention was signed, a member of the U.S. delegation who was on the committee that drafted the Convention described Article 10 as permitting direct service by mail.

B. The Court should also give great weight to the views of the Executive Branch, which has consistently interpreted Article 10(a) to permit service of process by postal channels—from the report that accompanied the President's transmission of the Convention to the Senate to the guidance posted on the Department of State's website. Most conspicuously, in 1990, the Deputy Legal Adviser in the Department of State sent a letter to the Administrative Office of the U.S. Courts and the National Center for State Courts explaining the United States' disagreement with the first federal court of appeals that adopted the interpretation of the decision below.

C. Other parties to the Convention have consistently indicated that Article 10(a) permits service through postal channels. Many of them have done so in the course of either objecting, or making it clear that they do not object, to the use of methods set forth in Article 10(a). Several foreign courts have expressly stated their understanding that Article 10(a) permits service by postal channels, and we are not aware of any foreign decisions that agree with the decision below. In addition, multiple Special Commissions convened since 1977 and comprising representatives from many of the

Convention's contracting states have repeatedly concluded that Article 10(a) permits service by postal channels. In 2003, representatives of 57 countries unanimously reaffirmed the conclusion that Article 10(a)'s use of the term "send" is to be understood as referring to "service" through postal channels.

D. Policy concerns do not support the lower court's reading of Article 10(a). United States courts should not second-guess the comparative reliability of service by mail in countries that have not seen fit to lodge their own objections under Article 21. Postal channels are often more expeditious and cost-efficient than the other channels of transmission. And, to the extent that there is uncertainty in an individual case about whether a mailed document was actually received, Article 15 provides protections for defendants.

ARGUMENT

ARTICLE 10(a) OF THE HAGUE SERVICE CONVENTION PERMITS SERVICE OF PROCESS BY POSTAL CHANNELS

The decision below, like those of other courts that have reached a similar conclusion, relied principally on the supposed contrast between Article 10(a)'s reference to "send[ing]" judicial documents and the references in many other articles of the Convention to the "service" of documents. See J.A. 55-56; see also, *e.g.*, *Nuovo Pignone, SpA* v. *STORMAN ASIA M/V*, 310 F.3d 374, 383-384 (5th Cir. 2002); *Bankston* v. *Toyota Motor Corp.*, 889 F.2d 172, 173-174 (8th Cir. 1989). All of the traditional tools of treaty interpretation, however, support the conclusion that Article 10(a)'s reference to "send[ing]" documents pertains—like the rest of the Convention—to the "service" of documents. Although the Convention does not itself affirmatively

authorize service of process by mail, it is properly construed to *permit* such service when it would accord with otherwise applicable law. See *Brockmeyer* v. *May*, 383 F.3d 798, 803-804 (9th Cir. 2004).[3]

A. The Text, Context, And History Of The Hague Service Convention Show That Article 10(a), Like The Rest Of The Convention, Pertains To Service Of Process

When interpreting a treaty, the Court "begin[s] 'with the text of the treaty and the context in which the written words are used.'" *Volkswagenwerk Aktiengesellschaft* v. *Schlunk*, 486 U.S. 694, 699 (1988) (quoting *Société Nationale Industrielle Aérospatiale* v. *United States District Court*, 482 U.S. 522, 534 (1987) (in turn quoting *Air France* v. *Saks*, 470 U.S. 392, 397 (1985)). If the text and context of the treaty are ambiguous, the Court "may look beyond the written words to the history of the treaty, the negotiations, and the practical construction adopted by the parties." *Id.* at 700 (citations omitted).

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[3] Respondent has contended (Br. in Opp. 6-9) that the judgment below could be affirmed on the alternative ground that, when this suit began, the Province of Québec had not yet adopted legislation to execute the Hague Service Convention. That question of foreign law, however, was not addressed by the state courts, and petitioner has questioned whether respondent preserved her argument as a matter of state procedural law. See Cert. Reply Br. 6-7. In any event, this Court typically does not address in the first instance questions that were not decided below. See, *e.g.*, *Zivotofsky* v. *Clinton*, 132 S. Ct. 1421, 1430 (2012). Accordingly, this brief does not address the potential effect of Québec law on the validity of the service in this case. (Article 494 of Québec's Code of Civil Procedure now affirmatively states that the Hague Service Convention "has force of law in Québec." Code of Civil Procedure, c. C-25.01, art. 484 (Can.), *LégisQuébec*, http://legisquebec.gouv.qc.ca/en/pdf/cs/C-25.01.pdf (last updated Dec. 1, 2016).)

1. Article 10(a) of the Convention states that, if "the State of destination does not object," the Convention "shall not interfere with * * * the freedom to send judicial documents, by postal channels, directly to persons abroad." App., *infra*, 2a. Unlike the other two paragraphs of Article 10, which reference methods to "effect service of judicial documents," *id.* at 3a, Article 10(a)'s reference to postal channels does not use the term "service." It must not, however, be viewed in isolation. In context, its reference to "send[ing] judicial documents" is readily understood as referring to the sending of documents through postal channels for purposes of service. The court of appeals' contrary reading would transform Article 10(a) into a bizarre and solitary interloper—the only portion of the Convention that would be about something other than service of documents.

a. The full title of the Hague Service Convention indicates that it is concerned with "Service Abroad." Its preamble explains that the Convention was intended "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," and to "simplify[] and expedit[e]" the procedures for doing so. App., *infra*, 1a. Then, in establishing the general scope of the Convention, Article 1 provides that it "shall apply in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad." *Ibid.*

As this Court has previously explained, the Convention's negotiating history demonstrates that its applicability was consciously limited to instances requiring the transmission of documents to other countries

for purposes of "service of process in the technical sense." *Schlunk*, 486 U.S. at 700. A preliminary draft of Article 1 referred to "all cases in which there are grounds *to transmit or to give formal notice of* a judicial or extrajudicial document in a civil or commercial matter to a person staying abroad." *Id.* at 700-701 (translating the French text from 3 Conférence de la Haye de Droit International Privé, *Actes et Documents de la Dixième Session* 65 (1965)). That preliminary draft, however, was criticized for "suggest[ing] that the Convention could apply to transmissions abroad that do not culminate in service." *Id.* at 701. As a result, the final version of Article 1 was revised, such that the Convention now "applies only to documents transmitted for service abroad." *Ibid.* The decision below cannot be reconciled with this Court's authoritative construction of Article 1 and the negotiating history upon which the Court relied.

The Court's reading of Article 1 is buttressed by the many other provisions of the Convention that are expressly tied to service of process rather than transmission of documents for some other purpose. Article 5 obliges a Central Authority that receives a request for service either to "serve the document" or to "arrange to have it served." 20 U.S.T. 362, 658 U.N.T.S. 167. Article 8 permits a contracting state to "effect service of judicial documents" through its diplomatic or consular agents, and Article 9 permits the use of consular or diplomatic channels "to forward documents, for the purpose of service." App., *infra*, 2a; see, *e.g.*, *id.* at 3a (Art. 11) (permitting contracting states to agree to alternate channels of transmission "for the purpose of service of judicial documents"); Art. 13, 20 U.S.T. 364, 658 U.N.T.S. 171 (restricting grounds upon

which a state may refuse to comply with "a request for service" that complies with the Convention); Art. 14, 20 U.S.T. 364, 658 U.N.T.S. 171 (providing that disputes over "the transmission of judicial documents for service" will be settled diplomatically); App., *infra*, 5a (Art. 19) (providing that the Convention will not alter a contracting state's law permitting other methods of transmission "of documents coming from abroad, for service within its territory").

Because the scope of the entire Convention thus was intentionally limited to "documents transmitted for service abroad," *Schlunk*, 486 U.S. at 701, there is no reason to infer that Article 10(a) was intended, through the word "send," to refer exclusively to unspecified uses of postal channels that do *not* involve service of process. Rather, the language in Article 10(a) preserving the freedom to "send" judicial documents, by postal channels, "directly" to persons abroad can be explained by the fact that, in contrast to Article 10(a), all other methods of service identified in the Convention require the affirmative engagement of an intermediary to effect "service." The word "send" in Article 10(a) is the most natural way to describe the using of "postal channels" as an alternative way of effecting service—"directly"—without invoking an intermediary.

b. Moreover, the only provision of the Convention that refers to Article 10 does not give any indication that paragraph (a) was seen as unique or as being about a different topic than is the rest of the Convention. Article 21 directs each contracting state to give formal notice (to the Ministry of Foreign Affairs of the Netherlands) of any "opposition" that the contracting state has "to the use of methods of transmission pursuant to [A]rticles 8 and 10." App., *infra*, 6a. Article 8

applies only to "service of judicial documents," as do paragraphs (b) and (c) of Article 10. *Id.* at 2a-3a. Article 21 thus indicates that the drafters perceived no categorical difference between the types of transmission of judicial documents addressed by those provisions and the type of transmissions governed by Article 10(a).

2. The negotiating history of Article 10(a) itself also provides strong support for the view that it refers to service of process. See *Saks*, 470 U.S. at 400 (recognizing that, in interpreting a treaty, "it is proper * * * to refer to the records of its drafting and negotiation").

The Rapporteur's report on the final text of the Convention, as adopted in the plenary session of the Hague Conference, "states that, except for minor editorial changes, Article 10 of the Convention corresponds to" the same article in an earlier draft. 1 Ristau § 4-3-5, at 205. The report about that draft version of Article 10, in turn, had explained as follows:

> a) Postal channels (para. 1)
>
> Paragraph 1 [designated "(a)" in the final text] of Article 10 corresponds to paragraph 1 of Article 6 of the 1954 Convention.[4]
>
> * * * * *
>
> The provision of paragraph 1 also permits service * * * by telegram if the state where *service* * * * is to be made does not object.
>
> The Commission did not accept the proposal that postal channels be limited to registered mail.

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[4] Convention Relating to Civil Procedure, *done* Mar. 1, 1954, 286 U.N.T.S. 265.

Ibid. (brackets in original) (translated by Ristau from the original French). The report about the draft version of Article 10 also noted that, as was the case under the similar provision of the earlier convention, service of process could be made by postal channels only if it was also "authorized by the law of the forum state." *Ibid.* Thus, the description of the earlier draft of Article 10 demonstrates that the drafters intended for the provision to permit service of process by postal channels in the absence of the receiving state's objection pursuant to Article 21.

3. That construction is also supported by the derivation of the parallel phrase in the French version of the Convention. The French text—which, according to the Convention's final clause, is "equally authentic" with the English text, 20 U.S.T. 367, 658 U.N.T.S. 181—contains the same potential anomaly, using a different word in Article 10(a) than in Article 10(b) and (c).[5] But "the verb '*adresser*' * * * , rendered in English by the verb 'send', had been used in substantially the same context in the three predecessor treaties [about civil procedure] drafted in The Hague [in 1896, 1905, and 1954]." 2016 *Handbook* ¶ 279, at 91. Even though the verb "*adresser*" is not actually "equivalent to the concept of '*service*,'" it had "been consistently interpreted" in the earlier treaties "as meaning service or notice." *Ibid.* The drafters accord-

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[5] Compare Art. 10(a), 20 U.S.T. 363, 658 U.N.T.S. 168 ("à la faculté *d'adresser* directement, par la voie de la poste") (emphasis added), with Art. 10(b), 20 U.S.T. 363, 658 U.N.T.S. 168 ("à la faculté, pour les officiers ministériels * * * de faire procéder à des *significations ou notifications*") (emphasis added) and Art. 10(c), 20 U.S.T. 363, 658 U.N.T.S. 170 ("de faire procéder à des *significations ou notifications*") (emphasis added).

ingly would have expected the same interpretation to apply to the term's appearance in the Hague Service Convention. In addition, Article 10(a) of the Hague Service Convention replaced Article 6(1) of the 1954 Convention (for states that were parties to both). See 1 Ristau § 4-3-5, at 204; see also Art. 22, 20 U.S.T. 366, 658 U.N.T.S. 177. In light of that history, it would be particularly incongruous if the similar French text in Article 10(a) were construed as eliminating the earlier understanding that postal channels could indeed be used for service when it is authorized by the law of the forum state and the receiving state does not object. See 1 Ristau § 4-3-5, at 205.

4. Other evidence contemporaneous with the negotiation of the Convention also supports the conclusion that Article 10(a) refers to service of process. Philip W. Amram was the member of the United States delegation who was the "principal American spokesman in the Committee of the Conference that produced the [Convention]." S. Exec. Rep. No. 6, 90th Cong., 1st Sess. 5 (1967) (S. Exec. Rep. No. 6) (reprinting statement of Deputy Legal Adviser Richard D. Kearney). In an article dated just a few months before the Convention's signing (and nine months after "[t]he final text of the Convention * * * was developed," 1 Ristau § 4-1-1, at 145), he summarized the Convention and stated that "Article 10 permits direct service by mail * * * unless th[e] state objects to such service." Philip W. Amram, *The Proposed International Convention on the Service of Documents Abroad*, 51 A.B.A. J. 650, 653 (1965).

Thus, when read in the context of the Convention, its negotiation history, the predecessors to the parallel French text, and contemporaneous statements by one

of its drafters, the text of Article 10(a) is best construed as permitting service of process through postal channels.

B. The Executive Branch Has Consistently Interpreted Article 10(a) To Permit Service Of Process By Postal Channels

"It is well settled that the Executive Branch's interpretation of a treaty 'is entitled to great weight.'" *Abbott* v. *Abbott*, 560 U.S. 1, 15 (2010) (quoting *Sumitomo Shoji Am., Inc.* v. *Avagliano*, 457 U.S. 176, 184-185 (1982)). The decision below, however, contradicts the Executive Branch's longstanding position that Article 10(a) refers to service of process, not to the sending of documents for other unspecified purposes.

1. When President Johnson transmitted the Convention to the Senate in 1967 for its advice and consent, his transmittal letter noted that "[t]he provisions of the convention are explained in the report of the Secretary of State transmitted herewith." *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters: Message from the President of the United States*, S. Exec. C, 90th Cong., 1st Sess. 1 (1967). The accompanying report explained that "Articles 8 through 11 provide for channels of service entirely outside the central authority." *Id.* at 4. It further stated that "Article 10 permits direct service by mail or by any persons who are competent for that purpose in the state addressed unless that state objects to such service." *Id.* at 5 (emphasis added).

Consistent with that construction, U.S. delegate Amram testified before the Senate Foreign Relations Committee that use of the Central Authority is "not obligatory" and that "[o]ptional techniques" include,

"unless the requested State objects, direct service by mail." S. Exec. Rep. No. 6, at 13 (citing Article 10).

2. Since the United States ratified the Convention, the Executive Branch has consistently adhered to that construction of Article 10(a). In 1980, the Administrative Office of the U.S. Courts sent a memorandum to all United States District Court Clerks requesting, based on advice from the Department of State, that they "refrain from sending summonses and complaints by international mail to foreign defendants in those countries" that had "made a reservation with respect to Article 10(a) of the Convention." 2 Marian Nash (Leich), *Cumulative Digest of United States Practice in International Law 1981–1988*, at 1447 (1994). Service by mail to defendants in non-objecting countries was not seen as a problem in the context of the Convention.

In 1989, the Eighth Circuit became the first federal court of appeals to hold that the Convention does not permit service by registered mail on a defendant in a foreign country. See *Bankston*, 889 F.2d at 174. A few months later, the Deputy Legal Adviser, Alan J. Kreczko, sent a letter to the Administrative Office of the U.S. Courts and the National Center for State Courts that expressed the Department of State's disagreement with the *Bankston* decision. See *United States Department of State Opinion Regarding the Bankston Case and Service by Mail to Japan under the Hague Service Convention*, 30 I.L.M. 260, 260-261 (1991) (reprinting excerpts of March 14, 1990 letter). That letter concluded that "the decision of the Court of Appeals in *Bankston* is incorrect to the extent that it suggests that the Hague Convention does not permit as a method of service of process the sending of a copy

of a summons and complaint by registered mail to a defendant in a foreign country." *Id.* at 261.

That view continues to be reflected on the Department of State's website, which explains that "[s]ervice by registered or certified mail, return receipt requested is an option in many countries in the world," but that "[s]ervice by registered mail should * * * not be used in the countries party to the Hague Service Convention that objected to the method described in Article 10(a) (postal channels)." U.S. Dep't of State, Bureau of Consular Affairs, *Legal Considerations: International Judicial Assistance: Service of Process*, https://travel.state.gov/content/travel/en/legal-considerations/judicial/service-of-process.html (last visited Jan. 24, 2017).[6]

The Court should give great weight to the Executive Branch's contemporaneous, longstanding, and consistent interpretation of Article 10(a). See, *e.g.*, *Medellin* v. *Texas*, 552 U.S. 491, 513 (2008).

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[6] Although not relevant here, additional considerations apply in cases involving efforts to serve sovereign defendants. The Foreign Sovereign Immunities Act of 1976, 28 U.S.C. 1602 *et seq.*, provides the exclusive means of service for purposes of suing a foreign state in a U.S. court. See 28 U.S.C. 1608(a)(1)-(4); Fed. R. Civ. P. 4(j)(1). Section 1608(a) does not provide for service by a plaintiff on a foreign sovereign through postal channels without the foreign sovereign's consent. Similarly, "service on the U.S. Government cannot be effected through Article 10," even though "the United States does not object to Article 10 service by postal channels for private individuals or companies." U.S. Dep't of Justice, Office of Int'l Judicial Assistance, *Service of Process on the United States Government* 2 (Nov. 4, 2016), https://www.justice.gov/civil/page/file/914441/download.

C. Other Parties To The Convention Agree That Article 10(a) Permits Service By Postal Channels

Because a treaty is "in its nature a contract between . . . [N]ations," the Court has recognized its "responsibility to read the treaty in a manner consistent with the *shared* expectations of the contracting parties." *Lozano* v. *Montoya Alvarez*, 134 S. Ct. 1224, 1232-1233 (2014) (citations and internal quotation marks omitted). As a result, the views of the other states that are parties to the treaty are "entitled to considerable weight." *Abbott*, 560 U.S. at 16 (citations omitted). With respect to the Hague Service Convention, many of the United States' treaty partners have consistently indicated—both singly and in joint Special Commissions periodically convened to assist in the Convention's implementation—that Article 10(a) permits "service" through postal channels, so long as the receiving state has not exercised its right under Article 21 to object to that form of service.

1. In formally giving notice to the Ministry of Foreign Affairs of the Netherlands of their ratification or accession to the Convention (Article 21), several contracting states—including Canada—have made clear their understanding that Article 10(a) of the Convention refers to using postal channels for service of process, not sending documents for other purposes. In its 1988 accession to the Convention, Canada declared, under a heading referring to Article 10(a), that "Canada does not object to service by postal channels."[7] In

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[7] Dutch Gov't, *Treaty Database: Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters: Parties with Reservations, Declarations, and Objections*, https://treatydatabase.overheid.nl/en/Verdrag/Details/004235_b (last visited Jan. 24, 2017) (entry for Canada).

1990, Pakistan declared that it does not object to "service by postal channels directly to the persons concerned (Article 10(a))."[8] In 2009, the Republic of Latvia, citing Article 10(a), declared that it "does not object to the freedom to send a judicial document, by postal channels, directly to an addressee within the Republic of Latvia * * * if the document to be served" satisfies certain conditions.[9] In 2010, Australia referred to Article 10(a) when declaring that "Australia does not object to service by postal channels, where it is permitted in the jurisdiction in which the process is to be served" and the documents are "sent via registered mail."[10] In 2016, Vietnam declared that it does not oppose "the service of documents through postal channels mentioned in paragraph a of Article 10" if the documents are "sent via registered mail with acknowledgment of receipt."[11]

Other contracting states have expressly *objected* to "service" pursuant to Article 10(a) or to having documents "served" through "postal channels."[12] By doing so, they have made clear their shared understanding that Article 10(a) would otherwise have permitted service by mail. Similarly, at least 13 states have declared their objection to all of the methods of transmission in Article 10 and described them collectively as involving "service," without discriminating between paragraph

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[8] *Ibid.* (entry for Pakistan).

[9] *Ibid.* (entry for Latvia).

[10] *Ibid.* (entry for Australia).

[11] *Ibid.* (entry for Vietnam).

[12] See, *e.g.*, *ibid.* (entries for the Czech Republic and Slovenia).

(a) and the rest.[13] Under the decision below, objections to "service" through postal channels would effectively be rendered meaningless; those states would have exercised their Article 21 power to object to Article 10(a) by objecting to something that Article 10(a) had not allowed in the first place.

To be sure, the declarations of some states have referred to the "sending," "transmitting," or "transmission" of documents under Article 10, or have referred to "service or transmission" or "transmission and service" under Article 10.[14] Such formulations do not clearly express a view on whether Article 10(a) refers to service. But no country has affirmatively indicated—either in its formal reservations, declarations, or objections, or, to our knowledge, anywhere else—that it shares the understanding of the decision below that Article 10(a) does *not* refer to service of process.

2. Nor are we aware of any foreign courts that have adopted the view of the decision below. To the contrary, several have expressly stated their understanding that Article 10(a) permits "service" through postal channels. For instance, an Ontario appellate court recently explained that "art. 10 of the Hague Service Convention provides that documents can be served directly by postal channels or local judicial officers of the state of destination, unless that state objects." *Wang* v. *Lin* (2016), 132 O.R. 3d 48, 61 (Can. Ont. Sup. Ct. J.). That statement was consistent with earlier Ontario cases that had recognized the validity of ser-

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[13] *Ibid.* (entries for Bulgaria, the People's Republic of China, Croatia, Germany, Greece, Hungary, India, Kuwait, Lithuania, Macedonia, Poland, the Russian Federation, and Turkey).

[14] See, *e.g.*, *ibid.* (entries for Luxembourg, Malta, Norway, San Marino, and Switzerland).

vice by mail on persons located in states that have not objected to Article 10(a).[15] In 1999, the Court of Justice of the European Union repeated without disagreement an Italian court's recognition that "Article 10(a) * * * allows service by post."[16] In 2000, a Greek Court of Appeal held that an Italian judgment was enforceable against a defendant that had been served in Greece by registered mail, because Greece had not yet objected to Article 10(a), which "envisaged" the "possibility of serving judicial documents in civil and commercial cases through postal channels."[17] In 1987, the Chancery Division of the English High Court concluded that the "service of a * * * summons by post on a resident of Belgium" was valid because Belgium had not objected to Article 10(a).[18] Such reasoning remains hornbook law in the United Kingdom.[19]

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[15] See *Purcaru* v. *Seliverstova*, [2015] O.J. No. 5615, para. 5 n.1 (Can. Ont. Sup. Ct. J.) (QL) (finding "service by mail" on Romanian respondent to be "appropriate and effective"); *Wilson* v. *Servier Can. Inc.*, [2003] O.J. No. 157, paras. 13-14 (Can. Ont. Sup. Ct. J.) (QL) (sustaining service of amended complaint by "regular mail" on French defendant under Article 10).

[16] Case C-412/97, *ED Srl* v. *Italo Fenocchio*, 1999 E.C.R. I-3874, para. 6.

[17] Efeteia [Efet.] [court of appeals] 3299/2000, p. 165, 168 (Greece).

[18] *In re Tucker (a Bankrupt)*, [1987] 1 W.L.R. 928 (Ch.), at 947 (Eng.), rev'd on other grounds, [1990] 1 Ch. 148 (C.A.) (Eng.); see *Noirhomme* v. *Walklate*, [1992] 1 Lloyd's Rep. 427 (Q.B.) (Eng.) (finding defendant duly served when, consistent with Article 10, documents originating Belgian court action were sent by post to England).

[19] See Maurice Kay et al., *Blackstone's Civil Practice 2013*, § 16.62, at 373 (13th ed. 2012) ("Service by post is also permitted under the Hague Convention provided the State of destination

In other words, we have no basis to doubt the Ninth Circuit's conclusion that foreign courts are "essentially unanimous" in disagreeing with the reasoning of *Bankston* and the decision below. *Brockmeyer*, 383 F.3d at 802; cf. 2016 *Handbook* ¶ 274, at 89 n.379 ("Space does not allow us to refer to the numerous decisions of other States expressly supporting the view that Art. 10(a) allows for service of process.").

3. Contracting states to the Convention have also collectively expressed their views about Article 10(a) in other ways. In particular, several Special Commissions have been convened by the Hague Conference on Private International Law to assist in the implementation of the Convention by providing a "forum for Contracting States to raise issues with the practical operation of the Convention, including differences with other States." 2016 *Handbook* ¶ 105, at 38.[20] Those Special Commissions have produced multiple reports making it clear that Article 10(a) is universally regarded by the contracting states as involving service.

The first such Special Commission was convened in 1977 and included 28 experts from 18 states and three international organizations. See *Report on the Work of the Special Commission on the Operation of the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or*

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does not object (art. 10(a))."); David McClean, *International Cooperation in Civil and Criminal Matters* 43-44 (3d ed. 2012) (criticizing the *Bankston* line of cases in the United States as "wholly unjustified").

[20] See Statute of the Hague Conference on Private International Law, art. 7, *formulated* Oct. 9-31, 1951, 15 U.S.T. 2230, 220 U.N.T.S. 127 (providing for special committees to study any "questions of private international law that come within the purpose of the [Hague] Conference").

Commercial Matters (21-25 November 1977), 17 I.L.M. 319, 319 (1978). Those experts deemed Article 10(a) to be about service of documents, not transmission for other purposes. Thus, the portion of the 1977 report addressing the use of postal channels said that "[i]t was determined [by the Special Commission] that most of the States made no objection to the *service* of judicial documents coming from abroad directly by mail in their territory." *Id.* at 326 (emphasis added). And, in light of the Article 21 power to object, the report further observed that "[t]he States which object to the utilisation of *service* by post sent from abroad are known thanks to the declarations made to the Ministry of Foreign Affairs." *Id.* at 329 (emphasis added).

A second Special Commission was convened in 1989, with representatives from 22 states that were members of the Hague Conference. *Report on the Work of the Special Commission of April 1989 on the Operation of the Hague Conventions of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters and of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters* ¶ 2, at 2 (Apr. 1989), https://assets.hcch.net/upload/scrpt89e_20.pdf. The resulting report on the Special Commission's work criticized "certain courts in the United States" for having concluded that "service of process abroad by mail was not permitted under the Convention." *Id.* ¶ 16, at 5. The report explained that "the postal channel for service constitutes a method which is quite separate from service via the Central Authorities or between judicial officers," and further that "theoretical doubts about the legal nature" of "service by mail" are "unjustified"

when a contracting state has not declared reservations about Article 10(a). *Ibid.*

In 2003, a third Special Commission produced a set of conclusions and recommendations that were unanimously approved by representatives from 57 states that were members of the Hague Conference. *Conclusions and Recommendations Adopted by the Special Commission on the Practical Operation of the Hague Apostille, Evidence and Service Conventions* ¶ 1, at 3 (Oct./Nov. 2003), https://assets.hcch.net/upload/wop/lse_concl_e.pdf (*2003 Conclusions and Recommendations*). In those conclusions, the Special Commission "reaffirmed its clear understanding that the term 'send' in Article 10(a) is to be understood as meaning 'service' through postal channels." *Id.* ¶ 55, at 11. There could scarcely be clearer evidence that the decision below is out of step with the views of the parties to the Convention.

The Special Commissions have also supported the preparation of a "practical handbook" about the operation of the Convention by the Permanent Bureau of the Hague Conference. Like the reports of the Special Commissions themselves, the last three editions of that handbook (in 1992, 2006, and 2016) have consistently described Article 10(a) as permitting the "service" of documents through postal channels, and they have expressly criticized the minority of U.S. courts that, like the decision below, have concluded otherwise.[21] The 2016 version of the *Handbook* reiterates

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[21] See Hague Conference on Private Int'l 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* 42-45 (2d ed. 1992); Permanent Bureau of the Hague Conference on Private Int'l Law, *Prac-*

frustration that the Deputy Legal Adviser's 1990 letter about *Bankston* "does not seem to have had the desired effect," and notes that "only courts in the United States have had difficulties with the interpretation of [Article 10(a)]." 2016 *Handbook* ¶ 274, at 89. It rejects the Eighth Circuit's decision in *Bankston*, agrees with the Ninth Circuit's decision in *Brockmeyer* sustaining service by mail, and squarely concludes that "[s]ervice by mail under Article 10(a) is possible and effective." *Id.* ¶ 280, at 91.

In sum, there is overwhelming support for the conclusion that the United States' treaty partners construe Article 10(a) to permit service of process by postal channels. This Court should construe the Convention in light of that widely shared understanding.

D. Policy Concerns Do Not Support The Lower Court's Reading Of Article 10(a)

Although the decision below rests principally on the supposed textual disparity between "sending" and "serving" documents, it also suggests that its conclusion is supported by policy considerations. J.A. 55-56. In particular, the court of appeals suggested that the mail is too uncertain for service of process, especially when the Convention's drafters contemplated the use of other methods of service, including diplomatic channels and contracting states' Central Authorities. *Ibid.*; see *Nuovo Pignone*, 310 F.3d at 384-385. Those concerns are not well founded, and United States courts should not second-guess the comparative reliability of service by

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tical 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 ¶¶ 213-225, at 75-80 (3d ed. 2006); 2016 *Handbook* ¶¶ 270-282, at 87-91.

mail in countries that have not seen fit to lodge their own objections under Article 21.

There is no basis for the implication that postal channels are less likely to give foreign defendants notice of a suit "in sufficient time to defend the allegation." *Nuovo Pignone*, 310 F.3d at 384. Diplomatic channels are the "most time-consuming form of transmission." 2016 *Handbook* ¶ 239, at 76. And postal channels are not necessarily slow. Indeed, the drafters contemplated that postal channels could include service "by telegram." 1 Ristau § 4-3-5, at 205. The 2003 Special Commission recognized "the increasing use of private courier services for the expeditious transmission of documents" and "concluded that for the purposes of Article 10(a) the use of a private courier was the equivalent of the postal channel." *2003 Conclusions and Recommendations* ¶ 56, at 11.

Such courier services will often be significantly faster than the Convention's other channels. Many of the countries that allow for service by mail indicate that service through their Central Authorities takes weeks or months.[22] Others do not indicate how long service through their Central Authorities will take—resulting

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[22] Hague Conference on Private Int'l Law, *Authorities: Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*, https://www.hcch.net/en/instruments/conventions/authorities1/?cid=17 (last visited Jan. 24, 2017). See, *e.g.*, *ibid.*, entries for Australia ("up to 3 months or more"), Belarus ("one month"), Canada (listing average times ranging from two to six weeks), Macao and Hong Kong ("3-4 months"), Denmark (two months), Estonia ("[a]pproximately 3-6 months"), Finland (two weeks), France (rarely less than three months), Israel ("1-4 months"), Italy ("[o]ne or two months sometimes more"), Luxemburg ("[a]bout two weeks"), and Portugal ("[b]etween 30 and 60 days").

in a level of uncertainty and delay for litigants.[23] As in the United States, where a service request through the Central Authority will involve a $95 fee,[24] service through Central Authorities in other countries may also involve higher costs than service by postal channels. The United States favors a reading that, consistent with the purpose of the Convention, presents litigants with efficient and cost-effective options for service abroad.

Nor is there any basis to think that postal channels are simply too "unreliable," when compared with Central Authorities. Indeed, "[t]he postal channel * * * is commonly used" for the initial transmission of a document *to the Central Authority* abroad, and—after the Central Authority effects service—the postal channel may again be used to return the certificate of service. 2016 *Handbook* ¶ 134, at 46; see *id.* ¶ 212, at 69. And, when there is uncertainty about whether a mailed document was actually received, Article 15 provides protections for defendants, generally requiring proof that the document was served as required by the receiving state or that it was "actually delivered," and that service or delivery was effected in due time. App., *infra*, 3a.[25]

Construing Article 10(a) as precluding service of process by postal channels would make cross-border service of process more burdensome and would cause a

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[23] See, *e.g.*, *ibid.*, entries for Belgium, Bosnia and Herzegovina, Costa Rica, Cyprus, Iceland, Ireland, Romania, Spain, and United Kingdom.

[24] *Ibid.*, entry for United States.

[25] The second paragraph of Article 15 is less demanding, but is intended to "be applied rarely, in case where the defendant evades service in bad faith." 2016 *Handbook* ¶ 314, at 101.

substantial increase in the number of requests for service submitted to Central Authorities. Factoring in the execution time and cost associated with sending requests through foreign Central Authorities (or with the other methods of service in the Convention), the result may have a detrimental effect on U.S. and foreign litigants in cross-border litigation—disserving the Convention's express purpose of "simplifying and expediting" service abroad. App., *infra*, 1a (Pmbl.).

CONCLUSION

The judgment of the Court of Appeals of Texas (Fourteenth District) should be reversed.

Respectfully submitted.

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APPENDIX

The English version of Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, *done* Nov. 15, 1965, 20 U.S.T. 361, 658 U.N.T.S. 163, provides in pertinent part:

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 I—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 organize the Central Authority in conformity with its own law.

* * * * *

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 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.

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CHAPTER III—GENERAL CLAUSES

* * * * *

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 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 8 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 28

Any State not 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.

* * * * *