U.S. Supreme Court: The Hague Service Convention Does Not Prohibit Service of Process By Mail

The 1965 Hague Convention on Service of Process is one of the cornerstone treaties for international litigation. It provides a simple and effective process to provide due notice of a proceeding in one signatory state to a party in another, via a designated Central Authority in each signatory state. Nevertheless, one provision has vexed U.S. courts for decades. Article 10 provides that, notwithstanding the Central Authority procedures, and "[p]rovided the State of destination does not object, the present Convention shall not interfere with. . . the freedom to send judicial documents, by postal channels, directly to persons abroad." By virtue of the fact that the provision says "send" and not the magic word "serve," U.S. Courts have long disagreed over whether the Convention's procedures preclude international service of process by mail.

Today, the U.S. Supreme Court settled the question, and held that the Hague Service Convention does not prohibit service of process by mail. This permissive reading serves to increase the practical utility of the Convention around the world.

The opinion is available here, and it is a fairly straightforward exercise in treaty interpretation by Justice Alito. He starts with the "treaty's text and the context in which its words are used," as well as the overall "structure of the Convention" to divine the meaning of Article 10. To buttress his permissive interpretation, he then discusses "three extratextual sources [that] are especially helpful in ascertaining Article 10(a)'s meaning": the Convention's drafting history, the interpretation of the U.S. Executive Branch, and that of other signatories to the Convention.

As a practical matter, though, this decision doesn't necessarily open the mailboxes of the world to liberal service of process. Rather, service by mail is still only permissible if the receiving state has not objected to service by mail (some

do by way of reservations) and if such service is authorized under otherwise-applicable law. In this case, because the Court of Appeals concluded that the Convention prohibited service by mail, it did not consider whether Texas law authorizes the methods of service. That question was sent back to the lower courts to consider on remand.