The Hague Service Convention and Agency Concepts: Lamb v. Volkswagenwerk Aktiengesellschaft

Gloria M. Hoyal

Follow this and additional works at: http://scholarship.law.cornell.edu/cilj

Part of the Law Commons

Recommended Citation
Available at: http://scholarship.law.cornell.edu/cilj/vol20/iss2/6

This Note is brought to you for free and open access by Scholarship@Cornell Law: A Digital Repository. It has been accepted for inclusion in Cornell International Law Journal by an authorized administrator of Scholarship@Cornell Law: A Digital Repository. For more information, please contact jmp8@cornell.edu.
THE HAGUE SERVICE CONVENTION AND AGENCY CONCEPTS: LAMB V. VOLKSWAGENWERK AKTIENGESELLSCHAFT

I. INTRODUCTION .................................... 391

II. BACKGROUND ...................................... 393
   A. Early Attempts at International Judicial Cooperation .................. 393
   B. The Hague Service Convention .................................... 395
   C. Federal Rule of Civil Procedure 4 and Due Process ...................... 398
   D. Federal Rule of Civil Procedure 4 and the Hague Service Convention .... 400
   E. Domestic Subsidiary as a Foreign Corporation's "Agent" ................ 402

III. LAMB V. VOLKSWAGENWERK AKTIENGESELLSCHAFT .................... 404

IV. ANALYSIS .......................................... 406
   A. Interpretation and Application of the Hague Service Convention ........ 406
   B. Agency Concepts as Supplementing the Hague Service Convention ...... 408
   C. Enforcement of U.S. Judgments Abroad ................................... 411

V. CONCLUSION .......................................... 411

I. INTRODUCTION

In Lamb v. Volkswagenwerk Aktiengesellschaft, the district court for the Southern District of Florida, using common law agency theory, upheld service of process on a German corporation through its U.S. subsidiary. Although prior courts have upheld service on a foreign corporate parent through its subsidiary, Lamb was the first case to hold the Hague Convention's provisions on service of judicial documents abroad inapplicable, where service was performed in-state through a subsidiary.

2. Id. at 101.
3. See infra note 72 and accompanying text.
4. Lamb, 104 F.R.D. at 96. The District Court for the Northern District of Illinois cited Lamb in holding that service of process upon a Japanese corporation through a wholly-owned subsidiary in Illinois based on common law agency principles was not con-
The Hague Service Convention is an international treaty drafted by representatives from twenty-three countries to promote international cooperation in serving process and rendering enforceable judgments against foreigners. Both this convention and the subsequent Hague Discovery Convention promote international judicial assistance by creating enforceable judgments through mutually acceptable judicial procedure.

This Note argues that Lamb is inconsistent with the Hague Service Convention's objectives and could impede international judicial assistance and foreign enforcement of United States judgments. Lamb frustrates the simplicity, predictability, uniformity, and cooperative spirit underlying the Hague Service Convention. The second section of this Note describes international attempts to standardize service of process and the resulting Hague Service Convention. The second section also focuses on the interplay between the Hague Service Convention and Federal Rule of Civil Procedure 4 (governing service of process for United States courts) and common law agency principles. The third section presents the Lamb court's analysis of both the Hague Convention and common law agency principles. Finally, the Note analyzes Lamb in light of the Hague Service Convention's poli-


7. "International judicial assistance" has been defined as "aid rendered by one nation to another in support of judicial or quasi-judicial proceedings in the recipient country's tribunals." Jones, International Judicial Assistance: Procedural Chaos and a Program for Reform, 62 YALE L.J. 515 (1952-53).

8. This Note discusses only service of process to obtain personal jurisdiction over a foreign defendant, as in FED. R. CIV. P. 4. Foreign service of subpoenas (as covered in FED. R. CIV. P. 37(e), FED. R. CIV. P. 45(e)(2), and the Hague Convention on Service of Judicial and Extrajudicial Documents in Civil or Commercial Matters) raises problems sufficiently different from foreign service of all other process to warrant separate discussion. However, the compulsory nature of a subpoena renders international comity concerns even more compelling.

9. Lamb has further significance because parties are unlikely to appeal such district court opinions. The cost of appealing the court's determination far exceeds the cost of service in a manner which complies with the district court opinion. If the court upholds the manner of service, as did the court in Lamb, a additional appeal would only create additional delay at great cost without reaching the merits of the case.
cies and its effect on international judicial assistance and foreign enforcement of U.S. judgments.

II. BACKGROUND

A. EARLY ATTEMPTS AT INTERNATIONAL JUDICIAL COOPERATION

Since 1854, various foreign governments have proposed uniform international procedures for judicial assistance to the United States. The United States, however, declined to join other nations in establishing these uniform procedures, stating that the Constitution and the federal system restricted participation in such agreements.

The United States' objections were twofold. First, the federal government regarded judicial procedure as the sole province of the states. Reconciling the diverse state court procedures would be unwieldy. Moreover, the Constitution prevented the federal government from participating in agreements which would bind the states on procedural matters. Second, even if a foreign government was willing to negotiate separately with each state, the Constitution prohibited state-entry into treaties, an area reserved solely for the federal government. Because the states could not bind themselves, and the federal government could not bind the states, the United States claimed it

10. Jones, supra note 7, at 556-58. Between 1861 and 1885, the Italian government twice attempted to organize an international conference on uniform international procedures for judicial assistance. In 1874, the Netherlands also unsuccessfully attempted to unite other governments to devise international procedures. 1 B. RISTAU, INTERNATIONAL JUDICIAL ASSISTANCE (CIVIL AND COMMERCIAL) 5 (1984); see also Harvard Research in Int'l Law, Draft Convention on Judicial Assistance, 33 AM. J. INT'L L. 26, 27 (Supp. 1939).

In 1893, the Netherlands hosted the First Hague Convention on Private International Law. 1 B. RISTAU, supra, at 5. Subsequent conventions helped to unify areas of private international law and establish procedures for judicial assistance. However, the United States never participated. Id. At the Fourth Session of the Hague Conference on Private International Law in 1904, fifteen European states drafted and adopted a convention on Civil Procedure that remained in force for many of the signatories for over fifty years. Id. In 1954, participants at the Seventh Session of the Hague Convention revised the 1905 Civil Procedure Convention to cover procedures for service of process, taking of evidence, and legal aid. Twenty-eight nations eventually adopted the 1954 Convention. Id. at 6; see also Jones, supra note 7, at 558.


could not participate in any international judicial agreement. The U.S. isolationism from international private law matters resulting from this position became so well recognized that the United States was not invited to the 1954 Hague Conference on Private International Law.\footnote{14. Jones, supra note 7, at 558.}

The fundamental differences underlying civil and common law judicial systems also presented serious obstacles to international judicial cooperation.\footnote{15. Service and Evidence Abroad (Under English Civil Procedure), 29 GEO. WASH. L. REV. 495, 535 (1961).} For example, some civil law countries consider service a judicial and sovereign act. Therefore, a foreigner's performance of a sovereign act within a civil law country may be contrary to that country's law.\footnote{16. Jones, supra note 7, at 537. For example, Switzerland sanctions the performance of a sovereign act within its borders and would probably object to a foreigner serving documents of a foreign court. \textit{Id.} It should be noted that civil law practice, like common law practice, varies from jurisdiction to jurisdiction and is not uniform. \textit{Id.} at 530 n.44.} As a result, a person not qualified to serve process under a foreign country's law could be sanctioned for attempting to serve process.\footnote{17. FED. R. Civ. P. 4 comments to 1963 amendments.}

After World War II, however, the need for international judicial assistance became critical to the United States for two reasons. First, a surge in international litigation took place due to the dislocation of persons and property during the war. Second, the United States became the leading industrial and creditor nation in the post-war period. This also caused a surge in international litigation affecting the United States.\footnote{18. COMMISSION ON INTERNATIONAL RULES OF JUDICIAL PROCEDURE-ESTABLISHMENT, S. REP. No. 2392, 85th Cong., 2d Sess. 2, \textit{reprinted in} 1958 U.S. CODE CONG. \& ADMIN. NEWS 5201; Jones, supra note 7, at 516.} The increase in international litigation demonstrated the inadequacy of existing judicial procedures to meet current international and U.S. needs.\footnote{19. Jones, supra note 7, at 558.} Ironically, while the characteristics of the federal system had prevented the United States from participating in any previous international conference, in 1958, the United States began to make cooperative efforts to establish uniform international judicial procedures because of the federal system.\footnote{20. Note, supra note 13, at 126. The American Bar Association, the Department of Justice, and the Harvard Research Institute in International Law initiated studies of international practices as early as 1936. At the end of World War II, the American Bar Association and several other bar organizations again returned to the problems of international practice. The American Bar Association recognized that an international agreement would be helpful in the administration of justice and recommended in 1950 "that the President appoint a governmental committee on international procedures to draft treaties and take other steps to improve existing practice." Jones, supra note 7, at 558-59.}

The United States abandoned arguments that the federal government could not constitutionally bind the individual states to reciprocity in treaty matters that concerned private
With 49 separate procedural jurisdictions in the United States . . . a unitary approach is the only solution. We can hardly expect [foreign governments] to look favorably on a program of separate negotiation with the representatives of each of the 48 States and with the representatives of the Federal Government. The problems must be solved through a single, unified set of discussions, the results of which will be effective for all of the 49 jurisdictions.\textsuperscript{21}

In 1958, Congress established a Commission on International Rules of Judicial Procedure to study international judicial assistance and the effect of international judicial procedures on U.S. judgments. After studying the current procedures, the Commission recommended improvements in existing law to the President.\textsuperscript{22} In response, President Johnson signed a joint resolution on December 30, 1963 enabling the United States to fully participate in the Hague Conference on Private International Law at its Tenth Session in October, 1964.\textsuperscript{23}

\section*{B. The Hague Service Convention}

In October, 1964, representatives from twenty-three nations met at the Hague Conference to discuss and form a multilateral convention for the international service of judicial and extrajudicial documents.\textsuperscript{24} On November 15, 1965, these representatives completed a draft of the Hague Service Convention. The United States\textsuperscript{25} and twenty-four other nations\textsuperscript{26} have since adopted and ratified this Convention.\textsuperscript{27}

\begin{footnotesize}
\begin{enumerate}
\item The United States interpreted Article VI of the Constitution to make treaty law effective on the states as well as the federal government. \textit{Id. at 562 n.153.}
\item \textit{Id.; see also} 1 B. Ristau, supra note 10, at 9-10; Note, \textit{supra} note 13, at 127. The Committee, along with the Project on International Procedure of the Parker School of Law, Columbia University, submitted proposals to amend the Federal Rules of Civil and Criminal Procedure and to comprehensively revise the Federal Judicial Code. The proposed amendments concerned the power of a court to render international judicial assistance. Smith, \textit{International Litigation Under the United States Code, 65 Colum. L. Rev.} 1015, 1016 (1965). While the Committee suggestions were unilateral and did not involve any international agreement, the Committee hoped that the changes in policy would set an example and stimulate foreign countries to similarly adjust their procedures. \textit{See S. Rep. No. 1580, 88th Cong., 2d Sess. 2, reprinted in} 1964 \textit{U.S. Code Cong. \& Admin. News} 3782, 3783; Note, \textit{supra} note 13, at 127.
\item At the same time, other American bar organizations were passing resolutions encouraging international judicial cooperation and participation in future Hague Conferences. The ABA adopted a resolution urging that the United States join the Hague Conference on Private International Law in 1963. \textit{The American Branch of the International Law Association, the American Association for the Comparative Study of Law, and the American Society of International Law subsequently adopted similar resolutions. Finally, the Executive Branch urged Congress to authorize U.S. participation in the Hague Convention. 1 B. Ristau, supra note 10, at 6.}
\item \textit{1 B. Ristau, supra note 10, at 6; Amram, \textit{The Proposed International Convention on the Service of Documents Abroad}, 51 A.B.A. J. 650 (1965); Note, \textit{supra} note 13, at 127-28.}
\item \textit{Note, \textit{supra} note 13, at 128.}
\item \textit{1 B. Ristau, supra note 10, at 6.}
\item 7 \textit{Martindale-Hubbell Law Directory} 1 (118th ed. 1986).
\end{enumerate}
\end{footnotesize}
The Hague Service Convention had several objectives. First, the Convention sought to establish a simple and reliable procedure for serving documents upon foreigners. Second, the Convention sought to create a method of service that would withstand attack in later suits to enforce foreign judgments. Third, the Convention sought to limit the potential for default judgments in cases where the defendant had no actual notice of the proceedings.

The Hague Service Convention is divided into three parts: Judicial Documents; Extrajudicial Documents; and General Clauses. The Convention applies "in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad" and the address of the person to be served is known. Under the Hague Service Convention, all requests for service of documents are to the "Central Authority" in the country where the person to be served is located. Each nation selects its own Central Authority. The Central Authority will arrange for service of documents if the method requested conforms with local law.

---


28. See supra notes 10-23 and accompanying text.

29. Id.; see also Hague Service Convention, supra note 5, at preamble.

30. Jones, supra note 7, at 538; see also REPORT OF THE SENATE COMMITTEE ON FOREIGN RELATIONS ON THE CONVENTION ON THE SERVICE ABROAD OF JUDICIAL AND EXTRAJUDICIAL DOCUMENTS, S. Exec. Rep. No. 6, 90th Cong., 1st Sess. 1 (1967) [hereinafter SENATE EXECUTIVE REPORT] (statement of Joe Barrett) ("[I]t gives to our people, whether litigating rights in State or Federal courts, a very useful tool in furthering a fair determination of their rights, where nationals of other contracting countries are involved, that would otherwise not be available to them.").

31. See supra notes 10-23 and accompanying text; see also SENATE EXECUTIVE REPORT, supra note 30, at 6 (statement of Richard Kearney) ("[I]t provides a high degree of assurance that if an American citizen in the United States is sued in the courts of a state party to this treaty, he will be notified of the suit in sufficient time to enable him to defend the action.").

32. The treaty does not define "Judicial Documents" and "Extrajudicial Documents." The difference is not significant, however, since both forms of documents receive identical treatment under the treaty. Hague Service Convention, supra note 5, art. 17.

33. Id. art. 1.

34. Id. The broad language of the Convention has been criticized. Countries differ in perceptions of what constitutes a civil or commercial matter, judicial or extrajudicial document, and when there is occasion to transmit documents for service abroad. See Note, Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters Under the Hague Convention, 3 REV. LITIGATION 493, 498 (1983).

The Convention has equal authority in both French and English (as promulgated), yet the translation of the word 'residence' in Article 15(b) also adds ambiguity to the issue of the Convention's applicability to foreign corporations. Note, supra note 13, at 136-37.

35. Hague Service Convention, supra note 5, art. 2.

36. Id. art. 5.
specifies any objection to the request. The local Central Authority may require the sender to write or translate the document into the official language of the receiving nation, before effecting service. Where a request for service complies with the requirements of the Hague Service Convention, the nation addressed, if a party to the Convention, must comply unless its sovereignty or security is threatened. Nations must use diplomatic channels to resolve any conflicts arising under the Convention's provisions.

Articles 8, 9, and 10 of the Hague Service Convention provide methods of service in addition to the Central Authority. Under these articles, service may be effected directly through a diplomatic or consular agent, through methods accepted by the local law of the addressed country, and by mail. Any country may object to these methods of service by notifying the Netherlands Ministry of Foreign Affairs, limiting service to transmittal of documents through the country's authorized Central Authority. Through these articles, the Convention establishes a predictable and reliable method of service that can be supplemented by subsequent agreement or direct communication between the signatory states.

Articles 15 and 16 of the Hague Service Convention address default judgments. When a party fails to respond to service properly effected under the Convention, a default judgment may be entered against the party. Under the Convention, a defendant will be in default only if: 1) service of process was delivered in a manner allowing him sufficient time to defend; and 2) service of process was delivered in compliance with the Convention. A defendant can have a default judgment set aside even after the time for appealing the judgment has passed if the defendant can show that: 1) he had no knowledge of the document to defend or appeal; and 2) he has a prima facie defense to the action on the merits.

The Hague Service Convention strives to give prompt notice to persons served abroad by providing a simple, predictable, and uniform
procedure of service that expedites delivery of documents. The liberal procedural U.S. statutes provide many ways to effectuate service within the United States. However, the American Bar Association wanted a simple and reliable service procedure that would result in enforceable foreign judgments. Moreover, the United States long objected to certain European service methods that failed to provide U.S. defendants actual notice, resulting in default judgments in favor of European plaintiffs. While such judgments may be readily set aside for the limited time allotted for an appeal, a default judgment may be difficult or impossible to re-open. The Hague Service Convention diminishes the possibility of an unjust default judgment. Furthermore, a judge may set aside a default judgment under the provisions of the Hague Service Convention.

C. FEDERAL RULE OF CIVIL PROCEDURE 4 AND DUE PROCESS

Federal Rule of Civil Procedure 4 governs the adequacy and form of service of process in United States federal courts. Rule 4 supplements the Constitutional requirement that the form of service satisfy due process.

Federal Rule 4 sets forth the particular manner and circumstances of service of process. Any person eighteen years of age or older may serve a summons and complaint. A defendant may be served by mail or by any method authorized by the state where the district court is located. The defendant may be served personally, through an authorized agent, or through an officer if the defendant is

49. Id. at proclamation preamble.
50. COMMISION ON INTERNATIONAL RULES OF JUDICIAL PROCEDE-ESTABLISHMENT, supra note 18, reprinted in 1958 U.S. CODE CONG. & ADMIN. NEWS, at 5202.
51. Note, supra note 13, at 130.
Notification au parquet has been particularly notorious in this regard. Under this system a European plaintiff may serve process on a local European official. Notification must be sent to the defendant, but the service is valid even if it never reaches him. Thus, a European plaintiff can win a default judgment against an American defendant who had no notice that an action had been instituted against him. Id. at 129-30.
52. Id.
53. Hague Service Convention, supra note 5, arts. 15, 16; see also supra notes 46-48 and accompanying text.
54. See supra notes 46-48 and accompanying text.
55. See infra notes 57-74 and accompanying text.
56. See infra notes 76-79 and accompanying text.
57. FED. R. CIV. P. 4(c).
58. Id. 4(c)(2)(C)(ii).
59. Id. 4(c)(2)(C)(i).
60. Id. 4(d)(l).
61. Id.
a corporation. While service is generally limited to the state's territorial borders where the district court sits, a U.S. statute or Federal Rule 4 may extend the area where a defendant may be served.

In 1964, Congress amended Federal Rule 4 by adding section 4(i). This amendment was part of a "sweeping revision of federal laws dealing with international judicial assistance." Federal Rule 4(i) prescribes rapid and inexpensive methods of service abroad acceptable in United States federal courts. For service abroad to be effectuated through Federal Rule 4(i), federal or state law must first provide for service beyond the territorial limits of the state where the district court is located. If federal or state law authorizes service abroad, then service under Federal Rule 4(i) can take place in one of several ways: 1) in a manner permissible in the courts of general jurisdiction of a foreign country, 2) by direction of the foreign country in response to a request for assistance if the form of service is reasonably calculated to provide actual notice, 3) by personal service to an individual or to a corporation's officer or agent, 4) by mail requiring a return receipt, or 5) in any manner directed by the district court's order.

The Advisory Committee notes to the 1964 amendments state that:

One of the purposes of subdivision (i) is to allow accommodation to the policies and procedures of the foreign country. It is emphasized, however, that the attitudes of foreign countries vary considerably and that the question of recognition of United States judgments abroad is complex. Accordingly, if enforcement is to be sought in the country of service, the foreign law should be examined before a choice is made among the methods of service allowed by subdivision (i).

Although the drafters of the Federal Rules recognized the importance of international considerations for enforceable judgments abroad, Federal Rule 4(i) only supplements the other provisions of Federal Rule 4,

---

62. Id. 4(d)(3). Special provisions provide the manner of service upon the United States, an officer or agency of the United States, any state or municipal corporation, or any governmental organization which may be protected by sovereign immunity. Id. 4(d)(4)-(6). Service upon an infant or incompetent is governed by local state rules. Id. 4(d)(2).
63. Id. 4(e). Federal Rule 4 also provides that the summons shall be issued by the court clerk. Id. 4(a). The court clerk shall indicate on the summons the date the defendant is to appear in court. Id. 4(b). Proof of service must be filed with the court by the person serving process. Id. 4(g). Such proof of service can be amended by leave of the court where justice requires. Id. 4(h). In most cases, service must be effected within 120 days after the complaint has been filed. Id. 4(i).
64. 1 B. RISTAU, supra note 10, at 2.
65. FED. R. CIV. P. 4(i)(1), 4(e).
66. Id. 4(i)(1)(A).
67. Id. 4(i)(1)(B).
68. Id. 4(i)(1)(C).
69. Id. 4(i)(1)(D).
70. Id. 4(i)(1)(E).
71. Id. 4(i) advisory committee's note (1963 amendments).
so that service on a foreign defendant can occur under any provision of Federal Rule 4.\textsuperscript{72} Under Federal Rule 4(e), state law may dictate the manner and circumstance of service on a foreign defendant.\textsuperscript{73} Federal Rule 4(d) permits service on a foreign defendant through the defendant's agent.\textsuperscript{74} Federal Rule 4 provides flexibility in serving process on foreign defendants; however, the effectiveness of the service depends on the enforceability of the resulting judgment.\textsuperscript{75}

In addition to the requirements of Federal Rule 4, two further requirements must be met before a United States court has personal jurisdiction over a controversy. First, the defendant must have sufficient minimum contacts with the forum state. The minimum contacts requirement ensures that requiring the defendant to come to the forum state to defend the suit is just and reasonable.\textsuperscript{76} Second, service of process must be reasonably calculated to give actual notice to the defendant.\textsuperscript{77} Aliens and citizens are entitled to the protections of the Due Process Clause.\textsuperscript{78} To withstand an attack on a default judgment, the plaintiff must comply with constitutional due process requirements.\textsuperscript{79}

D. FEDERAL RULE OF CIVIL PROCEDURE 4 AND THE HAGUE SERVICE CONVENTION

Where the two conflict, the Hague Service Convention supersedes state law.\textsuperscript{80} Similarly, if the Hague Service Convention conflicts with Federal Rule 4, the Convention supersedes the Federal Rule.\textsuperscript{81} However, when the terms of Federal Rule 4 neither conflict or contradict the Hague Service Convention, Federal Rule 4 supplements the Con-


\textsuperscript{73} Note, A Practical Guide to Service of U.S. Process Abroad, 14 INT'L LAW. 637, 639 (1980).

\textsuperscript{74} See supra note 72.

\textsuperscript{75} See Jones, supra note 7, at 538.

\textsuperscript{76} Kulko v. Superior Court, 436 U.S. 84, 91 (1977); International Shoe Co. v. Washington, 326 U.S. 310 (1945).

\textsuperscript{77} Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306, 319 (1950) (trustee sought to settle all accounts against all future claimants; the Supreme Court stated, "[t]he statutory notice to known beneficiaries is inadequate, not because in fact it fails to reach everyone, but because under the circumstances it is not reasonably calculated to reach those who could easily be informed by other means at hand"); Milliken v. Meyer, 311 U.S. 457, 463 (1940).

\textsuperscript{78} United States v. Pink, 315 U.S. 203, 228 (1942) ("To be sure, aliens as well as citizens are entitled to the protection of the Fifth Amendment.").

\textsuperscript{79} Note, supra note 34, at 517; see also Jim Fox Enter. v. Air France, 705 F. 2d 738 (5th Cir. 1983); Arrowsmith v. United Press Int'l, 320 F.2d 219 (2d Cir. 1963) (Federal Rule 4 is a procedural method for acquiring, but not for conferring, personal jurisdiction).

\textsuperscript{80} See infra notes 97-98 and accompanying text.

\textsuperscript{81} See infra notes 87-90 and accompanying text.
vention's methods of serving process. For example, in *Tamari v. Bache & Co. (Lebanon) S.A.L.*, the district court upheld personal service over a French resident in France because France had not objected to personal service under article 10 of the Convention. Citing *Shoei Kako v. Superior Court*, the district court stated in dictum that the Hague Service Convention is not meant to abrogate the provisions of Federal Rule 4 when the two do not conflict.

Because the Hague Service Convention supersedes inconsistent state laws, service may be effected in a manner consistent with the Hague Service Convention and due process requirements, even if state law normally would disallow the same manner of service.

A signatory state of the Hague Service Convention can object to supplementary methods of service otherwise permissible under Convention articles 8 and 10. Where a foreign country objects to supplementary forms of service, the Hague Service Convention supersedes Federal Rule 4. Therefore, even if service were proper under Federal Rule 4, and Hague Service Convention and due process requirements were met, the service would be ineffective if the foreign country had previously objected to these supplementary forms of service. Under these circumstances, service would have to be effected through the Central Authority provisions of article 2 of the Hague Service Convention. In *Rivers v. Stihl, Inc.*, West Germany objected under the Hague Service Convention to service within its borders by any method other than through its Minister of Justice. The Alabama Supreme Court held that service upon a West German defendant by certified mail under Federal Rule 4(i)(4) was ineffective because of the limitations requested by West Germany.

Similarly, in *Kadota v. Hoso-gai*, the Arizona Supreme Court quashed personal service on a Japanese defendant in Japan under Federal Rule 4(e) because the Hague Service Convention between the United States and Japan spe-

---

82. See infra notes 83-85 and accompanying text.
86. Note, supra note 34, at 504. While Federal Rule 4(e) permits state law to dictate methods of service in federal court actions, a convention qualifies as a treaty under the Supremacy Clause of the United States Constitution and therefore supersedes any conflicting state law. American Trust Co. v. Smyth, 247 F.2d 149, 153 (9th Cir. 1957); U.S. Const. art. VI, cl. 2.
87. 434 So. 2d 766 (Ala. 1983).
88. Id. at 769-70.
specifically prohibited the form of personal service used.  

E. DOMESTIC SUBSIDIARY AS A FOREIGN CORPORATION’S “AGENT”

Under Federal Rule 4(d), a foreign corporation may be served through its subsidiary when the subsidiary acts as an agent of the parent corporation. United States courts have developed a common law agency rule that renders a parent corporation “present” in a state for personal jurisdiction purposes if the parent corporation is sufficiently related to its subsidiary. The parent corporation’s deemed presence in the forum for personal jurisdiction purposes has led the federal courts to apply the same principles to service of process on a parent corporation. As a result, federal courts, using common law agency principles, will permit service of process on the parent under Federal Rule 4(d)(3) through service upon its subsidiary.

The United States Supreme Court established that a foreign corporation can be subject to personal jurisdiction when the corporation is “present” within a state. A foreign corporation is “present” in a state for personal jurisdiction purposes when the corporation has a sufficient number of minimum contacts with that state. In International Shoe v. Washington, the Supreme Court held that solicitation of business by a foreign corporation’s salesman in a state constituted sufficient minimum contacts to subject the corporation to the state’s in personam jurisdiction. The Court stated that the determinative factor in a minimum contacts analysis should be whether the foreign corporation’s activities are extensive enough to make personal jurisdiction over the defendant consistent with “fair play and substantial justice.”

The mere presence of a wholly-owned subsidiary in a state is insufficient to establish an agency relationship between the parent and subsidiary for service of process purposes. A parent corporation is

91. Federal Rule 4(d)(3) allows service upon an agent “authorized by appointment or by law.” Federal Rule 4(c)(2)(C)(i) allows service “pursuant to the law of the state in which the district court is held,” and Federal Rule 4(e) allows service upon a corporation not found within the state according to the law of that state. 4 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1101, at 383-84, § 1114, at 469, § 1116, at 473, 478-80 (1969).
92. See infra notes 94-96 and accompanying text.
93. See infra notes 97-102 and accompanying text.
94. 326 U.S. 310 (1945).
95. Id. at 320.
96. Id. at 316.
97. Cannon Mfg. Co. v. Cudahy Packing Co., 267 U.S. 333 (1925) (parent corporation not served through its subsidiary where subsidiary had separate business); see also Jones v.
insulated from service through its subsidiary in the same way a parent
corporation is insulated from the liabilities of its subsidiary. However,
when the parent corporation exercises sufficient control over its
subsidiary so that the subsidiary no longer exists independently, but
operates merely as a department of the parent corporation, courts will
disregard the insulation.

The test to determine whether an agency relationship exists
between a parent corporation and its subsidiary is complex. Courts
have inconsistently described the degree of control by the parent cor-
poration over its subsidiary sufficient to establish an "agency" rela-
tionship. In particular, courts have ruled differently on very similar
facts regarding whether a U.S. subsidiary is an agent of its foreign
parent for purposes of service of process.

---

Volkswagen of America, Inc., 82 F.R.D. 334, 335 (E.D. Tenn. 1978) (subsidiary not neces-
sarily parent corporation’s agent for service of process); Comment, Jurisdiction over Parent

98. Restatement (Second) of Agency § 14M comment a (1957).
99. In Ex parte Volkswagenwerk Aktiengesellschaft, 443 So. 2d 880 (Ala. 1983), the
court stated,
Alternatively, the party seeking to have service on the subsidiary and the parent
may show that [T]he parent corporation has complete control over the subsidiary,
conducting its business and creating its policies ... (or the subsidiary) is a mere
adjunct and instrumentality of the parent ... (or the) subsidiary corporation is
merely a 'dummy' by means of which the parent corporation does business in the
state ...'

Id. at 884 (citation omitted). The inquiry regarding the agency of a subsidiary is essentially
1977).

100. The leading analysis in the area provides that:

The statement that the insulation will be broken down when the subsidiary is an
"agency", "adjunct", "instrumentality", "alter ego", "tool", "corporate double",
or "dummy" of the parent is not helpful. These concepts themselves need defining.
At best they merely state results. And the results are significant only in light of the
facts. The conclusion that the parent will be held liable only when the use of the
subsidiary is a "cloak for fraud", or is "inequitable", or "unjust", or "unconsciona-
ble", also falls short of describing the standard of conduct which the facts of most
of the cases permit. The facts deal with the manner and method of organization
and operation.

Douglas & Shanks, Insulation from Liability through Subsidiary Corporations, 39 Yale
L.J. 193, 195 (1929). The authors cite more than eighteen factors that courts take into
consideration as "guideposts" when determining agency, and distinguish cases brought on
tort and contract causes of action. Id. at 195 n.8.

101. In the following cases, courts have found insufficient evidence of an "agency" rela-
tionship and have quashed service of process: Lasky v. Continental Products Corp., 97
F.R.D. 716 (E.D. Pa. 1983); Richardson v. Volkswagenwerk A.G., 552 F.Supp. 73 (W.D.
Mo. 1982); Jones v. Volkswagen of America, 82 F.R.D. 334, 335 (E.D. Tenn. 1978); Stoehr

In the following cases, courts have found sufficient evidence of an "agency" relationship
1158 (C.D. Cal. 1983); Top Form Mills, Inc. v. Sociedad Nationale Industria Applicazioni
No case, however, had addressed the applicability of the Hague Service Convention when a parent corporation is "present" in a state through its agent. The district court in *Lamb v. Volkswagenwerk Aktiengesellschaft* was the first to address this issue.102

III. *LAMB V. VOLKSWAGENWERK AKTIENGESELLSCHAFT*

In *Lamb v. Volkswagenwerk Aktiengesellschaft*, defendant Volkswagenwerk Aktiengesellschaft ("VWAG"), a West German corporation, moved for the court to reconsider its order of October 23, 1984. The order denied VWAG's motions to dismiss, to quash process, and to quash service of process.103 Defendant VWAG "specially appeared"104 to challenge the court's personal jurisdiction over it.105 The court granted VWAG's request for reconsideration of the order.106

VWAG challenged the court's jurisdiction on two theories. First, VWAG asserted that the Hague Service Convention controlled the case. The plaintiff, Lamb, had served C.T. Systems, the appointed agent of Volkswagen of America ("VWoA"). VWoA was a subsidiary of VWAG. Because West Germany limits the application of the Hague Service Convention and allows service only through its Central Authority,107 service of process on C.T. Systems did not comply with


102. *See supra* note 4 and accompanying text.
104. On the subject of special appearance, Wright & Miller state: Prior to the federal rules, the practice was to appear specially for the purpose of objecting by motion to the jurisdiction of the court, the venue of the action, or an insufficiency of process or service of process; a failure to follow the correct procedure for doing so often resulted in a waiver of the defense. There no longer is any necessity for appearing specially to challenge personal jurisdiction, venue, or service of process. This is made clear by the absence in Rule 12 of any reference to either a general or special appearance and the express provisions in subdivision (b) to the effect that every defense may be made either in the responsive pleading or by motion, and that no defense or objection is waived by being joined with any other defense or objection in a responsive pleading or a motion. Thus, technical distinctions between general and special appearances have been abolished and no end is accomplished by retaining the terms in federal practice. However, there is no penalty if the pleader, mindful of old ways, undertakes a 'special appearance', although the label has no legal significance.
106. *Id.* at 96.
107. *Id.*
the Hague Service Convention.108 Second, VWAG argued that even if the Hague Service Convention was not controlling, and common law agency concepts were applicable, VWoA was not an "agent" of VWAG for purposes of service of process on VWAG.109

The Lamb court emphasized that the Hague Convention applied only to cases in which documents are transmitted abroad.110 The court noted that the Federal Republic of Germany objected to alternative methods of service specified in article 10.111 The court agreed that service of process on VWAG in the Federal Republic of Germany would have to be through the Government's authorized Central Authority. Distinguishing this case, however, the court held the provisions of the Hague Service Convention inapplicable under common law agency theory when service of process is accomplished within the United States.112 The court stated:

The purpose of The Hague Convention is to simplify the procedure for serving judicial documents abroad to ensure that the party to be served in the foreign country will receive notice in timely fashion. There is nowhere among the provisions of The Hague Convention any indication that it is to control attempts to serve process on foreign corporations or agents of foreign corporations within the State of origin. To ask a Court to find such an indication within the meaning of the Convention's language is to ask that a new treaty be fashioned by the Court.113

In analyzing the validity of service of process under a common law agency theory, the court stated that the inquiry was a factual matter that the plaintiff had to establish.114

The parties seeking to prove proper service must at least show that the parent exercises SUCH A DEGREE OF CONTROL OVER THE SUBSIDIARY THAT THE ACTIVITIES OF THE SUBSIDIARY ARE THE ACTIVITIES OF THE PARENT or show THAT THE SUBSIDIARY'S ACTIVITIES ARE CONTROLLED BY THE PARENT TO THE EXTENT THAT THE SUBSIDIARY IS ONLY A DEPARTMENT OF THE PARENT.115

The court applied a common law agency analysis and found that VWoA was in fact VWAG's agent because VWAG maintained extensive authority over VWoA's day-to-day operations.116 The court cited:

108. See infra note 129.

109. Lamb, 104 F.R.D. at 96. VWAG acknowledged that C.T. Systems was the agent of VWoA and that if VWoA was the agent of VWAG, service upon C.T. Systems would constitute valid service upon VWAG. Id. at 98.

110. "By its terms, the Hague Convention is applicable only to attempts to serve process in foreign countries. Both the introduction and Article I refer to the transmission of judicial documents, in civil matters, for service ABROAD." Id. at 97 (emphasis in original).

111. Id.

112. Id.

113. Id.

114. Id. at 98.

115. Id. (emphasis in original) (quoting Richardson v. Volkswagenwerk, A.G., 522 F. Supp. 73, 79 (W.D. Mo. 1982)).

116. Id. at 99-100. In determining that VWoA was an agent for VWAG, the court cited:
emphasized that the parent-subsidiary relationship made it reasonably certain that service on VWoA would provide adequate notice to VWAG, the parent corporation.\textsuperscript{117} Based on the factual relationship between VWoA and VWAG, the court upheld service on VWoA as conferring jurisdiction over VWAG.

IV. ANALYSIS

\textit{Lamb} presents three fundamental problems. First, the opinion interpreted an international treaty without regard to the treaty's purposes and policies.\textsuperscript{118} Second, the decision erroneously circumvented a duly legislated treaty by applying a common law agency theory.\textsuperscript{119} Finally, the decision jeopardizes efforts to enforce U.S. judgments abroad.\textsuperscript{120}

A. INTERPRETATION AND APPLICATION OF THE HAGUE SERVICE CONVENTION

In determining the applicability of the Hague Service Convention for service of process abroad, a court should focus on the Convention's ordinary meaning and purpose. A court should not automatically focus on whether service is possible by a method other than that provided for under the Hague Service Convention.\textsuperscript{121} The Restatement (Second) of Foreign Relations Law of the United States states that, "[t]he primary object of interpretation is to ascertain the meaning intended by the parties for the terms in which the agreement is expressed, having regard to the context in which they occur and the circumstances under which the agreement is made."\textsuperscript{122}

The Hague Service Convention was a significant step in encouraging international judicial assistance and in fostering respect and tolerance for foreign procedural systems. Over 110 years of negotiating

---

\textsuperscript{117} See infra notes 121-31 and accompanying text.

\textsuperscript{118} See infra notes 132-46 and accompanying text.

\textsuperscript{119} See infra notes 147-50 and accompanying text.


\textsuperscript{121} \textit{Restatement (Second) Foreign Relations Law of the United States} § 146 (1965); see also \textit{Restatement of the Foreign Relations Law of the United States (Revised)} § 325 (Tent. Final Draft 1985).
and compromise were necessary to draft the current agreement.\textsuperscript{123} The Convention's specific objective was to establish a uniform, predictable, and simple form of service that all nations would be willing to honor.\textsuperscript{124} To effectuate this objective, courts must enforce the Convention's spirit and objectives rather than a narrow and overly-literal interpretation.\textsuperscript{125}

Even if application of the Hague Service Convention is not mandatory, additional means of interpretation, such as rules of construction, necessitate that common law agency principles not supplement the Convention.\textsuperscript{126} Two rules of treaty construction support the application of the Hague Service Convention in circumstances similar to those found in \textit{Lamb}.

First, the maxim "expressio unuis est exclusio alterius" asserts that if exceptions to a treaty are specifically set forth, the treaty is intended to exclude other exceptions.\textsuperscript{127} Articles 8 and 10 of the Hague Service Convention provide for several methods of service unless a country specifically objects, limiting process to service through its Central Authority.\textsuperscript{128} In \textit{Lamb}, the Federal Republic of Germany objected to the liberal provisions of articles 8 and 10.\textsuperscript{129}

\begin{itemize}
\item \textsuperscript{123} See \textit{supra} notes 10-23 and accompanying text.
\item \textsuperscript{124} See \textit{supra} notes 28-31 and accompanying text.
\item \textsuperscript{125} Note, \textit{supra} note 13, at 141-42.
\item \textsuperscript{126} Cook v. United States, 288 U.S. 102, 112 (1933) ("In construing the Treaty its history should be consulted."); Vienna Convention, \textit{supra} note 121, art. 32 ("Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion . . . ."); see also \textit{supra} note 122 and accompanying text.
\item \textsuperscript{127} "A maxim of statutory interpretation meaning that the expression of one thing is the exclusion of another. . . . Under this maxim, if a statute specifies one exception to a general rule or assumes to specify the effects of a certain provision, other exceptions of effects are excluded." BLACK'S LAW DICTIONARY 521 (5th ed. 1979); see also Comment, \textit{The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters: The Exclusive and Mandatory Procedures for Discovery Abroad}, 132 U. PA. L. REV. 1461, 1481-82 (1984).
\item \textsuperscript{128} See \textit{supra} notes 32-45 and accompanying text.
\item \textsuperscript{129} In reference to the Hague Service Convention between the United States and Germany, the Fourth Circuit in Vorhees v. Fisher & Krecke, 697 F.2d 574 (4th Cir. 1983) stated:

The terms of the treaty provide that each signatory country may reject certain general provisions and append specific requirements for valid service of process within that country. In signing the treaty, West Germany specified that judicial documents be forwarded through one of various designated central authorities and that such documents be written in, or translated into, the German language.

\textit{Id.} at 575.

Not only has the German government specified its desire for limited service of process to the Conference, it has reminded the United States specifically of its objections:

Under German legal interpretation, German sovereignty is violated in cases where foreign judicial documents are served directly by mail within the Federal Republic of Germany. By such direct service, an act of sovereignty is conducted without any control by German authorities on the territory of the Federal Republic of Germany. This is not admissible under German laws. Under these laws, the Ger-
Germany's request for exclusion from the supplementary forms of service listed in articles 8 and 10 make it probable that Germany also intended to exclude service through a subsidiary based on common law agency principles.

A second rule of treaty construction provides that a treaty shall not be interpreted in a manner that renders it superfluous. The district court's interpretation in *Lamb*, however, renders the Hague Service Convention superfluous by limiting the Convention to service abroad. Under *Lamb*, state courts could allow any method of service (such as service on the secretary of state and mailing to the defendant), thereby circumventing the Hague Service Convention. Thus, the Convention would merely provide a more time-consuming and difficult means of serving foreign defendants.

The negotiations, advisory notes, objectives, and rules of treaty interpretation should have led the *Lamb* court to conclude that the Hague Service Convention is not merely a supplementary method of effecting valid service of process. The objectives of the Hague Service Convention can be fulfilled only if applied in all cases where a foreign defendant is located abroad.

Man authorities must be in a position to examine whether the foreign request for service is in compliance with the legal provisions established for this purpose and whether it is in compliance with the ordre public of the Federal Republic of Germany. This is the reason why the Federal Republic of Germany has, when depositing the instrument of ratification to The Hague Conference of November 15, 1965, concerning the service abroad of judicial and extrajudicial documents in civil or commercial matters, objected in accordance with Article 21, Paragraph 2, letter 'a' of the Convention to the application of the channels of transmission as stipulated in article 10 of the Convention.

The Federal Government also considers service conducted under the laws of individual United States by persons other than judicial officers to be judicial service. It thereby follows the legal interpretation expressed by the Department of Justice in its Memo No. 386 (Revision 2, of June 15, 1977, at 13 n.4). Under this interpretation, such persons are to be considered "authority or judicial officers competent under the law of the State in which the documents originate" in the sense of Article 3 of The Hague Convention on the Service of Documents.

Since the Hague Convention on the Service of Documents has gone into effect between the United States of America and the Federal Republic of Germany on June 26, 1979, the Federal Government would appreciate it if service of documents originating from American judicial proceedings to persons within the Federal Republic of Germany would be conducted in compliance with this convention only and if the courts and attorneys involved could be informed accordingly.

B. AGENCY CONCEPTS AS SUPPLEMENTING THE HAGUE SERVICE CONVENTION

Three problems arise under the Hague Service Convention when valid service on a foreign corporation is effected through service upon a domestic subsidiary. First, civil law jurisdictions traditionally have been hostile to common law methods of service of process. Civil law jurisdictions may not enforce judgments where service of process was effected through the use of common law agency principles. Second, foreign countries may supplement their service procedures so that U.S. defendants will not receive due process. Finally, the nature of common law agency and its case-by-case analysis has produced irreconcilable results and unpredictability.

The Hague Service Convention resulted from several decades of negotiation among civil and common law nations. When service of process does not comply with a country's law, it may violate that country's concepts of sovereignty and prevent enforcement of an otherwise valid judgment. The unwillingness of U.S. courts to recognize concerns of foreign judicial systems could cause a deterioration in judicial assistance. If the United States refuses to honor the procedures required by foreign courts, those courts will be unwilling to defer to U.S. judicial procedure requirements. Compliance with the Hague Service Convention is simple; "exceptions," therefore, are unnecessary and potentially harmful to international judicial assistance. International concerns require compliance with the Hague Service Convention, even though a foreign parent corporation may receive "actual" notice when its subsidiary is served.

Negative foreign response to service on a foreign parent corporation directly through its U.S. subsidiary is another concern. The need for judicial assistance and compliance with a uniform procedure is reciprocal. If U.S. courts allow supplementary forms of service, civil law countries may return to procedures that do not meet U.S. due process requirements. Service effected in a manner outside the

132. See infra notes 135-37 and accompanying text.
133. See infra notes 138-43 and accompanying text.
134. See infra notes 144-46 and accompanying text.
135. See supra notes 10-23 and accompanying text.
136. See supra notes 15-17 and accompanying text.
137. Note, supra note 73, at 638.
138. Jones, supra note 7, at 516.
139. An example of a foreign method of service that would not meet the U.S. due process requirement is the French method of service au parquet. Under this French concept, if suit was brought in a French court against a non-resident defendant, service of the initial process could be made upon the defendant by leaving a copy for him at the 'parquet,' the office of the local Procureur-General. An effort was supposed to be made to give the defendant actual notice through diplomatic channels. However, this was, in practice, a fiction, because failure to notify did not invalidate the
Hague Service Convention abrogates the protective default provisions of articles 15 and 16. For example, countries could adopt procedures that fail to give the defendant actual notice of an action pending against him. A court could enter a judgment against a defendant and attach property without giving the defendant an opportunity to challenge the merits of the cause of action. Hague Service Convention articles 15 and 16 protect the defendant from this possibility. One British commentator has recognized that the phrase "service abroad" is ambiguous, presenting the danger that courts could interpret the phrase in such a way that there would be no occasion to transmit documents for service abroad. The commentator wrote: "[i]t is to be hoped that those countries which ratified this Convention will apply it in the liberal spirit in which it is intended: ... in directing its provisions against the hardship and injustice which it seeks to relieve." Lamb invites countries to frustrate the objectives of the Hague Service Convention by circumventing the Convention and allowing service on a foreign parent corporation through its domestic subsidiary.

Finally, the fictional nature of the common law agency doctrine makes it inappropriate for application in international litigation. United States procedural law should be predictable and uniform, particularly when foreign litigants must interpret it. The agency relationship "test" is very complex and U.S. courts have applied the test unevenly. Thus, foreign corporations cannot predict the consequences of their conduct under the agency test. In fact, courts have split on the question of whether Volkswagen of America is Volkswagen of America service. Further, the statutory period for the defendant's answer was so short that actual notice through formal diplomatic channels was physically impossible before the date when the plaintiff would take judgment by default. It has even happened that the statutory time for appeal from the default judgment will have expired before the defendant has any actual notice of the commencement of the action.

Amram, Revolutionary Change in Service of Process Abroad in French Civil Procedure, 2 Int'l Law. 650 (1968).

140. See supra notes 46-48 and accompanying text.
141. See supra note 139.
143. Id. at 539.
144. See supra notes 91-102 and accompanying text. The courts have also split on whether federal or state standards apply in determining whether an agency relationship is established. Compare Arrowsmith v. United Press International, 320 F.2d 219 (2d Cir. 1963) (en banc) ("There thus exists an overwhelming consensus that the amenability of a foreign corporation to suit in a federal court in a diversity action is determined in accordance with the law of the state where the court sits, with 'federal law' entering the picture only for the purpose of deciding whether a state's assertion of jurisdiction contravenes a constitutional guarantee.") with Washington v. Norton Mfg. Inc., 588 F.2d 441 (5th Cir. 1979), cert. denied, 442 U.S. 942 (1979) and Jim Fox Enter. Inc. v. Air France, 705 F.2d 738, 741 n.8 (1983) (federal, not state, standards define whether a subsidiary is an agent under Federal Rule 4(d)).
145. See supra note 101.
genwerk Aktiengesellschaft's agent under common law agency rules on the same facts. Courts have reached different conclusions as to VWoA's agency for service of process or personal jurisdiction over VWAG even though VWAG operates identically with each of its American subsidiaries. United States courts should uniformly and predictably apply procedural rules, especially when issues of international comity and mutual judicial assistance are involved. Foreign courts will not enforce judgments that seem based on arbitrary rules.

C. ENFORCEMENT OF U.S. JUDGMENTS ABROAD

A foreign court may prevent the enforcement of a U.S. judgment abroad when service of process in the original action did not comply with the law of that country. When a foreign defendant has been served in the United States in a manner not permitted by the Hague Service Convention, the resulting judgment may be unenforceable abroad.

The Hague Convention was drafted as a contract. All parties agreed to comply with a uniform international procedure for judicial assistance so long as the procedure was not offensive to its local government and would be upheld in subsequent challenges to its jurisdiction. When service is effected in a manner offensive to a foreign government's sovereignty, the resulting judgment will not be enforced in that country. Lamb, by circumventing the provisions of the Hague Service Convention through the U.S. common law concept of agency, encourages a form of service that may lead a foreign court to disregard a U.S. judgment. Moreover, Lamb encourages other courts to create local exceptions by narrowly construing the Hague Service Convention to apply only to service abroad. This construction will lead fewer countries to accept U.S. service of process methods, even where those methods meet the requirements of the Hague Service Convention.

V. CONCLUSION

Lamb's supplementation of the Hague Service Convention with common law agency principles unnecessarily complicates service on

146. The following are cases in which the agency of the subsidiary was upheld: Lamb v. Volkswagenwerk Aktiengesellschaft, 104 F.R.D. 95 (S.D. Fla. 1985); Ex parte Volkswagenwerk Aktiengesellschaft, 443 So. 2d 880 (Ala. 1983); Crose v. Volkswagenwerk Aktiengesellschaft, 88 Wash. 2d 50, 558 P.2d 764 (1977).

147. Jones, supra note 7, at 537.

148. See supra notes 24-54 and accompanying text.

149. Note, supra note 13, at 130; see also supra notes 15-17 and accompanying text.
foreign defendants. The decision frustrates the simplicity, predictability, uniformity, and cooperative spirit the Hague Service Convention sought to achieve. *Lamb* represents a departure from efforts to unify international private law procedures. The bench, the bar, and the public must cooperate to maintain a mutually beneficial system of international procedure.

*Gloria M. Hoyal*