

Article

***No Sirve* Continued: Mexico Modifies Its Declarations to the Hague Service Convention**

By Charles B. Campbell*

In the Winter 2010 issue of the *Minnesota Journal of International Law*, I published an article concerning service of process under the Hague Service Convention¹ on parties in Mexico entitled *No Sirve: The Invalidity of Service of Process Abroad by Mail or Private Process Server on Parties in Mexico Under the Hague Service Convention*.² Reviewing the original Spanish text of Mexico's declarations to the Convention,³ and noting an

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¹ 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 [hereinafter Hague Service Convention].

² Charles B. Campbell, *No Sirve: The Invalidity of Service of Process Abroad by Mail or Private Process Server on Parties in Mexico Under the Hague Service Convention*, [19 MINN. J. INT'L L. 107](#) (2010) [hereinafter *No Sirve*].

³ *Id.* at 108, 120–24; *see* Accession (with Declarations) of Mexico to the Hague Service Convention, 2117 U.N.T.S. 318 (2000) [hereinafter Accession (with Declarations)] (Spanish text of 1999 declarations, followed by English and French translations); Decreto Promulgatorio del Convenio sobre la Notificación o Traslado en el Extranjero de Documentos Judiciales o Extrajudiciales en Materia Civil o Comercial [Decree promulgating the Hague Service Convention], [Diario Oficial de la Federación \[D.O.\] 7, 16 de Febrero de 2001](#) [hereinafter Decreto Promulgatorio] (Spanish text of 1999 declarations, followed by Spanish translation of Convention). All copies of the *Diario Oficial de la Federación* cited herein are available online at the website of the Secretaría de Gobernación, <http://dof.gob.mx/>.

error in the English “courtesy translation” of those declarations, I concluded that service of process through “alternative” methods provided in Article 10 of the Convention, such as by mail or private process server, was invalid with respect to Mexico and should not be used by courts in the United States when serving parties in Mexico.⁴ The article has been well received in several recent federal and state cases.⁵

In the article, I noted that Mexico had already begun the process of reviewing and revising its declarations, but that it would be some time before the Executive presented the modified declarations to the Mexican Senate for approval.⁶ On March 11, 2010, the Executive submitted the revised declarations to the Senate.⁷ On De-

⁴ No Sirve, *supra* note 2, at 109, 124–27, 134–36.

⁵ See *Mitchell v. Volkswagen Grp. of Am., Inc.*, No. 1:10-CV-944-TCB, 2010 WL 4910115, at *6, n.3 (N.D. Ga. Oct. 4, 2010); *OGM, Inc. v. Televisa S.A. de C.V.*, No. CV 08-5742-JFW (JCx), 2009 WL 1025971, at *2–3 (C.D. Cal. Apr. 15, 2009); *Cardona v. Creamer*, 235 P.3d 1026, 1029 (Ariz. 2010); *In re Vanessa Q.*, 114 Cal. Rptr. 3d 294, 298 (Ct. App. 2010); *Enquip Techs. Grp., Inc. v. Tycon Technoglass, S.r.l.*, No. 2008-CV-1276, 2009 WL 2588197 ¶ 55 n.92 (Ohio C.P. Aug. 24, 2009); see also FEDERAL PRACTICE AND PROCEDURE SUPPLEMENTAL SERVICE § 1133 (Mar. 2011); Elizabeth M. Youngdale, *Reviewing the Law Reviews*, 77 DEF. COUNS. J. 276 (2010); Clemens Kochinke, *Auslandszustellung Neu Beurteilt* [Foreign Service of Process Reevaluated], GERMAN AMERICAN LAW JOURNAL (May 1, 2009), <http://anwalt.us/2009/05/01#0501-zustellung.txt>.

⁶ No Sirve, *supra* note 2, at 134.

⁷ See *Modificaciones a las Declaraciones formuladas al momento de adherirse al Convenio Sobre la Notificación o Traslado en el Extranjero de Documentos Judiciales o Extrajudiciales en Materia Civil o Comercial* [Modifications to the Declarations formulated upon accession to the Hague Service Convention], [GACETA DEL SENADO 18, 11 de Marzo de 2010](#) [Gazette of the Senate] (transmittal letter); see also *Modificaciones a las Declaraciones del Gobierno de los Estados Unidos Mexicanos al Convenio Sobre la Notificación o Traslado en el Extranjero de Documentos Judiciales o Extrajudiciales en Materia Civil o Comercial* [Modifications to the Declarations of the Government of the United Mexican States to the Hague Service Convention] (Mar. 5, 2010), [hereinafter 2010 Declarations]

cember 7, 2010, the Mexican Senate approved the modifications.⁸ Mexico officially published the Senate's decree approving the modifications in the March 3, 2011, edition of the *Diario Oficial de la Federación* (Official Gazette of the Federation).⁹ It will also transmit the modified declarations to the depositary of the Hague Service Convention, the Foreign Ministry of the Netherlands,¹⁰ which will issue a depositary notification to all States party with English and French translations of the revised declarations.¹¹ The modified declarations will be effective as a matter of international law upon

(Spanish text of modifications with Memorandum of Precedents), available at <http://www.senado.gob.mx/sgsp/gaceta/61/2/2010-12-07-1/assets/documentos/HAYA.pdf>. The Senate referred the modifications jointly to its Committee on Foreign Relations, International Organizations and its Committee on Justice. See [GACETA DEL SENADO 3-4, 12 de Marzo de 2010](#). For all copies of the *Gaceta* cited in this article, see the Mexican Senate's website at <http://www.senado.gob.mx>.

⁸ [1 GACETA DEL SENADO 20, 9 de Diciembre de 2010](#). The joint committees submitted their report with the text of the revised declarations and recommended adoption on December 2, 2010. [2 GACETA DEL SENADO 238, 2 de Diciembre de 2010](#). The text of the revised declarations also appears in the 2010 Declarations, *supra* note 7; and again in the December 7, 2010, *Gaceta*. See [3 GACETA DEL SENADO 477, 479-80, 7 de Diciembre de 2010](#). For the complete Spanish text of the 2010 Declarations, see Appendix *infra*, at 7.

⁹ Decreto por el que se aprueban las Modificaciones a las Declaraciones formuladas al momento de adherirse al Convenio sobre la Notificación o Traslado en el Extranjero de Documentos Judiciales o Extrajudiciales en Materia Civil o Comercial [Decree approving Modifications to the Declarations formulated upon accession to the Hague Service Convention], [Diario Oficial de la Federación \[D.O.\] 4, 3 de Marzo de 2011](#).

¹⁰ See Hague Service Convention, *supra* note 1, art. 21(c).

¹¹ See *id.*, art. 31(e). For its Hague Conference depositary notifications, see The Dutch Foreign Ministry website at <http://www.minbuza.nl/>. The Hague Conference on Private International Law also posts the modifications and translations on its excellent website available at <http://www.hcch.net/>.

their receipt by the other States party.¹² As the substance of Mexico's opposition to service under Article 10 remains unchanged, however, the effective date of the modifications is essentially academic with respect to Mexico's Article 10 declaration.

Because a complete English translation of Mexico's revised declarations will be published elsewhere shortly, it suffices for present purposes to note simply the modified declaration with respect to alternative methods of service under Article 10 of the Convention.¹³ As I reported, Mexico's Article 10 declaration "has been reformulated so as to clearly express the plain fact that Mexico opposes the alternative channels of Article 10(a),

¹² According to the 1969 Vienna Convention on the Law of Treaties, when a State transmits a notification to a depositary, it is "considered as received by the State for which it was intended only when the latter State has been informed by the depositary in accordance with article 77, paragraph (e)." Vienna Convention on the Law of Treaties, art. 78(c), *done* May 23, 1969, 1155 U.N.T.S. 331 [hereinafter Vienna Convention]. Thus, "[a] communication relating to a reservation shall be considered as having been made with regard to a State or an international organization only upon receipt by that State or organization." Text of the Set of Draft Guidelines Constituting the Guide to Practice on Reservations to Treaties, Provisionally Adopted by the International Law Commission, Draft Guideline 2.1.6, para. 3, Rep. of the Int'l Law Comm'n, 62d Sess., May 3–June 4, July 5–Aug. 6, 2010, [U.N. Doc. A/65/10 ¶ 105 at 43](#); GAOR, 65th Sess., Supp. No. 10 (2010). As the commentary to Draft Guideline 2.1.6 emphasizes, "the reservation produces effects only as from the date on which the communication relating thereto is received by the States and organizations for which it is intended, and not as from the date of its formulation." Text of the Draft Guidelines and Commentaries Thereto Adopted by the International Law Commission at its Sixtieth Session, Draft Guideline 2.1.6, cmt. 13, Rep. of the Int'l Law Comm'n, 60th Sess., May 5–June 6, July 7–Aug. 8, 2008, [U.N. Doc. A/63/10 ¶ 124 at 179](#); GAOR, 63d Sess., Supp. No. 10 (2008).

¹³ For the complete English translation of Mexico's revised declarations, consult the Hague Conference on Private International Law website or the Dutch Foreign Ministry website, *supra* note 11.

(b) and (c).’”¹⁴ The new Spanish text and my translation appear below:

| SPANISH TEXT | AUTHOR’S TRANSLATION |
|--|---|
| 2. De conformidad con el Artículo 21, párrafo segundo, inciso a), el Gobierno de los Estados Unidos Mexicanos declara su oposición al uso dentro de su territorio de las vías de remisión previstas en el Artículo 10. ¹⁵ | 2. In conformity with Article 21, second paragraph, subparagraph a), the Government of the United Mexican States declares its opposition to the use within its territory of methods of transmission pursuant to Article 10. ¹⁶ |

This clarification should lay to rest whatever doubt or confusion that might remain regarding Mexico’s position with respect to alternative methods of service under Article 10.¹⁷

¹⁴ No Sirve, *supra* note 2, at 134 (quoting Letter from Christophe Bernasconi, First Secretary, Hague Conference on Private Int’l Law, to G.H.W.M. Limburg, Hoofd Afdeling Vergragen (DJZ/VE), Ministerie van Buitenlandse Zaken 2 (Oct. 30, 2009) (on file with author)).

¹⁵ 2010 Declarations, *supra* note 7, ¶ 2.

¹⁶ Because the language “su oposición al uso . . . de las vías de remisión previstas en el Artículo 10” follows the Spanish translation of Article 21(2)(a) almost exactly, I have followed the English text of Article 21(2)(a) in my translation. *Compare* Convenio sobre la Notificación, art. 21(2)(a), in Decreto Promulgatorio, *supra* note 3, at 11, *with* Hague Service Convention, *supra* note 1, art. 21(2)(a). Of course, my translation is for informational purposes only. The translation circulated by the depositary should be used once it is available.

¹⁷ Mexico also continues its objection to alternative means of service through diplomatic or consular agents under Article 8 (unless the party to be served is a national of the country making service), in language virtually identical to its 1999 Declaration. *Compare* 2010 Declarations, *supra* note 7, ¶ V *with* Accession (with Declarations), *supra* note 3, ¶ IV; *see* No Sirve, *supra* note 2, at 108 & n.6, 123. As noted previously, however, “[s]ervice through consular or diplomatic officials under Articles 8 and 9 is generally not an option for litigants in United States litigation due to State Department regulations . . .” *Id.* at 117 n.53; *see* [22 C.F.R. §§ 92.85, 92.92 \(2010\)](#) (prohibiting Foreign Service officers from serving

Mexico's modifications to its declarations to the Hague Service Convention underscore its objection to alternative means of service under Article 10 of the Convention. As stated previously, service of process through the Mexican Central Authority remains "effectively the exclusive means of service of process abroad on parties in Mexico under the Hague Service Convention."¹⁸ Thus, "such service of process abroad should proceed through Mexico's Central Authority in accordance with Articles 3 through 7 of the Convention."¹⁹

process or appointing others to do so unless specifically directed by the State Department).

¹⁸ No Sirve, *supra* note 2, at 136; *see also* RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 471 cmt. e (1987).

¹⁹ No Sirve, *supra* note 2, at 136.

APPENDIX

Modificaciones a las Declaraciones del Gobierno de los Estados Unidos Mexicanos al Convenio sobre la Notificación o Traslado en el Extranjero de Documentos Judiciales o Extraju- diciales en Materia Civil o Comercial, adoptado en La Haya, el 15 de noviembre de 1965

“1. El Gobierno de los Estados Unidos Mexicanos modifica las declaraciones formuladas al adherirse al Convenio sobre la Notificación o Traslado en el Extranjero de Documentos Judiciales o Extrajudiciales en materia Civil o Comercial, adoptado en la Haya el 15 de noviembre de 1965, para quedar como sigue:

- I. En relación con el artículo 2, el Gobierno de México designa a la Dirección General de Asuntos Jurídicos de la Secretaría de Relaciones Exteriores como Autoridad Central para la recepción de las peticiones de notificación o traslado de documentos judiciales o extrajudiciales provenientes de otros Estados Contratantes, quien las remitirá a la Autoridad Judicial competente para su diligenciación.
- II. En relación con el Artículo 5, los documentos judiciales o extrajudiciales en idioma distinto del español, que deban ser objeto de notificaciones o traslado en territorio mexicano, deberán ser acompañados de su debida traducción al español.
- III. En relación con el Artículo 6, la Autoridad Judicial que haya conocido del asunto será la encargada de expedir la certificación sobre el cumplimiento de la notificación conforme a la fórmula modelo y la Autoridad Central únicamente validará la misma.
- IV. En relación con el Artículo 7 segundo párrafo, se apreciará cumplimentar los espacios en blanco de las fórmulas modelo en idioma español.

- V. En relación con el Artículo 8, los Estados Contratantes no podrán realizar notificaciones o traslados de documentos judiciales directamente, por medio de sus agentes diplomáticos o consulares, en territorio mexicano, salvo que el documento en cuestión deba ser notificado o trasladado a un nacional del Estado de origen, siempre que tal procedimiento no sea contrario a normas de orden público o garantías individuales.
- VI. En relación con el segundo párrafo del Artículo 12, los gastos ocasionados por la diligencia de la notificación o traslado de documentos judiciales o extrajudiciales serán cubiertos por el requirente.
- VII. En relación con el Artículo 15, segundo párrafo, el Gobierno de México no reconoce a la Autoridad Judicial la facultad de proveer cuando el demandado no comparece y no se haya recibido comunicación alguna acreditativa de la notificación o traslado o de la entrega de documentos que le fueron remitidos del extranjero para dichos efectos y a que hacen referencia los apartados a) y b) del primer párrafo.
- VIII. En relación con el Artículo 16, tercer párrafo, el Gobierno de México declara que tal demanda no será admisible si se formula después del plazo de un año computado a partir de la fecha de la decisión, o en un plazo superior que pueda ser razonable a criterio del juez. El Gobierno de México entenderá que, para los casos en que se haya dictado sentencia, sin que el demandado haya sido debidamente emplazado, la nulidad de actuaciones se realizará de conformidad con los recursos establecidos en la legislación aplicable.
2. De conformidad con el Artículo 21, párrafo segundo, inciso a), el Gobierno de los Estados Unidos Mexicanos declara su oposición al uso dentro de su territorio de las vías de remisión previstas en el Artículo 10.”