

The Operation of the 1965 Hague Service Convention in Japan

Yuko Nishitani *

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A. INTRODUCTION

On 28 May 1970, Japan ratified three conventions concluded within the framework of the Hague Conference regarding international judicial assistance:

- the Hague Convention of 1 March 1954 on Civil Procedure,
- the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents, and
- the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

The Convention on Civil Procedure entered into force on 26 July 1970 for Japan, followed the next day by the Legalisation and Service Conventions.¹

Currently, the Permanent Bureau of the Hague Conference on Private International Law is working on a new version of the Handbook on the operation of the Service Convention.² The latest version of the Handbook is dated 1992 and in the interim it has become essential to follow up the evolutions and clarify the difficulties encountered in practice during the last decade. In order to understand the current situation of practice and case-law, Member States and non-Member States were asked to answer a questionnaire prepared by the Permanent Bureau.³

* The author thanks Ms. *Leila Ben Debba* for her devoted proofreading.

1 Articles 1 to 7 of the Convention on Civil Procedure are not applied, as they are replaced by the Service Convention. *See* Art. 22 of the Service Convention.

2 Its provisional version is available at: <http://www.hcch.net/doc/lse_pd01e.pdf>

3 The Questionnaire was answered by the following States: Australia, Belarus, Bulgaria, Canada, China (including Hong Kong and Macao), Denmark, Finland, France, Hungary, Germany, Ireland, Italy, Japan, Kuwait, Lithuania, Luxembourg, Malaysia, the Netherlands, New Zealand, Norway, Poland, Portugal, Slovakia, Spain, Sweden, Switzerland, Ukraine, and the United States. Both the Questionnaire and the answers are available at: <http://www.hcch.net/e/workprog/lse_intro.html>

The following questionnaire and answers from the Japanese government have been reprinted in order to provide readers with information about how the Service Convention operates in practice in Japan.⁴ Under II. 4., the author describes Japanese court decisions which were pointed out by the Japanese government.

B. QUESTIONNAIRE AND ANSWERS FROM THE JAPANESE GOVERNMENT

I. QUESTIONS ADDRESSED TO NON-PARTY STATES

1. *Are there any particular reasons why your State has not ratified the 1965 Convention?*
2. *Do you envisage becoming a Party to the 1965 Convention? If yes, why?*

ANSWER: (These questions are not relevant to Japan.)

II. ADMINISTRATIVE INFORMATION AND UPDATES

The Permanent Bureau draws the States' and observers' attention to the importance of regular updates of this information in order to secure effective implementation of the Convention.

3. Central Authority

- 3.1 The administrative information relating to the Central Authority is, and shall remain, accessible on the Conference's website. Updating this information is essential. For such purpose, could you check whether the contact information for the Central Authority or Authorities in your State as it appears on the site at <http://www.hcch.net/e/status/stat14e.html> is accurate, and if necessary, provide us with your corrections and supplementary information? This contact information includes the postal address, telephone number, fax number, and if possible, the Central Authority's e-mail address.

ANSWER: The Minister for Foreign Affairs is designated as the Central Authority which receives requests for service from other Contracting States, pursuant to the first paragraph of Article 2.

Address of the Central Authority:

Ministry of Foreign Affairs
2-2-1 Kasumigaseki Chiyoda-ku, Tokyo
100-8919 JAPAN
phone: +81(3)3580-3311

⁴ The author thanks the Permanent Bureau for permission to reprint the Questionnaire and the Japanese Government for providing the answers.

- 3.2 An indication of the languages used by those authorities' staff would also be very helpful.

ANSWER: The languages used by the Central Authority's staff are Japanese and *English*.

- 3.3 Do you have at your disposal statistical information relating to the number and source of requests directed at your State's Central Authority? If so, could you provide it to us?

ANSWER: Please refer to the statistics attached to this answer.

4. *Case-law and Reference Works*

The Permanent Bureau warmly thanks the States which have provided it with their case-law and reference works on the subject since 1992. This information considerably enriches the Permanent Bureau's knowledge of the Convention's actual operation, and has been integrated into the provisional version of the Handbook.

- 4.1 The Permanent Bureau invites the States and observers to provide it with copies of *significant* Court rulings issued pursuant to the 1965 Convention since 1992 and not cited in the provisional version of the Handbook. Insofar as the text of the ruling is drafted in a language other than English or French, a summary in the English or French language of the facts and grounds for the ruling would be very helpful.

ANSWER: (The Japanese Government indicated the following three court decisions. The author describes their facts and judgments as follows:)

(1) Hachioji Branch of Tokyo District Court, Judgment, December 8, 1997

Plaintiff father filed a suit at the Family Court of the State of New York, seeking return of his child against defendant mother on 22 February 1996. Defendant who claimed to have custody rights had left New York and returned to Japan with the child on 25 November 1995. The show cause order accompanied by plaintiff's affidavit was sent directly to defendant in Japan by postal channel. The order was necessary to commence the procedure, though a Japanese translation thereof was not attached. The NY Family Court rendered a default judgment on 8 August 1996, ordering the return of the child to plaintiff or his attorney.

Plaintiff filed exequatur proceedings under Article 24 of the Code of Civil Enforcement at Hachioji Branch of Tokyo District Court for the recognition and enforcement of this NY judgment in Japan. He claimed that the requirements for the recognition of foreign judgments under Article 200 of the Japanese Civil Procedural Code (at that time), namely (1) international jurisdiction, (2) regular service or notification to the defeated Japanese defendant, (3) consistency with public policy,

and (4) reciprocity, were fulfilled. Defendant made a general appearance to move to dismiss the case.

Hachioji Branch of Tokyo District Court held as follows and dismissed the case: Japanese Code of Civil Procedure requires, as one of the conditions for recognition and enforcement of a foreign judgment, that the defeated Japanese defendant has received service of summons or any other necessary orders to commence procedures in order to enable the defendant to arrange for his/her defense (Article 200 (2) of the Japanese Civil Procedural Code). For the purpose of enabling a Japanese defendant to arrange for his/her defense, a Japanese translation must be attached to the document to be served and service must be conducted in accordance with the due process of judicial assistance.

Specific circumstances in each case, such as the party's fluency in the language, actual receipt of the sent document and understanding of its content, shall not be taken into account, as this would contradict the uniformity and certainty of proceedings, and jeopardize the foreseeability of defendant whether or not to make a general appearance.

The fact that Japan has not declared objection to service by postal channels under Article 10 (a) of the Service Convention only means that Japan grants factual effects to this type of service and does not add a new category to the admissible types of service. The above mentioned interpretation, therefore, does not contradict Article 10 (a) of the Service Convention.

In this case, the requirement for recognition and enforcement of a foreign judgment under Article 200 (2) of the Japanese Civil Procedural Code is not met because the show cause order was sent to defendant by postal channel without its translation into Japanese.

The claim for an exequatur shall be, therefore, dismissed.

(2) Tokyo District Court, Judgment, February 24, 1998

Plaintiff filed a claim for payment of debt out of a suretyship contract at the District Court of Berlin, Germany, on 16 May 1994. The written pleading and summon were served by registered mail, together with a Japanese translation thereof, to the address of defendant by a German consular agent in Japan. In addition, there was a letter written in German accompanying the documents, according to which defendant was assumed to have accepted the service of the documents voluntarily if he did not send them back within 20 days after the documents reached him. On 17 August 1994, the court rendered a default judgment, ordering defendant to pay about 1,000,000 dollars, which eventually became a *res judicata*.

Plaintiff sought exequatur proceedings under Article 24 of the Code of Civil Enforcement at Tokyo District Court to enforce this German judgment in Japan. Concerning the requirement of regular service as a requirement to recognize foreign judgments (Art. 118 (2) of the Japanese Civil Procedural Code), the court ruled as follows:

(a) Japan and Germany are both Contracting States of the Hague Service Convention. According to its Article 8 (1), every country is entitled to effectuate service abroad through its diplomats or consular agents stationed in that foreign country. Because the service in the given case was done by a German consular agent in Tokyo by way of registered mail, it shall be regarded as a valid method of service under Article 8 (1) of the Convention.

(b) Defendant proclaims that service by a consular agent under Article 8 (1) of the Convention can only be done by a voluntary handing in of court documents, but not by mail. However, in our opinion, Article 8 (1) of the Convention shall be interpreted as allowing the latter type of service as well.

(c) Defendant further argues that the letter written in German accompanying the documents prevents the assumption that there was a voluntary acceptance by defendant, as he is a Japanese national and could not understand its content. However, in our opinion, the service of court documents itself was validly effectuated by the written pleading and summon, which were translated into Japanese. Furthermore, it would have been possible for defendant to react to the service within 20 days by asking German speaking people, which are numerous in Tokyo and in its surrounding areas. Under these circumstances, defendant's rights of defense cannot be regarded as violated.

(d) Because Germany declared objection against Article 8 (2) of the Service Convention, defendant contends that, according to the principle of reciprocity under Article 21 (1) (b) of the Vienna Convention on the Law of Treaties, Germany cannot proclaim towards other countries the validity of service conducted by German consular agent. However, in our opinion, Japan cannot refuse service effectuated by German consular agent within its territory because Japan did not declare objection against Article 8 (2) of the Service Convention.

The other requirements for the recognition of foreign judgments under Art. 118 of the Japanese Civil Procedural Code, namely (1) international jurisdiction, (3) consistency with public policy, and (4) reciprocity, are fulfilled as well.

An exequatur shall, therefore, be granted.

(3) *Supreme Court, Judgment, April 28, 1998*

[FACTS]

This case concerns an action for the recognition and enforcement of a foreign order of payment regarding the costs of proceedings which was issued by the Hong Kong High Court before Hong Kong was returned to China on July 1, 1997.

(a) Plaintiffs X1 and X2 are a married couple; they are Indian nationals and were domiciled in Hong Kong. Defendant Y1 is an Indian national; Y1 and his wife Ladika, domiciled in Japan, are both executive officers of the defendant company Y2 which has its principal place of business in Japan. Plaintiff X1 and defendant Y1 are brothers.

(b) On 5 June 1978, X1 and X2, Y1 and his wife Ladika signed a suretyship contract with Bank of India, which agreed, as a business of its Osaka Branch, upon a loan for Y2. However, because Y1 quarrelled with his brothers because of their family business, he signed, together with Ladika, a renewed suretyship contract with Bank of India on 8 April 1981 for financing Y2; the first suretyship contract was revoked.

(c) Later, when the bills of exchange issued by Y2 and discounted by Bank of India were dishonored by non-payment, Bank of India requested Y2 to pay the amount. Y1 and Y2 started to negotiate with the bank and reached an agreement on 12 May 1982 as follows:

- Bank of India sues X1 and X2 for payment based on the first suretyship contract in Hong Kong.
- Y2 bears the costs of the action and enforcement of the judgment.
- Bank of India will abstain from suing Y1, Y2 and Ladika.

(d) Based on this agreement, Bank of India sued X1 and X2 for the performance of the first suretyship contract at the Hong Kong High Court on 10 June 1982 (“First Action”).

In July 1986, X1 and X2 filed a counter-claim against Bank of India, Y1 and Ladika (“Second Action”), seeking confirmation that X1 and X2 subrogated Bank of India with regard to the mortgage created by Y1 and Ladika in the interests of the bank, in case X1 and X2 lost the First Action.

The Hong Kong High Court rendered an order allowing X1 and X2 to serve a third party notice (“TPN”) to Y1, Ladika and Bank of India. On 26 July 1986, the TPN was handed in to Attorney Sasano in Japan, who further sent it to Y1, Ladika and Bank of India. Y1 and others claimed before the High Court that the TPN was not valid, but this complaint was dismissed on 27 January 1987. Following this, X1 and X2 started a third party proceeding against Y1 and others (“Third Action”), seeking confirmation that X1 and X2 had the right of reimbursement against Y1 and others, in case X1 and X2 lost the First Action.

On the other hand, Y1, Ladika and Bank of India filed a counter-claim against X1 and X2, seeking confirmation that only X1 shall carry the obligations for payment out of the first suretyship contract (“Fourth Action”).

- (e) On 27 April 1988, the Hong Kong High Court rendered the following judgment:
- With regard to the First Action: the claims of Bank of India are dismissed.
 - With regard to the Second Action: the counter-claim of X1 and X2 is dismissed.
 - With regard to the Third Action: the request to confirm the right of reimbursement is dismissed, as the claim of Bank of India in the First Proceeding was dismissed.
 - With regard to the Fourth Action: the counter-claim of Y1, Ladika and Bank of India is dismissed.

(f) In addition, this Hong Kong judgment ordered Bank of India to pay X1 and X2 the costs of the First and Second Actions. It also declared that X1 and X2 had the right of reimbursement against Y1, Ladika and Bank of India as to the costs of the Third and Fourth Actions. On 12 September 1989, the Division for the Cost of Action within the Hong Kong High Court calculated the latter amount to be paid by X1 and X2 as 213,807.77 Hong Kong dollars, which became irrevocable on 26 September 1989.

(g) X1 and X2 entered a request at the Hong Kong High Court on 11 May 1988 to render another order, according to which Y1, Ladika and Bank of India had to bear the whole costs of actions incurred to X1 and X2. Because there was no attorney appointed by Bank of India, Y1 and Ladika in Hong Kong, the judge allowed X1 and X2 to serve the “Notice of Motion” to third parties outside the jurisdiction. On 26 July, the Notice of Motion was sent to Attorney Naito in Japan in accordance with an agreement thereof between him and X1-X2, and he eventually delivered it directly to Y1 and others.

Following this, Y1 and others appointed a law firm in Hong Kong, which notified the High Court that it represents Y1 and others. After hearing the attorney of X1 and X2, as well as the attorney of Y1 and others, the judge rendered an order as requested on 31 August. On 3 October 1989, the Division for the Cost of Action within the Hong Kong High Court calculated the costs as 988,777.81 Hong Kong dollars to be paid by Y1, Ladika and Bank of India, and 1,628,915.08 Hong Kong dollars to be paid by the bank alone. This calculation became irrevocable on 12 October.

(h) X1 and X2 sought the recognition and enforcement of this Hong Kong order for the payment of costs of actions and filed *exequatur* proceedings under Article 24 of the Code of Civil Enforcement at the Kobe District Court. X1 and X2 proclaimed that Y1 and Y2 had to pay 1,202,585.58 Hong Kong dollars and the interest for the delay of payment under Hong Kong law.

[JUDGMENTS]

(1) *The Kobe District Court* decided in its judgment of 22 September 1993 that all the requirements for the recognition of foreign judgments under Article 200 of the Japanese Code of Civil Procedure (at that time), namely (1) international jurisdiction, (2) regular service or notification to the defeated Japanese defendant, (3) consistency with public policy, and (4) reciprocity, were fulfilled and granted an *exequatur*.

Especially as to Article 200 (2) of the Code of Civil Procedure, the Court held as follows:

In this case, Article 200 (2) of the Code of Civil Procedure is only applicable to Y2, but not to Y1, because Y1 is not a Japanese national. The purpose of this provision is to protect a Japanese defendant who was defeated without being given an opportunity to defend himself. Furthermore, as a matter of interpretation of Art. 10 (a) of the Service Convention, it is legally permissible to conduct a service which enables the defendant to know about the suit and its content and defend himself, even though the service is not based on international judicial assistance. Judging from the ascertained facts, both the service of the main proceedings and that of payment order for the costs of action were effectuated in a way that fulfills the requirement of Article 200 (2) of the Code of Civil Procedure.

(2) *Osaka High Court*

In its judgment of 5 July 1994, the Osaka High Court dismissed the appeal and affirmed the judgment of the first instance.

(3) *Supreme Court*

The Supreme Court dismissed the appeal in its judgment of April 28, 1998. In the interim, Article 200 of the Code of Civil Procedure had been replaced by Article 118 of the revised Code of Civil Procedure, which was enacted on 26 June 1996 and entered into force on 1 January 1998.

The Court applied Article 118 of the new Code of Civil Procedure and held that all the requirements for the recognition of the Hong Kong payment order were fulfilled. As to Article 118 (2), the Court argued as follows:

Appellants Y1 and Y2 contend in their grounds of appeal that the service of “Notice of Motion” regarding the payment order was conducted by Attorney Naito in Japan through direct handing in, which did not fulfill the due process under the Service Convention. Consequently, the requirement Article 118 (2) was not met in their opinion.

In our opinion, the “service of summons or any other necessary orders to commence procedures” to the defendant, as is stipulated in Article 118 (2) of the Code of Civil Procedure, does not have to comply with the laws and rules of civil pro-

cedure in Japan. It is rather required that the service provides the defendant with actual knowledge of the commencement of action and does not hinder the exercise of his rights of defense.

In addition, from the viewpoint of guaranteeing clear and stable procedures, it shall be considered as follows: where for the purpose of service of judicial documents, a convention is concluded regarding judicial co-operation between Japan and the rendering country and service of judicial documents necessary to commence an action shall be undertaken in accordance with the methods provided by the convention, process of service that does not abide by one of these methods does not satisfy the requirement of Article 118 (2).

Japan and the United Kingdom, which had sovereignty over Hong Kong at the time of the proceedings in question, are State Parties to the Service Convention. The Convention does not allow a service, as in the present case, by means of direct delivery by a person who is asked personally to conduct it by Y1 and Y2. Moreover, we cannot base such a service on the bilateral treaty between Japan and the United Kingdom, namely the "Consular Treaty between Japan and the United Kingdom of Great Britain and Northern Ireland." Therefore, the service of the above-mentioned Notice of Motion to the appellants Y1 and Y2 shall be regarded as an illegal action that does not satisfy the requirement provided in Article 118 (2) of the Code of Civil Procedure.

On the other hand, "general appearance" under Article 118 (2) of the Code of Civil Procedure means that the defendant takes measures to defend himself after being given an opportunity thereof. It is broader than the "general appearance" in the sense of "submission to the jurisdiction" as a ground for judicial jurisdiction of the court hearing the case. In this respect, the fact that the defendant submits a plea to deny the jurisdiction of the court is also regarded as a "general appearance" under Article 118 (2) of the Code of Civil Procedure and fulfills its requirement. In the underlying case, it is obvious that appellants Y1 and Y2 made a general appearance in this sense concerning the proceedings involving the above-mentioned Notice of Motion.

Also the other requirements of Article 118 of the Code of Civil Procedure are fulfilled. The appeal is, therefore, dismissed.

- 4.2 Likewise, the Permanent Bureau invites the Contracting States to forward to it a list of bibliographical references of works and Articles published in those States since 1992 in connection with the 1965 Convention.

ANSWER:

"Manual of International Judicial Co-operation Procedure in Respect of Civil Cases" (*Hōsō-kai*, 1999) (under the editorship of Civil Affairs Bureau, General Secretariat, Supreme Court of Japan)

"Handbook of International Judicial Co-operation" (*Hōsō-kai*, 2001)

5. *Handbook*

- 5.1 In connection with redesign of the Hague Conference's website, the Permanent Bureau is considering the desirability and feasibility of providing access on its site to the information contained in the second and third parts of the former Handbook relating to forwarding Authorities, the principal and alternative transmission channels and the methods for execution of requests for service, for each State party to the Convention. The provisional version of the new Handbook provides information and useful explanations relating to the Convention's operation; more specific information by country, however, would require regular updates, which the Handbook, even if revised, cannot in practice provide adequately. It being specified that a decision in favor of the Conference's website would have implications in terms of resources, would you be in favor of such a proposal? If so, could you specify the information that you would consider useful to have appear on the site?

ANSWER: We consider it desirable to put on the website the information contained in the former Handbook.

- 5.2 Does the structure (headings, sub-headings) of the Handbook's provisional version seem satisfactory to you? Do you have any suggestions?

ANSWER: We do not have an opinion about it.

- 5.3 Would you wish to see in the Handbook other items that are not contained in the provisional version? If so, which?

ANSWER: We do not have an opinion about it.

- 5.4 The Handbook seems to be a very useful tool for practitioners in applying the Convention. Regular and continuous updating would be desirable, therefore. How would you contemplate such an updating of the Handbook, both in terms of frequency and in terms of resources?

ANSWER: We do not have an opinion about frequency and resources of updating the Handbook. However it may be desirable to make it possible to access the latest information, for example, by means of the website.

- 5.5 Could you provide a list of useful links to Internet sites containing information concerning application of the Convention in your State, or more generally regarding service in your State?

ANSWER: (No answer)

III. INFORMATION RELATING TO THE APPLICATION OF THE CONVENTION

The Permanent Bureau urges States to answer the following questions and to inform it of any suggestion or criticism that could contribute to enhancing the Handbook's practical value and to effective preparation of the Special Commission's meeting.

6. *Scope of the Convention (Article 1) (cf. I, 5 of the Handbook)*

6.1 Have you noted a change since 1992 in interpretation of the Convention's scope?

ANSWER: In Japan, it is difficult to examine all the cases relating to interpretation of the Convention because each court seized shall have the authority to interpret and apply the Convention autonomously. However, it seems to us that interpretation of the Convention's scope has not changed in Japan since 1992.

6.2 More particularly, has the scope of the phrase "in civil or commercial matters" given rise to difficulties (cf. I, 5, D)? Have the Courts interpreted it autonomously?

ANSWER: The phrase "in civil or commercial matters" may give rise to some difficulties in interpretation of its scope because the interpretation of the phrase may differ between a requesting State and a requested State. A typical example of this divergence can be seen in the question whether or not the documents of administrative cases should be within its scope of the phrase. We understand that each State shall have authority to interpret it autonomously. However it is necessary and beneficial to know the interpretation of the phrase and the practical operation in each State.

Where the interpretation of such phrase becomes a point of issue in the civil case in Japan, a court seized interprets it autonomously as mentioned in 6.1.

6.3 Have you noticed a change since 1992 regarding the interpretation that the 1965 Convention is not mandatory in that it is up to the *lex fori* to determine whether a document should be transmitted abroad (cf. I, 5, B., c))?

ANSWER: We have not noticed a change since 1992 regarding the interpretation.

6.4 Have you noted a change since 1992 regarding the Convention's exclusive character (cf. I, 5, B. c))?

ANSWER: We have not noted a change since 1992 regarding the Convention's exclusive character.

6.5 Does the terminology used in the Convention (e.g. "*acte introductif d'instance*" or "writ of summons") give rise to interpretation difficulties in connection with changes in your domestic law?

ANSWER: We have not had any information regarding the difficulty in interpretation about the terminology used in the Convention such as “writ of summons” so far.

7. *Forwarding Authority (cf. II, 1, B. (a) of the Handbook)*

7.1 Which are in your country the Authorities or persons competent to forward a request for service to the foreign Central Authority under Article 3?

ANSWER: In Japan, the only Authorities competent to forward requests for service to the foreign Central Authorities are the judges (see practical handbook second edition).

7.2 Do you consider that cooperation between Central Authorities to determine the competence of the forwarding authority should remain subject to “special circumstances”, or on the contrary, that it should be encouraged in broader circumstances?

ANSWER: We do not have an opinion about it.

8. *Methods for Service Used by the Central Authority (cf. II, 1, E of the Handbook)*

8.1 In the former version of the Handbook, Part III described the methods for service used in each Contracting State. It seems important to us to bring this information up to date. For this purpose, could you summarize the methods that are or may be used by the Central Authority in your country for:

- *formal service* of the documents within the meaning of Article 5 (1) (a) (e.g., service through a *huissier* or official)?
- *informal delivery* within the meaning of Article 5 (2) (e.g., use of the police service or officials)?
- a *special request* by the applicant, within the meaning of Article 5 (1) b) (e.g., postal service by the Central Authority)?

ANSWER:

(1) Article 5, paragraph 1, sub-paragraph (a)

The Minister for Foreign Affairs designated as the Central Authority refers the document to the competent court of justice. Service is then effected either by post (special postal service, Article 66 of the Mail Act; a report of service is drawn up by the postman) or through a marshal (see practical handbook second edition).

(2) Article 5, paragraph 2

The Minister for Foreign Affairs refers the documents sent to it to the competent court clerk. The court clerk informs the addressee of the documents to be served and the addressee then either presents himself/herself to the court or requests that

they be forwarded to him/her. In the latter case special postal service will be effected (Article 66 of the Mail Act; the postman will draw up a report of the delivery).

When the person to be served refuses to accept the documents, or fails to appear or to apply for forwarding the documents to him/her within three weeks of the date on which he/she was informed, the documents will be returned to the applicant (see practical handbook second edition).

(3) Article 5, paragraph 1, sub-paragraph (b)

When it is so requested, a marshal will effect service by delivering the document directly to the person after ascertaining that he/she is the addressee (see practical handbook second edition).

- 8.2 In connection with these descriptions, please specify the extent and scope of requirements for translation, if any (translation of the document to be served, translation of the document's summary, translation of evidence to be served, etc.) Please specify whether your State has entered into particular agreements with other Contracting States in this respect, within the meaning of Article 20(b).

ANSWER: We require a translation for any document to be served under Article 5 paragraph 1, sub-paragraph (a) or (b).

We have no agreement under Article 20 sub-paragraph (b).

- 8.3 Have administrative or other forms of action, such as the setting of periods to process applications or the use of outsourcing to perform the Central Authority's duties, been taken in order to expedite the service procedures? If so, which, and have they proved effective?

ANSWER: We have taken no administrative or other forms of action.

- 8.4 Please specify also whether charges are incurred for one method of service or another and if applicable, the nature of such costs (flat-rate or proportional costs), and the method for their reimbursement.

ANSWER: In principle, the applicant incurs no charges because the National Treasury bears the costs of service.

However, in the case of service by a marshal, a fee is charged and is to be reimbursed. To that end, the court which effected the service sends a bill of the costs to be reimbursed to the applicant together with the certificate referred to in Article 6.

9. *Translation Requirement (Article 5(3)) (cf. II, 1, E, (b) of the Handbook)*

- 9.1 The issue arises whether a general declaration by a State that its authorities will perform formal service only if the document to be served is drafted in or translated into its official language or languages, thereby depriving in advance its Central

Authorities of the discretion conferred by the Convention, is consistent with the spirit of Article 5(3). Does such a declaration make judicial assistance substantially more cumbersome in practice?

ANSWER: We do not think that such a declaration makes judicial assistance substantially more cumbersome in practice.

It is necessary that the Central Authority recognizes the content of a document to be served on the occasion of performing service under the Convention. We also consider that it is beneficial for the addressee to serve the translation of the document to the addressee as well as the original to give enough notice of the case (please refer to the answer of 9.4).

- 9.2 Do you consider that it might be appropriate to adopt a Recommendation that the Central Authority of the State addressed should not call for a translation if it has reasons to believe that a document drafted in a language of the requesting State is understandable to the addressee?

ANSWER: We do not consider that it is appropriate to adopt such a recommendation.

- 9.3 Could you state your suggestions regarding implementation of such a recommendation in connection with mutual assistance between authorities?

ANSWER: We do not have a suggestion.

- 9.4 Do you believe that the requirement of full translation of the document to be served is always appropriate, and could it not be restricted to the document's summary?

ANSWER: We do not consider it appropriate that the requirement of full translation is always restricted to the document's summary.

In Japan, full translation is required for any document to be served under Article 5 paragraph 1, sub-paragraph (a) or (b) and we serve the translation to the addressee together with the original. We consider that this practice is beneficial for the addressee because it makes it possible for him/her to recognize the content of the document to be served at the same level as domestic civil cases.

We also think it necessary that judicial officers who perform service recognize the contents of documents to be served when they serve them. In order to recognize the content of the document, a translation of the document's summary is not adequate.

- 9.5 Do such translations need to be legalized or to bear an *apostille*?

ANSWER: We consider that such translation does not need to be legalized or to bear an apostille.

10. *Timing (cf. II, 1, E, d of the Handbook)*

10.1 What is the average time required for performance of requests for service?

ANSWER: Please refer to the statistics attached to this answer.

10.2 Are there substantial differences between States addressed?

ANSWER: Please refer to the statistics attached to this answer.

10.3 How could the procedures for mutual assistance be improved?

ANSWER: We do not have an opinion about it.

11. *Alternative Transmission Channels (cf. II, 2 of the Handbook)*

11.1 *Consular and diplomatic channels (Articles 8 and 9) (cf. II, 2, B.)*

Are these forwarding channels frequently used in practice?

ANSWER: We frequently use consular channels in practice as the requesting State, because there is no cost and it takes a comparatively shorter time to complete service. Also we frequently use diplomatic channels as the requesting State.

11.2 *Postal channels (Article 10(a)) (cf. II, 2, C)*

Have the interpretation and application of this provision given rise to difficulties?

ANSWER: Please replace the description concerning the Japanese position on Article 10, sub-paragraph (a) in the provisional version of the new practical handbook (page 60) with the following.

This change is not a substantial one but is to make it be understood clearly.

Japan has not declared that it objects to the sending of judicial documents, by postal channels, directly to persons abroad. As the representative of Japan has made it clear at the Special Commission of April 1989 on the operation of the Convention on the Service of the Documents Abroad and on the Taking of Evidence Abroad, Japan does not consider that the use of the postal channels for sending judicial documents to persons in Japan constitutes an infringement of its sovereign power. Nevertheless, as the representative has also indicated, Japan believes that the sending of documents by such a method is not always valid in Japan in view of the benefit of the addressee, even though Japan has not declared its objection.

11.3 *Judicial officers, officials or other competent persons (Article 10 (b)) (cf. II, 2, D)*

a) States are invited to specify whether the transmission method described under Article 10 (b) is used frequently.

- b) If your State uses transmission between *huissiers*, can you specify:
 - i) with which States this procedure is used?
 - ii) how this system operates?
- c) Information relating to the costs of forwarding and reimbursement of the costs would also be useful.
- d) Contracting States are invited to provide to the Permanent Bureau the contact information for the national bodies governing *huissiers de justice*. This contact information includes the postal address, telephone number, fax number and if possible, the national organization's e-mail address.
- e) Are your country's lawyers or solicitors authorized to perform service from abroad?

ANSWER: Japan has declared its objection to Article 10, sub-paragraph (b).

11.4 *Interested persons* (Article 10 (c))

Have the interpretation and application of this provision given rise to difficulties?

ANSWER: Japan has declared its objection to Article 10, sub-paragraph (c).

12. *Judicial and Extrajudicial Documents* (cf. I, 5, E of the Handbook)

- 12.1 Does your country's legislation make a distinction between judicial documents producing procedural effects and those that do not? If so, do the authorities in your country apply the Convention to these two classes of judicial documents or only to those judicial documents producing procedural effects?

ANSWER: We make no legal distinction between judicial documents producing procedural effects (e.g., a written complaint or a judgment paper) and those that do not (e.g., a preliminary document).

- 12.2 Could you provide us with the statistics at your disposal, if any, relating to the volume of extrajudicial documents forwarded abroad under the Convention?

ANSWER: We have no statistics about it.

13. *Date of Service – Double Date* (cf. II, 1, E, f) of the Handbook)

- 13.1 What is your view of the dual-dating system?

ANSWER: We are reluctant to introduce the dual-dating system in the Convention because introducing such a system will raise complicated legal issues.

- 13.2 Does your country's domestic law provide for a system to determine, in the event of transmission abroad, the date of service for the applicant (as in Belgium, when the applicant has carried out the formalities required by Belgian law)?

ANSWER: Our law does not provide for the system to determine the date of service for the applicant in the event of transmission abroad.

14. *Exequatur*

- 14.1 In your country, would it be possible to deny enforcement of a foreign judgment on grounds of breach of public policy based on the service procedure applied, even though that service has been performed by the methods provided for under the Convention? If so, in what circumstances?

We are thinking, for instance, of the following situation: the addressee's (contracting) State has not objected to postal channels. The requesting State sends the service to the addressee without performing a translation (which is not required by the Convention in this particular instance). After receipt of the certificate of service, a judgment is entered. In your view, may the addressee's State refuse enforcement of the foreign judgment on the grounds that the service has not been translated?

ANSWER: In the case of the question, enforcement of a foreign judgment can be refused in some cases.

Japanese Code of Civil Procedure requires as one of the conditions for recognition and enforcement of a foreign judgment that the defeated defendant has received service (except for service by publication of notice or any similar means) of summons or any other necessary orders to commence procedures or has responded in the action without receiving service thereof in light of enabling a defeated defendant to arrange for his/her defense. It is considered that a Japanese translation must be attached to a document to be served regardless of his/her linguistic ability for the purpose of enabling a Japanese defendant to arrange for his/her defense.

With regard to the case in question, we think it possible to deny enforcement of the foreign judgment on the grounds that the service has not been translated at least in the case where the defendant (or addressee) is a Japanese.

15. *Exclusion of Application of the Convention Between the Parties (cf. I, 5, B., 5) of the Handbook)*

- 15.1 Have rulings been issued in your country permitting the parties to exclude application of the Convention between themselves by agreement or contract?

ANSWER: No rulings have been issued that permit such agreement or contract.

16. *Fax and Electronic Mail (cf. II, 3 of the Handbook)*

16.1 Form of the request

- a) Would the Central Authority of your country, as State addressed, be willing to accept requests forwarded to it by fax or e-mail? If so, subject to what requirements?
- b) Are e-mail and fax used in your country, as requesting State, to forward requests for service?

ANSWER:

- a) The Central Authority in Japan is not willing to accept such requests. Even if the use of electronic means for requests to the Central Authority under Article 3 is consistent with the letter, spirit and objectives of the Convention, a “document” transmitted by e-mail or fax cannot be served legally in Japan. We would not accept requests forwarded to our Central Authority by e-mail or fax because legal service which is based on such a request cannot be performed in Japan.
- b) We do not use e-mail and fax to forward requests for service.

16.2 Form of service

- a) In your State, may service from abroad be performed by e-mail or fax? If so, subject to what requirements?
- b) If your State allows postal channels for service from abroad, might the use of e-mail instead of postal channels be contemplated? If so, subject to what requirements?
- c) As requesting State, does your domestic law accept service performed by e-mail or fax in the State addressed?

ANSWER:

- a) Service from abroad cannot be performed by e-mail or fax in Japan.
- b) We would not accept it as valid service producing procedural effect.
- c) In case of entrusting service performed in a foreign State to the competent authorities of the State, the service shall be performed in accordance with the law of such State. We would accept it as valid as long as the requested State admits service by e-mail or fax.

16.3 Form of the certificate

- a) Does the Central Authority or any other competent authority in your country use or seek to use e-mail or fax for the sending of the certificate of due performance of service? If so, in what circumstances?

- b) As requesting State, would you accept receipt by e-mail or fax of a certificate of service abroad? If so, in what circumstances?

ANSWER:

- a) The Central Authority in Japan cannot use e-mail or fax for the sending of the certificate of due performance of service because Japanese Code of Civil Procedure provides that the public official who has effected service shall draft a document, which cannot be made by electrical means, containing the particulars relating to the service, and submit it to the court.

We do not seek to do so at this point.

- b) We understand that the Convention does not admit a certificate by electronic means because Article 6, paragraph 1 provides that the Central Authority of the State addressed shall complete a certificate in the form of the model annexed to the present Convention. Therefore we would not accept receipt by e-mail or fax of a certificate of service abroad under the present Convention.

- 16.4 Could you provide us with the statutes or case-law in your country, if any, permitting or ruling out the use of e-mail or fax in service procedures, whether domestic or international?

ANSWER: We have no statute or case law permitting the use of e-mail or fax in service procedures.

- 16.5 Is the use of e-mail or fax in service procedures subject to specific security requirements?

ANSWER: Please refer to the answers from 16.1 to 16.4.

- 16.6 Is the clause for service whereby parties to a contract agree in advance to receipt of service of any document by electronic channels used in practice (cf. II, 3, B., 2)? Does your domestic law recognize it as being valid?

ANSWER: Our domestic law does not recognize such a clause as being valid. The reason is that service shall be performed based on the court's own authority and by the method stipulated by the law in Japan and our law does not admit parties' autonomy to change its methods of service prescribed in the law itself.

17. *Model Forms*

- 17.1 Do you consider that the model forms ought to be revised? If so, how?

ANSWER: We do not have an opinion about it.

- 17.2 In particular, do you consider that information for the addressee, such as the amount due, the place and period for payment, the manner in which a defense

may be exercised and the consequences for the defendant of failure to enter a defense, ought to be added to them?

ANSWER: We do not have an opinion about it.

- 17.3 Amendment of the Request Form, to provide for a specific box for a description and declaration of the capacity and competence of the forwarding authority, might be contemplated. Such a solution would allow ascertainment that the request has indeed been forwarded by an authority or officer competent under the requesting State's law. Would you be in favor of such a change?

ANSWER: We would be in favor of such a change.

- 17.4 As the form is technically a part of the Convention, any proposed amendment requires in principle a formal revision of the Convention, and probably the drafting of a Protocol to which a State would subsequently have to decide to become a party for the new Request Form to become effective in that State. As such a procedure seems very formalistic and fairly cumbersome, adoption of a new Form by way of Recommendation, as in 1980, might be contemplated. Does this solution indeed seem more appropriate to you?

ANSWER: Such a solution does not seem appropriate to us because it might raise practical difficulties.

- 17.5 Would an electronic version of the model forms be useful?

ANSWER: We consider that an electronic version of the model forms would be useful.

18. *Reservations and Reciprocity*

- 18.1 Do Contracting States not opposing direct service *through postal channels* in accordance with Article 10 assert reciprocity against Contracting States having stated their opposition to this transmission method, or do they accept direct service through postal channels from such States?

ANSWER: Please refer to the answer of 11.2 with respect to the effect of direct service through postal channels.

We do not assert reciprocity in terms of such a method.

- 18.2 Do Contracting States not opposing transmission *through consular channels* within the meaning of Article 8 assert reciprocity against Contracting States having stated their opposition to this transmission method?

ANSWER: We do not assert reciprocity in terms of such a method.

19. *Article 25: Bilateral and Multilateral Agreements (cf. IV of the Handbook)*

- 19.1 Could you provide us with a list of the bilateral or multilateral agreements binding your country and other Contracting States with respect to international service?
- 19.2 For States Parties to the 1965 Convention and to the Interamerican Convention (Interamerican Convention on Letters Rogatory): how does the use in practice of such two instruments operate (*cf. IV, 1*)? More specifically, what is the relationship between them?
- 19.3 For States Parties to the 1965 Convention and bound by EU Regulation No 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters: how does the use of such two instruments operate in practice? Under its Article 20(1), the Regulation prevails over the Convention. How is the relationship between the two instruments managed in practice (*cf. IV, 3*)?
- 19.4 For States Parties to the 1965 Convention and members of the AALCO (African Asian Legal Consultative Organisation): what has been the impact of the AALCO model during bilateral negotiations conducted by your State (*cf. IV, 2*)?

ANSWER: (These questions are not relevant to Japan.)

**States of which Japan requested service under the Convention
(1.1. – 31.12.2002)**

Requested States	number	average time (days)
UNITED STATES	25	331
ITALY	1	111
GREECE	1	48
SWITZERLAND	3	33
REPUBLIC OF KOREA	55	61
CHINA	21	94
HONG KONG	5	156
GERMANY	5	43
PAKISTAN	1	156
FRANCE	3	119
BELGIUM	1	65
POLAND	1	113
TOTAL	122	128

**States which requested service of Japan under the Convention
(1.1. – 31.12.2002)**

Requesting States	number
UNITED STATES	570
IRELAND	2
ARGENTINA	2
UNITED KINGDOM	4
ITALY	27
EGYPT	6
NETHERLANDS	8
CANADA	7
GREECE	7
SWITZERLAND	6
SWEDEN	2
SPAIN	6
SRILANKA	2
SLOVAKIA	1
REPUBLIC OF KOREA	108
CHINA	240
GERMANY	20
TURKEY	6
NORWAY	5
FINLAND	2
FRANCE	183
BELGIUM	8
POLAND	3
TOTAL	1225