AWARD

Leonard J. Theberge Award for Private International Law: Arthur Taylor von Mehren

Arthur Taylor von Mehren, Story Professor of Law emeritus at Harvard Law School, received the 1997 Leonard J. Theberge Award for Private International Law at the annual meeting of the American Bar Association in San Francisco on August 5, 1997.

The Leonard J. Theberge Award for Private International Law

In the summer of 1982, the Board of Governors of the American Bar Association approved the proposal of the Section of International Law and Practice to present annually "a medal . . . to the individual judged by the Section to have performed distinguished services in the field of private international law." The award "would serve to recognize the ever growing importance of the private international law field." Recipients are selected "on the basis of long-standing contributions to the development of private interna-

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tional law through active participation in the formulation of international agreements or otherwise developing public understanding in this area." Candidates for the award are nominated by the Section's Private International Law Committee and selected by the Council of the Section. By resolution of the Council, the Award was named in memory of Leonard J. Theberge, Chair of the Section in 1979-80.

The first recipient of the award in 1983 was Philip Werner Amram, and successive recipients are Ambassador Richard D. Kearney, Professor Willis L.M. Reese, Professor John O. Honnold, Peter H. Pfund, Sir Joseph Gold, Monroe Leigh, Lester Nurick, Professor Louis B. Sohn, and E. Allan Farnsworth.

Arthur T. von Mehren

Arthur Taylor von Mehren is the Story Professor of Law emeritus at the Harvard Law School. He received the B.S., the LL.B., and the Ph.D. degrees from Harvard University and also studied in Switzerland and France. He joined the Harvard faculty in 1946, where he became the Story Professor of Law in 1976. He has lectured throughout the world and at the Hague Academy on International Law. In 1980 he lectured on "Recognition and Enforcement of Foreign Judgments—General Theory and the Role of Jurisdictional Requirements." In 1996 he delivered the general course on private international law at The Hague.

Professor von Mehren is a long-time member of the Secretary of State's Advisory Committee on Private International Law. Currently he advises the U.S. Department of State with respect to treaty negotiations that began in June 1997 for a convention regulating the assumption of jurisdiction as well as recognition and enforcement of foreign judgments. Since 1966 he has been a member of every U.S. delegation to The Hague Conference on Private International Law. He is a member of the Institut de Droit International and the International Academy of Comparative Law. An author of numerous law review articles, he has also written or edited five books including casebooks on comparative law and the conflict of laws. He is presently at work on a book on private international law.

Letter from Adair Dyer, Deputy Secretary General, Hague Conference on Private International Law

It is a particular pleasure for me to be asked to offer some remarks for the occasion when Arthur von Mehren will receive the Section's 1997 Leonard J. Theberge Award for Private International Law, on 5 August 1997 at San Francisco. Arthur has had a long and distinguished career at the intersection of the conflict of laws and comparative law. He published, together with Don Trautman, *The Law of Multi-State Problems* in 1965, after having published in 1957, *The Civil Law System: An Introduction to the Comparative Study of Law.* When I asked him to inscribe my copy of the Second Edition of this volume (co-authored

in 1977 with J. Gordley), he did so, referring to the work of my organization, the Hague Conference on Private International Law, as constituting "comparative law in action."

Arthur von Mehren, throughout his career, has epitomized comparative law in action. His teaching activities and his service as an arbitrator have taken him to many countries where there has been mutual enrichment of knowledge and understanding about different legal systems, as well as the ways in which they may appropriately be taken into account in solving the problems of private international law. He served as a U.S. delegate at the Hague Conference on Private International Law, for the first time in 1966, on a Commission drawing up the convention on recognition and enforcement of foreign judgments, joining a delegation headed by Richard Kearney, Deputy Legal Adviser, and including Joe Barrett of Arkansas, former President of the National Conference of Commissioners on Uniform State Laws, and Kurt Nadelmann, then Research Scholar at Harvard Law School and Adjunct Professor of Law at New York University.

I had reason to experience the openness which Arthur had towards practitioners of law in 1970 when he and Don Trautman, then co-Chairs of the graduate division of Harvard Law School, admitted me to the LL.M. program after nine years in the practice of law in Dallas. Around Arthur at Harvard was an unparalleled aura of expertise in private international law and comparative law. The distinguished Italian scholar, Professor Rodolfo De Nova of Pavia, offered a course and seminar that year in comparative conflicts of law, financing his stay in Harvard with NATO fellowship, while Arthur gave a special course on recognition of judgments and a seminar on comparative law of contracts, in addition to his usual courses on comparative law and conflict of laws.

Arthur's service as a U.S. delegate at the Hague Conference has now spanned more than thirty years, including election as the Reporter for the *Hague Convention on the Law Applicable to Contracts for the International Sale of Goods.* He is highly respected and liked by his colleagues serving on delegations from other countries, and I believe that, in addition to Professor De Nova, several other distinguished foreign experts in this field have done stints at Harvard at his instigation. The Harvard "school" also provided David Cavers as principal U.S. delegate on maintenance (support) obligations at the Twelfth Session in 1972 and Don Trautman in the same role for the *Hague Convention on the Law Applicable to Trusts and on their Recognition*, drawn up in 1984 at the Fifteenth Session.

Thirty years of participation in Hague Conference work have not diminished Arthur's interest or his intellectual contribution. The current project of the Hague Conference to prepare a worldwide Convention on jurisdiction and the recognition and enforcement of judgments has drawn its inspiration from his fertile brain. The *Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters*, drawn up in 1966 at an Extraordinary Session, had the wind taken out of its sails by the Brussels Convention of 27 September

1968, which covered jurisdiction as well, and therefore offered the attractions within the European Community of a "double" Convention. Arthur's insight has been that this largely successful model, followed in the Lugano Convention, did not exhaust the possible configurations for a modern convention dealing with jurisdiction and recognition and enforcement of judgments, suitable for use in the 21st Century. The first substantive meeting on this topic was held in June 1997 at the Peace Palace in The Hague, with my colleague Professor Catherine Kessedjian preparing an important report for the Permanent Bureau, and it is hoped that this will lead to the conclusion of a Convention at the Hague Conference's Nineteenth Plenary Session in the year 2000.

It would be remiss of me if I failed to mention that, as is the case with most great men, Arthur has enjoyed the constant support of a distinguished woman, his wife Joan, who, after rearing a family, recently published a penetrating biography of an American pioneer in the women's movement.

On behalf of the members of the Permanent Bureau of the Hague Conference, both past and present, Secretary General Hans van Loon, Deputy Secretary General Catherine Kessedjian, former Secretary General (retired) Georges A. L. Droz, and former Deputy Secretary General (retired) Michel Pelichet, I offer the warmest congratulations to Arthur von Mehren on the occasion of his receiving the Leonard J. Theberge Award for Private International Law and Practice Section of the American Bar Association.

August 1, 1997

Letter from Peter H. Pfund, Assistant Legal Adviser for Private International Law, U.S. Department of State

Professor Arthur von Mehren's continuous support for effective U.S. participation in the intergovernmental unification and harmonization of private law goes back to the 1960's when Abe Chayes, Dick Kearney, Phil Amram, Joe Barrett, Kurt Nadelman, David Cavers, Jim Dezendorf and Willis Reese, among others, first helped to get the United States involved and participating in the international process by joining the Hague Conference on Private International Law and the International Institute for the Unification of Private Law (UNIDROIT). Arthur has been on U.S. delegations to meetings of the Hague Conference and its diplomatic sessions over a period of more than 30 years. He has seen the United States, with his important help and support, become a party to four conventions prepared by the Hague Conference—dealing with service of process abroad, the taking of evidence abroad, the certification of documents intended for use abroad, and the return of internationally abducted children. He has been on the U.S. delegations to Hague Conference sessions that produced Conventions to which the United States should and eventually will become a party—dealing with intercountry adoption

and protective measures for children. He was the rapporteur elected by Hague Conference Member States for the 1985 Hague Convention on the Law Applicable to Contracts for the International Sale of Goods.

Arthur has been a member of the Secretary of State's Advisory Committee on Private International Law representing the American Society of Comparative Law since the early 1980's, but had attended and contributed to meetings of the Advisory Committee meetings since shortly after its establishment in 1964.

In addition to providing continuing guidance and support for the private international law program of the State Department over more than three decades, Arthur has been the driving intellectual force behind the U.S. government proposal in 1992 that the Hague Conference undertake another effort to produce a convention on the recognition and enforcement of foreign judgments in civil and commercial matters. The United States is currently not a party to a single bilateral or multilateral treaty providing for the recognition and enforcement of U.S. judgments. The U.S. proposal was for a convention that would also deal with bases of jurisdiction that would be permitted and bases that would be prohibited in litigation against persons or entities resident in other States party to the convention. Arthur is the author of the *convention mixte* concept for this convention, which is to have a world-wide appeal rather than a regional focus like the 1968 Brussels Convention in force among the Member States of the European Union. Thus, the *convention mixte* would not seek to divide all bases of jurisdiction only into those that are permissible, leaving all others impermissible, but would leave in a grey area all bases of jurisdiction not placed by the agreed text of the convention on the permissible or impermissible lists, with litigation based on grey area bases of jurisdiction permitted. However, the resulting judgment would not be entitled to recognition and enforcement abroad under the convention but, if at all, only under the general law and comity of the requested state. Thus, grey area bases of jurisdiction and the resulting judgments would not be prohibited or benefited by a *convention mixte*. Arthur has explained and promoted this concept in many fora as a realistic goal and a broadly acceptable one for a convention of world-wide reach. It now seems more than possible that his concept will ultimately be accepted for the convention that the Hague Conference Member States agreed in October of last year to seek to prepare by the conclusion of the Conference's 19th diplomatic session in October 2000.

Anyone who has worked with Arthur is continuously astounded by the depth of his keen understanding, the quickness of his mind and the clarity of his explanations, but equally also by the gentleness, courtliness and good humor with which he deals with those around him whose intellectual capabilities rarely equal his own. Arthur's patience with others and with the often ponderous pace of intergovernmental negotiations to unify private law does not detract from the steadiness of purpose and the persuasiveness with which he pursues the interests and goals of the United States. His combination of keen intellect, great knowledge, the

ability and patience to explain, and his steadfastness of purpose account for the highest regard in which Arthur is held by lawyers, law professors and government officials in the United States and all over the world, as well as by the international civil servants most particularly on the Permanent Bureau of the Hague Conference. Arthur is the finest example of legal thinker and expert by whom any country could hope to be represented, and to benefit from Arthur's guidance and his representation of the negotiations. We look forward to many more years of his dedication and assistance in this field.

I am delighted that the Section of International Law and Practice of the American Bar Association has chosen to award the Leonard J. Theberge Prize for Private International Law to my colleague and friend—Arthur T. von Mehren.

August 5, 1997

Letter from Peter D. Trooboff of Covington & Burling, Washington, D.C.

While a student at Harvard, I took Professor von Mehren's course in Comparative Law in the Spring of 1967. It was one of the few law school courses whose principal themes remain with me to this day. The classes were fascinating. Their joys arose from watching a truly remarkable intellect teach us how to rethink what we had learned in our first year in torts and contracts by contrasting civil and common law analysis. When we finished that semester, we understood how to begin analyzing a problem from the perspective of lawyers trained in different legal systems. It was only years later that I began to realize how difficult it is to accomplish this process well. In class Professor von Mehren made the exercise seem so clear and relatively straight-forward.

Attending the Secretary of State's Advisory Committee on Private International Law after entering private practice in Washington, I soon realized that Arthur was the intellectual leader for much of the Committee's work. In 1979, then Deputy Legal Adviser Stephen Schwebel asked if I would assist Arthur with negotiating Protocols to the Inter-American Conventions on Service of Process and Taking of Evidence. Arthur and I comprised our two-man delegation to the Second Inter-American Specialized Conference on Private International Law (CIDIP-II). It was at CIDIP-II in Montevideo, Uruguay, and later at the Hague Conference on Private International Law that I realized the extent of the worldwide audience of admirers that Arthur's scholarship enjoys. In South America, his inclusion on our delegation was taken as a mark of the respect that the United States held for the CIDIP process. Arthur showed remarkable patience in the group of experts that met in the early 1980's to work out the bases of jurisdiction for recognition and enforcement of judgments that eventually were included in an Inter-American Convention. Our Latin

colleagues took great pride in having negotiated with this world-class scholar on this important project.

Most recently Arthur has been the guiding light for the proposal by the United States to have the Hague Conference on Private International Law adopt as its current project the development of a General Convention on Jurisdiction and the Recognition and Enforcement of Judgments. Again I saw the respect for Arthur's thinking even when he was making points that our European and other Hague Conference colleagues found a little hard to accept. They might be reluctant to endorse his position but they never doubted that there was a formidable process of analysis that served as the basis for what he proposed. It was my task to convert into an explanatory chart the essence of Arthur's proposal for a mixed convention. This took nearly a year of collaboration and, in the end, Arthur honored me by including the chart as an appendix to his important article on the subject.

When we were in the Hague a few years ago, I recall telling an Iranian member of the legal staff to the Iran-U.S. Claims Tribunal that Arthur was with our delegation. Would I be able to arrange a luncheon with him? Arthur showed his usual graciousness and agreed to get together. My Iranian colleague brought along his copy of Arthur's book to have it signed. It was clear from the conversation that the meeting with Arthur and the book signing were professional highlights for the Tribunal lawyer. I know that book is one of his prized possessions.

Arthur's humor comes in small, carefully parcelled doses. I remember meeting a delegate at the Hague Conference who reported having attended one of my classes at the External Program of the Hague Academy. I introduced the delegate to Arthur and they chatted amiably. During the Hague Conference discussion, this delegate intervened and spoke at some length about a point that unfortunately made rather little sense. Arthur leaned over and said gently, "One of your students, Trooboff?"

What is it like to work with Arthur? I can attest to his diligence and productivity. Always writing by hand and always with the most skillful craftsmanship, Arthur will rapidly prepare draft language or comment on the proposal of others. His quickness is quite remarkable and the clarity of his approach is often well ahead of others who are working on the same issue.

In short, I am about to celebrate a 30th Law School reunion and I am still in Arthur's class—extremely happy to be there. Len Theberge would be proud to know that Arthur von Mehren is receiving the award that was named in Len's honor after his untimely death. Len cared so much about legal craftsmanship which has been central to Arthur's success. It is a fitting tribute to Len's memory and Arthur von Mehren's lifetime of teaching and scholarship that the Section should be conferring this award on Arthur.

I regret that I cannot be with you and ask that you permit me to join in your toast to Arthur—long may we all continue to learn from him!

June 30, 1997

Remarks by Arthur T. von Mehren upon Receiving the 1997 Leonard J. Theberge Award for Private International Law

It is a great honor to receive the ABA Section of International Law and Litigation's 1997 Leonard J. Theberge Award for distinguished, longtime contributions to the development of private international law. Among the previous recipients of the award I count many friends, including the late Philip Amran, Allan Farnsworth, John Honnold, the late Ambassador Richard Keamey, Peter Pfund, and the late Professor Willis Reese. It is a privilege to join this distinguished group.

There is much that I could say about the development of private international law in the latter half of the twentieth century, especially in the United States. The field's theory and methodology are today far less conceptual than was the case a half century ago. One notes also the greatly increased importance of legislation, especially in Western Europe, and of regional international conventions. The Brussels convention on jurisdiction and the enforcement of Judgments in Civil and Commercial Matters of 1968 is perhaps the best known and most important of these. Since 1951, the Hague Conference in Private International Law has prepared an impressive array of conventions intended for worldwide use including the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, the Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, and the Convention of 25 October 1980 on the Civil Aspects of International Child Abduction.

Since my remarks must be brief, I shall not focus on past accomplishments in the private international law field but talk instead about work that is now under way at the Hague Conference to prepare a convention that will address as well jurisdiction to adjudicate as recognition and enforcement of judgments. This project will be the principal agenda item for the Conference's Session in October 2000.[1]

Traditionally, international conventions have addressed only the recognition and enforcement of judgments. For a judgment to qualify for recognition and enforcement, it had to satisfy, *inter alia*, a jurisdictional requirement. Under such a convention, contracting States remain free, however, to exercise adjudicatory authority on any basis that they wish.

1. The project on which the Hague Conference has begun work is discussed in greater detail in Arthur von Mehren, *Recognition of United States Judgments Abroad and Foreign Judgments in the United States: Would an International Convention Be Useful?*, 57 RABELS Z 449-459 (1993); Arthur von Mehren, *Recognition and Enforcement of Foreign Judgments: A New Approach for the Hague Conference?*, 57 LAW AND CONTEMP. PROB. 271-287 (1994); and Arthur von Mehren, *The Case for a Convention-mixte Approach to Jurisdiction to Adjudicate and Recognition and Enforcement of Foreign Judgments*, 67 RABELS Z 86-92 (1997). For general background, see also A. Von Mehren, *Recognition and Enforcement of Sister-State Judgments: Reflections on General Theory and Current Practice in the United States*, 81 COLUM. L. REV. 1044-1060 (1981).

Of course, it is entirely possible to address in a single convention not only the recognition and enforcement of judgments but also the exercise of adjudicatory authority. A worldwide convention that takes this approach for a specific subject matter is the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards. Two regional conventions—the Brussels Convention of 1968 and the Lugano Convention of 1988—adopt the approach in dealing with civil and commercial matters generally. The traditional approach, which does not address directly the exercise of adjudicatory authority, results in what has come to be known as a *convention simple*; by contrast, a convention that, directly and exhaustively, regulates both the assumption of adjudicatory authority and the enforcement of judgments can be called a *convention double*. Brussels and Lugano would be such conventions in a strict sense had they regulated the exercise of adjudicatory authority by Contracting States not only over domiciled, but also over non-domiciled, defendants. In the case of the latter, however, the Contracting States are free to assert adjudicatory authority on any desired basis[2] Where non-domiciled defendants are in question, therefore, these conventions operate as *conventions simples*. They depart dramatically from the *convention simple* paradigm, however, by dispensing with all jurisdictional tests; regardless of the basis of adjudicatory authority asserted by the court of origin, its judgment must be recognized and enforced. (Of course, to the extent that the proposed Hague Convention functioned as a *convention simple*, recognition and enforcement of the foreign judgment would be subject to a jurisdictional test.) As the Brussels and Lugano conventions illustrate, an intermediate approach is also possible; elements of a convention *simple* can be combined in various ways with elements of a convention *double* to provide a mixed convention.

The distinguishing characteristic of a full-fledged convention *double* are that each Contracting State *must* exercise adjudicatory authority when a convention basis is present but otherwise must refrain from adjudicating on the merits. In litigations within a double convention's scope, either the litigation proceeds on a convention basis and a judgment entitled to recognition and enforcement results or litigation is aborted for lack of adjudicatory authority and a judgment on the merits cannot be given. A double convention, coupling jurisdiction and recognition, thus operates in "either-or" terms. Only the jurisdictional bases *required* by the convention can be invoked—permitted bases that are not required have no place—and all resulting judgments are, subject to rare exceptions, enforceable in the other Contracting States.

2. Each convention's article 4 provides that "[i]f the defendant is not domiciled in a Contracting State, the jurisdiction of the courts of each Contracting State shall, subject to the provisions of article 16 [providing for exclusive jurisdiction], be determined by the law of that State," rather than by the Convention. Article 26 requires recognition of judgments rendered under article 4 "in all other Contracting States" regardless of the jurisdictional basis on which the judgment rests.

A mixed convention differs from a double convention in that it divides bases of adjudicatory authority into three—rather than two—groups: (1) *required* bases that each Contracting State must make available if the litigation falls within the scope of the convention and whose use results in judgments entitled, in principle, to recognition and enforcement under the convention; (2) *permitted* bases that a Contracting State is not forbidden to use but whose use results in judgments that are not entitled to recognition and enforcement under the convention—instead, the enforceability *vel non* of such judgments is determined, as has traditionally been the case internationally, under the State addressed's general law of recognition and enforcement;[3] (3) *prohibited* bases that a Contracting State is not entitled to invoke in litigation that is within the scope of the convention.

The question whether the Hague Conference should seek to produce a double or a mixed convention is hotly debated. Obviously, the choice made will profoundly affect the drafting of the proposed convention. Long before the Conference decided to prepare a convention to address jurisdiction as well as recognition, I took the position that—for the reasons set out below—only the mixed model is appropriate and feasible for a convention intended not for regional but for worldwide use.

Agreement upon the particularized and *exclusive* list of jurisdictional bases that a true double convention requires would be very difficult, if not impossible, to obtain for an instrument intended for worldwide use. In the first place, in some circumstances one legal order has strong reasons for claiming adjudicatory authority while another has, from its perspective, strong reasons for refusing recognition of the resulting judgment. The likelihood and intensity of such tension increase as a function of the differences between the social, sociological, political, and economic cultures of the legal orders in question. In groupings of States that have relatively common backgrounds and cultures, these conflicts can often be resolved in favor of unqualified acceptance or unqualified rejection of the basis in question; this is especially so where the States aspire to a more closely knit legal, economic, and political order.

Worldwide, however, in many cases these tensions may be too deeply rooted to be resolved in the either-or fashion that a true double convention requires. Arguably, by introducing a general choice-of-law test and by a broad and lax conception of *ordre public* one could reduce the stringency of a full-fledged double convention sufficiently to make the approach acceptable in a worldwide convention. However, the cure would deprive the resulting convention of much of its value: A choice-of-law test introduces complexity and uncertainty at the

3. A refinement that merits consideration is the recognition of two types of *permitted* bases: (a) those where use would yield judgments entitled to recognition under the convention and (b) those that would not yield such judgments. This approach has advantages but would reduce the convention's informational effectiveness since in order to determine whether a state makes a particular permitted basis available, one would have to consult that jurisdiction's domestic law.

stage of recognition and enforcement; an expansive conception of *ordre public* unbridles judicial discretion.

A further difficulty with a strict duality approach in a worldwide convention is that States adopting the convention would have two very different regimes regulating exercises of adjudicatory authority—one for litigation generally, the other for litigation falling under the convention. This situation would lead to complications and confusion. By introducing a third group of jurisdictional bases whose hallmark is simply that the basis is neither one that *must* be made available by all convention States nor one that *must not* be made available by any convention State, a mixed convention relieves States from the need to revise drastically their existing jurisdictional law. To the extent that a State's general law of jurisdiction had previously not provided a required basis, the basis would be added—either by ratifying the convention or in legislation implementing it—to the State's jurisdictional repertoire for litigations falling within the scope of the convention. Likewise, where the convention applies, a state would have to forgo use of prohibited jurisdictional bases. For the rest, each State's general law of Jurisdiction would be undisturbed. The changes and adaptations required to accommodate a convention *mixte* regime are obviously far easier to make and far less disrupting than those that a full-fledged double convention requires.

Another difficulty in using the double convention approach in an instrument intended for worldwide use is that placing jurisdictional bases into two groups—the required and prohibited—would inevitably result in the required group including bases whose acceptability is marginal. In a mixed convention, on the other hand, the pressure to include in the required list marginal bases is far less. Unlike a double convention, bases that are seen as somewhat marginal or problematic need neither be canonized by placing them on the required list nor demonized by placing them on the prohibited list. Their ambivalent quality is instead recognized. States would be free to make such permitted bases available but the resulting judgments, while enforceable in the State of their rendition, would not be entitled to recognition under the convention.

The educational effect of a mixed convention on general thinking respecting the exercise of adjudicatory authority could thus be more constructive than that of a full-fledged double convention. A mixed convention has yet another educational effect; it encourages the use in practice of sound, rather than marginal, jurisdictional bases. A double convention provides no incentive for a plaintiff to avoid using a marginal *required* basis since all required bases yield judgments entitled to recognition and enforcement under the convention. A mixed convention, on the other hand, exacts from a plaintiff, who proceeds on a permitted basis that would be required basis in a double convention, the price of losing the right to enforce the resulting judgment under the convention.

Adopting the mixed-convention approach would still leave many difficult issues that would have to be resolved. For example, to what extent—if at all—will *forum non conveniens* stays or dismissals be allowed when a required jurisdictional

basis is in question? Will the convention accept the *lis pendens* principle and, if so, how will the principle apply to proceedings seeking declaratory judgments? Should the convention prohibit anti-suit injunctions? What measure of recognition will be accorded judgments awarding punitive or multiple damages? Should damage awards that are, by the standards of the recognizing jurisdiction, grossly excessive be subject to reduction by its courts? Finally, is there any way to deal effectively with a concern that arises with all recognition conventions that are, in principle, open to every interested State: Should—and can—a degree of protection be afforded the judgment debtor when enforcement is sought for a judgment emanating from a State, party to the convention, whose administration of justice is regarded as falling, at least on occasion, below internationally acceptable standards?

If a reasonably balanced and workable convention can be negotiated, what would its prospects for ratification be?

The convention's provisions, as well as its ultimate prospects for success, will in no small measure turn on whether other Hague Conference States believe that there is a reasonable chance that the United States will ratify. In this connection, members of the American Bar Association can be of great assistance in at least two ways to the State Department and to those responsible for the ongoing Hague negotiations. We need to know whether what we are doing and the positions that we plan taking in the negotiations are generally acceptable to the American Bar and we shall need the Bar's support in obtaining the Senate's advice and consent for the final product and congressional enactment of any necessary implementing legislation.

You will ask, as you should, what can a convention along the lines proposed offer the American Bar? You will, I hope, put this question from the perspective of the bar as a whole and with the realization that perfection is unattainable in these matters. At the end of the day, what should be decisive is whether—over all—Americans would be in a better position with such a convention in force than they currently are.

If the American Bar gives us the support that we need to negotiate at the Hague from strength rather than weakness, I am convinced that the ultimate product will be a decided improvement over the current situation.

Currently parties and their counsel encounter great difficulty and incur considerable expense in obtaining reliable information regarding whether foreign legal orders are prepared either to exercise adjudicatory authority or to enforce foreign judgments. Today, before litigation decisions respecting these matters can be made, an analysis of each national law that may be relevant must be undertaken. To make informed decisions respecting these matters, plaintiffs and defendants alike must undertake difficult research and incur considerable expense. In many cases, moreover, the answers may be far from clear.

A mixed convention would itself contain clear and reliable answers to the following questions: (1) For States party to the convention, what bases of jurisdic-

tion in the international sense are *required* and ensure recognition and enforcement of the resulting judgment in all other contracting States? and (2) What bases of jurisdiction in the international sense are *prohibited* and, accordingly, cannot be invoked in *any* contracting State? To this extent, with little or no consideration of national law, plaintiffs and defendants alike can easily and accurately determine where they stand by simply consulting the Convention.

A mixed convention does not, on the other hand, provide information respecting the *permitted bases of jurisdiction* that certain contracting States make available nor where the resulting judgments could be enforced. Where a *required* jurisdictional basis is not present, plaintiffs and defendants would find themselves exactly where they now are. (A full-fledged double convention would, of course, give complete information since, in matters within the convention's scope, all jurisdictional bases would be either *required or prohibited*. The informational advantages offered by a double convention are thus clearly superior to those offered by a mixed convention. However, for reasons already discussed, the disadvantages inherent in a double convention for worldwide use seem clearly greater than the advantages.)

In my judgment, a mixed convention along the lines sketched above is highly desirable and, with real support form the American Bar, attainable. Even if the convention offered no more than reliable, low-cost information on the issue discussed above, the convention would considerably improve the lot of American parties. So far as *permitted* bases were concerned, essentially nothing would change, but where a *required* or a *prohibited* jurisdiction basis was in question, the situation would be greatly improved. Reliable information on these matters could be obtained expeditiously and at a moderate cost. Should not the American Bar Association—and other elements of the organized Bar, as well—support wholeheartedly the effort to achieve such a Convention?