Recognition and Enforcement of Foreign Civil Judgments: A Summary View of the Situation in the United States

1. The general trend

The effectiveness of foreign nation judgments has been a staple topic in the legal literature of the United States. In view of the large scholarly output already existing, this report essays no more than summation of principal aspects of the current situation. Codified treatment of foreign-nation-judgment recognition and enforcement is a recent development in the United States; and treaty solutions to problems of this nature have just reached the nascent state. While the relevant law has been largely judge-made, the receptivity of United States courts to foreign-nation judgments has been characterized as extreme. In an important recent commentary, Professors von Mehren and Trautman synopsized the current practice:

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The judicial output, while not large, has been increasing. See Peterson, Res Judicata and Foreign Country Judgments, 24 Ohio St. L. J. 291, 295-26 (1963) (reported cases involving foreign nation judgments exceeded eleven per year during the period 1937-62).

2See Commissioners' Prefatory Note to the Uniform Foreign Money-Judgments Recognition Act, 9B U.L.A. 64 (1966). Diverse state statutes relevant to particular aspects of extranational adjudication are described in Peterson, supra note 1, at 296-99.

Doubtless influenced by interstate practice as shaped by constitutional compulsions, a state [of the United States] ordinarily recognizes and enforces an internationally foreign judgment to the extent that the judgment was enforceable in the rendering country, if in its view that country had adjudicatory jurisdiction in the international sense and utilized fair procedures. Such practice reflects not only a policy against harassing or evasive tactics, but also other relevant policies...including that of fostering the elements of stability and unity essential to an international order in which many aspects of life are not confined within the limits of any single jurisdiction.

"Recognition" in this context refers to the res-judicata status of a foreign judgment; it occurs when the foreign adjudication is held to bind the parties. "Enforcement" denotes the authorization of affirmative relief based on the foreign judgment; in this country, enforcement is effected via the device of a "judgment on the judgment"—a domestic judgment rendered pursuant to a claim predicated upon the foreign judgment.4

Two principal concerns dominate the United States literature in this field. One has been aptly capsulated, and assiduously pursued by Professor Nadelmann: Non-Recognition of American Money Judgments Abroad and What to Do About It.5 The other involves the adequacy of the general United States approach to foreign adjudications. Professors von Mehren and Trautman, among others, suggest that United States jurists have not adverted sufficiently to the differences between interstate and international settings; they propose distinct development of the basic policies that should guide practice with respect to internationally foreign judgments.6

Two recent developments in the United States reflect the general trend of decisions concerning recognition and enforcement of foreign-nation judgments.7 The Restatement (Second) of Conflict of Laws (1967) includes a section and commentary directed squarely to internationally foreign judg-

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4See Restatement (Second) of Conflict of Laws at 374 (Proposed Official Draft 1967). See id. § 100 comment d, § 102 comment g.

5Iowa L. Rev. 236 (1957).

6von Mehren & Trautman, supra note 1; Smit, supra note 1. But see Restatement (Second) of Conflict of Laws § 98 comment b (Proposed Official Draft 1967); cf. Peterson, supra note 1.


7Recognition and enforcement have not been limited to determinations of foreign courts of general jurisdiction. Decisions of special courts and legislative, executive or administrative agencies acting judicially have been accorded the same measure of respect. See Restatement (Second) of Conflict of Laws § 92 comment a (Proposed Official Draft 1967); Regierungspräsident Land Nordrhein Westfalen v. Rosenthal, 17 A.D.2d 145, 232 N.Y.S.2d 963 (1st Dep't 1962) (judicially reviewable administrative agency restitution order); Cundenhove-Kalerghi v. Dieterle, 36 N.Y.S.2d 313 (Sup. Ct. 1942) (award of permanent arbitration court for theatrical profession); von Engelbrechten v. Galvanoni & Nevy Bros., 59 Misc.2d 721 (Civ. Ct. N.Y.C. 1969) (award of Hamburg Amical Court of Arbitration).
ments. While the original Restatement (1934) does not present any distinct general position on foreign-nation judgments, the new effort states in bold face: 8

A valid judgment rendered in a foreign nation after a fair trial in a contested proceeding will be recognized in the United States so far as the immediate parties and the underlying cause of action are concerned.

And, motivated in large part by the desire to "make it more likely that judgments rendered in [states of the United States] will be recognized abroad, 9 the National Conference of Commissioners on Uniform State Laws has adopted the Uniform Foreign Money-Judgments Recognition Act (1962), which is intended to codify settled practice on the recognition of extranational judgments.

2. Recognition of sister-state and foreign-nation judgments: principal distinctions

Among states of the United States, recognition practice is controlled by the full-faith-and-credit clause of the federal Constitution. 10 The United States Supreme Court, ultimate arbiter of questions arising under the clause, has consistently stressed the judgment-nationalizing function of the full faith and credit mandate. To summarize the Court's position, a valid judgment of one state, even if it disregards the dominant interest or policy of another, must be recognized as the national answer to the litigated episode. Application of the clause, under Supreme Court supervision, has generally resulted in operation of the state judicial systems, after a valid judgment has been obtained in any one of the systems, as integrated units of the larger federal system. 11

The framework within which internationally foreign judgments are considered by United States courts is, of course, markedly different. No full-faith-and-credit obligation operates internationally. Thus, recognition practice derives from the recognition forum's policies, rather than from any mutually binding or superior legal precept. 12 Moreover, the United States Supreme Court has not spoken for the nation in this area. 13 At present, it is

8§ 98 (Proposed Official Draft).
10U.S. Const. art. IV § 1; 28 U.S.C. § 1738 (implementing statute).
12See Restatement (Second) of Conflict of Laws at 335 (Proposed Official Draft 1967).
13While the act-of-state doctrine is "exclusively an aspect of federal law," Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 425 (1964), court judgments resolving private disputes generally fall outside the compass of the doctrine as it is presently defined. Restatement (Second) of Foreign Relations Law § 41 comment d (1965 rev. ed.). But cf. Scoles, supra note 6, at 1607; note 78 infra and accompanying text.
generally assumed that state law determines the recognition due to foreign nation judgments.\(^{14}\)

In addition to the compulsion of the full-faith-and-credit clause, and the supervisory role of the United States Supreme Court, other factors operating in an interstate, but not in an international, setting, include similarity in adjudicatory procedures and standards and in the training and roles of professional jurists. Overall, while the integrity of a state or national judicial system requires reasonably strict application of res judicata doctrines, no similarly impelling consideration has operated internationally.\(^{15}\)

### 3. Policies underlying recognition; the disparaged reciprocity doctrine

As the rationale for its black-letter position on foreign-nation judgments, the Restatement tersely offers the *res-judicata* principle:\(^{16}\) the public interest requires that there be an end of litigation. Professors von Mehren and Trautman have presented the fundamental policies more elaborately\(^{17}\) and have urged sharper evaluation of these policies in the variant settings in which questions of the effectiveness of foreign judgments arise in court. However, along with the Restatement and most other academic writers, they discount reciprocity as a recognition prerequisite.\(^{18}\)

Uncertainty as to the situation in the United States concerning reciprocity as a condition to recognition has been engendered by the Supreme

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\(^{16}\) Restatement (Second) of Conflict of Laws § 98 comment b (Proposed Official Draft 1967). As to the claims, defenses and parties precluded by the foreign judgment, the rendition forum’s rules ordinarily control. *Id.* § 98 comment f. For finer distinctions, see von Mehren & Trautman, *supra* note 15, at 1671-95. See also Carrington, *Collateral Estoppel and Foreign Judgments*, 24 Ohio St. L. J. 381 (1963).

\(^{17}\) Five universal policies are identified, with the qualification that the weight given to each will depend in part on attitudes the recognition forum holds on related questions: avoidance of duplication of effort; protection of the successful litigant against harassment or evasive tactics on the part of his opponent; rendering choice of forum less dependent on the availability of local enforcement; fostering stability and unity in the international order; and, in certain cases, forum conveniens—deference to the rendition forum as the more appropriate adjudicator from the viewpoint of litigational convenience, or based on choice of law considerations. von Mehren & Trautman, *supra* note 15, at 1603-04.


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Court's 1895 decision in *Hilton v. Guyot*. While four of the Justices opposed any judicial application of "the principle of retorsion," the five-man majority applied a reciprocity test to a judgment obtained in France by a French plaintiff against United States defendants. As the Restatement commentary points out, the *Hilton* case involved an appeal from a lower federal court. The decision directly addressed practice in the federal courts. State courts have not considered it binding upon them, although some have adopted its reasoning. Moreover, under the current assumption that the federal courts are to apply the law of the state in which they sit in determining the effect that should be accorded to an internationally foreign judgment, it appears that *Hilton's* limited reciprocity ruling retains scant precedential value even for the federal judiciary.

Laws adopted in Massachusetts and New Hampshire are notable exceptions to the apparent anti-reciprocity trend. Massachusetts, in 1966, enacted the Uniform Foreign Money-Judgments Recognition Act with the addition of a reciprocity requirement. New Hampshire, in 1957, reacted to Quebec's refusal to recognize foreign judgments by providing that the effect accorded to New Hampshire judgments in Canada will be the measure of the effect given to Canadian judgments in New Hampshire.

The fear has been expressed that resort to state law on questions of foreign-judgment recognition may lead to application of archaic state precedent on reciprocity. An apparent illustration is *Svenska Handelsbanken v. Carlson*, a 1966 decision of the federal district court for Massachusetts. Although the court, in this diversity case, relied on early nineteenth-century Massachusetts state-court precedent to disqualify a Swedish judgment on the ground of lack of reciprocity, its action proved to be an accurate forecast of the current view of the Massachusetts legislature. Moreover, the foreign judgment in question had been rendered by default, and might not have survived a jurisdictional test. (Extending a rather long

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189 U.S. 113.

20Restatement (Second) of Conflict of Law § 98 comment e (Proposed Official Draft 1967).


Professor Smit, while criticizing *Hilton's* reliance on reciprocity, indicates agreement with the result based on his view of the diluted res-judicata policy applicable to foreign judgments. Smit, International Res Judicata and Collateral Estoppel in the United States, 9 U.C.L.A. L. Rev. 44, 68 (1962) (foreign personal judgments should bind domiciliaries of the adjudicating state and non-domiciliaries who selected the forum, but as to other non-domiciliaries, they should constitute only prima facie evidence of the merits of the original claim). For a contrary appraisal, see Peterson, Res Judicata and Foreign Country Judgments, 24 Ohio St. L. J. 291 (1963).

22See note 14 supra.


25258 F. Supp. 448.

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arm, the Swedish court proceeded against the estate of a United States domiciliary based on a guaranty given by the decedent to a Swedish bank.) In any event, the district court passed on to the merits, and swiftly resolved the case in favor of the Swedish plaintiff. In accord with the virtually unanimous view of commentators, and more likely indicators of the position toward which contemporary state judiciaries would incline, older New York decisions herald the demise of the reciprocity rule of Hilton.26

4. Conditions to recognition

The disparaged reciprocity test aside, the opinion in Hilton v. Guyot presents a catalogue of conditions to recognition that remain vital in United States practice. These conditions are that27

there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting a trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court or in the system of law under which it is sitting, or fraud in procuring the judgment, or any other special reason why the comity of this nation should not allow it full effect. . . .

In practice, principal focus has been placed on the question of the foreign tribunal’s jurisdictional base: Did that tribunal have sufficient relationship with the parties and episode in litigation to justify its exercise of adjudicatory authority?28 It is uncertain whether the recognition forum will accord res-judicata effect to the foreign tribunal’s fact findings resolving a challenge to its jurisdiction.29 Nor is there a settled approach when a base satisfactory to the recognition forum was present, but the rendering court purported to act pursuant to a base regarded by the recognition forum as unsatisfactory.30

Commentators, both here and abroad, have contrasted jurisdictional

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27159 U.S. at 202.
28von Mehren & Trautman, supra note 15, at 1610 (compliance with appropriate jurisdictional standards satisfies the “hallmark” function of suggesting that the rendering system shows fairness and judgment generally in its handling of litigation involving significant foreign elements). Cf. text at notes 94-99 infra.
29See Restatement (Second) of Conflict of Laws § 98 comment f (Proposed Official Draft 1967).
bases appropriate for international recognition purposes\textsuperscript{31} with bases found in domestic law, but unacceptable in the international sphere.\textsuperscript{32} Unacceptable or "exorbitant" bases (principally nationality, domicile or residence of the plaintiff, presence of any assets of a non-resident defendant, and—the common law contribution to the list—defendant's transitory presence) generally are not expected even by the rendition forum to elicit recognition outside.\textsuperscript{33} Particularly disturbing to jurists who stress the critical importance of a fair jurisdictional base as a recognition prerequisite is a feature of the Common Market convention concerning jurisdiction and judgments, signed in September, 1968. The convention provides for enforcement in all of the member nations of judgments against non-residents of the Common Market obtained pursuant to the exorbitant jurisdictional rules of individual member nations. At the same time, the convention excludes even the original assertion of jurisdiction over a Common Market resident on the basis of an exorbitant rule.\textsuperscript{34}

Foreign judgments will not be discounted in the United States on the sole ground that the rendition forum's choice of law did not comport with the choice that would have been made by the recognition forum.\textsuperscript{35} However, it is evident that choice-of-law concerns almost always bear upon


\textsuperscript{33}See Graupner, Some Recent Aspects of the Recognition and Enforcement of Foreign Judgments in Western Europe, 12 Int'l & Comp. L. Q. 367, 375 (1963); Nadelmann, Non-Recognition of American Money Judgments Abroad and What to Do About It, 42 Iowa L. Rev. 236, 261 (1957).


\textsuperscript{35}E.g., Watts v. Swiss Bank Corp., 305 N.Y.S. 2d 233 (A.D. 1st Dep't 1969). The same position is reflected in recent international efforts to deal with judgment recognition. See Draft Hague Conference Convention on the Recognition of Divorces and Legal Separations (1968) art. 6(b), English text in 16 Am. J. Comp. L. 582, 583 (1968); Draft Hague Conference Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters (1966) art. 7, English text in 15 Am. J. Comp. L. 362, 363 (1967) (recognition may not be refused for the sole reason that the court of the state of origin has applied a law other than that which would have been applicable according to the rules of private international law of the state addressed).
non-recognition dispositions broadly justified on "public policy" grounds.\(^3\) Also normally excluded in the United States as a justification for non-recognition is the existence of an error of fact or law made by the rendering court in ruling on the merits.\(^3\)

Recognition may not be granted, consistent with due-process fundamentals, if the defendant did not receive notice of the proceedings abroad in sufficient time to enable him to defend.\(^3\) Whether the judgment be domestic or foreign, "in rem" classification no longer insulates it from attack on the ground of inadequate notice.\(^3\) Where the relevant statute of the rendition forum does not mandate fair notice, but such notice was in fact given in the particular case, and no other disqualifying factor is present, the judgment should qualify for recognition.\(^4\)

Fraud in obtaining the judgment ranks with inadequate notice as a disqualifying factor. Disqualification will ordinarily result if a fraud defense is established under either the rendition forum's or the recognition forum's standard.\(^4\) Traditionally, courts in the United States have distinguished extrinsic fraud, which relates to defendant's opportunity to be heard, from intrinsic fraud, which concerns the presentation of false testimony and other improprieties engaged in by the successful party during the trial itself. It has been the rule that only intrinsic fraud warrants attack on a judgment no longer amenable to direct challenge on appeal.\(^4\) However, the distinction, often "shadowy and uncertain of application," has been dis-

\(^3\)See text at notes 50-55 infra. For a discussion of situations in which choice-of-law considerations may properly affect the decision whether or not to recognize a foreign adjudication, see von Mehren & Trautman, supra note 15, at 1636-54.

\(^2\)Restatement (Second) of Conflict of Laws § 106 comment a (Proposed Official Draft 1967); Reese, The Status in This Country of Judgments Rendered Abroad, 50 Colum. L. Rev. 783, 789 (1950). \(\text{But see Mont. Rev. Code Ann. 93-1001-27 (1947); Ore. Rev. Stat. 43.190 (1963)}\) (foreign nation judgments against a thing no longer insulates it from attack on the ground of inadequate notice).\(^3\) Where the relevant statute of the rendition forum does not mandate fair notice, but such notice was in fact given in the particular case, and no other disqualifying factor is present, the judgment should qualify for recognition.\(^4\)

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\(^4\)See von Mehren & Trautman, supra note 15, at 1666. In this situation, however, a questionable Supreme Court precedent disqualifies a sister state judgment. Wuchter v. Pizzuti, 276 U.S. 13 (1928) (Brandeis, Holmes and Stone dissenting); see Boivin v. Talcott, 102 F. Supp. 979 (N.D. Ohio 1951) (applying the Wuchter rule to deny effect to a Canadian judgment).

\(^4\)See Restatement (Second) of Conflict of Laws § 115 comments c, f (Proposed Official Draft 1967) (distinguishing sister-state and foreign-nation judgments in this regard. As to the former, the rendering court's standard is indicated as the sole measure). \(\text{But cf. Cardy v. Cardy, 23 A.D. 2d 117, 258 N.Y.S. 2d 955 (1st Dep't 1965)}\) (Quebec consent judgment recognized despite alleged fraudulent procurement).

\(^4\)See Restatement (Second), supra note 41, § 155 comment d.
carded in federal practice and in some of the states. Its eventual elimination for foreign as well as domestic judgments may be anticipated. Where a fraud defense is raised by a citizen of the rendition forum, the court may be reluctant to allow the attack; in this situation the recognition forum is likely to view the rendition forum as the more appropriate adjudicator.

A foreign judgment will not be credited prior to the time it acquires res-judicata effect in the rendition forum. Even as to sister state adjudications, full faith and credit has so far been required only for final judgments. While the pendency elsewhere of an earlier instituted action is not generally a bar to adjudication of the same claim even in a domestic setting, "prior action pending" may be urged as grounds for a discretionary stay.

Judgments on foreign-nation governmental claims—penal and revenue judgments—are not enforced by courts in the United States. However, foreign criminal judgments, although not enforced, may be recognized for specific purposes such as exclusion of aliens, application of multiple offender statutes, and double jeopardy rulings.

43See 5 Weinstein, Korn & Miller, New York Civil Practice Par. 5015.09 (1966).
44But see McKay v. McAlexander, 268 F.2d 35, 39 (9th Cir. 1959); Lucas v. Lucas, 232 F. Supp. 466, 467-68 (D. Canal Zone 1964) (intrinsic fraud does not warrant rejection of foreign-nation judgment).
45See Applewhaite v. S.S. Sunprincess, 150 F. Supp. 827, 828 (S.D.N.Y. 1956); Cardy v. Cardy, supra note 41; cf. American Law Institute, Study of the Division of Jurisdiction Between State and Federal Courts 311-12, 314 (1969) (within the federal system, the rendering court rather than the court from which recognition is sought should grant relief from a judgment inequitably obtained).
47Compare In re Will of Heller-Baghero, 302 N.Y.S. 2d 235 (A.D. 1st Dep't 1969) (2-1 opinion) (although New York proceeding for probate of 1964 will was commenced after 1962 will was offered to Austrian court, even if Austria was the death domicile, New York was not required to relinquish jurisdiction, where over 90% of decedent's property was in New York and New York resident was a substantial legatee under 1964 will), and Algazy v. Algazy, 135 N.Y.S. 2d 123 (Sup. Ct. 1952), aff'd 285 A.D. 1140, 142 N.Y.S. 2d 365 (1st Dep't 1958) (pending French alimony proceeding no bar to adjudication in New York which, as defendant's domicile, was the more appropriate forum) with Oakland Truck Sales, Inc. v. United States, 149 F. Supp. 902 (Ct. Cls. 1957) (action stayed pending conclusion of proceedings in Germany, where episode in dispute occurred.

As to modifiable judgments, see text at note 65 infra.
Foreign judgments, unlike sister-state judgments,\(^5\) may be disregarded if the underlying claim was contrary to the public policy of the recognition forum.\(^5\) It is frequently observed that, in principle, a public policy defense should not prevail unless the claim on which the foreign judgment is based is repugnant to the recognition forum’s fundamental notions of decency and justice.\(^5\) However, the label “contra public policy” is not easily contained in this narrow corridor. It may cover a less bed-rock choice of law concern of the recognition forum,\(^5\) or substitute for another ground of non-recognition,\(^5\) or appear as a make-weight in tandem with other disqualifying factors.\(^5\)

Finally, conflict with another judgment entitled to recognition,\(^6\) or with a forum-selecting agreement\(^5\) are factors that may disqualify a foreign adjudication.

5. Enforcement

Under modern practice, non-default foreign money judgments entitled to

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\(^5\) Restatement (Second) of Conflict of Laws § 98 comment g, § 117 comment c (Proposed Official Draft 1967).

\(^5\) Id § 117 comment c. Applying the public policy concept in this sense, courts have enforced foreign judgments although the underlying claim would not have been entertained in the recognition forum. E.g., Neporany v. Kir, 5 A.D. 2d 438, 173 N.Y.S. 2d 146 (1st Dep't 1958) (Canadian judgment for seduction and criminal conversation enforced despite New York legislation precluding such claims).


\(^5\) See note 119 infra and accompanying text.


\(^7\) See Restatement (Second) of Conflict of Laws § 80 (Proposed Official Draft 1967)
recognition ordinarily will be enforced via expeditious proceedings. The method employed remains the traditional suit on the judgment, eventuating in a forum judgment on the foreign judgment.\(^{58}\) Nonetheless, rapid summary judgment proceedings now available in the federal courts and in many state courts\(^ {59}\) have rendered formalistic, complaints about the absence of a specially labelled execution process (exequatur) which leads to execution of the foreign judgment itself without the interposition of a forum judgment.\(^ {60}\) In the case of a default judgment, however, careful examination of the law and facts relevant to the foreign court's jurisdiction may preclude summary adjudication.\(^ {61}\) Foreign currency stated in the foreign judgment generally will be converted into dollars as of the date of the enforcement forum's judgment.\(^ {62}\)

The original Restatement of conflict of Laws took the position that, whatever extranational judgments might be recognized, only money judgments were subject to enforcement because of the "extraordinary and discretionary character" of other remedies.\(^ {63}\) However, Restatement (Second) offers a qualified prediction that decrees ordering or enjoining an act will be enforced, absent undue burden upon the American court.\(^ {64}\)


\(^ {58}\)See Restatement (Second) of Conflict of Laws § 100 comment b (Proposed Official Draft 1967).

\(^ {59}\)Fed. R. Civ. P. 56. The federal model has been followed in many states. Moreover, in some states, summary judgment procedures have been speeded for certain matters, among them, enforcement of judgments. \textit{E.g.}, N.Y. CPLR § 3213 (motion for summary judgment in lieu of complaint).

\(^ {60}\)Nadelmann, Non-Recognition of American Money Judgments Abroad and What to Do About It, 42 Iowa L. Rev. 236, 259 (1957); Lenhoff, Reciprocity: The Legal Aspect of a Perennial Idea (Part 2), 49 Nw. U. L. Rev. 752, 763 (1955).


\(^ {62}\)Restatement (Second) of Conflict of Laws § 101 comment d (Proposed Official Draft 1967).


\(^ {63}\)Restatement of Conflict of Laws § 447 (1934) (applicable to sister-state as well as foreign-country judgments).

\(^ {64}\)§ 102 comment g (Proposed Official Draft 1967).
Formerly, the courts declined to enforce modifiable judgments, most notably support judgments, even when rendered by a sister state. Today, the trend is distinctly in the opposite direction, although such technically non-final judgments are still generally considered to fall outside the full faith and credit ambit. As to modifiable judgments rendered abroad, the courts have indicated an inclination to follow the practice developing in the sister-state arena. 65

6. Status adjudications

Of the reported cases in the United States dealing with foreign nation judgments, the largest category consists of decisions relating to status. 66 In this area, the policy of security of adjudication has special significance, and the general tendency in the United States, as elsewhere, is to recognize foreign adjudications. 67 On the other hand, the home state of the parties, or one of them, may have a strong choice-of-law concern regarding the family relationship in question. If this concern is disregarded, the home state, in turn, may disregard the foreign determination. 68

In the United States, where traditionally choice-of-law tests have not been applied overtly in recognition practice, non-recognition in such circumstances has been explained on other grounds; for example, lack of jurisdiction in the case of a divorce granted by a state where neither party was domiciled, 69 "changed circumstances" in custody cases, 70 and "public

65See Restatement (Second) of Conflict of Laws § 109 (Proposed Official Draft 1967). As in the case of sister-state support decrees, the respondent has been afforded the same opportunity to litigate questions concerning his obligation as would have been afforded to him in the original court. See Herczog v. Herczog, 186 Cal. App.2d 318, 9 Calif. Rptr. 5 (1960).

Under the New York statute authorizing modification and enforcement of foreign support orders, N.Y. Family Court Act 466(c), it is an open question whether the modification petitioner must show that the decree was modifiable where rendered. See Goldberg v. Goldberg, 57 Misc.2d 224, 291 N.Y.S.2d 482 (Fam. Ct. 1968) (downward modification allowed although wife urged that original Mexican court could not modify separation agreement incorporated in Mexican divorce decree).


69Id. at 1638.

70The Supreme Court has not yet decided whether, as between states of the United States, custody decrees are entitled to full faith and credit. See Restatement (Second) of Conflict of Laws § 103 comment b (Proposed Official Draft 1967). As to foreign-nation decrees, see generally Ehrenzweig, Recognition of Custody Decrees Rendered Abroad, 2 Am. J. Comp. L. 167 (1953). Case law is untidy, although it reveals that generally the welfare ("best interests") of the child is the paramount factor. Compare Application of Lang, 9 A.D.2d 401, 193 N.Y.S.2d 763 (1959), aff'd, 7 N.Y. 2d 1029, 200 N.Y.S.2d 71 (1960) (Swiss custody decree recognized where no change in circumstances was shown, although party granted custody under Swiss decree acted in deliberate violation of temporary order of New York court), with Kubon v. Kubon, 51 Cal.2d 229, 331 P.2d 636 (1958) (custody controversy

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policy’’ in adoption cases. The recognition accorded by New York courts to bilateral (consent) one-day Mexican divorces obtained by New Yorkers is a singular, but significant exception to the general practice—significant because numerically Mexican divorce decrees currently head the list of foreign adjudications for which recognition has been claimed in the United States; singular because New York is apparently the only state that has given judicial recognition to Mexican one-day consent divorces. Recently, however, the Court of Appeals for the Third Circuit approved the New York approach to bilateral Mexican divorces, and required their recognition in the Virgin Islands.

7. Legislation and potential treaty development: the Uniform Foreign Money-Judgment Recognition Act

While states of the United States have established generous recognition practices, the development to date has been unilateral. The treaty approach in which California refused to recognize Nevada adjudication where party obtaining Nevada decree acted in violation of temporary order of California court). Cf. Venizelos v. Venizelos, 30 A.D.2d 856, 293 N.Y.S.2d 20 (2d Dep’t 1968) (Greek decree rejected without explanation); Adamsen v. Adamsen, 195 A.2d 418 (Conn. 1963) (effect of foreign judgment determining custody is the same whether it is the judgment of a foreign nation or of a sister state).

E.g., In re Gillies Estate, 8 N.J. 88, 83 A.2d 889 (1951).


However, the New York judiciary is not alone in recognizing that a jurisdictional base other than domicile may suffice in divorce cases. See Alton v. Alton, 207 F.2d 667, 678 (3d Cir. 1953) (dissenting opinion severing the jurisdiction and choice-of-law issues); Scott v. Scott, 51 Cal.2d 249, 331 P.2d 641, 644-45 (1958) (concurring opinion); cf. Restatement (Second) of Conflict of Laws § 72 (Proposed Official Draft 1967).

to judgment recognition, familiar and generally preferred in civil-law countries, remains untried in the United States. The federal system offers a partial explanation for this state of affairs. Only the federal government may negotiate treaties, but, as indicated earlier, foreign-judgment recognition and enforcement practice is presently considered a matter of state law. Nevertheless, the area is susceptible of "federalization" because of its close association with foreign relations. Moreover, even if recognition practice were not brought within the domain of federal law, treaties could be negotiated for the benefit of those states that accepted the obligations of the treaty. A contribution toward eventual pursuit of such a cooperative federal-state approach is the Uniform Foreign Money-Judgments Recognition Act. The Act, which purports to codify settled common-law rules, has been carefully analyzed in a recent study.

This statute provides that a foreign judgment qualifying for recognition "is enforceable in the same manner as the judgment of a sister state entitled to full faith and credit." So far as procedure is concerned, this provision envisions enforcement via summary-judgment applications, that offer dispatch at least equal to that offered by the standard exequatur procedure of civil-law countries. The Commissioners on Uniform State Laws contemplated enforcement via the Uniform Enforcement of Foreign Judgments Act of 1948. Under this Act, the judgment creditor may obtain an immediate levy upon property of the judgment debtor; but sale must await notice to the debtor and an opportunity for the presentation of defenses.

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75See Graupner, Some Recent Aspects of the Recognition and Enforcement of Foreign Judgments in Western Europe, 12 Int'l & Comp. L. Q. 367, 368 (1963); Kulzer, Enforceability of Foreign Judgments, 16 Buff. L. Rev. 84 (1966).
76But cf. Section 8 infra (United States accession to United Nations Convention on Recognition and Enforcement of Arbitral Awards).
77See note 14 supra.
80§ 3.
82See note 59 supra and accompanying text.
A revised (1964) Uniform Enforcement of Foreign Judgments Act has been proposed for sister-state judgments. The 1964 Act provides for an automatic registration procedure, it puts the burden on the judgment debtor to stop the otherwise uninterrupted progression from registration to execution measures. Such a system has operated since 1948 among the federal courts. In view of the significant differences between the interstate and international areas, it would seem imprudent to authorize the same push-button style enforcement procedure for foreign-nation judgments.

Denial of recognition to foreign country adjudications is mandated by the Uniform Foreign Money-Judgments Recognition Act in only three instances: when "the judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law"; when "the foreign court did not have personal jurisdiction over the defendant"; or when "the foreign court did not have jurisdiction over the subject matter." The last of these stipulations is questionable. The Uniform Act apparently requires reference to foreign law to determine whether the foreign court had subject-matter jurisdiction, but reference to local law to determine the consequences of an absence of subject-matter jurisdiction. By contrast, with respect to sister-state judgments, the rendition forum's law is controlling on both questions. In the United States, particularly in the context of federal-state divisions of authority, lack of subject-matter jurisdiction constitutes a lingering objection to adjudication. In unitary foreign systems, however, rules concerning the competence of a particular court to hear a particular kind of case often occupy less hallowed ground. In view of the diverse settings in which the issue might arise, it would appear preferable to rank lack-of-subject-matter jurisdiction as a permissive rather than mandatory ground for non-recognition.

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89§ 4(a).
90Accord, Gorie v. Gorie, 26 A.D.2d 368, 274 N.Y.S.2d 985 (1st Dep't 1966) (where Mexican court lacked subject-matter jurisdiction under its own rules "it is of no moment that [collateral] attack would be allowed in Mexico").
91See Restatement (Second) of Conflict of Laws § 92 comment i, §§ 97, 105 (Proposed Official Draft 1967).
92For exceptional situations in which, for purposes of deciding a particular issue, it may be appropriate for the recognition forum to "validate a void judgment," see von Mehren & Trautman, supra note 68, at 1631-32. But see Restatement (Second), supra § 105 comment b, illustration 1.
While the Act contains no elaboration of the subject-matter jurisdiction requirement, it deals more precisely with the requirement of personal jurisdiction. Six specific bases are listed: personal service in the foreign state; voluntary appearance, except when made to protect property or contest jurisdiction; consent by choice-of-court agreement; domicile; operation of a business office in the foreign state, when the claim arises out of such operation; operation of a motor vehicle or airplane in the foreign state, when the claim arises out of such operation. The personal-jurisdiction requirement must be held satisfied if any one of these bases activated the foreign court. Following the list of specific bases is a stipulation that the courts of the enacting state may recognize other bases. This stipulation concerning other bases suggests that a jurisdictional base accepted for domestic courts may not be appropriate internationally and, conversely, that a base used by a foreign court, although not available locally, may be sufficient for recognition purposes. It would permit an approach to jurisdiction under which neither the foreign system's rules nor the forum's own would control, but focus would be placed on the fundamental question whether the foreign court had a connection with the parties and the litigated matter sufficient to warrant adjudication by it.

Although the list of six recognized bases includes the transient service rule, that "exorbitant" jurisdictional base peculiar to the common law, a further provision of the Act adds a significant qualification. In line with the approach just suggested, the Act indicates that personal service alone, even if enough for purposes of domestic adjudication, may be insufficient when international enforcement is the issue. Specifically, the provision calls for a forum-non-conveniens test: A foreign judgment need not be recognized if, in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action. Permissive grounds for non-recognition, in addition to forum non con-
veniens, where jurisdiction is predicated on personal service alone, are:

- lack of notice to the defendant in sufficient time to enable him to defend;
- fraud in obtaining the judgment;
- repugnance of the claim on which the judgment is based to the public policy of the recognition forum;
- conflict with another final and conclusive judgment;
- and conflict with an agreement between the parties under which the dispute was to be settled by means other than proceedings in the court that rendered the judgment.

Entrance by the United States into treaties on judgment recognition is no longer the remote possibility it seemed in past decades, when this country did not take part in multi-nation efforts to harmonize practice in the private international-law area. In 1963, the United States became an active participant in the Hague Conference on Private International Law and the International (Rome) Institute for the Unification of Private Law. It strongly supported and was the first nation to ratify the Hague Convention on the Service of Documents Abroad. Similar treatment of the more recent Hague Convention on the Taking of Evidence Abroad seems likely. Significantly, legislative activity at home preceded, and helped to assure a cordial reception for, these multilateral texts.

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100§ 4(b)(1)-(5). As to these grounds for non-recognition, see text at notes 38-45, 50-57 supra.


105See note 102 supra.
the Uniform Foreign Money-Judgments Recognition Act could well serve as a foundation for, or at least give impetus to, United States participation in multi-lateral or bilateral treaties on the recognition and enforcement of foreign judgments.


The step still on the horizon for judgments has already been taken with respect to arbitration agreements and awards. After World War II, the United States entered into a number of bilateral treaties of Friendship, Commerce and Navigation containing provisions on recognition and enforcement of arbitration agreements and awards. Ultimately, at the end of 1968, United States accession to the United Nations Convention on the Recognition and Enforcement of Arbitral Awards was approved by the Senate. This action augurs well for the eventual consummation of international agreements on judgment recognition and enforcement, for many of the factors that contributed to the initial hesitancy of the United States regarding the UN-sponsored arbitration convention also bear on the issue of treaty solutions with respect to judgments. The arbitration convention is, of course, important in its own right. In view of the high incidence of arbitration in commercial matters, members of the business community engaged in international trade are likely to consider it at least as significant as any treaty on judgment recognition.

The convention was formulated at the United Nations Conference on Arbitration held in New York in 1958. While most of the forty-five nations that participated in the Conference promptly acceded to the convention,


Approval of accession to the arbitration convention was made subject to the two declarations for which provision is made in the convention: (1) convention benefits will be limited by the United States to nations that have assumed the obligations of the convention; (2) the convention will apply only to differences arising out of legal relationships considered commercial under the federal law of the United States. For the United States, the second declaration is intended to make clear the exclusion of matters of state concern, such as title to real property. See Exec. Rep. No. 10, supra at p. 9. For civil-law countries with separate civil and commercial codes, it excludes matters governed by the civil code. See Executive E, supra at p. 18. With respect to the decision of the United States to include the reciprocity declaration, cf. Nadelmann, The Common Market Judgments Convention and a Hague Conference Recommendation: What Steps Next?, 82 Harv. L. Rev. 1282 (1969); Reese, The Status in This Country of Judgments Rendered Abroad, 50 Colum. L. Rev. 783, 793 (1950) (reciprocity requirements, although generally undesirable, may provide a useful bargaining weapon for the United States in negotiating treaties).

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the United States delegation recommended against immediate action. The
dlegation expressed a number of concerns. Was the traditional opposition
of common-law courts to arbitration dating from seventeenth century Eng-
ished precedent a relic of the past, ready for consignment to the scrap heap
of history? Would accession to the convention by the federal government
encroach upon an area of serious concern to the states? Would there be
widespread acceptance of the convention in the world community? Would
the American business community favor it?

Developments during the ensuing ten years quieted the fears voiced in
1958. The turnabout in judicial attitude toward arbitration had become
apparent. Courts in commercial centers plagued with congested dockets
"no longer view(ed) agreements to 'oust their jurisdiction' with the jaun-
diced eye of yesteryear." With respect to federal-state relations, a 1967
decision of the United States Supreme Court made it clear that arbitration
concerning interstate or foreign commerce was encompassed within the
federal domain, and that in such cases, the United States Arbitration
Act rather than state law governed enforcement proceedings in federal
courts. Thirty-three countries, including major trading nations, had be-
come parties to the convention. Legal advisers to businesses engaged in
foreign trade expressed their strong support. It was pointed out that acces-
sion would involve no fundamental change in United States law, for the
United States Arbitration Act already provided for enforcement of agree-
ments and awards of the kind dealt with in the convention. On the other
hand, failure of the United States to become a party to the convention
impeded efforts of American businessmen to enforce arbitration awards
against parties located in foreign countries. In addition to facilitating the
enforcement of American awards, the convention offered the advantage of
greater flexibility in selecting the place of arbitration. Because acceptance
of the convention was widespread, the forum decision could be made to
depend less upon the presence of assets subject to execution, and more
upon convenience for arbitration. Moreover, the latitude for party autono-
my implicit in the convention provisions received favorable comment: the
parties' choice of law would be effective whether or not it corresponded to
their choice of forum; they could subject to their private agreement the

111See, e.g., Standard Magnesium Corp. v. Otto Fuchs K.G. Metallwerke, 251 F.2d 455
(10th Cir. 1957) (American court order requiring arbitration is not prerequisite to enforcement
of Norwegian award under United States Arbitration Act). Legislation implementing the
convention, however, will eliminate the $10,000 amount-in-controversy requirement other-
112Art. V(1)(a) (by implication).
procedures as well as the composition of the arbitration tribunal. Finally, and perhaps the most important factor leading to reversal of the initial United States attitude, the 1963 Congressional authorization for United States participation in the Hague Conference and the Rome Institute marked the end of the era in which the government of the United States remained aloof from multi-nation efforts to promote international cooperation and agreement on private-law matters.

Legislation to implement the convention is to be made a part of the United States Arbitration Act. The legislation provides for both original and removal jurisdiction in the federal district courts, over all proceedings in which the convention is applicable. Where enforcement of an agreement is concerned, the court is authorized to direct the parties to proceed to arbitration at any place specified in the agreement, whether such place is within or without the United States. Enforcement of awards to which the convention applies may be obtained by application to a federal district court, filed within three years after rendition of the award. Confirmation of such awards is mandatory unless the court finds one of the grounds for refusal or deferral of recognition or enforcement specified in the Convention.

Among the grounds for such refusal of recognition are: the person against whom the award is invoked did not receive notice, or otherwise lacked adequate opportunity to present his case; recognition or enforcement would be contrary to the requested forum's public policy. Although the only explicit due-process guarantee relates to notice and opportunity to be heard, the Department of State memorandum on the convention articles states: "Because of the close link between the concept of due process and the public policy of the forum, the enforcing State could apply additional standards of due process pursuant to the public policy ground..." For these additional standards of due process, domestic precedent under the United States Arbitration Act is likely to guide the courts.

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113Art. V(1)(d) (by implication).
114See note 102 supra.
115U.S.C. The proposed legislation adds on additional chapter to the Act containing §§ 201-208.
116The United States Arbitration Act, absent the new chapter implementing the convention, permits a court to require arbitration only in its own district. 9 U.S.C. § 4.
117Art. V(1)(b) (mandatory ground).
118Art. V(2)(b) (discretionary ground).
119Executive E, supra note 107 at p. 20. However, the memorandum also cautions that abuse of the public-policy ground for non-recognition should be discouraged by Article XIV of the convention which provides that a contracting state shall not be entitled to invoke the convention against other contracting parties except to the extent that it is itself bound by the convention.
120See, e.g., Commonwealth Coating Corp. v. Continental Gas Co., 393 U.S. 145 (1968)
9. Conclusion

The United States experience indicates that a generous but unilateral approach to the requests of foreign litigants and tribunals is unlikely to solve the problems engendered by domestic litigation with international aspects. As to service of documents, and obtaining evidence abroad, the United States is pursuing the course familiar to and trusted by many of its partners in the world community. After considerable hesitation, it has followed the same course with respect to arbitration agreements and awards. Similar developments for judgment recognition and enforcement, although not yet clearly visible, are likely eventual prospects. United States experts have reported favorably on the Hague Conference Draft Convention on the Recognition of Divorces and Legal Separations (1968). As to the Hague Conference Draft Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters (1966), experts consider that it "well reflects current thinking here and abroad on sound rules for recognition and enforcement of foreign money-judgments." However, reservations have been expressed concerning United States accession, stemming in large measure from the problem created by the separate convention signed by the Common Market nations.

(award set aside as procured by "undue means" where impartial arbitrator, although not charged with actual bias, had an undisclosed consulting relationship with the successful party.)

