

MEXICAN LAW OF JUDICIAL COMPETENCE

Fernando Alejandro Vázquez Pando †

I. INTRODUCTION

Common law scholars analyze international jurisdictional issues in terms of whether or not a court has jurisdiction over a case with international elements.¹ In contrast, civil law systems differentiate between concepts of jurisdiction and competence.²

In civil law systems, courts have jurisdiction because they have the authority to declare the law³ (*i.e.*, power to exercise judicial functions), but not all courts are competent to determine a specific case. For example, a court lacks jurisdiction when the person or matter involved is beyond the scope of the court's authority, as in the case of a foreign state entitled to sovereign immunity, because a foreign state is not subject to the jurisdiction of another state's courts. The difference in terminology seems to be because the English word *jurisdiction* refers to all competences of the state and each one of its organs, while the Spanish word *jurisdicción*, and its equivalents in other European languages, have a meaning restricted to the exercise of the judicial function.⁴

† Licenciado en Derecho, Escuela Libre de Derecho, 1970. Partner, Vazquez Pando, Celis, Azuela y Asociados. Professor, Universidad Iberoamericana. Professor, Escuela Libre de Derecho. President Academia Mexicana de Derecho Internacional Privado.

1. It is very significant that the *Restatement of the Law of Conflict of Laws*, adopted and promulgated by the American Law Institute in 1934, dedicated its third and fourth chapters to jurisdiction, as does the *Restatement (Second) Conflict of Laws*, adopted and promulgated on May 23, 1969. Books on private international law or conflicts of law written by American or English scholars follow the same traditional terminology. See R. H. GRAVESON, *THE CONFLICT OF LAWS*, ch. 4 (6th ed. 1969); G. W. STUMBERG, *PRINCIPLES OF CONFLICT OF LAWS*, ch. IV (3rd ed. 1963); E. E. SCOLES & P. HAY, *CONFLICT OF LAWS*, ch. 5-11 (1982). Such terminology is used even when talking about legal systems belonging to the civil law tradition, such as Mexican law. See S. BAYITCH & J. SIQUEIROS, *CONFLICT OF LAWS: MEXICO AND THE UNITED STATES, A BILATERAL STUDY*, at 221-225 (1968). Moreover, in the English text of the *Inter-American Convention on Jurisdiction in the International Sphere for the Extraterritorial Validity of Foreign Judgments* [hereinafter *Inter-American Convention on Jurisdiction or The Convention*] the word *jurisdiction* is used every time the word *competencia* appears in the Spanish version. See D.O., Aug. 28, 1987.

2. Competence is the allotment of jurisdiction. Míaja de la Muela, *Les Principes Directeurs des Règles de Compétence Territoriale des Tribunaux Internes en Matière de Litiges Comportant un Élément International*, 135 RECUEIL DES COURS 15 (1972-I) [hereinafter Míaja de la Muela]; INSTITUTO DE INVESTIGACIONES JURIDICAS, *Diccionario Jurídico Mexicano*, (2d ed. Porrúa-UNAM 1987) at para. II word *competencia*. [hereinafter *Diccionario*] That is the fundamental idea when talking about jurisdiction of courts (from latin *juris dicere*). *Id.* word *jurisdicción*.

3. Míaja de la Muela, *supra* note 2 at 15.

4. *Diccionario*, *supra* note 2.

Under Mexican law, the competence of courts is determined by four criteria: Matter, amount, degree, and territory. Based upon subject matter, the courts are first divided into civil and criminal competence. All courts of the same branch of law are further divided into sub-branches. For example, civil courts include the family law courts and the lease courts. The amount of money in dispute in civil court litigation also determines which court is competent, as competence is limited by amount. Degree refers to the distinction between first instance courts and courts of appeal. Finally, the criterion of territory determines which court is competent, in a geographical sense.

The competence of Mexican courts cannot, as a general rule, be extended by the parties. Nevertheless, in cases involving only economic interests, such as contract cases, territorial competence may be extended by the parties. This extension, which is technically called *prórroga de competencia*, may be expressly made by including a clause in an agreement, or tacitly, by submitting a plea to a court which is not otherwise competent under the territorial criterion. As a result, civil lawyers do not talk about "jurisdiction clauses", but rather, about clauses which extend territorial competence (*cláusulas de prórroga de competencia judicial*) or clauses in which the parties submit to a specific court (*cláusulas de sumisión*).

This article will discuss the Mexican rules on jurisdiction, in common law terminology, or competence, in the civil law approach, in private international cases. Non-Mexican lawyers may perceive this emphasis on the territorial approach as too restrictive in solving the problems of international conflicts of judicial competence; nevertheless, since the parties' nationality is not relevant under Mexican law in determining competence of the court, the territorial criterion becomes the only relevant one.

II. OVERVIEW OF THE MEXICAN CIVIL COURT SYSTEM

In Mexico, as in the United States, there are federal and local (or state) courts. Mexican federal courts are competent in two different fields: Federal law cases and the *amparo* procedure.⁵ State civil courts are similarly competent in two different fields: Local law cases (which arise out of the state civil codes) and federal civil law⁶ cases, excluding

5. The *amparo* is a procedure to protect individuals against acts of authority violating the distribution of competency between federal and local authorities and against acts that violate constitutionally protected individual rights or that prejudice the legal interest of the individual.

6. Civil law, as opposed to criminal law, is not a specific branch of law itself, and it includes commercial cases.

maritime law,⁷ when the interests involved affect only private persons.⁸ Commercial⁹ and banking¹⁰ cases, which arise under federal law, can be heard by federal or local courts, at the plaintiff's election. In contrast, cases arising under the state civil codes can only be heard before local courts,¹¹ except in a few cases in which federal courts are competent.¹²

The competent federal courts in civil cases are the *juzgados de distrito* (district courts) as courts of first instance, and the *tribunales unitarios de circuito* (unitary circuit courts) as courts of appeal.¹³ The organization of local judicial power is governed by the local Constitution and the relevant local laws, and therefore may vary from state to state. First instance courts vary depending on the matter and the amount involved; it is therefore important to determine how federal and local courts assume competence on private international law cases in order to analyze whether submission clauses are sufficient grounds for a Mexican court to assume competence in such cases. Since it is beyond the scope of this discussion to analyze the relevant local laws of each sister state, this article will focus on the local courts of the Federal District. Additionally, the scope will be restricted to contract cases.¹⁴

III. RULES ON COMPETENCE IN PRIVATE INTERNATIONAL CASES

A. Federal Courts

Since there are no specific federal provisions governing the assumption of competence by federal courts in private international cases, competence is determined by applying the same rules used in domestic cases. These rules are used despite the fact that the case may or may not involve foreign elements.

To analyze the territorial competence of federal courts it is necessary to distinguish commercial law cases from others. Competence in

7. Constitución Política de los Estados Unidos Mexicanos, art. 104-II (Mex.) [hereinafter CONST.].

8. *Id.* at art. 104-I.

9. Pursuant to the Mexican Constitution, commercial law is federal. *Id.* at art. 73-X.

10. Pursuant to the Mexican Constitution, banking law is federal. *Id.*

11. Civil law is local law, pursuant to the Mexican Constitution. *See generally* CONST.

12. Civil cases in which the Mexican Federation is a party, CONST. art. 104-III; *id.* at sec. IV (litigation between two or more sister states or between one sister state and the Federation); *id.* at sec. V (litigation between one sister state and one or more persons resident in another sister state); and *id.* at sec. VI (cases involving members of the diplomatic or consular service).

13. In *amparo* cases the competent courts are the *juzgados de distrito*, the *tribunales colegiados de circuito*, and the *Suprema Corte de Justicia*. *See generally* Ley de amparo reglamentaria de los artículos 103 y 107 de la Constitución Política de los Estados Unidos Mexicanos reprinted in MICRO THEMIS PROCESAL (1989).

14. The concept of contract in civil law includes contracts and agreements.

commercial cases is governed by the *Código de Comercio* (Code of Commerce). Other cases (non-commercial) are controlled by the *Código Federal de Procedimientos Civiles* (Federal Code of Civil Procedures or C.F.P.C.), except in cases in which special statutes apply. This article will initially refer to the general rules, then to the rules applicable to commercial cases and finally, to a few cases of particular interest.

1. General rules

This section will address the analysis of jurisdiction or competence under the Mexican law approach as it arises in the following three cases: (1) A court's assumption of competence to determine a case, (2) a court's assumption of competence to enforce a judgment, and (3) a Mexican court's analysis of a foreign court's competence, undertaken in order to enforce the foreign judgment. In the first two cases, the court is considering its own competence, and both are ruled by the same provisions under Mexican law. In the third case, the court considers the competence of a foreign court in order to determine if the latter's judgment can be enforced.

a. Assuming competence to decide a case

In contract cases, the C.F.P.C. provides that the competent court is as follows:¹⁵

1. That of the place designated by the obligee to be judicially requested to comply with its obligation;
2. That of the place agreed to comply with the obligation;
3. That of the place where the real estate is located, in cases of *in rem* actions as well as in cases deriving from leases on real estate; and
4. That of the domicile of the defendant in cases of *in rem* actions on movable property and *acciones personales*.¹⁶

Therefore, if the relevant place is within the territorial competence of the court, it will assume competence despite the international nature of the case, and despite the possible necessity of having to serve process outside the court's territorial competence.

Criteria one through three above should easily be understood by American practitioners and even the fourth criterion may be understood when applied to a natural person. Nevertheless, an American lawyer

15. CÓDIGO FEDERAL DE PROCEDIMIENTOS CIVILES, art. 24 secs. I-IV [hereinafter C.F.P.C.].

16. *Acciones personales* (personal actions) are those actions *in personam*, such as actions involving economic value, but not implying an *ius in rem*. Examples are actions for the payment of money or actions for specific performance of an agreement.

might be surprised to learn that, under Mexican law, the criterion of domicile also applies to juridical persons such as corporations; domicile is not a necessary element for an American court to assume jurisdiction over juridical entities such as corporations. Under Mexican law, all persons, natural or juridical, have domicile, and Mexican law provides several rules to determine the domicile of juridical persons. For instance, the Civil Code for the Federal District¹⁷ (C.C.D.F.) provides that the domicile of juridical persons shall be the one where its management is conducted and located, and if such place is not the Federal District, the juridical person is considered to be domiciled in the Federal District with respect to legal acts executed there.¹⁸ Domicile is one of the most important grounds on which a Mexican court will assume competence.

Additionally, the court will assume jurisdiction even if the relevant place is not within its territorial competence, unless the action is *in rem* or involves leases on real estate. This assumption of jurisdiction is based on the provisions of the C.F.P.C. for extending the territorial competence of the courts. The C.F.P.C. establishes that there is tacit consent to jurisdiction or competence: (1) by the plaintiff's submission of the bill of complaint; (2) by the defendant's submission of the plea or counterclaiming the plaintiff without questioning the competence of the court; and (3) by the failure of interested parties to complain of a court's lack of competence.¹⁹

The fourth possibility is for the court to assume competence based on an express submission made by the parties. Such express submission may or may not be a clause in an agreement. This possibility brings us to one of this article's principal topics - the validity of submission clauses or, in common law terminology, jurisdiction clauses.

The C.F.P.C. has two special provisions dealing with submission clauses in international cases: (1) Article 566 provides authority for Mexican courts to recognize submission clauses as a valid basis for a foreign court to assume jurisdiction if, in light of the relationships and circumstances, such choice does not prevent access to, or cause a denial of, justice; (2) article 567 invalidates submission clauses that do not allow all the parties to benefit from a choice of court provision. These two provisions give rise to several interpretation problems and an effort must be made to clarify their meaning and field of applicability. The provisions read as follows:

Article 566. Jurisdiction assumed by a foreign judicial or

17. Said Code is local law for the Federal District, but it is federal law on federal matters.

18. CÓDIGO CIVIL PARA EL DISTRITO FEDERAL, art. 38 [hereinafter C.C.D.F.].

19. C.F.P.C., arts. 23, 34, and 36.

other adjudicatory authority designated by agreement of the parties before the procedure shall also be recognized, provided however, that taking into consideration the circumstances and relationships of the parties, such choice does not imply, in fact, the impossibility to appear or a denial of justice.

Article 567. Choice of jurisdiction clauses or agreements shall not be considered as valid when the power to make the choice operates to the exclusive benefit of one of the parties and not of all of them.

From its wording, article 566 seems to apply only when a Mexican court is requested to enforce a foreign judgment, and the court has to determine whether or not the foreign court rendering the judgment was a competent one; whereas, article 567 seems to be a substantial provision controlling the validity of submission clauses.²⁰ Therefore, although article 566 is relevant only when a Mexican court is requested to enforce a foreign judgment, article 567 is relevant in two cases: (1) To determine if the submission clause validly permits a Mexican court to assume competence and, (2) to determine the competence of a foreign court that assumed jurisdiction under a submission clause and rendered judgment, the enforcement of which is requested before a Mexican court.

Article 567 regulates submission clauses which purport to give a party the option of bringing the case before one of at least two different courts. For example, suppose in an agreement between A and B that the submission clause provides for B to submit, at A's election, to the courts of Mexico City and New York. In this case, the clause is void because the authority to choose the forum court operates only for the benefit of A. Nevertheless, if both parties, according to the clause, submit to the competence of the courts of Mexico City and New York at the election of the plaintiff, the clause is valid because authority to make the choice is for the benefit of all parties to the agreement. Since either A or B may be plaintiff or defendant, depending upon who sues whom, the clause gives both parties, at least at the inception of the contract, an equal opportunity to choose the forum.

To summarize, a Mexican federal court assumes competence in a contract case if there is a valid submission clause; in the absence of such a clause, competence shall be assumed if the relevant place as established by article 24 of the C.F.P.C. is within the court's territorial competence. The court may also be competent as a consequence of the tacit consent of the parties and may assume competence based on the submission of the

20. Independently from the above, under Mexican law a submission clause shall not be valid if it violates *due process of law*, as contemplated by the Mexican Constitution. *See generally* CONST.

complaint. In this last case, the defendant may contest the court's competence, but if it is not contested or if the corresponding remedy is abandoned, the competence of the court could be validly established. Finally, for a submission clause to be valid, if the parties have submitted to several jurisdictions, it is essential that the authority to choose be vested in all of the parties.

b. Assuming competence to enforce a foreign judgment

The C.F.P.C. provides that the Mexican federal court competent to enforce a foreign judgment is the court of the domicile of the person against whom enforcement is to be made and, absent such domicile, the competent court is the one of the place where the person's property is located.²¹

It must again be noted that under Mexican law both juridical and natural persons have domicile. Nevertheless, it is possible for a person not to have a domicile in Mexico; in such a case, the competent court is the one having territorial competence in the place where the property of the person against whom the judgment is to be enforced is located.

c. Recognizing competence for enforcement purposes

A Mexican federal court must enforce foreign judgments if the judgments comply with several requirements. One of the requirements is that the judgment be rendered by a foreign court that was competent to determine the case.²² Therefore, it is important to determine the criteria followed by Mexican federal courts to recognize the competence of foreign courts.

The following are the applicable rules of the C.F.P.C. by which a Mexican federal court recognizes the competence assumed by a foreign court that rendered a judgment, the enforcement of which is sought in the Mexican court:

1. If the court assumed competence pursuant to treaties to which Mexico and the corresponding country are parties;²³
2. In the absence of a treaty, the Mexican court shall recognize the competence of the foreign court if the following requirements are met:
 - 2.1. That the court should have assumed competence "pursuant to rules recognized in the international sphere" which are compatible with or similar to the criteria pursuant to which a Mexican court is

21. C.F.P.C., art. 573.

22. *Id.* at art. 571-III.

23. *Id.* at art. 543.

- competent;²⁴
- 2.2. That Mexican courts should not have exclusive competence to settle the case,²⁵
 - 2.3. That if assumption was made based on a clause or agreement in which a choice of courts was established:
 - a) the court, taking into consideration the circumstances and relationships of the parties, should determine if such choice does not imply, in fact, impossibility to appear or a denial of justice,²⁶ and
 - b) the court should determine that the authority to make the choice does not operate to the exclusive benefit of one of the parties to the clause or agreement rather than to all of them.²⁷

Additionally, Mexican courts will recognize the competence of the foreign court if such court assumed competence to avoid a denial of justice.²⁸

In applying the first rule, it should be noted that Mexico is a party to the Inter-American Convention on Jurisdiction in the International Sphere for the Extraterritorial Validity of Foreign Judgments,²⁹ but since the United States has not ratified this treaty, it is not applicable, in principle,³⁰ to judgments rendered by American courts.

Under the second rule, Mexican courts must recognize the competence assumed by a foreign court if that court did so by following the same criteria by which Mexican courts assume competence, or if it followed different criteria and such criteria are consistent with the reasons underlying Mexican rules on competence. For instance, there are a few cases in which Mexican law grants a plaintiff the privilege to sue the defendant before the competent courts of the plaintiff's domicile,³¹ but it would be compatible with the reasons underlying Mexican rules on competence for a judge to assume competence if the defendant is sued before the courts of his own domicile. The reason for this is that one of the basic tenets of Mexican rules on competence is the defendant's right to due process of law, a right which is not impaired by suing him before the courts of his own domicile.

24. *Id.* at arts. 564, 571-III.

25. *Id.* at art. 564.

26. *Id.* at art. 566.

27. *Id.* at art. 567.

28. *Id.* at art. 565.

29. Inter-American Convention on Jurisdiction, *supra* note 1.

30. As mentioned below, said convention may be relevant indirectly.

31. For example, divorce cases in which the plaintiff has been abandoned. C.F.P.C., art. 27.

This second rule not only requires the foreign court to assume competence by following reasons similar to those of Mexican law, but it also requires that Mexican courts may not have exclusive competence on the case. It is therefore necessary to determine the cases in which Mexican courts have exclusive competence. The C.F.P.C. gives a partial answer by specifying cases in which Mexican courts have exclusive competence. These cases involve:

1. Land and bodies of water located within the national territory, including the underground, airspace, territorial sea, and continental shelf, independently from the fact that the case might refer to rights *in rem*, or rights deriving from concessions to use, explore, exploit, take advantage, or lease such goods;
2. Resources of the maritime exclusive zone, or related to any right of sovereignty on such zone;
3. Acts of authorities or relative to the internal regime of the state or instrumentalities of the federal or local governments;
4. The internal regime of Mexican embassies and consulates abroad and their official activities;
5. Those circumstances established in other laws.³²

Among the cases not specified in the C.F.P.C. as cases in which Mexican courts have exclusive competence, there are two deriving from provisions of the Code: (1) Cases that involve *ius in rem* on movable property located in Mexico (since the Code does not permit enforcing foreign judgments rendered as a consequence of the exercise of rights of this kind),³³ and (2) cases in which Mexican courts assumed competence before the foreign court did.³⁴ For similar reasons, the competence of Mexican courts with respect to *in rem* actions on aircraft and ships registered in Mexico must be considered exclusive.

A peculiar case of exclusive competence of Mexican courts derives from the authority of the Mexican Supreme Court to assume exclusive competence in cases in which the Mexican federation is a party. This authority is discretionary and its exercise depends upon the national importance of the case.³⁵ The peculiarity is that the exclusive competence of the Supreme Court derives from its consideration of the case as a case of national interest.

As noted above, foreign courts may also assume competence based

32. C.F.P.C., art. 568.

33. Art. 571-II establishes, as a requirement to enforce foreign judgments, that the same not be rendered as a consequence of the exercise of an *action in rem*. CONST. art. 571-II.

34. C.F.P.C., art. 571-IV.

35. *Ley Orgánica del Poder Judicial de la Federación* (Organic Law of the Federal Judicial Power), art. 11-IV.

on submission clauses, provided certain requirements are met. Articles 566 and 567, which establish such requirements, were introduced by a decree which reformed the C.F.P.C. extensively in the field of international judicial cooperation.³⁶ The principal purpose of this reform was to modernize Mexican procedural law on international judicial cooperation and incorporate the basic principles accepted by Mexico through international treaties.³⁷ On the specific subject of limitations on submission clauses, section D, article 1 of the Inter-American Convention on Jurisdiction is critical because it seems to be the source of inspiration for Articles 566 and 567 of the C.F.P.C.³⁸

36. On the background and general aspects of such reform see VÁZQUEZ PANDO, *NUEVO DERECHO INTERNACIONAL PRIVADO MEXICANO* (1990). See also GARCIA MORENO, *DUODECIMO SEMINARIO NACIONAL DE DERECHO INTERNACIONAL PRIVADO, MEXICO 15-21, 50-62* (1989), a collection of essays by various authors. Of particular interest are the essays: Gomez Lara, *Medios Procesales para Resolver Controversias con Elementos Internacionales*, at 151-172; Arellano Garcia, *Las Nuevas Reglas Coflictuales en el Proceso Civil*, at 173-178, 183-189; Alberto Silva, *Aplicación de la Ley Procesal Extraña*, at 216-218; Contreras Vaca, *Reformas y Adiciones Legislativas Correspondientes al año de 1988, Relativas al Reconocimiento de Validez y Ejecución de Sentencias Extranjeras, en los Códigos Federal de Procedimientos Civiles y de Procedimientos Civiles para el Distrito Federal*, at 229-237; Abarca Franco, *Las Reformas en Materia de Cooperación Procesal Internacional, para la Práctica de Diligencias Judiciales y Recepción de Pruebas y sus Conflictos con el Sistema Procesal Norteamericano*, at 253-259; Luis Siqueiros, *La Cooperación Procesal Internacional*, at 312-344; and Garcia Moreno, *Reformas de 1988 en Materia de Cooperación Procesal Internacional*, at 345-368. Also helpful are: Luis Siqueiros, 19 *La Cooperación Procesal Internacional, Jurídica* 21, 21-56 (1988-1989); VÁZQUEZ PANDO AND BARRERA GRAF, *EN TORNO A LAS RECIENTES REFORMAS EN MATERIA DE DERECHO INTERNACIONAL PRIVADO, 1403-1429* (1989); VÁZQUEZ PANDO, *EL NUEVO DERECHO INTERNACIONAL PRIVADO MEXICANO (INTRODUCCION Y SELECCION DE FUENTES)*, MEXICO, THEMIS, 7-101 (1990) [hereinafter *NUEVO DERECHO*]; "Las nuevas tendencias mexicanas en materia procesal internacional", to be published in the *Homenaje a Werner Goldsmith; "New trends in Mexican Private International Law"*, *Festschrifts in honor of Sir Joseph Gold* (in press).

37. See the national presidential initiative of the corresponding decree reprinted in *NUEVO DERECHO*, *supra* note 35 at 552-566.

38. (The following translations were by the author). In the presidential initiative of the decree, the following paragraphs are of special interest on the subject:

. . . conventions stand out: . . . the Inter-American Convention on Jurisdiction in the International Sphere for the Extraterritorial Validity of Foreign Judgments. . . .

Nevertheless, and regardless of the fact that the nature of national procedural law is fully compatible with the agreements reached at such conventions, it is evident that our international legislation on such subjects is behind the progress made by conventional law which has already been promulgated, as the former has not been legislated in order to update it to the latter.

I therefore have considered advisable to submit to the consideration of the Honorable Congress this initiative of amendments and additions to the Federal Code of Civil Procedures.

In the international field, it has been considered that clauses in which there is an election of courts, which we call "prórroga contractual de competencia extraterritorial" (contractual extension of extraterritorial competence), have in some cases resulted in an impossibility to appear or a denial of justice, or also that in some cases it works for the benefit of only one of the parties, and in both assumptions it can imply a well-grounded nonrecognition of the competence assumed.

José Luis Siqueiros says, on articles 566 and 567:

Article 566 codifies a principle that is known in international procedural law as the territorial extension of competence; that is, when the parties, in accordance with an agreement and before a trial, have designated by mutual agreement a jurisdictional body located within the

2. Special rules

There are special rules in three specific cases: commercial cases, cases involving *Petróleos Mexicanos*, and cases requiring enforcement of foreign judgments rendered by a judicial or other adjudicatory authority of a state that is a party to the Inter-American Convention on Jurisdiction. These rules will be summarized in the following sections.

a. Commercial cases

The following discussion will first examine the procedure by which competence is assumed by Mexican federal courts in cases arising directly from commercial transactions. The discussion will then turn to the enforcement of a foreign judgment in Mexico deriving from a commercial transaction.

(i) Assuming competence to decide a case

The Code of Commerce has special provisions governing competence which apply to commercial cases, regardless of whether the case is heard by a federal or a local court. According to these provisions, assumption of competence is governed by the following criteria:

1. The competent court is that to which the parties have submitted expressly or tacitly;³⁹
2. In the absence of such submission:⁴⁰

territory of one of them, for it to hear any action that may arise in the event of controversy. The new device acknowledges that said contractual clause may extend the forum if, given the circumstances and the relationship between the parties, said election does not in fact imply an impossibility to appear nor a denial of justice. This device, to which reference is made beforehand, is supplemented by article 567, which provides that a clause for the election of courts shall not be considered as valid if the authority to elect works for the exclusive benefit of one of the parties, and not to all of them.

These amendments have given rise to a heated debate within the Mexican forum, and they have been construed as being a restriction to the autonomy of the parties to contractually designate the competent courts. Actually, the Inter-American Convention on Jurisdiction, signed at La Paz, recognizes the competence assumed by the court issuing a judgment in connection with actions deriving from international commercial agreements if the competence (extended by express submission) had not been established in an abusive manner, and provided that there had existed a reasonable link with the matter of the dispute. Maybe the Mexican legislator wished to express the same principle when he provided that the authority to choose must benefit all parties and not only one of them.

Another interpretation on the text of article 567 is that the Mexican legislator wished to limit the negotiating power of the economically stronger party, as is the case of the so called "contratos de adhesión" (this is an agreement prepared by one of the parties in which the other party has no negotiating power but can only accept or reject the proposal), in which the weakest party must accept all conditions imposed, including the submission to foreign laws and courts. J. L. Siqueiros, "La cooperación procesal internacional"; GARCIA MORENO, *DUODECIMO SEMINARIO NACIONAL DE DERECHO INTERNACIONAL PRIVADO, MÉXICO* (1989) at 334-35.

39. CODE OF COMMERCE, art. 1092.

40. *Id.* at art. 1104.

- a) The competent court is that of the place designated by the debtor for the judicial request for payment;
- b) The place designated in the agreement for the performance of the obligation;
- c) If none of the above, the court of the domicile of the debtor;⁴¹
- d) If the debtor has several domiciles, the competent court of any of them, at the plaintiff's election;⁴²
- e) If the debtor has no fixed domicile, the place of execution of the agreement (if the action is *in personam*), and the court of the place where the goods are located (if the action is *in rem*).⁴³

To be valid, express submission requires compliance with the following requirements:⁴⁴

1. Only territorial competence can be extended by the parties;
2. The submitting parties must waive the right to preferential competence to which they are entitled pursuant to law;
3. The parties can only submit to the courts of the domicile of any of the parties, those of the place of performance of any of the obligations deriving from the agreement, or those of the place where the thing is located;
4. If submission is made with respect to several courts, the authority to make the choice must not operate in favor of only one of the parties to the agreement, but of all of them;⁴⁵
5. Submission will not be valid if the same purports to evade the exclusive competence of Mexican courts.

In considering the third criterion, commercial companies have domicile under Mexican law, as mentioned above. The applicable statute requires the filing of articles of incorporation, which are used to determine the domicile of the company,⁴⁶ and these are to be registered in the Public Registration Bureau of the company's domicile.⁴⁷ In addition, parties to an agreement may appoint a conventional domicile for the purpose of the agreement.⁴⁸ The third and fifth criteria will be further analyzed in the discussion of Mexican courts' recognition of a foreign court's competence, since they are not relevant for a Mexican court's assumption of

41. *Id.* at art. 1105.

42. *Id.* at art. 1106.

43. *Id.* at art. 1107.

44. *Id.* at art. 1093.

45. C.F.P.C., art. 567.

46. *Ley General de Sociedades Mercantiles*, art. 6-VII; CODE OF COMMERCE, arts. 18, 19 and 23.

47. CODE OF COMMERCE, art. 261 (implied).

48. C.C.D.F., art. 34.

competence. The fourth requirement needs some clarification, because it is not established by the Code of Commerce.

When studying the general rules that give federal courts the competence to settle a case, one must refer to article 567 of the C.F.P.C., which controls the validity of submission clauses. Thus, the question of whether or not this provision also applies to commercial transactions has to be determined.

Article 1093 of the Code of Commerce was established by a decree published in the Official Gazette of January 4, 1989. Although this decree derived from a presidential initiative to amend several provisions of the Code, article 1093 did not appear in the initiative with the wording approved by Congress. The amendment to article 1093 as set forth in the initiative was worded as follows:⁴⁹

There is express submission when the interested parties renounce, clearly and finally, the jurisdiction permitted and designate the judge or tribunal to which they will submit themselves. The clause or agreement on election of the forum will not be considered valid if it acts as an impediment or denial of access to justice. The parties should be able to agree freely to the extension of competence on grounds of territoriality without more limitation than the prohibitions in article 1095.⁵⁰

According to the initiative's explanation, the purpose of this language was to invalidate an agreement to extend competence if it implied the impossibility to appear or a denial of justice "as it has been recognized in the principal international conventions." The reference to "international conventions" is not very clear, but perhaps it was a reference to the final sentence of section D of article 1 of the Inter-American Convention on Jurisdiction, to which Mexico is a party. This final sentence provides that the jurisdiction assumed by a court of a state shall be recognized if based on a commercial transaction in which the parties agreed in writing to submit to the jurisdiction of the court in which judgment was rendered; *provided, however, such jurisdiction must not have been established in an abusive manner and must have had a reasonable connection with the subject matter of the action.* It seems that the intention of the initiative was to define whether submission is *abusive*, by providing that the clauses would be invalid if they result in an impossibility to appear before the court or a denial of justice. The initiative followed the same

49. The initiative is published in NUEVO DERECHO, *supra* note 35 at 599-619.

50. Article 1095 of the Code of Commerce, which was not amended, establishes that extension of competence can be made only with respect to similar competence. That means that competency by matter, degree, and amount cannot be prorogated.

idea incorporated in article 566 of the C.F.P.C., which was previously commented upon.

On the other hand, this draft clearly implied that submission clauses will be valid, subject to only two limitations:

1. The clause must not imply an impossibility to appear, or work a denial of justice;⁵¹
2. Submission would not be allowed if it implies an extension of competence by a reason other than that of territory.

These provisions implied that the limitation established by article 567 of the C.F.P.C. was not to be applied to commercial transactions. Nevertheless, the presidential initiative was amended by Congress. The amendment provides that these article 1093 limitations to party autonomy in establishing submission clauses are not the only ones to consider when drafting submission clauses; the limitation established in article 567 of the C.F.P.C. is also applicable to commercial transactions. This is true if the submission is made in favor of federal courts, as such limitation is established in the Federal Code of Civil Procedure. Therefore, clauses that are not valid under the C.F.P.C. must not be considered valid by a Mexican federal court if included in an agreement, independently from whether the agreement is qualified as a civil or a commercial one. Based on the foregoing, the following are some examples of valid submission clauses in a commercial agreement between A and B:

1. A and B submit to the competence of the courts of the domicile of A;
2. A and B submit to the competence of the courts of the domicile of B;
3. A and B submit to the competence of the courts of the place of performance;
4. A and B submit to the competence of the courts of the place where the goods are located;
5. A and B submit to the courts of the domicile of A or B at the election of the plaintiff;⁵²
6. A submits to the competence of the courts of its domicile and to the courts of the place of performance at the election of B, and B submits to the competence of the courts of its domicile and to the courts of the place of performance at the election of A;
7. A and B submit to the courts of the places of performance 1, 2, 3, and 4, at the election of the plaintiff.

But clauses such as the following will not be considered valid:

51. That was consistent with the wording of art. 456 of the C.F.P.C.

52. As any of the parties to the agreement may be the plaintiff, depending on the circumstances, the authority to make the choice is vested in both parties to the agreement.

1. A submits to the courts of its domicile and to the courts of the place of performance at the election of B;
2. A submits to the courts of several places of performance at the election of B;
3. A submits to the courts of its domicile and to the courts of the location of the goods, at the election of B.

(ii) *Assuming competence to enforce a foreign judgment*

Since the Code of Commerce has no express provisions specifying the criteria for a Mexican court to assume competence in order to enforce a foreign judgment, the competent court must be determined according to the provisions of the corresponding local Code of Civil Procedure or the C.F.P.C.; the choice depends on whether the request for enforcement is submitted to a local or a federal court.

(iii) *Recognizing competence for enforcement purposes*

The Code of Commerce has only one provision regarding a Mexican court's recognition of the competence assumed by a foreign court:

Art. 1347-A. The judgments, awards and decisions rendered abroad may be enforced if the following conditions are met:

.....

III. That the judge or court rendering the decision be competent to hear and decide the case pursuant to the rules recognized in international law which are compatible with the ones adopted by this Code.

This provision, although similar to its companion provision in the C.F.P.C., differs from it because the C.F.P.C. refers to "rules recognized in the international sphere," and *not* to "rules recognized in international law."

Submission clauses are recognized in international law, at least in the case of commercial transactions. Mexico has accepted these clauses in the Inter-American Convention on Jurisdiction, subject to two limitations: (a) That the jurisdiction not be established in an abusive manner; and (b) that the jurisdiction have a reasonable connection with the subject matter of the action.⁵³ Nevertheless, since the assumption of competence has to be consistent with the principles of the Code of Commerce, the assumption of jurisdiction based on a submission clause would, to be recognized by the Mexican court, need to comply with one additional requirement: That the court be the court of the domicile of any of the

53. Inter-American Convention on Jurisdiction, *supra* note 1 at art. 1-D.

parties, of the performance of any of the contractual obligations, or of the location of the goods.

The parties to a commercial agreement have limited discretion on jurisdiction (*competence* in the civil law approach) clauses, since they cannot validly submit to just any court. They may only submit to those courts having territorial competence in the domicile of any parties, in the place of compliance of any of the obligations, or in the place where the goods are located. The first situation might seem unusual when applied to assume jurisdiction on juridical persons, such as corporations. Here again, it must be remembered that under Mexican law juridical persons have domicile.

An example of an issue that arises in this area is whether, in a clause in a commercial agreement between a corporation incorporated in Delaware and a Mexican *sociedad anónima* (company by shares) domiciled in the Federal District, the parties may validly agree to the jurisdiction of the courts of New York, considering that New York is not the place of performance of any obligation or the place where the relevant goods are located. It may appear that such a clause is invalid, because neither party is domiciled in New York. Nevertheless, this problem is a typical case of qualification, and if qualification is made pursuant to Mexican law, the Delaware corporation will be considered to be domiciled in New York if it is managed in New York. Similarly, the Delaware corporation will be considered domiciled in New York with respect to the agreement if the agreement has been executed in New York. Therefore, if the Delaware corporation was managed in New York, or if the agreement was executed in New York and the foreign court assumed jurisdiction based on this clause, the Mexican court may consider this clause as a valid basis for the American court's assumption of jurisdiction.

In the absence of a submission clause, the Mexican court would have to recognize the jurisdiction of a foreign court if the foreign court assumed jurisdiction following the rules of the Inter-American Convention on Jurisdiction.⁵⁴ These rules form a part of international law and are thus binding on Mexico as rules "recognized in international law."

b. Jurisdiction under the Inter-American Convention on Jurisdiction in the International Sphere for the Extraterritorial Validity of Foreign Judgments

(i) Assuming jurisdiction

Although the Inter-American Convention on Jurisdiction does not

54. The convention only applies to judgments rendered by courts and other adjudicatory authorities of the states party to such treaty.

directly govern jurisdiction on private international cases, it does so indirectly. It obliges states party to the treaty to recognize the jurisdiction assumed by judicial and other adjudicatory authorities of another party state. Therefore, a court of any state party to the treaty is assured that if it assumes jurisdiction under this treaty, the courts and adjudicatory authorities of other party states will recognize this assumption of jurisdiction. Furthermore, these rules are especially important in commercial cases where enforcement of a judgment is sought in Mexico. These rules are a part of international law and, therefore, are sufficient for a Mexican court to recognize the foreign court's jurisdiction, even if the court is not in a state party to the Convention. It should be emphasized that the Convention only applies to judgments rendered as a consequence of actions contemplated by article 1, and not excluded from the Convention pursuant to article 6.⁵⁵

The Convention provides that the competence assumed by Mexican courts shall be recognized by other states party to that treaty if assumed according to the following rules:⁵⁶

1. In an action *in personam* for a money judgment, on any of the following bases:
 - 1.1. If at the time the action was initiated, the defendant, if a natural person, had his domicile or habitual residence within the Mexican territory or, if a juridical person, had its principal place of business in Mexican territory;
 - 1.2. In an action against a private non-commercial or business enterprise, if the defendant at the time the action was initiated had its principal place of business in Mexico or was organized in Mexico;
 - 1.3. In an action against a branch, agency, or affiliate of a private non-commercial or business enterprise, if the

55. Article 6 of the convention reads as follows:

This convention shall apply only to the cases governed by the foregoing articles and shall not apply to the following subjects:

- a. Personal status and capacity of natural persons;
- b. Divorce, annulment, and marital property;
- c. Child support and alimony;
- d. Descendants' estates (testate or intestate);
- e. Bankruptcy, insolvency proceedings, composition with creditors, or other similar proceedings;
- f. Liquidation of business enterprises;
- g. Labor matters;
- h. Social security;
- i. Arbitration;
- j. Torts; and
- k. Maritime and aviation matters.

56. Inter-American Convention on Jurisdiction, *supra* note 1 at art. 1.

activities which gave rise to such action took place in Mexico;

- 1.4. In cases of non-exclusive fora permitting submission to other fora, if the defendant either consented in writing to the jurisdiction of the Mexican court or, if, despite making an appearance, it failed to challenge the jurisdiction of the Mexican court in a timely manner;
- 1.5. In an action arising from an international commercial contract,⁵⁷ if the parties agreed in writing to submit to the jurisdiction of the Mexican court, provided that such jurisdiction was not established in an abusive manner and had a reasonable connection with the subject matter of the action;
2. In an action involving rights to tangible movable property, if either of the following bases are satisfied:
 - 2.1. If at the time the action was initiated, the property was located in Mexico; or
 - 2.2. If any of the bases of paragraphs 1.1 through 1.4 is satisfied;
3. In an action involving property rights relating to immovable property, if the property was located, at the time the action was initiated, in Mexican territory.

Where jurisdiction was assumed by a Mexican court to avoid a denial of justice, a foreign court will enforce the judgment and recognize the Mexican court's jurisdiction pursuant to the Convention.⁵⁸

In a case in which a Mexican judgment was rendered on a counterclaim, the jurisdiction assumed by the Mexican court will be recognized pursuant to the Convention if:

1. One of the foregoing rules would have been satisfied, had the counterclaim been brought as an independent action;
2. The principal claim satisfied one of the foregoing rules, and the counterclaim arose out of the transaction or occurrence on which the principal claim is based.

Rule 1.5 requires further clarification at this point. Article 7 of the draft Inter-American Convention on Jurisdiction, prepared by the Inter-American Juridical Committee,⁵⁹ provided for the recognition of jurisdiction assumed by a foreign court based on submission clauses. Several requirements are necessary under article 7, including a prohibition

57. The Spanish official text of the convention reads "commercial contract" (art. 1-D), the English official text reads "business contract". *Id.* at art. 1-D.

58. *Id.* at art. 2.

59. Included in OEA/Ser.K/XXI.3; CIDIP-III/5, 15 de marzo 1983, español (Draft Convention on Jurisdiction in the International Sphere for the Extraterritorial Validity of Foreign Judgments).

against the assumption of jurisdiction in an abusive manner.⁶⁰ When party autonomy to choose jurisdiction was discussed at the Third Inter-American Specialized Conference on Private International Law, the representatives of the attending states agreed on the recognition of party autonomy.⁶¹ Two limitations were established: jurisdiction must have a reasonable connection with the subject matter of the action, and jurisdiction must not be established in an abusive manner.⁶² The language "abusive manner" was taken from the project of the Inter-American Juridical Committee.⁶³ Among the reasons given to establish this limitation was disparity of negotiating power of the parties.⁶⁴ Reference to specific cases was inconvenient because the court has to determine whether or not jurisdiction was established in an abusive manner.⁶⁵

(ii) *Recognizing jurisdiction*

Mexico is a party to two international treaties that are relevant to the enforcement of foreign judgments: (a) the Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards,⁶⁶ and (b) the Inter-American Convention on Jurisdiction.⁶⁷ In cases involving the enforcement of foreign judgments under the Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards, the Mexican court considers the foreign court which rendered the judgment as competent according to the provisions of the Inter-American Convention on Jurisdiction.⁶⁸ Mexico may, however, apply the second Convention to other cases.⁶⁹ Furthermore, since the United States is not presently a party to either of these treaties, they

60. Art. 7 of the project reads as follows:

That in the exercise of a profession or of commercial activities, the parties, having agreed in a written contract to submit to the jurisdiction of a judge or tribunal, and one of the parties having been sued before the judge or tribunal for claims arising from said contract, when the competence of the judge or tribunal has not been established in an abusive manner.

61. Parra-Aranguren, *La Tercera Conferencia Interamericana Sobre Derecho Internacional Privado* (CIDIP-III, La Paz 1984, reprint from the *Revista de la Facultad de Derecho de la Universidad Católica Andrés Bello*, Nos. 33 and 34 (1984-1985), at 116).

62. *Id.* at 119. See also Inter-American Convention on Jurisdiction, *supra* note 1 at art. 1-D.

63. *Id.* at 118.

64. *Id.* at 117-18.

65. *Id.* at 118-19.

66. Promulgated by a decree published in the *Diario Oficial*, August 20, 1987; table of errors, published in *D.O.*, November 30, 1987.

67. Inter-American Convention on Jurisdiction, *supra* note 1.

68. See the declarations made by Mexico with respect to both Inter-American Conventions, *supra* note 1.

69. See the last sentence of the declaration made by Mexico with respect to the Inter-American Convention on Jurisdiction, *supra* note 1.

do not apply to judgments rendered by American courts.⁷⁰ Finally, Mexican courts will not recognize the competence assumed by a foreign court that has infringed upon the exclusive jurisdiction of Mexican courts.⁷¹

(c) *The case of Petróleos Mexicanos-PEMEX*

The first paragraph of article 17 of the *Ley Organica de Petróleos Mexicanos*,⁷² provides as follows:

Federal Law shall apply to all acts, agreements and contracts in which Petróleos Mexicanos intervenes, and the controversies in which it is a party, of whatever nature, shall be of the exclusive jurisdiction of the Courts of the Federation.

It is therefore necessary to determine if *exclusive jurisdiction* has the technical meaning that this term has in private international law. For example, does it mean that only Mexican federal courts have jurisdiction in a case in which PEMEX is a party?

In order to clarify the meaning of this provision, it is convenient to consider the following points. This provision (*exclusive jurisdiction*) was introduced by the organic statute of PEMEX presently in force,⁷³ and has no precedent in previous PEMEX statutes. Prior to this statute, PEMEX could be sued before local or federal courts at the election of the plaintiff. The statute purports to prevent the possibility of PEMEX being sued before local courts, and this protection is possibly invalid under the Mexican Constitution.⁷⁴ Before Mexico's ratification of the Inter-American Convention on Jurisdiction, the concept of exclusive jurisdiction on private international cases was introduced into Mexican legislation by reforms made to the C.F.P.C. and to the Code of Civil Proceedings of the Federal District in January 1988; nevertheless, PEMEX has been sued several times before foreign courts and has not challenged the jurisdiction of the foreign courts by pleading the exclusive jurisdiction of Mexican courts. Finally, PEMEX has signed a number of agreements accepting submission clauses in which PEMEX submits to foreign courts.

Taking the above into consideration, the provision of the organic

70. "In principle" because, as discussed above, the *Inter-American Convention on Jurisdiction* has to be taken into consideration by Mexican courts to determine whether the foreign court which rendered a judgment on a commercial case, the enforcement of which is sought in Mexico, was competent in the international sphere, even if the court belongs to a country which is not party to the treaty.

71. Inter-American Convention on Jurisdiction, *supra* note 1 art. 4. See also C.F.P.C. art. 564.

72. Organic statute of Petróleos Mexicanos (PEMEX).

73. Pursuant to its first transitional article, the statute became effective on the day following its publication. D.O., Feb. 6, 1971.

74. CONST. art. 104-I.

statute of PEMEX is *not* intended to establish an exclusive jurisdiction at the international level; it is only exclusive with respect to Mexican courts, so as to avoid the possibility of PEMEX being sued before local courts.

B. Courts of the Federal District

By decree on January 7, 1988, the *Código de Procedimientos Civiles para el Distrito Federal (C.P.C.D.F.)*⁷⁵ was amended to make its provisions on international judicial cooperation consistent with the reforms to the C.F.P.C.⁷⁶ and with the international treaties binding upon Mexico.⁷⁷ Therefore, the explanations made with respect to the Federal courts are applicable to the local courts of the Federal District. An exception perhaps should be made with respect to the validity of submission clauses, because the C.P.C.D.F. has no provision similar to article 566 of the C.F.P.C.

To assume jurisdiction in a civil case, the courts of the Federal District need not consider article 566 of the C.F.P.C., as it has no equivalent in the C.P.C.D.F. However, in order to enforce a judgment of a foreign

75. See generally Code of Civil Procedure for the Federal District [hereinafter C.P.C.D.F.].

76. Although the reforms to the C.F.P.C. were published in the Official Gazette of January 12, 1988, the presidential initiative of said decree and the presidential initiative of the decree to amend the C.P.C.D.F. were both dated October 26, 1987. Both initiatives were based on drafts prepared by the same commission, and in fact, the commission had previously prepared the draft of decree relative to the C.F.P.C.; for such reason, some of the provisions of the C.P.C.D.F. make reference to the provisions of the C.F.P.C. The presidential initiative in *NUEVO DERECHO*, *supra* note 35 at 579-89.

77. (The following translation was made by the author.) The presidential initiative expressly says:

TRANSLATED VERSION

The United Mexican States, adhering to their exemplary foreign policy, have been and are presently cooperating with international entities involved in the improvement of the juridical framework of private international relations. This international activity has given rise to important conventions, to which Mexico is a party, in the field of international procedural cooperation, conventions to which I have made reference in the "Initiative for Amendments and Additions to the Federal Code of Civil Procedures"; the Inter-American Convention of Rogatory Letters, subscribed in Panama in 1975; the Inter-American Convention on the Taking of Evidence Abroad, also subscribed in Panama in 1975; as well as its Additional Protocol; the Inter-American Convention on General Rules of Private International Law, prepared in Montevideo, Uruguay in 1979; the Inter-American Convention on the Extraterritorial Validity of Foreign Judgments and Arbitral Awards, made also in Montevideo, Uruguay in 1979; and the Inter-American Convention on Jurisdiction in the International Sphere for the Extraterritorial Validity of Foreign Judgments, made in La Paz, Bolivia in 1984.

Said initiative of amendments and additions to the Federal Code of Civil Procedures and this initiative, which presents the proposals for amendments and additions to the Code of Civil Procedures for the Federal District, have as their main purpose to make our procedural laws consistent with the provisions contained in such conventions, as although the latter are laws in force in our country, as they have been legally subscribed, approved and promulgated, it is convenient for them to be made known and to foster their compliance by incorporating them to our statutes of daily application.

court, the courts of the Federal District have to analyze the competence of the foreign court pursuant to the *Reglas Reconocidas en la Esfera Internacional que sean Compatibles con las Adoptadas por éste Código o en el Código Federal de Procedimientos Civiles*⁷⁸ (rules recognized in the international sphere which are compatible with those adopted by this Code or by the C.F.P.C.).

Local courts must consider the limitations to party autonomy on submission clauses established by the Code of Commerce in order to assume competence on a commercial case, since competence on commercial cases is ruled primarily by the Code of Commerce, while the local Codes of Civil Procedure apply only when the Code of Commerce is silent.

Similarly, the local courts of the Federal District, and of all sister states, must consider the limitations established by the Code of Commerce and by the Inter-American Convention on Jurisdiction with respect to submission clauses in order to determine if a foreign court was competent to render the judgment, where its enforcement is required before local courts.

IV. CONCLUSION

Difficult Questions Remain

When Mexico ratified the Inter-American Convention on Jurisdiction, the concept of exclusive competence (or exclusive jurisdiction under the common law approach) was introduced into Mexican law. This concept was subsequently incorporated into the C.F.P.C., the C.P.C.D.F., the Code of Commerce, and some other local Codes of Civil Procedure.⁷⁹

Despite the changes and reforms in Mexico's laws on competence, difficult questions remain. For example, will a Mexican court assume competence in a case on the grounds of express submission, regardless of whether a foreign court has exclusive competence on the subject matter? This situation would be exemplified by litigation regarding the validity of an agreement transferring the ownership of real estate located outside of Mexico, in which the parties agreed to submit to a Mexican court.

Another question is, if the judgment to be rendered is unenforceable in the foreign state where the property is located, would the Mexican

78. C.P.C.D.F., art. 606-III.

79. Sometimes said incorporation occurs in an indirect manner, as for instance, in the cases of the Code of Civil Procedure of the State of Queretaro, which was recently amended in terms very similar to those of the C.P.C.D.F. The corresponding decree was published in the local official gazette of July 13, 1989. The wording of article 558-III of the Code of Civil Procedure makes a cross reference to the C.F.P.C. regarding the criteria to determine whether or not the foreign court was competent to settle the case.

court assume competence? There is no clear answer under present law and practices.

Yet another unclear item is whether or not Mexican courts have exclusive competence regarding actions *in rem* on movable property located in Mexico. Since Mexican law does not permit enforcement of foreign judgments arising from actions *in rem*, the answer probably is yes. A similar issue is whether or not Mexican courts have exclusive competence in *in rem* actions involving ships or aircrafts registered in Mexico. Again, the answer probably is yes.⁸⁰ It is also unclear whether a local court must invalidate submission clauses which are invalid pursuant to the C.F.P.C., even if the corresponding local Code has no provision on the subject.

Mexican scholars and practitioners still must address a multitude of issues regarding Mexican rules on competence in international cases. Since Mexican courts will continue to confront cases with international elements, and other nations' courts will probably encounter Mexican judgments, the issues addressed in this article should be helpful to practitioners and scholars in this area.

80. This issue arises because it would not be possible to enforce the judgment in Mexico on the aircraft or ship. It is impossible, while trying to enforce the foreign judgment, to change, cancel, or alter the registration of the ship or aircraft. Further, if such registration is not cancelled or changed as required, title cannot be validly vested in the new owner.

