SPEECH

ENFORCEMENT OF FOREIGN CIVIL AND COMMERCIAL JUDGMENTS IN THE MEXICAN REPUBLIC

*Jose Luis Siqueiros**

Of significant importance to the juridical-cultural relations between Mexico and America is the extraterritorial effectiveness of Mexican-rendered judgments in the United States and American-rendered judgments in Mexico. Instead of dealing with this issue in its entirety, I will limit discussion to the extraterritorial effect that may be given to foreign judgments in Mexico with special emphasis on those rendered by American judges in civil and commercial matters.

Both Mexico and the United States are federal republics. The states of each system recognize the validity of judicial resolutions rendered in sister states. This recognition is based on the principle known as "full faith and credit," which the framers of the first Mexican constitution adopted with inspiration from the U.S. Constitution.[1] According to the obligation imposed by Article 121, Section III, of the present Mexican Constitution,[2] the states of the federation are bound to recognize the judgments pronounced by other federal entities.

The principle of "full faith and credit" is, however, not applicable on an international level. The recognition and effect given to foreign judgments depends on diverse concepts such as respect for acquired

* Senior partner, Barrera, Siqueiros y Torres Landa, Mexico City; Professor of private international law at the National University, Mexico City; LL.B. at National University of Mexico; post-graduate work at Harvard Law School. Vice President of Mexican Bar Association (1971-1975); President of Mexican Academy of Private International Law (1971-1974); President of Academy of International Commercial Arbitration (1976-1980); President of the Federation of Mexican Bar Associations (1975-1979); Chairman of Executive Committee of Interamerican Bar Association (1979-1982); co-author (with Prof. S.A. Bayitch) of CONFLICT OF LAWS: MEXICO AND THE UNITED STATES. This lecture was delivered at the Seminar on Jurisdiction and Procedural Matters between Mexico and the United States, cosponsored by Universidad Panamericana, the University of Houston College of Law and the Academia Mexicana de Derecho Internacional Privado, on 1 July, 1980.

1. CONSTITUCION of 1824 art. 145 (Mex.); U.S. CONST. art. IV, § 1.

2. CONSTITUCION art. 121 (Mex.): "In each State of the Federation full faith and credit shall be given to the public acts, registers and judicial proceedings of all the others." This English translation is found in J. WHELESS, COMPENDIUM OF THE LAWS OF MEXICO (2d ed. 1938) [hereinafter cited as COMPENDIUM].

rights, international comity, reciprocity and mutual assistance between civilized nations. In certain cases, however, binding obligations arise from subscription to bilateral or multilateral treaties.

Mexico has not, to date, signed any convention concerning recognition and enforcement of foreign judgments in civil or commercial matters.[3] Mexico and the United States have signed a Treaty on the Enforcement of Penal Judgments, promulgated November 10, 1977.[4] These two countries are also part of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, approved by the United Nations in 1958.[5] Furthermore, Mexico is part of the Interamerican Convention on International Arbitration approved in Panama in 1975,[6] which the United States has yet to ratify. Thus, except for arbitral awards and penal judgments, there is no treaty-based law between Mexico and the United States concerning the recognition and enforcement of foreign judicial resolutions. Therefore, the effect of a foreign judgment is governed solely by the existing provisions of internal legislation in each country.

APPLICABLE LAW ON THE MATTER OF ENFORCEMENT OF FOREIGN JUDGMENTS

What Mexican legislation is the most applicable law concerning recognition of foreign judgments in any of the federal entities of Mexico? This question can have three distinct answers:

(a) The Federal Code of Civil Procedure,
(b) The Code of Civil Procedure of the Federal District, and
(c) The Codes of Civil Procedure of each of the States of the Republic.

Before expressing a preference as to any one alternative, we should remember that international relations are generally within the exclusive

3. The Mexican delegation signed the Final Act of the Second Conference on Private International Law (CIDIP-II) held in Montevideo in May, 1979. One of the treaties presently under study for its possible adoption and ratification by Mexico is the Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards.

4. The Decree of Promulgation of this treaty is published in 345 DIARIO OFICIAL 3 (1977) [hereinafter referred to as D.O.]. Article I of the same establishes that the sanctions imposed by the courts of each signing nation upon the citizens may be served in the penal institutions of the country of origin of the convict and under the supervision of its authorities. The purpose of the treaty, according to its preamble, is to provide a better administration of justice through the adoption of better methods that facilitate the social rehabilitation of the criminal. Subsequently, on March 26, 1979, a similar treaty between the United Mexican States and Canada on the execution of penal judgments, for the same purposes was published in 353 D.O. 2 (1979).

5. The final text was approved in New York on June 10, 1958. U.N. ESCOR, Conference of Plenipotentiaries on International Commercial Arbitration (24th mtg.), U.N. Doc. E/Conf. 26/8/Rev. 1 (1955).

6. Mexico ratified and is part of the Interamerican Convention on Orders or Letters Rogatory signed in Panama on January 30, 1975, promulgated on April 25, 1978 in 348 D.O. 2 (1978).

realm of any federal government. In concurrence with this principle, the provisions of Article 73, Section XVI of the Federal Constitution[7] and the text of Article 50 of the Law of Nationality and Naturalization[8] affirm that only federal law can apply in this context. These two statutes and the provisions of the Civil Codes and Code of Civil Procedure for the Federal District are federal in character and are obligatory upon the entire nation.

Logically, the Federal Code of Civil Procedure should be the statute governing this matter. The Code, however, is practically silent on this point; it contains only an article establishing general principles concerning judgments rendered in foreign countries. Article 428 provides that when judgments rendered in a foreign country are to be executed by Mexican courts, the court involved should first determine whether the judgments are contrary to the laws of the Republic or to the treaties or principles of international law. Due to the lack of guidance from the Federal Code, the procedural statute in force in the Federal District contains specific provisions[9] relating to the recognition of judgments rendered in foreign countries, emphasizing that such judgments shall have *in the Republic* the force established by the pertinent treaties, or in their absence, by international reciprocity. It seems the Federal District Code has made up for the omission in the Federal Code and that the latter, being chronologically more recent, preferred to abstain rather than establish extremely detailed or inadequate rules.

Some of the states have also abstained on this matter—suggesting that some State Congresses were aware of their possible lack of authority to regulate a matter constitutionally prohibited from them. A majority of states,[10] however, modeling their laws on the Federal District Code, do regulate the enforcement of judgments rendered in foreign countries. Some of them, in reference to the execution of foreign judgments "in the State," mistakenly allude to execution "in the Republic." There is no explanation for this phenomenon other than a simple lack of care when adopting the regulations from the Federal District Code.

This federalized interpretation in the State codes has been contra-

7. CONSTITUCION art. 73, § XVI (Mex.). The text of art. 73, § XVI of the Mexican Constitution reads: "The Congress has power: . . . [t]o enact laws in regard to nationality, the juridical condition of foreigners, citizenship, naturalization, colonization, emigration, immigration, and the general health of the country." COMPENDIUM, *supra* note 2, at 38.

8. The text of article 50: "Only Federal Law can modify and restrict the civil rights enjoyed by foreigners; consequently, this Law and the provisions of the Civil Code and the Code of Civil Procedure of the Federal District on this subject, have the character of Federal laws and shall be obligatory throughout the Union." COMPENDIUM, *supra* note 2, at 553.

9. Code of Civil Procedure for the Federal District, arts. 604, 605 (1932).

10. Codes of Civil Procedure for the states of Aguascalientes, Baja California, Baja California Sur, Coahuila, Colima, Chiapas, Chihuahua, Durango, Guerrero, Hidalgo, Mexico, Nayarit, Oaxaca, Queretaro, Sinaloa, Sonora, San Luis Potosi, Tabasco, Tamaulipas, and Veracruz.

dicted by various judgments of the Supreme Court of Justice of Mexico. In the "amparo" brought by William C. Greene,[11] the highest court took the position that the procedural rules of the State of Sonora governing the recognition of foreign judgments had no relation to the "legal status of foreigners," in which matter the exclusive authority rests with the Congress of the Union.[12] Thus, the Supreme Court ruled that the procedural requirements for foreign judgments to have effect in any federal entity are a matter reserved to the States of the Federation by Article 124 of the Constitution;[13] in other words, they are included within the scope of the State's internal affairs. This theme is repeated in other "amparos" involving the procedural legislation of the States of Coahuila[14] and Veracruz.[15]

COMPETENT COURT

Article 104, Section I of the Mexican Constitution establishes that it is for the federal courts to hear controversies of a civil, commercial, or criminal nature which arise over the fulfillment and application of federal law or of international treaties entered into by Mexico.[16] Nevertheless, as already indicated, various States of the Republic have adopted legislation concerning recognition of foreign judgments and the jurisdiction of their courts has been upheld by the Supreme Court of Justice. The jurisdictional conflict is resolved by the principle of concurrent jurisdiction.[17] Accordingly, in dealing with controversies of a civil or commercial nature affecting only the particular interests of the parties, state courts, as well as federal courts, have jurisdiction. In short, the plaintiff in a suit for recognition of a foreign judgment may elect between a federal court or a general jurisdiction state court to have jurisdiction of his suit.

If the plaintiff chooses the federal court system, the civil court in the corresponding district will be the correct court. If he chooses a state

11. *Amparo* William C. Greene, Semanario, VI Epoca, part 4a, vol. 5, at 121 A.D. 6474 (1956).

12. *Id.* at 121 & 127.

13. CONSTITUCION art. 124 (Mex.).

14. Semanario, V Epoca, vol. 51(5), at 2882 (1938).

15. Semanario, V Epoca, vol. 114, at 153 (1952).

16. CONSTITUCION art. 104 (Mex.). The text reads: To the tribunals of the Federation belong the cognizance: I. Of all controversies of the Civil or Criminal order which arise in regard to the compliance with and application of Federal laws or by reason of Treaties celebrated with foreign powers. When said controversies only affect private interests, the local judges and tribunals of the common order of the States, of the Federal District and Territories may also, at the election of the plaintiff (actor), take cognizance of them. The sentences of the first instance shall be appealable before the immediate superior of the judge who heard the matter in first degree.

17. *Id.*

court, the local rules establishing competence will require the court to have been competent to conduct the trial in which the foreign judgment was rendered. According to these rules, assuming the judgment was rendered as a consequence of a personal action,[18] the court in the State of defendant's domicile would be competent to hear the case. In a case where there are various courts of original jurisdiction, the plaintiff can choose among them.

AUTHENTICITY AND ENFORCEABILITY OF THE FOREIGN JUDGMENT

According to the system adopted by the Code of Civil Procedure for the Federal District, the decision to grant "exequatur" of a foreign judgment requires a prior examination of its authenticity.[19] To this end, the judgment must be translated if it is not written in Spanish. The translation should be certified by an official translator or by a diplomatic or consular agent. The court will hear the opposing party to determine whether there is agreement on the translation. If there is agreement, or the translation is not contested, it will be taken as a true translation; if not, the court will name an official translator.

If the translation is contested, a hearing will be held at which time the parties, including the District Attorney, may submit briefs. The decision will be made by the Court within three days, regardless of whether the parties respond; such decision is appealable. If the court denies recognition of the foreign judgment, an order to stay the proceedings will be issued until the higher court decides the appeal. If the lower court grants recognition of the foreign judgment, the appeal will be admitted, but without an order to stay. Appeals are decided summarily.

According to Mexican procedural law, the judge is precluded from reviewing the judgment on its merits; rather, he is limited to examining the authenticity of the foreign judgment and to ascertaining if the latter may be enforced in accordance with Mexican law.[20] Article 608 of the Code of Civil Procedure for the Federal District provides that neither the lower court nor the appellate court may decide upon the justice of the judgment, or the bases of fact or law upon which it rests.

Upon examination of the authenticity and enforceability of the foreign judgment, the Mexican court can arrive at one of two hypotheses:

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18. Code of Civil Procedure for the Federal District, arts. 156, 605 (1978).

19. Code of Civil Procedure for the Federal District, arts. 607, 330 (1978). The latter is the same as art. 132 of the Federal Code of Civil Procedure.

20. *Id.*

(a) That an international treaty exists, in which case the court will follow the directives of the text of the treaty, or
(b) That no treaty exists, in which case international reciprocity will govern.[21]

Since there is no such treaty between Mexico and the United States, the Mexican courts will require proof of existing reciprocity on the effectiveness of Mexican-rendered judgments in American courts. The existence of such reciprocity, though not constant or unanimous,[22] has been demonstrated in many judgments requiring the payment of sums of money as well as in judgments concerning the civil (marital) status of persons.[23]

Nonetheless, it is convenient to produce a distinction in foreign judgments brought to Mexican courts. A foreign judgment brought before a Mexican court can achieve two effects. The first is obtaining "exequatur" as a preliminary step to its enforcement by a competent judge. The second is a holding that the foreign public document is evidence that could be used in another judicial proceeding. In this latter alternative, petitioner is not required to show the existence of reciprocity, nor is it necessary to satisfy the requirements enumerated in Article 605 of the Federal District Code of Civil Procedure. This distinction in the effects of foreign judgments was recognized in one of the "Considerandos" of the Patino "amparo,"[24] holding that the foreign instrument was brought to trial in a declarative posture and without the purpose of execution.

CONSIDERATIONS OF FORM AND SUBSTANCE FOR GRANTING "EXEQUATUR"

According to the provisions of the Federal Code of Civil Procedure, the court must determine if the foreign judgment is not contrary to the laws of the Republic or to the treaties or principles of international law.[25] Once this requirement has been satisfied, the court will demand compliance with the formalities prescribed for recognition of such judgments. Since there is no international agreement between Mexico and the United States on the matter of letters rogatory,[26] the

21. Code of Civil Procedure for the Federal District, art. 604 (1978).
22. Cruz v. O'Boyle, 197 F. 824 (M.D. Pa. 1912).
23. There is ample case law concerning recognition by U.S. courts of judgments rendered in Mexico regarding marital status. *See* S. BAYITCH AND J. SIQUEIROS, CONFLICT OF LAWS: MEXICO AND THE UNITED STATES 241 (1968). As for the recognition in Mexico of judgments rendered by U.S. courts concerning marital status, *see* Greene, *supra* note 11.
24. Considering thirteenth, Amparo Directo, appellant Maria Cristina de Borbón de Patino, Semanario, VI Epoca, vol. 30, at 116 (1956).
25. Code of Civil Procedure, art. 428 (1978).
26. Mexico ratified the Inter-American Convention on Orders of Letters Rogatory

rules established by the Federal Code of Civil Procedure should be applied.

According to this Code,[27] letters rogatory can be sent through diplomatic channels to the place of their destination. The signature of the judicial authority of the State of origin should be legalized (authenticated) by the Mexican consul of the situs of the court issuing the letter rogatory. In some cases, however, the letter rogatory can be transmitted by the court of origin directly to the court of destination in the Mexican Republic, through a Central Authority, that is, the Secretariat of Foreign Relations. The Secretary will then transmit it to the Supreme Court of Justice or to the Superior Court of Justice of the corresponding State; the Supreme or Superior court will then assign it to the judge to whom it corresponds.

The judgment must have been rendered as a consequence of a personal action (*in personam*); foreign judgments rendered as a result of an action *in rem* are not recognized in Mexico. The Supreme Court of Justice in 1907 held that foreign judgments rendered in probate proceedings affecting immovables located in Mexico should not be given effect, because it would be unacceptable for a foreign court to oversee the adjudication of real property located in a different country, even in the name of the administration of justice.[28]

Another fundamental requirement is that the obligation, the performance of which has been sued upon abroad, be legal in the Mexican Republic. This implies the implementation of "public policy" (ordre public),—a notion which can be used by the court of the State of destination to deny the recognition of the foreign judgment. It is logical to assume that the interpretation of this flexible condition should remain in the hands of the judiciary. The recent trends, however, including the authors' opinions and modern case law, are not supportive of the broad and unrestrained use of the public policy element, except in those cases which effectively damage the values and institutions of the highest order in the country; yet the majority of international agreements in this area still retain in their texts this traditional reservation.[29]

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signed in Panama on January 30, 1965 (promulgated in D.O. April 25, 1978). During the course of the Second Special Conference on Private International Law in May, 1979, the previously cited Supplemental Protocol of the Convention was signed. Mexico and the United States are presently studying (as of July, 1980) the possibility of joining and ratifying the Protocol. It is very possible that should the government of the United States sign and ratify the Convention and Protocol, it will do so with the reservation of binding itself exclusively to those other countries that have ratified *both* instruments.

27. Federal Code of Civil Procedure, art. 302, in conjunction with the Code of Civil Procedure for the Federal District, arts. 108, 605, § I (1932).

28. *See* opinion published in Semanario, IV Epoca, vol. 31, at 722.

29. European Communities Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters, *done* September 27, 1968, arts. 27, 28, COMM. MKT.

Another important requirement for the granting of "exequatur" is determining whether the defendant was summoned personally before the court at the trial on the merits. Mexican courts must carefully examine foreign default judgments against Mexican citizens. Cases in which the judge believes the defendant was not given the right to be heard, or other rights of legal due process in a manner similar to the guarantees embodied in Articles 14 and 16 of the Mexican Constitution, will be strictly scrutinized.

The foreign judgment must also be executory in nature according to the laws of the nation in which it was rendered; that is, it must be a final judgment, not subject to appeal or any other collateral attack available in the jurisdiction of origin. If the party against whom the foreign judgment is invoked can demonstrate that the original judgment can be reversed or suspended by a competent authority in the country where it was rendered, it will be neither recognized nor enforced within the Mexican Republic.[30]

It is interesting to note, within the conditions analyzed above, that the Mexican legislature has not established the fundamental requirement present in all of the other international agreements written on this matter, namely that the judgment-rendering court should have had competence in the international sphere to hear and decide the matter presented in the original lawsuit. Such competence should be determined according to the law of the State where the judgment is to be given effect. The Hague Convention[31] and the European Communities Convention,[32] as well as the recent Interamerican Convention on Extraterritorial Validity of Foreign Judgments in Civil and Commercial Matters[33] establish a general basis for denying recognition and enforce-

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REP. (CCH) No. 96; *see* 8 INT'L LEGAL MATERIALS 229 (1969); Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, *done* April 26, 1966, art. 5(1); *see* 15 AM. J. COMP. L. 362 (1967); Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards, *opened for signature* May 8, 1979, art. 2(h), O.A.S. Document OEA/Ser.C/VI.21.2; *see* 18 INT'L LEGAL MATERIALS 1224 (1979).

30. Code of Civil Procedure for the Federal District, art. 605, § V (1932).

31. The Hague Conference on Private International Law Extraordinary Session Draft Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, *done* April 26, 1966, arts. 4(1), 21, 22, and 23, cls. 10-13. *See* 5 INT'L LEGAL MATERIALS 636 (1966).

32. European Communities Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters, *done* September 27, 1968, arts. 2-4. COMM. MKT. REP. (CCH) No. 96. This convention has been strongly criticized for establishing jurisdictional principles that are more favorable to people living in the EEC countries; the convention has been considered exorbitantly competitive and discriminatory. *See* Nadelmann, *The Common Market Judgments Convention and a Hague Conference Recommendation: What Steps Next?*, 82 HARV. L. REV. 1282 (1969), and 8 INT'L LEGAL MATERIALS 229 (1969).

33. Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards, *opened for signature* May 8, 1979, art. 2(d), O.A.S. Document OEA/Ser.C/

ment when the judgment-rendering court heard the case as the result of excessive long-arm statutes. Thus, pursuant to these Conventions, recognition and enforcement of a decision may be refused if the rendering court takes the case based upon:

(a) the physical presence in the territory of the State of origin of property belonging to the defendant;
(b) the mere nationality of the plaintiff;
(c) the mere domicile or habitual residence of the plaintiff; or
(d) the service of process on the defendant within the territory of the State of origin when his presence in the place of trial is due to merely transitory reasons.

The lack of competence of the court of the State of origin to the defendant and to the subject-matter of the suit are other reasons for denying the recognition of foreign judgments according to the Uniform Law for the Recognition of Foreign Money Judgments adopted in many states in the United States,[34] and it constitutes in many countries a legitimate defense to the execution of foreign judgments. It would be very convenient if in future legislative reform, or in the signing and ratification by Mexico of international agreements, this important reservation would be taken into account.

FINAL CONSIDERATIONS

The probability that Mexico and the United States will be bound by a bilateral treaty concerning the reciprocal obligation to grant extraterritorial effect to the judgments rendered by one or the other country seems remote. Neither has signed any international agreements on this matter with the exception of the previously mentioned Treaty for the Enforcement of Penal Sentences,[35] and I believe that the very special conditions prompting the signing of that document are unlikely to recur in the future.[36] Let us remember that even within the Inter-Ameri-

VI.21.2. *See* 18 INT'L LEGAL MATERIALS 1224 (1979). *See also*, Supplementary Protocol to the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, *done* October 15, 1966, arts. 2 (first paragraph), 4-7. *See* 15 AM. J. COMP. L. 369 (1967).

34. The Uniform Foreign Money-Judgments Recognition Act establishes in § 4(a), subsections 2 and 3, that a foreign judgment made in such cases will not be recognized. Additionally, § 5 establishes legal causes which fail for lack of "personal jurisdiction." *See* 9B UNIFORM LAWS ANNOT. 64 (1966).

35. *See* text accompanying note 4, *supra*.

36. The press, along with public opinion in the United States, put pressure on the U.S. government to negotiate a treaty with Mexico that would permit convicted criminals in Mexico (mainly participants in narcotics traffic) to complete their sentences in U.S. prisons. The Mexican government used this juncture to demand identical treatment for Mexicans serving sentences in the U.S.

can sphere, neither of the two countries has signed or acceded to the Treaties of Montivedeo[37] or to the Code of Bustamante[38] regulating this area of law. Both nations, however, were represented at the Second Specialized Conference of Private International Law (CIDIP-II) held in May, 1979, in Montevideo. At this conference a new Inter-American Agreement on the extraterritorial effect of foreign judgments and arbitral awards was signed. Though it is true that neither Mexico nor the United States has signed the document, it is also true that fourteen countries of this hemisphere[39] did sign it and some of them have begun to deposit the ratification instrument with the Organization of American States.

Mexico can now sign *ad referendum*[40] the Agreement and incorporate it into its treaty law. In light of the similar possibility for the United States, a panoramic analysis of the 1979 document is appropriate.

Article 1 declares that the Convention shall apply to

> judgments and arbitral awards rendered in civil, commercial and labor proceedings in one of the State Parties, unless at the time of ratification it makes an express reservation to limit the Convention to compensatory judgments involving property. In addition, any one of them may declare when ratifying the Convention that it also applies to rulings that end proceedings, to the decisions of authorities that exercise some jurisdictional function and to judgments in penal proceedings ordering compensation for damages resulting from an offense.[41]

The same provision goes on to establish that "[t]he rules of this

37. Article 50 of the Treaty of Montevideo of 1889 established the conditions necessary to give foreign effect to sentences and arbitral awards. The Treaty on International Civil Law, *signed* March 19, 1940 (*See* 37 AM. J. INT'L L. SUPP. 141 (1940)) reproduces in arts. 50 and 60 the disposition of the treaty of 1889. *See* G. F. MARTENS, NOVEAU RECUEIL GENERAL DE TRAITES, 2 SER. GOTTINGUE, 1876-1908.

38. The Code of Bustamante, *signed* February 20, 1928, art. 432, 86 L.N.T.S. 111, establishes the conditions to give executive strength to the civil sentences and the decisions given in administrative decisions produced in one of the contracting states.

39. The signatory countries are: Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, Guatemala, Haiti, Honduras, Panama, Paraguay, Peru, Uraguay, and Venezuela.

40. In January, 1975, in Panama City, Mexico subscribed to six Inter-American conventions in the course of the CIDIP-I. Of these, Mexico has ratified the Inter-American Convention on International Commercial Arbitration, the Inter-American Convention on Letters Rogatory, the Inter-American Convention on the Taking of Evidence Abroad, and the Inter-American Convention on the Conflict of Laws Concerning Bills of Exchange, Promissory Notes, and Invoices. For all the conventions see 18 INT'L LEGAL MATERIALS 1211 (1979). Mexico has not ratified the Inter-American Convention on Conflict of Laws Concerning Checks, nor the Inter-American Convention on the Legal Regimen of Powers of Attorney to be Used Abroad.

41. *See* note 33, *supra*.

Convention will apply to arbitral awards in all matters not covered by the Interamerican Convention on International Commercial Arbitration signed in Panama on January 30, 1975."

It seems to me that the scope of the *ratione materiae* (subject matter) of the Agreement is overly ambitious. Fortunately, its broad scope was mitigated by permitting the State Parties at the time of ratification to make an express reservation to limit the scope to compensatory judgments (*sentencias de condena en materia patrimonial*), even if, on the other hand the same signatory nation may expand such scope to include the other type of rulings mentioned above.

In my view the Agreement is too general—candidly over simplistic. It attempts to capture in a few short articles all the complex and intricate problems in this area of the law. The Latin American tradition of accepting general formulas similar to the style adopted by the Treaties of Montevideo and by the Code of Bustamante[42] continues to influence the drafting of the most recent Inter-American instruments.

The European and American experiences in these matters have not been made use of; there is an excess of idealism and too little realism. The complex problems of international judicial assistance are not resolved by abstract and doctrinal principles, but through texts less ambitious in content, more concrete in scope, and more practical as channels for the general acceptance of the postulates. The progressive codification of private international law should be welcomed; however, when codification is not innovative and only restates already stiffened formulas, it is preferable to leave the field open to the legislature and to the courts. If this happens, the legislation and the case law should respond to the challenge of modern times.

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42. *See* notes 37 and 38, *supra*.