"THE ENFORCEMENT OF FOREIGN JUDGMENTS AND ARBITRAL AWARDS IN THE UNITED MEXICAN STATES"

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1.1. LEGAL FRAMEWORK

Perhaps the single most important aspect regarding the enforcement of foreign judicial and arbitral decisions in Mexico is the area comprising the laws or codes that will actually govern the procedures for receiving the award or satisfying the judgment. Although the practical side is not to be discarded, and will eventually be treated in a final analysis within this investigation as noted in the introduction,[1] knowledge of the legal backbone is an indispensable feature for the international law practitioner who seeks relief before the domestic courts.

In this sense, it's important to indicate that within the Mexican system statutes do not occupy all of the legal spectrum to be taken into account when executing judgments or awards from abroad. We also have to look at case law, although scarce on our subject, as handed down by the Federal Courts,[2] including the Supreme Court, and we must see if an International Treaty exists between the Country in which the decision was rendered and Mexico due to the stipulations of Constitutional article 133[3] in the sense that treaties celebrated by the President and approved by the Senate are also, together with the Constitution and the Laws enacted by the Federal Congress, the supreme law of the Union if in compliance with said Supreme Law.

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[1] *See* discussion *supra* at II.

[2] Decisions have been published regularly since 1917 in the Federal Judicial Weekly (*Semanario Judicial de la Federación)* and are grouped by chambers of the Supreme Court and by specialty of the Collegiate Circuit Courts and arranged by loose time periods called epochs (*épocas)*. From 1995 to date, the 9th epoch is in effect.

[3] *See Constitución Política de los Estados Unidos Mexicanos*, [Const.] (translation by the author), at 163 (4th ed. McGraw Hill Intermaericana Editores Mex. 1997).

The most important bodies of internal law regulating foreign enforcement will be dealt with according to their hierarchy and their degree of specialty. State substantive and procedural civil codes are another class of statutory enactments that also come into play when considering execution outside the Federal District and of the scope of federal law. We will view briefly the procedural treatments of several state laws as the local substantive matter does not depart essentially from the canons laid out in the Civil Code for the Federal District which in light of recent reforms, as we will additionally see, takes a modern and less hostile approach to the execution of foreign binding decisions.

1.1.1 Federal Constitution

The 1917 General Constitution of Mexico, enacted on the same date as its federal predecessor of 1857,[4] February 5th, in her first article[5] adopts a territorialist view as to the laws applied within the Country and makes, initially, no distinction between foreigners and nationals. Article 40[6] also establishes a federal system of political organization in which an international conflicts of law rules scenario intertwines with a similar interstate setting.

In this respect, Article 104, Section I of the Mexican Constitution prescribes 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.[7] However, various Mexican states have adopted legislation concerning recognition of foreign judgments[8] and the jurisdiction of their courts has been upheld by the

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[4] *See* Volume IX, *Constitución de 1857, (Congreso Constituyente de 1857) y Legislación Mexicana o Colección Completa de las Disposiciones legislativas expedidas desde la independencia de la República,* Printing House of Dublán and Lozano, number 5478 at 329, (Mex. 1878).

[5] *See* [Const.], *supra* note 3. "In the United Mexican States every *individual* shall enjoy the guarantees that this Constitution confers. [These guarantees] cannot be restricted or suspended other than in the cases and with the conditions prescribed herein (translation and emphasis supplied by the author), at 1.

[6] *Id.* at 45.

[7] *Id.* at 100.

[8] *See* Codes of Civil Procedure for the states of Aguascalientes, Baja California, Baja California Sur, Campeche, Coahuila, Colima, Chiapas, Chihuahua, Durango, Guanajuato, Guerrero, Hidalgo, Jalisco, Mexico, Michoacán,

Supreme Court.[9] The jurisdictional conflict is resolved by the principle of concurrent jurisdiction. When dealing with a suit for recognition of a foreign judgment, the plaintiff may elect between a federal court or a general jurisdiction state court to entertain his claim.

Accordingly, article 41[10] ordains that the people exercise their sovereignty through the powers of the Union in the competent areas of these, and, regarding the internal regime of the States, through those established therein. As the subsequent article 124[11] stipulates, those matters not expressly reserved to the Federation are conferred upon the individual States, therefore, concurrent jurisdiction, as also expressed above, exists concerning judgment recognition and enforcement (*i.e.* these can be carried out either by Federal or State courts). When the conflict affects only private interests, State courts, upon defendant's choosing, can take cognizance of the dispute.[12]

At the heart of this dual system, article 121[13] gives full faith and credit to each and everyone of the public acts, records, and judicial proceedings carried out in a Sister State. This numeral establishes a system for the internal regulation of conflicts of laws between the states and was literally copied from Article 4 of the United States Constitution.[14] The Federal Congress has the power to ensure this cooperation by enacting laws that are in accordance with the principles stated in sections I to V of said precept. Section III sheds some light as to the extraterritorial effects of *in rem* judgments which will be enforced only if the applicable State legislation allows it, as property is governed by the law in which it is situated.[15] Its second paragraph refers to *in personam* court decisions which will be executed in another

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Morelos, Nayarit, Oaxaca, Querétaro, Sinaloa, Sonora, San Luis Potosí, Tlaxcala, Tabasco, Tamaulipas and Veracruz.

[9] The Supreme Court has 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. *Semanario Judicial de la Federación*, [*Semanario*] V Época, vol. 51(5), at 2882 (1938). *See also Semanario,* V Época, vol. 114, at 153 (1952).

[10] *See supra* note 3 at 100.

[11] *Id.* at 159.

[12] *Id.* at 100, art. 104-I.

[13] *Id.* at 132-133.

[14] *See* Pereznieto Castro, Leonel, *Derecho Internacional Privado,* at 220 (translation by the author), (7th ed. Oxford University Press, Mex. 1998).

[15] *See supra* note 3, Art. 121 § II at 132.

State solely if the defendant has expressly submitted to the jurisdiction, or by reason of domicile, to the Court that pronounced the judgment and had been duly served process of the trial.

Under this system, the modern long arm jurisdiction known in other Countries is not readily available and Mexico doesn't recognize foreign judgments where the adjudicating state had no jurisdiction over the judgment-debtor. However due to the structure of Constitutional article 73 a small room for "wiggling" is provided for local codes to foresee some type of far reaching effect in exercise of their jurisdiction. To this date, this is not the case with the Civil Code for the Federal District[16] which has been serving as a general model for civil statutes in the rest of the Federation.

Obtaining personal jurisdiction over the defendant in Mexico is much the same as acquiring personal jurisdiction in the United States. Both in the U.S. and Mexico parties must typically be found and served personally.[17] Although both States permit personal service on agents, in Mexico the agent must have a power of attorney over lawsuits and collections. Secondly, in spite of Mexico's more stringent due process requirements, both States direct parties to have a certain minimum of contacts before personal jurisdiction may be obtained.[18]

As a way of explaining the reasons for this on the international level, we can comparatively look to the Hague Convention,[19] the European Communities Convention[20] as well as the Interamerican Convention on Extraterritorial Validity of Foreign Judgments in

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[16] *See* discussion *infra* at 8-10.
[17] Fed.R.Civ.P. 4; *Código de Procedimientos Civiles para el Distrito Federal* [Federal District Code of Civil Procedure (FDCCP), Art. 602 (IV).
[18] *International Shoe Co. v. Washington,* 326 U.S. 310 (1945); FCCP, Art. 606.
[19] 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 International Legal Materials (I.L.M.) 636 (1966).
[20] European Communities Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters, done September 27, 1968, arts. 2-4, *See* 8 International Legal Materials 229 (1969).

Civil and Commercial Matters[21] which establish a general basis for denying recognition and enforcement when the judgment-rendering court heard the case as a result of excessive long arm statutes. Thus, pursuant to the cited 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 originating state 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 simply due to transitory reasons.

1.1.2 Civil Code for the Federal District (CC)

Mexico, as do the majority of the world's Countries, consider it an attribute of their sovereignty the exclusive jurisdiction of their courts:

"A manifestation of State sovereignty is the immunity of jurisdiction consisting in that foreign authorities lack within the respective State coercive power... [F]rom the absence of a foreign court's jurisdiction derives the need of international cooperation for the fulfillment of procedural actions."[22]

The initial articles of the main body of local, and to some extent national, civil law contain general principles and minimum legal standards for the application of justice regarding substantive conflict of law matters. When enacted, in 1928 and in effect as of 1932, the Mexico City Civil Code contained a territorialist approach that virtually excluded

[21] 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/VI.21.2, *See* International Legal Materials 1224 (1979), DO August 20, 1987.
[22] Arellano García, Carlos, *Derecho Internacional Privado,* at 878 (translation by the author), (10th Porrúa ed. Mex. 1992).

foreign law in domestic courts.[23] The following preamble of April 12th, 1928 furnishes some insight as to why this was so.

> SECTION ONE, *of the persons*...The legal capacity of a person regarding juridical acts depends on his physical and intellectual development, these, in turn, are determined by peculiar factors of race, climate, customs, traditions, language, etc. This is why laws regulating one's legal capacity must be national laws that take into account the expressed circumstances and have been especially made in light of the immanent and distinctive qualities of the individuals to whom they will apply. These laws must follow the person wherever he or she may go and only when they are in conflict with public policy precepts of the Country where the juridical act is done, they shall not apply, because public policy precepts constitute the fundamental principles that each Nation has adopted for the organization and functioning of their most important social institutions... As a defense measure of the nationalist policy, perfectly justified as it tends to erase unjust inequality contrary to international solidarity, the application of a foreigner's personal law who executes juridical acts in the Republic *is conditioned on reciprocity".*[24]

This scheme was substantially reformed when Mexico signed and ratified numerous conventions on private international law[25] which conflicted with the then existing choice of law provisions contained in its preliminary dispositions. As a result of the many and unprecedented international obligations assumed by Mexico in eleven Conventions,[26] mainly

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[23] *See* Volume 2, Vargas, Jorge A. et. al., *Mexican Law: A Treatise for Legal Practitioners and International Investors,* West Group, at 278, 1998.

[24] Preamble of the Civil Code for the Federal District in Ordinary Matters and for the entire Republic in Federal Matters (*Exposición de Motivos del Código Civil para el Distrito Federal en materia común y para toda la República en materia federal*), (translation and emphasis by the author), (Porrúa ed., at 13 and 14 Mex. 1993).

[25] Among these, during the first period of openness (1978 through 1985), we find the Inter-American Convention on Letters Rogatory, the Inter-American Convention on Conflict of Laws Regarding Bills of Exchange, Promissory Notes and Invoices, *both* DO April 25, 1978; Inter-American Convention relative to Corporations, DO May 8, 1978; Supplementary Protocol to the Inter-American Convention on Letters Rogatory, DO April 28, 1983; Inter-American Convention on Proof of Foreign Law, April 29, 1983; Inter-American Convention on General Rules of Private International Law, DO May 8, 1984 and October 10, 1984.

[26] *See infra* discussion, section1.2.

sponsored by the Specialized Interamerican Conference on Private International Law[27] (CIDIP, as known in its Spanish abbreviation) and the great influence exercised by the Mexican Academy of Private International Law[28] during 1987 and 1988, on January 7th, 1988 twelve reforms and two additions were introduced in the CC. The analysis of the pertinent revised text follows.

Article 6 of the CC enables individuals to freely renounce their private rights and, for example, submit themselves to a foreign jurisdiction only to the extent that the renounced rights don't directly affect the public interest and third party rights aren't aggrieved in the process.[29]

The subsequent eighth precept establishes an important public policy consideration and voids acts that are executed against restrictive laws *or* those relating to public interest.[30]

An essential section dealing with the application of foreign law is Article 12. We found for many years in its text the embodiment of Mexico's extreme territorialism until 1988, when Mexican courts only applied domestic law to the exclusion of foreign law. The original text provided that: "[T]he Mexican laws, including those which refer to the status and capacity of individuals a*pply* to *all inhabitants* of *the Republic*, whether naturals or *foreigners*, and whether domiciled therein or *transient."*[31]

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[27] Charter article 128 of the Organization of American States provides "Specialized Conferences" for dealing with the technical aspects or the development of interamerican cooperation, by means of a General Assembly Resolution adopted on petition of an institutional organism, that of a member State or through the Consultation Meetings of their Secretariats of Foreign Affairs. These Conferences have been convened by the General Assembly. *See* Weston, Falk and D'Amato, *Basic Documents in International Law and World Order,* West Publishing Co., at 42 (1980).

[28] *See* Vázquez Pando, Fernando A., *Nuevo Derecho Internacional Privado Mexicano*, Themis ed. at 19-22 Mex. 1990).

[29] *See* Art. 6 of the Civil Code for the Federal District in Ordinary Matters and for the entire Republic in Federal Matters (CC) (*Código Civil para el Distrito Federal en materia común y para toda la República en materia federal*), (translation by the author), at 3 (1st ed. McGraw Hill/Interamericana de México Mex. 1997). Art. 7 *Id.* conditions this resignation of private rights to be in a precise and clear manner, otherwise it does not produce any legal effect.

[30] *Ibid.* at 3 (translation and emphasis by the author).

A more attenuated version of territorialism is reflected in the current text which reads:

> "The Mexican laws apply to all persons located within the Republic, as well as to the acts and events which have taken place within its territory and jurisdiction, and to those who have submitted to said laws, save when those laws provide for the application of a foreign law and save, also, what is provided by the treaties and conventions of which Mexico is a party."[32]

As we observe, a mixed system is implemented (principally territorialist but also permissive) through which, in its first part, the spatial application of legal rules is contemplated and in the second a possibility for applying foreign law is given in accordance with Mexican laws and the treaties that the Country is party to. The exception laid out is developed in articles 13, 14 and 15.

In order for us not to astray too much from the principal analysis which seeks a comprehensive overview for enforcing foreign binding decisions in Mexican Courts, we will not explain exhaustively the conflicts of law rules other than presenting to the readers its five basic principles contained in Article 13.

I.- The juridical situations legally created under the laws of the Mexican and foreign States, within those jurisdictions, shall be awarded full recognition.[33]

II.- The status and legal capacity of persons is governed by the law of domicile. Under this heading all aspects relating to birth, filiation, matrimony, divorce, nationality, majority of age, general or personal incapacities, etc. are dealt with by the law of residence.[34]

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[31] *See supra* note 23 at 278.
[32] *See supra* note 29 at 3.
[33] *Id.* at 3 and 4.
[34] *Ibid.*

III.- The constitution, regime and extinction of real property rights, as well as lease contracts, the temporary use of these properties and movable property shall be governed by the law of their location (*lex rei sitae*) even if title is held by a foreign person or corporation.[35] This primarily obeys the registration process where one can view the situation of *in rem* rights in the local public registry of property (*Registro Público de la Propiedad*).

IV.- The formality of juridical acts shall be determined by the law of the place where they are celebrated (*locus regit actum*).[36] The primary concern for this, we think, relates to those acts required by law to fulfill a certain solemnity in its formation such as matrimony or the elaboration of a will where this condition determines the very existence of the acts.

V.- Save what is noted in the previous numerals, the juridical effects of the acts and of the contracts will be governed by the law of the place of performance, unless the parties validly designate the application of another body of law (*lex loci executionis*).[37]

It is important to state that with regard to this last part, the Fifth Inter-American Convention on International Contracts celebrated in Mexico City in 1994, under the auspices of the Specialized Conference on Private International Law (CIDIP-V), adopted an absolute party autonomy principle where the parties are free to choose the applicable law, provided that it is not contrary to public policy or was done to defraud Mexican Law.[38]

Once foreign law is determined under these rules, a second step towards its application is appropriate following also the five directives of Article 14. When employing this system of law, it shall be done as the foreign judge would apply it and in doing so the court may obtain the necessary information regarding the text, term, meaning and scope of the applicable law.[39]

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[35] *Ibid. See also supra* note *3* [Const.] Art. 121 **§** II.
[36] *Ibid.*
[37] *Ibid.*
[38] *See supra* note 14 at 232.
[39] *See supra* note 29 at 4 and 5.

Neither the trial court nor the appellate tribunal can decide on the justice or injustice of the foreign judgment, nor can they review its legal and factual basis. They are limited to examine its authenticity, *i.e.* legal admissibility, and whether or not enforcement is due under the previous articles. This closes the door on refusal of execution upon the ground that the foreign court applied a different law than the Mexican court would have applied. [40]

The above procedure gives rise to a peculiar circumstance. A judge of the Federal District or a federal judge for this matter is ordered to look into not the Mexican conflict of law rule but that of the foreign jurisdiction. Ample interpretative powers are given within this mandatory system due to the fact that the judge can determine the meaning and scope of foreign law.

Secondly, substantive foreign law will be applied unless, under special and exceptional case circumstances, the conflict of law rules of that State should be taken into consideration and these indicate the application of substantive Mexican law or that of a third Country. Remand is avoided to the fullest extent possible.

The third rule provides that the lack of an institutional framework for the essential procedure applicable to the foreign institution shall not be an impediment for applying foreign law if there exists analogous institutions or procedures. This eliminates a possible arbitrary determination by a Mexican judge for not applying exterior law if he or she is not familiar with a definite juridical institution and encourages courts to be open to for the resolution of problems occurring in the international judicial traffic.

A following fourth principle states that previous matters, preliminary or incidental, which may arise in conjunction with the principal matter, need not necessarily be resolved by the rule of law applicable to the main affair. We can infer from this that the Federal Congress when enacting this section intended to give independent status for the heart of the

matter and enable the application of a more specific body of law if incidental questions appear in the regular course of determining applicable law.

Finally, an important rule is inscribed in the fifth roman numeral of Article 14 that touches upon the specific factual situations of cases presented unto judges and presents a scenario for a case by case analysis.

When different aspects of the same legal relationship are regulated by various laws, these shall apply in harmony with the goals pursued by each concurring law. In order to resolve the difficulties caused by the simultaneous application of these laws, the particular demands of each case shall be taken into account. The rule contained herein will be observed also when the law of another federal entity is applicable.[41]

The basic structure that recognizes the need for coordinating or balancing different legal systems present and to harmonize their diverse objectives is laid out in this article and commands the judge to maintain an open attitude in order to fulfill justice.[42]

Even during this stage of application of foreign law, article 15 directs the courts to refrain from applying it and resolving the matter by using domestic law when public policy is undermined or there has been a fraudulent use of exterior law.[43] The latter pertains mainly when the foreign legal body manipulates the minimum contacts in one's favor so as to avoid fundamental principles of Mexican law and obtain a result impossible to achieve otherwise.

Also as an exception, we note paragraph II of this same article that enunciates the preemption of Mexican fundamental institutions and principles of public order (set of laws and obligations that one cannot alter or contract against) over foreign law. When there exists

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[40] *See* Art. 608- IV, FDCCP, DO December 11, 1987.
[41] *See supra* note 29 at 5 (translation by the author).
[42] *See* Battifol, Henri, (*Aspects philosophiques du droit international privé),* cited by Leonel Pereznieto Castro, *supra* note 14 at 234 (translation by the author).
[43] *See supra* note 29 at 5.

a possibility to apply a foreign provision that is prohibited by Mexican law we come across the scope of this section. Furthermore, it's not always the content of the external legal body that is contrary to public order but the resulting effect of the application that might be illegal.

1.1.3. Federal Code of Civil Procedure (FCCP)

On January 7, 1988 in response to the International Conventions to which Mexico had acceded to during the previous years, the addition of a fourth book of the FCCP entitled "International Procedural Cooperation" was published in Mexico's official gazette. As enacted in 1943, the Federal Code of Civil Procedure[44] contained only three articles regulating matters pertaining to international legal cooperation questions.[45] To correct this the legislative technique used by the Federal Congress to introduce the needed additions was to address these specific questions in a more detailed and systematic manner through 35 new articles.

The first of the relevant federal articles is number 543 which establishes the fundamental premise that in matters of a federal nature, the international judicial cooperation shall be regulated by the provisions of this Book and other applicable laws, save what is provided by the treaties and conventions to which Mexico is a party.[46]

For purposes of this article it should be understood that under Mexican law, questions of a federal nature comprise civil or criminal controversies involving "the enforcement and application of federal laws or of international treaties entered into by the Mexican State", as provided by Constitutional article 104.

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[44] *Código Federal de Procedimientos Civiles* [FCCP], DO Feb. 24, 1943.

[45] *See* Vargas, Jorge A., *Enforcement of Judgments in Mexico*, 14 Nw. J. Int'l L. & Bus. 376, at 410 (1994), (Articles 131, 302 and 428 of the original FCCP).

[46] *Código Federal de Procedimientos Civiles* [FCCP], *Nueva Legislación de Amparo Reformada, Doctrina, Textos y Jurisprudencia.* (Porrúa ed., Mexico, at 371-377 (1993).

Subsequent article 544 provides: "On international litigation matters, the Federal and state agencies shall be subject to the special rules provided in this Book".[47] In his message accompanying the bill, President De la Madrid underlined that the provisions in this chapter contain rules that regulate "the procedural situation of the federal and state governmental agencies, as well as its officials and employees" when they are sued in foreign courts, adding that those rules are in symmetry with "widely recognized international law principles".[48]

In the years prior to the drafting of this bill, different entities of the government of Mexico had been sued before U.S. courts. This explains the rules contained in Articles 559 through 563 regarding the taking of evidence in possession of Mexican officials, but in particular precept 563 which provides: "In relation with Article 543, public officials of federal or state agencies shall be impeded to rendering statements in judicial proceedings and to give testimonial proof with respect to their functions as said officials. Such declarations should be made in writing when they involve private matters and when the competent national judge so orders".[49] Although it is not the main intention of this study, it's imperative to mention the procedural implications of these rules of evidence as they will also be taken into account at the recognition and enforcement stage of a judgment.

Article 545 of this Chapter establishes that:

> The processing by Mexican courts of service of process, taking of evidence or any other procedural acts of a merely formal nature, requested to produce effects abroad, shall not imply the definite recognition of the jurisdiction assumed by the foreign court, nor the obligation to enforce the judgment to be rendered in the corresponding proceeding".This article was inspired by the second and ninth numerals of the Inter-American Convention on Letters Rogatory[50] and was included to "facilitate the

[47] *See supra* note 46 (translation by the author).
[48] *See* the text of the message (*Exposición de Motivos* or preamble) accompanying the presidential bill in DO January 7, 1988.
[49] *See supra* note 46 (translation by the author).
[50] Art. 9 of this Convention on Letters Rogatory provides: "Execution of letters rogatory shall not imply ultimate recognition of the jurisdiction of the authority issuing the letter rogatory or a commitment to recognize the

> processing of said acts, avoiding commitments on the part of the Mexican courts which may limit them at a later stage including the future enforcement of judgments rendered by a foreign court.[51]

Numeral 546 basically eliminates the "legalization" requirement for foreign public documents to produce legal effects in Mexico when they are sent internationally by the official channels. Any other documents as it is customary in these cases will have to be "legalized" by the competent Mexican authorities in conformity with the applicable laws. In Mexico the central authority is the Foreign Affairs Secretariat (*Secretaría de Relaciones Exteriores* or *SRE*). Since August of 1995 Mexico is a party to the Hague Legalization Convention.

The text of article 547 allows the service of summons (i.e., *Notificaciones*) and the taking of evidence in Mexico's national territory, to produce legal effects abroad, at the request of the interested party, without having to obtain a letter rogatory from the foreign court.

Ending the first chapter, Article 548, establishes that:

> The conduct of procedural acts in a foreign country to produce legal effects in suits before national courts may be entrusted to members of the Mexican Foreign Service by the competent courts; in these cases, the conduct of said acts shall be carried out in conformity with the provisions of this Code, within the limits allowed by international law. In cases when it is allowed, said members may request the cooperation of the competent foreign authorities in the carrying out of the entrusted acts.[52]

The following sections deal properly with the enforcement provisions, as for the sake of space we will not view other dispositions that don't deal directly with our subject. Among the *lacunae* presented by the Mexican procedural legislation was the omission that in order

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validity of the judgment it may render or to execute it." *Documentos Oficiales, Serie sobre Tratados* No. 43, at 7, OEA/ser. A./21 SEPF (1975), (*Organización de los Estados Americanos*) (translation by the author).

[51] *See supra* note 14 at 452.

for a Mexican judge to enforce a foreign judgment, valid jurisdiction on the part of the foreign judge was a *sine qua non* condition.[53]

Mexican judges, briefly speaking, are competent to exercise jurisdiction over three different types of procedural acts in matters involving international judicial cooperation, namely:

1.- the performance of procedural acts of a merely formal nature,[54] such as service of process, summonses or subpoenas abroad, and the taking of evidence;[55]

2.- the enforcement of foreign judgments;[56] and

3.- the recognition of the jurisdiction of a Mexican judge to enforce a foreign judgment.[57]

This rule also controls the jurisdiction of a judge regarding the enforcement of a foreign arbitral award or judicial resolution.[58]

The recognition of jurisdiction by the Mexican judge to enforce in the Country a foreign judgment is regulated by Chapter V of the code now studied[59] and finds limits to the jurisdiction of a foreign court when said court encounters an area reserved exclusively to the jurisdiction of Mexican courts according to the following:

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[52] *See supra* note 46, at 372 (translation by the author).
[53] *See* García Moreno, Victor Carlos, *Derecho Conflictual*, Instituto de Investigaciones Jurídicas, (UNAM, Mex.), (1991) at 38 (translation by the author).
[54] Art. 554 FCCP. *See supra* note 47.
[55] *Id.* Art. 556 and 557.
[56] *Id.* Art. 573.
[57] *Id.* Art. 564 through 568.
[58] *Id.* Art. 573.
[59] *Id.* Art. 564-568.

> I.- In cases involving lands and waters located in Mexico's national territory, including its subsoil, air space, the territorial sea and the continental shelf, whether with respect to realty or concession rights, or the leasing of these assets;[60]
> II.- Marine resources in Mexico's 200 nautical mile exclusive economic zone;[61]
> III.- Acts of authority or pertaining to the internal regime of the Nation, including federal and state agencies;
> IV.- The regime applicable to the Mexican embassies and consulates abroad and their official functions; and
> V.- In the cases provided by other laws.[62]

Another essential aspect of foreign enforcement refers to letters rogatory whereby, as noted in the appendix, a Mexican judge receives a written communication by another court of a foreign jurisdiction requesting the performance of some act within the ambit of the its Mexican counterpart. As Mexico is a party to the Inter-American Convention on Letters Rogatory, a uniform practice is observed throughout the ratifying States.

Article 550 of the FCCP provides a general definition of letter rogatory:

> Letters rogatory to be sent abroad shall be the official written communications containing a petition to carry out those procedural acts which are necessary in a given case. Said communications shall contain the necessary information, as well as the certified copies, notifications, copies of the complaint and any other pertinent annexes, as may be necessary.

No other additional formal requirements shall be necessary regarding letters rogatory received from abroad as follows from the last part of this same article.

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[60] Article 42 of the Constitution [Const.] enumerates the parts that comprise Mexico's "national territory", such as the 31 States, islands, the continental shelf, keys and reefs; the waters of the territorial sea and internal waters, and the air space in accordance with international law. *See supra* note 3 at 51.
[61] *Id.* at 25. Art. 27 as reformed in [DO] Feb. 6, 1976.
[62] Art. 568 FCCP.

Congruent with Article 4 of the Inter-American Convention on Letters Rogatory, and Article 11 of the Inter-American Convention on the Taking of Evidence Abroad, Article 551 establishes that letters rogatory may be transmitted by any of the four following manners: (1) by the interested parties; (2) through judicial channels; (3) by consular or diplomatic agents; or (4) by the competent authority of the State of origin or of the State of destination, as the case may be. Article 552 reiterates that letters rogatory received from abroad through "official channels" need not be "legalized" and those sent to a foreign nation "shall only require the legalization demanded by said country in its domestic legislation. Article 553 states that any letter rogatory received from abroad written in a foreign language should be translated into Spanish.

Article 554 merits special comment. It addresses the question of *homologación*, which is the formal procedure that must be initiated before a competent Mexican court when an international letter rogatory received from a foreign nation does not involve the performance of "procedural acts of a merely formal nature," but rather the coercive enforcement of specific acts, such as the repossession of an asset, the access to certain documents or files, the acquiescence of specific conditions, etc. Known at the international level as *"Exequatur"*,[63] this procedure consists of the formal compliance in a competent court of law of those specific requirements established by the applicable Mexican domestic legislation to provide a foreign judgment, arbitral award or judicial resolution with executive force.

Article 554 reads:

> The international letters rogatory received from abroad shall require homologation when it needs to be coercively enforced against persons, assets or rights, in which case the provisions of the Sixth Chapter of this Book shall control. Letters rogatory regarding service of summons, taking of evidence and other procedural acts of a merely formal nature, shall be performed without homologation.[64]

[63] *See* appendix.

Regarding executive letters rogatory, it is necessary to initiate special judicial proceedings before a competent court, known as *Incidente de Homologación* or Homologation Incident. These proceedings require the serving of summons to the affected party in a personal manner, and the intervention of the competent District Attorney *(i.e., Agente del Ministerio Público,* either federal or local).

The Mexican court examines the following rules of homologation:

First of all, to be executed in Mexico, a foreign judgment must not be the result of a realty action (an action based on real estate located in Mexico), which is reserved to the exclusive jurisdiction of Mexican courts.[65] Second, the foreign judge of the sentencing court must have had jurisdiction to determine the case. Third, the defendant must have been summoned before the foreign court at trial. Fourth, the judgment must be final (*res judicata*) in order to be executed by a Mexican court. Fifth, the case must not be the subject of another pending or final suit in Mexico. Finally, the judgment must not be contrary to Mexico's public policy.

Article 555 gives discretion to the court at the State of destination to allow for the exceptional simplification of formalities of those different than the national ones, at the request of the judge of the State of origin or of the interested party, "provided this shall not result in prejudice to the public order and especially to the Constitutional rights" [of a Mexican national]. The request in question should contain "the description of the formalities whose application is demanded for the enforcement of the letter rogatory."[66]

This article follows closely the content of Article 10 of the Inter-American Convention on Letters Rogatory.

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[64] *See supra* note 46.
[65] Some variations can be found in the local procedural codes and these actions are permissible if in accordance with state laws. *See infra* discussion at section 1.1.7.
[66] Art. 555 FCCP.

Article 564 provides a very important rule for enforcement:

The jurisdiction assumed by the foreign court shall be recognized in Mexico regarding the enforcement of a judgment, when said jurisdiction has been assumed by reasons resulting compatible or analogous with the national law, save those cases which are of the exclusive jurisdiction of the Mexican courts.[67]

This article was inspired by Article 2(d), of the Inter-American Convention on Jurisdiction on the International Sphere for the Extraterritorial Validity of Foreign Judgments.[68] Pursuant to Article 565, the Mexican court recognizes the jurisdiction of the foreign judge when he or she "assumed said jurisdiction to avoid a denial of justice, for the lack of a competent jurisdictional organ".

Article 566 recognizes the validity of a forum selection clause when the court mutually chosen by the parties "does not imply a de facto impediment or denial of justice." This provision should be read in conjunction with Article 567, which declares the selection "not valid" if it results "in the exclusive benefit of a party but not of all the parties involved."[69]

The content of Article 567 has provoked "an extensive debate" in Mexico's legal community. The limitation imposed by its text has been interpreted "as a restriction to the autonomy of the contractual will of the parties to designate competent courts."[70]

Putting and end to this chapter, Article 568, as discussed earlier, establishes the cases in which the Mexican courts have "exclusive jurisdiction". Private international law clearly

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[67] This article starts Chapter V of the FCCP, entitled "Competence regarding enforcement of judgments" which ends with article 568.

[68] The Inter-American Convention on Jurisdiction in the International Sphere for the Extraterritorial Validity of Foreign Judgments was signed at La Paz, Bolivia, on May 24, 1984 (DO. August 28, 1987). *See supra* note 15 at 478.

[69] Art. 566 FCCP.

[70] *See* Siquieros, José Luis, *La Cooperación Procesal Internacional [International Cooperation in Procedural Matters]* in Jurídica (Yearbook of the Law Department of the *Universidad Iberoamericana*, Mex.), No. 19, at 23 and 24 (1988-1989).

recognizes the validity of a judge's decision to refuse the enforcement of a foreign judgment in violation of the exclusive jurisdiction of the State of destination. This is the sense of Article 4 of the Inter-American Convention on Jurisdiction in the International Sphere for the Extraterritorial Validity of Foreign Judgments.[71]

The legal regime established by the Federal Code of Civil Procedure for the enforcement of judgments is the one which received the greatest attention from the Mexican legislator, as contained in Articles 564-568, discussed above, and 569-577.

Article 569 establishes:

> Judgments, private arbitral awards and other foreign jurisdictional resolutions shall have validity and be recognized in the Republic of Mexico in everything which is not contrary to the internal public order in the terms established by this code and other applicable laws, save what is provided by the treaties and conventions to which Mexico is a party.[72]

Pursuant to this provision, when a Mexican judge is to enforce a foreign judgment, private arbitral award or any "other foreign jurisdictional resolution" rendered by a foreign judge in the State of origin which is a party to a treaty or convention that is in force in Mexico,[73] the judge must act in strict compliance of the pertinent international instrument. Mexican judges should refer to the provisions of the Federal Code only when the international instruments are inadequate because of omissions or gaps.

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[71] *See supra* note 70 and 15 at 479.

[72] Art. 569 FCCP.

[73] Regarding foreign judgments, Mexico is a party to: 1.- the Inter-American Convention on the Extraterritorial Validity of Foreign Judgments and Arbitral Awards, of 1979 (DO August 20, 1987); 2.- the Inter-American Convention on Jurisdiction in the International Sphere for the Extraterritorial Validity of Foreign Judgments of 1984 (DO of August 28, 1987). On the subject of private arbitral awards, Mexico is a party to: 1.- the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed in New York on June 10, 1958 (DO of June 22, 1971); 2.- the Inter-American Convention on International Commercial Arbitration signed in Panama on January 30, 1975 (DO February 9, 1979); and 3.- the Inter-American Convention on the Extraterritorial Validity of Foreign Judgments and Arbitral Awards (DO August 28,1987).

The second paragraph of Article 569 reads:

Concerning judgments, awards or jurisdictional resolutions to be utilized only as proof before Mexican courts, it shall suffice for those documents to comply with the necessary requirements to be considered as authentic.[74]

This alludes to the distinction between foreign documents of an "executive nature" and those involving "the performance of procedural acts of a merely formal nature." As this article provides, foreign documents "to be utilized only as proof" must be demonstrably authentic. Therefore, they should be duly legalized by the diplomatic or consular authorities, if the Hague Legalization Convention does not apply, and be translated into Spanish when written in a language other than Spanish.[75]

We can classify these requirements into two separate categories, one being procedural in nature and the other substantive. Substantive requirements have to do with the exercise of proper and valid jurisdiction by the foreign judge. In this respect, it is fundamental that we carefully review the criteria established by those provisions included in Chapter V of the Federal Code of Civil Procedure discussed above. Article 571 adds the condition that must be complied with to obtain "executive force" when foreign judgments are to be enforced effectively in Mexico. As also said earlier, the necessary proceedings are known as *Exequatur* or homologation.

It is important to underline this last paragraph. Even when each of these conditions are fully complied with, this does not automatically guarantee the enforcement of the foreign judgment. A Mexican judge is empowered to deny the requested enforcement when it is proven, at the court's discretion, that similar foreign judgments are not enforced in the country of origin. The basis for this outcome is the application of the so-called "Principle of Negative Reciprocity." Unlike "positive reciprocity," which requires valid proof that the

[74] Art. 569 *in fine* FCCP.
[75] *Id.* Art. 131 and 132.

country of origin does permit the enforcement of similar kind of judgments in an exercise generally involving costly legal research and time, the principle of negative reciprocity is considered to be less cumbersome and more practical.

However, its addition in the last paragraph within Article 571 has produced some commentary among Mexican specialists. Although the notion of reciprocity continues to attract some criticism, Fernando Vázquez Pando points out that this notion was attenuated by three factors: (1) it is not necessary to prove the existence of reciprocity before a Mexican judge to obtain the enforcement, but to prove the lack of it to enjoin such enforcement; (2) the absence of reciprocity is only relevant when applied to similar cases; and (3) the Mexican judge is not obligated, but rather "empowered" *(i.e., facilitado)* to deny the enforcement.[76]

It should be understood that, pursuant to Article 573, the Mexican court having jurisdiction to enforce a foreign judgment is the court of the domicile of the defendant, or in the absence of it, the court of the place where the assets are located in the [Mexican] Republic.

Article 574 enumerates the requirement to be complied with in conducting the proceedings to provide a foreign judgment with "executive force," known in Mexico, as we discussed before, *"Incidente de Homologación."* Both the plaintiff and the defendant should be personally served with the summons, giving each of them nine working days to advance their defenses or exercise corresponding rights. If there is evidence, a special hearing shall be scheduled to admit only that evidence authorized by the court. A public prosecutor (i.e. *Agente dcl Mintsteno Público)* is to take part in the proceedings in order to exercise any pertinent rights. The decision rendered by the judge in these proceedings is appealable whether the enforcement is denied or granted.

It must to be stressed that, in accordance with Article 575, neither the trial court nor the court of appeals may examine or decide over the justice or injustice of the foreign

judgment, its rationale or the factual or legal grounds, but must limit their role to the examination of the authenticity of said judgment and determining whether it should be enforced in conformity with the applicable Mexican domestic legislation.

The court where the homologation proceedings take place retains jurisdiction to decide on any questions associated with the enforcement of foreign binding decisions, such as repossession, deposit, sale at a public auction, etc. in the comprehension that the monies resulting from that auction should be made available to the foreign judge (article 576).

The Mexican legislator introduced an interesting innovation in that when the foreign judgment or award cannot be enforced in its entirety, the Mexican court "may admit its partial validity, at the request of the interested party." (article 577).

1.1.4 Federal District Code of Civil Procedure (FDCCP)

The seventh chapter of title seven of this Law addresses the recognition and enforcement of foreign judgments and arbitral awards within the Federal District which, being the jurisdiction where the majority of foreign judicial affairs is conducted will be the only local procedural code to be viewed in this work.

Reformed on the 11th of December of 1987, articles 604 through 608 have a friendlier approach to foreign binding decisions than its previous text. The same goes, in essence, to the procedural civil laws of the rest of the States.[77] Before the reform, the first of the articles cited left execution issues of *judicial* resolutions to international treaties and, in the absence of these, to international reciprocity.[78] Currently precept 604 talks primarily about letters rogatory and reflects the views of sister article 554 of the FCCP. Homologation

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[76] *See supra* note 28 at 98.
[77] *See infra* section 1.1.5
[78] *See supra* note 22 at 812.

proceedings are required only if coercive enforcement is sought over persons, assets or rights.[79]

Precept 605 states clearly that sentences and other foreign resolutions shall be effective and will be recognized in the Country to the extent that they do not contravene public policy in the terms spelled out in the code [FDCCP], the FCCP and other applicable laws, save what is stipulated in the treaties and conventions to which Mexico is a party to.[80]

Referral again is made to the federal procedural code within the following article in the sense that foreign rendered judgments and awards will enjoy coercive enforcement if the formalities regarding international letters rogatory prescribed in the FCCP are met. *In rem* actions are not enforced under section II of this precept and a finality of the decision must exist as the terms of section V point out.

A rule of discretionary enforcement, *i.e.* even if all conditions are complied with execution need not be forthcoming, is laid out in the final part and is based upon the negative reciprocity principle already discussed.[81]

Article 607 deals with documentary requirements that will be discussed sparingly in the practical aspects section of this research.[82]

The competent court, as follows from section 608, having jurisdiction on these matters is the court where the defendant's domicile is established. Express guidelines are set in place with respect to homologation proceedings, which are very similar to the federal rules.[83]

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[79] *See supra* note 14 at 635 (translation by the author).
[80] *Ibid.*
[81] *See* discussion *supra* at 21-22.
[82] *See* discussion *infra* at 1.4

1.1.5 State Civil Procedure Codes

As noted previously,[84] this subsection does not seek to exhaust the local provisions of foreign judgment enforcement but rather to present to the reader the principal departures of these bodies of laws as compared to the FCCP and the substantive and procedural civil codes of the Federal District that historically, though not always, have led the way in reforms. The caveat about the character that can be inferred from the local laws extends only to the specific conditions for validity, recognition and, being the case, enforcement of foreign binding decisions. It should not be stretched to create a generalized tool of execution as in every Federal State differences are natural and even encouraged.

The codes that follow were chosen on the basis of their proximity to the United States and their share in international juridical traffic. Consideration was also given to their level of federal resemblance or separation.

Baja California's code establishes in its 585th article the opposition to state laws as an additional ground for enforcement denial. Section III of article 588 further states that execution is not granted when the defendant was not served personally of the trial. Finally, numeral 590 gives foreign judicial resolutions the same effect as they enjoy under existing treaties or, in their absence, subjection to the principle of international reciprocity is directed.[85]

This demand will be found in the majority of state statutes and it's very important that the due process requirement found therein be met in the initial procedural stage of the subject matter dispute as enforcement will generally be denied if it was lacking.

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[83] *See* supra note 46 (*Código de Procedimientos Civiles para el Distrito Federal* [Federal District Code of Civil Procedure], in effect as of Oct. 1, 1932, Art. 608 (translation by the author).
[84] *See supra* discussion at II and 1-2.
[85] *See Código de Procedimientos Civiles para el Estado de Baja California, Leyes y Códigos de México* [Civil Procedure Code for the State of Baja California], (Porrúa ed., Mex., at 316-321).

The State of Campeche likewise directs execution, as determined by numeral 890, on the conditions prescribed in treaties and, supplementarily, in the context of international reciprocity. Due process limitations regarding personal notification of suit is followed too (891-IV).[86]

Coahuila for its part orders a previous proceeding regarding letters rogatory when exterior enforcement is sought (article 599). Personal service of process is also deemed necessary and deference to treaties and international reciprocity is again contemplated (article 604). Precept 608, with its same content and numeric position as the Federal District's civil procedure law prohibits the Mexican judge to reexamine the issue on the merits and is limited to view its authenticity or legal admissibility.[87]

A friendlier approach towards our subject matter is provided by the law of Chihuahua since it does not point to reciprocity as a means for enforcement. It does, however, point to treaties, if any, and confers the same force to these decisions as they're given in their home jurisdiction, either by way of legislative enactment or through case law.[88]

Guanajuato and the State of Mexico completely refer the subject to the FCCP and the existing treaties celebrated on these issues. Article 469 of the former provides: "The enforcement of foreign judgments shall be subject to the provisions of the Federal Code of Civil Procedure and to the respective treaties or conventions on the subject".[89]Precept 719 of the latter takes the same approach.[90]

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[86] *See Código de Procedimientos Civiles para el Estado de Campeche, Leyes y Códigos de México* [Civil Procedure Code for the State of Campeche], (Porrúa ed., Mex., at 138-139).
[87] *See Código de Procedimientos Civiles para el Estado de Coahuila, Leyes y Códigos de México* [Civil Procedure Code for the State of Coahuila], (Porrúa ed., Mex., at 142-145).
[88] Articles 766 and 767, *See Código de Procedimientos Civiles para el Estado de Chihuahua, Leyes y Códigos de México* [Civil Procedure Code for the State of Chihuahua], (Porrúa ed., Mex., at 204-205).
[89] *See Código de Procedimientos Civiles para el Estado de Guanajuato, Leyes y Códigos de México* [Civil Procedure Code for the State of Guanajuato], (Porrúa ed., Mex., at 111).
[90] *See Código de Procedimientos Civiles para el Estado de México, Leyes y Códigos de México* [Civil Procedure Code for the State of Mexico], (Porrúa ed., Mex., at 163).

The central State of Hidalgo adopts the same framework as the rest of the analyzed federal entities in the sense that foreign sentences will have the force determined for them in treaties and a secondary referral is made to the profusely found principle of international reciprocity. It makes two special annotations, the first concerning the Constitutional due process requirement[91] of having the defendant served personally of the suit and the second addressing the translation of the judgment or award. The State Attorney General's office (*Ministerio Público local)* is given an important and *ex oficio* part in the preliminary enforcement proceedings that deal with the authenticity of the foreign document containing the binding decision.[92]

Jalisco calls for exterior judgments to be in accordance with existing state legislation and only enforces those that deal with liquid amounts or individually determined material objects (these include rights). A simpler route is constructed in this legal system and special attention is provided to international letters rogatory.[93]

The western State of Michoacán institutes through its civil procedural law the principle of negative reciprocity as is reflected from the writings of article 791 where judgments *or resolutions* rendered in a jurisdiction where those dictated by Mexican courts are not executed will not have effect within the state.[94] Intervention of the Attorney General's office is viewed under subsequent precept 798.

Article 454 of the Morelos Civil Procedure Code spells out an additional requirement for execution and it hinges upon what are called "validation proceedings". These can be accomplished before a competent state jurisdiction court or, treaties permitting, through

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[91] *See supra* note 3 at 9 and 10 [Articles 14 and 16].
[92] Articles 589- IV, 592, 593-IV and 595, *See Código de Procedimientos Civiles para el Estado de Hidalgo, Leyes y Códigos de México* [Civil Procedure Code for the State of Hidalgo], (Porrúa ed., Mex., at 132-133).
[93] *See Código de Procedimientos Civiles para el Estado de Jalisco, Leyes y Códigos de México* [Civil Procedure Code for the State of Jalisco], (Porrúa ed., Mex., at 124-127).
[94] *See Código de Procedimientos Civiles para el Estado de Michoacán, Leyes y Códigos de México* [Civil Procedure Code for the State of Michoacan], (Porrúa ed., Mex., at 155-157).

diplomatic channels on the basis of reciprocity. Once validated, enforcement of the foreign judgment shall be forthcoming (article 460).

There exists documentary requirements in numeral 457 consisting in the presentation of a copy of the foreign judgment; record of the rendering court stating the decision as final and not subject to review; record that said judgment has not been judicially executed nor voluntarily complied with abroad. The aforesaid documents must be legalized if originating from countries not participating in the Hague Legalization Convention to which Mexico acceded in August of 1995, and translated, if written in a foreign language, by an expert designated by the judge or accomplished by experts of the Foreign Relations Secretariat.

Article 459 imposes a unique exception for enforcement that refers to opposition of the foreign judgment to another resolution issued by a Mexican court.[95]

A different element is considered in Tlaxcala's procedural statute that involves denial on the grounds of third party rights in relation to the asset on which enforcement of the foreign binding resolution centers. If the good that execution is sought upon is directly possessed by a third party whom was not heard by the requiring judge, execution will be halted and the letter rogatory returned with the inserted resolution and the founding records.[96]

Due to space limitations all of the thirty one local civil procedure codes are not herein contained but the most representative, either hostile or friendly, have been incorporated.

1.1.6 Commerce Code (CC)

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[95] *See Código de Procedimientos Civiles para el Estado de Morelos, Leyes y Códigos de México* [Civil Procedure Code for the State of Morelos], (Porrúa ed., Mex., at 233-236).

[96] Article 599, *See Código de Procedimientos Civiles para el Estado de Tlaxcala, Leyes y Códigos de México* [Civil Procedure Code for the State of Tlaxcala], (Porrúa ed., Mex., at 161-162).

Chapter IX entitled "Recognition and enforcement of [arbitral] awards" of the Mexican Commerce Code (CC) provides an exclusive, accelerated non-appealable procedure for the recognition and enforcement of all foreign and domestic arbitral awards. The Mexican law closely follows the United Nations Commission on International Trade Law (UNCITRAL or *CNUDMIC*) Model Law.[97]

Mexico allows foreign judgments to be recognized if they are not contrary to the internal public order, according to the code, all applicable laws, as viewed before, treaties and conventions to which Mexico is a signatory. If the judgment or arbitral award is subject to any international instrument, then the Mexican judge must act in strict compliance with the applicable international document unless there is an omission which makes the judgment inadequate and he or she must follow the earlier recorded requirements of FCCP article 571. In addition, any party seeking to enforce an award or judgment should meet the following documentary exigencies: the original or an authentic copy of the award or judgment; a copy of the records regarding consent with the rules of letters rogatory; and translations into Spanish if necessary as noted in the following articles, which, by virtue of legislative history, were introduced by the Federal Congress on the 23rd of July of 1993.

The text of article 1463 reads:

> Regardless of the country where an arbitration award is entered, it shall be given full faith and credit and upon petition in writing to a judge, it shall be enforced in accordance with the provisions of this Chapter. The party who asserts an award or petitions for its enforcement shall present the original of the award duly authenticated, or a certified copy and the original of the agreement of arbitration referred to by Articles 1416, subparagraph I and Article 1423, or a certified copy thereof. If the award or the agreement is not in Spanish, the party presenting them shall provide a translation into Spanish prepared by an official interpreter.[98]

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[97] 24 International Legal Materials (I.L.M.) 1302 (1985).

[98] *Código de Comercio Actualizado* [Commerce Code], effective as of January 1st 1890, (translation by the author), at 95 (3rd ed. McGraw-Hill, Mex. 1997).

Article 1462, on its part, states that:

Full faith or enforcement of an award may only be denied, regardless of the country from which it originates, if: I. The party against whom the award is presented proves to the satisfaction of the judge of appropriate jurisdiction in the country in which full faith and execution is demanded that: a) One of the parties to the arbitration agreement was affected by a legal disability, or that the agreement is invalid under the applicable law chosen by the parties, or if nothing is mentioned in that respect, by the laws of the country where the award is entered. b) He was not duly notified of the designation of an arbiter or of the arbitration proceedings, or was unable for whatever reason to assert his rights. c) The award refers to a controversy not foreseen in the arbitration agreement, or contains determinations that exceed the terms of the agreement. Nevertheless, if the determinations of the award refer to submitted issues that can be separated from those that were not, the former may be validated and given execution. d) The constitution of the arbitration tribunal or the arbitration procedure was not in accordance with the agreement between the parties, or in the absence of agreement, it did not comply with the law of the land where the arbitration was held; or, e) The award is not compulsory upon the parties or has been annulled or suspended by the judge of the country where it was entered; or, II. The judge finds that according to Mexican law, the controversy is not subject to arbitration; or that full faith or enforcement of the award will be against public policy.[99]

Literally, numeral 1463 establishes that:

If a petition to declare void or suspend an award is brought before a judge of the country pursuant to whose laws the arbitration was held, the judge before whom full faith or enforcement of the award is requested may withhold his decision if he so deems advisable, and at the request of the party petitioning enforcement of the award, he may require the posting of security from the other party. Full faith or enforcement

[99] *Id.* at 95 and 96.

> proceedings shall be brought on by special motion in accordance with Article 360 of the Federal Code of Civil Procedure. Its determination shall not be subject to review.[100]

A cornerstone for recognition and execution of foreign binding decisions is article 1347-A which was a product of the 1988 reforms recorded above.[101] Properly speaking, it is the only section that spells reciprocity as a means for not enforcing judgments or jurisdictional resolutions.

> Article 1347-A. Final judgments and decrees of foreign countries may be enforceable if the following conditions are followed: I. The formalities established by international treaties to which Mexico is a signatory in respect to letters rogatory coming from overseas have been followed; II. The judgments or decrees were not the result of an in rem action; III. The foreign judge or tribunal had jurisdiction over the subject-matter and can rule on the case in accordance with the recognized rules of international law that are compatible with those adopted by this Code; IV. The defendant received notice or was served personally so as to insure him the right to be heard and assert his defenses; V. The matter is *res judicata* in the country of origin, or there is no further recourse available; VI. The cause of action that resulted in the foreign judgment is not the subject-matter of a pending action between the same parties in a Mexican tribunal predating the foreign action or letters rogatory to serve the other party have not been processed and delivered to the Foreign Secretariat or the state authority to effect service of process. The same shall apply if a domestic final judgment has been entered; VII. The underlying obligation for which enforcement has been requested locally shall not be against public policy in Mexico; and, VIII. The judgment or decree shall comply with all requirements to establish its authenticity. *Notwithstanding compliance with the preceding conditions, the judge may refuse to grant execution if it is shown that in the country of origin of the judgment or decree in analogous situations execution is not granted.*[102]

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[100] *Id. at 96.*
[101] *See supra* at 6-7.
[102] *See supra* note 98 at 77 (translation and emphasis by the author).

Another important section dealing with judicial intervention for the recognition and enforcement of arbitration is article 1422, although located in Chapter I of Title Fourth under the heading "Commercial Arbitration" it refers also to "international arbitration" if the place of proceedings is located outside the national territory.[103]

Its text furnishes:

> If judicial intervention is requested, the Federal District Court or the local trial court at the place where the arbitration is held shall be competent. If the arbitration is held overseas, the recording of the award or execution within the Republic shall be under the jurisdiction of the Federal District Court or the local trial judge at the place of residence of the debtor, or if the debtor has no residence, at the place where the assets are located.[104]

On a more general note and in accordance with the enunciated UNCITRAL model law, article 1448 provides the subsequent:

> The [arbitral] award shall be in writing and shall be signed by the arbiter; if there is more than one arbiter, the signatures of a majority shall be sufficient, as long as the reasons of why the remaining arbiters failed to sign is set forth. The award must be explained in a decision. unless the parties have agreed otherwise or the award is entered in terms agreed to by the parties pursuant to Article 1447. The award shall set forth the date it was entered and the place where the arbitration was held as provided in the first paragraph of Article 1436. The award shall be deemed to have been entered at that location. After entry of the award, the tribunal shall give notice to the parties by delivering a copy of it signed by the arbiters in accordance with the provisions of the first paragraph of this Article.

1.1.7 Law Protecting Trade and Investment from

[103] *Id.* at 85.
[104] *Id.* at 87.

Foreign Legislation that Contravenes International Law

Another body of law that legal practitioners seeking judicial relief before domestic courts on enforcement issues should also note is the Mexican blocking statute of the United States Cuban Liberty and Democratic (LIBERTAD) Act,[105] commonly known as the Helms-Burton Act. Enacted on 23 October 1996 and in effect as of the next day, the Law Protecting Trade and Investment from Foreign Legislation that Contravenes International Law *(Ley de Protección al Comercio y la Inversión de Normas Extranjeras que Contravengan al Derecho Internacional)* was designed to prevent consequences from the application of the U.S. statute referred to above and, among its provisions, we find the following sections of particular interest:

Individuals and enterprises in Mexico, or whose activities might have effects in Mexico (such as importing or exporting goods), or who for any reason submit themselves to Mexican law are barred from carrying out acts mandated by foreign laws that affect trade and investment in Mexico; the penalty for violating this provision is a sum equivalent to 100,000 days of minimum wage (at the time of this writing, April 1999, and in the equivalency of the Federal District's minimum wage rate, approximately $300,000 dollars).

The same persons are barred from providing information required by foreign courts or authorities and the penalty for non observance is a sum equivalent to 50,000 days of minimum wage.

Notification to the Ministry of Foreign Relations and the Ministry of Commerce and Industrial Development (*SECOFI)* is required on behalf of such persons when they could be affected by the foreign law or when they receive an order from foreign authorities.

Mexican judges are ordered to deny enforcement of court decisions, court orders or arbitral awards based on laws that contradict international law.[106]

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[105] 35 I.L.M. 357, (1996).
[106] DO October 23, 1996 (translation and emphasis by the author). *See* also 36 I.L.M. 133 (1997).

Although the President of the United States has continued a semi-annual waiver to prevent private suits under the Act, the future possibility exists of conflicting domestic and international legal obligations.[107]

The last section of the blocking statute refers to a potentially dangerous situation where, in addition to the existing limitations of foreign enforcement, Mexican judges can now invoke, on a discretionary basis, this statute to prevent execution of binding decisions dictated abroad if it is deemed that they conflict with "international law". International law can be interpreted very broadly or very narrowly and the case by case power of interpretation given, this writer thinks, can thwart to a considerable extent the enforcement objective of the various legal reforms Mexico has pursued in recent years and that of the numerous treaties on the subject to which the Country has acceded.

1.2 TREATIES RELATING TO FOREIGN JUDGMENT AND ARBITRATION RECOGNITION

The enforcement of foreign judgments and arbitral awards has traditionally been difficult in Latin American states. In the late nineteenth and early twentieth centuries, Latin American countries used the Calvo doctrine as a means of protecting themselves from foreign companies investing in the region then using diplomatic intervention to ensure better protection of their investments than that afforded to Latin American nationals. The Calvo doctrine, named after the famed Argentinean Foreign Affairs Minister, translated into Calvo clauses[108] in most Latin American contracts and barred international arbitration as a means of settling disputes as it prohibited foreigners from going outside of the Latin American country for dispute settlement in any form. In general, Calvo clauses mandate that a foreigner or foreign entity had no right to legally demand superior treatment than that afforded to nationals, *i.e.* alien citizens shall have no more rights than nationals, and the

[107] 36 I.L.M. 216-217 (1997).
[108] Article 27 [Const.], *see supra* note 3.

foreigner is reduced to only local remedies in the settlement of contractual disputes. Typically, Calvo clauses are enforceable unless they are repugnant to a generally accepted principle of international law. As a result, local law and procedure applies to foreign investment as a matter of settled law, limiting party autonomy for both choice of law and choice of forum. These limitations have commonly carried over into the international arbitration setting, despite local code provisions, like we've seen, recognizing arbitration as a means of resolving disputes and granting enforcement to foreign awards and having also effects on execution of exterior judgments.

Although we have briefly stated the treaties and conventions to which Mexico is a party[109] and we have incidentally viewed international legislation on the subject throughout this work, it is imperative we study to a further extent the most important documents that have shaped the country's foreign obligations in this ever increasing area of law. In passing, we should point out that although Mexico is an active participant of these agreements on private international law, it does not treat judgments from countries that are signatories differently than those who are not.[110]

1.2.1 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards

This Convention was signed in New York on June 10, 1958 and it applies to Mexico as of 1971 on both its commercial and non commercial scopes since it didn't reserve the commercial character of claims nor did it condition enforcement on the principle of reciprocity. The Convention mainly pursued two objectives, as reflected from it preparatory documents,: to provide certainty for the international enforcement of arbitration clauses and recognition and enforcement of arbitral awards. Parties governed by the New York Convention may only deny enforcement under article V of the Convention for five reasons:

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[109] *See supra* note 73.

[110] *See* Thompson, Lisa C., *International Dispute Resolution in the United States and Mexico: A Practical Guide to Terms, Arbitration Clauses, and the Enforcement of Judgments and Arbitral Awards*, 24 Syracuse J.Int'l L.& Com. L, at 35 (1997).

incapacity of the disputants; improper notice of the appointment of the arbitrator or the arbitration time; lack of jurisdiction; procedural irregularities; and invalid award by virtue of its overruling by a competent authority. Further, the Convention provides for denial of enforcement if the subject matter of the dispute is not arbitrable under the laws of the country where enforcement is sought (public policy exception). We can say that when the Convention is applicable, a convenient guide is provided.

1.2.2 Inter-American Convention on International Commercial Arbitration

This body of international law, very similar to the New York Treaty but limited to application in the Americas, was adopted during the First Specialized Conference on Private International Law at Panama City in 1975. This Convention[111] has become effective in Colombia, Chile, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Panama, Paraguay, United States, Uruguay, and Venezuela. By providing a system for the recognition and enforcement of arbitration agreements and arbitral awards, the Convention represents a departure from the traditional Latin American approach that allowed enforcement of agreements to arbitrate an existing dispute (*compromiso*), but generally did not enforce agreements to arbitrate future disputes (*cláusula compromisoria*).

The Convention was originally open for signature by "Member States of the Organization of American States" (Article 7), but provides for accession by "any other state" (Article 9), thereby allowing the use of the Convention beyond the western hemisphere. The Convention applies, by its own terms, only to agreements to arbitrate "with respect to a commercial transaction" (Article 1), and, by implication, only to awards rendered in commercial disputes. It covers the recognition and enforcement of agreements to arbitrate (Article 1) and arbitral awards (Article 4). Article 5 of the Convention provides that "recognition and execution" of an award may be refused only if the party against whom recognition or execution is sought can prove (1) incapacity of the parties or invalidity of the arbitration agreement, (2) improper notice or other lack of due process, (3) an award beyond

the scope of the agreement to arbitrate, (4) improper arbitral procedure or composition of the arbitral board or (5) that the award has been annulled or suspended or is otherwise not binding. In addition, recognition or enforcement may be refused if the subject matter of the dispute is not capable of settlement by arbitration under the enforcing state's laws or if recognition or enforcement would be contrary to the public policy of that state. (Article 5(2)). Both of these provisions of Article 5 are phrased in discretionary terms ("may"), allowing a court to enforce an award even if it finds one of these conditions to exist.

Mexico did not formulate a reservation when ratifying nor when adopting this regional Convention.

1.2.3 Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards

The previous international agreement should be considered in conjunction with this 1979 Inter-American Convention[112] done at the Second Inter-American Specialized Conference held in Montevideo, Uruguay. Its first precept establishes that the rules of this Convention will apply to arbitral awards in all matters not covered by the Inter-American Convention on International Commercial Arbitration. Mexico limited the scope of article 1 only to judgments dictated on patrimonial and monetary matters.

Its second article specifies the conditions for extraterritorial validity of a foreign judgment, award or decision as follows:

a).- That the foreign judgment meet all the formal requirements for authenticity in the State of origin;
b). That the foreign judgment and any required attached documents be translated into the official language of the nation of enforcement;

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[111] *See supra* note 14 at 362-364.
[112] *Ibid.*

c). That the foreign judgment be duly legalized according to the law of the nation of execution;

d).-That the judge or tribunal rendering the foreign judgment have "competence in the international sphere" over the case according to the law of the nation of enforcement;

e).- That service of process has been issued in a manner which is substantially equivalent to that of the law of the nation of execution;

f).- That the parties have had an opportunity to present their defense;

g).-That the foreign judgment is final or is *res judicata* where rendered; and

h).- That the foreign judgment is not manifestly contrary to the public policy of the nation of execution.

Article 3 lists the documentary evidence required for enforcement of an arbitral award. The goal of the Convention is to facilitate the recognition of agreements to arbitrate (Article 1) and the recognition and execution of arbitral awards (Article 4).[113]

The Convention also specifies the possibility of partial execution of a foreign judgment (Art. 4), the effect of a declaration in *forma pauperis* (Art 5), and the choice-of-law rules for determining the validity of a foreign judgment, including questions of jurisdiction (Art. 6).

1.2.4 Other International Legislation

1.2.4.1 North American Free Trade Agreement (NAFTA)

Notwithstanding that the passage of the North American Free Trade Agreement has led to the continued rapid expansion of commerce between the United States, Canada, and Mexico it does not adequately touch upon the issue of the increasing number of commercial disputes between American, Canadian, and Mexican businesses as a result of this rapid commercial growth. It does not contemplate any measures for actually enforcing the

provisions explained below and non-investment related disputes don't justify the detailed arbitration procedures accorded to investment complaints. Parties, therefore, are left with the traditional methods of litigation and arbitration.

The three signatory governments to this economic agreement[114] encouraged the use of commercial arbitration as follows from article 2022 and other alternative means of dispute settlement. Each Party agreed to establish mechanisms to foster compliance with arbitral agreements and the recognition and enforcement of arbitral awards within the general framework of the New York and Panama Conventions, of which both Mexico and the United States are signatories. Canada is a signatory only to the New York Convention.

Pursuant to section 4 of this precept, a NAFTA advisory committee of experts is to be set up to submit reports and make recommendations to the Free Trade Commission on matters for which arbitration or other means of alternative dispute resolution may be advisable to settle complaints within the free trade zone. In addition to establishing unique and ample arbitral institutions and procedures for the settlement of disputes among the parties, NAFTA creates a mechanism for the settlement by way of mandatory international arbitration of certain types of investment disputes between a NAFTA party and a private investor from another NAFTA country. This provision is most notable because Mexico has never before agreed to compulsory arbitration.

Under this heading, mention should be given to the novel, although unofficial, Commercial Arbitration and Mediation Center for the Americas (CAMCA)[115] which was jointly created by the American Arbitration Association, the British Columbia International Commercial Arbitration, the Mexico City National Chamber of Commerce, and the Quebec National and International Commercial Arbitration Center to settle private commercial disputes arising in the sphere of the North American Free Trade Agreement (article 2022).

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[113] *See supra* note at 474-478.

[114] North American Free Trade Agreement (NAFTA), December 17, 1992 US-Mex.-Can (1993) *Tratado de Libre Comercio de America del Norte (TLCAN)*, ratified by publication DO December 20, 1993.

Since March 15 of 1996 it has operated on uniform rules, policies and administrative procedures and many distinguished attorneys from the three signatory Countries are associated with it.

1.2.4.2 Bilateral Judgment or Arbitration Recognition Treaties

It is important to note that Mexico has not entered into any bilateral treaties concerning mutual judgment recognition or international commercial arbitration save the Convention Governing the Recognition and Enforcement of Judicial Judgments and Arbitral Awards on Civil and Commercial Matters with Spain.[116] This treaty rises to a greater importance in the light of the many civil procedure codes of the States that refer to execution of foreign binding decisions to "the treaties that Mexico has entered into.

1.3 DIFFERENCES BETWEEN THE RECOGNITION AND THE ENFORCEMENT OF A FOREIGN JUDGMENT

It is essential we bear in mind that recognition of validity, *i.e.* homologation proceedings, and the execution of a foreign binding decision is different.

While all foreign resolutions can be granted validity, legislation permitting, only those decisions that compel a party to a lawsuit to deliver a thing or transfer a right to another, order a certain action to be taken or demand abstention from a certain conduct or action will enjoy coercive enforcement because of their inherent nature, *i.e.* can be individually determined or monetarily settled. This is not true for mere declaratory or constitutive judgments.[117]

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[115] 35 I.L.M. 1541

[116] *Convenio sobre Reconocimiento y Ejecución de Sentencias Judiciales y Laudos Arbitrales en Materia Civil y Mercantil* [Convention on the Recognition and Execution of Judicial Sentences and Arbitral Awards on Civil and Commercial Matters], April 17, 1989, Mexico-Spain, DO March 5, 1992.

1.4 Practical aspects

In an effort to present a useful *praxis* to the readers and to the attorneys seeking enforcement in Mexico of a foreign binding decision, this being either a judgment or an award, and in addition to the already discussed procedural aspects presented earlier in this book, the following are areas that should be considered.

Generally:

When pursuing the incidental procedure for letters rogatory, in compliance with section IV of article 607 of the FDCCP, one must indicate a local address, *i.e.* within the place of homologation, for hearing and receiving notifications. Having local counsel establishes a local domicile where the judgment is enforced. If local domicile doesn't exist, that would be one way for a Mexican opposing counsel to file an *amparo*[118] and do away with the whole procedure since a violation of due process under Articles 14 and 16 of the Mexican Constitution could easily be found.

I would recommend for any law firm involved in this process to always hire local counsel because of their judicial and political knowledge, they will be able to inform the international practitioner on the ability and experience of the Mexican judge.

Regarding arbitration:

Simply including a binding arbitration clause in a contract does not necessarily imply that arbitration will be conducted. The arbitral agreement merely confers jurisdiction upon the arbitral process. Therefore it is critical to define clearly and explicitly the scope of the

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[117] *See* Contreras Vaca, Francisco José, *Derecho Internacional Privado, parte general* at 240 (translation by the author), (2nd ed. Harla, Mex. 1996).
[118] *See* appendix.

claims to be resolved through arbitration. The 1993 revisions to the Mexican Commerce Code permit the use of such phrases as "all disputes arising out of this agreement" to confer jurisdiction under Mexican law, but if such a phrase is used, the Code exemptions must be carefully considered.

Parties contracting with a variety of parties for multiple and related transactions should include identical arbitration clauses with consolidation provisions in all or the agreements to ensure that, in the event of a conflict, all defendants can be brought into the arbitration. Mexico's arbitration law (ComC) authorizes the tribunal to rule on jurisdiction, but the ruling is subject to review by the authorities enforcing the arbitral award.

The parties must choose carefully the types of claims they want to resolve through arbitration. The New York Convention has very few limits on the types or claims that may be submitted to arbitration, and the limits it has typically do not apply to commercial disputes. Specifically, the Convention does not require the enforcement of an arbitral award if the subject of the dispute was not arbitrable in the state where enforcement is sought. However, this limitation rarely applies to commercial disputes.

It should be noted that while government entities such as Pemex or the Federal Power Commission may arbitrate, their failure to honor the decision cannot result in execution against their assets.

On another note, translation of documents and verbal communications can be quite costly and choice of language should be a major consideration. Mexico does flexibly permit the selection of forum and language.

When a U.S.-Mexico commercial dispute leads to an arbitral decree, enforcement will most likely turn on the application of the United Nations Convention on Recognition and Enforcement of Foreign Arbitral Awards. The New York Convention recognizes the parties' right to submit their disputes to arbitration, gives the arbitral award the effect of a judicial

decree and mandates its enforcement unless the losing party carrying the burden of proof establishes one of a very limited number of defenses. These defenses are construed rather strictly and are intended primarily to protect a country's sovereignty and a person's right to due process. These defenses include;

1.- the agreement to arbitrate fails to meet the requirements for a binding contract;
2.- failure to provide a party with fair notice or a reasonable opportunity to present its case;
3.- the arbitral award encompasses matters that exceed the scope of what the parties agreed to arbitrate;
4.- the composition of the arbitral panel is not in accord with the parties' agreement or the governing law;
5.- the arbitral award is set aside or otherwise not binding;
6.- the subject matter of the dispute is not capable of settlement by arbitration under the law of the country called upon to enforce the award; and
7.- recognition of the award would be against the public policy of the country called upon to enforce it.[119]

A thorough understanding, for this and all practical purposes, by the practitioner of the linguistic, cultural and business differences of Mexico as compared to other countries, especially the United States, must be held. Drafting of cross-border agreements is not a simple or predictable task. In some cases differences in language, business style and legal systems may overwhelm the parties. The attorney asked with negotiating a U.S.-Mexico contract faces a series of unique burdens. They must reconcile two different languages, and legal systems, seek resolution and documentation of many issues where the business practices and cultures may vary dramatically. The practitioner must be flexible enough to recognize that the contract executed by the parties may not have all the provisions that might be found in a U.S. deal The difference in culture, language and legal systems will call but for a hybrid style.

Regarding letters rogatory:

For example, how is a law firm going to be able to send a letter rogatory from a judge in Washington to a judge in Mexico City? The interested parties can send it directly, *i.e.* the attorney in Washington handling the case can get the letter rogatory, and that letter rogatory then is going to be sent to local counsel in Mexico.

It is likely that, as an interested party, the defendant in Mexico is going to oppose the serving or enforcement of the letter rogatory because it was sent directly through interested parties. Mexican courts perceive that it is more important when the letter rogatory goes through official or diplomatic channels. For instance, when a U.S. judge sends the letter rogatory to a Mexican judge, Mexican judges sometimes feel threatened if they receive this document written in English and translated into Spanish, legalized and so forth, from a United States court so, generally speaking, they are inclined towards the usage of diplomatic or consular means.

Mexico, for illustrative purposes, has 41 Consulates in the United States. In most of these, they have one Consul who is in charge of serving summons, letters rogatory, and enforcement of judgments. The Mexican Consulates can serve them from the United States to Mexico and vice versa. The consulate officer is a Mexican attorney and, therefore, may also be an additional source of information for any interested party. The officer can tell how much it is going to cost, who is a good translator for the document containing the enforcement request, how the letter rogatory appears from a legal standpoint, the necessary annexes for its proper presentation and provide the interested persons some insight as to the chances for successful execution.

Regarding the concept of legal authority:

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[119] *See* Vargas, Jorge A., *Enforcement of Judgments and Arbitral Awards in Mexico*, USMEX L.J. 137, at 145 and 146.

Lastly and on a procedural description, under Mexican law the Foreign Relations Secretariat, a federal entity, is the competent authority concerned with letters rogatory. To send the letter rogatory, for example, to the Secretariat a foreign judge will send it either to the State Department or first to the Department of Justice and then to the State Department. The State Department in Washington, D.C. will send that letter rogatory to the American Embassy in Mexico City. Finally, the American Embassy in Mexico City is going to deliver the letter rogatory directly to the Secretariat.

These are only a few of the many aspects arising in the daily practice of foreign judicial relief in Mexico and attempt to give a general overview as to the issues that might determine a successful or unsuccessful enforcement of a specific exterior judgment or award. Due consideration on the local level must too be readily shown as a tripartite government system also exists within the Mexican States and naturally present different scenarios on these issues.

1.5 CONCLUSIONS

Rather than enunciating conclusions, as the practical aspects of this work summed up this part, I'd like to share with the readers three important ideas:

The recognition and enforcement of foreign judgments and arbitral awards in Mexico obeys to the need of justice conveyance towards those who deposited their faith in a legal process. It also avoids the proliferation of parallel litigation and is more in tune with the

recent and increasing economic globalization, as well as the development of private international law.

Instead of relying upon the traditional but ambiguous notions of international policy and reciprocity, Mexico's legal regime regulating matters of international procedural cooperation is openly based upon legal principles and norms derived from international conventional law at the bilateral, regional and global scope.

The enforcement of foreign binding decisions involves federal and state law; therefore, we should expect a movement towards harmonization in the near future.

APPENDIX

DEFINITIONS

As in any research endeavor contemplating two or more different legal systems, a limited set of defined technical or key words, whose wording in Spanish will be italicized, is appropriate to ensure the reader a better comprehension and avoid lengthy, and often unread, footnotes to the principal text. This section deals with the most common concepts that are encountered in the Mexican practice of Private International Law regarding the enforcement of foreign judicial and arbitral decisions.

Amparo (Juicio de Amparo). Constitutional and Federal remedy to insure the inviolability of the rights and guaranties set forth in the Constitution (Const. Arts. 103 and 107).

Arbitral awards (*Laudos arbitrales*). The final decision of an arbitrator or other non-judge in a dispute submitted to him. This award normally involves compensation or a determination of rights to property.

Central Authority *(Autoridad central).*The official and usually only channel for foreign countries to send public documents to a Country for these to produce legal effects therein. Mexico's central authority is its Secretariat of Foreign Affairs (*Secretaría de Relaciones Exteriores, SRE*).

Comity (*Cortesía internacional*).Traditionally, foreign courts used to honor foreign judgments based on the respect paid to this courtesy rule which was believed to form part of the then recognized international practice. As a rule, recognition of foreign judgments in those days was conditioned upon the principle of reciprocity. The honoring of foreign judgments based on the notion of comity was a purely discretional and unilateral act on the part of the receiving State. Today, specific international conventions on international procedural questions signed at the bilateral, regional and global levels have substituted the ancient notion of comity.

Denial of Justice (*Denegación de justicia*). A peculiar situation whereby any court of law in Mexico, in clear violation of what is provided by its Constitution, in particular the rights enunciated in its Articles 14 and 16, as well as other internationally recognized fundamental legal principles, does not render a fair, objective and expeditious justice in a given case legally brought before it.

Enforcement (*Ejecución*) Dealt with in its *exequatur* context, is the authorization given by the judicial authority of a country to execute within its jurisdiction a judgment given in another sovereign state. In doing so, the domestic court determines whether or not to validate the foreign decision, being judicial or derived from arbitration, and gives it a conclusive effect towards the involved parties.

Exequatur (Exequátur). Special judicial proceedings that must be met by the requesting party to confer upon a foreign judgment the necessary formalities under Mexican law to be

able to enforce it in a coercive manner. This process, also known as *Homologación*[120] in Mexico, results in the issuance of a writ that renders a foreign judgment subject to execution in the same manner as a domestic judgment.[121]

"The *exequatur* falls within the enforcement of foreign judicial judgments which have established payment of a money sum, whatsoever its nominal value, and that are the result of a civil or commercial process conducted by a competent foreign court."[122]

Extraterritorial Validity *(Validez extraterritorial).* Situation whereby a judgment or arbitral award rendered in a given country is sent to another country where it is legally recognized and validated for its proper implementation, compliance or enforcement purposes. For extraterritorial validity to take place the judgment or award in question must comply with all the specific formal and substantive requirements established by the receiving country in its applicable legislation or provided by the pertinent international agreements.

Federal Code of Civil Procedure (FCCP). The code that contains the rules of civil procedure that governs any civil case in a federal court. Originally enacted on February 24,1942, this code was revised on January 7th, 1988 to add a new section (*Libro Cuarto*) titled: International Procedural Cooperation (articles 543-577). This section regulates federal cases involving international judicial assistance matters save what is provided by treaties and international conventions to which Mexico is a party. This section is formed by these six chapters: 1) General provisions; 2) International letters rogatory; 3) Jurisdiction; 4) Reception of evidence; 5) Court jurisdiction for the enforcement of judgments; and 6) Enforcement of

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120 *See* discussion *infra* at III.

121 *See* Weintraub, Russell J. *How Substantial is our need for a judgments recognition convention and what should we bargain away to get it?,* XXIV:1 BROOK. J. INT'L L. 184 (1998).

122 López Velarde, Rogelio (translation by the author), as cited in Bennack, Donald Lloyd and López Velarde, Alejandro *La Ejecución de Sentencias Extranjeras: Contrastes entre México y los Estados Unidos de América*, 24-I JURÍDICA, Anuario del Departamento de Derecho de la Universidad Iberoamericana 271 (Mex. 1995).

judgments. These provisions should be read in conjunction with Articles 604-608 of the Code of Civil Procedure for the Federal District [Mexico City].

Federation and State Governments *(Federación y gobiernos de los Estados).* The Federal Code of Civil Procedure provides (Article 544) that in international litigation matters, Mexico's federal and state governments, including their respective public servants and officials are subject to "special rules" enumerated in said code. (Articles 559-563 and 568) Public servants and officials are expressly prohibited from "exhibiting documents or copies of documents" kept in official archives located in Mexico; in discovery cases, no Mexican court can order or conduct any inspection of "archives which are not available for public access;" in international litigation cases, federal and state officials and public servants are prohibited from rendering testimony, depositions or any statements, etc.

Foreign Country Money Judgment (*Sentencia dineraria extranjera*). An order for the payment of damages made by the courts of a political entity other than Mexico, a Mexican State, or a territory, island or possession of the United Mexican States.

Foreign Law *(Derecho extranjero).* The law of any other country except Mexico. Article 14 of the Civil Code for the Federal District establishes the five basic rules governing the application of foreign law in Mexico. Article 16 of the same code states the two hypotheses where foreign law is not to be applied in that country. Article 86 Bis of the Federal Code of Civil Procedure provides that "[T]he [Mexican] court shall apply foreign law in the same way it would be applied by the judges or courts of the States whose law is applicable.

This article allows Mexican judges to take judicial notice of foreign law and also to use official reports requested from the Mexican Foreign Service to provide information on certain aspects of foreign law.

Homologation (*Homologación*). Article 554 of the Federal Code of Civil Procedure provides that [I]nternational letters rogatory received from abroad shall require *'homologación'*

when they need to be coercively enforced against persons, assets or rights..." Thus, this process may be described as the legal action filed in a competent Mexican court (e.g. the court which exercises jurisdiction over the defendant's domicile or by reason of the location of the assets) to provide a foreign judgment or award with the indispensable executive force under Mexican law, to enforce said judgment against the defendant's assets or rights in a compulsory manner. Both parties will have to advance arguments or submit evidence to convince the court whether the foreign judgment should be enforced or not. The specific procedural aspects are governed by Article 571 of the FCCP and Article 608 of the Code of Civil Procedure for the Federal District.

International Arbitral Award (*Laudo Arbitral Internacional*). An award of compensation or determining rights to property issued by an arbitral tribunal as a result of an arbitration involving parties from two or more countries.

International Civil Procedural Law *(Derecho Internacional del Procedirniento Civil).* An emerging legal area which studies the judicial and administrative procedures associated with the serving of summons, the taking of evidence, the enforcement of judgments and arbitral awards rendered by a given country and enforced in another. Compliance with both the applicable domestic legislation as well as the principles and mechanisms established by the relative international conventions are also sought.

Judgments (*sentencias*). Judicial decisions procedurally given by a court of competent jurisdiction to end the dispute presented to it by the parties.[123]

Jurisprudence (*Jurisprudencia*). The interpretation of the law by the federal courts, embodying the precedents and the group of five cases already decided in the same manner and uninterrupted by a contrary resolution. This case law is obligatory to all the federal

[123] *See* Couture, Eduardo, *Las Garantías Constitucionales del proceso civil,* Editorial Porrúa, at 227, (1978) (Mex.), (translation by the author).

courts when performed by the Mexican Supreme Court in the order and fashion earlier prescribed.

Legalization *(Legalización).* This is the formal requirement mandated by Article 546 of the FCCP for foreign public documents to produce legal effects in Mexico when they are not sent internationally by the official channels. "Legalization" formalities are officially performed by the Mexican consular officials and they usually consist in verifying the authenticity of a foreign public official's handwritten signature and his or hers valid official tenure (*Legalización de firma*). This formality is unnecessary when the foreign public documents (i.e. judgments, summons, resolutions, etc.) are sent to Mexico using the official channels, the consular offices of Mexico's Secretariat of Foreign Affairs.[124]

Letters Rogatory (*Exhorto*). According to Article 550 of the FCCP letters rogatory are "the official written communications containing a petition to carry out those procedural acts which are necessary in a given case. Said communications shall contain the necessary information, as well as the certified copies, notifications, copies of the complaint and any other pertinent annexes, as may be necessary". Letters rogatory may be transmitted by any of these four avenues: 1) Directly by the interested parties; 2) through judicial channels; 3) by consular or diplomatic agents, which is the preferred method; and 4) by the competent authority of the State of origin or of the State of destination, as the case may be (Article 551 FCCP). Letters rogatory written in languages other than Spanish must be duly translated into Spanish by a certified translator (Article 553 FCCP).

These instruments of international judicial cooperation have been classified into diverse categories, and, for our purposes, the most important type is the one pertaining to decision recognition. In this case, the requesting authority asks that the other acknowledge

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[124] *See also* Convention Abolishing the Requirement of Legalization of Foreign Public Documents (Hague Legalization Convention) signed at The Hague on October 5th, 1961, 527, U.N.T.S. 189, *reprinted in* 20 I.L.M. 1409 (1981) to which Mexico acceded in 1995 (D.O. August 14, 1995).

the validity of its determinations, these being either final or provisional, and proceed to the enforcement thereof.

Mexican jurisdiction *(Jurisdicción exclusiva).* Article 588 of the FCCP provides that the "[Mexican] national courts shall have exclusive jurisdiction", in cases involving: 1) Mexican lands and waters located within the national territory, including the subsoil, the air space, the territorial sea, and the continental shelf; 2) Any natural resources from Mexico's 200 nautical mile Exclusive Economic Zone (EEZ), whether renewable or non-renewable; 3) Any authority acts affecting Mexico's internal affairs and regime, at the Federal and State levels; 4) The internal regime of the Mexican Embassies and Consulates in their official tasks; and 5) In the other cases provided by the laws.

Partial Enforcement *(Ejecución parcial).* Article 577 of the FCCP provides that when a foreign judgment may not be able to be enforced in its entirety, the competent Mexican court may, at the request of an interested party, determine to enforce only part of it.

Principle of Negative Reciprocity *(Principio de reciprocidad negativa).* Rather than proving that a foreign country allows for the enforcement of foreign judgments, which may pose legal or judicial problems with respect to proving the equivalency of a given type of judgment or enforcement, the principle of Negative Reciprocity operates by simply proving that the foreign country has officially declared that it does not enforce foreign judgments or resolutions, in this case, it suffices to prove that this lack of enforcement applies, for example, to civil and commercial matters and to state the reasons for non enforcement.[125]

Private International Law *(Derecho Internacional Privado*). This branch of Mexican law addresses questions pertaining to nationality, the legal regime applicable to foreigners and legal avenues for identifying, analyzing and solving issues on international civil procedural

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[125] *See* Volume 2, Vargas, Jorge A. et. al., *Mexican Law: A Treatise for Legal Practitioners and International Investors,* West Group, p. 305, 1998.

law. Conflict of law rules, as named in the United States, can be generally comprised within this field.

Recognition (reconocimiento). As used in the thesis, is construed so as to indicate the effectiveness of rendered judgments and arbitral awards. This process validates binding decisions dictated by foreign courts, arbiters or arbitral tribunals and can be viewed as a necessary and prior step towards enforcement. Generally speaking, the process by which an authenticated foreign country money judgment is filed, any challenges to the judgment are resolved and the sentence is granted or denied conclusive effect by a Mexican court.

Territorialism *(Territorialismo).* Basically, this consists in the practice of applying the law of the forum *(Lex fori)* to any and all individuals who are physically located within the territorial boundaries of a given State, regardless of their nationality, the nature of their acts or the reason for their presence in that State. Mexico's extreme territorialism prevailed until 1988, when Mexican courts only applied domestic law to the exclusion of foreign law. Today, Mexican courts recognize and apply foreign law in certain cases (Articles 13 and 14 CC).

BIBLIOGRAPHY

- - Arellano García, Carlos, *Derecho Internacional Privado,* (10th Porrúa ed. Mex. 1992).

- - Bennack, Donald Lloyd and López Velarde, Alejandro *La Ejecución de Sentencias Extranjeras: Contrastes entre México y los Estados Unidos de América*, 24-I JURÍDICA, Anuario del Departamento de Derecho de la Universidad Iberoamericana (Mex. 1995).

- - *Constitución de 1857, (Congreso Constituyente de 1857) y Legislación Mexicana o Colección Completa de las Disposiciones legislativas expedidas desde la independencia de la República,* Printing House of Dublán and Lozano, number 5478 (Mex. 1878).

- - Contreras Vaca, Francisco José, *Derecho Internacional Privado, parte general*, (2nd ed. Harla, Mex. 1996).

- - Couture, Eduardo, *Las Garantías Constitucionales del proceso civil*, (Porrúa ed. Mex. 1978)

- - García Moreno, Victor Carlos, *Derecho Conflictual*, Instituto de Investigaciones Jurídicas, (UNAM, Mex.), (1991).

- - Pereznieto Castro, Leonel, *Derecho Internacional Privado,* (7th ed. Oxford University Press, Mex. 1998).

- - Siquieros, José Luis, *La Cooperación Procesal Internacional [International Cooperation in Procedural Matters]* in Jurídica (Yearbook of the Law Department of the *Universidad Iberoamericana*, Mex.), No. 19, (1988-1989).

- - Tapia Pérez, José Enrique and Batista, José, *Ha Llegado el Tiempo de México*, (Private and numbered ed., Mex., 1998)

- - Tapia Zuckermann, José Eduardo, *La inclusión de la Materia Electoral en el Juicio de Amparo,* Universidad Iberoamericana, Mex. (1997).

- - Thompson, Lisa C., *International Dispute Resolution in the United States and Mexico: A Practical Guide to Terms, Arbitration Clauses, and the Enforcement of Judgments and Arbitral Awards*, 24 Syracuse J.Int'l L.& Com. L.,(1997).

- - Vargas, Jorge A. et. al., *Mexican Law: A Treatise for Legal Practitioners and International Investors,* West Group (Volume 2, 1998).

- - _____ *Enforcement of Judgments in Mexico*, 14 Nw. J. Int'l L. & Bus. 376 410 (1994).

- - _____ *Enforcement of Judgments and Arbitral Awards in Mexico*, USMEX L.J. 137.

- - Vázquez Pando, Fernando A., *Nuevo Derecho Internacional Privado Mexicano*, (Themis ed. Mex. 1990).

- - Weintraub, Russell J. How Substantial is our need for a judgments recognition convention and what should we bargain away to get it?, XXIV:1 BROOK. J. INT'L L. (1998).