

MEMBER COUNTRIES

INDONESIA

In Indonesia, foreign judgments are generally not enforceable. The only exception is in a case of general average decided by a competent foreign judicial authority. Foreign judgments are also generally not recognised in Indonesia. The Indonesian judges have, however, the discretion to use the foreign judgment as evidence.⁴

CEYLON⁵

In Ceylon, a foreign judgment, as such, has no direct operation unless the statute provides for it. But a suit can be brought in a Ceylon court making the foreign judgment the cause of action. If the foreign judgment fulfils the conditions required by the law of Ceylon, it will be enforced. Otherwise not. The court will not, in such a case, go into the merits of the case.⁶ Judgments obtained in the "Superior Courts of the United Kingdom and of other parts of the Her Majesty's Realms and Territories" can be enforced in Ceylon without recourse to a suit. In these cases the judgment-debtor may apply to the court in Ceylon within twelve months from the date of the judgment to have the judgment registered in that court, and on such registration the foreign judgment will have the same effect as if it were a judgment of the Ceylon court. In both the above cases, i.e., whether the judgment is sought to be enforced by a suit or by registration, the judgment must satisfy certain conditions which are very nearly the same. The judgment must be final and conclusive,⁷ and in an action in *personam* it must be for a debt or a definite sum of money. Even if the above

⁴See Appendix IV.

⁵The Law of Ceylon in this respect follows the principles of English Law, and accordingly bears close resemblance to the laws of Burma, India and Pakistan. See Appendix I.

⁶It may be noted that according to the law of Ceylon, the foreign judgment does not extinguish the original cause of action. The parties to the foreign judgment can still bring an original suit in Ceylon on the same cause of action, (instead of suing on the foreign judgment) and in such a suit, the court will examine the merits of the case.

conditions are satisfied, the foreign judgment will not be enforced in Ceylon, if:—

- (a) the judgment was not pronounced by a court of competent jurisdiction—competent according to the rules of conflict of laws of Ceylon.
- (b) the judgment was in respect of a cause of action which would not have supported an action in Ceylon.
- (c) the judgment was obtained by fraud.
- (d) the proceedings in which the judgment was given is contrary to natural justice.⁸

According to the Ceylon rules of conflict of laws, the foreign court is not competent to try an action against a sovereign or an ambassador or a diplomatic agent. The foreign court has also no jurisdiction to adjudicate in respect of immovable property not situate in the country in which the court is situate. In an action *in personam*, the foreign court has competent jurisdiction if the defendant is present or resident in that foreign country at the commencement of the action or if he is a subject or citizen of that country at the time of the judgment or if he has expressly or impliedly submitted or contracted to submit to the jurisdiction of that court. In an action *in personam*, the Ceylon law does not recognise foreign court's jurisdiction based upon the presence in that foreign country of the property of the defendant. But if the action is *in rem*, a court has jurisdiction to determine the title to movable or immovable property situate in the country in which the court is situate.⁹

INDIA

It may be mentioned here that the Indian courts follow the English practice in this respect. In India, a foreign judgment as

⁷For the purpose of enforcement by registration, the judgment is not final if an appeal is pending or if the judgment-debtor satisfies the registering court that he is entitled and intends to appeal.

⁸The statutory provisions providing for the enforcement of certain judgments by registration specifically state that the defendant in the foreign proceedings must have been given sufficient notice to afford him an opportunity to defend himself. In cases to which the statute does not apply, this condition would be covered by the requirements of natural justice.

⁹See also Appendix I.

such has no force or authority. But it can be enforced by bringing a suit on it.¹⁰ If the foreign judgment satisfies certain conditions which are required to be satisfied according to the conflict of law-rules of India, the judgment will be enforced. Otherwise it will be refused enforcement. The court will not examine the merits of the case. The court is concerned to see if the required conditions are satisfied, and since one of the conditions is that the foreign judgment must not have been obtained by fraud, the court may go into evidence to see if there was fraud. Judgments of certain territories known as reciprocating territories, i.e., countries which have entered into agreements with India for reciprocal enforcement of judgments—can be enforced in India by a simpler procedure. No suit need be brought to enforce them. What is required is to file a certified copy of the foreign judgment in the Indian court in which the foreign judgment is sought to be enforced and then the judgment can be enforced in India as if it were a judgment of that court. In both the above cases, i.e., whether the foreign judgment is sought to be enforced by a suit on it or by filing an application for execution, it is necessary that the judgment must have been rendered by a court of competent jurisdiction—competent according to the Indian conflict of laws rules. These rules are based upon decided cases and are not exhaustive and cover only actions *in personam*. In an action *in personam*, the foreign court has competent jurisdiction, according to Indian law, if the defendant was a subject of that foreign country or was resident there at the commencement of the action, or if he has voluntarily appeared in that court or submitted or contracted to submit to that court's jurisdiction or if the defendant has sued as plaintiff in the foreign court on the same cause of action. On the production of a duly certified copy of the foreign judgment, the court will presume in favour of the foreign court's competency. The presumption can be displaced by contrary evidence. Even if the above condition is satisfied, the Indian court will refuse enforcement (or recognition) to the foreign

¹⁰It may be noted that in this suit the foreign judgment is made the cause of action. But since the foreign judgment does not extinguish the original cause of action, the parties to the foreign judgment also have the right to bring a suit on the original cause of action provided jurisdiction exists (instead of suing on the foreign judgment) and in proceedings thereof, the court will go into the merits of the case. But a foreign judgment which is conclusive according to Indian Law is a complete answer to such proceedings.

judgment if:—

- (a) it was not given on the merits of the case;
- (b) it was obtained by fraud;
- (c) it appears on the face of the proceedings to be founded on an incorrect view of international law or refusal to apply the Indian law in cases in which such law is applicable.
- (d) it sustains a claim founded on a breach of any law in force in India.
- (e) the proceedings in which the judgment was given is contrary to natural justice.¹¹

BURMA

In Burma, the mode of enforcement of foreign judgments as well as the conditions under which foreign judgments are recognised and enforced appear to be the same as in India. The laws of Burma and India in this respect have a common genesis and continue to be the same in substance.¹²

PAKISTAN

In Pakistan also, the procedures available for the enforcement of foreign judgments are the same as the two modes available in India and referred to above. The conditions under which the foreign judgments will be enforced are also the same as those required by the laws of India and Burma.¹³

JAPAN

In Japan, a foreign judgment can be enforced by filing a suit in the appropriate District Court for its execution. In such a proceeding, the Japanese court will not re-examine the merits of the

¹¹See Appendix III.

¹²See Appendix II for the statutory provisions. The Civil Procedure Codes of Burma and India retain the provisions as they existed when they had a common Civil Procedure Code.

¹³See Appendix VI.

case. The foreign judgment must, however, fulfil the following conditions:

- (1) The judgment must be final and conclusive in the foreign court.
- (2) The judgment must have been rendered by a court of competent jurisdiction.
- (3) If the defendant is a Japanese, he must have received notice of the proceedings in the court or otherwise must have appeared in the court.
- (4) The foreign judgment must not be contrary to the Japanese ideas of public order or good morals.

The Japanese Code of Civil Procedure does not give the conditions or circumstances under which the foreign court will be considered a court of competent jurisdiction. The Japanese law also stipulates the condition that there must be mutual guarantee, which probably means that the Japanese court will enforce a foreign judgment only if the foreign court, whose judgment is sought to be enforced in Japan, gives reciprocal treatment to its judgment.¹⁴

UNITED ARAB REPUBLIC

Under Egyptian law,¹⁵ foreign judgments will be enforced in Egypt on a reciprocal basis. When an Egyptian decree is sought to be enforced in a foreign country, if that country requires the petitioner to file a new suit, the judgments of the courts of that country can be enforced in Egypt by bringing a new suit. On the other hand, if Egyptian judgments can be enforced in the foreign country by directly applying for execution, similar procedure is available to enforce the judgment of the courts of that country. The party against whom the judgment is to be enforced must be served with a writ of summons. Before the court issues an *exequatur*, it must be satisfied that the foreign judgment fulfils the following conditions:

- (1) The judgment was rendered by a competent judicial authority according to the law of that foreign country and that according to that law the judgment was final.

¹⁴See Appendix VII.

¹⁵See Appendix VIII.

- (2) The parties were properly and duly summoned and represented in the suit.
- (3) The foreign judgment is not contrary to any judgment already given by the Egyptian court.
- (4) The judgment is not contrary to public policy or morality in Egypt.

IRAQ

In Iraq, judgments of certain specified countries—specified by regulations made from time to time—can be enforced by filing an application in the Iraqi court for an order for execution of the judgment together with an authenticated copy of the judgment. Those countries may be so specified by regulations whose courts enforce the judgments rendered by the Iraqi courts. The Iraqi courts will issue an order for execution if they are satisfied that the foreign judgment fulfils certain conditions. They are required not to presume them. The conditions are:

- (1) that the foreign judgment was delivered by a court of competent jurisdiction—competent according to the law of Iraq in this respect.
- (2) that the defendant was given reasonable and sufficient notice.
- (3) that the cause of action on which the judgment is founded is not contrary to the Iraqi ideas of public policy.
- (4) that the judgment is executory in the foreign country.

Only judgments for a debt or a definite sum of money are enforceable in Iraq. Civil compensation decreed in penal action is also enforceable.

Even if the court is satisfied as to the above conditions, still the judgment will be refused execution if the judgment debtor proves that—

- (a) the foreign judgment was obtained by fraud; or
- (b) that the proceedings in the foreign court is contrary to justice or equity.

The foreign judgment must be final. If the judgment debtor has a right of recourse to a higher court, and if he has already taken or intends to take such recourse, the judgment is not enforceable. But in suitable cases, the Iraqi court may pass an order of seizure against judgment debtor's property.

The Iraqi law¹⁶ on the execution of foreign judgments lists a number of grounds upon which the foreign court is required to base its jurisdiction. When the foreign court has based its jurisdiction on any of those grounds, it will be deemed competent by the Iraqi courts. These grounds are: that the property in dispute was situate in the foreign country; that the contract from which the action arose was either made or intended to be performed in that country; that the acts which gave rise to the cause of action were done in that foreign country; that the judgment-debtor was ordinarily resident or carrying on business in that country; and that the judgment-debtor has either voluntarily appeared in the foreign court or had agreed to submit to its jurisdiction.

SOME OTHER SELECTED COUNTRIES

NIGERIA¹⁷

The only African country, apart from the United Arab Republic, about which the Secretariat has been able to gather information so far is Nigeria. The Nigerian law concerning the recognition and enforcement of foreign judgments is based upon the English law. There are a number of countries in the African continent whose legal system is based on the English pattern whilst there are some which have the continental system. According to Dr. Elias, a foreign judgment is enforceable in Nigeria only by way of registration as provided for by the Foreign Judgments (Reciprocal Enforcement) Ordinance. This Ordinance is based upon English statute law. Only the judgments of the courts of those countries will be recognised and enforced in Nigeria which satisfy the requirements of reciprocity. The conditions under which the foreign judgments will be enforced are as follows:

- (1) The judgment must be final and conclusive.

¹⁶See Appendix V.

¹⁷See T.O. Elias, *Groundwork of Nigerian Law*, on which the note is based. The relevant portion is given in Appendix IX.

- (2) It must be for a definite sum of money but not payable by way of taxes or penalty.
- (3) It must have been rendered by a court of competent jurisdiction—competent as recognised by Nigerian law.
- (4) It must not be vitiated by fraud.
- (5) It must not offend against public policy in Nigeria.

The judgment is not enforceable if the defendant was not duly served with notice of the proceedings and therefore did not attend.

It may also be mentioned that the judgments contemplated by the Ordinance are the judgments of the superior courts of the reciprocating foreign countries given otherwise than on appeal.

ENGLAND¹⁸

Most of the Asian-African countries have adopted either the common law or the continental system with regard to their rules of private international law. As far as is known, there is no indigenous system of laws on this subject. It is, therefore, useful to state what the relevant rules are in England as well as in the continent of Europe.

In England, the common law procedure for the enforcement of a foreign judgment is to bring a suit on it. The foreign judgment cannot be enforced as such. But it may be made a cause of action on which an English judgment may be obtained. Though a new suit is required, the court will not enquire into the merits of the case except in exceptional circumstances, such as, when fraud is alleged, and therefore the time and money involved are much less than in a regular suit and the successful party in the foreign action is saved the trouble of proving his case all over again. This is because the judgment of a competent foreign court on the merits is normally recognised by English courts as conclusive of the matter thereby decided. There is also another procedure, provided for by statute, for enforcing foreign judgments. The judgment of a country which comes under the statutory provisions will be registered by English courts on the evidence of a certified copy of it, and after

¹⁸See Dicey's *Conflict of Laws*, 7th edition, pp. 979-1075; Graveson, *The Conflict of Laws*, 4th ed. pp. 536-77; Cheshire, *Private International Law*, 5th ed. pp. 595-645; Wolff, *Private International Law*, 2nd ed., pp. 249-74.

such registration, it will be enforced in the same way as an English judgment. Whether the foreign judgment is sought to be enforced by a suit on it or by registration, the judgment must fulfil certain conditions which are very nearly the same. The conditions are as follows:—

- (1) The judgment must be for a definite sum of money.
- (2) The judgment must be final and conclusive in the foreign court. For the purpose of registration under the statutory system, the judgment is not final if an appeal is pending or if the judgment-debtor satisfies the court that he is entitled and intends to appeal.
- (3) The judgment must have been delivered by a court of competent jurisdiction—competent in the view of English conflict of laws.
- (4) The judgment must not be contrary to English ideas of public policy or natural justice.
- (5) The judgment must not be vitiated by fraud.

Normally the court's presumption is in favour of the existence of these conditions unless the contrary appears on the face of the documents.

English courts do not enforce foreign penal judgments or judgments for payment of taxes.

CONTINENT OF EUROPE¹⁹

In the *Netherlands*, foreign judgments are generally not enforceable.

In *France*, a foreign judgment can be enforced by obtaining an *exequatur* of the French court. In such a proceeding, the

¹⁹See Gutheridge in 13 *British Yearbook of International Law* (1932) pp. 47-67; Rudolf Graupner in 12 *International and Comparative Law Quarterly* (1963) pp. 367-86; Batiffol, *Traite elementaire de Droit International Prive*, 3rd ed. 1959; Niboyet, *Traite de Droit International Prive francais* (1949); Riezler, *Internationales Zivilprozessrecht* (1949). Also see the Civil Codes of the countries concerned.

French court will re-examine the case on merits. The foreign judgment is required to fulfil the following conditions:

- (1) The judgment must be valid, executory and possess the authority of *res judicata*.
- (2) The foreign judgment must have been given in conformity with the French rules of conflict of laws.
- (3) It must have been rendered by a court of competent jurisdiction. If the defendant is a Frenchman, unless he has agreed to the jurisdiction of the foreign court, that court has no competence.
- (4) It must not be contrary to the French view of public policy (*Ordre public*).

In *Germany*, the judgment of only those foreign courts will be recognised or enforced which have reciprocity of treatment to the judgments of German courts. The procedure for enforcement is in the nature of an *exequatur*, but the court will not re-examine the case on merits. The conditions under which foreign judgment will be enforced are that it emanates from a court of competent jurisdiction, that the parties were served with proper notice or had otherwise submitted to the court's jurisdiction and that the judgment is not *contra bonos mores* or against the object of a German law. The German courts will not permit the foreign judgments to be impeached on the ground of fraud.

SECTION "B"

Doctrinal Basis for Recognition of Foreign Judgments

As already stated, courts of many countries recognise and enforce foreign judgments though there is no agreed theoretical basis for this well-recognised practice. A search for the juristic basis of the rules concerning the recognition and enforcement of foreign judgments leads one to the basis of the application of the foreign law and therefore the basis of the Conflict of Laws itself. According to Von Bar, a judgment is a *lex specialis*, a law regulating one single case.²⁰ Whether it is so or not, the statement emphasizes the closeness between the problems raised by the need to apply foreign laws and by the need to give effect to foreign judgments, a point all the more emphasized by the vested rights theory.²¹

The earliest theory is the statute theory which was developed by the Italian universities of the thirteenth century and to which conflict of laws owes its origin. The statistists never raised and answered the question, why apply the foreign law? They presupposed the existence of two independent laws effective at the same time and place and proceeded to determine which of them applied to a given situation. The result was the division of laws into real and personal, which has left its mark throughout the subsequent development of this branch of the law. Some of the well-known maxims of conflict of laws, such as *mobilia sequuntur personam*, *locus regit actum* also owe their origin to the statistists.

The later theories can be divided into two groups, viz. the international theories and the territorial theories. The former contend the existence of a single set of principles of conflict of laws common to all nations which are given effect to by municipal legal systems. Though this is a desirable international situation, and

²⁰See Wolff, *Private International Law*, 2nd ed. pp. 251-253, where Von Bar's theory is summarised. Von Bar's work is "*Theorie und Praxis des internationalen Privatrechts*, 2 Vols. 2nd ed., 1889.

²¹French authors consider the two problems as separate, the one conflict of laws, and the other the conflict of judgments. But this does not represent the French law correctly, because the French court does not recognise a foreign judgment merely because the foreign court had jurisdiction according to the view of the French court but it also requires that the foreign court should have rendered the judgment according to French rules of conflict of laws.

would conform to Savigny's expectations that "the same legal relations have to expect the same decision whether the judgment is delivered in this state or that", the rules of conflict of laws existing in the various countries do not show any support for this theory. Nor is there any rule of international law which obliges the States to accept a minimum standard of private international law.²² The theory of *comity*, which may also be included in this group, requires some mention because of its practical implications. According to this theory, the basis for the application of foreign law is courtesy extended by one State to another and not an obligation founded in international law. Implied in the theory is the idea of reciprocity of treatment. There are many legal systems which make the existence of reciprocity a condition for the enforcement of foreign judgments.

The territorial theories are all built on the concept of territoriality of laws. They attempt to work out a case for the application of foreign laws in cases where justice so requires in such a way so as not to infringe the territorial sovereignty of the State applying the foreign laws and not to place any reliance on any super-national source of obligation. From the principle of territorial sovereignty it follows that the judgments of the courts of one country cannot have direct operation, of their own accord, in another country. Then how to reconcile the enforcement of foreign judgments with the concept of territorial sovereignty? The explanation offered by these theories is that the courts of a country never apply foreign laws as such, and "when they are popularly said to enforce a foreign law what they enforce is not a foreign law, but a right acquired under the law of a foreign country..."²³ The territorial theories are mainly concerned with reconciling the application of foreign law with the principle of territoriality of laws. They are inadequate to provide a satisfactory basis on which the rules of conflict of laws can be constructed.²⁴

²²See Wolff, *op. cit.*, pp. 12-14, Dr. Mann, an eminent English jurist, has been developing the idea that international law should impose an obligation upon States to maintain an adequate standard of private international law—See "International Delinquencies Before Municipal Courts" in 70 *Law Quarterly Review* (1954) p. 181.

²³Dickey's *Conflict of Laws*.

²⁴Graveson, *The Conflict of Laws*, 4th ed., p. 29.

Cheshire, *Private International Law*, 5th ed., pp. 34-36.

All attempts to construct a theory of conflict of laws appear to have been not very successful. It appears that there is no single doctrine by reference to which correct solution of all diverse cases that arise in practice can be discovered. Dr. Martin Wolff says "In the last seventy or eighty years it has come to be recognised more and more that the coining of general formulae . . . is not very helpful. . . ."²⁵ Speaking of English law Prof. Graveson says "It may be admitted that no single theory so far advanced has succeeded in explaining satisfactorily every aspect of English private international law."²⁶ Probably this is true of conflict of laws of most countries.

²⁵ *Private International Law*, 2nd ed., p. 40.

²⁶ Graveson, *The Conflict of Laws*, 4th ed., pp. 31-32.

SECTION "C"

The Conditions under which Foreign Judgments are Recognised and Enforced

1. Competent Jurisdiction of Foreign Court

The comparison between law and judgment made by Von Bar²⁷ in his attempt to harmonise the recognition and enforcement of foreign judgments with the application of foreign laws emphasises the importance of the source from which the judgment emanates. Just as the legal validity of a rule depends upon the source or the authority it emanates from, so too a judgment derives its validity from the competence of its source. A judgment is valid and enforceable only if it is pronounced by a court of competent jurisdiction whether within the municipal sphere or in the international sense. That a foreign judgment in order to be given effect to should be pronounced by a court of competent jurisdiction is a requirement of almost all the countries which give effect to foreign judgments. And this should be so, otherwise the way would be open to the abuse of the process and much injustice would result.

(a) Internal Competence and International Competence Distinguished

The determination of the jurisdiction of the foreign court involves two questions. One is what may be termed as the internal competence of the foreign court, i.e. competence of the foreign court as determined by the laws of that country. If the foreign judgment was rendered by a court which has no jurisdiction according to the laws of that country, the judgment itself would be a nullity in that country and therefore unenforceable everywhere. Though there was some doubt about it in certain quarters,²⁸ it now appears to be generally recognised that unless the foreign judgment is rendered by a court of competent jurisdiction according to the law of that foreign country, the judgment cannot be recognised as valid in another country.

²⁷ L. Von Bar, *Theorie und Praxis des Internationalen Privatrechts*. Gillespie's English translation p. 891 et. seq.

²⁸ See Westlake, *Private International Law*, 7th ed. 1925, p. 398. Dicey's *Conflict of Laws*, 6th ed. (the 7th edition has corrected this view).

The second question in the determination of jurisdiction is the competence of the foreign court in the international sense. According to the laws of most countries, it is not enough that the foreign court is duly invested with jurisdiction under the domestic rules of the foreign country. The assertion of jurisdiction, which the foreign court makes, must also meet the test prescribed by the rules of conflict of laws (or the rules of conflict of jurisdiction as the French authors call it) of the court in which the enforcement is sought. In other words, the foreign court which rendered the judgment must not only be internally competent but must also be so internationally.

(b) Public International Law and International Competence

The jurisdictional bases regarded by the rules of conflict of laws of the various countries as adequate to invest the foreign court with internationally competent jurisdiction (so as to render an internationally enforceable judgment) are not the same.²⁹ There is no rule of public international law which obliges the States to recognise and enforce foreign judgments based upon any type or set of jurisdictional grounds.³⁰ There is also no obligation under public international law, except for one exception, to refuse recognition or enforcement to a foreign judgment, because it is founded on a particular jurisdictional basis.³¹ The exception is where the court has asserted jurisdiction on persons and things who are immune from such jurisdiction under public international law. Foreign States, sovereigns and diplomatic and consular representatives come under this immunity. If the judgment

²⁹ Though a country may apply the same rules for determining the international competence of a foreign court as are applicable to the assertion of jurisdiction by its own courts, it is necessary to remember that these two questions are distinct and different. The question under investigation in the jurisdiction of the courts of country A as recognised by the law of country B while the other question is the jurisdiction of the courts of country B as it exists according to the law of B. It is necessary to emphasise this, because the distinction may not be clear in many cases. The distinction is clear in English law. The English courts do not concede to the foreign courts all the jurisdictional bases which they claim for themselves.

³⁰ Wolff, *Private International Law* 2nd ed., 1950 p. 53; Jellinek, *Die Zweisitzigen staatsvertraege ueber Anerkennung auslaendischer Zivilurteile*, 1953, Vol. I. p. 217, et. seq.

³¹ *Ibid.*

of a court violates such immunity, that judgment would be unenforceable everywhere. Apart from this, there is no international jurisdiction which is generally recognised or prohibited by the international community of States or a large section thereof.³²

(c) Principles of International Competence Embodied in the Reciprocal Enforcement of Judgments Concluded between Member States of the Arab League

The Reciprocal Enforcement of Judgments Agreement approved by the Council of the League of Arab States on September 14, 1952³³ does not make an attempt to define international competence. Article 1, which sets out the types of judgments which shall be executory in each others territories, also refers to the source from which the judgments have to emanate. They have to emanate from a competent court. Article II which deals with the conditions under which the execution may be given or refused states that the court of a member State may refuse execution of the judgment (among other grounds) if the legal authority which rendered the judgment was not competent to hear the case on account of lack of jurisdiction or because of prevailing principles of international law. It is not possible, from the bare text of the Agreement, to say, by what rules the lack of jurisdiction is intended to be determined. Is the jurisdiction (or the lack of it) to be determined according to the law of the State whose court has rendered the judgment? The law of U.A.R. is to that effect. Its requirements of international competence are satisfied if the foreign court which rendered the judgment was internally competent. However, according to the law of Iraq, the fact that the foreign court was internally competent is not enough. To satisfy its (Iraq's) requirements of international competence, the foreign court must have asserted jurisdiction on one of the grounds specified by the Iraqi rules of conflict of laws. The existence of such conflicting jurisdictional requirements in the laws of the signatories to the Agreement makes it all the more difficult to say by what law the lack of jurisdiction referred to in Article II of the Agreement is intended to be determined.

³² Rudolf Graupner, "Some Recent Aspects of the Recognition and Enforcement of Foreign Judgments in Western Europe, in the *International Comparative Law Quarterly*, Vol. 12, p. 367 at 374.

³³ See Appendix X.

(d) Principles of International Competence Adopted by the International Law Association

The subject of recognition and enforcement of foreign judgments has been under consideration by the International Law Association for a number of years. At its New York Conference held in 1958, the I.L.A. agreed upon a draft set of principles concerning the recognition and enforcement of foreign judgments. These principles were further elaborated and were also slightly amended at the next Conference of the I.L.A. held in 1960 at Hamburg. The Hamburg Conference produced a model law known as the "Model Act Respecting the Recognition and Enforcement of Foreign (Money) Judgments", which embodies the principles as amended. The Set of Principles adopted at the New York Conference as well as the Model Act adopted at the Hamburg Conference are reproduced in the Appendices. The Model Act contains the provisions which, in the opinion of the I.L.A., should be embodied in any convention between high contracting parties relating to recognition of judgments. The international competences recognised by the Model Act are set out in its Section 5 which is as follows:

"5. (1) For the purposes of this Act the original court has jurisdiction when:—

- (a) the judgment debtor has voluntarily appeared in the proceedings for the purpose of contesting the merits and not solely for the purpose of
 - (i) contesting the jurisdiction of the original court, or
 - (ii) protecting his property from seizure or obtaining the release of seized property, or
 - (iii) protecting his property on the ground that in the future it may be placed in jeopardy of seizure on the strength of the judgment;

or

- (b) the judgment debtor has submitted to the jurisdiction of the original court by an express agreement; or
- (c) the judgment debtor at the time of the institution of the proceeding ordinarily resides in the state of the original court; or

- (d) the judgment debtor instituted the proceeding as plaintiff or counterclaimed in the State of the original court; or
 - (e) the judgment debtor, being a corporate body was incorporated or has its seat (*siege*) in the State of the original court, or at the time of the institution of the proceeding there had its place of central administration or principal place of business there; or
 - (f) the judgment debtor, at the time of the institution of the proceeding, has either a commercial establishment or a branch office in the State of the original court and the proceeding is based upon a cause of action arising out of the business carried on there; or
 - (g) in an action based on contract the parties to the contract ordinarily reside in different States and all, or substantially all, of the performance by the judgment debtor was to take place in the state of the original court; or
 - (h) in an action in tort (*delict or quasi-delict*) either the place where the defendant did the act which caused the injury, or the place where the last event necessary to make the defendant liable for the alleged tort (*delict or quasi-delict*) occurred, is in the State of the original court.
- (2) Notwithstanding anything in sub-section (1), original court has no jurisdiction:
- (a) in the cases stated in clauses (c), (e), (f) and (g) if the bringing of proceedings in the original court was contrary to an express agreement between the parties under which the dispute in question was to be settled otherwise than by a proceeding in that court;
 - (b) if by the law of the forum exclusive jurisdiction over the subject matter of the action is assigned to another court."

(e) Important International Competences

(i) Agreement to submit to the jurisdiction of the court

International contracts sometimes contain a clause which stipulates the country whose courts shall have jurisdiction to decide all disputes arising out of the contract. Such agreements may be valid under some laws, while they may not be valid under some others.