

FINAL REPORT OF THE COMMITTEE ADOPTED AT THE SESSION

The questions relating to "Reciprocal Enforcement of Judgments, Service of Process, and Recording of Evidence among States both in Civil and Criminal Cases" have been referred to this Committee under Article 3 (b) of its Statutes by the Government of Ceylon with a view to formulating uniform set of rules to ensure reciprocal recognition and enforcement of foreign judgments and to facilitate the service of process and recording of evidence in foreign countries.

At the Sixth Session of the Committee, the subject was considered by a Sub-Committee consisting of the Representatives of Ceylon, India, Iraq and the United Arab Republic on the basis of a study prepared by the Secretariat and the memoranda submitted by the Delegations of Ceylon and the United Arab Republic. The Sub-Committee placed before the Committee a report containing two draft agreements, one on the subject of "Recognition and Enforcement of Judgments", and the other on the subject of "Service of Process and Recording of Evidence."

The Committee at the present Session took up for consideration the Report of the Sub-Committee appointed at the Cairo Session. It was agreed in the Committee to give detailed consideration to the provisions of the two drafts prepared by the Sub-Committee on the basis that those provisions, if adopted, would be recommended as model rules on the subject for consideration of the Governments. The Committee, after a careful consideration of the Report of the Sub-Committee, is agreed on the adoption of the model rules on the subject, which are set out in Annexures I and II to this Report.

The Committee decides to submit this Report to the Government of Ceylon and the Governments of other participating countries in the Committee as the Final Report of the Committee on the subject.

MODEL RULES ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS IN CIVIL CASES

Article 1

In these model rules:

- (a) A "foreign judgment" means a decision made by a judicial authority whose jurisdiction does not extend to the State in which its enforcement is sought.
- (b) A "final judgment" means a judgment which is enforceable in the State in which it was delivered.
- (c) "recognized" means being given effect to as a *res judicata* according to the law of the State in which its effects are sought to be maintained.
- (d) "enforceable" means capable of being compulsorily executed.

Article 2

These rules shall apply to foreign judgments in civil cases, including commercial cases, whereby a definite sum of money is made payable. It shall not apply to judgments whereby a sum of money is payable in respect of a tax, fine or penalty.

Note: The Delegations of India and Pakistan desired express provision excluding (1) arbitration award, even if such an award is enforceable as money decree or judgment, (2) order for the payment of money arising out of matrimonial proceedings.

Article 3

A foreign judgment shall be recognized as conclusive and be enforceable between the parties thereto as if it had been issued by a court of the State in which its enforcement is sought.

Article 4

A foreign judgment shall not be recognized or enforced unless the following facts are verified:

- (a) that it is final and conclusive.
- (b) that it is issued by a court which is internationally competent.
- (c) that it is issued according to a procedure which would enable the defendant to submit his defence.
- (d) that it does not violate the public policy or morality of the State in which enforcement is sought.
- (e) that it is not obtained by fraud.
- (f) that it does not conflict with any judgment, delivered by any court of the State in which enforcement is sought, between the same parties on the same subject matter in an action instituted earlier.
- (g) that there is no action, instituted earlier, pending between the same parties on the same subject matter in the State in which enforcement is sought.

Note (I) Regarding Clause (b) of the Article.

The Delegations of India and Ceylon desired that the expression "A court which is internationally competent" should be defined to mean a court having jurisdiction which satisfies the following requirements:

- (1) (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 said 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 judgments; or
- (b) the judgment debtor has submitted to the jurisdiction of the said 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 said court; or
 - (d) the judgment debtor instituted the proceeding as plaintiff or counterclaimed in the State of the said court; or
 - (e) the judgment debtor, being a corporate body, was incorporated or has its seat (*siege*) in the State of the said court, or at the time of the institution of the proceeding had its place of central administration or principal place of business in that State; 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 said 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 said 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, in the State of the said court.
- (2) Notwithstanding anything in clause (1), the court which issued the judgment shall not have jurisdiction:
- (a) in the cases stated in sub Clauses (c), (e), (f) and (g), if the bringing of proceedings in the said 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 country in which enforcement is sought, exclusive jurisdiction over the subject matter of the action is assigned to another court.

The bases of jurisdiction recognized in the foregoing clauses are 'however' not exclusive and the court in which enforcement is sought may accept additional bases.

The Delegations of Ghana and Pakistan desired that Clause (b) of Article 4 be altered as follows: "that it had been issued by a court of competent jurisdiction."

Note (II)—Regarding Clause (c) of this Article, the Delegations of India and Pakistan suggested that the following be substituted:

"that it had been issued according to a procedure which gives the defendant reasonable notice of the proceeding and reasonable opportunity of submitting his defence and follows the principles of natural justice".

Note (III)—Regarding Clause (f) of this Article, the Delegation of the United Arab Republic desired that the clause should be as follows:

"that it does not contradict any judgment delivered by a court of the State in which enforcement is sought".

Note (IV)—Regarding Clause (d) of this Article, the Delegations of India and Pakistan desired that the following clauses should be added to the Article as clauses (h) and (i):

- (h) that it is not founded on a refusal to recognize the law of the State in which enforcement is sought in cases where such law is applicable.
- (i) that it does not sustain a claim founded on a breach of any law in force in the State in which enforcement is sought.

Article 5

A foreign judgment shall not be recognized or be enforceable except by a formal decision made by the appropriate court in accordance with the procedural requirements of the State in which enforcement is sought.

Note The Delegations of India and Pakistan desired an additional provision to the following effect:

"Proceedings for enforcement shall be stayed on proof of appeal being filed or other steps being taken to have the judgment set aside".

Article 6

The appropriate judicial authority required to recognize or direct the enforcement of a foreign judgment shall not investigate the merits of that judgment.

Article 7

Requests for recognition or enforcement should be supported by the following documents:

- (a) A certified true copy of the judgment sought to be executed, duly authenticated by the appropriate authorities.
- (b) A certificate from the appropriate authority to the effect that the judgment sought to be enforced is final and executory.
- (c) A certificate that the parties were duly summoned to appear before the appropriate authority in cases where the judgment was obtained in default of appearance of either party.

Annexure II

MODEL RULES FOR THE SERVICE OF JUDICIAL PROCESS AND THE RECORDING OF EVIDENCE IN CIVIL & CRIMINAL CASES

PART ONE—GENERAL PROVISIONS**Article 1**

In these model rules—

- (a) "Judicial Process" means every type of document, which is required to be served on a party or witness in civil or criminal proceedings.
- (b) "Recipient" means the person on whom such process is intended to be served.
- (c) "Requesting State" in Part Two means the State which requests the service of judicial process in the territory of another State and in Part Three means the State from which a request to record evidence emanates.
- (d) "Competent Authority" in Part Two means the authority which is empowered to record evidence in terms of these Rules.

PART TWO—SERVICE OF PROCESS**Article 2**

- (a) Judicial Process shall be served in accordance with the law of the State in which such service is to be effected. Provided that if the Requesting State desires such process to be served in accordance with its own law, the request shall be complied with unless it conflicts with the law of the State where the service is to be effected.
- (b) If the Recipient is a national of the Requesting State, the process may be served by a Consular Officer of the Requesting State provided that the State in which it is to be served shall bear no responsibility.

NOTE : The Delegation of Ghana desired the omission of the proviso to Clause (a).

Article 3

Subject to the provisions of Article 2 request for the service of judicial process shall be made as follows:

- (a) The Letter of Request shall be addressed by a Diplomatic or Consular Officer of the Requesting State to the competent authority of the State where such process is to be served.
- (b) It shall state the full name, address and such other information as is necessary to identify the Recipient.
- (c) Two copies of the process to be served shall be annexed to the Letter of Request, and where the process is not drawn up in the language of the State in which it is to be served, it shall be accompanied by a translation in duplicate.

Article 4

- (a) A request for service of process made in accordance with the preceding provisions shall be complied with unless—
 - (1) the authenticity of the request for service is not established; or
 - (2) the State to which the request is made considers it to be contrary to its public policy.
- (b) The competent authority by whom the request is executed shall furnish a certificate in proof of such service or explain the reasons which have prevented such service.

PART THREE—RECORDING OF EVIDENCE

Article 5

When evidence is required to be recorded in a civil or criminal proceeding by a court of one State in the territory of another State, such evidence shall be taken in accordance with the following provisions.

Article 6

A request to record evidence shall be executed by the competent authority in accordance with the law in force in that State, provided

that if the requesting State desires it to be executed in some other way, such request shall be complied with unless it conflicts with the law of the State in which such evidence is to be recorded.

Article 7

- (a) The Letter of Request shall be addressed by a Diplomatic or Consular Officer of the Requesting State to the competent authority of the State where such evidence is to be recorded.
- (b) The Letter of Request shall be drawn up in the language of the State where the evidence is to be taken or be accompanied by a translation in such language. The Letter of Request shall state the nature of the proceeding for which the evidence is required and the full name and address of the witnesses whose evidence is to be recorded.
- (c) The Letter of Request shall either be accompanied by a list of interrogatories and documents, if any, to be put to the witness or it shall request the competent authority to allow such questions to be asked *viva voce* as the parties or their representatives shall desire to ask.

Article 8

A request for the recording of evidence made in accordance with the aforesaid provisions shall be complied with unless;

- (1) The authenticity of the Letter of Request is not established; or
- (2) The State to whom the request is made considers it to be contrary to its public policy.

Sd/—

(SHAKIR AL-ANI)

President.

1-4-1965.

OTHER DECISIONS OF THE COMMITTEE

United Nations Charter from Asian-African Viewpoint

The subject of U.N. Charter from Asian-African Viewpoint had been referred to the Committee by the Government of the U.A.R. under Article 3(b) of the Statutes with the request that the Committee might examine the provisions of the Charter from the legal point of view taking into account in particular the changed composition of the United Nations after the admission of the newly independent Asian and African States.

At the Sixth Session of the Committee, the subject was considered on the basis of the memoranda submitted by the Governments of India and the U.A.R., and the preliminary study made by the Secretariat of the Committee. The Delegates present at the Session made statements expressing their views.

The Committee noted with satisfaction the adoption of the two resolutions by the General Assembly on the question of equitable representation in the Security Council and the Economic and Social Council and recommended that the participating States should ratify the resolutions by the 1st of September, 1965. The Committee also made an appeal to all Member States of the United Nations to ratify the said amendments by 1st of September, 1965. It was decided to transmit the Resolution of the Committee to the United Nations Secretariat so that it may be brought to the attention of the Member States of the United Nations. The Committee directed the Secretariat to compile further material on the subject and to place the same before the next Session.

At the Seventh Session of the Committee, the subject was given further consideration by the Committee on the basis of the study prepared and presented to it by the Secretariat. After a general debate, the Committee, whilst directing the Secretariat to continue its study of the subject, decided to postpone until a more propitious time, to be decided in consultation with Governments, the question concerning the revision of the Charter. On the proposal of the U.A.R. Delegate a resolution was adopted, in which the Committee expressed its full confidence in the United Nations and appealed to

all Member States of the Organisation to faithfully live up to their obligations under the Charter.

Law of Outer Space

The Law of Outer Space had been referred to this Committee by the Government of India under Article 3(b) of the Statutes. In particular, the Government of India have suggested the following questions for the consideration of the Committee:

- (1) The question of drafting an international convention or declaration reserving outer space exclusively for peaceful purposes;
- (2) The question of formulating rules on liability for injury or loss caused by the operation of space-vehicles;
- (3) The question of formulating rules regarding assistance to, and rescue of, astronauts and space-vehicles in distress.

At the Seventh Session of the Committee, the subject was taken up for preliminary consideration. The Delegates of Ceylon, Ghana, India, Japan and the Observer for Malaysia made general statements. The Committee took note of these statements and directed the Secretariat to collect relevant material on the questions referred by the Government of India and to prepare a detailed study on the subject on the basis of such material for consideration of the Committee at its next Session. The Committee requested the participating governments to furnish their views and observations on the subject to the Secretariat.

Codification of the Principles of Peaceful Co-existence

This subject has been referred to the Committee by the Government of India under Article 3(b) of the Statutes.

At the Seventh Session of the Committee, the subject was taken up for preliminary consideration and the Delegates of Ceylon, India, Japan, Iraq and the Observer for Malaysia made general statements. The Committee directed the Secretariat to collect the relevant material on the subject including the Report of the Special Committee of the General Assembly on the Principles of International Law concerning Friendly Relations and Co-operation among States, and to prepare a study for the consideration of the Committee at its next session.

Relief against Double Taxation & Fiscal Evasion

The subject relating to Relief against Double Taxation was referred to the Committee by the Government of India under the provisions of Article 3(c) of the Statutes of the Committee for the exchange of views and information between the participating countries. The Committee took up the subject for consideration at the Fourth Session and appointed a Sub-Committee to examine the manner in which the Committee should treat the problem of Avoidance of Double Taxation and Fiscal Evasion. The Sub-Committee discussed the subject on the basis of a general note prepared by the Secretariat of the Committee. The Committee, accepting the recommendations of the Sub-Committee, decided that the Secretariat should request the Governments of the participating countries to forward to the Secretariat the texts, if any, of agreements for Avoidance of Double Taxation and Fiscal Evasion concluded by them and the texts of the provisions of their municipal laws concerning the subject. The Committee also directed the secretariat to draw up the topics of discussion (questionnaire with short comments) and to circulate it to the governments of the participating countries.

At the Sixth Session of the Committee, the subject was taken up for further consideration and a sub-committee was appointed to go into the question. The Sub-Committee received a memorandum for the U.A.R. Delegation and also a note from the Delegation of Ceylon containing its answers to the U.N. Questionnaire on Double Taxation. The Sub-Committee after a preliminary exchange of views concluded that though bilateral double taxation agreements provided a practical solution to the financial problems which arose from the economic intercourse of nations, the conclusion of a multi-lateral convention may be desirable. The Sub-Committee felt that it was necessary for this purpose to have an exchange of views on the techniques employed by the participating states, their experiences and practices. Since the views of some of the participating countries were not before the Sub-Committee, it recommended the postponement of the consideration of this subject to the next Session and direction to the Secretariat, meanwhile to complete the compilation of rules, regulations and State practice of the participating States and of the agreements concluded by them.

At the Seventh Session of the Committee, the subject was again

considered by a Sub-Committee. The Sub-Committee faced the same difficulty as its predecessor, but having regard to the vital importance of the subject to the developing Asian and African countries for the promotion of economic cooperation, expansion of trade and commerce, flow of capital and business enterprise, it deemed proper to make a beginning by formulating broad principles on the subject in the report which it drew up for the consideration of the Committee. The Committee took note of this report and decided to give it consideration at the next Session.

Diplomatic Protection & State Responsibility

The subject relating to the Status of Aliens was referred to this Committee under Article 3(b) of the Statutes by the Government of Japan. At the Third Session held in Colombo, it was decided to consider the subject under the separate topics namely "Diplomatic Protection of Citizens Abroad" and "State Responsibility for Maltreatment of Aliens". The Final Report of the Committee relating to substantive rights of aliens was adopted at the Fourth Session held in Tokyo. The Committee at that session directed the Secretariat to collect further material and prepare drafts of articles on Diplomatic Protection and State Responsibility for submission to the Committee at its Fifth Session. The Draft Articles on Diplomatic Protection alongwith commentaries were placed before the Committee at its Fifth and Sixth Sessions, but were not taken up at those sessions because of Committee's preoccupation with other more urgent subjects.

At the Seventh Session, the topic of Diplomatic Protection was given consideration by a Sub-Committee, appointed for the purpose. Considering that the subject is closely related to that of State Responsibility, the Sub-Committee recommended that they should be studied together at some future session.

Work Done by the International Law Commission- The Law of Treaties.

During its Sixteenth Session, the International Law Commission had considered *inter alia* the subjects of the Law of Treaties, the law relating to Special Missions and that relating to Relations between States and Inter-Governmental Organisations. Mr. Hafez Sabek,

had represented the Committee as an Observer at this Session of the Commission. He submitted his Report, under clause 5 (a) of Rule 6 of the Statutory Rules, to the Committee at its Seventh Session. The Committee expressed its appreciation for the services rendered by Mr. Sabek in representing the Committee at the Commission's session and for his valuable report. Prof. Roberto Ago, Chairman of the International Law Commission, was invited to address the Committee. Prof. Ago made certain observations on the functions and scope of work of the Commission. He also stressed the need for closer co-operation between the Commission and this Committee. Taking note of the observations and suggestions of Prof. Roberto Ago, the Committee decided to take up the subject of the Law of Treaties for consideration on a priority basis at its next session, with a view to formulating proposals and suggestions from the Asian-African viewpoint for the consideration of the Commission. The Committee further decided to appoint Dr. Hasan Zakariya, Alternate Member for Iraq, as Special Rapporteur on the Law of Treaties, with the request that he prepare a report on such specific points arising out of the Commission's Draft Articles on the subject as require consideration from the Asian-African viewpoint, and that he suggest any amendments to the draft articles that he may consider necessary. The Committee requested the participating governments to send their comments on the Draft Articles to the Rapporteur through the Secretariat of the Committee by August 1965 and requested the Rapporteur to complete his Report by October 1965 and to transmit the same to the Secretariat. The Committee directed the Secretariat to circulate the Report of the Rapporteur to the participating governments inviting their comments and observations, and to place this Report together with any comments and observations that may be received from the participating governments, before the Committee at its next session.

**THE RECOGNITION AND ENFORCEMENT
OF FOREIGN JUDGMENTS, SERVICE OF
PROCESS AND RECORDING OF EVIDENCE
AMONG STATES BOTH IN CIVIL AND
CRIMINAL CASES**

**REPORT OF THE COMMITTEE & BACKGROUND
MATERIALS**

(I) INTRODUCTORY NOTE

The subject of "The Recognition and Reciprocal Enforcement of Judgments, Service of Process, and Recording of Evidence among States in Civil and Criminal Cases" has been referred to this Committee under Article 3(b) of its Statutes by the Government of Ceylon with a view to formulating a uniform set of rules to ensure reciprocal recognition and enforcement of judgments, and to facilitate the service of process and recording of evidence in foreign countries.

At the Sixth Session of the Committee, the subject was considered by a Sub-Committee, appointed for the purpose, on the basis of a study prepared by the Secretariat and the memoranda submitted by the Delegations of Ceylon and U.A.R. The Sub-Committee placed before the Committee a report containing two draft agreements, one on the subject of "Recognition and Enforcement of Judgments", and the other on the subject of "Service of Process and Recording of Evidence." As the Committee did not have sufficient time to consider that report, it directed that the report be placed before it at its Seventh Session.

At the Seventh Session held in Baghdad, the report of the Sub-Committee appointed at the Sixth Session was taken up for consideration. The Committee finalized consideration of the subject by adopting its Final Report, which contains two sets of model rules, one on the subject of "Recognition and Enforcement of Foreign Judgments", and the other on the subject of "Service of Process and Recording of Evidence". As directed by the Committee, the Final Report has been submitted by the Secretariat to the Government of Ceylon and the governments of the other participating countries.

(II) STUDY PREPARED BY THE
SECRETARIAT OF THE COMMITTEE

CONTENTS

I. Introductory

II. Recognition and Enforcement of Foreign Judgments

Section A: Principles underlying the Recognition and Enforcement of Foreign Judgments in the Laws of Various Countries

- (i) Indonesia
- (ii) Ceylon
- (iii) India
- (iv) Burma
- (v) Pakistan
- (vi) Japan
- (vii) United Arab Republic
- (viii) Iraq
- (ix) Nigeria
- (x) England
- (xi) Continent of Europe

Section B: Doctrinal Basis for Recognition of Foreign Judgments

Section C: The Conditions under which Foreign Judgments are Recognised and Enforced

1. Competent Jurisdiction of Foreign Court

- (a) Internal Competence and International Competence Distinguished
- (b) Public International Law and International Competence
- (c) Principles of International Competence Embodied in the Reciprocal Enforcement of Judgments concluded between Member States of the Arab League
- (d) Principles of International Competence Adopted by the International Law Association
- (e) Important International Competences
 - (i) Agreement to submit to the jurisdiction of the Court

- (ii) Voluntary appearance by the judgment-debtor in the proceedings
 - (iii) Habitual Residence
 - (iv) Service of summons personally within jurisdiction
 - (v) Situation of the commercial establishment or branch office of the judgment-debtor
 - (vi) Domicile
 - (vii) Situation of property of the defendant
 - (viii) Place where the cause of action arose
 - (ix) Nationality
2. Reciprocity
 3. Natural Justice
 4. Public Policy
 5. Other Conditions

Section D: Attempts Made by International Bodies.

III. The Service of Process and Recording of Evidence

- A. General Note
 - B. Judicial Assistance Rendered by Member Countries.
- Bibliography**

I. INTRODUCTORY

The question of recognition and enforcement of foreign judgments arises fairly frequently before the municipal courts of a country in civil matters, particularly those arising out of commercial transactions, matrimonial decrees and maintenance orders. The Committee has already finalised its Report on the question of Recognition and Enforcement of Foreign Judgments in Matrimonial Matters, and this topic has been, therefore, left out of consideration in this report. Recognition and enforcement of foreign judgments generally depend on the municipal law of each state and on a basis of reciprocity. It is, however, desirable to have some kind of uniformity in practice with regard to this matter and to have a set of uniform rules for enforcement of foreign judgments in the interest of comity and to facilitate international trade and commerce. Several learned societies have devoted considerable attention to achieve this object, and certain conventions have been entered into between a group of states which contain a set of rules for observance by states parties to the Conventions with regard to this matter. It is for the Committee to consider whether it would like to draw up a set of model rules with regard to enforcement of foreign judgments as this appears to be the object of the reference by the Government of Ceylon.

It may be stated that there can be no question of enforcement of foreign judgments in criminal matters for crimes are essentially local in character; they are cognizable and punishable in the country where they are committed subject only to the exception that the laws of some countries authorise trial and punishment of their own nationals for crimes committed abroad. In no case, however, will a State imprison or punish a person resident or sojourning in its territory in execution of a judgment rendered by a foreign court.

The service of process of foreign courts and rendering of evidence for use in judicial proceedings in the courts of another country are regarded as part of international judicial assistance which a country may be expected to render to another for suppression of crimes, and for proper adjudication of the rights of individuals. These arise both in criminal and civil proceedings. It appears that in so far as criminal matters are concerned, mutual assistance in (1) execution

of letters rogatory, (2) the service of writs and of records of judicial verdicts, (3) service of summons for personal appearance of witnesses and experts, and (4) communication of extracts from judicial records required in criminal cases is considered desirable. There can be no doubt that assistance rendered in such matters would greatly facilitate administration of criminal justice, and in fact the member states of the Council of Europe have entered into a Convention for mutual assistance with regard to these matters.

Similarly, in civil matters also judicial assistance and mutual co-operation are desirable for due and proper administration of justice. For example, if the defendant in an action or the material witnesses are resident in a country other than the one where the suit has been failed, the court before which the suit is pending would be greatly hampered in its task unless the other State renders its assistance in the service of the writs or for recording of evidence. There is no rule of public international law which would oblige a State to render assistance in such matters. Some States do render assistance to foreign courts as matter of comity or on the basis of reciprocity. Attempts have, however, been made to put the matter on a more satisfactory footing by means of bilateral treaties or multilateral conventions providing for mutual administrative and/or judicial assistance in these respects.

II. RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS

The question of recognition and enforcement of foreign judgments comes before the courts fairly frequently, and it has become a matter of considerable importance in the modern world. Indeed with the increase in international commerce and acceleration in the movement of goods and people across the national boundaries, reciprocal enforcement of judgments and decrees has become essential in the interests of trade and commerce. However, as Prof. Castel has pointed out "the increased volume of international trade has not been followed by a comparable development of the facilities granted to creditors to recover on their claims."¹ A businessman, who has obtained a judgment in the courts of one country, may learn that the property of the debtor situate in that country may not be sufficient to satisfy the judgment and that the property out of which the judgment may be satisfied is situate in another country, or that the defendant has moved in company with all his assets to another country. The interests of international commerce demand that the plaintiff should be able to enforce his judgment in that other country. Otherwise the plaintiff has to bring a new suit against the defendant in that other country and go through the whole procedure once again, resulting in waste of time and money. In some cases, it may not be possible for the plaintiff to bring a new suit. This would be the case if the courts of the country, where the property of the defendant is situate or to which he has escaped, have no jurisdiction to entertain the suit. In this case the creditor will be without remedy. Not to give effect to foreign judgments would, in some cases, put the defendant also to unnecessary inconvenience and even harrassment, because the plaintiff who was unsuccessful in one country may bring a fresh suit against the defendant in another country provided the jurisdictional rules of that country permit it. Therefore, the interest of the defendant also demands that a valid judgment obtained in the courts of one country should become a bar to indetical action between the same parties on the same cause of action in the courts of another country.

¹See *Report of the 48th Conference of the International Law Association*, p. 103. Prof. J.G. Castel was the Rapporteur appointed by the I.L.A. to prepare a report on the "Reciprocal Enforcement of Foreign Judgments".

In fact the municipal courts of many countries do give effect to foreign judgments. But before a court does so, it requires the foreign judgment to satisfy certain conditions. These conditions are not, however, uniform and they vary from country to country. In addition, there is also the difference in the rules of procedure, the rules of jurisdiction and the juridical concepts of the various countries. Consequently, the international efficacy of a judgment is very much in doubt unless the countries concerned are bound by treaties regulating the matter. The uncertainty is not conducive to international trade and commerce which is very vital to every nation in the world. Therefore, it is not merely the interests of plaintiffs and defendants, but also the interests of the world community in general that demand that proper facilities are created for judgments rendered in one country to be enforced in another, whenever it is so necessary.

The rules concerning the recognition and enforcement of foreign judgments are part of the rules of conflict of laws. They are a body of rules which have grown out of the need of each legal system to develop a set of principles and rules for dealing with cases involving elements of foreign law. Such cases are increasingly encountered by the legal system of a country as the social and economic intercourse of the country with other countries grows. Though the law of a country is influenced by its social conditions, there are certain common features all over the world in the social relationships which give rise to this branch of the law, and therefore the principles which hold good to one legal system should be so equally to another legal system, subject to such modifications and exceptions as may be necessary because of the difference in the basic ideas and principles on which the two legal systems are based. Almost all the modern systems of conflict of laws have their genesis in the doctrines which originally found acceptance in the continent of Europe.² Nor is the influence of jurists Huber, Storey and Savigny confined to the systems of conflict of laws of the countries of their birth. A study of the conflict of laws of the various countries will show that one of its important sources is comparative law.

²As to the historical antecedents of English law, (on which are based the laws of India, Burma, Ceylon and Pakistan), see Alexander N. Sack, *Conflicts of Laws in the History of the English Law: A Century of Progress, 1835-1935*, pp. 342-454. For a general history of the subject see Beale, *Conflict of Laws*.

SECTION "A"

Principles underlying the Recognition and Enforcement of Foreign Judgments in the laws of the various countries

It may be mentioned at the very outset that as between several countries of Europe the question of enforcement of foreign judgments is governed by provisions of bilateral treaties or multilateral conventions. And so also between some of the member countries of the Arab League³ and among the members of the Organisation of American States. As between countries parties to a convention, the matter is regulated by the terms of the convention itself. But such cases are few compared to cases not covered by conventions. As regards the countries between whom there are no treaty relations, the matter is governed by the general laws of the courts. However, the courts of a country do not always apply the same rule for recognition or enforcement of all foreign judgments. This applies equally to the *mode* of enforcement and the *conditions* under which the foreign judgment will be enforced. The applicable rules differ according to the existence of reciprocity. This is the practice of most countries though there are countries which apply the same rules irrespective of the existence of reciprocity. Thus, in the case of most countries, there may be three sets of principles applicable to the enforcement of foreign judgments: one based upon convention; one on reciprocity; and the third in the absence of either.

The problem of enforcement of foreign judgments has two main aspects. One is the mode of enforcement, i.e., the procedure by which a foreign judgment may be enforced. The other is the conditions which the foreign judgment must satisfy in order to qualify for enforcement. Both these aspects will be examined as practised by the various States.

³The Convention is signed by all members of the League, but it appears to have been ratified so far by three countries only—Egypt, Jordan and Saudi Arabia. For the text of the Convention see Appendix.