Civil Judgment Recognition and the Integration of Multi-state Associations: A Comparative Study

By Robert C. Casad
A.B., M.A., J.D., S.J.D.
Visiting Professor of Law, University of California
Hastings College of the Law, 1980, Professor of Law, University of Kansas

The past three decades have seen, on the one hand, new nation-states spawned by the breaking up of colonial empires, and on the other hand, the integration of separate nation-states into multi-state associations. Most notable and successful of such associations is the European Economic Community; but other movements, aimed at greater or lesser degrees of integration have been formed in Latin America, the Caribbean area, Africa, and the Middle East.

One feature of any such association likely to achieve significant integration is an effective scheme for the mutual recognition and enforcement of civil judgments. This proposition was clearly understood by the founders of the United States of America; for example, both the Articles of Confederation¹ and the Constitution² contained Full Faith and Credit Clauses.

The Treaty of Rome establishing the European Economic Community in 1957 contained no express arrangement for judgment recognition among the member states. However, it noted the

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² 1. Art. of Confederation art. IV.
² 2. U.S. Const. art. IV, §1.
importance of the problem, and relied on the member states to negotiate treaties with each other to provide for the "simplification of the formalities governing the reciprocal recognition and execution of judicial decisions and arbitral awards." It soon became apparent that full realization of the goals of the Community could not be achieved without the establishment in all the member states of uniform rules to ensure nearly automatic recognition and enforcement of civil and commercial judgments.

Accordingly, in October of 1959 the Commission of the European Economic Community sent a letter to the member states declaring that

... a true internal market between the six states will be achieved only if adequate legal protection can be guaranteed. The economic life of the Community will be liable to disturbances and difficulties unless it is possible, where necessary, by judicial means to ensure the recognition and enforcement of the individual rights which will arise from multiple legal relationships. As the power of the judiciary in both civil and commercial matters is derived from the sovereignty of Member States, and the effect of judicial instruments remains limited to national territory, legal protection, and consequently, legal security in the Common Market are essentially dependent on Member States adopting a satisfactory solution to the problem of recognition and enforcement of judgments.

A negotiating committee was convened in 1960 to prepare a draft convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters. The draft was completed in 1964, and after extensive debate, adopted and ratified by the six original Community members. It became effective February, 1973. Some significant modifications of the Convention were made in 1978 to accommodate the accession of Denmark, Ireland and Great Britain to the Community.

Another regional integration plan that was formed somewhat

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5. The six original members of the European Economic Community were: Belgium, France, the Federal Republic of Germany, Italy, Luxembourg, and the Netherlands.
later than the European Economic Community was the Central American Common Market. Central America at present is undergoing some severe political shocks, and the Common Markets has, for all practical purposes, dissolved. Nonetheless there are lessons to be learned from the Central American experience that benefit our understanding of the integration process, especially in the context of lesser developed nations. It is particularly interesting that Central America was at one time a political federation; its reintegration has since been proclaimed to be a matter of high policy for each of the member states. The Central American Common Market was merely the latest in a long series of integration plans.

The constitution of the short-lived Federal Republic of Central America and the later, half-formed, Central American Confederation contained specific provisions for judgment recognition and enforcement, as did several still later regional treaties of peace.

7. The present constitutions of four of the five member states of the former Federal Republic of Central America contain strong declarations of this policy.

El Salvador: El Salvador Const. of 1962, art. 10:

El Salvador, being a part of the Central American Nation, is obligated to promote the total or partial reconstruction of the Republic of Central America. The Executive Power, with the approval of the Legislative, will be capable of accomplishing that in a confederate, federal or unitary form, without the necessity of authorization or ratification by a Constituent Assembly [Constitutional Convention], so long as republican and democratic principles are respected in the new State, and the essential rights of individuals and associations are fully guaranteed.

Guatemala: Guatemala Const. of 1965, art. 2:

Guatemala, as part of the Central American community, will maintain and cultivate fraternal relations of cooperation and solidarity with the other States that fomed the Federation, and, faithful to the patriots’ ideal that inspired it, will take all just and peaceful measures that will conduce to the total or partial realization of the union of Central America.

Honduras: Honduras Const. of 1965, art. 9:

Honduras is a separated State of the Republic of Central America. Consequently, it recognizes as a primordial necessity the return to a union with one or more States of the former Federation. To this end, the Legislative Power is empowered to ratify treaties tending to bring that about, partially or totally, so long as they are proposed in a just and democratic manner.

Nicaragua: Nicaragua Const. of 1950, art. 6:

Sovereignty and territory are indivisible and inalienable. Nevertheless, treaties can be celebrated that tend to bring about a union with one or several republics of Central America.


9. Const. of 1824, art. 193: “The legal and juridical acts of one State will be recognized in all the others.” O. Colindres, supra note 8, at 389.
and amity. The basic Charter of the Central American Common Market, however, contained no reference to the matter. Perhaps, one reason for this omission was that all the member states — as well as Panama, which was officially invited to join the union (when and if it saw fit) — were already signatories to an instrument that embodied a scheme of judgment recognition. That instrument is the Pan American Code of Private International Law, more commonly referred to as the Bustamante Code in honor of its principal architect.

The Bustamante Code was promulgated as the Final Act of

10. Treaty of Friendship, Peace and Trade, 1887, art. 16, declared:
Article 16. Judgments in civil and commercial matters arising from duly legalized personal actions and rendered by the courts of one of the parties shall have, at the request of those courts, in the territory of the other parties, equal force as those rendered by the local courts and shall be executed in the same way as them.

So that these judgments may be executed, they must previously be declared final by the pertinent Higher Court of the Republic in which the execution will take place; and this court will not declare them to be such unless it has first ascertained in summary proceedings:

1. That the judgment has been rendered by a competent judicial authority and that the parties were legally summoned.
2. That the parties have been legally represented or declared legally in default.
3. That the judgment does not contain provisions contrary to the public order or the public law of the State.

Organization of American States, Inter-American Juridical Committee, Work Accomplished by the Inter-American Juridical Committee During its Regular Meeting Held from July 26 to August 27, 1973, p. 113, n.2 CJII-17, OEA/SER. Q/IV.7 (April 1974).

Article 15 of the General Treaty of Peace and Amity of 1907 declared as follows:

The judicial authorities of the contracting Republics shall carry out the judicial commissions and warrants in civil, commercial or criminal matters, with regard to citations, interrogatories and other acts of procedure or judicial function.

Other judicial acts, in civil or commercial matters, arising out of a personal suit, shall have in the territory of any one of the contracting Parties equal force with those of the local tribunals and shall be executed in the same manner, provided always that they shall first have been declared executory by the Supreme Tribunal of the Republic wherein they are to be executed, which shall be done if they meet the essential requirements of their respective legislation and they shall be carried out in accordance with the laws enacted in each country for the execution of judgments.

2 W. Malloy, Treaties, Conventions, International Acts, Protocols and Other Agreements Between the United States of America and Other Powers, 1776-1909, at 2395-96 (1910). This provision was reaffirmed in treaties of 1923 and 1934.

11. Drafters of the Code included representatives from North America, Mexico, South America and Central America.

12. Antonio Sanchez de Bustamante ySirven, a Cuban jurist and scholar, was formerly a magistrate of the Permanent Court of International Justice.
the Sixth International Conference of American States, November 25, 1928, in Havana. It codified principles of choice-of-law, jurisdiction and judgment recognition. The Code aimed at hemispheric acceptance by expressly providing that signatory nations were free to apply as "personal" law either that of the domicile or that of nationality. Nations were also free to adopt the Code with reservations. Uniformity thus could not be achieved under the Bustamante Code unless all nations voluntarily chose either domicile or nationality as the basis for "personal" law and accepted the Code without reservation. This did not occur. Even with these concessions to local concerns, not all nations were willing to sign. All the nations of the Central American isthmus ultimately did ratify the Bustamante Code, although some of them expressed reservations.

In spite of its inadequacies as a vehicle for hemispheric unification of private international law, the Bustamante Code provided the framework for a general plan of judgment recognition within Central America. It contained principles of jurisdiction, general rules relating to res judicata and enforcement of judgments rendered in other "contracting states", as well as special rules relating to bankruptcy.

15. Id. art. 3.
16. Argentina, Colombia, Mexico, Paraguay, Uruguay and the United States refused to sign. See Lorenzen, supra note 13, at 501.
17. Nicaragua reserved the right to depart from the Code in any situation in which its provisions conflicted with Nicaraguan law or with Canon law as recognized in Nicaragua. See 4 M. HUDSON, INTERNATIONAL LEGISLATION 2352 (1931). Nicaragua did not say it would apply its own rules, but it reserved the right to decide whether to do so or not when necessity should arise. Costa Rica joined Colombia in expressly reserving all matters in which the Code conflicted with local law. Id. El Salvador expressly reserved all matters in which the Code conflicted with local law, Id. at 2348, including, among other things, the right not to recognize foreign judgments in inheritance and bankruptcy matters insofar as concerned Salvadoran immovable property, Id. at 2350-51, rejecting Articles 327, 328 and 329 of the Code, which appeared to make the court of the domicile of the decedent or debtor competent in such cases.
18. The Organization of American States Inter-American Council of Jurists has, for over 20 years, been debating from time to time a resolution seeking to harmonize the Bustamante Code with the Montevideo Treaties of 1940 (on Commercial Navigation Law, Procedural Law, Penal Law, and Civil Law), and with the American RESTATEMENT (SECOND) OF CONFLICTS OF LAWS.
20. Id. art. 396.
21. Id. arts. 414-422.
This study examines the role of a scheme of civil judgment recognition in the integration of multi-state associations and will analyze comparatively the effectiveness of three particular systems in fulfilling that role.

I. JUDGMENT RECOGNITION IN THE INTEGRATION OF MULTIPLE STATE ENTITIES.

A. Interests Affected by the Recognition Decision.

Whether one nation should ever give effect to the judgments of other nations depends on whether that nation’s interests are served or disserved thereby. If its interests are significantly disserved, recognition of a foreign judgment is unlikely. Normally a nation will not sacrifice significant local interests merely to give effect within its borders to a sovereign act of another. However, in the recognition of judgments simply resolving disputes between private parties, the interests of the recognizing state may be weak and indirect. States may differ on the procedure for resolving private disputes or on how the substantive merits of a particular situation should be decided. Nevertheless, the laws provided by different states to regulate such matters often reflect merely administrative or convenience concerns, not important national interests. Even when a citizen of the country may have been a party—or both parties—to foreign litigation, and even if a different result might have been reached if it had been adjudicated in that country’s courts, it does not follow that any significant interests of that country could be disserved by giving the foreign judgment effect. Every nation has an interest in seeing to it that justice is done between competing litigants but that does not mean that every nation has an interest in trying in its own courts the merits of a case that has been adjudicated elsewhere. Every nation also has an interest in economy of its judicial resources, an interest that should normally preclude the reconsideration of matters once fairly adjudicated anywhere. Clearly, relitigation should be precluded if there is no reason to believe that a different or better outcome would result if the matter were tried again. Even in cases where a different outcome might be likely, other concerns may nevertheless require that recognition and effect be given to the foreign judgment.

Trautman and von Mehren have indentified five concerns that
are shared to some degree by all civilized states and which point toward the recognition and enforcement of foreign judgments: 22

(1) a desire to avoid the duplication of effort and consequent waste involved in reconsidering a matter that has already been litigated; 
(2) a related concern to protect the successful litigant, whether plaintiff or defendant, from harassing or evasive tactics on the part of his previously unsuccessful opponent; 
(3) a policy against making the availability of local enforcement the decisive element, as a practical matter, in the plaintiff's choice of forum; 
(4) an interest in fostering stability and unity in an international order in which many aspects of life are not confined to any single jurisdiction; and, 
(5) in certain classes of cases, a belief that the rendering jurisdiction is a more appropriate forum than the recognizing jurisdiction, either because the former was more convenient or because as the predominantly concerned jurisdiction or for some other reason its views as to the merits should prevail.

The relative strength of these interests can vary from country to country, and from case to case, as can, of course, the nature and strength of local countervailing interests that might be impaired by giving effect to the unrevised foreign judgment without revision.

Local interests of the recognizing state that may oppose recognition of a foreign judgment include the interest in having its own substantive law principles applied to the case (or, at least, in having the principles applied which its choice of law rules would identify) and the interest in seeing to it that minimal standards of procedural fairness were observed in any judgment that is to be given effect within its territory. Moreover, a state may have a strong interest in seeing to it that its substantive rules or choice of law principles govern the merits of the case if one of the parties is a citizen or domiciliary of the state, or if events giving rise to the litigation had some significant impact in that state.

B. Association Interests.

Besides the relative strengths of these policies and concerns, the political relationship between the jurisdiction where the judg-

ment was rendered and the one where it is sought to be enforced is also relevant. That relationship is an element of the enforcing state’s own interests, but it is important enough to merit special attention.

When the two states are linked together in some sort of multiple-state association, the interests numbered 2, 3, and 4 in the von Mehren-Trautman model, supra, take on special relevance. These concerns are present to some degree in any case where recognition is sought in one state for judgments rendered in another, but their importance is magnified when the states are member states of a larger association formed to promote mutual political or economic goals. Local concerns that might otherwise justify denying recognition to a judgment may be outweighed by association interests. The association interests are shared by all of the member states, but in particular cases the special interests of individual states may conflict with the association interests. Thus, a sound scheme of judgment recognition should rest on an analysis that can identify and evaluate the association interests potentially affected by a decision granting or refusing to grant recognition to a judgment of a sister state.

The nature and strength of the association interests affected by such a decision depends upon the character and purposes of the association. The interests of a loose regional association like the Organization of American States are neither so extensive nor so intensive as those of a federal union such as the United States of America. Somewhere in between the federal union and the O.A.S. on a spectrum of associational strength lie sub-regional organizations like the Organization of Central American States, and regional common market organizations, such as the European Economic Community and the Central American Common Market.

Several association interests can be identified that are affected by a member state’s rules relating to the recognition and enforcement of judgments rendered by other member states of the association. Probably most important is the interest in faithful and consistent application and interpretation of the provisions and policies of the association’s basic charter and its implementing regulations. This interest must be accorded great weight. Toward that end, multiple-state associations sometimes create special tribunals to review the decisions of constituent states involving such questions of interpretation. The Supreme Court of the United States is such a tribunal. In the European Economic Community this func-
tion is performed by the European Court of Justice; although that tribunal's jurisdiction is not broad enough to cover all situations in which the community's interests are affected by local tribunals. At one time there existed the Central American Court of Justice, an international tribunal comparable to the European Court of Justice. Established in 1907, the Central American Court of Justice was the world's first judicial institution with the power to adjudicate—not just arbitrate or mediate—disputes between nations. All five Central American nations solemnly bound themselves to submit to its jurisdiction and abide by its judgments. Five judges, one from each country, sat on the Court. It was to have a life of ten years, after which time its continued existence was to depend upon how successful its work had been. It was designed to represent the "National Conscience of Central America."

The Court's jurisdiction was as follows:

(a) all controversies or questions which might arise among [the Central American Nations] of whatsoever nature and no matter what their origin might be, in case their respective Departments of Foreign Affairs had not been able to reach an understanding;

(b) the questions which individuals of one Central American Country might raise against any of the other contracting governments, because of the violation of treaties or conventions, and other cases of international character, no matter whether their own government supported their claim or not, provided, however, that the remedies which the laws of the respective country afforded for such a violation had been exhausted or that a denial of justice had been shown;

(c) cases between two or more governments or between one government and one individual, when submitted by a common accord; and

(d) international questions which any of the five governments and a foreign government might submit to it by a special agreement.

The Court considered only ten cases during its ten year existence.


25. The last of these cases, and the one that spelled the end of the Court, involved the validity of the Bryan-Chamorro Treaty in which Nicaragua granted the United States the right to build a canal through Nicaragua, the right to build a naval base on the Gulf of Fonseca, Nicaragua, and renew all leases for two Caribbean islands, the Corn Islands. Costa
The General Treaty of the Central American Common Market provided for an Arbitration Tribunal to resolve disputes relating to the interpretations of provisions of the treaty that could not be otherwise resolved, but it has had almost no use.²⁶ Likewise, the Charter of the Organization of Central American States (ODECA) provided for a Central American Court of Justice, but this tribunal, too, has been essentially non-functional.²⁷ The absence of an effective unifying tribunal makes it all the more important that the association’s interest in faithful and consistent interpretation and application of the association’s basic policies be accorded weighty consideration in decisions relating to recognition of sister state judgments. The association interest in uniformity and consistency would normally require one state to give conclusive effect to a judgment of another embodying such an interpretation, unless: 1) it was clearly wrong; 2) previous decisions of the enforcing state or other association states had given the same point an interpretation different from the one embodied in the judgment; 3) some truly fundamental municipal interest of the enforcing state would be impaired by according the decision conclusive effect; or 4) some other important association interest (besides the interest in faithful and consistent interpretation of basic policy) would be impaired thereby. If the judicial decisions containing such interpretations are duly publicized and circulated among courts in the member states, inconsistent rulings should occur only rarely.²⁸ Incorrect

Rica claimed the treaty violated longstanding agreements between it and Nicaragua granting Costa Rica free navigational rights in the San Juan River and the right of consultation on any canal plans. El Salvador and Honduras which also coast upon the Gulf of Fonseca, claimed that none of the countries could cede control of any of the shore without the consent of the others. The Court entertained the case (although disclaiming any jurisdiction over the United States) and ruled that Nicaragua had violated earlier treaties with the plaintiff countries. When neither Nicaragua nor the United States would heed the decision, it became clear that another helpful step toward reunification had failed. Central American historians are proud of the Court and its accomplishments, and many have speculated that it could have been the key to solid reunification if the United States had accepted its judgment. The United States did not, however, and the Court’s term was not renewed when it expired. See KARNES, supra note 8, at 200-01.


²⁷. See Soto, Sobre la Justicia en la Integración Regional, 20-21 REVISTA DE CIENCIAS JURIDICAS 285 (1972) (U. of Costa Rica). (The cited work contains a draft of a plan for the creation of a fully functional “Central American Superior Court” at 302-05.)

²⁸. Unfortunately in the Central American region judicial decisions are not regularly published and are not circulated widely even in the country where rendered, much less throughout the region. The role of courts in refining and clarifying association policy, thus, has been severely limited.
and inconsistent interpretations thus publicized can be remedied legislatively by amending the basic documents of the association to reflect the desired meaning. Recognition without revision of the interpretation is the best judicial response to a sister state judgment interpreting the basic policy, even if the enforcing court disagrees with the interpretation.

Related to the association interest in consistent interpretation of the basic charter and policies is the interest in the avoidance of conflict between local law and association policies. Presumably member states are conscious of this interest when promulgating legislative enactments or regulations after the adoption of the basic charter. Nonetheless, potential conflicts between the basic charter's policies and the pre-existing corpus juris of the member states, are likely to go undetected until the issue is confronted in an actual controversy. It is normally in the association's interest for such controversies to be resolved by according primacy to the association policy over the local one unless the local policy is of such fundamental importance to the concerned member state that its further participation in the association would be jeopardized if its local policy had to yield. This interest is relevant to the judgment recognition decision even if no question of interpretation or application of the basic charter or policies of the association itself is directly involved. If the sister state judgment embodies an application or interpretation of local law in a way potentially conflicting with association policy, the association interest is served by keeping the effects of that local law confined to the rendering state. The denial of extraterritorial recognition in such a case serves to dramatize the potential conflict and bring it to the attention of both the lawmakers of the rendering state and of the association for appropriate consideration. The enforcing state in such a case should weigh this interest against other interests tending to support extraterritorial recognition and enforcement of the judgment. Unless the conflict between the local rule and association policy is substantial and direct, it is doubtful that this interest alone would be sufficient to offset other concerns that normally favor recognition. When such a conflict is suggested, however, the enforcing state may have to look behind the face of the judgment.

Another association interest meriting consideration is the interest in the mobility of goods and persons among the member states. This may be one of the basic policies of the association, and so this interest could be subsumed in the broader ones previously
discussed. But since the international movement of goods and persons makes international recognition and enforcement of judgments a significant problem, this interest merits special attention.

Significant to the goals of a common market, the association interest in mobility of goods and persons argues for a general, association-wide policy of recognition and enforcement of judgments without revision of the merits. Mobility is important to such an association in that it facilitates responsiveness to opportunities for economic development within the region. Labor and capital, goods, and services should be encouraged to flow from one place to another within the region in response to economic considerations. Realization of an integrated economy requires that artificial barriers and non-economic concerns tending to inhibit the free flow be eliminated to the greatest possible extent. If havens from the claims of judgment creditors are eliminated from the region, then one potentially inhibiting consideration would be removed. The association interest in mobility of goods and persons argues for a rule, uniform throughout the region, guaranteeing a virtually automatic recognition and enforcement of the judgments of each member state in all others.

Another association interest deserving mention is the interest in fostering a climate of confidence and faith in the security of commercial transactions. Ready enforceability and recognition of judgments throughout the region is obviously a factor conducive to such a climate.

C. Conditions Generally Requisite to Judgment Recognition.

A sound judgment recognition regime should produce results that reflect a rational balance of the interests favoring and those opposing recognition. Most existing regimes, however, do not call for a conscious weighing of the competing interests. Instead, they base the decision to extend recognition on the presence or absence of certain specific conditions, some but not all of which bear a relation to relevant policy principles.

1) Jurisdiction and Competence.

One condition regarded as essential in all judgment recognition systems is jurisdiction; e.g., the rendering court must have had jurisdiction to adjudicate the case. Anglo-American law analyzes separately jurisdiction over parties and over subject matter. The
legal systems of Continental Europe and Latin America employ
the concept of “competency,” which is similar, but not identical, to
our notions of jurisdiction. The standards of jurisdiction for this
purpose are not necessarily the same as those that either the ren-
dering state or the recognizing state would apply to determine
whether one of its courts could entertain the case. A distinction is
generally made, in other words, between jurisdiction or com-
petency in the domestic sense, i.e. the conditions that must exist
before a court can entertain an original action, and in the “inter-
national” sense. Jurisdiction in the international sense depends upon
the factors tending to connect the case and the defendant to the
rendering state in a way that satisfies the recognizing state’s con-
ception of what is fair in “the handling of the litigation involving
significant foreign elements.”

The bases for personal jurisdiction in Anglo-American law are factors tending to connect the defend-
ing party to the forum state. “Competence” standards in other

29. von Mehren & Trautman, supra note 22, at 1610.

30. Traditionally, the authorized bases were said to be physical presence, consent, and
domicile. Under the traditional tests, defendant could be constitutionally subjected to suit
in a state only if he was domiciled there, was personally served with process while physically
present there, or if he consented to suit there. See RESTATEMENT, Judgments § 14, Comment
1 at 19. This traditional approach was seriously deficient for a federal system such as the
United States, however. See Kurland, The Supreme Court, the Due Process Clause, and
the Supreme Court, in the famous case of International Shoe Co. v. State of Wash-
ington, 326 U.S. 310 (1945), rejected the notion that personal service on a non-consenting non-
resident defendant while physically present in the state was necessary for due process. All
that is necessary in such a case (insofar as concerns the basis element of jurisdiction) is
“certain minimum contracts with [the forum state] such that the maintenance of the suit
does not offend ‘traditional notions of fair play and substantial justice.’” Id. at 316.

The application of this very flexible test involves a weighing of the factors favoring the
exercise of jurisdiction over that defendant for that case and the factors opposing such an
exercise. It involves a consideration of “the quality and nature of the [defendant’s] activity
in relation to the fair and orderly administration of the laws which it was the purpose of the
due process clause to insure.” Id. at 319. Such questions as the expectations of the parties,
regulatory concerns of the various states with which the case has an arguable connection,
relative procedural convenience, etc., are relevant in determining whether sufficient contact
exists between the parties and issues and the forum state to satisfy due process. A single
liability creating act or event within the state may be enough contact to satisfy the standard
for an action arising out of that act, if the act or event was the result of the defendant’s own
conduct undertaken with awareness of its potential impact in that state. See Hanson v.
Denckla, 357 U.S. 235 (1958). A more substantial connection is required, however, to justify
jurisdiction for a cause of action unrelated to the defendant’s activity in the forum state.

In 1945, then, physical presence in the state of a non-consenting non-resident ceased to
be a necessary condition for the exercise of personal jurisdiction by a state court. It contin-
ued to be widely assumed, however, that physical presence was a sufficient condition until
systems also commonly require some enduring connection between the subject of the action and the forum state.\(^{31}\)

2) Notice.

"Jurisdiction" as used in Anglo-American courts also includes such matters as the form, content and timing of the notice given the defendant. In other systems the notice element is considered separately from "competency." A foreign judgment will not be accorded recognition unless it satisfies the "international" standards not only as to the bases for jurisdiction (or competency), but also as to notice.

3) Choice of Law and Public Policy.

Some countries also apply a "choice of law" test to determine whether a foreign judgment is entitled to recognition.\(^{32}\) In such countries a foreign judgment will be recognized without reexamination of the substantive merits only if the rendering court applied legal principles consistent with those that the recognizing court would apply. Although this test is not an established requirement in Anglo-American law, it does help to identify cases in which the local interests of the recognizing court may warrant denial of recognition.

Such a test, like the jurisdictional test, tends to ensure that the defendant has been treated with at least minimal fairness by a jurisdiction which is not unduly parochial in its view of international transactions. Furthermore, when the requested jurisdiction has a legitimate interest in the parties or in the factual situation out of which the controversy arose, failure to apply the law which its courts would apply suggests that its interests may not have been properly protected. However, when choice-of-law practices are generally reasonable, these arguments are not conclusive, and they may yield to considerations of convenience and simplicity.\(^{33}\)

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1977. In that year, the Supreme Court in the case of \textit{Shaffer v. Heitner}, 433 U.S. 86 declared that "all assertions of state court jurisdiction must be evaluated according to the standards set forth in International Shoe and its progeny." \textit{Id.} at 2584-85. The full significance of this decision is not yet clear, but it may mean that physical presence of a non-consenting non-resident is no longer sufficient for due process. See Case, \textit{Shaffer v. Heitner: An End to Ambivalence in Jurisdiction Theory?} 26 KAN. L. REV. 61, 73 (1977).


32. See von Mehren & Trautman, \textit{supra} note 22, at 1636.

33. \textit{Id.} at 1637.
Some states that do not employ a choice-of-law test nevertheless give effect to local substantive policy concerns, as well as basic notions of procedural fairness, through a vague "public policy" doctrine. Even American courts may resort to this doctrine to avoid recognition of some judgments rendered in foreign countries.\textsuperscript{34} The "public policy" concept is difficult to define, and its application may be an unpredictable factor in the judgment recognition scheme.

4) Reciprocity.

In some states foreign judgment recognition turns on whether or not the state in which the judgment was rendered would grant recognition to a judgment of the enforcing state under reciprocal circumstances. Presumably the justification for the state's adopting the reciprocity test is the pressure that may exert on the other country to force it to grant recognition without revision to that state's judgments. Since the foreign country's interests normally are not involved directly in the denial of recognition to a private judgment, this is a rather ineffective form of pressure. Moreover, it is the once successful private litigant who must bear the burden of this means of exerting pressure on the other country. The reciprocity rule has been recognized in the United States in a limited way,\textsuperscript{35} but it is generally assumed not to be constitutionally required: some states have refused to follow it at all.\textsuperscript{36} Nonetheless the reciprocity rule is still widely followed in Latin America.

5) Finality.

A common requirement is that the judgment for which recognition is sought must have achieved some degree of finality. Procedures for international judicial assistance, however, often can be employed to give extraterritorial effect to some kinds of interlocutory orders, such as serving process, taking testimony, and even issuing provisional attachments of property.

\textsuperscript{34} See Restatement (Second) of Conflict of Laws, § 117, Comment c (1971).
\textsuperscript{36} See, e.g., Johnston v. Compagnie Generale Transatlantique, 242 N.Y. 381, 162 N.E. 121 (1926).
II. COMPARATIVE ANALYSIS OF RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN A TYPICAL ACTION FOR MONEY

One way to gauge the effectiveness of a multi-state judgment recognition system in promoting the association interests is to examine its operation in a typical case and to compare it to the operation of other multi-state systems in the same kind of case. For this comparison, we will use the case of a judgment rendered in an ordinary action for money based on a liquidated claim. We will examine the conditions that must be satisfied for the judgment to be entitled to recognition and enforcement in the other associated states under the regimes of the United States, the European Economic Community, and the Bustamante Code. From this comparison we will be able to see the relative effectiveness of the three systems in striking an appropriate balance of the individual, local state, and association interests affected by the judgment-recognition decision.

A. Basic Enforcement Procedure.

The procedural steps that must be taken in order to entitle a sister state judgment to enforcement differ considerably among the three systems under comparison here.

In the United States the normal method of enforcing money judgments entails the bringing of an action in an ordinary court of first instance in the enforcing state to collect the debt declared by the judgment to be owing. This procedure has been held consistent with the Full Faith and Credit Clause.37 The party seeking enforcement can prove the cause of action by presenting a copy of the judgment, duly authenticated as prescribed by federal law.38 The Full Faith and Credit Clause thus makes a money judgment enforceable without re-examination of the merits of the underlying claim wherever the judgment debtor may have property. If there is no defect of jurisdiction or other invalidity that would warrant denial of full faith and credit, a judgment is granted by the enforcing court which can then be enforced by the same procedures as are available for domestic judgments.

The conventional procedure is a contentious one. Jurisdiction of the enforcing state over the defendant or his property must be obtained through the service of process, affording the defendant an opportunity to appear in opposition to the judgment, before a new judgment can be rendered in the enforcing state authorizing execution there. Although contentious, the procedure is normally uncomplicated. The only issues that can be raised to avoid enforcement are those relating to jurisdiction, broadly defined, of either the rendering or the enforcing court. No inquiry into the merits of the claim underlying the judgment is permissible. Not even the strong "public policy" of the enforcing state will provide a defense to enforcement.\(^{39}\) The federal policy of interstate enforcement of ordinary civil judgments always prevails over the local substantive policy of the enforcing state. Not even the existence of a prior inconsistent judgment in the enforcing state,\(^{40}\) or the pendency there of an action on the claim embodied in the judgment, provides a defense to enforcement in the American regime of full faith and credit. Enforcement of the judgment is the only proper way for a plaintiff to seek recovery in another state on an obligation that has been reduced to a money judgment. His or her original claim is said to "merge" in the judgment, and he or she cannot sue again on the original claim\(^{41}\) if the opposing party brings the existence of the judgment to the attention of the court in the later action.

Appeal of the judgment granting or denying enforcement to a sister-state judgment is possible under the same conditions as appeals of other judgments. Since a federal constitutional question is involved, review may ultimately be sought in the Supreme Court of the United States to determine whether full faith and credit was properly accorded or withheld.

An even more expeditious method is provided for the enforcement of a judgment of one U.S. District Court in other District Courts.\(^{42}\) This procedure eliminates the need for initiating a separ-

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41. See R. Casad, Res Judicata in a Nutshell 294 (1976). In this respect the American scheme treats judgments of sister states differently than it does judgments of foreign nations. It is generally said that the original claim does not "merge" in a foreign country judgment. See Yntema, The Enforcement of Foreign Judgments in Anglo-American Law, 33 Mich. L. Rev. 1129, 1139 (1935).
rate action. The judgment, properly authenticated, is registered with the clerk of the recognizing court, and the judgment thus becomes enforceable there.

The Uniform Enforcement of Foreign Judgments Act, adopted in several states, also permits enforcement of sister state judgments by registration as an alternative to the conventional method. The basic enforcement scheme of the European Economic Community is different in several respects. The European Economic Community Convention identifies the court empowered to entertain enforcement proceedings in each of the six original member states. Except in Italy, the court is the general court of first instance. The procedure for enforcement is mainly governed by the local law of the enforcement state, as is the case in the United States, but the convention specifies that it is to be a non-contentious proceeding in which the defendant is not entitled to participate. As such, the defendant is not entitled to notice nor an opportunity to defend in that state. The European procedure thus differs significantly from that of the United States and of the Bustamante Code, discussed infra. The purpose of proceeding without the defendant is to give the plaintiff a chance to prove his or her foreign judgment before the defendant learns about it, so as to thwart any move by the defendant to remove property from the jurisdiction. Protection of the plaintiff creditor is the object. American notions of procedural fairness proceed from the opposite pole. While an American creditor can, sometimes, get an order preventing the defendant from moving property beyond the range of the court's process while the action is proceeding, the defendant is normally entitled to notice and an opportunity to present countervailing contentions. American procedural due process stresses the defendant's right to a hearing before any official action is taken that might adversely affect his or her rights in any way.

The European enforcement court examines the record of the judgment to see if any of the conditions authorizing non-recog-

43. Uniform Laws Annotated 9(c).
44. Convention of September 27, 1968, on Enforcement of Judgments art. 32 [hereinafter cited as Convention]. In the United Kingdom, enforcement of maintenance judgments is sought in a subordinate court.
45. Id. art. 34.
46. Jenard Report supra note 4, at 86.
tion are apparent. 48 Non-recognition to a money judgment is authorized only if:

1. It contravenes the public policy of the enforcing state;
2. the defendant lacked adequate notice and an opportunity to defend in the rendering state;
3. a prior inconsistent judgment had been rendered between the same parties in the enforcement state or in a non-contracting state, if it involved the same cause of action and is entitled to recognition in the enforcing state;
4. the convention's provisions relating to competence were not satisfied by the rendering court. 49

In reviewing this last condition, however, the enforcing court cannot look beyond the face of the record, as an American court can do. 50 The rendering court is required to pass upon the competence questions, whether disputed by the parties or not, and it will only be where there is a failure to comply with that requirement that lack of competence or "exorbitant" jurisdiction will provide grounds for non-recognition.

The European proceeding can become a contentious one. The defendant can appeal from an order granting recognition and the plaintiff can appeal from an order denying the same. The defendant's appeal is taken to the same court which granted the enforcement order in Belgium, Ireland, Italy, the Netherlands, and the United Kingdom, but to a higher court in Denmark, France, Germany and Luxembourg. 51 A plaintiff's appeal from an order denying enforcement is taken to a higher court in all the countries except Italy, Ireland and the United Kingdom. 52 The appeal does not entail a second examination of the facts, but merely a consideration of errors of law, and is limited to the same questions that the enforcement court examined in the first instance. Appeal of the second judgment is possible in some circumstances. 53 If a question of interpretation of the basic charter is raised, the question may be referred to the European Court of Justice for an authoritative ruling. 54

48. Convention, supra note 44, at art. 28.
49. Convention, supra note 44, at art. 28.
51. Convention, supra note 44, at art. 37.
52. Convention, supra note 44 at art. 40.
53. Convention, supra note 44, at arts. 37, 41.
54. E.E.C. Treaty, art. 177.
As in the United States scheme, the European judgment enforcement procedure is the only mechanism through which a plaintiff can properly recover in another member state on a claim that has been reduced to a judgment. Suit on the original claim is barred.\footnote{DeWolf v. Harry Cox B.V. (case 42/76, Court of Justice of the European Communities, 1976) [1977] 2 Comm. Mkt. L.R. 43.}

Under the Bustamante Code, basic enforcement procedure is usually left up to the local law of the enforcing state for the most part.\footnote{Code Civ. Proc. art. 1020 (Costa Rica); Code Civ. Proc. art. 453 (El Salvador); Code Proc. art. 239 (Honduras); Code Civ. Proc. art. 16(5), 545 (Nicaragua); Law 47 of 1956, art. 30[3] (Panama).} The Central American enforcement scheme, in all countries except Guatemala, involves a contentious proceeding in the highest court in the land before a judgment, even of a sister republic of Central America, can be presented to a court of first instance for enforcement.\footnote{Bustamante Code, art. 424.} Moreover, the Code declares that the state itself is to be given the opportunity to participate in the proceeding.\footnote{Bustamante Code, art. 426.} Since the Bustamante Code generally leaves the enforcement procedure up to the individual countries the state’s participation is not required, except in Honduras and Panama.\footnote{Code of Civ. Proc. art. 240 (Honduras); Judicial Code, art. 587 (Panama). Nicaragua requires notification of the state’s representative as a step in the enforcement procedure in the case of Panamanian judgments and those of other non-Central American countries, (Code Civ. Proc. 546), but provides specially for enforcement of other Central American judgments.}

Issues that may be litigated in the enforcement proceeding include competence of the rendering court, adequacy of the notice given the defendant in the rendering court, executoriness of the judgment in the rendering state, and conformity of the judgment to public policy of the enforcement state.\footnote{Bustamante Code, art. 423.} The existence of a prior inconsistent judgment in the rendering state is not an express limitation on enforceability (as it is in the E.E.C. Convention), but in fact such a limitation is observed through the application of the public policy exception.\footnote{Antillón, El Auxilio Jurídico Internacional en Costa Rica, 15 Revista de Ciencias Juridicas 212, 241 (1970).}

As in the United States, the rendering court must be competent under both its own and “international” standards. The international standards to be used for this purpose are basically those...
provided by the Bustamante Code.\textsuperscript{62} The Code, however, permits a state to follow its own rules in matters of competence \textit{ratione loci}, if it chooses.\textsuperscript{63} Thus the enforcing court may use its own competence rule in some cases to judge the competence of the rendering court, at least if its rule makes the enforcing state exclusively competent. The competence standards that are relevant in most actions that can produce money judgments are of the type \textit{ratione loci},\textsuperscript{64} and so there is no such no assurance that a set of uniform competence standards will be applied to determine enforceability as is the case in the United States (where the Fourteenth Amendment's due process clause and the Full Faith and Credit Clause impose a large measure of uniformity) and in the European Community (where the convention's competency standards are applied directly in the rendering court and may not be re-examined).\textsuperscript{65}

The Bustamante Code\textsuperscript{66} technically provides for appeal from the ruling granting or withholding an enforcement decree (called \textit{exequiatur} or \textit{parlatis} in Central America) but in fact this provision operates only in Guatemala, since in the other Central American states the highest court in the country is the one that issues the decree in the first instance.

Comparison of the basic enforcement procedures under the three systems indicates that the Central American procedure is far less promotive of the association interests in free mobility of judgments than the other two schemes. A judgment of the highest court in the land based on a contentious proceeding is required in all the countries but one and in some of them the state itself participates as a party in the proceeding. Proceedings in the high court are likely to be more costly than the same kind of proceeding in a lower court of first instance. If the state is an active advocate in the proceeding, there is a greater likelihood that arguments that could defeat enforcement will be made and grounds that may be raised to defeat enforcement are more numerous than those per-

\textsuperscript{62} Bustamante Code, arts. 314-343.
\textsuperscript{63} Id. art. 316.
\textsuperscript{64} Competence \textit{ratione loci} refers not just to jurisdiction predicated upon the location of things, but to any rule in which the criterion for identifying the proper court is the location of something. The term applies to personal actions in which the proper court is the one at the domicile of one of the parties, for instance, as well as to real actions. See Muñoz, CAMY & HALL, DERECHO INTERNACIONAL PRIVADO 214 (1953). See also A. Godoy, 1 DERECHO PROCESAL CIVIL DE GUATEMALA 92 (1973).
\textsuperscript{65} See infra note 88.
\textsuperscript{66} Bustamante Code, art. 425.
mitted to be raised in other systems. Moreover, there is no such assurance that the standards for resolving those issues will be uniform throughout the region as in the United States or the E.E.C. And even when *exequatur* is granted by the high court, further proceedings in a lower court are necessary before there is actual enforcement.

The Central American scheme is more costly, more complex, and less likely to produce predictable results. The additional cost and complexity does not yield any greater protection to the legitimate interests of the individual parties. It serves no interest of the plaintiff. It aids the defendant by making enforcement more difficult to obtain, but the defendant arguably has no legitimate interest in avoiding enforcement unless there was some fundamental unfairness about the proceeding in the rendering court. The United States and E.E.C. have provisions to protect the defendant from enforcement of a judgment obtained through such a proceeding at less cost to the association interests than under the Central American scheme. It is doubtful that the local interests served are worth the cost and complexity of the Central American system. No reason is apparent, other than tradition, for requiring the participation of the highest court in the land in the enforcement of every ordinary civil money judgment. Guatemala found it possible to dispense with that requirement with no apparent injury to its national dignity and sovereignty. It would surely be a step forward if the other Central American countries were to adopt a procedure like that of Guatemala, at least for the enforcement of judgments of other Central American states. Cases presenting serious questions of interpretation of the association's Charter or of local public policy should be reviewed in the Supreme Court. Ordinary cases, however, could certainly be disposed of in a court of first instance with ample protection to individual and local policy interests and less sacrifice of association interests.

B. Kinds of Judgments Subject to Enforcement

In the United States, every money judgment is entitled to enforcement in every other state, with the possible exception of a "penal" judgment. Even money awards issued by administrative tribunals are entitled to full faith and credit. Arbitration awards,
however, and settlement agreements that are not embodied in official decrees are not constitutionally required to be enforced in other states, although many states do grant enforcement to such private arrangements.

The European Common Market Convention extends enforcement to all "civil and commercial" judgments, except certain kinds that are specially noted. The characterization as civil or commercial turns on the nature of the cause of action, not upon the nature of the rendering tribunal. The nature of the cause of action is determined by reference to a common but unwritten standard deriving from the "objectives and scheme of the convention" and generally accepted principles. Doubts are resolved in favor of the civil or commercial characterization, and so most kinds of money judgments in private actions will be enforceable under the convention, except those specifically noted. Arbitration awards are not covered by the 1968 convention, but there are other treaties and conventions that do provide for their enforcement.

In Central America virtually any private money judgment is enforceable. The Bustamante Code declares that "Every civil and contentious administrative judgment. . . may be executed. . . . " "Civil" in this passage is construed broadly, and does not refer to the character of the rendering tribunal or to the particular code that provides the substantive principles. Even penal judgments can be enforced to the extent that they include civil elements—i.e., an award of damages for the victim. Arbitration awards are also made enforceable if the subject of the arbitration is such that it

69. Convention, supra note 44, at art. 1.


72. See Jenard Report, at 24.

73. See Bustamante Code, art. 423. The provision for execution of contentious-administrative judgments as well as civil judgments is curious, since the defendant in such cases is nearly always the foreign state or one of its agencies, and the situations in which the courts of one country could exercise jurisdiction over another country or its properties must be rare indeed. See Bustamante Code, arts. 333-339. The only extra-territorial effect that could be given to a contentious-administrative judgment, apparently, would be a non-conclusive evidentiary effect. See Working Document, Second Inter-American Specialized Conference on Private International Law, Recognition and Execution of Foreign Judicial Judgments, 17-18 (OEA/Ser. K./XXI.2) (June 1977).

74. Bustamante Code, art. 437.
could have been a subject of "compromise" under the law of the enforcing state. In a few countries it is possible to obtain enforcement of ex parte judicial orders directing the defendant to pay money. Although some of the Central American states made express reservations affecting recognition of some kinds of judgments, these reservations have rarely been invoked.

C. Competency and Jurisdiction Standards

A fundamental condition of enforcement in all the systems we are comparing is that relating to the competency or jurisdiction of the rendering court. The rendering court must have been competent both under its own and under "international" standards.

The purpose of superimposing a requirement of competency by international standards over the requirement of jurisdiction under the rendering court's own standards is to protect the interest of the defendant in not having to defend himself in a forum lacking the minimal connections to the parties and the case to satisfy universal notions of fairness. It also serves to protect any interests the enforcing state may have in providing the forum for the resolution of the issues in the underlying controversy. This latter interest is particularly strong when the enforcing state is the exclusive forum under its own law. If the enforcing state and the rendering state are members of an association of states, an association interest may also be served by the international competency standards in seeking to channel the litigation to the most convenient or appropriate forum, even if that is a third state.

The particular international competency standards recognized in all three of the regimes we are comparing generally foster these interests. However, they differ in the extent to which they permit these interests to prevail over competing interests such as the plaintiff's interest in forum choice, and the overall interest in expeditious judgment enforcement.

75. Id. art. 432.
76. These are the "judgments of sale," (sentencias de remate). See 5 ALSINA, DERECHO PROCESAL 184-86 (1982). See also CODE CIV. PROC., art. 431 (Costa Rica) and CODE CIV. PROC. art. 549 (Nicaragua).
77. See note 17 supra.
78. In the E.E.C. Convention, the rendering court's competency is prescribed by the Convention itself, and so there are not in fact two sets of standards. E.E.C. Convention, art. 5. In the Bustamante Code, the requirement of competency under the rendering court's own rules is implicit in the requirement that the judgment be "executory" in the state of rendition. Bustamante Code, art. 423[4].
In the United States system, the "international" jurisdiction standards are the same as those minimal standards prescribed by the due process clause of the Fourteenth Amendment.\(^79\) These standards focus upon the defendant's connection with the rendering state. The defendant must have such contacts with the forum state as to make it reasonable under traditional notions of fair play and substantial justice to require him or her to defend the particular lawsuit in that forum. Even under this test, however, before 1977 it was generally assumed that in one situation a state court could constitutionally exercise jurisdiction over a defendant in an in personam action having no reasonable connection with the forum state: where the defendant was physically served with process within the boundaries of that state. The United States Supreme Court in 1977, however, seemingly eliminated that possibility, declaring that all assertions of state court jurisdiction must be judged by the "minimum contact-fundamental fairness" criteria first announced in International Shoe Corp. v. State of Washington.\(^80\) If physical presence has thus been eliminated as a sufficient basis for personal jurisdiction, a defendant cannot now be sued in a state with which he or she has not voluntarily formed some contact relevant to the action unless he or she consents to such jurisdiction. If a judgment is obtained against him or her in a state lacking such contacts, the judgment is not entitled to recognition or enforcement in other states.

The American standard overtly seeks to insure basic fairness, but it is so vague that different courts can reach different conclusions in applying the standard to similar facts. In the American scheme since the enforcing state can make an independent determination of the rendering court's jurisdiction, the vagueness of the standard means that substantial review authority is lodged in the court of the enforcing state. This problem is relieved by two factors. The first is the possibility of ultimate review in the Supreme Court of the United States of state court rulings on the application of "international standards." The second stems from our conception of res judicata in its issue preclusion aspect. The enforcing court can review the basis of the rendering court's jurisdiction, but if that issue was actively litigated in the rendering court, the parties are precluded from relitigating in the enforcing court the ren-

\(^{79}\) See note 30 supra.

\(^{80}\) 326 U.S. 310 (1945).
dering court’s ruling. A defendant is entitled to challenge the rendering court’s jurisdiction only once either in the rendering court or the enforcing court. If the defendant challenges it in the rendering court and loses (or makes a general appearance in the rendering court without challenge,) the defendant can be precluded from making the challenge in the enforcing court. It should be noted that in the American scheme, unlike that of the E.E.C. Convention, the rendering court is under no obligation to inquire into the basis for its jurisdiction in personam unless the defendant raises the issue as a defense.

Another consequence of the broadness of the standards within the United States is that they may authorize the exercise of jurisdiction concurrently in several states. For instance, a suit for damages for breach of contract between a resident of state A and a resident of state B calling for performance in both states C and D, could possibly be brought in any of the four states without violating the constitutional standards. Assume that a suit is brought against the state A resident in state D, and a default judgment is obtained there which is then submitted for enforcement in state A, the judgment debtor’s domicile. The American scheme permits the defendant to raise an objection to state D’s jurisdiction in the state A enforcement action, but the objection probably would not succeed since state D would probably have sufficient minimal contacts. Does this scheme adequately protect the defendant’s interest and the enforcing state’s own interest in providing a forum for suits against its domiciliaries? The American answer to that question is yes. Our conception of fairness in the matter of personal jurisdiction consciously recognizes the need to balance the interests of the defendant and those of the plaintiff, of the forum state and other potential fora, and the overall interests of judicial administration in a federal system. The defendant does not have an absolute right to be sued in the state of his or her domicile. If there are alternative fora, the plaintiff (who must bear the burden of ul-

82. “[Due Process] demands . . . such contacts of the [defendant] with the state of the forum as make it reasonable, in the context of our federal system of government, to require the [defendant] to defend the particular suit which is brought there. An ‘estimate’ of the inconveniences which would result to the [defendant] from a trial away from its ‘home’ or principal place of business is relevant in this connection. . . . Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure.” International Shoe Co. v. State of Washington, 326 U.S. 310, 316-17, 319 (1945).
timate persuasion in the merits of the case) is generally permitted to choose the one in which to proceed.

The American system does permit the defendant to exert some influence on forum selection. Under the doctrine of *forum non conveniens*, a defendant sued in a seriously inconvenient forum can appeal to the discretion of the forum court to dismiss the action. The factors relevant to deciding whether dismissal for *forum non conveniens* is appropriate are the same ones that are relevant in determining whether the minimal contacts necessary for due process are present, but the jurisdictional standard may sometimes be met in a case where the forum is nevertheless seriously inconvenient. *Forum non conveniens* is not a constitutional doctrine, but is recognized in most states as a common law principle. Thus it is a generally available means by which the defendant can influence the choice among alternative permissible fora.

In addition to *forum non conveniens* a defendant sued outside his or her home state may be able to remove the action from the state court to a federal court. Once the case is removed to a federal court, the defendant may then apply for a transfer of venue of the action to another federal court where it might have been brought, if it is more convenient for the parties and the witnesses and furthers the interests of justice. The standards for venue transfer from one federal court to another are not so rigorous as those that must be met under the *forum non conveniens* doctrine and the focus is upon convenience, not "serious inconvenience."

These devices supply substantial protection to the defendant's interest in spite of the very permissive standards of international jurisdiction recognized in the United States today. The association interest in channeling the litigation to the most appropriate forum is significantly protected, although the protection depends upon the defendant's acting to invoke one of these protective measures. The enforcing state's interest in providing the exclusive forum, like the association interest, is served if, but only if, the defendant chooses to counter the plaintiff's forum choice. Since basic procedures are the same in all American states, and even the substantive laws are very similar in most kinds of cases likely to produce civil money judgments. The interest of any one state in providing the

84. Removal is permitted only if the plaintiff or plaintiffs are all citizens of states different than that of the defendant and more than $10,000 is in controversy. 28 U.S.C. 1332. 85. 28 U.S.C. 1404(a).
exclusive forum for a given action is not likely to be as strong as that of an individual sovereign state in the other systems we are comparing. Thus, measures to protect particular states' exclusive forum interests are not so important in the American scheme.

The jurisdictional standards prescribed by the E.E.C. Convention are expressed in much more specific terms than those based upon the United States Constitution, and their application is quite different. Under the E.E.C. Convention the competency standards are applied directly by the rendering court, and it must rule on that issue, whether or not the defendant objects even if the defendant defaults. The rendering court's determination of competency is not subject to any review by the enforcing court. By providing more specific standards to be directly and conclusively applied by the rendering court, the E.E.C. Convention avoids some of the uncertainty that the American system entails, but it is also much more restrictive of the plaintiff's range of forum choice.

A defendant domiciled in the European community is subject to suit in the state of his or her domicile. Defendant's consent or voluntary general appearance can make a non-domiciliary court competent unless the case is one for which the convention provides that a particular state is exclusively competent. In addition, an alternative forum is provided for certain specific kinds of cases: e.g., contract cases, place of performance; tort cases, place of the tortious act. Special provisions are also made for cases involving insurance and consumer transactions. The provisions for these special cases identify states with particular significant contacts with the case. These contacts would undoubtedly be sufficient to justify requiring a non-consenting non-resident to defend there under American standards, too. Thus, competency for a suit against a domiciliary of one of the member nations would not be recognized under the E.E.C. standards. American standards being less specific, permit jurisdiction in some cases in states that, how-

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86. Convention, supra note 44, at arts. 2-18.
87. Id. art. 28.
88. Id. art. 2. The law of the forum is to be applied in determining domicile. Id. art. 52.
89. Id. art. 18.
90. See Id. art. 16; Notable are actions involving rights in rem in real property which may be brought only in the courts at the situs. See also Id. art. 17, dealing with prorogation agreements.
91. Id. art. 5.
92. Id. arts. 7-12a.
93. Id. arts. 13-15.
ever, would not be competent under the E.E.C. standards. Never-
theless, in most cases the standards of the two systems would lead
to essentially similar results. One case in which the E.E.C. Conven-
tion standards may be more permissive than those of the United
States involves multiple defendants resident in different countries.
Under the convention all may be sued in the domicile of any one of
them. Domicile of a co-defendant has not been regarded as an
adequate basis for personal jurisdiction in America. In this situa-
tion the difference between the European concept of "competency"
to entertain the action and the American concept of jurisdiction
over the person of the defendant is apparent.

The E.E.C. standards although not expressed in terms that in-
vite interest balancing do seem to aim at striking a balance be-
tween the interests of the individual and the states. The defendant
is protected against having to defend in a seriously inconvenient
forum by the specification of only certain states in which an action
can be brought without his consent. The "exorbitant" bases of ju-
risdiction which the laws of some of the individual countries other-
wise would permit are expressly excluded when the defendant is a
domiciliary of one of the contracting states. Individual states’ in-

94. Id. art. 6.
95. Id. art. 3. Bartlett, supra note 6, at 53.

The most commonly cited of these rules of exorbitant jurisdiction are the following:

1) In France and Luxembourg jurisdiction can be predicated on the basis of the plain-
tiff's nationality. See Code Civ. art. 14(France). Thus, a Frenchman, even if not domiciled
in France, can obtain a judgment in a French court against a non-French defendant domi-
ciled outside the Common Market, even though the cause of action is unrelated to France.

2) German courts can exercise jurisdiction on the basis of the presence of assets within
Germany, and the judgment is not limited to the value of the assets themselves. See Zivil-
prozessordnung [ZPO] art. 23 (W. Ger.) (Code Civ. Proc.).

3) A Dutch court can entertain a suit against a non-domiciliary on the basis of the
plaintiff's Netherlands domicile. Code Civ. Proc. art. 120(3) (Netherlands).

4) In Ireland and the United Kingdom, jurisdiction may be predicated on the tempo-
rorary presence of a defendant within the territory of the forum. In the United Kingdom, too,
limited quasi in rem jurisdiction may be based on the presence of property.

These "exorbitant" bases may be utilized in cases involving defendants who are not
domiciled in one of the contracting states, and judgments obtained on such bases then be-
come enforceable throughout the entire Common Market region. Convention, supra note 44,
at art. 4. This provision of the convention has provoked a great deal of criticism, particu-
larly from the United States. See Nadelmann, The Common Market Judgment Convention
(1969); Nadelman, Jurisdictionally Improper Fora in Treaties on Recognition of Judg-
ments: The Common Market Draft, 67 COLUM. L. REV. 995 (1967). See also Hay, supra note
71, at 149; and Carl, The Common Markets Convention—Its Threat and Challenge to
Americans, 8 INT'l L. REV. 446 (1974).

It means that member states of the Common Market can adjudicate cases against non-
interests in providing the forum for the action are given greater weight than is true in the American scheme, since the convention recognizes some states as having exclusive competence for some cases, an exclusivity that cannot be circumvented even by the defendant’s consent. The greater importance placed on individual state’s forum interests would not be appropriate in a federal union such as the United States, where all states’ procedural rules are very similar.

The international competence standards embodied in the Bustamente Code are narrower than in the other two systems mentioned. For ordinary civil and commercial actions, a plaintiff has no forum choice. If the parties expressly or impliedly consent to a particular court’s competency, that will be the competent court if one of the parties is a domiciliary or national of that country. Otherwise, the competent court is the one where the obligation that is the subject of the action is to be performed. If no place is specified, or if the action does not concern an obligation to be performed, the court of the defendant’s domicile or residence will be

community defendants on the so-called “exorbitant” jurisdictional bases recognized by some of the member states, and the judgments thus rendered are entitled to automatic recognition and enforcement throughout the community without re-examination of the jurisdiction of the rendering court. The fact that the convention framers have been willing to extend the principle of automatic enforcement to judgments resting on these “exorbitant” jurisdictional bases tends to emphasize how important the matter of judgment recognition is regarded.

The patent unfairness to non-community defendants resulting from the extension of the effects of these “exorbitant” jurisdictional bases to the whole Common Market region cannot be avoided even by the enforcing court’s invoking the “public policy” exception. Convention, supra note 44, art. 28. Provision is made for the avoidance of the obligation to enforce such judgments, however, through bilateral or other treaty agreements between individual member states and non-member countries. Id. art. 59. Thus the United States, for instance, could avoid the extraterritorial enforcement within the Common Market of judgments rendered against American domiciliaries based on “exorbitant” jurisdiction by negotiating bilateral treaties with each of the member states, or through such an arrangement as the proposed Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, reprinted in 15 Am. J. Comp. L. 362 (1967).

A bilateral treaty, recently initialed, between the United States and the United Kingdom could become a model for treaties with other Common Market nations which would provide protection to American defendants from judgments obtained through resort to “exorbitant” jurisdictional bases. See Hay & Walker, The Proposed Recognition of Judgments Convention Between the United States and the United Kingdom, 11 Tex. Int’l L.J. 421 (1976). The apparent abolition of one of our own “exorbitant” jurisdictional bases by the Supreme Court of the United States in Shaffer v. Heitner, 433 U.S. 186 (1977) may make it easier for our negotiators to arrange such conventions.

96. Convention, supra note 44, arts. 16, 18.
97. Bustamante Code, art. 318.
98. Id. art. 323.
competent.99 All this presupposes that the laws of the rendering courts also recognize the court prescribed by the Bustamante Code as competent. The Bustamante Code’s jurisdiction provisions, thus, do not establish any firm uniform standards of international competence that will apply in all cases to determine the enforceability of a foreign judgment.

By expressly making its jurisdictional prescriptions subordinate to local law, the Bustamante Code seems to go far beyond the American or E.E.C. schemes in extending protection to the enforcing state’s interests. Under the Bustamante Code the enforcing court can also make its own determination of the rendering court’s competency under international standards and there is no single tribunal as there is in the United States, whose interpretation must be followed by all states. The Bustamante Code may even permit a reexamination of the facts on which the rendering court’s competency rested, even though the facts were contested and specifically determined in the rendering court.100 Thus, neither of the factors which in the American system tend to eliminate the uncertainty caused by allowing the enforcing court to review the rendering court’s competency is present in the regime of the Bustamante Code.

Since the Bustamante Code was not drafted as a vehicle for promoting regional integration, it is understandable that it permits more latitude for the enforcing state’s local interests. This deference to the enforcing state seems inappropriate for a Central American regime. In terms of basic law and procedure, the Central American states are more similar to each other than are the countries of the E.E.C. Accordingly, local forum interests would seem to be less important. Moreover, by thus reducing the number of cases in which automatic enforcement is prescribed while providing no alternative fora for the plaintiff’s original action, the Bustamante Code unduly favors the defendant. In addition, a defendant may have two chances to challenge the rendering court’s competency; once in the rendering court itself, and again in the enforcing court. In the E.E.C. system all challenges must be made in the rendering court. In the American system a challenge may be made in one or the other, but not both.

99. Id.
100. See Ortiz, EL DERECHO INTERNACIONAL PRIVADO EN COSTA RICA 292 (1969). The doctrine of collateral estoppel which serves to permit relitigation of jurisdictional facts in the American system has no application in the Latin American concept of cosa juzgada.
The Bustamante Code’s scheme of competency standards then, is significantly less conducive to the expeditious enforcement of civil judgments than are the other two systems. The individual law and practices of the particular countries of Central America apparently contain nothing to make regarding competency standards enforcement more readily available than under the Bustamante Code’s scheme. The only exception might be the Nicaraguan scheme, where a special law governs enforcement of judgments of Central American states.\footnote{101} The author could find no cases that would suggest any real difference between Nicaragua’s treatment of Central American judgments and those of other Bustamante Code signatories.

D. Notice Requirements and Default Judgments

All of the systems under examination provide that before a sister state money judgment is entitled to enforcement it must appear that the defendant was adequately notified of the action against him in the rendering court and that he had an adequate opportunity to defend. However, the defendant’s voluntary participation in the action on the merits without objecting to any defect in the notice will always foreclose this issue as a grounds for challenging the judgment in the enforcing state.\footnote{102} Thus, the notice factor is a defense to enforcement only in the case of a default judgment, or in a case where the defendant raised unsuccessfully an objection to the notice element in the rendering court.

In the United States the notice requirement is combined with the requirements relating to the bases of personal jurisdiction in the federal constitutional requirement of due process. Each state prescribes its own procedures for notification of the defendant, but the procedures must conform to a federal standard. The prescribed procedure must provide reasonable assurance that the defendant will receive actual notice in time to adequately prepare a defense. Actual notice, however, is neither necessary nor sufficient to satisfy the constitutional requirement. At one time service by publication or posting notice was considered adequate for some kinds of cases—even some in personam actions. Today such notice will not

\footnote{101. This law appears as Articles 9-20, Code of Civil Procedure of Nicaragua. It originated in an instrument called the Central American Procedure Convention of 1892.}

\footnote{102. Under the European Convention the right to resist enforcement on grounds of lack of notice is extended only to a “defaulting defendant.” Convention, supra note 44 art. 27 [2]; Bustamante Code, art. 423 [2].}
suffice for defendants whose identity and whereabouts are known. Notice by mail sent to the defendant's last known address is probably adequate in most cases.\textsuperscript{103}

In the United States the defense of lack of notice can only be raised to resist judgment enforcement in the case of a default judgment in which the defendant made no appearance whatsoever in the rendering court. A defendant who made a special appearance in the rendering court and unsuccessfully challenged the sufficiency of the notice or service cannot again assert the same challenge in a later enforcement action. A defendant's only recourse against an unfavorable ruling in that case is to appeal the resulting judgment in the rendering court, with possible ultimate review in the Supreme Court of the United States.\textsuperscript{104}

A defendant who made no appearance at all in the rendering court and suffered a default judgment can challenge the jurisdictional adequacy of the notice later in an enforcement action. Defendants can challenge the adequacy of the process by which they were served both under the law of rendering state itself and under federal constitutional standards. Even if the judgment formally recites that proper service and notice were effected the enforcing court can make its own determination of the facts based on an evidentiary hearing and, if it finds that the facts do not show that the prescribed procedure was followed, or, if it was, that the procedure did not comport with due process standards, enforcement may be denied. The plaintiff seeking enforcement can appeal the denial of enforcement with possible ultimate review in the Supreme Court of the United States.

The E.E.C. Convention contains two separate provisions recognizing the importance of adequate notice to the defendant in the rendering court. If a defendant domiciled in a state other than the one in which the action is brought, makes no appearance in the action, the judge of the rendering court is required to stay the rendition of judgment until the plaintiff adequately establishes that the "defendant has been able to receive the document instituting the proceedings or an equivalent document in time to enable him to arrange for his defense, or that all necessary steps have been

\textsuperscript{104} Cf. Baldwin v. Iowa State Travelling Men's Ass'n., 283 U.S. 522 (1931), where the jurisdictional defect concerned the basis element rather than the form and adequacy of notice. The same principle applies in both situations, however.
taken to this end."\textsuperscript{105} This means that the defaulting defendant must have been served personally or served at his domicile with sufficient time to defend.\textsuperscript{106} It is not necessary to show that defendant actually received the notice; it is enough to show that the plaintiff took all the steps required by the law of the rendering state (or the appropriate convention of service outside the state is required by "good conscience and good faith").\textsuperscript{107}

The E.E.C. convention's treatment of the question of competency and that of notice in a default case are similar. The rendering court must make a finding on the question even if the defendant makes no objection. However, the convention also permits the enforcing court to consider the notice factor in a default case—even when the defendant was not domiciled outside the rendering state.\textsuperscript{108}

The question arises whether this permits the enforcing court to make an independent determination of the adequacy of notice, even after the rendering court has passed on the question. Nothing in the text of the convention precludes such an interpretation. However, the Jenard Report indicates that a second, independent review by the enforcing court of the fact and timing of notice is not contemplated.\textsuperscript{109} A determination by the rendering court that notice was adequately and timely served, then precludes consideration of the same question by the enforcing court, even if the defendant did not object in the rendering court. Thus, the convention seeks to protect the defendant's right to notice and an opportunity to defend, but does not go so far as the American scheme in granting the defendant a right to actively litigate that issue. If the defendant did get notice of the action, and had an objection to the form or timing of it, the interests of effective judicial administration reasonably require that the objection be made in the rendering court before judgment—while the proceeding is stayed for that very purpose. While the E.E.C. Convention does not guarantee the defendant a day in court on the issue of adequacy of notice in all cases, it protects a defendant's legitimate interests while serving the interests of interstate enforceability of judgments even better.

\textsuperscript{105} Convention, Article 20.
\textsuperscript{106} Jenard Report, supra note 4, at 68-69. What is a sufficient time to defend is not defined in the convention itself, and so it is a factor on which judges may differ.
\textsuperscript{107} Id. at 69.
\textsuperscript{108} Convention, supra note 44, art. 27 [2].
\textsuperscript{109} Jenard Report, supra note 4, at 76-77.
than does the American scheme in this respect. It eliminates the possibility of collateral attack in the enforcing court in many kinds of cases where the American scheme would permit it.

The Bustamante Code, too, establishes as a condition of enforcement the requirement that the defendant must have been officially served, either personally or by representative.110 Presumably this requirement is not available as a defense to enforcement when the defendant participated on the merits without objection in the rendering court.111 The code apparently permits the enforcing court to consider the propriety of service even when the question was raised and decided in the rendering court. Even if the code did not authorize such review of the service by the enforcement court, due service and notice are generally regarded as matters of "public order" in Central American countries, and enforcement may be denied on that alternative ground.

The Central American regime appears to be at least as zealous about protecting the defendant’s right to adequate notice in the original action as the American and E.E.C. systems. However, it appears less concerned with promoting certainty and expeditiousness in judgment enforcement in that it does not provide limits on the defendant’s right to challenge the sufficiency of the notice in the enforcement action. In view of this defect, a better balance of the relevant interests seems desirable.

E. Finality Factors

Each of the three systems under examination extends enforceability to final money judgments that could be executed in the rendering state if the defendant had any property there. There are, however, some interesting differences among the three systems in the kinds of judgments that are enforceable, other than, final judgments for a fixed sum of money.

In the United States enforceability extends to "final" judgments. A judgment is not final until the trial judge has performed every judicial act necessary to entitle the judgment to be given effect in the rendering state. When it becomes "final" in the rendering state, it is subject to enforcement in a sister state, even if the judgment can still be appealed in the rendering state.112 Enforce-

110. Bustamante Code, art. 423 [2].
111. Cf. note 103 supra.
112. See Uniform Enforcement of Foreign Judgments Act § 6.
ment is normally stayed, however, if an appeal is taken.

The American principle of "finality" causes problems in application to judgments calling for future installment payments. Such judgments are common in the areas of domestic relations—alimony and support decrees—and, in some states, worker's compensation. Although the trial judge may have done all that is required to make the installments collectible by execution as they fall due, the passage of time is still a condition precedent to enforceability. Future installments are not "final" till the time for payment of each sum falls due.\(^\text{113}\)

In the European Common Market Convention, a judgment becomes enforceable in another state as soon as it becomes enforceable in the rendering state,\(^\text{114}\) but it will not be so enforceable so long as appeal is possible in the rendering state.\(^\text{115}\) In the E.E.C. Convention most installment payment judgments which cause "finality" problems in the American system, are simply excluded. Article 1 of that convention specifically excludes its application to revenue, customs and administrative matters as well as to matters of status and marriage regimes, and to social security matters (which include cases comparable to worker's compensation).\(^\text{116}\) The main reason for exclusion is the recognition that in such matters the public policies of the individual states assume greater importance than in the case of ordinary civil and commercial judgments, and the assumption was that no single scheme could be adopted that would command uniform respect throughout the region.\(^\text{117}\) Thus, these matters are left up to individual state law, or to separate treaty.

The Bustamante Code recognizes as enforceable only judgments that are "executory" in the rendering state.\(^\text{118}\) Basically, this provision is like the E.E.C. Convention's requirement of enforceability. In the Bustamante Code, no express exclusion is made relating to enforcement of installment payment judgments. However, each state is granted the right to recognize or not divorces granted

\(^{113}\) See Barber v. Barber, 323 U.S. 77 (1944); Sistare v. Sistare, 218 U.S. 1 (1910). Some states, although not required to do so, recognize the judgments for future installments. See, e.g., Worthley v. Worthley, 44 Cal. 2d 465, 283 P.2d 19 (1955); Light v. Light, 12 Ill. 2d 502, 147 N.E.2d 34 (1957); Uniform Laws Annotated § (c).

\(^{114}\) Convention, supra note 44, art. 31.

\(^{115}\) See Jenard Report, supra note 4, at 82.

\(^{116}\) See Jenard Report, supra note 4, at 23.

\(^{117}\) Id. at 19.

\(^{118}\) Bustamante Code, art. 423 [4].
abroad with effects not admitted by the personal law of the parties. 119 This, coupled with the general public policy exception, impedes enforcement of alimony and support decrees that do not conform to local law. Where public policy is not at stake, presumably installment judgments can be enforced, at least for accrued arrearages.

One other aspect of the "finality" requirement in American law merits special attention. The "finality" requirement means there is no constitutional obligation upon one state to effectuate a summons, subpoena, attachment, or other interlocutory order issued by a court in another state. States will often agree to serve summonses or even subpoenas issued by courts in other states—but the practice is not uniform. Curiously, for reasons probably attributable to our use of attachment and quasi in rem jurisdiction as a procedural substitute for personal jurisdiction over the defendant, American states have not developed a practice of honoring attachment, garnishment or sequestration orders issued by out-of-state courts. 120

The E.E.C. Convention 121 and the Bustamante Code 122 both recognize the interstate enforceability of attachment orders, although enforcement may be denied on public policy grounds in some Central American states.

F. Reciprocity

A common feature of judgment enforcement regimes of many individual countries is the limitation of enforcement to judgments of those countries which will grant reciprocal treatment to the judgments issued by the courts of the enforcing state. This requirement is completely eliminated, however, with respect to the judgments of sister states within the United States and the European Common Market. All states are similarly bound by the same basic rules, and thus there is no room within those systems for differences that might lead to a reciprocity requirement.

The fact that all the Central American countries are signatories of the Bustamante Code also would seem to eliminate reci-

119. Id. art. 53.
121. See Convention, supra note 44, art. 24.
122. Bustamante Code, arts. 388-393.
proximity as a factor to be considered in the enforcement proceeding among those states even when the enforcement state's own law insists upon reciprocity as a condition of enforcement of foreign judgments generally. However, the fact that some of the countries accepted the Bustamante Code only with reservations and the fact that the Code leaves several important matters to be determined by local law means that the Code does not operate in the same way in all countries, and so reciprocity is not ensured by the Code. The lack of reciprocity is a defense to enforcement of a sister state's judgment in at least one Central American country.\(^{123}\) While reciprocity has not been viewed by the other Central American countries as a condition to the enforcement of judgments emanating from Bustamante Code countries, the possibility of its invocation does exist. The reciprocity factor is a potential obstacle to the realization of a judgment enforcement system in Central America as effective as those of the United States and the European Community.

G. Public Policy

Nearly all judgment enforcement schemes recognize an exception to the obligation of enforcement when the effect would be contrary to some strongly held policy principles of the enforcement state. Since "public policy" in this context is rarely defined, this exception introduces a potential source of uncertainty into the judgment recognition regime.\(^{124}\) The degree to which the association interests and other interests that would be served by expeditious enforcement must yield to local interests of the enforcing state though this exception depends upon how broadly or narrowly the enforcing state construes its public policy. If the public policy exception is broad enough to apply in any case in which the legal principles of the rendering court differ from those that would have been applied if the action had originally been brought in the enforcing court, there will be very few instances of interstate judgment enforcement unless the states have virtually identical bodies of substantive law. The problem of placing limits on the public policy exception so that it does not virtually destroy the recogni-

\(^{123}\) Honduras, for example. This point rests upon the author's examination of several Pareatis decisions of the Supreme Court of Honduras. (Pareatis is the term used in El Salvador and Honduras instead of exequeratur). See Pareatis decisions of Dec. 29, 1960; Aug. 7, 1953, Nov. 18, 1941, and July 3, 1942.

\(^{124}\) See von Mehren & Trautman, supra note 22, at 1670.
tion and enforcement scheme has been troublesome to all regional systems.

The solution to the problem in the United States is simply to eliminate local public policy as a defense to enforcement of a sister state judgment. Federal constitutional law overrides local law and policy, and the federal policy of ready and expeditious judgment enforcement is given precedence over any local substantive policy concerns. If the conditions were present for the exercise of jurisdiction by the rendering court then the question of what state's policy should supply the substantive principles ought to be raised and altered there. Whether or not the issue is actually raised, however, once a judgment has been rendered, that question is foreclosed from collateral review.

This solution to the public policy problem, however, gives rise to problems of its own. Since American federal law leaves the matter of choice of law up to individual states, with very little federal constitutional restraint, there may be no corrective if the rendering court should apply rules of decision that thwart important sister state policy interests, which in a totally rational system should be honored. This might lead one to believe that this feature of the American system attributes excessive weight to ready interstate enforcement at the expense of local substantive policy interests of a state other than the rendering state. However, in a federal system where state laws and policies are so similar as in the United States, local policy concerns probably should be given considerably less weight than would be true in the case of a less thoroughly integrated group of states.

A "public policy" exception is expressly recognized in the E.E.C. scheme, although the committee that drafted the convention suggested that the exception could properly be invoked only in extraordinary cases. For one thing, the convention expressly excludes from its coverage certain kinds of cases that are likely to provoke the enforcing court to apply the public policy exception, e.g., family law cases, social security, etc. Their exclusion in effect recognizes a region-wide principle that in such cases local interests are more important than the basic association interest in interstate judgment enforcement. One state can refuse to enforce another's judgment in one of the excluded types of cases without invoking

126. Convention, supra note 44, art. 27 [1].
127. See Jenard Report supra note 4, at 75.
the general public policy exception. In addition, the convention contains provisions that prevent the use of the public exception as a device to permit the enforcing state to review the jurisdiction and choice of law rules applied by the rendering court. Jurisdictional rules are not proper subjects of the public policy exception, no matter how “exorbitant” they may be.\textsuperscript{128} By expressly making the rendering court’s choice of law subject to review in the enforcing court in certain kinds of cases, Article 27(4) impliedly establishes that choice of law rules are not subject to review in other kinds of cases and accordingly, that such rules are not proper subjects of the public policy exception. The mere fact that the substantive principles underlying the judgment are different than those the enforcing state would apply does not trigger the exception. The convention’s drafting committee expressed the view that it is not the foreign judgment itself that is to be examined in the light of local public policy, but the recognition of it.\textsuperscript{129} The E.E.C. regime also contains a check against a misinterpretation by a local court of the permissible scope of the public policy exception. The General Treaty of the E.E.C. provides for an authoritative interpretation by the European Court of Justice, binding all participant states.\textsuperscript{130} Such judicial review is not compulsory, as is the United States Supreme Court’s jurisdiction to interpret our constitutional scheme, but it does serve as a potential check on the public policy exception recognized by the E.E.C. Convention.

The public policy exception in the Central American system is free to operate virtually without restraint. Technically it is not an exception but a condition of enforceability. The Bustamante Code prescribes, as a condition to enforcement of a foreign judgment “that the judgment does not conflict with the public policy or the public laws of the country in which execution is sought. . . .”\textsuperscript{131} The term “public laws” should be read as “public law,” a term that generally refers to laws regulating relations between persons and the state. Thus, the enforcing state’s “public law” can always prevent the enforcement of a sister state judgment.

The term “public policy” presumably refers to something different. It is generally understood to refer to that body of laws and precepts of the enforcing state that would be characterized as laws

\textsuperscript{128} Convention, \textit{supra} note 44, art. 28.
\textsuperscript{129} Jenard Report \textit{supra} note 4, at 76.
\textsuperscript{130} E.E.C. Treaty, art. 177.
\textsuperscript{131} Bustamante Code, art. 423 [a].
of “international public order” in Bustamante’s terminology.\textsuperscript{132} This concept is so vague and confusing as to make it nearly meaningless as a prescriptive term.\textsuperscript{133} Only rules that are considered very important to the society of the enforcing state deserve such characterization, but, there is no standard by which to gauge “importance”. Family law rules relating to basic procedural fairness, and all constitutional precepts are common examples of matters of “public policy”.\textsuperscript{134} As in the E.E.C. regime, it is not necessary to invoke the public policy exception to avoid enforcing judgments involving certain family law matters that conflict with local policies of the enforcing state.\textsuperscript{135} Local policy of the enforcing state is expressly given precedence over the association interest in recognition and enforcement in these cases. Nevertheless, the Central American states refusing recognition and enforcement to such judgments usually do so on grounds of “public policy,” adding unnecessarily to the freight that concept has to carry.

The absence of any clear concept of public policy and the absence of any unifying tribunal to supply narrowing interpretations binding all states in the association means that each state is free to determine for itself what the “public policy” exception will cover. This is a potential source of great uncertainty in the Central American judgment enforcement regime. The exception does not seem to have posed much of a threat to the enforcement of money judgments in ordinary commercial or contract cases, but in the realm of labor law, and other branches of law where the public interest is more apparent, the exception is an inhibition to ready enforceability. In one Guatemalan case the public policy exception was invoked to prevent the recognition and enforcement in Guatemala of a provisional attachment issued in a tort action by a Costa Rican court against property in Guatemala of a Guatemalan corporation. The Bustamante Code prescribes enforcement of such provisional attachments, but the Guatemalan appellate court ruled that to

\begin{itemize}
\item \textsuperscript{132} Article 3 of the Bustamante Code declares that laws are divided into three classes: “1) Laws of an internal public order, or personal laws; 2) Laws of an international public order, or territorial (or “local”) laws; and 3) Laws of a private order, or voluntary laws.”
\item \textsuperscript{133} For a discussion of the difficulty of ascertaining the meaning of those classifications, see Lorenzen, supra note 13, at 499.
\item \textsuperscript{134} See Bustamante Code, art. 4.
\item \textsuperscript{135} The Code, for example, allows each state “to permit or recognize, or not, the divorce of new marriage of persons divorced abroad, in cases, with effects or for causes which are not admitted by their personal law.” Id. art. 53.
\end{itemize}
give it effect in Guatemala would violate public policy.\textsuperscript{136} The case illustrates the potential of the public policy doctrine for introducing further uncertainty into the Central American judgment enforcement regime in an area specifically covered by the Code.

One might think that an association of states with as much in common as those of the Central American isthmus—whose laws, policies, official language and basic social institutions are more similar to each other’s than are those of the states of the E.E.C., and who officially declare themselves to be separate elements of a single nation\textsuperscript{137}—could go further in subordinating local policy interests to the association interests in free mobility of judgments than could the nations of the European Community. At present, however, the Central American regime permits the enforcing state to construe its public policy as broadly as it sees fit, with no effective check. This is a serious obstacle to an optimally effective judgment recognition scheme.

H. Res Judicata—\textit{Cosa Juzgada}

Our comparisons herein have dealt with issues related to the enforcement of simple civil money judgments. Such judgments may have other extraterritorial consequences besides enforceability which must be considered in any comparative examination of the three systems. These other extraterritorial consequences are the res judicata (or \textit{cosa juzgada}) effects of the judgments. According to the common law doctrine of res judicata as followed generally in the United States, a judgment can affect future litigation between the same parties in two different ways. It may preclude a later suit on the same claim, and it may preclude relitigation of the same issues. The Full Faith and Credit Clause of the federal constitution gives these preclusive effects nationwide operation. If a judgment of State A will preclude a later suit on the same claim in State A it will also preclude a later suit on the same claim as State B. If an adjudication in State A has conclusively established certain ultimate facts as between two parties, that same conclusive effect must be recognized in a suit between those parties in State B.\textsuperscript{138}

\begin{itemize}
\item \textsuperscript{136} Jose Antonio Copa Lopez v. Juez Quinto de Primera Instancia de lo Civil, Expediente \#719, Sala Primera, Corte de Apelaciones (1969). The Supreme Court reversed the ruling on other grounds but did not overrule the public policy conclusion.
\item \textsuperscript{137} See note 7 supra.
\item \textsuperscript{138} The recent decision in \textit{Thomas v. Washington Gas Light Co.}, U.S., 100 S. Ct. 2647 (1980) raises some question about the application of this principle in the context of workers'
\end{itemize}
Nationwide operation of res judicata conserves the judicial resources of the nation. The losing party’s interests are protected by limiting the operation of res judicata to judgments that are jurisdictionally valid and final. Jurisdictional safeguards protect against a grossly unfair forum choice and unfair procedure; the finality requirement insures that conclusive effect will not be given to a ruling that could still be changed by the original court. Furthermore, claim preclusion will not result unless the judgment was “on the merits”. Issue preclusion effect will not be given except to issues that were actually contested and decided and which were necessary to the judgment rendered. Some other limitations may also be imposed to assure that a proper balance is struck between goals of the doctrine of res judicata and the protection of the losing party’s interests.

Res judicata operates without formal procedure. No separate judgment of the enforcing state, such as is usually required for enforcement, is necessary to entitle a sister state judgment to recognition for its res judicata effect. The judgment need only be presented in duly authenticated form to the trial court in the pending action in the recognizing state. The United States system, then, ascribes to sister state judgments conclusive effects as broad as those a judgment would have in the rendering state, and it dispenses with all formalities for the recognition of those effects, except rudimentary requirements of proof.

The system of the E.E.C. Convention is similar to that of the United States in eliminating the need for special formalities (other than proof of judgment) when recognition, as opposed to enforcement, is sought for a sister state judgment.\(^{139}\) It is similar, too, in

\(^{139}\) Convention, supra note 44, art. 26. If, however, recognition is sought, not as incidental to an action commenced for an independent purpose, but as an end in itself, the formalities prescribed for enforcement must be followed. Jenard Report, supra note 4, at 74.
that the judgment entitled to recognition is to be accorded the
same conclusive effect in the recognizing state as it has in the ren-
dering state. Its operation is different from that of the United
States system, however, in that European law simply does not at-
tribute such extensive effects to judgments as does the common
law of the United States. Claim preclusion operates in a much
narrower scope than in the latter system. It prevents the later ac-
tion only when the same "object" and "cause" as were presented in
the first action are involved in the second. Normally the combina-
tion of these elements will be present in fewer cases than those
which would involve the "same claim or cause of action" as un-
derstood in American law. Moreover, issue preclusion is not rec-
nized at all. Judgments may be used as evidence on issues, but are
not conclusively dispositive, as is the case in the United States.
Although the scope of res judicata is thus limited, the E.E.C. Con-
vention serves to project throughout the whole community such
conclusive effect as the judgment has in the state of rendition, and
that effect can be realized without any special proceedings.

The scheme of the E.E.C. Convention, unlike that of the
United States, does not permit the conclusive effect of a sister
state judgment to be avoided by a collateral attack on the judg-
ment for want of jurisdiction (competence). Like the United States
scheme, however, it sometimes permits a challenge in the recogniz-
ing state to the adequacy of the service and notice given to the
defendant in the original action. Unlike the system of the United
States, the conclusive effect of a sister state judgment can also be
challenged on grounds of the public policy of the recognizing state,
although, as noted above, the "public policy" objection does not
have such a wide scope in the E.E.C. scheme as it does in the pri-
ivate international law doctrines of most individual countries. Also
unlike the American practice, recognition need not be accorded to
a judgment of a sister state if there has been an incompatible judg-
ment between the same parties in the recognizing state. This point
will be examined in the next section.

All in all, the interstate res judicata effects of judgments
among the nations of the E.E.C. are of lesser scope than is true

141. See Herzog, Civil Procedure in France, 554-55 (1967); Cappelletti & Perillo,
Civil Procedure in Italy, 253-54 (1965); von Mehren & Trautman, supra note 22, at 1674-
75.
142. See Convention, supra note 44, art. 27[2]; Jenard Report, supra note 4, at 76-77.
among states of the United States.

Latin American law is basically the same as that of France and Italy on the question of the scope and effects of res judicata (cosa juzgada).\textsuperscript{143} The effects are much more limited than is true in the American scheme. The Bustamante Code's treatment of recognition of judgments for purposes of res judicata is confusing at best. Two separate provisions of the code refer to the problem, and they do not fit neatly together. Article 431 declares as follows:

Final judgments rendered by a contracting State which by reason of their pronouncements are not to be executed shall have in the other States the effects of res judicata if they fulfill the conditions provided for that purpose by this Code, except those relating to their execution.

Article 396 provides:

The plea of res judicata founded on a judgment of another contracting party shall lie only when the judgment has been rendered in the presence of the parties or their legal representatives, and no question founded on the provisions of this Code has arisen as to the competence of the foreign court.

By authorizing recognition for judgments incapable of execution does Article 431 mean that executable judgments for which enforcement has not been sought are not to be recognized for their res judicata effects at all? If so, then a plaintiff who has once obtained a money judgment in a sister state cannot be prevented from suing again on the original claim rather than seeking enforcement in another state. The defendant would not be able to raise the defense of res judicata against such an action, because the earlier judgment would be executable. The plaintiff would have an option to sue on the original claim or to enforce the judgment in another state. This would constitute a significant difference between the regime of the Bustamante Code and those of the E.E.C. and the United States. Latin American practice, however, has not followed this reading.

Perhaps Article 431 should be read to mean that executable judgments are entitled to recognition, but that in the case of executable (as opposed to non-executable) judgments all the conditions, including those for execution, must be satisfied. This, however, would be an anomalous requirement to impose upon a

\textsuperscript{143} See 1 M. Aguirre, Derecho Procesal Civil de Guatemala, 789-822 (1973).
defendant who sought recognition for the foreign judgment to prevent a suit by the plaintiff on the original claim. Probably the most sensible reading of Article 431 is to simply ignore the reference to non-executable judgments as ill-considered surplusage.\textsuperscript{144}

Another problem is whether an order of \textit{exequatur} must be obtained before a judgment can be recognized for its res judicata effects in those countries that require \textit{exequatur} in connection with enforcement. In Central America (and elsewhere in Latin America) some of the states have taken the position that \textit{exequatur} is required even when only recognition of the sister state judgment is concerned.\textsuperscript{145} Others have ruled that \textit{exequatur} is necessary only when enforcement is sought.\textsuperscript{146} Thus, in some countries of Central America a formal decree of the highest court in the land is necessary before a sister state judgment will be entitled to recognition for even the limited effects that Latin American \textit{cosa juzgada} doctrine covers. This may be understandable in the case of recognition of divorce or other status decrees, but otherwise it is difficult to see any rational justification for this serious impairment of the association interest in the free mobility of judgments. Is any local interest of the recognizing state or any individual interest of any party protected by the \textit{exequatur} requirement that is not otherwise adequately served? None is apparent.

Apart from the inhibiting effect of the \textit{exequatur} requirement, which is limited to only some of the countries, the Central American scheme contains some other impediments to ready recognition that make recognition of sister state judgments less likely there than under the American and E.E.C. regimes. All of the defenses that can be asserted to resist enforcement of a sister state judgment (except, perhaps, lack of executoriness) can be raised against recognition; lack of competence, inadequate notice, public policy, etc. This means basically that both the defenses that would be allowed in the United States and those that would be allowed in the European Community can be asserted in Central America. More-

\textsuperscript{144} Even such a reading leaves problems unsolved. It is unclear whether the Article 431 conditions, which must be met for \textit{res judicata}, refer to those prescribed in Article 396 or those prescribed in Article 423 of the Code, or both. Most jurists have assumed that conditions of Articles 396 and 423 must be met. Bustamante Code, arts. 396, 423, 431.


over, the “public policy” defense is broader than under the European scheme.\footnote{147} In addition, the Bustamante Code seems to impose a stricter standard for recognition than for enforcement in its provision that “no question” must have arisen as to the competence of the rendering court.\footnote{148} This would seem to bar recognition if a substantial question of competence was \textit{raised}—whether or not it was resolved—in either the rendering or recognizing court. Odd though it may seem, this probably is what Bustamante himself intended.\footnote{149}

The extent to which the res judicata effect of judgment can operate throughout the region is far less in Central America than among the states of either the United States or of the European Community. Yet, it would seem that judgment recognition should be at least as broadly effective among the Central American states as among the European, if not so broadly as in the United States.

\section{I. Inconsistent Judgments and Pending Actions}

Two common problems concerning recognition and enforcement of foreign judgments are 1) what significance should be placed on the fact that an independent action on the claim embodied in the judgment is pending at the time recognition or enforcement is sought; and 2) what significance should be placed on the fact that another judgment already exists inconsistent with the one for which recognition or enforcement is sought. The two problems are discussed together here because of the common concern, underlying both, with the need to avoid conflicting judicial commands.\footnote{150}

\footnote{147. If the official English translation of Article 396 is taken at face value even compliance with all the prescribed formalities for notice to the defendant in the rendering state will not entitle the judgment to recognition if the defendant or his representative was not in fact “present.” No recognition, in other words, could be extended to default judgments, even though such judgments may be enforceable. This is probably not the meaning intended, however. The Spanish term “comparencia,” translated as “presence,” probably means instead “being made a party, by appearance or due citation.” Cf. A. Bustamante, \textit{supra} note 147, at 287.}

\footnote{148. Bustamante Code, art. 396.}

\footnote{149. In his treatise, discussing this article, Bustamante speaks, not of the lack of competence, but \textit{doubt} as to the competence of the rendering tribunal. A. Bustamante, \textit{supra} note 147, at 285.}

\footnote{150. \textit{See Id.} at 281-82. “A dual interest—that of the administration of justice and that of the parties—demands that there be but one single litigation or process for each matter. This spares the individuals trouble and useless expenditures; the public administration annoying duplications and perhaps sterile results; and the concept and application of law the}
The American system generally tolerates the simultaneous pendency of two different actions on the same basic subject in different states. Two actions pending in the same state may invoke local procedural rules for consolidation, but these rules do not operate across state lines. A court in one state may seek to enjoin the prosecution of an action in another state, but the court in the second state is not bound by the Full Faith and Credit Clause to recognize or enforce such a decree.\textsuperscript{151} There is, then, no generally effective deterrent to concurrent litigation of the same claim in more than one state, except practical considerations of cost and convenience.

Although actions can legally proceed simultaneously, when one of the claims is resolved in a judgment for or against the claimant, the obligation of full faith and credit arises and the second court must recognize the res judicata effect. Even if the action pending in the second state was commenced before the one in the sister state now concluded in judgment, the pendency of that action is not a defense to the recognition or enforcement of the sister state judgment.

Res judicata is a defense to be asserted by a party, not an issue the court will raise on its own motion.\textsuperscript{152} It sometimes happens that the existence of the judgment is not called to the attention of the court in which another action on the same claim is pending. When this occurs, a second judgment on the same claim may be rendered. This second judgment may or may not be compatible with the first. The same problem can arise if the first judgment is asserted as res judicata in the action, but the court erroneously fails to extend the recognition that full faith and credit requires. The American system treats the later one as the effective one,\textsuperscript{153} even though it was improperly rendered. The remedy against this kind of erroneous judgment is the same as for erroneous judgments generally: not collateral attack, but appellate review. Review can be sought all the way to the Supreme Court of the United States, if necessary. But unless reversed by a higher court, the second of the two inconsistent judgments is the effective one, and it now is entitled to full faith and credit, \textit{i.e.}, to recognition and enforcement.

\textsuperscript{152} See, \textit{e.g.}, Fed. R. Civ. P. 8(c).
\textsuperscript{153} See note 40 supra.
even in the state where the prior inconsistent judgment was rendered.

The treatment of these problems in the E.E.C. Convention is quite different from that in the United States. The basic solution to the problem of concurrently pending actions on the same claim is to require the court in which the later action is brought to declare itself incompetent, leaving only the first action. Temporal priority in initiating the action determines which action is to be allowed to proceed.\textsuperscript{154}

The convention even goes beyond the problem of concurrent actions on the same claim and provides also for the case when related\textsuperscript{155} actions are pending. In such a case the court in which the second action is lodged has discretion to stay its proceedings. It may even yield jurisdiction at the request of one of the parties, in order to permit consolidation of the two related actions in the state in which the first action is pending. This provision for dealing with related actions operates similarly to the doctrine of forum non conveniens in American law. The trial court may, but is not compelled to, cede jurisdiction to a court in another state where the action might be brought in the interests of convenience, economy in adjudicating the actions simultaneously, and avoidance of incompatible results.

The convention does not declare any general rule of priority where two actions do proceed to inconsistent judgments. It does, however, provide that recognition may be denied if an incompatible judgment was rendered in the very state in which recognition or enforcement is sought.\textsuperscript{156} That provision relating to judgments of the enforcement state, however, is not limited to inconsistent judgments on the same claim.\textsuperscript{157}

It makes no difference which judgment was rendered first. If the two actions were pending at first instance at the same time, the second one would have been stayed or dismissed in deference to the one commenced earlier.\textsuperscript{158} The inconsistent judgment defense, then, is available only where the actions were not pending at the same time or where, in spite of the concurrent pendency, the court in which the later one was brought failed to take the appropriate

\textsuperscript{154} Convention, supra note 44, art. 21.
\textsuperscript{155} Id. art. 22.
\textsuperscript{156} Id. art. 27 [3], [5].
\textsuperscript{157} See Jenard Report, supra note 4, at 78.
\textsuperscript{158} Convention, supra note 44, arts. 21-23.
steps.\textsuperscript{159} It will be noted that the E.E.C. Convention’s provision for dealing with inconsistent judgments, unlike the American solution, does not eliminate the inconsistency. In fact, it affirms the coexistence within the region of two incompatible judgments—each valid and invulnerable in the state of its rendition. The American solution, giving validity to the judgment last in time, probably could not be adopted by the European system. Basic to the “last in time” rule is the availability of appellate review in the Supreme Court of the United States to correct the second court’s erroneous denial of full faith and credit. The European Court of Justice does not have such general appellate review powers. The E.E.C. Convention could have taken the position that only the first of two inconsistent judgments could be recognized as valid, but this solution probably was rejected on the ground that it would simply be circumvented by the recognizing court’s invoking the “public policy” exception when an inconsistent judgment existed in the recognizing state. The draftsmen of the convention were very concerned about keeping the public policy exception in check, as discussed above. The solution adopted—permitting the inconsistent judgments—basically serves the local policy interests of the recognizing state at the expense of the association interest in uniform ready enforceability, but does so without expanding the scope of the public policy defense.

The convention provides no solution whatsoever for the case in which a judgment inconsistent with the one for which recognition is sought was rendered, not in the recognizing state, but in a third state. The solution to that problem must come from the local law of the recognizing state, and this means there may be no one solution uniform throughout the Community.

The Bustamante Code allows but does not require the court of one state to dismiss the action when another action on the same claim is pending in another state.\textsuperscript{160} Although inconsistent judgments may result, the Code contains no provision for the case of inconsistent judgments. If a judgment inconsistent with the one for which enforcement or recognition is sought has been rendered in the enforcing state itself, it is to be expected that recognition and enforcement will be denied on public policy grounds.\textsuperscript{161} If the in-

\textsuperscript{159} See Bustamante Code, arts. 21, 22, 23.
\textsuperscript{160} Bustamante Code, art. 5.
\textsuperscript{161} See Antillon, supra note 61.
consistent judgment is that of a third state, however, no single solution is apparent. The local law of the enforcing state will have to supply the solution, and this, of course, weakens the effectiveness of the Code to provide a uniform region-wide judgment enforcement scheme.

J. Comparative Evaluation

This comparison of the three systems shows that in every respect the Central American does not go as far as the others toward providing expeditious regional recognition and enforcement of sister state judgments. Although the Bustamante Code applies in theory to more kinds of judicial orders than do the other two, this advantage is offset by its limitations. The enforcement procedure in most of the Central American countries is more cumbersome, the grounds for refusing recognition more numerous, and the conditions upon which recognition can be denied are subject to more uncertainty and variation than is true in the American and E.E.C. systems. The international competency standards of the Bustamante Code are really not uniform, since the Code defers to local rules where they conflict with those of the Code in most ordinary cases. Even in matters where the Code does not defer to local rules, individual states can reserve the right to apply their own law, thus preventing the realization of a uniform regionwide system. The discredited reciprocity requirement does have some force even in connection with sister-state judgments. The public policy exception is free to operate without any effective limitation. The rules relating to recognition of judgments for their res judicata effects are confusing and ambiguous. There is not even agreement among the countries as to whether exequatur is required in connection with mere recognition. There is no provision in the Bustamante Code for the problem of inconsistent judgments.

In contrast to Central America, the European Economic Community realized a need “by judicial means to ensure the recognition and enforcement of the individual rights which will arise from multiple legal relationships.”162 Adoption of the Convention on Jurisdiction and Enforcement of Civil and Commercial Matters is a clear attempt to achieve uniformity.163 While conditions for non-recognition are more numerous in the European system than under

162. See Jenard, supra note 4.
163. Id.
the full faith and credit regime of the United States, still the bases of non-enforcement are uniformly set out in the Convention.\textsuperscript{164}

The weight given to local public policy is a major point of distinction between the United States system, the E.E.C. system, and the Central American system. In the United States system, the association interest in interstate judgment recognition prevails over substantive policy interests of the recognizing state. The E.E.C. and the United States attempt to strike a balance between the interests of the association favoring enforcement, the interests of the individual parties favoring predictability, and the interests of the enforcing state favoring preference for local policy and notions of sovereignty. The Central American system permits much greater weight to be given to local public policy of the enforcing state subordinating to that extent the interests of the parties and the association interests.

The doctrine of \textit{res judicata}, pervasive in the American system, is applied more narrowly in the European system. Nonetheless, the latter does project throughout the association states the same \textit{res judicata} effect a judgment would be given in the rendering state itself. No special proceedings are necessary to realize this effect.\textsuperscript{165} The Bustamante Code, on the other hand, deals cryptically with recognition as opposed to enforcement. Practice in the signatory states regarding the matter is inconsistent and unclear, a substantial hindrance to certainty and uniformity of civil judgment recognition.

In May 1979, a new convention on judgment recognition was approved by the Second Inter-American Specialized Conference on Private International Law (CIDIP-II) of the Organization of American States.\textsuperscript{166} It is open for signature and ratification by member states, and accession by other states. In its final form the convention is significantly different from two earlier draft proposals made in 1973\textsuperscript{167} and 1977.\textsuperscript{168} The 1973 draft had consciously tried to draw beneficial ideas from the E.E.C. Convention and other multi-

\textsuperscript{164} Convention, supra note 44, art. 27.
\textsuperscript{165} Id. art. 26.
\textsuperscript{166} OEA/Ser. C/V1.212.
\textsuperscript{167} Organization of American States, Inter-American Juridical Committee, Work Accomplished by the Inter-American Judicial Committee During Its Regular Meeting Held from July 26 to August 27, 1975, at 99, (CJI-17)(OEA/Ser. QIV.7).
\textsuperscript{168} Organization of American States, Inter-American Juridical Committee, Work Accomplished by the Inter-American Judicial Committee During Its Regular Meeting Held from January 10 to February 18, 1977, (CJI-31) (OEA/Ser. Q/IV.14).
state conventions. It contained two very important provisions that offered significant promise for a better judgment recognition regime for Latin America. It prescribed international competency standards, and it called for the elimination of an *exequatur* proceeding for the recognition, as contrasted with the execution, of foreign judgments.

The 1977 draft astonishingly repudiated these features, and proposed a convention even less satisfactory than the Bustamante Code it would replace.

The 1979 convention corrected some of the weaknesses of the 1977 version, but the resulting product is a scant improvement over the Bustamante Code.\textsuperscript{169}

A thorough analysis of the new convention must await the publication of the background documents, but it seems clear that it will be no more effective a vehicle for an intra-associational judgment recognition scheme for Central America than the present regime. When stability returns to the area, one thing the statesmen might do to promote more effective integration would be to draw up a new Central American treaty on judgment recognition, and implement the Central American Court of Justice.

\textsuperscript{169} As of September 14, 1979 the new convention had been signed by the following countries: Brazil (with reservation), Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, Guatemala, Haiti, Honduras, Panama, Paraguay, Peru, Uruguay and Venezuela.
APPENDIX

Code of Private International Law (Bustamante Code), Annexed to the Convention adopted at Habana, February 20, 1928. (Abridged)

Art. 3. For the exercise of civil rights and the enjoyment of identical individual guarantees, the laws and regulations in force in each contracting State are deemed to be divided into the three following classes:

I. Those applying to persons by reason of their domicile or their nationality and following them even when they go to another country, termed personal or of an internal public order.

II. Those binding alike upon all persons residing in the territory, whether or not they are nationals, termed territorial, local or of an international public order.

III. Those applying only through the expression, interpretation, or presumption of the will of the parties or of one of them, termed voluntary or of a private order.

Art. 4. Constitutional precepts are of an international public order.

Art. 5. All rules of individual and collective protection, established by political and administrative law, are also of an international public order, except in case of express provisions therein enacted to the contrary.

Art. 6. In all cases not provided for in this Code each one of the contracting States shall apply its own definition to the juridical institutions or relationships corresponding to the groups of laws mentioned in article 3.

Art. 7. Each contracting State shall apply as personal law that of the domicile or that of the nationality or that which its domestic legislation may have prescribed, or may hereafter prescribe.

Art. 8. The rights acquired under the rules of this Code shall have full extraterritorial force in the contracting States, except when any of their effects or consequences is in conflict with a rule of an international public order.

Art. 53. Each contracting State has the right to permit or recognize, or not, the divorce or new marriage of persons divorced abroad, in cases, with effects or for causes which are not admitted by their personal law.

Art. 314. The law of each contracting State determines the competence of courts, as well as their organization, the forms of
procedure and of execution of judgments, and the appeals from their decisions.

Art. 315. No contracting State shall organize or maintain in its territory special tribunals for members of the other contracting States.

Art. 316. Competence ratione loci is subordinated, in the order of international relations, to the law of the contracting State which establishes it.

Art. 317. Competence ratione materiae and ratione personae, in the order of international relations should not be based by the contracting States on the status as nationals or foreigners of the interested parties, to the prejudice of the latter.

Art. 318. The judge competent in the first place to take cognizance of suits arising from the exercise of civil and commercial actions of all kinds shall be the one to whom the litigants expressly or impliedly submit themselves, provided that one of them at least is a national of the contracting State to which the judge belongs or has his domicile therein, and in the absence of local laws to the contrary.

The submission in real or mixed actions involving real property shall not be possible if the law where the property is situated forbids it.

Art. 319. The submission can be made only to a judge having ordinary jurisdiction to take cognizance of a similar class of cases in the same degree.

Art. 320. In no case shall the parties be able to submit themselves expressly or impliedly for relief to any judge or court other than that to whom is subordinated according to local laws the one who took cognizance of the suit in the first instance.

Art. 321. By express submission shall be understood the submission made by the interested parties in clearly and conclusively renouncing their own court and unmistakably designating the judge to whom they submit themselves.

Art. 322. Implied submission shall be understood to have been made by the plaintiff from the fact of applying to the judge in filing the complaint, and by the defendant from the fact of his having, after entering his appearance in the suit, filed any plea unless it is for the purpose of denying jurisdiction. No submission can be implied when the suit is proceeded with as in default.

Art. 323. Outside the cases of express or implied submissions, without prejudice to local laws to the contrary, the judge compe-
tent for hearing personal causes shall be the one of the place where
the obligation is to be performed, and in the absence thereof the
one of the domicile or nationality of the defendants and subsidiar-
ily that of their residence.

Art. 324. For the exercise of real actions in respect to personal
property, the judge of the place where the property is situated
shall be competent, and if it is not known by the plaintiff, then the
judge of the domicile, and in the absence thereof, the one of the
residence of the defendant.

Art. 325. For the exercise of real actions in respect to real
property, and for that of mixed actions to determine boundary and
partition of common property, the competent judge shall be the
one where the property is situated.

Art. 326. If in the cases to which the two preceding articles
refer there is any property situated in more than one of the con-
tracting States, recourse may be had to the judges of any of them,
unless prohibited, as to immovables, by the law of their situation.

Art. 327. In cases relating to the probate of wills or to intesta-
tate estates, the competent court will be that of the place in which
the deceased had his last domicile.

Art. 328. In insolvency and bankruptcy proceedings, when the
debtor has acted voluntarily, the judge of the domicile of the latter
shall be the one competent.

Art. 329. In insolvency or bankruptcy proceedings brought by
the creditors the competent judge shall be the one of any of the
places who has cognizance of the claim which gives rise to them,
preference being given, if among them, to that of the domicile of
the debtor if he or the majority of the creditors demand it.

Art. 330. In respect to acts of voluntary jurisdiction, saving
also the case of submission without prejudice to local laws to the
contrary, the competent judge shall be the one of the place where
the person instituting it has or has had his domicile, or if none, his
residence.

Art. 331. Respecting acts of voluntary jurisdiction in commer-
cial matters, apart from the case of submission, without prejudice
to local laws to the contrary, the competent judge shall be the one
of the place where the obligation should be performed or, in the
absence thereof, the one of the place where the event giving rise to
them occurred.

Art. 332. Within each contracting State, the preferable com-
petence of several judges shall be in conformity with their national
law.

Art. 333. The judges and courts of each contracting State shall be incompetent to take cognizance of civil or commercial cases to which the other contracting States or their heads are defendant parties, if the action is a personal one, except in case of express submission or of counterclaims.

Art. 334. In the same case and with the same exception, they shall be incompetent when real actions are exercised, if the contracting State or its head has acted on the case as such and in its public character, when the provisions of the last paragraph of Article 318 shall be applied.

Art. 335. If the foreign contracting State or its head has acted as an individual or private person, the judges or courts shall be competent to take cognizance of the cases where real or mixed actions are brought, if such competence belongs to them in respect to foreign individuals in conformity with this Code.

Art. 336. The rule of the preceding article shall be applicable to universal causes (juicios universales, e.g., distribution of a bankrupt's or decedent's effects), whatever the character in which the contracting foreign State or its head intervenes in them.

Art. 337. The provisions established in preceding articles shall be applied to foreign diplomatic agents and to the commanders of war vessels or aircraft.

Art. 338. Foreign consuls shall not be exempt from the civil jurisdiction of the judges and courts of the country in which they act, except in respect to their official acts.

Art. 339. In no case can judges or courts adopt coercive or other measures which have to be executed within the legations or consulates or their archives, nor in respect to diplomatic or consular correspondence, without the consent of the respective diplomatic or consular agents.

Art. 340. The judges and courts of the contracting State in which crimes or misdemeanors have been committed are competent to take cognizance of and pass judgment upon them.

Art. 341. Competence extends to all other crimes and misdemeanors to which the penal law of the State is to be applied in conformity with the provisions of this Code.

Art. 342. It also extends to crimes or misdemeanors committed in a foreign country by national officials enjoying the benefit of immunity.

Art. 343. Persons and crimes and misdemeanors to which the
penal law of the respective State does not extend are not subject, in penal matters, to the competence of the judges and courts of the contracting States.

Art. 382. The nationals of each contracting State shall enjoy in each of the others the benefit of having counsel assigned to them upon the same conditions as natives.

Art. 383. No difference shall be made between nationals and foreigners in the contracting States in respect to giving security for judgment.

Art. 384. Aliens belonging to a contracting State may exercise in the others public rights of action in matters of a penal nature upon the same conditions as the nationals.

Art. 385. Nor shall those aliens be required to furnish security when exercising a private right of action in cases in which it is not required from nationals.

Art. 386. None of the contracting States shall require from the nationals of another the security judicio sisti nor the onus probandi in cases where they are not required from its own nationals.

Art. 387. No provisional attachments, bail, or any other measures of a similar nature shall be authorized in respect to the nationals of the contracting States by reason merely of their being foreigners.

Art. 388. Every judicial step which a contracting State has to take in another shall be effected by means of letters requisitorial or letters rogatory, transmitted through the diplomatic channel. Nevertheless, the contracting States may agree upon or accept as between themselves any other form of transmission in respect to civil or criminal matters.

Art. 389. The judge issuing the letters requisitorial is to decide as to his own competence and the legality and propriety of the act or evidence, without prejudice to the jurisdiction of the judge to whom said letters are addressed.

Art. 390. The judge to whom such letters requisitorial are sent shall decide as to his own competence ratione materiae in respect to the act which he is requested to perform.

Art. 391. The one receiving the letters requisitorial or letters rogatory should comply, as to the object thereof, with the law of the one issuing the same, and as to the manner of discharging the request he should comply with his own law.

Art. 392. The letters requisitorial will be written in the language of the State which sent them and will be accompanied by a
translation in the language of the State to which they are addressed, said translation to be duly certified by a sworn public translator.

ART. 393. Parties interested in the execution of letters requisitorial and rogatory of a private nature should give powers of attorney, being responsible for the expenses incurred by the same and by the investigations made.

ART. 394. *Litispendencia* by reason of a suit in another of the contracting States may be pleaded in civil matters when the judgment rendered in one of them is to take effect in the other as res judicata.

ART. 395. In criminal cases the plea of *litispendencia* by reason of a cause pending in another contracting state shall not lie.

ART. 396. The plea of *res judicata* founded on a judgment of another contracting party shall lie only when the judgment has been rendered in the presence of the parties or their legal representatives, and no question founded on the provisions of this Code has arisen as to the competence of the foreign court.

ART. 397. In all cases of juridical relations subject to this Code questions of competence founded on its precepts may be addressed to the jurisdiction of the Court.

ART. 414. If the insolvent or bankrupt creditor has only one civil or commercial domicile, there can be only one preventive proceeding in insolvency or bankruptcy, or one suspension of payments, or a composition (*quita y espera*) in respect of all his assets and his liabilities in the contracting States.

ART. 415. If one and the same person or partnership should have in more than one contracting State various commercial establishments entirely separate economically, there may be as many suits for preventive proceeding in bankruptcy as there are commercial establishments.

ART. 416. A decree establishing the capacity of the bankrupt or insolvent, has extraterritorial effect in each of the contracting States, upon the previous compliance with the formalities of registration or publication which may be required by the legislation of each State.

ART. 417. A decree of bankruptcy or insolvency, rendered in one of the contracting States, shall be executed in others in the cases and manner established in this code in respect to judicial resolutions; but it shall have the effect of *res judicata* from the moment it is made final, as to the persons which it is to affect.
ART. 418. The powers and functions of the trustees appointed in one of the contracting States in accordance with the provisions of this code shall have extraterritorial effect in the others, without the necessity of any local proceeding.

ART. 419. The retroactive effect of a declaration of bankruptcy or insolvency and the annulment of certain acts in consequence of those judgments shall be determined by the law thereof and shall be applicable to the territory of all the other contracting States.

ART. 420. Real actions and rights of the same nature shall continue to be subject, notwithstanding the declaration in bankruptcy or insolvency, to the law of the situation of the things affected thereby and to the competence of the judges of the place in which they are found.

ART. 421. The agreement among the creditors and the bankrupt or insolvent shall have extraterritorial effect in the other contracting States, saving the right to a real action by the creditors who may not have accepted.

ART. 422. The rehabilitation of the bankrupt has also extraterritorial validity in the other contracting States, as soon as the judicial resolution by which it is ordered becomes final, and in conformity with its terms.

ART. 423. Every civil or contentious administrative judgment rendered in one of the contracting States shall have force and may be executed in the others if it combines the following conditions:

1. That the judge or the court which has rendered it have competence to take cognizance of the matter and to pass judgment upon it, in accordance with the rules of this Code.

2. That the parties have been summoned for the trial either personally or through their legal representative;

3. That the judgment does not conflict with the public policy or the public laws of the country in which its execution is sought;

4. That it is executory in the State in which it was rendered.

5. That it be authoritatively translated by an official functionary or interpreter of the State in which it is to be executed, if the language employed in the latter is different.

6. That the document in which it is contained fulfills the requirements necessary in order to be considered as authentic in the State from which it proceeds, and those which the legislation of the State in which the execution of the judgment is sought requires for authenticity.

ART. 424. The execution of the judgment should be requested
from a competent judge or tribunal in order to carry it into effect, after complying with the formalities required by the internal legislation.

Art. 425. In the case referred to in the preceding article, every recourse against the judicial resolution granted by the laws of that State in respect to final judgments rendered in a declarative action of greater import shall be granted.

Art. 426. The judge or tribunal from whom the execution is requested shall, before decreeing or denying it, and for a term of twenty days, hear the party against whom it is directed as well as the prosecuting attorney.

Art. 427. The summons of the party who should be heard shall be made by means of letters requisitorial or letters rogatory, in accordance with the provisions of this Code if he has his domicile in a foreign country and lacks sufficient representation in the country, or in the form established by the local law if he has his domicile in the requested State.

Art. 428. After the term fixed for appearance by the judge or the court, the case shall be proceeded with whether or not the party summoned has appeared.

Art. 429. If the execution is denied, the judgment shall be returned to the party who presented it.

Art. 430. When the execution of judgment is granted, the former shall be subject to the procedure determined by the law of the judge or the court for its own judgments.

Art. 431. Final judgments rendered by a contracting State which by reason of their pronouncements are not to be executed shall have in the other States the effects of res judicata if they fulfill the conditions provided for that purpose by this Code, except those relating to their execution.

Art. 432. The procedure and effects regulated in the preceding articles shall be applied in the contracting States to awards made in any of them by arbitrators or friendly compositors, whenever the case to which they refer can be the subject of a compromise in accordance with the legislation of the country where the execution is requested.

Art. 433. The same procedure shall be also applied in respect to civil judgments rendered in any of the contracting States by an international tribunal when referring to private persons or interests.

Art. 434. The provisions made in acts of voluntary jurisdiction
regarding commercial matters by judges or tribunals of a contracting State or by its consular agents shall be executed in the others in accordance with the procedure and the manner indicated in the preceding article.

Art. 435. The resolutions adopted in acts of voluntary jurisdiction in civil matters in a contracting State shall be accepted by the others if they fulfill the conditions required by this Code for the validity of documents executed in a foreign country and were rendered by a competent judge or tribunal, and they shall in consequence have extraterritorial validity.

Art. 436. No contracting State shall execute the judgments rendered in one of the others in penal matters in respect to the sanctions of that class which they impose.

Art. 437. They may, however, execute the said judgments in respect to civil liability and the effects thereof upon the property of the convicted person if they have been rendered by a competent judge or tribunal in accordance with this Code and upon a hearing of the interested party and if the other conditions of form and procedure established by the first chapter of this title have been complied with.

CONVENTION OF SEPTEMBER 27, 1968, ON JURISDICTION AND THE ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS (AS AMENDED BY THE CONVENTION ON ACCESSION OF OCTOBER 9, 1978 AND ABRIDGED)

(O.J. 1978, L301/77; Cmnd. 7395)

PREAMBLE

The High Contracting Parties to the Treaty establishing the European Economic Community, desiring to implement the provisions of article 220 of that Treaty by virtue of which they undertook to secure the simplification of formalities governing the reciprocal recognition and enforcement of judgments of courts or tribunals; anxious to strengthen in the Community the legal protection of persons therein established; considering that it is necessary for this purpose to determine the international jurisdiction of their courts, to facilitate recognition and to introduce an expeditious procedure for securing the enforcement of judgments, authentic instruments and court settlements...
TITLE I-SCOPE

ARTICLE 1

This Convention shall apply in civil and commercial matters whatever the nature of the court or tribunal. [It shall not extend, in particular, to revenue, customs or administrative matters.]

The Convention shall not apply to:

1. the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;
2. bankruptcy, proceedings relating to the winding up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
3. social security;
4. arbitration.

TITLE II-JURISDICTION

SECTION 1-GENERAL PROVISIONS

ARTICLE 2

Subject to the provisions of this Convention, persons domiciled in a Contracting State shall, whatever their nationality, be sued in the courts of that State.

Persons who are not nationals of the State in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that State.

ARTICLE 3

Persons domiciled in a Contracting State may be sued in the courts of another Contracting State only by virtue of the rules set out in Sections 2 to 6 of this Title.

[In particular the following provisions shall not be applicable as against them:

— in Belgium: Article 15 of the civil code (Code civil—Burgerlijk Wetboek) and Article 638 of the judicial code (Code Judiciare—Gerechtelijk Wetboek),
— in Denmark: Article 248 (2) of the law on civil procedure (Lov om rettens pleje) and Chapter 3, Article 3 of the Greenland law on civil procedure (Lov for Grønland om rettens pleje),
— in the Federal Republic of Germany: Article 23 of the code of civil procedure (Zivilprozessordnung),
in France: Article 14 and 15 of the civil code (Code civil),
in Ireland: the rules which enable jurisdiction to be founded on the
document instituting the proceedings having been served on the
defendant during his temporary presence in Ireland,
in Italy: Article 2 and 4, Nos. 1 and 2 of the code of civil proce-
dure (Codice di procedura civile),
in Luxembourg: Articles 14 and 15 of the civil code (Code civil),
in the Netherlands: Articles 126 (3) and 127 of the code of civil
procedure (Wetboek van Burgerlijke Rechtsvordering),
in the United Kingdom: the rules which enable jurisdiction to be
founded on:
(a) the document instituting the proceedings having
been served on the defendant during his temporary pres-
ence in the United Kingdom; or
(b) the presence within the United Kingdom of property
belonging to the defendant; or
(c) the seizure by the plaintiff of property situated in
the United Kingdom.]

ARTICLE 4

If the defendant is not domiciled in a Contracting State, the
jurisdiction of the courts of each Contracting State shall, subject to
the provisions of Article 16, be determined by the law of that
State.

As against such a defendant, any person domiciled in a Con-
tracting State may, whatever his nationality, avail himself in that
State of the rules of jurisdiction there in force, and in particular
those specified in the second paragraph of Article 3, in the same
way as the nationals of that State.

SECTION 2-SPECIAL JURISDICTION

ARTICLE 5

A person domiciled in a Contracting State may, in another
Contracting State be sued:

1. in matters relating to a contract, in the courts for the place of
performance of the obligation in question;
2. in matters relating to maintenance, in the courts for the place
where the maintenance creditor is domiciled or habitually resi-
dent or, if the matter is ancillary to proceedings concerning the
status of a person, in the court which, according to its own law,
has jurisdiction to entertain those proceedings, unless that jur-
sisdiction is based solely on the nationality of one of the parties;
3. in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred;

4. as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seised of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings;

5. as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place in which the branch, agency or other establishment is situated;

6. as settlor, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, in the courts of the Contracting State in which the trust is domiciled;

7. as regards a dispute concerning the payment of remuneration claimed in respect of the salvage of a cargo or freight, in the court under the authority of which the cargo or freight in question:

   (a) has been arrested to secure such payment, or

   (b) could have been so arrested, but bail or other security has been given; provided that this provision shall apply only if it is claimed that the defendant has an interest in the cargo or freight or had such an interest at the time of salvage.

ARTICLE 6

A person domiciled in a Contracting State may also be sued:

1. where he is one of a number of defendants, in the courts for the place where any one of them is domiciled;

2. as a third party in an action on a warranty or guarantee or in any other third party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case;

3. on a counter-claim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending.

ARTICLE 6A

Where by virtue of this Convention a court of a Contracting State has jurisdiction in actions relating to liability arising from the use or operation of a ship, that court, or any other court substituted for this purpose by the internal law of that State, shall also have jurisdiction over claims for limitation of such liability.
SECTION 3-JURISDICTION IN MATTERS RELATING TO INSURANCE

ARTICLE 7

In matters relating to insurance, jurisdiction shall be determined by this Section, without prejudice to the provisions of Articles 4 and 5(5).

ARTICLE 8

An insurer domiciled in a Contracting State may be sued:

1. in the courts of the State where he is domiciled, or
2. in another Contracting State, in the courts for the place where the policyholder is domiciled, or
3. if he is a co-insurer, in the courts of a Contracting State in which proceedings are brought against the leading insurer.

An insurer who is not domiciled in a Contracting State but has a branch, agency or other establishment in one of the Contracting States shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that State.

ARTICLE 9

In respect of liability insurance or insurance of immovable property, the insurer may in addition be sued in the courts for the place where the harmful event occurred. The same applies if movable and immovable property are covered by the same insurance policy and both are adversely affected by the same contingency.

ARTICLE 10

In respect of liability insurance, the insurer may also, if the law of the court permits it, be joined in proceedings which the injured party has brought against the insured.

The provisions of Article 7, 8 and 9 shall apply to actions brought by the injured party directly against the insurer, where such direct actions are permitted.

If the law governing such direct actions provides that the policy-holder or the insured may be joined as a party to the action, the same court shall have jurisdiction over them.

ARTICLE 11

Without prejudice to the provisions of the third paragraph of Article 10, an insurer may bring proceedings only in the courts of
the Contracting State in which the defendant is domiciled, irrespective of whether he is the policy-holder, the insured or a beneficiary.

The provisions of this Section shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

**ARTICLE 12**

The provisions of this Section may be departed from only by an agreement on jurisdiction:

1. which is entered into after the dispute has arisen, or
2. which allows the policy-holder, the insured or a beneficiary to bring proceedings in courts other than those indicated in this Section, or
3. which is concluded between a policy-holder and an insurer, both of whom are domiciled in the same Contracting State, and which has the effect of conferring jurisdiction on the courts of that State even if the harmful event were to occur abroad, provided that such an agreement is not contrary to the law of that State, or
4. which is concluded with a policy-holder who is not domiciled in a Contracting State, except in so far as the insurance is compulsory or relates to immovable property in a Contracting State, or
5. which relates to a contract of insurance in so far as it covers one or more of the risks set out in Article 12.

**ARTICLE 12A**

The following are the risks referred to in Article 12 (5):

1. Any loss of or damage to
   (a) sea-going ships, installations situated off-shore or on the high seas, or aircraft, arising from perils which relate to their use for commercial purposes,
   (b) goods in transit other than passengers’ baggage where the transit consists of or includes carriage by such ships or aircraft;
2. Any liability, other than for bodily injury to passengers or loss of or damage to their baggage,
   (a) arising out of the use or operation of ships, installations or aircraft as referred to in (1)(a) above in so far as the law of the Contracting State in which such aircraft are registered does not prohibit agreements on jurisdic-
tion regarding insurance of such risks,
(b) for loss or damage caused by goods in transit as de-
scribed in (1) (b) above;
3. Any financial loss connected with the use or operation of
ships, installations or aircraft as referred to in (1)(a) above, in
particular loss of freight or charter-hire;
4. Any risk or interest connected with any of those referred to in
(1) to (3) above.

SECTION 4—JURISDICTION OVER CONSUMER CONTRACTS

ARTICLE 13

In proceedings concerning a contract concluded by a person
for a purpose which can be regarded as being outside his trade or
profession, hereinafter called "the consumer," jurisdiction shall be
determined by this Section, without prejudice to the provisions of
Articles 4 and 5(5), if it is:

1. a contract for the sale of goods on installment credit terms, or
2. a contract for a loan repayable by installments, or for any
other form of credit, made to finance the sale of goods, or
3. any other contract for the supply of goods or a contract for
the supply of services, and
   (a) in the State of the consumer's domicile the conclu-
   sion of the contract was preceded by a specific invitation
   addressed to him or by advertising, and
   (b) the consumer took in that State the steps necessary
   for the conclusion of the contract.

Where a consumer enters into a contract with a party who is
not domiciled in a Contracting State but has a branch, agency or
other establishment in one of the Contracting States, that party
shall, in disputes arising out of the operations of the branch,
agency or establishment, be deemed to be domiciled in that State.

This Section shall not apply to contracts of transport.

ARTICLE 14

A consumer may bring proceedings against the other party to
a contract either in the courts of the Contracting State in which
that party is domiciled or in the courts of the Contracting State in
which he is himself domiciled.

These provisions shall not affect the right to bring a counter-
claim in the court in which, in accordance with this Section, the
original claim is pending.
ARTICLE 15

The provisions of this Section may be departed from only by an agreement:

1. which is entered into after the dispute has arisen, or
2. which allows the consumer to bring proceedings in courts other than those indicated in this Section, or
3. which is entered into by the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Contracting State, and which confers jurisdiction on the courts of that State, provided that such an agreement is not contrary to the law of that State.

SECTION 5-EXCLUSIVE JURISDICTION

ARTICLE 16

The following courts shall have exclusive jurisdiction, regardless of domicile:

1. in proceedings which have as their object rights in rem in, or tenancies of, immovable property, the courts of the Contracting State in which the property is situated;
2. in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, or the decisions of their organs, the courts of the Contracting State in which the company, legal person or association has its seat;
3. in proceedings which have as their object the validity of entries in public registers, the courts of the Contracting State in which the register is kept;
4. in proceedings concerned with the registration or validity of patents, trade marks, designs, or other similar rights required to be deposited or registered, the courts of the Contracting State in which the deposit or registration has been applied for, has taken place or is under the terms of an international convention deemed to have taken place;
5. in proceedings concerned with the enforcement of judgments, the courts of the Contracting State in which the judgment has been or is to be enforced.

SECTION 6-PROROGATION OF JURISDICTION

ARTICLE 17

If the parties, one or more of whom is domiciled in a Con-
tracting State, have agreed that a court or the courts of a Contracting State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have exclusive jurisdiction. Such an agreement conferring jurisdiction shall be either in writing or evidenced in writing or, in international trade or commerce, in a form which accords with practices in that trade or commerce of which the parties are or ought to have been aware. Where such an agreement is concluded by parties, none of whom is domiciled in a Contracting State, the courts of other Contracting States shall have no jurisdiction over their disputes unless the court or courts chosen have declined jurisdiction.

The court or courts of a Contracting State on which a trust instrument has conferred jurisdiction shall have exclusive jurisdiction in any proceedings brought against a settlor, trustee or beneficiary, if relations between these persons or their rights or obligations under the trust are involved.

Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if they are contrary to the provisions of Article 12 or 15, or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 16.

If an agreement conferring jurisdiction was concluded for the benefit of only one of the parties, that party shall retain the right to bring proceedings in any other court which has jurisdiction by virtue of this Convention.

**Article 18**

Apart from jurisdiction derived from other provisions of this Convention, a court of a Contracting State before whom a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered solely to contest the jurisdiction or where another court has exclusive jurisdiction by virtue of Article 16.

**Section 7-Examination as to Jurisdiction and Admissibility**

**Article 19**

Where a court of a Contracting State is seised of a claim which is principally concerned with a matter over which the courts of another Contracting State have exclusive jurisdiction by virtue of Article 16, it shall declare of its own motion that it has no
jurisdiction.

**ARTICLE 20**

Where a defendant domiciled in one Contracting State is sued in a court of another Contracting State and does not enter an appearance, the court shall declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of this Convention.

The court shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.

The provisions of the foregoing paragraph shall be replaced by those of Article 15 of the Hague Convention of November 15, 1965, on the service abroad of judicial and extrajudicial documents in civil or commercial matters, if the document instituting the proceedings or notice thereof had to be transmitted abroad in accordance with that Convention.

**SECTION 8-LIS PENDENS-RELATED ACTIONS**

**ARTICLE 21**

Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Contracting States, any court other than the court first seised shall of its own motion decline jurisdiction in favour of that court.

A court which would be required to decline jurisdiction may stay its proceedings if the jurisdiction of the other court is contested.

**ARTICLE 22**

Where related actions are brought in the courts of different Contracting States, any court other than the court first seised may, while the actions are pending at first instance, stay its proceedings.

A court other than the court first seised may also, on the application of one of the parties, decline jurisdiction if the law of that court permits the consolidation of related actions and the court first seised has jurisdiction over both actions.

For the purposes of this article, actions are deemed to be related where they are so closely connected that it is expedient to
hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

**ARTICLE 23**

Where actions come within the exclusive jurisdiction of several courts, any court other than the court first seised shall decline jurisdiction in favour of that court.

**SECTION 9-PROVISIONAL, INCLUDING PROTECTIVE, MEASURES**

**ARTICLE 24**

Application may be made to the courts of a Contracting State for such provisional, including protective, measures as may be available under the law of that State, even if, under this Convention, the courts of another Contracting State have jurisdiction as to the substance of the matter.

**TITLE III-RECOGNITION AND ENFORCEMENT**

**ARTICLE 25**

For the purposes of this Convention, "judgment" means any judgment given by a court or tribunal of a Contracting State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court.

**SECTION 1-RECOGNITION**

**ARTICLE 26**

A judgment given in a Contracting State shall be recognized in the other Contracting States without any special procedure being required.

Any interested party who raises the recognition of a judgment as the principal issue in a dispute may, in accordance with the procedures provided for in Sections 2 and 3 of this Title, apply for a decision that the judgment be recognised.

If the outcome of proceedings in a court of a Contracting State depends on the determination of an incidental question of recognition that court shall have jurisdiction over that question.

**ARTICLE 27**

A judgment shall not be recognized:
1. if such recognition is contrary to public policy in the State in which recognition is sought;
2. where it was given in default of appearance, if the defendant was not duly served with the document which instituted the proceedings or with an equivalent document in sufficient time to enable him to arrange for his defence;
3. if the judgment is irreconcilable with a judgment given in a dispute between the same parties in the State in which recognition is sought;
4. if the court of the State in which the judgment was given, in order to arrive at its judgment, has decided a preliminary question concerning the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills or succession in a way that conflicts with a rule of the private international law of the State in which the recognition is sought, unless the same result would have been reached by the application of the rules of private international law of that State;
5. if the judgment is irreconcilable with an earlier judgment given in a non-Contracting State involving the same cause of action and between the same parties, provided that this latter judgment fulfills the conditions necessary for its recognition in the State addressed.

ARTICLE 28

Moreover, a judgment shall not be recognized if it conflicts with the provisions of Section 3, 4 or 5 of Title II, or in a case provided for in Article 59.

In its examination of the grounds of jurisdiction referred to in the foregoing paragraph, the court or authority applied to shall be bound by the findings of fact on which the court of the State in which the judgment was given based its jurisdiction.

Subject to the provisions of the first paragraph, the jurisdiction of the court of the State in which the judgment was given may not be reviewed; the test of public policy referred to in Article 27 (1) may not be applied to the rules relating to jurisdiction.

ARTICLE 29

Under no circumstances may a foreign judgment be reviewed as to its substance.

ARTICLE 30

A court of a Contracting State in which recognition is sought of a judgment given in another Contracting State may stay the
proceedings if an ordinary appeal against the judgment has been lodged.

A court of a Contracting State in which recognition is sought of a judgment given in Ireland or the United Kingdom may stay the proceedings if enforcement is suspended in the State in which the judgment was given by reason of an appeal.

SECTION 2-ENFORCEMENT

ARTICLE 31

A judgment given in a Contracting State and enforceable in that State shall be enforced in another Contracting State when, on the application of any interested party, the order for its enforcement has been issued there.

However, in the United Kingdom, such a judgment shall be enforced in England and Wales, in Scotland, or in Northern Ireland when, on the application of any interested party, it has been registered for enforcement in that part of the United Kingdom.

ARTICLE 32

The application shall be submitted:

— in Belgium, to the tribunal de première instance or rechtbank van eerste aanleg,
— in Denmark, to the underret,
— in the Federal Republic of Germany, to the presiding judge of a chamber of the Landgericht,
— in France, to the presiding judge of the tribunal de grande instance,
— in Ireland, to the High Court,
— in Italy, to the corte d’appello,
— in Luxembourg, to the presiding judge of the tribunal d’arrondissement,
— in the Netherlands, to the presiding judge of the arrondissementsrechtbank,
— in the United Kingdom:
  1. in England and Wales, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates’ Court on transmission by the Secretary of State;
  2. in Scotland, to the Court of Session, or in the case of a maintenance judgment to the Sheriff Court on transmission by the Secretary of State;
  3. in Northern Ireland, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates’
Court on transmission by the Secretary of State.

The jurisdiction of local courts shall be determined by reference to the place of domicile of the party against whom enforcement is sought. If he is not domiciled in the State in which enforcement is sought, it shall be determined by reference to the place of enforcement.

**ARTICLE 33**

The procedure for making the application shall be governed by the law of the State in which enforcement is sought.

The applicant must give an address for service of process within the area of jurisdiction of the court applied to. However, if the law of the State in which enforcement is sought does not provide for the furnishing of such an address, the applicant shall appoint a representative *ad litem*.

The documents referred to in Articles 46 and 47 shall be attached to the application.

**ARTICLE 34**

The court applied to shall give its decision without delay; the party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.

The application may be refused only for one of the reasons specified in Articles 27 and 28.

Under no circumstances may the foreign judgment be reviewed as to its substance.

**ARTICLE 35**

The appropriate officer of the court shall without delay bring the decision given on the application to the notice of the applicant in accordance with the procedure laid down by the law of the State in which enforcement is sought.

**ARTICLE 36**

If enforcement is authorised, the party against whom enforcement is sought may appeal against the decision within one month of service thereof.

If that party is domiciled in a Contracting State other than that in which the decision authorising enforcement was given, the
time for appealing shall be two months and shall run from the date of service, either on him in person or at his residence. No extension of time may be granted on account of distance.

**Article 37**

An appeal against the decision authorising enforcement shall be lodged in accordance with the rules governing procedure in contentious matters:

— in Belgium, with the tribunal de première instance or rechtbank van eerste aanleg,
— in Denmark, with the landsret,
— in the Federal Republic of Germany, with the Oberlandesgericht,
— in France, with the cour d’appel,
— in Ireland, with the High Court,
— in Italy, with the corto d’appello,
— in Luxembourg, with the Cour supérieure de justice sitting as a court of civil appeal,
— in the Netherlands, with the arrondissementsrechtbank,
— in the United Kingdom:
  1. in England and Wales, with the High Court of Justice, or in the case of a maintenance judgment with the Magistrates’ Court;
  2. in Scotland, with the Court of Session, or in the case of a maintenance judgment with the Sheriff Court;
  3. in Northern Ireland, with the High Court of Justice, or in the case of a maintenance judgment with the Magistrates’ Court.

The judgment given on the appeal may be contested only:

— in Belgium, France, Italy, Luxembourg and the Netherlands, by an appeal in cassation,
— in Denmark, by an appeal to the højesteret, with the leave of the Minister of Justice,
— in the Federal Republic of Germany, by a Rechtsbeschwerde,
— in Ireland, by an appeal on a point of law to the Supreme Court,
— in the United Kingdom, by a single further appeal on a point of law.

**Article 38**

The court with which the appeal under the first paragraph of Article 37 is lodged may, on the application of the appellant, stay
the proceedings if an ordinary appeal has been lodged against the judgment in the State in which that judgment was given or if the time for such an appeal has not yet expired; in the latter case, the court may specify the time within which such an appeal is to be lodged.

Where the judgment was given in Ireland or the United Kingdom, any form of appeal available in the State in which it was given shall be treated as an ordinary appeal for the purposes of the first paragraph.

The court may also make enforcement conditional on the provision of such security as it shall determine.

ARTICLE 39

During the time specified for an appeal pursuant to Article 36 and until any such appeal has been determined, no measures of enforcement may be taken other than protective measures taken against the property of the party against whom enforcement is sought.

The decision authorising enforcement shall carry with it the power to proceed to any such protective measures.

ARTICLE 40

If the application for enforcement is refused, the applicant may appeal:

— in Belgium, to the cour d’appel or hof van beroep,
— in Denmark, to the landsret,
— in the Federal Republic of Germany, to the Oberlandesgericht,
— in France, to the cour d’appel
— in Ireland, to the High Court,
— in Italy, to the corte d’appello,
— in Luxembourg, to the Cour supérieure de justice sitting as a court of civil appeal,
— in the Netherlands, to the gerechtshof,
— in the United Kingdom:
  1. in England and Wales, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates’ Court;
  2. in Scotland, to the Court of Session, or in the case of a maintenance judgment to the Sheriff Court;
  3. in Northern Ireland, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates’ Court.
The party against whom enforcement is sought shall be summoned to appear before the appellate court. If he fails to appear, the provisions of the second and third paragraphs of Article 20 shall apply even where he is not domiciled in any of the Contracting States.

**Article 41**

A judgment given on an appeal provided for in Article 40 may be contested only:

— in Belgium, France, Italy, Luxembourg and the Netherlands, by appeal in cassation,
— in Denmark, by an appeal to the højesteret, with the leave of the Minister of Justice,
— in the Federal Republic of Germany, by a Rechtsbeschwerde,
— in Ireland, by an appeal on a point of law to the Supreme Court,
— in the United Kingdom, by a single further appeal on a point of law.

**Article 42**

Where a foreign judgment has been given in respect of several matters and enforcement cannot be authorised for all of them, the court shall authorise enforcement for one or more of them.

An applicant may request partial enforcement of a judgment.

**Article 43**

A foreign judgment which orders a periodic payment by way of a penalty shall be enforceable in the State in which enforcement is sought only if the amount of the payment has been finally determined by the courts of the State in which the judgment was given.

**Article 44**

An applicant who, in the State in which the judgment was given, has benefited from complete or partial legal aid or exemption from costs or expenses, shall be entitled, in the procedures provided for in Articles 32 to 35, to benefit from the most favourable legal aid or the most extensive exemption from costs of expenses provided for by the law of the State addressed.

However, an applicant who requests the enforcement of a decision given by an administrative authority in Denmark in respect of a maintenance order may, in the State addressed, claim the ben-
efits referred to in the first paragraph if he presents a statement from the Danish Ministry of Justice to the effect that he fulfils the economic requirements to qualify for the grant of complete or partial legal aid or exemption from costs or expenses.

**ARTICLE 45**

No security, bond or deposit, however described, shall be required of a party who in one Contracting State applies for enforcement of a judgment given in another Contracting State on the ground that he is a foreign national or that he is not domiciled or resident in the State in which enforcement is sought.

**SECTION 3 COMMON PROVISIONS**

**ARTICLE 46**

A party seeking recognition or applying for enforcement of a judgment shall produce:

1. a copy of the judgment which satisfies the conditions necessary to establish its authenticity;
2. in the case of a judgment given in default, the original or a certified true copy of the document which establishes that the party in default was served with the document instituting the proceedings or with an equivalent document.

**ARTICLE 47**

A party applying for enforcement shall also produce:

1. documents which establish that, according to the law of the State in which it has been given, the judgment is enforceable and has been served;
2. where appropriate, a document showing that the applicant is in receipt of legal aid in the State in which the judgment was given.

**ARTICLE 48**

If the documents specified in Article 46(2) and 47(2) are not produced, the court may specify a time for their production, accept equivalent documents or, if it considers that it has sufficient information before it, dispense with their production.

If the court so requires, a translation of the documents shall be produced; the translation shall be certified by a person qualified to do so in one of the Contracting States.
ARTICLE 49

No legalisation or other similar formality shall be required in respect of the documents referred to in Article 46 or 47 or the second paragraph of Article 48, or in respect of a document appointing a representative ad litem.

TITLE IV-AUTHENTIC INSTRUMENTS AND COURT SETTLEMENTS

ARTICLE 50

A document which has been formally drawn up or registered as an authentic instrument and is enforceable in one Contracting State shall, in another Contracting State, have an order for its enforcement issued there, on application made in accordance with the procedures provided for in Article 31 et seq. The application may be refused only if enforcement of the instrument is contrary to public policy in the State in which enforcement is sought.

The instrument produced must satisfy the conditions necessary to establish its authenticity in the State of origin.

The provisions of Section 3 of Title III shall apply as appropriate.

ARTICLE 51

A settlement which has been approved by a court in the course of proceedings and is enforceable in the State in which it was concluded shall be enforceable in the State in which enforcement is sought under the same conditions as authentic instruments.

TITLE V-GENERAL PROVISIONS

ARTICLE 52

In order to determine whether a party is domiciled in the Contracting State whose courts are seised of a matter, the Court shall apply its internal law.

If a party is not domiciled in the State whose courts are seised of the matter, then, in order to determine whether the party is domiciled in another Contracting State, the court shall apply the law of that State.

The domicile of a party shall, however, be determined in accordance with his national law if, by that law, his domicile depends
on that of another person or on the seat of an authority.

**ARTICLE 53**

For the purpose of this Convention, the seat of a company or other legal person or association of natural or legal persons shall be treated as its domicile. However, in order to determine that seat, the court shall apply its rules of private international law.

In order to determine whether a trust is domiciled in the Contracting State whose courts are seised of the matter, the court shall apply its rules of private international law.

**TITLE VI-TRANSITIONAL PROVISIONS**

**ARTICLE 54**

The provisions of this Convention shall apply only to legal proceedings instituted and to documents formally drawn up or registered as authentic instruments after its entry into force.

However, judgments given after the date of entry into force of this Convention in proceedings instituted before that date shall be recognised and enforced in accordance with the provisions of Title III if jurisdiction was founded upon rules which accorded with those provided for either in Title II of this Convention or in a convention concluded between the State of origin and the State addressed which was in force when the proceedings were instituted.

**TITLE VII-RELATIONSHIP TO OTHER CONVENTIONS**

**ARTICLE 55**

Subject to the provisions of the second paragraph of Article 54, and Article 56, this Convention shall, for the States which are parties to it, supersede the following conventions concluded between two or more of them.

— the Convention between Belgium and France on jurisdiction and the validity and enforcement of judgments, arbitration awards and authentic instruments, signed at Paris on July 8, 1899,

— the Convention between Belgium and the Netherlands on jurisdiction, bankruptcy, and the validity and enforcement of judgments, arbitration awards and authentic instruments, signed at Brussels on March 28, 1925,
— the Convention between France and Italy on the enforcement of judgments in civil and commercial matters, signed at Rome on June 3, 1930,
— the Convention between the United Kingdom and the French Republic providing for the reciprocal enforcement of judgments in civil and commercial matters, with Protocol, signed at Paris on January 18, 1934,
— the Convention between the United Kingdom and the Kingdom of Belgium, providing for the reciprocal enforcement of judgments in civil and commercial matters, with Protocol, signed at Brussels on May 2, 1934,
— the Convention between Germany and Italy on the recognition and enforcement of judgments in civil and commercial matters, signed at Rome on March 9, 1936,
— the Convention between the Federal Republic of Germany and the Kingdom of Belgium on the mutual recognition and enforcement of judgments, arbitration awards and authentic instruments in civil and commercial matters, signed at Bonn on June 30, 1958,
— the Convention between the Kingdom of the Netherlands and the Italian Republic on the recognition and enforcement of judgments in civil and commercial matters, signed at Rome on April 17, 1959,
— the Convention between the United Kingdom and the Federal Republic of Germany for the reciprocal recognition and enforcement of judgments in civil and commercial matters, signed at Bonn on July 14, 1960,
— the Convention between the Kingdom of Belgium and the Italian Republic on the recognition and enforcement of judgments and other enforceable instruments in civil and commercial matters, signed at Rome on April 6, 1962,
— the Convention between the Kingdom of the Netherlands and the Federal Republic of Germany on the mutual recognition and enforcement of judgments and other enforceable instruments in civil and commercial matters, signed at The Hague on August 30, 1962,
— the Convention between the United Kingdom and the Republic of Italy for the reciprocal recognition and enforcement of judgments in civil and commercial matters, signed at Rome on February 7, 1964, with amending Protocol signed at Rome on July 14, 1970,
— the Convention between the United Kingdom and the Kingdom of the Netherlands providing for the reciprocal recognition and enforcement of judgments in civil matters, signed at The Hague on November 17, 1967,
and, in so far as it is in force:
the Treaty between Belgium, the Netherlands and Luxembourg on jurisdiction, bankruptcy, and the validity and enforcement of judgments, arbitration awards and authentic instruments, signed at Brussels on November 24, 1961.

ARTICLE 56

The Treaty and the conventions referred to in Article 55 shall continue to have effect in relation to matters to which this Convention does not apply.

They shall continue to have effect in respect of judgments given and documents formally drawn up or registered as authentic instruments before the entry into force of this Convention.

ARTICLE 57

This Convention shall not affect any conventions to which the Contracting States are or will be parties and which in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments.

This Convention shall not affect the application of provisions which, in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments and which are or will be contained in acts of the institutions of the European Communities or in national laws harmonised in implementation of such acts.

ARTICLE 58

This Convention shall not affect the rights granted to Swiss nationals by the Convention concluded on June 15, 1869, between France and the Swiss Confederation on Jurisdiction and the enforcement of judgments in civil matters.

ARTICLE 59

This Convention shall not prevent a Contracting State from assuming, in a convention on the recognition and enforcement of judgments, an obligation towards a third State not to recognise judgments given in other Contracting States against defendants domiciled or habitually resident in the third State where, in cases provided for in Article 4, the judgment could only be founded on a ground of jurisdiction specified in the second paragraph of Article 3.

However, a Contracting State may not assume an obligation towards a third State not to recognise a judgment given in another
Contracting State by a court basing its jurisdiction on the presence within that State of property belonging to the defendant, or the seizure by the plaintiff of property situated there:

1. if the action is brought to assert or declare proprietary or possessory rights in that property, seeks to obtain authority to dispose of it, or arises from another issue relating to such property, or,
2. if the property constitutes the security for a debt which is the subject matter of the action.

**ARTICLE 63**

The Contracting States recognise that any State which becomes a member of the European Economic Community shall be required to accept this Convention as a basis for the negotiations between the Contracting States and that State necessary to ensure the implementation of the last paragraph of Article 220 of the Treaty establishing the European Economic Community.

The necessary adjustments may be the subject of a special convention between the Contracting States of the one part and the new Member States of the other part.

**ARTICLE 67**

Any Contracting State may request the revision of this Convention. In this event, a revision conference shall be convened by the President of the Council of the European Communities.

**PROTOCOL (ABRIDGED)**

The High Contracting Parties have agreed upon the following provisions, which shall be annexed to the Convention:

**ARTICLE I**

Any person domiciled in Luxembourg who is sued in a court of another Contracting State pursuant to Article 5(1) may refuse to submit to the jurisdiction of that court. If the defendant does not enter an appearance the court shall declare of its own motion that it has no jurisdiction.

An agreement conferring jurisdiction, within the meaning of Article 17, shall be valid with respect to a person domiciled in Luxembourg only if that person has expressly and specifically so agreed.
ARTICLE II

Without prejudice to any more favorable provisions of national laws, persons domiciled in a Contracting State who are being prosecuted in the criminal courts of another Contracting State of which they are not nationals for an offense which was not intentionally committed may be defended by persons qualified to do so, even if they do not appear in person.

However, the court seised of the matter may order appearance in person; in the case of failure to appear, a judgment given in the civil action without the person concerned having had the opportunity to arrange for his defence need not be recognised or enforced in the other Contracting States.

ARTICLE III

In proceedings for the issue of an order for enforcement, no charge, duty or fee calculated by reference to the value of the matter in issue may be levied in the State in which enforcement is sought.

ARTICLE IV

Judicial and extrajudicial documents drawn up in one Contracting State which have to be served on persons in another Contracting State shall be transmitted in accordance with the procedures laid down in the conventions and agreements concluded between the Contracting States.

Unless the State in which service is to take place objects by declaration to the Secretary-General of the Council of the European Communities, such documents may also be sent by the appropriate public officers of the State in which the document has been drawn up directly to the appropriate public officers of the State in which the addressee is to be found. In this case the officer of the State of origin shall send a copy of the document to the officer of the State applied to who is competent to forward it to the addressee. The document shall be forwarded in the manner specified by the law of the State applied to. The forwarding shall be recorded by a certificate sent directly to the officer of the State of origin.

ARTICLE V

The jurisdiction specified in Articles 6 (2) and 10 in actions on
a warranty or guarantee or in any other third-party proceedings may not be resorted to in the Federal Republic of Germany. In that State, any person domiciled in another Contracting State may be sued in the courts in pursuance of Article 68, 72, 73 and 74 of the code of civil procedure (Zivilprozessordnung) concerning third-party notices.

Judgments given in the other Contracting States by virtue of Article 6 (2) or 10 shall be recognised and enforced in the Federal Republic of Germany in accordance with Title III. Any effects which judgments given in that State may have on third parties by application of Article 68, 72, 73 and 74 of the code of civil procedure (Zivilprozessordnung) shall also be recognised in the other Contracting States.

ARTICLE VB

In proceedings involving a dispute between the master and a member of the crew of a sea-going ship registered in Denmark or in Ireland, concerning remuneration or other conditions of service, a court in a Contracting State shall establish whether the diplomatic or consular officer responsible for the ship has been notified of the dispute. It shall stay the proceedings so long as he has not been notified. It shall of its own motion decline jurisdiction if the officer, having been notified, has exercised the powers accorded to him in the matter by a consular convention, or in the absence of such a convention has, within the time allowed, raised any objection to the exercise of such jurisdiction.

ARTICLE VD

Without prejudice to the jurisdiction of the European Patent Office under the Convention on the grant of European patents, signed at Munich on October 5, 1973, the courts of each Contracting State shall have exclusive jurisdiction, regardless of domicile, in proceedings concerned with the registration or validity of any European patent granted for that State which is not a Community patent by virtue of the provisions of Article 86 of the Convention for the European patent for the Common Market, signed at Luxembourg on December 15, 1975.