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The Uniform Foreign Money-Judgments Recognition Act: A Survey of the Case Law

Carol C. Honigberg

THE UNIFORM FOREIGN MONEY-JUDGMENTS RECOGNITION ACT: A SURVEY OF THE CASE LAW

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I. INTRODUCTION

The Uniform Foreign Money-Judgments Recognition Act's[1] genesis lay in the belief that a state's codification of its rules on the recognition of foreign[2] money-judgments would increase the likelihood that similar judgments rendered by that state would be recognized abroad.[3] The treatment of United States judgments in the courts of foreign nations concerned the Commissioners on Uniform State Laws because United States courts traditionally accord far better treatment to foreign judgments than is accorded United States judgments abroad.[4] The recognition and enforcement of foreign judgments, or recognition practice, has long posed special problems because of the vast differences in the various legal systems rendering the judgments. The Uniform Act attempts to resolve such problems as finality, jurisdiction, and due process,

1. 13 UNIFORM LAWS ANN. 270 (1980) [hereinafter cited as the Act or Uniform Act].

2. "Foreign" judgment, as used throughout this Note, refers to a judgment rendered by the court of a foreign nation, i.e., not the United States.

3. 13 UNIFORM LAWS ANN. at 417, Commissioners' Prefatory Note.

4. Golomb, *Recognition of Foreign Money Judgments: A Goal-Oriented Approach*, 43 ST. JOHN'S L. REV. 604, 607 (1969).

while achieving a measure of uniform treatment for the recognition and enforcement of foreign judgments in United States courts. This Note will first consider the confused state of common law recognition practice in the United States. This Note will then examine the Uniform Act in detail, with the discussion centering on the case law decided under the Act. Finally, this Note concludes with some observations on the effectiveness of the Uniform Act to date, and a recommendation that recognition practice become a part of the federal common law, based on the policies underlying the Uniform Act.

II. History of Recognition Practice in the United States

In the celebrated case of *Hilton v. Guyot*,[5] the United States Supreme Court detailed the principles governing the recognition and enforcement of foreign judgments. Mr. Justice Gray stated:

> [W]here there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court, or in the system of laws under which it was sitting, or fraud in procuring the judgment, or any other special reason why the comity[6] of this nation should not allow it full effect, the merits of the case should not, in an action brought in this country upon the judgment, be tried afresh, as on a new trial or an appeal, upon the mere assertion of the party that the judgment was erroneous in law or in fact.[7]

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5. 159 U.S. 113 (1895).

6. Comity is the common law principle which governs the recognition and enforcement of foreign judgments. The *Hilton* court defined comity as:

> neither a matter of absolute obligation, . . . nor of mere courtesy and good will. . . . But it is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws.

Hilton v. Guyot, 159 U.S. 113, 163-64 (1895). As the above definition suggests, the comity doctrine states but does not explain the desired result. Reese, *The Status in this Country of Judgments Rendered Abroad*, 50 Colum. L. Rev. 783, 784 (1950). *See also* Golomb, *supra* note 4, at 613.

7. 159 U.S. at 202-03.

Although this statement became the cornerstone of recognition practice in the United States,[8] the *Hilton* Court, under the facts of that case, refused to accord conclusive effect to a judgment rendered by a French court of competent jurisdiction against a United States defendant. The Court decided as it did because judgments of United States courts at that time were reviewable upon the merits under French law.[9] Because French courts would not accord conclusive effect to United States judgments, the Supreme Court refused to grant conclusive effect to the French judgment.

The "reciprocity rule" set forth in *Hilton* has been widely criticized.[10] Critics point out that reciprocity penalizes individual litigants because of positions taken by foreign governments.[11] Reciprocity, they say, disregards both the merits of the claims and fairness to the parties.[12] The main argument advanced by those who support reciprocity is that it encourages foreign courts to respect United States judgments.[13] A significant number of civil law countries require proof of reciprocity before recognition will be accorded.[14]

Although the *Hilton* decision appears to mandate reciprocity in United States recognition practice, its holding is narrowly circumscribed. The *Hilton* rule is limited to in personam judgments in which a defendant has a judgment entered against him in a for-

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8. von Mehren & Patterson, *Recognition and Enforcement of Foreign-Country Judgments in the United States*, 6 L. & POL'Y INT'L BUS. 37, 45 (1974). *See also* notes 79-109 *infra* and accompanying text.

9. 159 U.S. at 227.

10. *See, e.g.*, Homburger, *Recognition and Enforcement of Foreign Judgments: A New Yorker Reflects on Uniform Acts*, 18 AM. J. COMP. L. 367, 390 (1970); Lenhoff, *Reciprocity and the Law of Foreign Judgments: A Historical-Critical Analysis*, 16 LA. L. REV. 465 (1965); Reese, *The Status in this Country of Judgments Rendered Abroad*, 50 COLUM. L. REV. 783, 793 (1950); Comment, *The Reciprocity Rule and Enforcement of Foreign Judgments*, 16 COLUM. J. TRANSNAT'L L. 327 (1977).

11. von Mehren & Trautman, *Recognition of Foreign Adjudications: A Survey and Suggested Approach*, 81 HARV. L. REV. 1601, 1661 (1968).

12. Cheatham & Maier, *Private International Law and Its Sources*, 22 VAND. L. REV. 27, 68 (1968).

13. Comment, *supra* note 10, at 345.

14. Kulzer, *Recognition of Foreign Country Judgments in New York: The Uniform Foreign Money-Judgments Recognition Act*, 18 BUFFALO L. REV. 1, 2 (1968).

eign nation's court in favor of a citizen or resident plaintiff.[15] In *Johnston v. Compagnie Generale Transatlantique*,[16] however, the New York Court of Appeals faced a factually similar situation but declined to follow the *Hilton* rule. Judge Pound, writing for a unanimous court, distinguished *Hilton* in the following manner:

> It is argued with some force that questions of international relations and the comity of nations are to be determined by the Supreme Court of the United States; that there is no such thing as comity of nations between the state of New York and the Republic of France; and that the decision in *Hilton v. Guyot* is controlling as a statement of the law. But the question is one of private rather than public international law, of private right rather than public relations, and our courts will recognize private rights acquired under foreign laws and the sufficiency of the evidence establishing such rights.[17]

By thus bifurcating public and private international law, and categorizing the right in question as private, the New York Court of Appeals evaded the *Hilton* precedent. *Johnston* holds that state conflicts of laws rules govern the recognition and enforcement of foreign judgments, at least when private rights are involved. Many states subsequently adopted the *Johnston* rule.[18] Other states have followed the *Hilton* rule, evidently feeling that the Supreme Court has spoken on a foreign affairs issue, thus binding both state and federal courts.[19] The *Restatement (Second) of Conflict of Laws*[20] adopts the *Johnston* rule, which is the prevailing view today.

The Supreme Court's holding in *Erie R.R. v. Tompkins*[21] further complicates the question of what law governs the recognition and enforcement of foreign judgments in the United States. Although *Erie* probably requires a federal court to apply the substantive law of the state in which it sits when determining the

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15. 159 U.S. 113, 227 (1895).

16. 242 N.Y. 381, 152 N.E. 121 (1926).

17. *Id.* at 386-87, 152 N.E. at 123.

18. Some offered the explanation that *Hilton* involved an appeal from a lower federal court, and the Court never indicated that its reciprocity rule was intended to be binding on state courts.

19. *See generally* Comment, *Judgments Rendered Abroad — State Law or Federal Law*, 12 VILL. L. REV. 618 (1967).

20. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 98, Comment e (1971).

21. 304 U.S. 64 (1938).

measure of respect to be accorded a foreign judgment,[22] the issue is not well settled. Accordingly, common law recognition practice in the United States remains a quagmire both from the standpoint of legal theory and that of practical application.

III. The Uniform Act and Developing Case Law

The widely divergent views on recognition practice in this country, while troublesome, have not been the motivating force behind codification of the rules relating to recognition and enforcement of foreign judgments. The main concern of those favoring codification has not been unifying the substantive law now in force in most of the states so much as attempting to insure recognition of that law on the part of foreign nations.[23] Even where decisions on point exist, courts in civil law countries, unfamiliar with the common law principle of stare decisis, often fail to accept those decisions as adequate proof of reciprocity.[24] The uncertain status of *Hilton* has also hindered recognition by civil law countries of United States judgments. It has been contended that codification may alleviate these problems and secure better treatment for United States judgments abroad. This position is supported by reference to the British experience after enacting the (British) Foreign Judgments (Reciprocal Enforcement) Act of 1933.[25]

The Uniform Act was adopted by the National Conference of Commissioners on Uniform State Laws in 1962,[26] and, to date, is in force in twelve states.[27] This Note will analyze each section of

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22. Restatement (Second) of Conflict of Laws § 98, Comment e (1971). *But see* Homburger, *supra* note 10, at 382-83.

23. Judicial Conference of New York, 15 Ann. Rep't A100 (1970).

24. Nat'l Conference of Commissioners on Uniform State Laws, Handbook and Proceedings of the Annual Conference, Rep't of Special Comm. on Uniform Recognition of Foreign Judgments Act 151 (1958).

25. 13 Uniform Laws Ann. 417, Commissioners' Prefatory Note (1980).

26. Nat'l Conference of Commissioners on Uniform State Laws, Handbook and Proceedings of the Annual Conference 242-45 (1962).

27. Alaska Stat. §§ 09.30.100-09.30.180 (1973); Cal. Civ. Proc. Code §§ 1713-1713.8 (West 1972); Colo. Rev. Stat. §§ 13-62-101 to -109 (Supp. 1978); Ga. Code Ann. §§ 110-1301 to -1308 (Supp. 1979); Ill. Ann. Stat. ch. 77, §§ 121-129 (Smith-Hurd 1966); Md. Cts. & Jud. Proc. Code Ann. §§ 10-701 to -709 (1974); Mass. Gen. Laws Ann. ch. 235, § 23A (West Supp. 1979); Mich. Comp. Laws Ann. §§ 691.1151-.1159 (1968); N.Y. Civ. Prac. Law §§ 5301-5309 (McKinney 1978); Okla. Stat. Ann. tit. 12, §§ 710-718 (West 1979-80); Or. Rev. Stat. §§ 24.200-.255 (1977); Wash. Rev. Code Ann. §§ 6.40.010-.915 (Supp. 1978).

the Act and the pertinent case law decided under that section. State legislature modifications of the language of the Act will be discussed in connection with each affected section of the Act.

A. *Scope of the Act*

Section 1 defines two important terms, "foreign state" and "foreign judgment,"[28] and delineates the scope of the Uniform Act. Subsection (1) excludes from the Act's coverage all judgments rendered in the United States and its territories and possessions. These judgments fall under the full faith and credit clause of the Constitution,[29] which is inapplicable to judgments rendered by foreign nations.[30] Although the full faith and credit accorded sister state judgments is unavailable to foreign judgments, there is an inevitable carry-over of concepts into the area of recognition practice.[31] Much of United States recognition practice to date has been the somewhat careless application of domestic principles to foreign judgments seeking recognition and enforcement in this country. Some of the policies served by the full faith and credit clause may be applicable to foreign judgments.[32] Each policy basis for the full faith and credit doctrine should be analyzed as to its relevance in the foreign judgment context, and so long as that policy is relevant, the concept should be carried over. For example, one of the policies served by the full faith and credit doctrine is res judicata. Any foreign judgment which meets

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28. Section 1 provides that:

As used in this Act:

(1)"foreign state" means any governmental unit other than the United States, or any state, district, commonwealth, territory, insular possession of, or the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryuku Islands;

(2)"foreign judgment" means any judgment of a foreign state granting or denying recovery of a sum of money, other than a judgment for taxes, a fine or other penalty, or a judgment for support in matrimonial or family matters.

29. U.S. CONST. art. IV, § 1, *as implemented by* 28 U.S.C. § 1738 (1976).

30. Aetna Life Ins. Co. v. Tremblay, 223 U.S. 185 (1912).

31. Several commentators argue that the differences in policy underlying interstate practice and recognition practice underscore the need for separate treatment of the two areas. Smit, *International Res Judicata and Collateral Estoppel in the United States*, 9 U.C.L.A. L. REV. 44, 46 (1962); von Mehren & Trautman, *supra* note 11, at 1605-07.

32. H. STEINER & D. VAGTS, TRANSNATIONAL LEGAL PROBLEMS 777 (2d ed. 1976).

all requirements for recognition under section 4 of the Uniform Act should be entitled to the benefits of an end to litigation policy.[33] Certainty and predictability are other values furthered by the full faith and credit clause and these policies clearly apply to the area of recognition practice. A third policy underlying the full faith and credit doctrine is the need for uniformity within our federal system. The needs of federalism clearly have relevance only within the domestic context, and therefore rules based on this policy should not be applied in the area of recognition practice.

Subsection (2) limits the meaning of judgment by excluding certain categories of judgments from the ambit of the Act. The exclusions of judgments for taxes and fines or penalties follows international recognition practice.[34] The differences in national laws concerning marital and support decrees necessitate the support judgment exclusion.[35] Although subsection (2) excludes these categories from the Uniform Act, this in no way prohibits a state from adopting a more lenient preclusive policy than that required by the Act.[36] An adopting state is free, for example, to recognize and enforce a foreign alimony decree.[37] The Act merely prescribes the minimum effect to which a qualifying judgment is entitled.[38]

Although section 1 seems to lay out the scope of the Uniform Act in fairly simple terms, this provision has proved difficult to apply in practice. The difficulty probably stems from common usage of the term "foreign judgment" to refer both to a judgment rendered by a foreign nation and to one rendered by a sister state. The overlap of full faith and credit concepts into the area of recognition practice further adds to the confusion.[39] This confusion over terminology presumably explains the defendant's argument in *Mueller v. Payn.*[40] In *Mueller,* plaintiff obtained a judgment in Missouri and then sought full faith and credit in Ma-

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33. *But see* Smit, *supra* note 31, at 62-68.

34. Kulzer, *supra* note 14, at 12.

35. *Id.* at 13.

36. Section 7 of the Uniform Act permits recognition of foreign judgments in situations not covered by the Act.

37. Wolff v. Wolff, 40 Md. App. 168, 389 A.2d 413 (Ct. Spec. App. 1978), *aff'd* 285 Md. 173, 401 A.2d 479 (1979).

38. JUDICIAL CONFERENCE OF NEW YORK, *supra* note 23, at A99.

39. *See* note 31 *supra.*

40. 30 Md. App. 377, 352 A.2d 895 (Ct. Spec. App. 1976). *See also* Collins v. Peacock, 147 Ga. App. 424, 249 S.E.2d 142 (Ct. App. 1978).

ryland. Defendant argued that plaintiff was not entitled to full faith and credit because the rendering foreign court was a seriously inconvenient forum[41] within the meaning of the Uniform Foreign Money-Judgments Recognition Act.[42] In affirming judgment for plaintiff, the court informed defendant that the Act had no bearing whatsoever on the case and referred defendant to the Act's definition of "foreign judgment."[43] A similar result obtained in the Oklahoma case of *Willhite v. Willhite.*[44] In *Willhite,* a divorce decree requiring child support payments was rendered in Texas. The decree was subsequently registered in Oklahoma pursuant to the Uniform Enforcement of Foreign Judgments Act,[45] which deals with the procedure for granting full faith and credit to sister state judgments. Plaintiff garnished defendant's wages to satisfy the judgment, and defendant countered that the Oklahoma court lacked jurisdiction to enforce the Texas decree because the Uniform Act specifically precludes recognition of judgments for support in family matters.[46] Once again the court rejected defendant's misplaced argument, this time pointing out the need to distinguish the Uniform Enforcement of Foreign Judgments Act from the Uniform Foreign Money-Judgments Recognition Act.[47]

The confusion engendered by the multiple meanings of "foreign judgment" and the similarity in name of the two Uniform Acts on Judgments also arises in *Southern Bell Telephone and Telegraph Co. v. Woodstock, Inc.*[48] In this case, defendant argued against the enforcement of a Florida judgment in Illinois by contending that section 4(b)(6) of the Uniform Act applied.[49] Section 4(b)(6) provides a discretionary ground for nonrecognition of a foreign judgment for situations in which jurisdiction is based only on personal service and the foreign court is a seriously inconvenient forum. Though the Illinois court properly rejected defendant's contention, because jurisdiction was based on the transaction of

41. Uniform Act § 4(b)(6).
42. 30 Md. App. at 384, 352 A.2d at 900.
43. *Id.*
44. 546 P.2d 612 (Okla. 1976).
45. 13 UNIFORM LAWS ANN. 176 (1980)(1964 Revised Act).
46. 546 P.2d at 614.
47. *Id.*
48. 34 Ill. App. 3d 86, 339 N.E.2d 423 (1975).
49. *Id.* at 89, 339 N.E.2d at 426.

business in Florida,[50] it failed to carry the analysis to its logical conclusion by indicating the inapplicability of the Uniform Act to this full faith and credit question. Such incomplete analysis only creates more confusion and uncertainty concerning the proper scope and application of the Act. In another case applying the Uniform Act inappropriately, *Stevens v. Superior Court of Los Angeles County*, a California court relied on section 6 of the Act to authorize a post-judgment stay of execution pending appeal of an Oklahoma judgment.[51] While there is nothing improper from a policy standpoint in authorizing a stay of execution pending appeal, the statutory authorization for that stay is, by its own terms, restricted to judgments of foreign nations. Thus, the cases noted above make it obvious that greater care must be taken to differentiate sister state judgments from foreign nation judgments and the Uniform Enforcement Act from the Uniform Recognition Act.

Even when the Uniform Act is inapplicable because of a subsection (2) exclusion, the Act should be consulted by courts in formulating common law decisions. This practice will produce greater consistency in decisions under the Act and at common law, especially when the policies underlying the Act and the common law are identical or complementary. The only caveat to this approach is that the reason for exclusion from the Act must first be ascertained, because if the exclusion was predicated on policy differences between the Act and the excluded category of judgments, the Act should no longer serve as a guide. While not relying on the Act as the basis for its decision, the court in *Pentz v. Kuppinger*,[52] looked to the provisions of the Uniform Act in determining the effect to accord a foreign alimony decree. The opinion may be criticized because it does not clearly articulate the reasons for referring to the Act. Nevertheless, the court properly applied the Uniform Act provision allowing nonrecognition because the cause of action on which the judgment was based was contrary to the public policy of the state.[53] Thus, the court reached a decision under the common law analogous to that which would have been obtained under the Act.[54]

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50. *Id.*

51. Stevens v. Sup. Ct. of L.A. Cty., 28 Cal. App. 3d 1, 4, 104 Cal. Rptr. 369, 371 (Ct. App. 1972).

52. 31 Cal. App. 3d 590, 107 Cal. Rptr. 540 (Ct. App. 1973).

53. Uniform Act § 4(b)(3).

54. 31 Cal. App. 3d at 597, 107 Cal. Rptr. at 545.

Another appropriate application of section 1 of the Uniform Act appears in the Illinois case of *Nardi v. Segal.*[55] The issue presented in *Nardi* was whether the Illinois court had jurisdiction to enforce an Israeli decree for child support payments.[56] The court found no common law governing matrimonial matters in Illinois, as divorce and family matters are governed solely by statute in that state.[57] Since the statute governing recognition and enforcement of foreign judgments in Illinois, the Uniform Act, excludes judgments for support, and since there is no common law on which to fall back, the court correctly held that it lacked jurisdiction to enforce the decree.[58] The *Nardi* court also pointed out the fundamental distinction between recognition and enforcement of foreign judgments.[59] A foreign judgment is recognized when a court concludes that a certain matter has already been decided by the judgment and therefore need not be litigated further. On the other hand, a foreign judgment is enforced when a party is accorded the relief to which the judgment entitles him.[60]

B. *Application of the Act*

Section 2 provides that "this Act applies to any foreign judgment that is final and conclusive and enforceable where rendered even though an appeal therefrom is pending or it is subject to appeal."[61] Thus, the rendering forum's determination of finalty, conclusiveness, and enforceability governs applicability of the Act. A judgment deemed not final by the rendering forum, or one no longer enforceable because of the rendering nation's statute of limitations, for example, cannot be recognized or enforced in the United States pursuant to the Uniform Act.[62] This follows from the notion that a judgment should not be entitled to greater ef-

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55. 90 Ill. App. 2d 432, 234 N.E.2d 805 (App. Ct. 1967); *see* notes 147-50 *infra* and accompanying text. *But see* Wolff v. Wolff, 40 Md. App. 168, 389 A.2d 413 (Ct. Spec. App. 1978), *aff'd* 285 Md. 173, 401 A.2d 479 (1979).

56. 90 Ill. App. 2d at 434, 234 N.E.2d at 806.

57. *Id.* at 436-37, 234 N.E.2d at 807-08.

58. *Id.* at 438, 234 N.E.2d at 808. *See also* Zalduendo v. Zalduendo, 45 Ill. App. 3d 849, 360 N.E.2d 386 (App. Ct. 1977).

59. 90 Ill. App. 2d at 434-35, 234 N.E.2d at 807.

60. von Mehren & Patterson, *supra* note 8, at 38.

61. Uniform Act § 2.

62. A Japanese court's determination that an arbitration award was not a judgment precluded recognition and enforcement of the award under the Uniform Act. Fotochrome, Inc. v. Copal Co., Ltd., 517 F.2d 512 (2d Cir. 1975).

fect abroad than at home.[63]

Section 2, however, must be read in conjunction with section 6. The latter empowers the recognizing court to stay the proceedings if an appeal is pending or the judgement is subject to appeal.[64] "Subject to appeal" infers that the right of appeal exists in the rendering forum and that time remains within which to exercise that right. Timely exercise of the right of appeal has been strictly construed. For example, in *Island Territory of Curacao v. Solitron Devices, Inc.*,[65] defendant failed to seek judicial review of an arbitral award within the allotted time period and judgment was entered against him. That judgment was enforced by the Second Circuit Court of Appeals, which stated that, "(w)e must recognize that the judgment itself is definite in amount, was conclusive and enforceable in Curacao, and . . . is final to the extent that it specifies what Solitron is to pay."[66]

C. *Recognition and Enforcement*

Section 3 states that except as provided in section 4,[67] "a foreign judgment meeting the requirements of section 2 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money."[68] The conclusive effect of a foreign judgment extends only to the parties, and its enforcement is limited to the granting or denying of a sum of money. Any other equitable relief to which the judgment-holder is entitled is precluded under the Act.[69] A foreign judgment is granted conclusive effect even though reexamination of the merits in this country would lead to a different result. Recognition will not be withheld merely because the choice of law process in the rendering forum applies a law at variance with that which would be applied under the recognizing forum's choice of law principles.[70]

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63. Kulzer, *supra* note 14, at 14.

64. Uniform Act § 6.

65. 489 F.2d 1313 (2d Cir. 1973), *cert. denied* 416 U.S. 986 (1973).

66. *Id.* at 1323.

67. Section 4 provides both mandatory and discretionary grounds for nonrecognition of a foreign judgment.

68. Uniform Act § 3.

69. Section 7, however, allows courts to look beyond the Act to common law principles of the recognizing forum which may permit the granting of equitable relief.

70. Watts v. Swiss Bank Corp., 27 N.Y.2d 270, 265 N.E.2d 739, 744, 317 N.Y.S.2d 315 (Ct. App. 1970). *But see* von Mehren & Trautman, *supra* note 11,

Section 3 does not clearly indicate whether domestic res judicata rules are to be applied to foreign judgments. The *Restatement (Second) of Conflicts of Laws* suggests that United States courts normally apply foreign rules of res judicata provided that the foreign rules are substantially the same as those of the United States.[71] It is uncertain whether United States courts would grant similar effect to foreign rules that differ from common law norms, such as splitting of causes of action.[72] The silence of the Uniform Act as to these conflicts questions suggests that the drafters chose to leave this area to development in the courts.[73]

Section 3 also establishes the procedure for enforcement of foreign judgments. They are to be enforced in the same manner as sister state judgments, which are entitled to full faith and credit.[74] The Commissioners' Comment to this section states that the method of enforcement will be that of the Uniform Enforcement of Foreign Judgments Act of 1948 in states which have enacted that Act.[75] The Comment seems contrary to the spirit of the Act, however, since the Uniform Enforcement of Foreign Judgments Act of 1948 requires a summary judgment-type proceeding to obtain domestic judgment status for a sister state judgment, while the equivalent Act of 1964 provides for direct registration of sister state judgments. Direct registration of judgments would seem to provide the most assurance to foreign nations that their judgments will in fact be recognized in the United States. Requiring a second proceeding, however summary, to obtain a domestic judgment that may then be recognized and enforced adds new uncertainty that could influence foreign nations to deny United States judgments recognition abroad. Nonetheless, both

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at 1636-42, in which it is argued that application of a choice of law test would ensure minimal fairness and protect legitimate interests of the recognizing forum.

71. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 98, Comment f (1971).

72. *Id.*

73. Kulzer, *supra* note 14, at 22-23. Several commentators argue that the end-to-litigation rationale of domestic res judicata is inapplicable to the foreign judgments context. They contend that a second lawsuit would not be a duplication of effort because of the potential for substantive and procedural differences between the forums. Smit, *supra* note 31, at 62; von Mehren & Trautman, *supra* note 11, at 1605-06.

74. Uniform Act § 3.

75. 13 UNIFORM LAWS ANN. 419, 420, Commissioners' Comment to § 3 (1980).

California[76] and New York[77] have amended the language of section 3 to specifically require an action on the judgment or comparable proceeding.[78]

D. *Grounds for Nonrecognition*

The principles that govern recognition practice in the United States, as stated by Mr. Justice Gray in *Hilton v. Guyot*,[79] have been incorporated into section 4 of the Uniform Act. That section reads as follows:

> (a) A foreign judgment is not conclusive if
>
> (1) the judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law;
> (2) the foreign court did not have personal jurisdiction over the defendant; or
> (3) the foreign court did not have jurisdiction over the subject matter.
>
> (b) A foreign judgment need not be recognized if
>
> (1) the defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him to defend;
> (2) the judgment was obtained by fraud;
> (3) the (cause of action) (claim for relief) on which the judgment is based is repugnant to the public policy of this state;
> (4) the judgment conflicts with another final and conclusive judgment;
> (5) the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court; or
> (6) in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.[80]

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76. CAL. CIV. PROC. CODE § 1713.3 (West 1972).

77. N.Y. CIV. PRAC. LAW § 5303 (McKinney 1978).

78. For New York cases decided under its amended § 3 of the Uniform Act, see Biel v. Boehm, 94 Misc. 2d 946, 406 N.Y.S.2d 231 (Sup. Ct. 1978) and Neumeier v. Kuehner, 43 A.D.2d 109, 349 N.Y.S.2d 866 (Sup. Ct. App. Div. 1973).

79. *See* note 10 *supra*.

80. Uniform Act § 4.

Both sections 4(a)(1) and (2) are constitutionally mandated, requiring observance of domestic due process concepts before recognition can be accorded a foreign judgment. This is not to say that mere differences in procedural systems suffice as grounds for nonrecognition. On the contrary, only a serious showing of injustice resulting from use of the differing procedures will be sufficient grounds for nonrecognition.[81] Under the United States Constitution any failure to comply with minimum requirements of domestic due process, adequate notice, and opportunity to be heard, compels nonrecognition of the foreign judgment. This is illustrated by the case of *Julen v. Larson*,[82] in which a Swiss default judgment is denied recognition by a California court. The issue was whether the Swiss court had acquired personal jurisdiction over defendant, a United States citizen doing business in Switzerland.[83] To be recognized and enforced, a foreign judgment must be conclusive; to be conclusive, the foreign court must acquire jurisdiction over the defendant.[84] If a foreign court lacks personal jurisdiction over the defendant, section 4(a)(2) of the Uniform Act prohibits recognition of the foreign judgment. In *Julen* process was served on defendant by the mailing of two letters, neither of which clearly indicated the legal significance of the documents enclosed.[85] The documents themselves were written in German, a language the defendant could not read.[86] The court determined that in order for notice to meet the requisite level of informativeness, a defendant should be informed, in the language of the jurisdiction in which he is served, that a specific legal action is pending against him at a particular time and place.[87] Since no such notice was provided, the Swiss court had no basis on which to exercise personal jurisdiction over defendant, and recognition of the judgment was denied.[88] Whenever a question arises as to whether a foreign court has personal jurisdiction over a de-

81. 13 UNIFORM LAWS ANN. at 423, Commissioners' Comment (1980).
82. 25 Cal. App. 3d 325, 101 Cal. Rptr. 796 (Ct. App. 1972).
83. *Id.*
84. *Id.* at 327, 101 Cal. Rptr. at 798.
85. *Id.*, 101 Cal. Rptr. at 797.
86. *Id.*, 101 Cal. Rptr. at 798.
87. *Id.* at 328, 101 Cal. Rptr. at 798. The conclusion of the court is supported by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of Nov. 15, 1965, 20 U.S.T. 361, T.I.A.S. No. 6638, 658 U.N.T.S. 163.
88. 25 Cal. App. 3d 325, 330, 101 Cal. Rptr. 796, 800.

fendant, section 5 of the Uniform Act must also be consulted. Section 5 lists the kind of contacts which are deemed adequate for the acquisition of personal jurisdiction.

Section 4(a)(1) denies recognition to a foreign judgment rendered under procedure incompatible with due process. This section thus raises the question of the impact of *Shaffer v. Heitner*[89] on foreign judgments seeking recognition and enforcement in this country when jurisdiction in the rendering court was based on intangible property of the United States defendant within the foreign nation. *Shaffer* requires sufficient minimum contacts among the parties, the litigation, and the forum when the nonresident's property is unrelated to the underlying cause of action.[90] The sufficient minimum contacts standard adopted by the Supreme Court in *Shaffer* defies a generalized response to the question posed, because in each case the relationship between the United States defendant and the forum, and between the parties, the forum, and the litigation will govern the question of sufficient contacts to satisfy notions of fair play and substantial justice.[91] The crucial inquiry, therefore, is whether a relationship between the forum, the parties, and the underlying cause of action can be established. When such a relationship is established, due process will be satisfied.

Lack of subject matter jurisdiction by the foreign court is the final mandatory ground for nonrecognition under the Uniform Act. New York has moved this provision to section 4(b), thereby making nonrecognition discretionary when subject matter jurisdiction is lacking.[92] Maryland, on the other hand, has added another provision to the mandatory nonrecognition category. This provision prohibits recognition of foreign judgments obtained by fraud.[93]

The first of the discretionary grounds for nonrecognition occurs in the situation in which defendant fails to receive notice of the

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89. 433 U.S. 186 (1976).

90. *Id.*

91. *See generally* Note, *The Applicability of Shaffer to the Quasi-in-Rem Attachment of Foreigners' Assets*, 12 VAND. J. TRANSNAT'L L. 393 (1979); 11 VAND. J. TRANSNAT'L L. 159 (1978).

92. Professor Kulzer explains the shift by stating that New York regards rules of subject matter jurisdiction as primarily matters of internal organization of a nation's courts. Kulzer, *supra* note 14, at 29.

93. MD. CTS. & JUD. PROC. CODE ANN. § 10-704(a)(4) (1974).

proceedings in sufficient time to enable him to defend.[94] A lack of adequate notice would defeat an assumption of personal jurisdiction by the foreign court, thus compelling nonrecognition under section 4(a)(2). Therefore, section 4(b)(1) must be read to deny recognition when the defendant actually received notice, but it was so late that the defendant was physically unable to arrive at the proceedings in time to defend. Any other interpretation of section 4(b)(1) could raise due process problems under the Constitution.[95]

Nonrecognition is likewise permitted if the judgment was obtained by fraud.[96] The determination of fraud is made by the recognizing forum under the Act. It is defaulted, however, whether a United States court would permit the issue of fraud to be settled conclusively by a foreign law which might be based upon concepts of fairness and justice at variance with those prevailing in the United States.[97]

The next defense to recognition of foreign judgments listed by the Act is the public policy defense. This ground for nonrecognition has been characterized as the most elastic and unpredictable of the Act's defenses.[98] A judgment will not be recognized under the Act unless the underlying cause of action on which the judgment is based is contrary to the public policy of the state.[99] It is difficult to hypothesize a situation which would fall into this category which would not also be controlled by the proscription of section 4(a)(1), thus compelling nonrecognition of the foreign judgment.

Another discretionary defense to recognition exists if the foreign judgment conflicts with another final and conclusive judgment.[100] In this situation, the court must balance the equities and at least one commentator feels the scales should be tipped towards recognition of the foreign judgment. The New York CPLR Practice Commentaries state that a foreign judgment should not

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94. Uniform Act § 4(b)(1).

95. *See* N.Y. CIV. PRAC. LAW § 5304, Practice Commentaries (McKinney 1978).

96. Uniform Act § 4(b)(2).

97. Reese, *supra* note 10, at 794.

98. Scoles & Aarnas, *The Recognition and Enforcement of Foreign Nation Judgments: California, Oregon, and Washington,* 57 ORE. L. REV. 377, 384 (1978).

99. Uniform Act § 4(b)(3).

100. *Id.* § 4(b)(4).

be recognized under section 4(b)(4) only after some showing why the United States judgment should have priority.[101]

Recognition may be denied if the parties agreed to a means of dispute settlement other than proceedings in the rendering forum.[102] This provision applies to both arbitration agreements[103] and forum selection clauses.[104] The Supreme Court recently endorsed choice of forum selection clauses between contracting parties.[105] If parties agree on a choice of court clause, this would establish a basis for personal jurisdiction over a defendant who sought to contest jurisdiction in a recognition proceeding.[106]

The last provision in section 4 adds a new twist to recognition policy.[107] Section 4(b)(6) in effect grants a *forum non conveniens* defense to recognition, but only if jurisdiction was based on personal service.[108] This ground for nonrecognition qualifies section 5(a)(1) of the Act, which approves the transient rule of personal jurisdiction as a sufficient jurisdictional basis.[109] Thus, section 4(b)(6) gives a defendant who is personally served a possible defense to the foreign court's jurisdiction.

Massachusetts and Georgia, however, have added another paragraph to this section of the Uniform Act. The Massachusetts provision, which is similar to the Georgia rule, provides that "A foreign judgment shall not[110] be recognized if judgments of this state are not recognized in the courts of the foreign state."[111] The addition of this clause, of course, adds a reciprocity requirement[112] which effectively undermines the very purpose of the Uniform

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101. N.Y. CIV. PRAC. LAW § 5304, Practice Commentaries (McKinney 1978).

102. Uniform Act § 4(b)(5).

103. *See* New Central Jute Mills Co. v. City Trade & Indus., Ltd., 65 Misc. 2d 653, 318 N.Y.S.2d 980, 985 (Sup. Ct. 1971).

104. Scoles & Aarnas, *supra* note 98, at 386.

105. The Bremen v. Zapata Off-Shore Co., 407 U.S. 1 (1972).

106. Uniform Act § 5(a)(3). *See also* notes 124-31 *infra* and accompanying text.

107. Kulzer, *supra* note 14, at 35.

108. *See* 13 UNIFORM LAWS ANN. at 423, Commissioners' Comment to § 4 (1980).

109. Homburger, *supra* note 10, at 373.

110. By changing the introductory language of § 4(b) to "shall not be recognized" from "need not be recognized," Massachusetts and Georgia presumably intend to make all the grounds for nonrecognition listed in § 4 mandatory.

111. MASS. GEN. LAWS ANN. ch. 325, § 23A (West Supp. 1979).

112. The arguments against the reciprocity requirement have been discussed previously. *See* notes 10-12 *supra* and accompanying text.

Act. A major purpose of the Act was to codify recognition practice in the United States so that other nations will treat United States judgments favorably. As long as certain states reserve reciprocity, however, foreign nations cannot reasonably predict the treatment their judgments will receive. Thus, the reservation of reciprocity may not only defeat the purpose of enacting the Uniform Act in Massachusetts and Georgia, but also may harm other states' judgments abroad. There are no reported Massachusetts or Georgia cases since *Hilton* that deny recognition of a foreign judgment solely on lack of reciprocity grounds.[113] Indeed, this author found no Massachusetts cases decided under the Uniform Act at all.[114] This dearth of authority is not unusual, however. Several other states which had adopted the Uniform Act have yet to decide any cases under it.[115] Furthermore, those states that have adopted the Act have sometimes been inconsistent in applying it. For example, the Illinois courts have rendered several decisions based on the Uniform Act[116] and have looked to the Act for supporting policy in other situations.[117] Nonetheless, in *Hager v. Hager*[118] the court considered the question of recognition of a foreign alimony decree and, in listing grounds on which recognition could be withheld, included lack of reciprocity.[119] This is difficult to reconcile since the Uniform Act had been in force in Illinois four years when the *Hager* opinion was rendered, and Illinois has no additional provision reserving reciprocity. In addition, the court indicated its awareness of the Act by correctly holding that support payments are expressly excluded from its scope.[120] The mixed references by the *Hager* court to both the *Hilton* reciprocity rule on one hand and the Uniform Act on the other, indicate the confu-

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113. Peterson, *Foreign Country Judgments and the Second Restatement of Conflicts of Laws*, 72 COLUM. L. REV. 220, 233-36 (1972).

114. The lack of case law could be explained because the cases annotated in conjunction with the Massachusetts version of the Uniform Act all involved domestic judgments and full faith and credit issues. For a discussion of this frequent error, see text at 7-11.

115. No case law pertaining to the Uniform Act was found in Alaska, Colorado, Michigan, Oregon, or Washington.

116. *See, e.g.*, Zalduendo v. Zalduendo, 45 Ill. App. 3d 849, 360 N.E.2d 386 (App. Ct. 1977); Nardi v. Segal, 90 Ill. App. 2d 432, 234 N.E.2d 805 (App. Ct. 1967).

117. Davis v. Nehf, 14 Ill. App. 3d 318, 302 N.E.2d 382 (App. Ct. 1973).

118. 1 Ill. App. 3d 1047, 274 N.E.2d 157 (App. Ct. 1971).

119. *Id.* at 1051, 274 N.E.2d at 159.

120. *Id.* at 1052, 274 N.E.2d at 160.

sion that lingers in the area of United States recognition practice, even in those states that have enacted the Uniform Act.

E. *Personal Jurisdiction*

Section 4(a)(2) provides that no recognition is due a foreign judgment unless the rendering court acquired personal jurisdiction over the defendant. Section 5 then lists jurisdictional bases deemed adequate for the acquisition of personal jurisdiction. The first adequate basis of personal jurisdiction under the Act is personal service in the foreign state,[121] even though this practice is not accepted in many civil law countries.[122] As noted previously, however, the *forum non conveniens* provision of section 4(b)(6), modifies the transient rule of personal jurisdiction. Another valid basis of personal jurisdiction under section 5 occurs when the defendant makes a voluntary appearance in the proceedings other than a "special" appearance.[123] Agreement of the defendant prior to commencement of proceedings to submit to the jurisdiction of the foreign court constitutes a third basis of personal jurisdiction.[124] For instance, in *New Central Jute Mills Co. v. City Trade & Industries, Ltd.*,[125] defendant who had agreed contractually to submit to arbitration pursuant to the provisions of the Indian Arbitration Act, found itself precluded from challenging the jurisdiction of the Indian court. The court further held that any other defenses sought to be raised by defendant must have been asserted in the Indian courts, since defendant agreed to proceed in the India forum.[126]

The contrary result was reached in *Kough v. Bank of Montreal*,[127] however. *Kough* involved a breach of contract action by the bank against defendant Kough, as guarantor of the loans of a British Columbian corporation. The contract executed between Kough and the bank stated that "the courts of that Province (British Columbia) shall have jurisdiction over all disputes which may arise under this contract."[128] In analyzing this case, the court

121. Uniform Act § 5(a)(1).
122. Homburger, *supra* note 10, at 373.
123. Uniform Act § 5(a)(2).
124. *Id.* § 5(a)(3).
125. 65 Misc. 2d 653, 318 N.Y.S.2d 980, 985 (Sup. Ct. 1971).
126. *Id.*
127. 430 F. Supp. 1243 (N.D. Cal. 1977).
128. *Id.* at 1247.

noted first, that a form contract was involved, and second, that a clause specifically stating that Kough agreed to submit to the personal jurisdiction of the British Columbian courts could easily have been added if the bank had intended.[129] The court further characterized the above provision as "a general agreement that the contract disputes would be governed by the law of British Columbia" as distinguished from the situation in *New Central Jute*, where two large companies negotiated a contract providing for arbitration.[130] This distinction, and the result reached by the court, is unpersuasive. Absent a large inequality in bargaining position[131] or an adhesion contract situation, there appears no reason to avoid a finding of personal jurisdiction under section 5(a)(3) in the *Kough* case.

The remaining three bases of personal jurisdiction under subsection (a) of section 5[132] are more expansive grounds of long-arm jurisdiction. Nonetheless, these bases are conservative when compared with expanding notions of jurisdiction in recent years[133] because these grounds result in a mandatory finding of personal jurisdiction under the Act. As the New York Judicial Conference aptly noted, while it is common knowledge that "countries are quite generous in extending their own jurisdictional reach, they

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129. *Id.*

130. *Id.*

131. Perhaps the court's reference to two large companies in *New Central Jute* was meant to imply an inequality of bargaining position in the instant case. This is unpersuasive because Kough, although a single individual, was a knowledgeable businessman, and a member of the board of directors of the corporation whose obligations he agreed to guarantee.

132. These subsections are as follows:

> (a) The foreign judgment shall not be refused recognition for lack of personal jurisdiction if
>
> (4) the defendant was domiciled in the foreign state when the proceedings were instituted, or, being a body corporate had its principal place of business, was incorporated, or had otherwise acquired corporate status, in the foreign state;
>
> (5) the defendant had a business office in the foreign state and the proceedings in the foreign court involved a [cause of action][claim for relief] arising out of business done by the defendant through the office in the foreign state; or
>
> (6) the defendant operated a motor vehicle or airplane in the foreign state and the proceedings involved a [cause of action][claim for relief] arising out of such operation.

13 UNIFORM LAWS ANN. at 425.

133. von Mehren & Patterson, *supra* note 8, at 53.

are reluctant to recognize very many extensions by others."[134] This understandably self-interested attitude makes determinations by a recognizing court of whether a rendering court had jurisdiction over the defendant one of the most difficult problems impeding international cooperation in the field of recognition practice.[135]

Section 5(b) provides that courts may recognize other bases of jurisdiction not specified in the Act. This provision allows the enacting state to recognize foreign judgments rendered on more expansive bases of jurisdiction.[136] The court in *Kough v. Bank of Montreal*,[137] for example, had little difficulty going beyond the provisions of section 5(a) to find a basis for personal jurisdiction over defendant Kough. The court found several significant contacts between defendant and the British Columbian forum, such as that defendant was engaged in business there (albeit without an office); that he was a director and shareholder of a company operating in British Columbia; and that he signed a contract in British Columbia specifically relating to other dealings in the province.[138] The court emphasized that it would not have recognized the jurisdiction of the British Columbian courts had the contacts between defendant and the province been less pronounced.[139]

In *Siedler v. Jacobson*,[140] contracts between defendant and the Austrian forum were found to be "so casual and incidental" by a New York Court that it refused to recognize the Austrian court's jurisdiction. Defendant in *Siedler* purchased an antique from plaintiff in Vienna and subsequently refused payment, alleging misrepresentation of the age and value of the piece.[141] Defendant was personally served in New York, and a default judgment was rendered against him in Austria, which plaintiff then sought to enforce in New York pursuant to the Uniform Act.[142] The court stated:

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134. THE JUDICIAL CONFERENCE OF NEW YORK, *supra* note 23, at A102 (1970).
135. Kulzer, *supra* note 14, at 38.
136. 13 UNIFORM LAWS ANN. at 425, Commissioners' Comment.
137. 430 F. Supp. 1243 (N.D. Cal. 1977).
138. *Id.* at 1248.
139. *Id.* at 1249.
140. 86 Misc. 2d 1010, 383 N.Y.S.2d 833 (Sup. Ct. 1976).
141. *Id.*, 383 N.Y.S.2d 834.
142. *Id.*

> Analysis of the legislative history of Article 53 (the New York Uniform Foreign Money-Judgments Recognition Act) makes clear that it was not within the intendment of that statute to adopt the broad definition of "transacting any business" applicable under CPLR §302 (New York's long-arm jurisdiction statute) as the criterion for extending recognition to foreign country judgments themselves bottomed upon correspondingly liberal bases of jurisdiction.[143]

The *Siedler* court's position that jurisdictional standards for recognition purposes should not mirror the recognizing court's standards for assuming jurisdiction has many supporters.[144] The opposite view posits that it is appropriate for an enacting state to recognize under section 5(b), any jurisdictional basis it recognizes in its local law for a foreign judgment.[145] There should be no due process problems associated with such a jurisdictional basis. The debate over how far to expand jurisdictional bases for recognition purposes must ultimately focus on the purpose of the Uniform Act. Section 5 clearly does not mandate recognition in a *Siedler*-type situation, and there is substantial precedent for the *Siedler* approach.[146] But if the basic premise underlying the Uniform Act is accepted — that consistent recognition of foreign judgments in the United States will promote recognition of United States judgments abroad—then the Act may be used as a springboard to expand recognition of foreign judgments, consonant, of course, with due process and fairness to the parties.

F. *Nonexclusivity of the Act*

Section 7 of the Uniform Act provides that "this Act does not prevent the recognition of a foreign judgment in situations not covered by this Act."[147] This section acknowledges the nonexclu-

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143. *Id.*

144. *See* von Mehren & Trautman, *supra* note 11, at 1616-29.

145. N.Y. CIV. PRAC. LAW § 5305, Practice Commentaries (McKinney 1978).

146. *See, e.g.*, Falcon Mfg. (Scarborough) Ltd. v. Ames, 53 Misc. 2d 332, 278 N.Y.S.2d 684 (Civ. Ct. N.Y. 1967).

147. The remaining provisions of the Uniform Act are as follows:

§ 8 [Uniformity of Interpretation]

This Act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

§ 9 [Short Title]

This Act may be cited as the Uniform Foreign Money-Judgments Recognition Act.

13 UNIFORM LAWS ANN. at 427.

sive nature of the Uniform Act, and provides that an enacting state may recognize a foreign judgment when not required to do so by the terms of the Act. A clear illustration of this principle was provided by the court in *Wolff v. Wolff*.[148] In this case the court specifically held that the Uniform Foreign Money-Judgments Recognition Act "neither provides for the recognition or enforcement of the alimony provisions of the English divorce decree, nor precludes such recognition or enforcement on a basis other than that set out in the Act."[149] The court then considered whether recognition should be accorded under common law principles of comity[150] and concluded that the decree should be recognized and enforced.[151]

IV. Conclusion

The Uniform Foreign Money-Judgments Recognition Act was not intended by its drafters to be new or controversial. It was meant to be a codification of consistently applied common law principles governing the recognition and enforcement of foreign judgments in the United States. The Special Committee on the Uniform Act reported in 1958 that "in view of the obvious advantages of a Uniform Act, its adoption by the States, we think, is in due course most likely."[152] The Committee's bold prediction has not been realized, however, as less than one quarter of the states to date have adopted the Act.[153] It is true that recognition questions rarely arise in many states, and that several of those states most active in international business transactions are among the enacting jurisdictions. Nonetheless, the failure to obtain passage by a greater number of states detracts from the effectiveness of the Act. And, even in the enacting states, confusion remains in the area of recognition practice, as the above analysis of the case law demonstrates.

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148. 40 Md. App. 168, 389 A.2d 413 (Ct. Spec. App. 1978), *aff'd* 285 Md. 173, 401 A.2d 479 (1979).

149. *Id.* at 176, 389 A.2d at 418.

150. *Id.* at 177-84, 389 A.2d at 418-22.

151. *But see* Nardi v. Segal, 90 Ill. App. 2d 432, 234 N.E.2d 805 (App. Ct. 1967).

152. *Supra* note 24, at 152.

153. *See, e.g.*, Carl, *Proposed Legislation: Uniform Foreign Country Judgments Recognition Act*, 40 Tex. B.J. 40 (1977), explaining its terms and recommending passage of the Act. Texas has yet to adopt the legislation.

Arguments in favor of adopting the Act were first cogently set forth by Professor Kulzer in her study undertaken prior to enactment of the Uniform Act in New York. The primary reason for adopting the Act was that notification to civil law countries that their judgments would be recognized in the United States would result in United States judgments receiving improved treatment abroad.[154] As the prevailing law would be set forth, foreign nations could more accurately predict the sections of United States recognition decisions.[155] Uniform legislation would also help ease the way for treaties in this area.[156] Additionally, the Act would clarify the applicable standards for[157] courts in states that had adopted the Act.

How effective has the Uniform Act been to date? The scope of this Note does not extend to an examination of those cases in which United States judgment-holders sought recognition abroad. A study of these cases would do much to answer the question posed. But even absent this data, some conclusions can be drawn. First, the smaller number of states that have adopted the Uniform Act has probably affected the civil law countries' reaction to it. Many of them are unfamiliar with the machinations of the United States federal system, and the fact that all states will not treat their judgments in like fashion may simply lead to a conclusion that reciprocity has not been established. Furthermore, if a foreign nation were to attempt to unravel the case law in existence under the Act, it would find inconsistent explanations for the sometimes contradictory actions taken. A greater measure of consistency and certainty will undoubtedly be achieved as more cases are decided and courts familiarize themselves with the Act. The present state of recognition practice in the United States, however, notwithstanding the Uniform Act, is unsettled.[158]

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154. Kulzer, *supra* note 14, at 5.

155. *Id.*

156. *Id.*

157. *Id.*

158. Several other efforts to improve international recognition practice have been or are currently underway. For an excellent discussion of several draft conventions on this subject, see Zaphiriou, *Transnational Recognition and Enforcement of Civil Judgments*, 53 NOTRE DAME LAW 734 (1978). *See also* Draft Convention on the Reciprocal Enforcement of Judgments in Civil Matters between the United Kingdom and the United States of America, 16 INT'L LEGAL MAT. 71 (1977); Brussels Convention of Sept. 27, 1968, on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters, O.J. EUR. COMM. (No. L 299) 32

The recognition of foreign judgments has become increasingly important as the international marketplace expands. The decision to recognize or to deny recognition to a foreign judgment arising out of an international business transaction may impact substantially on United States foreign relations, and therefore must be considered an important federal concern appropriate for federal control.[159] The federal government clearly has the power to enact statutes or enter into treaties governing recognition practice.[160] Judicial action is also a practical possibility. Specifically, the Supreme Court could, pursuant to the foreign affairs power and the foreign commerce clause, create a federal common law of recognition and enforcement of foreign judgments.[161] This proposal merits consideration simply because the recognition and enforcement of foreign judgments is an area that significantly affects our foreign affairs. Such an area of national concern should not continue to develop in an ad hoc fashion. Some state and federal courts have expressly rejected the Supreme Court's decision in *Hilton,* which is still good law, while other states have yet to consider the question of which law governs recognition practice in their state. The ad hoc nature of decision-making in this area is a direct result of the strong preference of many states to ignore the *Hilton* reciprocity rule. To include a reciprocity requirement in the state's rules on foreign judgments imposes a significant burden on commerce which is undesirable. Assuming reciprocity to be an undesirable policy in recognition cases, however, individual state action is a poor way to combat the problem, because it jeopardizes stability in international transactions.[162] Until a coherent

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(1977), *reprinted in* 2 COMM. MKT. REP. (CCH) ¶ 6003; Draft Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, 5 INT'L LEGAL MAT. 636 (1967).

159. Cheatham & Maier, *supra* note 12, at 67.

160. Several commentators advocate bilateral and multilateral treaties and conventions as the best solution to recognition practice problems. *See* Golomb, *supra* note 4, at 642-48; von Mehren & Patterson, *supra* note 8, at 79-82.

161. On the foreign affairs power, see *Moore, Federalism and Foreign Relations,* 1965 DUKE L.J. 248. On the foreign commerce clause, see Note, *Alternative Theories for Establishing a Federal Common Law of Foreign Judgments in Commercial Cases: The Foreign Affairs Power and the Dormant Foreign Commerce Clause,* 16 VA. J. INT'L L. 635 (1976). Indeed, to one commentator, the *Hilton* court sought to "federalize" the common law of recognition of foreign judgments, including the reciprocity requirement. Homburger, *supra* note 10, at 383-85.

162. Golomb, *supra* note 4, at 635.

policy on recognition practice is developed, the potential for disruption of commerce and interference with foreign policy will remain. For these reasons, the Supreme Court should end the confusion as to which law governs in recognition cases by over-ruling *Hilton v. Guyot.* The Court could then begin to fashion a federal common law of recognition practice with the rules of the Uniform Act as its cornerstone. By incorporating the Uniform Act into a federal common law of recognition practice, the national uniformity necessary to deal with the problems associated with recognition practice will be obtained in the most expeditious manner possible. As long as the *Hilton* reciprocity rule remains good law, the Uniform Act in its present form cannot achieve a uniform and coherent United States recognition policy.

Carol C. Honigberg