

THE POLICIES UNDERLAYING THE RULES OF
ENFORCEMENT OF FOREIGN JUDGMENTS IN
LIBYA : A COMPARATIVE STUDY.

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I. ILLUSTRATION OF THE PROBLEM

We wish to know the value of a foreign judgment, that is, under what conditions and to what extent such a judgment will be effective.

The answers to these questions depend upon a country's considerations and policies which determine to what extent it recognizes the foreign country's judgment. The major consideration is international transaction needs. For example, if a person sought enforcement of a judgment in many countries, lack of recognition of the foreign judgment by some of these countries would necessitate multiple law suits and as a consequence higher adjudication costs, the waste of time, and, in some cases, a conflict between judgments from country to country. All of this would disturb the frequency and stability of international transactions.

Professor Nadelmann, after referring to Madison's comments on the full faith and credit clause of the United States Constitution in the **Federalist**, states: "Today with our banking techniques and the modern means of transportation almost every place on the globe it has become a "contingent state" in this respect. It is therefore equally important that judgments duly obtained in the domestic courts are recognized and can be enforced outside the United States ..."(1)

The contrary argument, which argues against the recognition of the foreign judgments in whole or in part, states that, in addition to the jurisdiction to adjudicate (jurisdictio) element, the judgment has an imperative

(1) Nadelmann, "Non-recognition of American money judgment abroad and what to do about it," 42 Iowa Law Review, 237 (1951).

(imperium) element. This imperative element would imply that a judicial order from one country would be enforced, by force if necessary, by the executive authority of another country. It is undoubtedly true, however, that no country's executive authority will accept orders from another country's judiciary. Furthermore, a country where in enforcement of a foreign judgment is sought may not trust the courts which rendered the judgment to have administered justice irreproachably for a variety of reasons. Among these might be corruption in the judiciary, insufficiency of legal education, or the existence of incompetent judges and justices whose appointment may have been motivated by political influences. Furthermore, the differences between various countries in their fundamental attitude to questions of morality, public policy and social order makes the recognition of some judgments undesirable (1)

Finally, it is inconceivable to order the extraterritoriality of a court's authority, since the laws under which the court adjudicates are not those of the country in which we wish its effects to be felt, in the normal circumstances, and the laws of one country are never expected to be binding on another.

In balancing the considerations and policies which lead to the enforcement of foreign judgments or lack of it, the legislatures and the courts of various countries entertain different attitudes towards the problem.

The Libyan legislature has treated the rules and procedures of recognition and enforcement of foreign judgments in Articles 405-411 (2) inclusive in the Civil and Com-

(1) Wolff, "Private International Law," Oxford (1950) 231.

(2) The translation of these articles appears in Appendix (1).

mercial Procedures Code.(1'2)

The theme of this paper will be to analyze the policies underlying the rules of enforcement of foreign judgments in Libya with a comparative study of the rules of the Uniform Foreign Money-Judgments Recognition Act which was approved in 1962 by the National Conference of Commissioners on Uniform State Laws,(3) effective in a number of States in America, including Massachusetts-Mass. Gen. L. Ch. 235 Sec. 23A.

The reason that the paper will make reference to the Uniform Act instead of general federal standards relates to the apparent effect of the Supreme Court's rule in **Erie Railroad Co. v. Tompkins** 304 U.S. 64, within the context of enforcement of foreign country judgments as interpreted in federal decisions. The **Erie** decision requires that a federal court sitting in diversity must apply state law in matters of substantive law. Since the question as to whether a state will enforce a foreign judgment has been held to be a matter of substantive law, it follows that state law is determinative of the issue. **Svenska Handelsbanken v. Carlson** 258 E. Supp. 348 (D. Mass. 1966). See also **Johnson v. Compagnie Generale Transatlantique** 242 N.Y. 381 (1926).

(1) The law was published on Feb. 20, 1954 and it is in force ever since March 7, 1954 and until the present day. The Libyan Official Gazette, February 1954.

(2) Article one of the promulgating decree states the following : "The procedure law, now in force, shall be repealed and replaced by the civil and commercial procedure code accompanying this decree, provided that the new code shall come into force fifteen days after its publication in the official Gazette and all provisions of the law contravening the same shall be repealed."

(3) Published in 9B U.L. Annotated 64. Text appendix (2).

Thus, although the Supreme Court's opinion prior to **Erie in Hilton v. Guyot** 159 U.S. 113 (1895) seemed to establish federal standards of enforceability of foreign judgments, it is not clear yet that the question is one left for the states. It is because of the fact that a number of states have adopted this Uniform Act that this paper uses it as illustrative of the rules in America.

2. CONDITIONS FOR ENFORCEMENT

Certain conditions related to the foreign judgment and the foreign court in addition to the reciprocity requirement have to be complied with before enforcement is ordered. We will briefly discuss these conditions in the Libyan Code and the Uniform Act.

A. The Foreign Judgment.

Definition :

Articles 405 and 407 deal with the judgments rendered by judicial institutions of foreign sovereignties seeking an order of enforcement. The Libyan Code adheres to a form of broad interpretation of the word judgment. It will view as a "judgment" for purposes of enforcing a foreign judgment, not only court judgements and court orders such as appointment of a guardian or custody of a child (1) (Article 405) but under certain conditions even foreign arbitration awards (Article 408) and foreign authenticated acts (Article 410). (2)

(1) Wolff, "Private International Law," Oxford (1950) 236.

(2) The arbitral awards are considered foreign if they were awarded in a foreign country with no considerations to the disputants, or the arbitrators, nationalities or to the place where agreement on arbitration took place. This is stated by Article 761 of the same code.

Conditions : on Foreign Judgment :

1. A judgment is considered foreign when it is rendered by a foreign court in the name of a foreign sovereign and no significance is given to the nationality of the judges rendering it or to the place where they sit.

The wording of Article 405, "Judgments ... rendered in a foreign country ...," should be interpreted as including any judgment rendered in the name of the foreign sovereign in any place where the foreign country exercises its sovereignty.

2. Every country accepts as a fundamental condition for enforcement of foreign judgments that the subject matter must be limited to private law disputes. Since this condition is universally recognized⁽¹⁾ as relating to the exclusive sovereignty of each nation, there is no need for a specific provision of the Libyan code to so state. In other words, this means that penal, fiscal and administrative judgments cannot be executed in Libya. Illustrations of the kinds of judgments included in these categories are : foreign judgments ordering the payment of a fine or financial penalty, or ordering the collection of a tax or rendering a judgment against any other nation.

3. The foreign judgment to be entitled to an order for execution must be final and conclusive and not subject to a stay of execution or appeal. This condition was taken from the old Egyptian Civil and Commercial Code, Article 93, which was in turn originally found in the Italian Code of procedure.⁽²⁾ The significance of this condition is that it promotes stability with respect to the enforcement of

(1) Abdul Rahman, "The Private International Law," Cairo (1964) 69.

(2) Abdulla, "Egyptian Private International Law," Cairo (1954) p. 727.

foreign judgments, to the extent that the possibility of repeal or modification has been eliminated.

4. The next condition requires that no foreign judgment shall conflict with any domestic judgment (Article 407 (3)). If there exists any conflict between domestic and foreign judgments, the foreign judgment will not be recognized. The reason for this requirement is correctly explained by those French jurists who view the conflict as one touching upon National Public Policy "ordre publique" of the country whose domestic judgment is challenged. If the foreign judgment were to prevail over the domestic one then it could not be said that the judicial actions of the domestic country are an expression of truth and justice, which is contrary to the needs of the public order.(1)

5. Finally, the foreign judgment must not be contrary to the morality or the conception of public order in Libya (Article 407 (4)). This condition is found in all legal systems. A distinguished English jurist has made this point as follows : "A contract, for example, which is valid under its proper law, but contrary to boni mores as understood in this country, cannot be upheld ..." (2)

In order to understand when a foreign judgment will not be upheld because it is contrary to the forum's morality or conception of public order — in short its public policy — it is necessary to briefly investigate what is meant by "public policy" and how it is used in making a determination about the enforceability of foreign judgments.

The notion of public policy is an abstract idea which exemplifies a complex of societal and political relations, and various moral and religious viewpoints; it is not possible

(1) *Id.* 227, p. 728.

(2) Wolff, "Private International Law," Oxford (1950) 158.

to state that public policy means any one thing or set of things since the relations and viewpoints which constitute it are constantly in flux. The only rule which can be used in applying or deciding the public policy is that it is always changeable and flexible and should not be viewed as fixed for once and for all. Changes of time and place, however slight, may have significant effects in evaluating public policy.

However, we can make a distinction between public policy when applied strictly to issues of domestic concern versus when it is applied to the field of private international law. On the most general level, we see this distinction by the fact that in domestic disputes only those rights and obligations are enforced [or given legal recognition at all] which are recognized as consistent with the aims and goals of that society as embodied in that country's laws. This is contrasted with the fact that a nation's public policy, in the field of private international law, which it may not recognize the substantive rights which foreign judgment is based upon, will allow for its enforcement, as long as those substantive rights do not impinge on notions of public policy so severely. In other words, there is less room in the field of private international law with respect to public policy considerations since foreign laws are indirectly enforced while domestically such would not be true, if those rights were not recognized. Further, in the case of a right which is created abroad, the judge does not control its creation or whether the creation conflicts with his country's public policy, he only ascertains if the effects of the "foreign created right" is in conflict with his country's public order. (1)

(1) The classic example of this occurred in France where, before the year 1884, divorce was proscribed and this prohibition was applied to foreigners even if their personal law permitted them to divorce. After, the Supreme Court (Cour de Cassation) ruled that it is permissible for these foreigners to derive effects from, in France, a divorce which occurred abroad. Battifol, "Traité élémentaire de droit international privé," Paris (1967) 367, 4 Ed.

The Uniform Act.

We will now briefly analyze the position which is taken by the Uniform Foreign Money-Judgments Recognition Act on the five conditions which we outlined above as necessary for recognition and enforcement of foreign judgment in Libya. Basically, the Uniform Act's position on these points is the same as the Libyan position outlined in the Code. Differences which appear to exist are the following :

1. For purposes of definition Libya does seem to limit the subject matter, other than by the public policy considerations mentioned in condition 5, while the Uniform Act clearly excludes the notion of judgment from applying to any "judgment for support in matrimonial or family matters." (Section 1 "2").

2. With respect to the Libyan condition number 3, recognizing that the foreign judgment be final and conclusive and not subject to appeal or to stay of execution, the Uniform Act differs. Section Two of the Uniform Act only requires that the foreign judgment be final and conclusive but does not prohibit any judgment from seeking recognition and enforcement even if an appeal is pending or is subject to an appeal. This is qualified, however, by Section 6 which allows for a stay of execution of the state or federal court if the Defendant satisfies the court that either an appeal is pending or that he is entitled and intends to appeal.

3. Condition 4 that was described required that if any foreign judgment conflicted with a Libyan judgment, the foreign judgment was unenforceable. However, Section (4) of the Uniform Act would not recognize a foreign judgment if it conflicted "with another final and conclusive judgment." This language is capable of the interpretation that any other final and conclusive judgment which con-

with the foreign judgment will be sufficient to compel recognition. Thus, any other foreign judgment might render the foreign judgment seeking recognition non-enforceable.

Reciprocity.

Reciprocity is a controversial issue among the various countries especially as to the enforcement of foreign judgments. Reciprocity in this context simply means that the rendering country awards reciprocal treatment to the forum country of enforcement by enforcing its judgments.

It is true that the rule of reciprocity in enforcement of foreign judgments seems to stand as an obstacle to the furtherance of international cooperation. It causes major problems in proving that the rendering country does in fact allow for the enforcement of the forum country's judgments. In addition, the reliance on this rule tends to misdirect the efforts of the courts to effectuate the recovery of private rights in the field of private international transactions. But it is also true that due to the "retorsional effect" (1) it "exerts influence to make others adhere to the rule." (2)

Article 405.

Article 405 purports to treat the foreign judgments in Libya in the same way that the Libyan judgments are treated in the rendering country. (3) The reciprocity rule

(1) Lenhoff, "Reciprocity : The Legal Aspect of a Perennial Problem," 49 Nw. U.L. Rev. 619, 752 (1955).

(2) von Mehren and Trautman, "The Law of Multistate Problems," 49 (1965).

(3) Reciprocity is more than a procedural condition; it gives the foreign judgment the same value and effect given to the Libyan judgment in the foreign country and it asserts the same method used in the foreign country to enforce the Libyan judgment whether the foreign court treatment is restricted to "control" or a "revision de novo."

as laid down by this Article is a condition for enforcement. (1)

Although the rule of reciprocity represents the threshold point in determining the enforcement, a word to be said in this respect is that the Libyan court will, in all cases, check the compliance with the conditions laid down by Article 407, even in the case where the foreign court allows the enforcement of the Libyan judgment with no condition whatsoever, and treats it as a domestic judgment. The requirement of such conditions in all cases is justified by the policies underlying them, which is to safeguard from infringement the adjudicatory jurisdiction of the national courts, public order and guarantees of administration of justice.

Reciprocal enforcement of each country's judgment can be a "diplomatic reciprocity" reached by a treaty, a "legislative reciprocity" where national laws specify the enforcement of foreign judgments on a reciprocal basis or permits the enforcement without the requirement of reciprocity, and finally a "factual reciprocity" where the country awards enforcement of foreign judgments in spite of the lack of a treaty or legislation.

Diplomatic reciprocity finds its source in Article 411 which states that the rules and procedures with regard to enforcement of the foreign judgment will not impair any provision of international treaties in which Libya is and will be involved. (2)

(1) A closer example to the application of this condition is Section 328/1/5 of the German Code of Civil Procedure ZPO.

(2) Libya is a party to the convention regarding the execution of judgments concluded under the auspices of the Arab League since May 19, 1957 — Arab League documentary record Vol. II — Beirut.

Libya is also a party to the convention on recognition and enforcement of foreign arbitral awards. Done at New York on June 10, 1958. United Nations Treaty series 330 (1959) 38.

Reciprocity and Hilton v. Guyot.

While the Supreme Court in **Hilton v. Guyot** 159 U.S. 113 set out what was first thought to be the American rule of reciprocity, it is to be noted that it was only a partial rule of reciprocity.⁽¹⁾ The holding of that case restricted the requirement that the foreign country whose judgment sought enforcement must allow enforcement of American judgments only in the case where the losing party was a defendant who was an American. With the subsequent opinion of the Supreme Court in **Erie v. Tompkins**, it now seems that the enforcement of foreign judgments is a State concern. This view is now backed by considerable authority as previously discussed. Consequently, it is the State laws which are crucial for understanding the American law. Only a few States have enacted laws dealing specifically with the topic of enforcement of foreign judgments and of these some have adopted the Uniform Foreign Money-Judgment Recognition Act, which does not require reciprocity at all.

The Foreign Court.

The Libyan Code requires that certain conditions be satisfied by the foreign court for whose judgment enforcement is sought. Some of these conditions concern jurisdiction, while others concern procedure.

Jurisdiction.

The foreign judgment which seeks enforcement in Libya must have been rendered by a court having adjudicatory jurisdiction. The question as to whether the court has adjudicatory jurisdiction is to be determined by the law of the country rendering the judgment (Article 407 (1)).

(1) Homburger, "Recognition and Enforcement of Foreign Judgment: A new Yorker Reflects on Uniform Acts." 18 American Journal of Comparative Law (1970) 381.

This provision requires two things : first, that the rendering court has adjudicatory jurisdiction; second, that such jurisdiction is determined according to the law of the rendering court.

As for the first part, it is not clear from the provision of the Article whether it means the jurisdiction in the international sense or the national sense or both. It is important to note that the requirement that the rendering court must have jurisdiction in the international sense according to the law of the country of enforcement seems to be the minimum that most countries insist upon in their laws. (1) On the other hand, the satisfaction of the internal jurisdiction of the rendering court is a matter of controversy. (2) It is clear that the rendering court's internal jurisdiction ["competence"] is not reviewed by the courts in Libya. (3)

As for the second matter concerning the law by which the international jurisdiction of the rendering court is determined, the Article has stated, in general terms, that the law of the rendering court controls the determination of the jurisdiction. This provision, if applied mechanically, will encroach on the jurisdiction of the Libyan courts in the cases where the foreign courts assume jurisdiction while the Libyan courts have more connection with the litigation than the foreign courts have, as envisioned by the standards

(1) Nussbaum, "Jurisdiction and Foreign Judgments" 41 Colum. L. Rev. 221 (1941).

(2) Graupner, "Some Recent Aspects of the Recognition and Enforcement of Foreign Judgments in Western Europe." 12 Int. & Comp. L.Q. 367 (1963).

(3) The provision of Article 407 (1) does not project the Libyan internal jurisdictional standards in the foreign court's standards. It requires only that the rendering court has jurisdiction in accordance with the foreign court's standards.

of international jurisdiction in the Libyan law.(1) It is also contrary to the rule followed by various countries that the adjudicatory jurisdiction of the rendering country is determined by the international jurisdictional standards in the country of enforcement.(2)

Therefore, it seems necessary for the considerations of preserving non-encroachment on the Libyan courts jurisdiction and the underlying policies of the basis of juris-

(1) The standards of international jurisdiction appear in Article 3 of the Libyan Code of Civil Procedure. Its provision is as follows :
ARTICLE 3 — Jurisdiction in Claims Against Foreigners.

The Libyan Judiciary have jurisdiction to hear claims instituted against foreigners in the following circumstances :

1. If the foreigner lives in Libya or has an elected domicile therein or has an Agent therein with authority to represent him before the Courts or if he consents to the jurisdiction of the Libyan Judiciary, provided that the claim does not relate to real property situated outside the Kingdom.

2. If the claim relates to property existing within Libya or to inheritance by a Libyan Native or to an estate opened in Libya or to a bankruptcy declared therein, or if the claim results from a contract concluded in Libya or performed therein or if it was stipulated that performance thereof should be therein, or if the claim results from an occurrence which took place therein.

3. If the claim is connected with a claim instituted before the Libyan Judiciary or to precautionary procedure which must be executed in Libya, or if the claim is connected with matters within the jurisdiction of the Libyan Judiciary.

4. Under the circumstances where a Foreign Judiciary has jurisdiction to hear claims preferred against Libyans and this upon a basis of reciprocity.

(2) See Note No. 1. Also the historical source of the provision of Article 407 (1) was the old Egyptian Code (1949). This provision was amended in the recent Egyptian Code (1968) to preserve the Egyptian international jurisdiction from encroachment a difficult experience to apply the old rule by courts. Abdulla, "The Agreement of Enforcement of Judgments" p. 30, Cairo (1964) in arabic.

tion spelled out by Article 3,(1) to restrict the application of the provision of Article 407 (1) to the following interpretation. When it is proved to the Libyan judge that the foreign court does not have "real and substantial connections"(2) with the litigation or that these connections are less substantial than the connection with the Libyan court and therefore the basis of assuming adjudicatory jurisdiction by the foreign court according to the Libyan law is not adequate, he should refuse to order the enforcement of the foreign judgment.

This method of application of the Libyan law means that the Libyan judge begins by testing the international jurisdictional standards in order to verify the relationship between the litigation to both forums. If the result of the test proved that the Libyan court should assume jurisdiction because the connection between the litigation and this court is more real and substantial than the connection with the foreign court as perceived by the law, the order of enforcement of the foreign judgment dealing with the same litigation should be denied. In the reverse situation the order of enforcement of the foreign judgment should be ordered after the satisfaction of other conditions including the compliance with the internal jurisdiction standards (competence) according to the foreign law.(3)

(1) See Note No. 4.

(2) For a discussion of the grouping of contacts methodology whether the rendering forum had a sufficient connection with the parties and the underlying cause to justify its exercise of jurisdiction," see, von Mehren & Trautman, "Recognition of Foreign Adjudications: A Survey and a Suggested Approach." 81 Harv. L.R. 1601 (1968).

(3) The satisfaction of the internal jurisdiction standards test according to the foreign law endeavor to ascertain that the foreign judgment seeking enforcement is valid under the foreign internal jurisdiction (competence) without projecting the Libyan standards into the Libyan law.

it” (1) particularly in the litigations connected with the family law where the Libyan forum seems to be more able to achieve fairness to the Libyan defendant. (2) We think, as long as there is no explicit order of the law, the Libyan courts should not assume jurisdiction if they had a real and substantial connection with the litigation other than the nationality of the defendant.

The domicile or residence of the defendant in Libya is considered to be a basis for assuming jurisdiction. This is deduced from Article 3 which a fortiori means the Libyan courts will assume jurisdiction over the foreigner who has domicile or a place of residence in Libya. We do not think that the transient presence of the defendant in the country should constitute by itself a ground for asserting jurisdiction unless the cause of such action has a sufficient contact with Libya.

It is clear that the domicile or residence of the defendant does not furnish an exclusive basis for adjudicatory jurisdiction, except if it establishes a dominant contact with the forum; consequently the litigation over land situated outside the country falls within the jurisdiction of **situs** regardless of the domiciliary or residence of the parties.

Finally, Article 3 is explicit about the basis of the specific adjudicatory jurisdiction (3) in assuming jurisdiction over the foreigner who is not domiciliary or a resident of the country. The Article lists several bases of specific jurisdiction which constitute sufficient contact with the litigation

(1) **Id.**

(2) There is no proof to substantiate the argument that the Libyan law has abandoned this traditional rule.

(3) As opposed to “general jurisdiction.” See, von Mehren & Trantman, “Recognition of Foreign Adjudications,” p. 1610.

assert jurisdiction of the Libyan courts regardless of the defendant's nationality, domicile or residence. It is to be mentioned that the bases of specific jurisdiction in Article 3 constitute an exclusive jurisdiction by the Libyan courts. Otherwise, the criteria for assuming jurisdiction, beside consent, will be the weighing of various connecting factors between either forums. This process of weighing of contacts leads us the choice of law test⁽¹⁾ to determine which law apply to decide the litigation. Therefore the litigations concerning lands located abroad or the status of foreigners establish real and substantial connection with the foreign law which will result in assigning adjudicatory jurisdiction to the foreign court notwithstanding a certain contact with the Libyan court.

Procedure.

Article 407 (2) requires that the parties were called to appear and were validly represented in the action, which resulted in the judgment being sought to be executed in Libya. The policy behind this condition is that the party who lost the litigation should have been able to present his defenses. Often this condition is stated as requiring that the judgment must not be repugnant to natural or substantial justice. If the defendant has not been given "a reasonable opportunity of presenting his case,"⁽²⁾ the judgment does not meet this condition.

The French courts and writers require much more than that the judgment is satisfactory only if it is rendered after a regular procedure "Regularite de la procedure" in conformity with the law of the forum.⁽³⁾ This concept is more elaborate and demanding than the Libyan one.

(1) *Ibid.*, p. 1636.

(2) Wolff, "Private International Law," Oxford (1950) 245 (B).

(3) Battifol — Paris (1967) 723.

We are faced, however, with describing the full effect Article 407 (2). There appears to be three possible ways of interpreting this provision :

1. Since this provision makes no mention of determining whether the requirements of "regularity of procedure" are satisfactory under the law of the country rendering the judgment (unlike the provision of 407 (1) which requires that the interpretation of the "competence" of the court should be made in accordance with the law of that country), it is possible that the determination is to be made by the interpretation of the Libyan court of the standards set up by the provision.

2. It is however possible to view the language of Article 407 (2) as consistent with or following the language of Article 407 (1.) This would mean that in understanding what is meant by the parties being "called to appear" and being "validly represented" the Libyan judge would merely check to see that those standards were found in analagous provisions in the law of the forum rendering the judgment and that they were met. Of course, the lack of such analagous provisions might cause some problems for this interpretation.

3. The third possibility is that the Libyan Code is actually making a specific application of the elaborate conception of "regularity of procedure" as interpreted by the French, which would mean that in addition to checking that the foreign procedural rules were met, that certain independent requirements would need to be met.

Since Article 407 (2) does not specifically make any reference to the law of the country rendering judgment, while it is carefully included in Article 407 (1), it seems reasonable to conclude that its absence is of significance. Therefore, possibility number 2 seems to be eliminated,

In addition, since possible interpretation number 3 also includes the requirement that the law of the country rendering the judgment will be investigated, it seems that again in the absence of the mention of the foreign country's law must force the conclusion that this possibility is also not the intended one. Thus, we are left with the conclusion that the standards of regularity of procedure is to be measured and evaluated independently of the procedure prescribed by the country rendering the judgment. This at least ensures that certain essential features of "substantial justice" cannot be denied, at least if the judgment seeks enforcement in Libya.

The Uniform Act.

We will now briefly discuss the comparable notions in the Uniform Foreign Money-Judgments Recognition Act, relating to jurisdiction and procedure. The basic difference between the Uniform Act and Article 407 (1) - (2) of the Libyan Code concerns the issue of the "competence" of the tribunal rendering judgment. That is, while the Libyan law allows for a determination of "competence" according to the law of the foreign country, Section 4 (1) of the Uniform Act takes a different view. The Uniform Act requires a greater showing of the quality of the tribunal than the Libyan law because it states that a judgment is not enforceable if the judgment "was rendered under a system which does not provide impartial tribunals." And with respect to the issue of procedure the Uniform Act uses the "due process of law" as the standard by which to measure the acceptability of the foreign court's practices. The Uniform Act makes many more specific requirements concerning personal and subject matter jurisdiction than the Libyan law, but the explicitness may not of itself indicate any greater standards which the foreign judgment must meet for enforcement under the Uniform Act.

Conclusion.

It is always easy to point out the differences between attempts of two countries to deal with a specific issue. However, it is only when one views how much greater the differences could be especially if this greater disparity is found in another country's solution — that one recognizes a tremendous agreement between the two legal solutions. Throughout the discussion in this paper we have made no mention of the French solution to the problem of enforcement of foreign judgments, which includes the requirement that the foreign court must have chosen the choice of law that would have been chosen under French law.⁽¹⁾ When one considers the impact of a provision of this sort on the ease with which a foreign judgment could be enforced, one can see that except in those rare cases where a country has a choice of law standards identical to that of France or the same result is reached, enforcement would not be possible.

In terms of considering the impact of this sort of provision on increasing the ease of international transactions and the creation of an international community of nations sharing their legal systems, it is clear that it only hinders and complicates matters. Thus, if we compare this sort of hampering provision with either the rules of Libya or the Uniform Act in some of the American states, we can see that they are far closer to solutions providing for the easy inter-relationship of legal systems and the furtherance of international relations involving legal relations of these countries.

However, there are criticisms and comments which must be made with regard to the rule of reciprocity as simplified in Article 405 of the Libyan Code. First, it creates great administrative problems in that it places a

⁽³⁶⁾ Battifol, "Droit International Privé," Paris (1955) 2nd 760.

great burden on the judges to investigate whether a given country, which seeks enforcement of its judgment, will grant reciprocal treatment to the forum country's judgment. This task also adds a possibility of error on the judge's part which further hampers and complicates the matter.

Secondly, if reciprocal treatment is lacking justice will be denied since a perfectly valid claim and decision will be denied on grounds completely unrelated to the merits of the case.

Finally, the crucial concerns which ought to determine each country's policy towards enforcement of foreign judgments are the international transaction needs and the realization of justice, without consideration of the practice of any other nation. Therefore, each nation ought to establish standards which should not change regardless of the change made by any other nation and should only require that the foreign judgment expresses truth and justice.

APPENDIX "I"

Article 405**Execution of foreign judgement**

An order for execution of judgements or orders, rendered in a foreign country may be made under the same conditions existing in the law of that country for the execution therein of Libyan judgements and orders.

Article 406**Procedures**

The order of execution is demanded by a citation to the other party, issued under the ordinary conditions, for him to appear before the court of first instance within the jurisdiction of which execution is sought.

Article 407**Conditions for the order of execution**

An order for execution is not to be issued until the following matters have been realized :

1. That the judgement or order is rendered from a judicial bench having competence therein in accordance with the law of the rendering country and it has obtained the force of a *res judicata* in accordance with that law.

2. That the parties were called to appear and were validly represented.

3. That the judgement or order does not conflict with a judgement or order previously rendered by the Libyan courts.

4. That the judgement or order does not contain anything contrary to the provisions of morality or public order in Libya.

Article 408

Awards of Arbitrators

In regard being had to the provisions of the preceding articles, an order may be issued for the execution of the awards of arbitrators rendered in a foreign country, if it is final and capable of being executed in the rendering country.

Article 409

The demand of execution

The court shall expeditiously give judgement in the demand for the order of execution.

Article 410

Foreign authenticated acts

An order for the execution of executable authenticated acts, drawn up in a foreign country, may be issued with the stipulations provided by the law of that country for the execution of authenticated acts drawn up in Libya. The order of execution is demanded by an application to the judge for urgent matters in the court of first instance within the jurisdiction of which it is desired to levy execution, and the order is not to be issued until it has been realized that the conditions for authentication of the document are fulfilled in accordance with the law of the country in which it was completed and that it contains nothing contrary to morality or public order in Libya.

Article 411

International Conventions

The preceding rules are applicable without prejudice to the provisions of international conventions made or to be made between Libya and other nations to this end.

APPENDIX "2"

Uniform Foreign Money-Judgments Recognition Act

1. [Definitions] — 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 thereof, or the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu 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.

2. [Applicability] — 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.

3. [Recognition and Enforcement] — Except as provided in section 4, 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. The foreign judgment is enforceable in the same manner as the judgment of a sister state which is entitled to full faith and credit.

4. [Grounds for Non-recognition] — (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 subject matter.

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 of relief] on which the judgment is based is repugnant to the public policy of the 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.

Personal Jurisdiction] — (a) The foreign judgment shall not be refused recognition for lack of personal jurisdiction if

(1) the defendant was served personally in the foreign court;

(2) the defendant voluntarily appeared in the proceedings, other than for the purpose of protecting property or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over him;

(3) the defendant prior to the commencement of the proceedings had agreed to submit to the jurisdiction of the foreign court.

foreign court with respect to the subject matter involved;

(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 that 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.

(b) The courts of this state may recognize other bases of jurisdiction.

3. [Stay in Case of Appeal] — If the defendant satisfies the court either that an appeal is pending or that he is entitled and intends to appeal from the foreign judgment, the court may stay the proceedings until the appeal has been determined or until the expiration of a period of time sufficient to enable the defendant to prosecute the appeal.

7. [Saving Clause] — This Act does not prevent the recognition of a foreign judgment in situations not covered by this Act.

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.

b. **[Repeal]** — The following Acts are repealed :

(1)

(2)

(3)

c. **[Time of Taking Effect]** — This Act shall take effect