

COMMENT

Implementing the Hague Convention on Choice of Court Agreements in the United States: An Opportunity To Clarify Recognition and Enforcement Practice

INTRODUCTION

On January 19, 2009, the United States signed the Hague Convention on Choice of Court Agreements (Convention or HCCCA),¹ designed to govern disputes between parties arising out of contracts with forum selection clauses.² The Convention asserts “three basic rules”³: courts of Contracting States must (1) assume jurisdiction if named in a choice-of-court agreement,⁴ (2) decline jurisdiction if not named in a choice-of-court agreement,⁵ and (3) recognize and enforce⁶ any judgment issued in accordance with a choice-of-court agreement by a court of a Contracting State.⁷

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1. See, e.g., Peter Trooboff, *Convention on Choice of Court Agreements*, NAT'L L.J., July 27, 2009.
 2. See Convention on Choice of Court Agreements, June 30, 2005, 44 I.L.M. 1294, available at <http://www.hcch.net/upload/conventions/txt37en.pdf> [hereinafter HCCCA].
 3. RONALD A. BRAND & PAUL M. HERRUP, *THE 2005 HAGUE CONVENTION ON CHOICE OF COURT AGREEMENTS: COMMENTARY AND DOCUMENTS* 11 (2008).
 4. HCCCA, *supra* note 2, art. 5.
 5. *Id.* art. 6.
 6. Although the terms “recognition” and “enforcement” often appear together, and although “recognition and enforcement” often means primarily “enforcement,” recognition does have a meaning and a purpose distinct from enforcement. See Cedric C. Chao & Christine S. Neuhoff, *Enforcement and Recognition of Foreign Judgments in United States Courts: A Practical Perspective*, 29 PEPP. L. REV. 147, 147 (2001). Courts are required to recognize a judgment in order to enforce it, but courts can recognize judgments without enforcing them. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW pt. 4, ch. 8, intro. note (1987). Recognition is often defined as giving a foreign judgment the same effect that it has in the

The Convention also lists seven exclusive grounds upon which the court of a Contracting State may decline to recognize or enforce a foreign judgment under the Convention.⁸ However, recognition and enforcement practice in U.S. courts under the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)⁹ and the Uniform Foreign Money-Judgments Recognition Act (UFMJRA)¹⁰ suggests that American courts may invoke an additional ground for refusal: the recognizing and enforcing court's lack of jurisdiction over the parties.¹¹

rendering state, RESTATEMENT (SECOND) OF CONFLICTS OF LAW ch. 5, topic 2, intro. note (1971), and recognition is often sought independently of enforcement when the defendant to a suit asserts res judicata or collateral estoppel to rely on prior adjudication of a controversy or issue, respectively, RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 481 cmt. b (1987). This Comment will argue that recognition can also be sought independently of enforcement by a plaintiff to an enforcement action, as a step preliminary to, but separate from, enforcement. See *infra* Part II. Enforcement, on the other hand, entails the granting of affirmative relief by the enforcing court in accordance with the judgment of the rendering court. RESTATEMENT (SECOND) OF CONFLICTS OF LAW ch. 5, topic 2, intro. note (1971).

7. HCCCA, *supra* note 2, art. 8.
8. *Id.* art. 9; see TREVOR HARTLEY & MASATO DOGAUCHI, EXPLANATORY REPORT 61-62 (2007), reprinted in BRAND & HERRUP, *supra* note 3, at 223, 284-85.
9. United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 38.
10. 13 U.L.A. 263 (1962).
11. See, e.g., *Frontera Res. Azer. Corp. v. State Oil Co. of the Azer. Republic*, 582 F.3d 393, 396-97 (2d Cir. 2009) (finding that "Article V's exclusivity limits the ways in which one can challenge a request for confirmation, but it does nothing to alter the fundamental requirement of jurisdiction over the party against whom enforcement is being sought" and that "the numerous other courts to have addressed the issue have each required personal or quasi in rem jurisdiction"). The New York Convention, to which the United States became a party in 1970, is an international treaty governing the recognition and enforcement of arbitral awards by domestic courts. Because the Hague Convention "may serve as the litigation counterpart" to the New York Convention, BRAND & HERRUP, *supra* note 3, at 3, it is possible that courts will approach recognition and enforcement in a similar manner under both Conventions. Thus, any confusion now existing with regard to personal jurisdiction in the context of the New York Convention is relevant to a study of personal jurisdiction in the context of the Hague Convention. The UFMJRA is of similar predictive value. In the absence of an international treaty governing the recognition and enforcement of foreign judgments by domestic courts, the National Conference of Commissioners on Uniform State Laws drafted the UFMJRA in 1962 to unify the approach of U.S. state courts to foreign judgments. See Uniform Law Comm'n, *Summary: Uniform Foreign-Country Money Judgments Recognition Act*, NAT'L CONFERENCE OF COMM'RS ON UNIF. STATE LAWS, http://www.nccusl.org/update/uniformact_summaries/uniformacts-s-ufcmjra.asp (last visited Sept. 5, 2010). Because the UFMJRA is the domestic predecessor to the Hague Convention, U.S. approaches to and difficulties with the recognition and enforcement of foreign judgments under the UFMJRA are valuable in identifying issues that may arise in

This Comment argues that the jurisdictional requirements of the recognizing and enforcing court are in need of elaboration and clarification as the United States prepares to implement the new Hague Convention.¹² Part I provides an overview of recognition and enforcement practice under both the New York Convention and the UFMJRA and highlights existing inconsistencies. Part II then presents a proposal for the future under the HCCCA: in cases of enforcement, U.S. courts should not require jurisdiction over the defendant's person as long as they have jurisdiction over the defendant's property, and there should be no need to establish a connection between the property and the case. Furthermore, in cases of recognition only, courts should not require jurisdiction over either the person or his property, with the result that the plaintiff should be permitted to obtain recognition even in the absence of assets in the forum. In order to unify and clarify U.S. practice for future litigants, language elaborating upon these jurisdictional

the recognition and enforcement of foreign judgments under the Hague Convention. (The 2005 Uniform Foreign-Country Money Judgments Recognition Act (UFCMJRA) revised the 1962 UFMJRA, but as the 2005 UFCMJRA has been enacted in fewer states and more recently, this Comment will focus on jurisprudence under the 1962 UFMJRA. See Uniform Law Comm'n, *A Few Facts About the . . . Uniform Foreign-Country Money Judgments Recognition Act* (2005), NAT'L CONFERENCE OF COMM'RS OF UNIF. STATE LAWS, http://www.nccusl.org/update/uniformact_factsheets/uniformacts-fs-ufcmjra.asp (last visited Oct. 22, 2010).

12. Although other authors have explored similar concerns in the arbitral context, this Comment is unique in its focus on foreign judgments, recognition, and a statutory solution. See Arístides Díaz-Pedrosa, *Shaffer's Footnote 36*, 109 W. VA. L. REV. 17, 19-20 (2006) (arguing for enforcement of arbitral awards in the presence of assets but not as thoroughly treating recognition alone, foreign judgments, or statutory solutions); Int'l Commercial Disputes Comm. of the Ass'n of the Bar of the City of N.Y., *Lack of Jurisdiction and Forum Non Conveniens as Defenses to the Enforcement of Foreign Arbitral Awards*, 15 AM. REV. INT'L ARB. 407 (2004) (arguing for enforcement of arbitral awards in the presence of assets but arguing against recognition in the absence of assets, not focusing on foreign judgments, and only implicitly acknowledging the possibility of a statutory solution) [hereinafter *Lack of Jurisdiction*]; William W. Park & Alexander A. Yanos, *Treaty Obligations and National Law: Emerging Conflicts in International Arbitration*, 58 HASTINGS L.J. 251 (2006) (arguing for enforcement of arbitral awards in the presence of assets and for recognition of arbitral awards in the absence of assets, but only briefly mentioning foreign judgments and statutory solutions); Ronald R. Darbee, Comment, *Personal Jurisdiction as a Defense to the Enforcement of Foreign Arbitral Awards*, 41 MCGEORGE L. REV. 345 (2010) (arguing for the abolition of personal jurisdiction as a defense to the recognition and enforcement of arbitral awards but deemphasizing recognition alone and foreign judgments and not proposing a statutory solution).

requirements (or lack thereof) should be added to the Convention's implementing legislation.¹³

I. THE CURRENT APPROACH TO JURISDICTIONAL REQUIREMENTS IN THE RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS UNDER THE NEW YORK CONVENTION AND FOREIGN JUDGMENTS UNDER THE UFMJRA

The jurisdictional requirements for enforcing arbitral awards are inconsistent between circuits. Courts generally require personal or quasi in rem jurisdiction over the defendant;¹⁴ however, for quasi in rem purposes, the Fourth and Ninth Circuits currently disagree as to whether the property must bear a connection to the dispute before it can serve as a basis for jurisdiction in enforcement actions. In *Base Metal Trading, Ltd. v. OJSC "Novokuznetsky Aluminum Factory,"* the Fourth Circuit refused to assert jurisdiction based on the presence of property in the forum because there was no connection between that property and the parties' dispute.¹⁵ Meanwhile, in *Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.,* the Ninth Circuit suggested that it would be willing to exercise its jurisdiction over the defendant's property even when "that property ha[d] no relationship to the underlying controversy between the parties."¹⁶

13. At the time of this writing, the Departments of State and Justice, along with the National Conference of Commissioners on Uniform State Laws, are in the process of drafting the legislation to implement the HCCCA. See Trooboff, *supra* note 1.

14. See, e.g., *Frontera*, 582 F.3d at 396 ("[T]he numerous other courts to have addressed the issue have each required personal or quasi in rem jurisdiction.") (collecting cases). Courts with personal jurisdiction over a party may impose personal liability upon that party, whereas courts with quasi in rem jurisdiction over property of a party may determine claims of the parties to the property in question. RESTATEMENT (SECOND) OF JUDGMENTS § 6 cmt. a (1982). Formerly, the exercise of personal jurisdiction required minimum contacts with the forum, while the exercise of quasi in rem jurisdiction required only property in the forum. Furthermore, "type II" quasi in rem jurisdiction allowed "a thing owned by a specified person [to be] seized as a basis for exercising jurisdiction to decide a claim against the owner," even when the claim was unrelated to the thing and even when the owner did not otherwise have the requisite minimum contacts with the forum. *Id.* Today, all forms of jurisdiction require that the defendant have minimum contacts with the forum before a court can exercise power over him or his property. However, the thirty-sixth footnote of *Shaffer v. Heitner*, 433 U.S. 186, 210 n.36 (1977), is often read to have preserved "type II" quasi in rem jurisdiction in the judgment-enforcement context. See *infra* note 24 and accompanying text.

15. 283 F.3d 208, 211 (4th Cir. 2002).

16. 284 F.3d 1114, 1127 (9th Cir. 2002).

In the foreign judgments context, the case law on jurisdictional requirements for enforcement seems more clearly not to require a connection between the property in dispute and the underlying cause of action.¹⁷ As an example, the Michigan Court of Appeals in *Electrolines, Inc. v. Prudential Assurance Co.* recently adopted the position that “an action to enforce a judgment may usually be brought wherever property of the defendant is found, without any necessary connection between the underlying action and the property, or between the defendant and the forum.”¹⁸ There is no guarantee, however, that confusion similar to that existing in the arbitral context will not arise in the foreign judgment context. Moreover, some cases discussing the enforcement of foreign judgments have reasoned imprecisely and hinted at a potentially more expansive approach.¹⁹

The jurisdictional requirements for recognition alone are largely unknown, but courts and commentators who have discussed the issue disagree. On the arbitral side, parties rarely seek recognition by itself, with the result that the independent requirements of recognition remain unspecified.²⁰ In the foreign judgment context, some approaches require evidence of property in the forum at the recognition stage, while others do not. For instance, the American Law Institute’s proposed federal statute would require personal jurisdiction over the debtor or property of the debtor in the forum before recognizing a foreign judgment.²¹ On the other hand, several state courts have dispensed with the

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17. See AMERICAN LAW INSTITUTE, *RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS: ANALYSIS AND PROPOSED FEDERAL STATUTE* § 9, at 117 (2005) (“[N]o court has held that property is not a proper jurisdictional basis on which to bring an action to recognize or enforce a foreign judgment.”).
 18. 677 N.W.2d 874, 884 (Mich. App. 2003) (quoting RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 481 cmt. h (1987)).
 19. The Northern District of Iowa, for instance, concluded broadly in *Pure Fishing, Inc. v. Silver Star Co.* that “a party seeking the recognition and enforcement of a foreign judgment . . . is not required to establish a basis for exercise of personal jurisdiction over the judgment debtor,” with no simultaneous mention of a need for a quasi in rem, property-based alternative. 202 F. Supp. 2d 905, 917 (N.D. Iowa 2002). Although elsewhere in the opinion the court seemed to assume the existence of property in the forum, the quoted statement is less than fully clear.
 20. Rather, parties often seek “confirmation,” combining recognition and enforcement. See Pedro Menocal, *We’ll Do It for You Any Time: Recognition and Enforcement of Foreign Arbitral Awards and Contracts in the United States*, 11 ST. THOMAS L. REV. 317, 336 (1999) (“[C]onfirmation of arbitral awards . . . includes both the recognition and enforcement of a foreign arbitral award.”).
 21. AMERICAN LAW INSTITUTE, *supra* note 17, § 9, at 19 (“An action to recognize or enforce a judgment under this Act may be brought in the appropriate state or federal court (i) where

property requirement. In *Lenchyshyn v. Pelko Electric, Inc.*, a New York court reasoned that “even if defendants do not presently have assets in [the forum], plaintiffs nevertheless should be granted recognition of the foreign country money judgment . . . and thereby should have the opportunity to pursue all such enforcement steps in futuro.”²² Following *Lenchyshyn*, a Texas intermediate appellate court agreed in *Haaksman v. Diamond Offshore (Bermuda), Ltd.* that “if a judgment debtor does not currently have property in [the forum], a judgment creditor should be allowed the opportunity to obtain recognition of his foreign-money judgment and later pursue enforcement if or when the judgment debtor appears to be maintaining assets in [the forum].”²³

II. PROPOSED FUTURE APPROACH TO JURISDICTIONAL REQUIREMENTS IN THE RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS UNDER THE HCCCA

U.S. courts should enforce foreign judgments when defendants have assets in the forum, whether or not those assets are related to the cause of action. Such an approach is consistent with the Supreme Court’s views on personal jurisdiction as expressed in *Shaffer v. Heitner*.²⁴ Admittedly, *Shaffer* does hold that “in an action on the merits, *quasi-in-rem* jurisdiction over a non-resident defendant could not be based upon the mere presence in the state of property that was unrelated to the plaintiff’s cause of action.”²⁵ At the same time,

the judgment debtor is subject to personal jurisdiction; or (ii) where assets belonging to the judgment debtor are situated.”).

22. 281 A.D.2d 42, 50 (N.Y. App. Div. 2001).

23. 260 S.W.3d 476, 481 (Tex. App. 2008). Furthermore, because “principles and practices engendered by the Full Faith and Credit clause in the United States Constitution in respect of sister-State judgments have to a large extent been carried over to recognition and enforcement of judgments of foreign states,” various cases discussing jurisdictional requirements in the context of the recognition and enforcement of sister-state judgments also shed light on jurisdictional requirements for foreign judgments. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW pt. 4, ch. 8, intro. note (1987). Many state courts have not required the presence of property before recognizing sister-state judgments. In *Gingold v. Gingold*, for instance, a California appeals court was willing to register and confirm a support order from New York, even though the defendant had no identified assets in California, so that enforcement could follow more quickly once assets were located. 161 Cal. App. 3d 1177, 1184-85 (1984); see also *Lagerwey v. Lagerwey*, 681 P.2d 309 (Alaska 1984); *Pinner v. Pinner*, 234 S.E.2d 633 (N.C. App. 1977); *Davanis v. Davanis*, 392 N.W.2d 108 (Wis. App. 1986).

24. 433 U.S. 186 (1977).

25. *Lack of Jurisdiction*, *supra* note 12, at 417.

however, the Court left room for an exception to the *Shaffer* rule in cases of judgment enforcement:

Once it has been determined by a court of competent jurisdiction that the defendant is a debtor of the plaintiff, there would seem to be no unfairness in allowing an action to realize on that debt in a State where the defendant has property, whether or not that State would have jurisdiction to determine the existence of the debt as an original matter.²⁶

In other words, “to determine the existence of the debt as an original matter,” courts require minimum contacts to give rise to personal jurisdiction, or property that is related to the cause of the action to give rise to quasi in rem jurisdiction. Conversely, to enforce a preexisting judgment in a forum where the debtor has property, neither is necessary. Rather, *Shaffer* suggested that personal jurisdiction would not be required in actions to enforce judgments, and the minimum contacts test would not apply; property alone could give rise to jurisdiction, and no relationship between the property in question and the cause of action would be necessary. That said, the *Shaffer* footnote also assumed the existence of property in the forum, indicating that enforcement based on this type of quasi in rem jurisdiction should likely be limited to that property.²⁷

U.S. courts should not decline to recognize foreign judgments due to the absence of minimum contacts with the defendant or property of the defendant in the forum. Jurisdiction has been described as a “sliding scale.”²⁸ For example, general and specific jurisdiction lie at opposite ends of a spectrum. In exercising general jurisdiction over a party, courts are asserting great power over that party and therefore require many contacts between the party and the forum. In exercising specific jurisdiction over a party, courts are exercising less power over that party and therefore require fewer contacts between the party and the forum.²⁹ As between recognition and enforcement, a similar sliding scale exists. In enforcing a judgment, courts are mandating that assets change hands and therefore require that assets exist in the forum. In recognizing a

26. 433 U.S. at 210 n.36.

27. See also *Lack of Jurisdiction*, *supra* note 12, at 410 (“[T]he presence of the debtor’s property within the state, regardless of whether that property is connected with the underlying claim, is sufficient to establish *quasi-in-rem* jurisdiction. . . . Still, where the sole basis of jurisdiction is the defendant’s property within the state, the judgment should be limited in its effect to property within the state at the time the action was commenced.”).

28. Díaz-Pedrosa, *supra* note 12, at 26.

29. See *id.*

judgment, courts are not mandating that assets change hands and therefore should not require that assets exist in the forum. Rather, a weaker link between the forum and the debtor should suffice.³⁰ The debtor's initial consent to litigate under the HCCCA, or the creditor's good faith belief that assets do or will exist in the forum, should be sufficient to satisfy the general Due Process requirement of fairness in free-standing recognition actions, when the court merely validates a foreign determination of legal rights and does not mandate any action by the parties.³¹

This two-step approach to recognition and enforcement would also serve to promote the broader aims of the Hague Convention by facilitating the enforcement of foreign judgments and allowing the United States to uphold its treaty commitment to do so. In fora where creditors believe that their debtors currently have hidden assets, recognition as an independent, preliminary step could trigger procedural tools to enable eventual enforcement. For example, jurisdictional discovery³² is often available to creditors who have yet to obtain judgments against their debtors. Where creditors have recognized judgments, jurisdictional discovery should be even easier to obtain. Upon discovery of property of the debtor, enforcement would then be possible. In fora where creditors believe that their debtors will in the future have assets, stand-alone recognition could speed enforcement when assets later arrive in the jurisdiction. If a debtor's funds were to pass briefly through a forum's banks, enforcement would be more rapid if the judgment in question had already been recognized, and creditors could more easily obtain the relief to which they are entitled before the transitory assets once again departed the jurisdiction.³³ Although critics may counter that U.S. courts and debtors alike would be burdened if recognition actions could be maintained in fora where debtors lack

30. See also Park & Yanos, *supra* note 12, at 284 ("The stakes involved in having an award [or judgment] 'recognized' are often less than those for 'enforcement' . . . This lesser exercise of judicial power means a lesser threshold nexus between forum and person in order to satisfy due process.").

31. See HARTLEY & DOGAUCHI, *supra* note 8, at 51.

32. See, e.g., *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 n.13 (1978) ("[W]here issues arise as to jurisdiction or venue, discovery is available to ascertain the facts bearing on such issues."); see also *Lack of Jurisdiction*, *supra* note 12, at 422 ("This Committee believes that, upon a proper showing, jurisdictional discovery regarding the award debtor's assets in the jurisdiction should be available in *quasi-in-rem* actions to enforce foreign arbitral awards and judgments. The showing required to obtain such discovery should be no more rigorous than the showing required in actions on the merits.").

33. See Marc J. Goldstein & Andrea K. Bjorklund, *International Commercial Dispute Resolution*, 36 INT'L LAW. 401, 406-07 (2002).

assets,³⁴ such actions would burden creditors as well, who as a result are likely to pursue recognition only in fora where they have good reason to believe that assets are or will be located.³⁵

The implementing legislation for the Hague Convention could and should provide for the approach suggested above. Other federal statutes have explicitly set forth personal jurisdiction requirements in certain contexts. The Foreign Sovereign Immunities Act, for instance, states that “[p]ersonal jurisdiction over a foreign state shall exist as to every claim for relief over which the district courts have [subject matter] jurisdiction . . . where service has been made under section 1608 of this title.”³⁶ Similarly, personal jurisdiction provisions are rather common in state statutes on family law.³⁷ Today, all fifty states have adopted a version of the Uniform Interstate Family Support Act (UIFSA),³⁸ which “rests on expansion of concepts of personal jurisdiction . . . by providing eight circumstances in which a court may exercise personal jurisdiction”³⁹ Given prior practice of clarifying personal jurisdiction through statutes, Congress should not hesitate to set forth explicitly what would satisfy personal jurisdiction in the context of recognition and enforcement when implementing the Hague Convention on Choice of Court Agreements.⁴⁰ In this case, statutory clarification could eliminate inconsistencies, codify a single approach, and thereby provide predictability for litigants under the Convention.

34. See, e.g., Díaz-Pedrosa, *supra* note 12, at 42-43.

35. See Park & Yanos, *supra* note 12, at 289 (“[I]t would be surprising indeed if award creditors expended funds bringing random confirmation motions in places unconnected with the debtors’ commercial activity, and where attachable assets were not likely to exist in the near future.”).

36. 28 U.S.C. § 1330(b) (2006).

37. *Personal Jurisdiction*, in 50 STATE STATUTORY SURVEYS: CIVIL LAWS: CIVIL PROCEDURE (2009) 0020 SURVEYS 10 (Westlaw).

38. Unif. Interstate Family Support Act (amended 2001), 9 U.L.A. 228 (2005) [hereinafter UIFSA]; Symeon C. Symeonides, *Choice of Law in the American Courts in 2001: Fifteenth Annual Survey*, 50 AM. J. COMP. L. 1, 90 (2002). By 1998, all fifty states had adopted the 1996 amended UIFSA, 9 U.L.A. 162 (2005), though not all states have adopted the version as amended in 2001, 9 U.L.A. 159 (2005).

39. John K. Matsumoto, *The “Personal Jurisdiction Over Nonresident” Provisions of UIFSA*, 11 J. CONTEMP. LEGAL ISSUES 445, 446 (2000).

40. The International Commercial Disputes Committee of the Association of the Bar of the City of New York has implicitly recognized the possibility of a legislative solution in the case of jurisdiction over enforcement of arbitral awards and foreign judgments. *Lack of Jurisdiction*, *supra* note 12, at 411 (“Until the issues are judicially or legislatively resolved . . .”).

CONCLUSION

The implementing legislation for the HCCCA should include two provisions: one providing for recognition of foreign judgments in the absence of known assets in the forum and the other providing for enforcement of foreign judgments in the presence of known assets in the forum, up to the amount of those assets, even if those assets are unrelated to the parties' dispute. Parties might seek recognition in the absence of known assets if they have reason to suspect that assets might exist or might appear in the future, in order to facilitate or obtain expedited enforcement at a later date. Thus, these two provisions would work together: courts could decide whether or not to recognize an award by reference to HCCCA criteria. Should creditors subsequently identify debtors' assets located in the forum, another proceeding could confirm the existence and amount of the assets and order their transfer. This approach would simultaneously honor U.S. treaty commitments, respect constitutional guidelines, and streamline recognition and enforcement practice.

CAROLINE EDSALL