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Cross-border Litigation Involving Canadian and U.S. Litigants

*Bruno A. Ristau**

I. Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters

Overview of the Convention

The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters[1] ("Hague Service Convention" or "Convention") was developed at the Tenth Session of the Hague Conference on Private International Law ("Hague Conference"), which the United States joined in 1964. The purpose of this Convention was to modernize and revise the Hague Conventions on Civil Procedure of 1905 and 1954. Currently more than two dozen states are parties to the Convention.

The Hague Service Convention establishes a multilateral regime among the states which become parties, by ratification or accession, for the service of legal documents abroad in "civil or commercial" matters.[2] The Convention consists of thirty-one articles, divided into three chapters. Chapter I defines the meaning of "Judicial Documents" and establishes the Convention machinery. Chapter II deals with private documents, not related to litigation, which may nonetheless require formal service. Chapter III contains general clauses. The Convention addresses five different areas:

(1) the methods by which service of judicial and other documents may be made in another country;
(2) language requirements;
(3) proof of service;
(4) default judgments; and
(5) costs and fees related to service.

When a state becomes a party to the Convention it is required to designate at least one "Central Authority." However, federal states may designate more than one such authority. The Central Authority has the responsibility for receiving requests for service from other states and for

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[1] Done at the Hague November 15, 1965; entered into force for the United States February 10, 1969; 20 U.S.T. 361; T.I.A.S. No. 6638; *reprinted* (with declarations) *in* 28 U.S.C.A., note to Rule 4, Fed.R.Civ.P.

[2] Article 1.

executing these requests.[3] "Requests" for service are to be made on a form set forth in an annex to the Convention.[4] The request must be accompanied by the document to be serviced, and a "summary" of that document[5] as prescribed in a second form set forth in the annex. Legalization of the requests is not required.[6]

The Convention allows three possible methods of service:

(1) under a method prescribed by the internal law of the country of service for domestic actions;
(2) pursuant to a particular method requested by the applicant; and
(3) by voluntary acceptance by the addressee.

The second and third methods may not be used if they are inconsistent with the laws of the country where service is to be made.[7]

Requests for service under the Convention may be made in French or English, as well as in the language of the country where the document is to be served.[8] However, if the document is to be served under method one or two described above, a translation of the document into the official language of the country of service may be required.[9]

If a request for service is deficient, the Central Authority of the receiving state is required to notify the applicant promptly and to specify its objections to the request.[10] The grounds upon which a state may refuse to execute a request are extremely limited.[11]

Once service is completed, the Central Authority of the receiving state is required to complete a "certificate" on a third form annexed to the Convention.[12] This certificate establishes that either service has been made, and the particulars thereof, or that service has not been made, and the reasons why it has not been made.[13]

With respect to default, the Convention provides that if service has been effected but the defendant has not appeared, a default judgment may not be entered until certain facts concerning service have been established.[14] (A country may vary by declaration which facts are to be considered under certain conditions.[15] Many countries have made such declarations.) Additionally, the Convention permits relief from default

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3 Article 2. The Central Authority for the United States, for example, is the U.S. Department of Justice.

4 Article 3.

5 Articles 3 & 5.

6 Article 3.

7 Article 5.

8 Article 7.

9 *Id.*

10 Article 4.

11 Article 13.

12 *See* Annex to the Convention.

13 Article 6.

14 Article 15.

15 *Id.*

judgments under prescribed conditions.[16] A number of states have made declarations limiting the time within which applications for relief from default judgments may be filed.

The Convention places limits on the costs payable in connection with service of documents under its provisions.[17] Several countries' declarations contain additional provisions relating to such costs.

In addition to the three conventional methods of service, the Convention permits service (without compulsion) through the diplomatic or consular agents of a contracting State.[18] States may, by declaration, limit the right to make such service to only the nationals of the requesting State. Most contracting states have made such a declaration. The Convention also permits "sending" (note the language "send" rather than "serve") documents by mail to recipients abroad, and the direct service of documents to judicial authorities in the State of destination (bypassing the Central Authority), unless states declare their opposition to such procedures.[19] Several states have declared that they are opposed to such procedures.

The declarations of the country to which a request for service will be made must be studied carefully before making the request, because the declarations vary the effect of the Convention in a given State. In the United States, procedures for service abroad are available in federal as well as state courts. To the extent that a state's method for service of judicial documents abroad is inconsistent with the Convention, the Supremacy Clause of the United States Constitution mandates that the inconsistent state procedures not be employed.

Issues under the Hague Service Convention

Since the Convention's entry into force, a number of issues have arisen concerning its construction and operation. One noteworthy issue relates to the scope of the Convention. The Convention does not define the term "civil or commercial matters," which determines its scope. Because the term is not defined, it is interpreted differently by each state. There is agreement that criminal matters fall outside the Convention's scope. However, some countries also exclude administrative, fiscal, and family law matters when these issues are not characterized as "civil or commercial" under their internal laws.

Another issue relates to whether the Convention's procedures are exclusive (and therefore must be followed when a party to be served is located abroad), or non-exclusive (allowing resort to other methods of service; for example, those permitted under Rule 4(i) of the Federal Rules of Civil Procedure). In *Volkswagen Atkiengesellschaft v.*

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[16] Article 16.

[17] Article 12.

[18] Article 8.

[19] Article 10.

Schlunk,[20] the Supreme Court held that the Hague Service Convention is inapplicable where process can be validly served on a foreign corporation by serving its U.S. subsidiary which, under state law, is treated as the foreign parent's involuntary agent for service of process. Inasmuch as the result in *Schlunk* turned on Illinois law, its application in other states will depend on whether their internal law requires transmittal of documents abroad for purposes of service where a foreign party is involved, thereby triggering the Convention, or alternatively, permits substituted service of the type used in *Schlunk*.

Another vexing issue under the Convention is whether, absent a state declaration of opposition, service by registered mail is permitted by Article 10, paragraph (a), which, as noted, allows the "sending" of documents through postal channels. Courts have split on this issue in the United States, with some courts construing "send" to mean "serve," and others distinguishing the two terms.

Parties to the Hague Service Convention as a January 1, 1991

Antigua and Barbuda	France	Norway
Barbados	Germany	Portugal
Belgium	Greece	Seychelles
Botswana	Hungary	Spain
Canada	Israel	Sweden
Cyprus	Italy	Turkey
Czechoslovakia	Japan	United Kingdom
Denmark	Luxembourg	United States
Egypt	Malawi	
Finland	Netherlands	

II. CONVENTION ON THE TAKING OF EVIDENCE ABROAD IN CIVIL OR COMMERCIAL MATTERS

Overview of the Convention

The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters[21] ("Hague Evidence Convention" or "Convention") was adopted at the Eleventh Session of the Hague Conference on Private International Law. The United States was one of the first countries to ratify the Convention, to which nineteen other countries are now party.

The Hague Evidence Convention represents an attempt to bridge differences between the systems used by common law countries for taking evidence abroad and those used by civil law countries. As its name sug-

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20 486 U.S. 694 (1988).

21 Done at The Hague, March 18, 1970; entered into force for the United States on October 7, 1972; 23 U.S.T. 2555; T.I.A.S. No. 7444; *reprinted* (with declarations) *in* 28 U.S.C.A., note to 28 U.S.C. § 1781.

gests, the Convention applies where evidence is to be obtained in one signatory country for use in judicial proceedings of a "civil or commercial" nature in another signatory country.[22] The term "civil or commercial" is not defined in the Convention, but is interpreted by each country according to its own law.

The Convention consists of forty-two articles divided into three chapters. Chapter I deals with the taking of evidence via letters of request. Chapter II contains provisions for the taking of evidence by diplomatic or consular officials, and court-appointed commissioners. Chapter III contains general provisions.

The basic method for the securing of evidence abroad contemplated by the Convention is the letter of request, formerly called a letter or letters rogatory. The letter comprises a request from a judicial authority in one country (the "requesting authority") to a judicial authority in another country (the "requested authority") for evidence (testimony or documents) needed for a proceeding in the requesting country. The letter of request is transmitted through a "Central Authority" in the receiving state. Each state party to the Convention is required to designate a "Central Authority" for this purpose.[23]

Chapter I specifies what information must be contained in the letter of request[24]; language requirements;[25] procedures for execution of a letter of request, including the use of "special procedures" such as oaths, verbatim transcripts, cross-examination[26]; compulsory measures[27]; the availability of testimonial privileges[28]; grounds for a refusal to execute a letter of request[29]; and permissible fees and costs.[30]

As to the taking of evidence by diplomatic or consular officials, Chapter II draws a distinction between the taking of evidence by such officials from their own nationals, and the taking of evidence from nationals of their host countries or of third countries. Generally, prior permission from the host country is required in the latter but not the former case, although a state may alter this by declaration.[31] Most states have made reservations relevant to these articles. Diplomatic and consular officials have no power to compel testimony, but must apply to the courts of the host state, which use their own standards and measures of compulsion.[32] The host state may regulate the conditions under which evidence

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22 Article 1.

23 Article 2.

24 Article 3.

25 Article 4. States must accept a letter of request in English or French unless a contrary reservation is made.

26 Article 9.

27 Article 10.

28 Article 11.

29 Article 12.

30 Article 14.

31 Articles 15 & 16.

32 Article 17.

is taken by such officials.[33]

Chapter II allows the taking of evidence by court-appointed commissioners, a familiar concept in U.S. civil procedure,[34] but a concept unknown in civil law jurisdictions prior to the Convention. Most civil law countries have made reservations to this aspect of the Convention.

The Convention allows member states to permit the taking of evidence by methods other than those contemplated by the Convention. It also allows states to permit the taking of evidence by the methods contemplated by the Convention, but under less restrictive terms.[35]

The Convention permits states to make a reservation to the requirement of Article 4(2), that they accept letters of request in English or French (i.e., not necessarily in their own language). A number of states have made reservations to the language provisions, and these should be checked carefully for each country. Other states have disallowed all or part of Chapter II, and many have imposed conditions and requirements that should be carefully reviewed.

Finally, Article 23 of the Convention allows states to declare at the time of ratification or accession that they will "not execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents as known in common-law countries."[36]

In 1978, a special commission appointed to study the operation of the Convention approved a model form of a letter of request to be used in drafting requests under the Convention.[37]

Issues Arising under the Convention

The provision in Article 23 allowing declarations limiting pre-trial discovery of documents received little attention at the time the Convention was ratified by the United States. In recent years, however, it has been the focal point of virulent controversy between the United States and other member states. Most member states have made declarations either denying entirely, or severely limiting the discovery of documents. Among the second group of countries, which includes the Scandinavian countries, the declarations frequently include a specification of the kinds of documentary request that will not be accepted (typically broad, non-specific requests). This refusal to countenance "fishing expeditions" has led U.S. litigants - typically, plaintiffs in product liability suits against foreign defendants that have sold allegedly defective products on the U.S. market - to seek discovery abroad from the foreign parties under the more liberal procedures of the Federal Rules of Civil Procedure. In doing so, litigants contend that the Convention, by virtue of Article 27, is

33 Article 19.

34 *See* Fed.R.Civ.P. 28(b).

35 Article 27.

36 Article 23.

37 The form is reprinted following the text of the Convention.

not the exclusive and mandatory means of proceeding where a U.S. court has jurisdiction over a foreign party.

After conflicting opinions in the lower courts, the United States Supreme Court considered the relationship between the Convention and the Federal Rules of Civil Procedure in *Société Nationale Industrielle Aerospatiale v. U.S. District Court.*[38] The Court ruled, five to four, that the Convention is not the exclusive and mandatory means of obtaining foreign evidence. At the same time, the Court held that the Convention cannot be disregarded whenever a U.S. court has jurisdiction over a foreign party from whom evidence is sought. In the majority's view, trial courts should use their discretion, based on the facts of a particular case, in determining the extent to which the use of Convention procedures should be required.

The *Aerospatiale* decision effectively permits U.S. courts to avoid the Convention, except where evidence is sought from third-party witnesses who are not subject to their personal jurisdiction. Although the Supreme Court's decision is viewed by some as a response to the intransigent attitude of many Hague Evidence Convention countries towards discovery, the decision could prove detrimental in the long term, depending on its application by the lower courts. For example, it may well affect the willingness of a foreign country to recognize and enforce any ensuing judgment.

Parties to the Hague Evidence Convention as of January 1, 1991

Argentina	Luxembourg
Barbados	Monaco
Cyprus	Netherlands
Czechoslovakia	Norway
Denmark	Portugal
Finland	Singapore
France	Spain
Federal Republic of Germany	Sweden
Israel	United Kingdom
Italy	United States

III. The Foreign Sovereign Immunities Act of 1976

Historical Background

For more than a century and a half, the United States generally granted foreign sovereigns complete immunity from suits in U.S. courts. In the *The Schooner Exchange v. M'Faddon,*[39] Chief Justice Marshall concluded that, while the jurisdiction of a nation within its own territory

[38] 482 U.S. 522 (1987).

[39] 7 Cranch 116 (1812).

"is susceptible of no limitation not imposed by itself,"[40] the United States had impliedly waived jurisdiction over certain activities of foreign sovereigns. Although the narrow holding of *The Schooner Exchange* was that the courts lack jurisdiction over an armed ship of a foreign state found in a U.S. port, that opinion came to be regarded as extending virtually absolute immunity to foreign sovereigns.[41]

As *The Schooner Exchange* made clear, however, foreign sovereign immunity is a matter of grace and comity on the part of the United States, and not a restriction imposed by the Constitution. Accordingly, the Supreme Court has consistently deferred to the decisions of the political branches, in particular, those of the Executive Branch, on whether to exercise jurisdiction over actions against foreign sovereigns and their instrumentalities.[42]

Until 1952, the State Department uniformly certified immunity in all actions against friendly foreign sovereigns. But in the 1952 "Tate Letter", the State Department announced its adoption of the "restrictive" theory of foreign sovereign immunity. Under this theory immunity is confined to suits involving the foreign sovereign's public acts, (*jure imperii*), and does not extend to cases arising out of a foreign state's strictly commercial or "private" acts, (*jure gestionis*).

The restrictive theory was not initially enacted into law, however, and its application proved troublesome. As in the past, initial responsibility for deciding questions of sovereign immunity fell primarily upon the Executive Branch acting through the State Department. Since the courts abided by the "suggestions of immunity" filed by the Executive Branch, foreign nations often placed diplomatic pressure on the State Department in seeking immunity. On occasion, political considerations led to suggestions of immunity in cases where immmunity would not have been available under the restrictive theory.

An additional complication was that foreign nations did not always make requests to the State Department. In such cases, the responsibility fell to the courts to determine whether sovereign immunity existed. This was generally done by reference to prior State Department decisions. Thus, sovereign immunity determinations were made in two different branches, subject to a variety of factors, occasionally including political considerations. Not surprisingly, the governing standards were neither clear nor uniformly applied.[43]

In 1976, Congress passed the Foreign Sovereign Immunities Act ("FSIA") in order to free the Government from the case-by-case diplomatic pressures, to clarify the governing standards, and to "assur[e] liti-

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40 *Id.* at 136.

41 *See, e.g., Berizzi Brothers Co. v. S.S. Pesaro*, 271 U.S. 562 (1926).

42 *See, e.g., Ex parte Peru*, 318 U.S. 578 (1943); *Mexico v. Hoffman*, 324 U.S. 30 (1945).

43 *See*, Weber, *The Foreign Sovereign Immunities Act of 1976: Its Origin, Meaning and Effect*, 3 YALE STUDIES IN WORLD PUBLIC ORDER 1, 11-13, 15-17 (1976).

gants that . . . decisions are made on purely legal grounds and under procedures that insure due process."[44] To accomplish these objectives, the FSIA contains a comprehensive set of legal standards governing claims of immunity in every civil action against a foreign state and its political subdivisions, agencies or instrumentalities.

Synopsis of the Act

The FSIA codifies, as a matter of federal law, the restrictive theory of sovereign immunity. Therefore, a foreign state is normally immune from the jurisdiction of federal and state courts,[45] subject to a set of exceptions specified in §§ 1605 and 1607. Those exceptions include actions in which the foreign state has explicitly or impliedly waived its immunity, actions based upon commercial activities of the foreign sovereign carried on in the United States or causing a direct effect in the United States, and actions for damages for tortious injury caused in the United States. When one of the specified exceptions applies, "the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances."[46]

The FSIA expressly provides that its standards control in "the courts of the United States and of the States,"[47] and thus clearly contemplates that such suits may be brought in either federal or state courts. However, "i[n] view of the potential sensitivity of actions against foreign states and the importance of developing a uniform body of law in this area,"[48] the FSIA guarantees foreign states the right to remove any civil action from a state court to a federal court.[49] If one of the specified exceptions to sovereign immunity applies, a federal or state court may exercise subject matter jurisdiction under § 1330(a). If the claim does not fall within one of the exceptions, U.S. courts are incompetent to hear the case.

The Supreme Court has firmly established that the FSIA is the sole and exclusive jurisdictional basis for suits against foreign states and their agencies and instrumentalities, including foreign state owned corporations or other legal entities.[50]

IV. Enforcement of Foreign State Judgments

The Uniform Foreign Money Judgments Recognition Act[51]

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[44] H.R. Rep. No. 94-1487, at 7 (1976).

[45] 28 U.S.C. § 1604 (1991).

[46] § 1606.

[47] § 1604.

[48] H.R. Rep. No. 94-1487, at 32 (1976).

[49] § 1441(d).

[50] *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428 (1989); *Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480 (1983).

[51] The aim of the adoption of the Act by several states, (e.g., New York), was not so much to aid recognition of foreign judgments, but to enhance the prospect of recognition of domestic judg-

("Act"), which has now been adopted by twenty states, is generally regarded as a codification of preexisting common law principles as to when U.S. courts will recognize and enforce money judgments rendered abroad. The Act will be used in this paper as a convenient outline for a synopsis of the principles governing recognition and enforcement of foreign judgments.

"Foreign State" and "Judgment" Defined

Subdivision (1) of § 1 defines a "foreign state" as any governmental unit other than those listed. The jurisdictions listed are American jurisdictions. Their courts' judgments get full faith and credit and can be summarily registered in most states of the American Union. Thus, state court judgments do not need assistance from the Act.

Subdivision (2) clarifies subdivision (1) in that the section applies only to money judgments and excludes from recognition judgments for taxes, fines, or penalties, as well as support judgments in matrimonial and family matters.

Finality

Only foreign judgments that are "final, conclusive and enforceable" are subject to enforcement. This excludes all intermediate and interlocutory determinations, including money judgments, if, under the law of the rendering jurisdiction, there is any impediment to their immediate enforcement. The only stated exception is when an appeal is pending or when the judgment is subject to appeal. An appeal as such does not prevent the judgment from being deemed final.

There may well be good reason for seeking to at least start an action in the United States on the foreign judgment even though an appeal is pending in the foreign jurisdiction. If the judgment debtor has assets in the United States, the commencement of an enforcement action may support an application for an order of attachment to preserve assets until the action is determined.[52]

Recognition and Procedure for Enforcement

Unless one of the grounds listed in § 4 of the Act for refusing recognition is applicable, § 3 requires that our courts treat the foreign judgment as conclusive. Ordinarily, it will be a judgment creditor who will seek to invoke the provisions of the Act to enforce the judgment, but the section applies as well to a judgment which "denies" recovery of money. Thus, a defendant in a foreign action who prevailed against the plaintiff's

ments by foreign courts. In states which do not recognize and enforce U.S. judgments unless it is shown that the U.S. reciprocates, the Act makes the requisite showing of reciprocity. A statutory manifestation is more convincing than case law to the courts of some of these nations, especially those under the civil law system.

52 *See also* § 6.

money claim is just as entitled to have the judgment deemed binding in his favor as the plaintiff is when he prevails. The second sentence of § 3 allows the judgment to be interposed as an "affirmative defense."

A judgment creditor with a foreign money judgment may convert it into a domestic judgment either by bringing an ordinary action on the judgment or, in some states, by proceeding under statutes which permit the judgment creditor to accompany a summons with a set of motion papers and move for summary judgment.[53]

Once converted into a domestic judgment, the foreign judgment becomes enforceable like a domestic judgment.

Grounds for Refusing Recognition

Section 4 permits refusal to recognize a foreign judgment on a variety of grounds. Subdivision (a) of § 4 states three mandatory grounds which precluded U.S. courts from recognizing the foreign judgment. Each cited ground, i.e., the want of an impartial tribunal and fair procedures, the lack of personal jurisdiction over the defendant, and lack of subject matter jurisdiction, are long-established grounds for refusing recognition under preexisting law. The want of personal jurisdiction would, in the United States, mean that our domestic concept of due process was not satisfied in the foreign forum, thus precluding recognition of the judgment on constitutional grounds.

In determining whether the foreign court had personal jurisdiction over the defendant, the domestic law of the state where enforcement is sought must be consulted. If the foreign court's personal jurisdiction accords with domestic laws, recognition may not be refused for lack of personal jurisdiction, although recognition may be refused on one of the six discretionary grounds set forth in subdivision (b) of § 4.

Lack of notice and opportunity to defend in the foreign forum is a ground for refusing recognition under paragraph (1). This goes to the roots of due process in the United States, and therefore, makes a refusal to recognize the judgment constitutionally mandatory rather than, as subdivision (b) of § 4 would have it, discretionary.

The "public policy" objection of paragraph (3) is a traditional ground for protection in international agreements which are analogous to the Act. For example, the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which the United States has ratified, includes in Article V, § 2(b), as a reason for refusing to enforce an arbitral award, that it would be "contrary to the public policy" of the country where enforcement is sought.

A refusal to recognize a foreign judgment because it conflicts "with another final and conclusive judgment," the ground stated in paragraph

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[53] A judgment of a foreign country may not be enforced by registration, which is available only for the judgments of courts of the United States. *See, e.g.*, 28 U.S.C. § 1963.

(4), should occur only when some reason is shown why the latter judgment should have priority.

The ground in paragraph (5) involves what is known as an "ouster" agreement, whereby the parties stipulate that disputes shall be settled only in particular courts, thereby "ousting" all other jurisdictions. If another forum has assumed jurisdiction despite the ouster, its judgment can be refused recognition under paragraph (5).

Paragraph (5) also covers the situation in which the foreign court assumed jurisdiction, over the objection of a party, concerning a dispute which both sides had agreed to submit to arbitration or to a similar extrajudicial dispute settlement machinery. Thus, if it appears that the judgment creditor deliberately sought out a court in a jurisdiction hostile to arbitration, even though he agreed to arbitrate, he can be denied the fruits of the judgment.

Paragraph (6) permits a refusal of recognition if the foreign court can be shown to have been a "seriously inconvenient" forum. This ground applies only if the court's jurisdiction rested solely on local service of process on the judgment debtor, i.e., where there was no other jurisdictional nexus.

Bases for Personal Jurisdiction

As noted earlier, subdivision (a)(2) of § 4 provides that a foreign judgment may not be enforced if the rendering court lacked personal jurisdiction over the judgment debtor. Subdivision (a) of § 5 then sets forth a list of bases deemed adequate for the exercise of personal jurisdiction, thus removing the barrier of § 4(a)(2) if one of the listed bases is present.

To begin with, mere personal service within the foreign country assures jurisdiction under paragraph (1) of subdivision (a) of § 5. U.S. courts would be hypocritical to hold otherwise, since American law still recognizes local service even upon a transient as a basis for personal jurisdiction.[54] Recognition may, however, be refused when service was the *sole* jurisdictional basis if it is also shown that the foreign forum was a "seriously inconvenient" one.[55]

Under paragraph (2), voluntary appearance in the foreign proceedings submits the defendant to the court's jurisdiction. There are, however, two exceptions. The first exception is when the appearance was solely to protect property seized in the foreign place. This exception acknowledges that the need to protect property may sometimes compel a submission to jurisdiction when foreign law allows such coercive use of the property's coincidental presence. An appearance under such circumstances would be an especially sympathetic point for the judgment debtor if the property was unrelated to the underlying dispute.

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[54] *See, Burnham v. Superior Court of California*, 110 S. Ct. 2105 (1990).

[55] § 4(b)(7).

The second exception in paragraph (2) is when the appearance was solely for the purpose of challenging jurisdiction, what used to be termed a "special appearance." If the judgment debtor did more than preserve his jurisdictional objection in the foreign court, he will be deemed to have submitted voluntarily to its jurisdiction and to have forfeited the right to claim an exception for himself under paragraph (2).

The remaining grounds listed in subdivision (a) of § 5 are analogous to those which are now generally recognized for extraterritorial jurisdiction. Paragraph (3) recognizes a contractual submission. Paragraph (4) recognizes domicile on the part of an individual defendant and place of incorporation, or the "doing business" test in the case of a corporate defendant. Paragraph (5) acknowledges a type of "long arm" jurisdiction analogous, if not identical, to the "transaction of business" test. Paragraph (6) involves a combination of a general long arm statute and the more specialized alternatives of a traditional nonresident motorist statute.

The bases listed in subdivision (a) of § 5 are by no means exclusive. A state is free, under subdivision (b), to recognize in respect of the foreign judgment any other jurisdictional basis which that state's law finds congenial.