BOOK REVIEW

Litigating International Commercial Disputes, by Lawrence W. Newman and David Zaslowsky. St. Paul: West Publishing Co., 1996. Pp. 429. $50.00 (softcover).

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I. INTRODUCTION

With the global economy becoming increasingly more tightly knit and with litigation replacing trial-by-combat as a less violent means of resolving international economic disputes, the development of transnational litigation is receiving increased attention. International courts entertain disputes between sovereign states that consent to jurisdiction.[1] These courts, however, do not adjudicate commercial disputes between private parties.[2] For private parties, international arbitration, increasingly in vogue, provides a neutral international forum of choice.[3] Many parties engaged in a commercial dispute with a citizen of another nation, however, do not—whether by happenstance or by choice—have recourse to arbitration. They are therefore likely to find themselves seeking justice in a national court somewhere in the world.

Unfortunately for many litigants, the local judicial system involved may be ill equipped to deal effectively with the international aspects of the dispute—a task requiring a significant degree of sophistication and sensitivity. In order to deal effectively with an international dispute, the local court must first have no ingrained partiality in favor of one of the litigants on grounds of nationality.

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1. *See* David D. Caron, *The Nature of the Iran-United States Claims Tribunal and the Evolving Structure of International Dispute Resolution*, 84 AM. J. INT'L L. 104, 116 (1990) (describing the trend towards international arbitration upon the failure of parties to submit to an international court's jurisdiction).

2. *See generally* Ronald A. Brand, *Semantic Distinctions in an Age of Legal Convergence*, 17 U. PA. J. INT'L ECON. L. 3, 5-7 (1996) (describing the participation of private parties in the international legal system).

3. Jill A. Pietrowski, Comment, *Enforcing International Commercial Arbitration Agreements: Post-*Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 36 AM. U. L. REV. 57, 57-59 (1986).

Second, before dispensing justice on the merits, the court must satisfy a number of procedural hurdles peculiar to the international setting; for example: (1) When and how can the court assert personal jurisdiction over the foreign party? (2) What weight should be given to forum selection and choice-of-law agreements made by the parties? (3) How is transnational discovery conducted with a recalcitrant party—sometimes a foreign government—hostile to the process? (4) Should deference be accorded concurrent proceedings in a foreign court involving the same parties and the same dispute? (5) And, once a judgment is entered, how can it be enforced against a foreign party who has no assets within the jurisdiction? The fair and efficient management of these and other pertinent international facets of the case is frequently a prerequisite to the effective dispensation of justice in a national tribunal.

II. Litigating International Commercial Disputes

The title of the useful new book by Lawrence Newman and David Zaslowsky, *Litigating International Commercial Disputes*,[4] is somewhat of a misnomer. The book is essentially a guide to the treatment of commercial disputes in the courts of the United States, rather than in international or foreign fora. The authors offer a modest discussion, from the comparative law viewpoint, of how other countries handle these issues. Yet a reader who wants to know in any detail how particular questions are addressed in the courts of Japan, Switzerland, or some other nation had best seek guidance from analogous volumes applicable to those countries, if they exist. Nonetheless, the subject matter of what is generally called "transnational" litigation is an important and rapidly developing concept in the context of U.S. law, and *Litigating International Commercial Disputes* provides an accurate and concise road map through the relevant issues. That is no small feat in this esoteric area in which the practical implications and nuances of a legal rule are often as important to the litigant and the lawyer as the black-letter law.

A. *Background*

Although many state courts have also presided over international commercial disputes,[5] the authors primarily focus on the rules as

4. Lawrence W. Newman & David Zaslowsky, Litigating International Commercial Disputes (1996).

5. Pietrowski, *supra* note 3, at 59-60.

they have developed in federal law.[6] A lawyer representing a client in a case in New York or Texas state courts, for instance, must be keenly aware of the potential impact on the litigation of the local rules and attitudes.[7] State law, moreover, may be controlling even in federal courts.[8] The Supreme Court, for example, has held that choice-of-law rules are controlled by state law.[9]

Still, a compilation of the various pertinent laws in each of the fifty states and the territories would entail an enormous effort and yet yield relatively little value to the bar and academia. Most of the important issues peculiar to transnational litigation are governed by the same principles—general federal principles—regardless of whether the case is in federal or state court. In asserting personal jurisdiction over a foreign defendant, for example, federal and state courts must meet the standards of the U.S. Constitution's due process requirements.[10] In both federal and state courts, where service of the complaint and summons on a foreign defendant is required, access to the procedures of the Hague Service Conven-

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6. NEWMAN & ZASLOWSKY, *supra* note 4, at 110-91.

7. The states, for example, have developed their own rules as to when to dismiss a case on grounds of *forum non conveniens*, and these rules have coexisted with the federal doctrine of *forum non conveniens*. The Supreme Court has left open the question of whether state *forum non conveniens* law should control in federal diversity of citizenship cases where the federal and state standards are different. As such, there exists a debate on this point. *Compare* 15 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 3828, at 294 (2d ed. 1986) ("[I]t seems quite clear that [*forum non conveniens* matters] . . . are matters of the administration of the federal courts, not rules of decision, so that state rules cannot be controlling.") (footnote omitted), *with* Allen R. Stein, Erie *and Court Access*, 100 YALE L.J. 1935, 2003 (1991) ("Federal displacement of state law is appropriate only in cases where the court-access issue turns on the question of the appropriate allocation of judicial authority between the forum and a foreign government.") (footnote omitted).

8. Pursuant to the long standing doctrine of *Erie Railroad v. Tompkins*, 304 U.S. 64 (1938), federal courts are to apply state substantive law except in questions governed by the federal constitution, federal statutes, or federal "procedural" law. In addition, the Rules of Decision Act provides that the "laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply." 28 U.S.C. § 1652 (1994).

9. *See* Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 487, 496 (1941); *see also* Donald T. Trautman, *Toward Federalizing Choice of Law*, 70 TEX. L. REV. 1715, 1715-16 (1992) (noting the "ignominy" of being treated as a matter of state law).

10. U.S. CONST. amend. XIV; *see* Asahi Metal Indus. Co. v. Superior Court, 480 U.S. 102, 113 (1987) ("A court must consider the burden on the defendant, the interests of the forum state, and the plaintiff's interest in obtaining relief."); Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 413-14 (1984); International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945).

tion[11] may be necessary. Similarly, recourse to the Hague Evidence Convention[12] may be required for a federal or state proceeding to obtain access to documents or witnesses located abroad. Finally, whether in federal or state court, suits in the United States against foreign states or against their agencies or instrumentalities must comply with the standards for jurisdiction, service of process, attachment, and execution as prescribed by the Foreign Sovereign Immunities Act of 1976 (FSIA).[13]

The development of settled rules to govern transnational litigation in the United States has been a difficult and unfinished journey. The revision of the Federal Rules of Civil Procedure in 1993, for example, addressed the issue of whether a waiver of service of summons procedure could be imposed on a foreign defendant in light of the Hague Service Convention.[14] In addition, the Supreme Court has addressed disputes involving the scope of the Hague Service Convention and the Hague Evidence Convention, with foreign governments joining in the fray through *amicus curiae* briefs.[15] Finally, the comprehensive revision of the *Restatement of the Foreign Relations Law of the United States* in 1987[16] was achieved only after several years of wrangling.[17]

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11. Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov. 15, 1965, 20 U.S.T. 361, 658 U.N.T.S. 163, *reprinted in* FED. R. CIV. P. 4 [hereinafter Hague Service Convention].

12. Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, Mar. 18, 1970, 23 U.S.T. 2555, 847 U.N.T.S. 231. In *Société Nationale Industrielle Aérospatiale v. United States District Court*, 482 U.S. 522, 529 (1987), the Supreme Court held that the Hague Evidence Convention procedures are not the exclusive means by which litigants may seek discovery from foreign parties and third parties; thus, subject to control by the court, the litigants are free to use the Federal Rules of Civil Procedure or applicable state court rules of procedure.

13. 28 U.S.C. §§ 1602-1611 (1994). The Supreme Court made it clear in its decision in *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 434 (1989), that the Foreign Sovereign Immunities Act (FSIA) constitutes the exclusive basis on which jurisdiction may be asserted over a foreign state.

14. In the revised rules of civil procedure, the rule authorizing the court to impose costs on a defendant who refuses to waive service was eventually limited to actions involving plaintiffs and defendants located within the United States. FED. R. CIV. P. 4(d)(2)(G).

15. *See* Volkswagenwerk Aktiengesellschaft v. Schlunk, 486 U.S. 694 (1988); Société Nationale Industrielle Aérospatiale v. United States Dist. Court, 482 U.S. 522 (1987).

16. RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 1 (1987) [hereinafter RESTATEMENT]. The *Restatement of Foreign Relations Law* deals with international law as it applies to the United States, and with domestic law that affects U.S. foreign relations or results in other substantial international consequences.

17. Much of the wrangling was over the issue of whether the reporters were indeed restating the law in this largely virginal area or, as some people asserted, were bent on shaping portions of the *Restatement* to suit their own theories as to what the law should be. *See* AMERICAN SOC'Y INT'L LAW, THE RESTATEMENT OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES, REVISED: HOW WERE THE CONTROVERSIES RESOLVED? 181 (1990).

In sum, this area of the law is still a work in progress, as was demonstrated by the Supreme Court's sharp split in *Hartford Fire Insurance Co. v. California*.[18] By reason of its importance as a precedent and its controversial nature, this decision deserves further discussion.

B. Hartford Fire

Hartford Fire involved claims that various U.S.-based insurance companies and London-based reinsurers violated the Sherman Act[19] by conspiring to force certain primary insurers to change the terms of their standard domestic commercial general liability insurance policies.[20] One of the issues presented to the Supreme Court was whether the Sherman Act should be applied to the acts of the reinsurers in London on the jurisdictional ground that those acts were alleged to affect U.S. commerce.[21] The London reinsurers, with the support of the British government as *amicus curiae*,[22] urged that the Act should not reach and proscribe their conduct on the grounds that such application would conflict with British law.[23]

Justice Souter, joined by four other justices, wrote the opinion of the Court with respect to this issue. The opinion first noted that, as the London reinsurers conceded, the Sherman Act facially applied because the alleged foreign conduct was meant to produce, and did in fact produce, some substantial effect in the United States.[24] The disputed question, however, was whether the U.S. courts should decline to exercise jurisdiction over the reinsurers' activities under the principle of international comity.[25] In rejecting such forbearance, the Court considered the undisputed fact that the conduct alleged was perfectly consistent with British law, yet held that policy was not a sufficient basis to create a conflict.[26] Relying on commentary in the *Restatement* recognizing the concurrent exercise

18. Hartford Fire Ins. Co. v. California, 509 U.S. 764 (1993) (addressing the role to be given to international comity in resolving jurisdictional clashes).

19. Sherman Antitrust Act, ch. 647, 26 Stat. 209 (1890) (codified as amended at 15 U.S.C. § 1 (1994)).

20. *Hartford Fire*, 509 U.S. at 770-79.

21. *Id.* at 779.

22. The author of this book review discloses that he and his law firm represented the British government in connection with this litigation.

23. The British defendant argued that because British law did not prohibit the acts in question, it would be inconsistent and a violation of comity for U.S. law to apply. *Hartford Fire*, 509 U.S. at 798-99.

24. *Id.* at 796.

25. *Id.* at 797.

26. *Id.* at 799.

of jurisdiction by two nations, the majority opinion rejected the argument that notions of international comity were applicable:

> Since the London reinsurers do not argue that British law requires them to act in some fashion prohibited by the law of the United States or claim that their compliance with the laws of both countries is otherwise impossible, we see no conflict with British law. We have no need in this litigation to address other considerations that might inform a decision to refrain from the exercise of jurisdiction on grounds of international comity.[27]

Justice Scalia, joined by three other justices, dissented from the Court's opinion on this issue. Justice Scalia agreed with the Court that the Sherman Act applies extraterritorially.[28] He reasoned, however, that "firmly established in our jurisprudence" is "the practice of using international law to limit the extraterritorial reach of statutes."[29] Like the Court majority, Justice Scalia relied on the *Restatement* provisions concerning prescriptive jurisdiction, yet concluded that, in light of the United Kingdom's comprehensive regulatory interest in the London reinsurance markets, it would be "unimaginable that an assertion of legislative jurisdiction by the United States would be considered reasonable, and therefore it is inappropriate to assume, in the absence of statutory indication to the contrary, that Congress has made such an assertion."[30] The majority, in his view, misinterpreted section 403 of the *Restatement* by limiting the possible application of international comity—"the respect sovereign nations afford each other by limiting the reach of their laws"[31]—to situations in which compliance with U.S. law would constitute a *violation* of another country's law.[32]

The majority's holding, which limits application of the doctrine of international comity to cases of "true conflict" (where compliance with the law of both countries would be impossible should the United States not refrain from the exercise of jurisdiction), casts a pall over the doctrine's future, at least in the jurisdictional context.[33] In fact, Andreas Lowenfeld, the author of the portion of the *Restatement* upon which Justice Souter based his opinion, expressed

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27. *Id.* (citations omitted).
28. *Id.* at 814 (Scalia, J., dissenting).
29. *Id.* at 818.
30. *Id.* at 819.
31. *Id.* at 817.
32. *Id.* at 819-21.
33. One knowledgeable observer has pointed out that the *Hartford Fire* decision "probably puts off the day when a more rational international approach involving harmonization or allocation of jurisdiction will make extraterritorial law enforcement less compelling and less disruptive of international economic cooperation." Kenneth W. Dam, *Extraterritoriality in an Age of Globalization: The* Hartford Fire *Case*, 1993 SUP. CT. REV. 289, 328.

the view that, "Justice Scalia understood, and Justice Souter misunderstood, the approach of the Restatement."[34] Lowenfeld thus considers that the majority's narrow definition of conflict fails to recognize that "conflict is not just about commands: it is also about interests, values and competing priorities. All of these need to be taken into account in arriving at a rational allocation of jurisdiction in a world of nation-states."[35]

Underlying the doctrinal differences espoused by the two sides of the Supreme Court in *Hartford Fire* is a tension which frequently confronts U.S. courts in transnational lawsuits. To put that tension in question form: Does adherence to international law and comity entitle foreign litigants and foreign governments to more benign treatment at the hands of U.S. courts than is received by U.S. litigants? And, if so, at what point does this approach unfairly disadvantage our citizens and strip U.S. law of its force? As we shall see, the dilemma is observable with respect to a number of the most important issues posed in U.S. transnational litigation.

C. *Personal and Subject Matter Jurisdiction*

1. Personal Jurisdiction

The lawyer for a foreign party sued in a U.S. federal or state court is likely to consider, as a threshold point, whether the relationship between the forum and the defendant is sufficient to confer personal jurisdiction over the defendant. If the foreign corporation or individual conducts business within the forum state, personal jurisdiction will normally be upheld under one of the traditional bases for jurisdiction.[36] In addition, "long-arm" statutes adopted by U.S. states often specify the types of nexi between the actor and the state that establish personal jurisdiction, including situations where the defendant was active within a state, and more attenuated acts, such as the supplying of goods or services into the state from outside its borders or committing a tortious act outside

34. Andreas F. Lowenfeld, Editorial Comment, *Conflict, Balancing of Interests, and the Exercise of Jurisdiction to Prescribe: Reflections on the Insurance Antitrust Case*, 89 AM. J. INT'L L. 42, 50 (1995). There is also the contrary viewpoint that Justice Scalia "got the law wrong" because "even if there were a generally applicable customary international law rule like section 403 [of the *Restatement*], the United States would long ago have opted out." Phillip R. Trimble, Editorial Comment, *The Supreme Court and International Law: The Demise of Restatement Section 403*, 89 AM. J. INT'L L. 53, 54-56 (1995).

35. Lowenfeld, *supra* note 34, at 51.

36. *See* International Shoe Co. v. Washington, 326 U.S. 310, 319 (1945).

the state that causes injury to persons or property within it.[37] As Messrs. Newman and Zaslowsky explain, the test applied must also satisfy the "minimum contacts" standard of the U.S. Constitution that was developed in *International Shoe Co. v. Washington*[38] and its progeny. Under this line of cases, the rules for exercising personal jurisdiction must not offend "traditional notions of fair play and substantial justice."[39] Pursuant to this requirement, a plaintiff's claims must arise from the defendant's activities within the forum state or the defendant's contacts with the state must constitute "continuous and systematic general business contacts."[40] Many of the important decisions involving application of this doctrine have come in the context of product liability cases.[41]

The intricacies of the minimum contacts requirement in the transnational setting were starkly presented to the Supreme Court in *Asahi Metal Industry Co. v. Superior Court.*[42] *Asahi* involved a suit in the California state courts arising from an accident in California, which had been allegedly caused by an exploding motorcycle tire.[43] The injured party sued the Taiwanese manufacturer of the tire tube, and the latter filed a cross-complaint seeking indemnification from, among others, Asahi Metal Industry Co., Ltd. (Asahi), which had manufactured the tire valve assembly in Japan before selling it to the Taiwanese tire manufacturer.[44] When the plaintiff's claims against the tire manufacturer and the other defendants were settled and dismissed, the question posed was whether, given that the remaining dispute was between the two foreign companies, the California state courts could exercise jurisdiction over the defendant, Asahi, consistent with the Due Process Clause of the Fourteenth Amendment.[45]

The California Supreme Court upheld the state court's exercise of jurisdiction.[46] The Supreme Court reversed, but did so with a

37. *See, e.g.*, Coats v. Penrod Drilling Corp., 5 F.3d 877, 883 (5th Cir. 1993) (citing McDaniel v. Ritter, 556 So. 2d 303, 309 (Miss. 1989)) (describing Mississippi's long-arm statute).

38. *International Shoe*, 326 U.S. at 316.

39. *Id.*; *see* NEWMAN & ZASLOWSKY, *supra* note 4, at 21.

40. Helicopteros Nacionales De Colombia, S.A. v. Hall, 466 U.S. 408, 415-16 (1984).

41. *See* World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980) (holding that the minimum contacts required for jurisdiction had to be the result of an action of the defendant purposefully directed toward the forum state, not simply the foreseeable unilateral action of a consumer bringing the product into the forum state).

42. Asahi Metal Indus. Co. v. Superior Court, 480 U.S. 102 (1987).

43. *Id.* at 106.

44. *Id.*

45. *Id.*

46. *Id.* at 108.

variety of opinions that left a degree of confusion in the Court's wake.[47] The authors of *Litigating International Commercial Disputes* treat the resolution of *Asahi* somewhat confusingly by failing to distinguish among Justice O'Connor's opinion for the Court, her plurality opinion for four justices, Justice Brennan's concurring opinion for four justices, and Justice Stevens's concurring opinion for three justices.[48]

A unanimous Court held that, "[c]onsidering the international context, the heavy burden on the alien defendant, and the slight interests of the plaintiff and the forum State, the exercise of personal jurisdiction by a California court over Asahi in this instance would be unreasonable and unfair."[49] The additional opinions, however, which dealt with the minimum contacts issue as a separate inquiry (distinct from that of reasonableness), diverged. Speaking for four justices, Justice O'Connor concluded that minimum contacts must be based on a purposeful act of the defendant and that, as in the case of Asahi, the "placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State."[50] Justice Brennan's concurring opinion, also joined by four justices, differed by reasoning that a defendant who places a product into the stream of commerce with the awareness that the product is being marketed in the forum state has committed a purposeful act directed at the forum state ordinarily sufficient to confer jurisdiction.[51] Justice Stevens (joined by Justices White and Blackmun who also joined Justice Brennan's opinion) wrote a concurring opinion in which he rejected the plurality's assumption "that an unwavering line can be drawn between 'mere awareness' that a component will find its way into the forum State and 'purposeful availment' of the forum's market."[52]

These diverging views in *Asahi* have left the lower courts in doubt over the precise standard to be applied. The result, as described by the Third Circuit, is that lacking further guidance from the Supreme Court, "most of the circuits to have addressed the 'stream of commerce' theory since *Asahi* have chosen to avoid taking a position on the current status, attempting when possible to decide

47. *Id.* at 116.
48. NEWMAN & ZASLOWSKY, *supra* note 4, at 22.
49. *Asahi*, 480 U.S. at 116.
50. *Id.* at 112.
51. *Id.* at 116-17.
52. *Id.* at 122.

the case on the basis of the facts on record."[53] As *Asahi* demonstrates, the factors to be considered include the defendant's territorial contacts with the forum state and the interest or disinterest of that state in providing a forum for the dispute.[54] In this writer's view, it is unfortunate that the Supreme Court's venture into personal jurisdiction in *Asahi* left the area in such significant disarray.

2. Subject Matter Jurisdiction

Any discussion of subject matter jurisdiction must start with a definition of the term; therein often lies the most difficult part of the discussion. The *Restatement* differentiates three categories of jurisdiction: (1) *jurisdiction to prescribe*—the authority of a state to make its law applicable to persons or activities; (2) *jurisdiction to adjudicate*—the authority of a state to subject particular persons or things to its judicial process; and (3) *jurisdiction to enforce*—the authority of a state to use the resources of government to induce or compel compliance with its law.[55] U.S. courts, according to the *Restatement*, have developed the applicable rules as a blend of international and domestic law, including international comity as part of that law.[56]

In chapter four of *Litigating International Commercial Disputes*, the authors discuss subject matter jurisdiction in the sense of jurisdiction to prescribe.[57] The inquiry of the discussion is the extent to which the U.S. Congress intended certain pieces of regulatory legislation to apply extraterritorially, namely, to parties and conduct outside of U.S. territorial limits.[58] The focus of the chapter is on judicial interpretations of the antitrust, securities, commodities, trademark, and civil rights statutes.[59]

The application of U.S. antitrust law, particularly the Sherman Act, to anticompetitive activities conducted abroad that affect U.S. commerce, has annoyed—indeed often infuriated—many of our foreign friends for years.[60] Surprisingly, it was not until 1993 that the Supreme Court squarely declared in *Hartford Fire* "that the

53. Renner v. Lanard Toys Ltd., 33 F.3d 277, 282 (3d Cir. 1994).
54. *Asahi*, 480 U.S. at 113.
55. RESTATEMENT, *supra* note 16, § 401.
56. *Id.*
57. NEWMAN & ZASLOWSKY, *supra* note 4, at 42-56.
58. *Id.*
59. *Id.*
60. Because it is generally conceded as a matter of international law that a state may regulate its own nationals wherever they may be, the furor has been over the reach of U.S. civil and criminal antitrust proceedings to encompass activities abroad by *foreign* nationals. *See id.* at 42.

Sherman Act applies to foreign conduct that was meant to produce and did in fact produce some substantial effect in the United States."[61] The U.S. Department of Justice and Federal Trade Commission's Antitrust Enforcement Guidelines for International Operations[62] reflect this doctrine which applies essentially to "import" situations. The Guidelines also go a step further by restating the 1992 policy determination that the two enforcement agencies may, in appropriate cases,

> take enforcement action against anticompetitive conduct, wherever occurring, that restrains U.S. *exports*, if (1) the conduct has a direct, substantial, and reasonably foreseeable effect on exports of goods or services from the United States, and (2) the U.S. courts can obtain jurisdiction over persons or corporations engaged in such conduct.[63]

The U.S. antitrust enforcement agencies thus reserve the right to proceed in U.S. courts against foreign companies with respect to activities those companies are carrying on in their home markets that adversely restrain U.S. exports to those markets. In the exercise of their prosecutorial discretion, however, the agencies will consider international comity in determining whether to assert jurisdiction, to investigate or bring an action, or to seek particular remedies in a given case.[64] They will take full account of international comity factors—including the interests of other sovereign nations—even if there is no true conflict with foreign law.[65]

As observed earlier, Justice Souter's opinion for a majority of the Supreme Court in *Hartford Fire* delimits the extent to which U.S. courts may take international comity into account in determining whether to exercise jurisdiction under a U.S. regulatory statute.[66] There must, at the very least, be a conflict with foreign law so that compliance with both the U.S. and the foreign law would be impossible.[67] *Litigating International Commercial Disputes* discusses the balancing test introduced by the Ninth Circuit in *Timberlane Lumber Co. v. Bank of America*[68] and also mentions the *Hartford Fire* decision. The book, however, fails to alert the reader to the diminished significance to which *Hartford Fire* has relegated the jurisdictional rule

61. Hartford Fire Ins. Co. v. California, 509 U.S. 764, 796 (1993).
62. U.S. DEP'T OF JUSTICE & FEDERAL TRADE COMM'N, ANTITRUST ENFORCEMENT GUIDELINES FOR INTERNATIONAL OPERATIONS (1995).
63. *Id.* at 16 (emphasis added).
64. *Id.* at 20.
65. *Id.*
66. *See supra* notes 19-35 and accompanying text.
67. Hartford Fire Ins. Co. v. California, 509 U.S. 764, 799 (1993).
68. Timberlane Lumber Co. v. Bank of America, 549 F.2d 597 (9th Cir. 1976).

of reason, and its attendant balancing test, where the application of U.S. regulatory statutes, like the antitrust laws, is involved.[69] Later in their volume, the authors do underscore the difference between such "prescriptive comity," curtailing the reach of national law in deference to other nations, and the "comity of courts," whereby judges in one nation decline to exercise jurisdiction over matters more appropriately adjudged elsewhere.[70] Where only the comity of courts is concerned and no significant U.S. regulatory interest is put at risk, the courts seem to have retained their ability to decline to exercise jurisdiction in transnational cases on principles akin to *forum non conveniens.*

D. *Service of Process*

For a U.S. court to exercise jurisdiction over a defendant, the defendant must receive notice of the litigation through valid service of process.[71] Where the defendant is a foreign individual or corporation, that service must generally be effected abroad.[72] The defendant may challenge service in the U.S. court if it was not in compliance with U.S. law.[73] Even if the service was valid under U.S. law, a judgment resulting from the litigation may be unenforceable overseas if the service did not comport with the law of the defendant's home jurisdiction.[74] Ensuring proper service is thus a critical, and often difficult, initial task in launching transnational litigation.

Rule 4 of the Federal Rules of Civil Procedure sets out detailed provisions for service of the summons and complaint upon a defendant in a federal case. Service may be effected in a foreign country pursuant to an international treaty, such as the Hague Service Convention, by other means authorized by foreign authorities, or, if not prohibited by international agreement, as may be directed by a U.S. court.[75] Service on a foreign defendant may, in some circumstances, be effected within the United States. An individual defendant may be served while physically in the United

69. *See* NEWMAN & ZASLOWSKY, *supra* note 4, at 43-44. The Ninth Circuit has sought to salvage as much of the *Timberlane* balancing test as possible. *See* Metro Indus., Inc. v. Sammi Corp., 82 F.3d 839, 846 n.5 (9th Cir. 1996) ("While *Hartford Fire Ins.* overruled our holding in *Timberlane II* that a foreign government's encouragement of conduct which the United States prohibits would amount to a conflict of law, it did not question the propriety of the jurisdictional rule of reason or the seven comity factors set forth in *Timberlane I.*").

70. NEWMAN & ZASLOWSKY, *supra* note 4, at 97.

71. FED. R. CIV. P. 4(m).

72. *Id.* at 4(f), (h).

73. *See* Volkswagenwerk Aktiengesellschaft v. Schlunk, 486 U.S. 694, 701 (1988).

74. *See* NEWMAN & ZASLOWSKY, *supra* note 4, at 61-62.

75. FED. R. CIV. P. 4(f), (h).

States, and a foreign corporation may be served by delivery of a copy of the summons and complaint on an officer or agent in the United States.[76] For purposes of satisfying U.S. law, personal jurisdiction may be asserted and service accomplished as to a foreign corporation through service on a related corporation in the United States, where it can be successfully established that the latter is the "alter ego" of the former.[77]

As explained in *Litigating International Commercial Disputes*, Congress's amendment of rule 4, effective December 1, 1993, established a waiver-of-service regime.[78] This regime enables a plaintiff to send to the defendant, by first-class mail or "other reliable means," a copy of the complaint, a notice of the commencement of suit, and a request that the defendant waive service.[79] If a defendant located in the United States fails, without good cause, to comply with a request for waiver made by a plaintiff located in the United States, the court must impose on the defendant the costs incurred in effecting the service.[80] A foreign defendant still has a "duty" to avoid unnecessary costs of serving the summons, but it is not subject to the imposition of costs of service if it fails to return a timely waiver.[81]

Rule 4(f)(1) expressly acknowledges the Hague Service Convention as an internationally agreed upon procedure for service of process to which the United States and certain other countries are signatories.[82] The Hague Service Convention applies in cases involving civil or commercial matters "where there is occasion to transmit a . . . document for service abroad."[83] Because the use of the Convention's procedures is mandatory in situations where it applies, the interpretation of the phrase "service abroad" may be critical, as it was in the Supreme Court's decision in *Volkswagenwerk Aktiengesellschaft v. Schlunk*.[84] In that case, the Supreme Court reasoned that the term "service abroad" must be determined by reference to the law of the forum state.[85] Because the law of Illinois—the forum state—authorized the plaintiff to serve the German cor-

76. *Id.* at 4(e), (h).
77. *See, e.g., Schlunk*, 486 U.S. at 694 (upholding substituted service on a corporation's domestic agent).
78. NEWMAN & ZASLOWSKY, *supra* note 4, at 57-60.
79. *See id.*
80. FED. R. CIV. P. 4(d)(2)(I).
81. *Id.*
82. *Id.* at 4(f)(1).
83. Hague Service Convention, *supra* note 11, 20 U.S.T. at 362, 658 U.N.T.S. at 165.
84. Volkswagenwerk Aktiengesellschaft v. Schlunk, 486 U.S. 694 (1988).
85. *Id.* at 701.

porate defendant by substituted service on its U.S. subsidiary, the Court concluded that service abroad was not involved.[86]

The Hague Service Convention requires that each signatory designate a central authority to receive requests for service from other contracting parties and effect the requested service.[87] As the authors of *Litigating International Commercial Disputes* posit, the Hague Service Convention imposes no time period for the accomplishment of service, and it is not unusual for service to take between six and eighteen months.[88] With respect to both the Hague Service Convention and the Hague Evidence Convention, plaintiffs' counsel would likely favor use of the federal rules over the more cumbersome Convention procedures; defendants' counsel, however, would prefer the Convention procedures.[89]

E. *Forum Selection and Choice-of-Law Agreements*

In negotiating the terms of international commercial transactions, wise counsel for the parties will not only take into account the possibility of a future dispute, but also the fact that the international setting of the arrangement may impart uncertainty as to which law will govern the dispute and as to where any ensuing litigation will be heard. To forestall such uncertainty and the severe disadvantage that may result for one of the parties—usually the defendant—the parties may include choice-of-law and forum selection clauses in their agreement.[90] Chapter six of *Litigating International Commercial Disputes* examines the extent to which such agreements will be given force in the U.S. courts.[91]

As the authors point out, although a party's advance choice of forum has long been honored by the U.S. forum so chosen, problems arose prior to 1972 when a plaintiff brought suit in a nonagreed U.S. forum, and that court refused to accept the forum selection clause.[92] In 1972, the Supreme Court held that district courts should enforce the parties' choice-of-forum agreement.[93] In

86. *Id.* at 701, 707-08.
87. NEWMAN & ZASLOWSKY, *supra* note 4, at 62-63.
88. *Id.* at 63.
89. *See, e.g.*, Hudson v. Hermann Pfauter GmbH & Co., 117 F.R.D. 33, 34-35 (N.D.N.Y. 1987) (detailing defendants' insistence on the procedures of the Hague Convention); David A. Strauss, Recent Development, 3 TUL. J. INT'L & COMP. L. 249, 256-57 (1995) (describing plaintiffs' efforts to follow federal rules).
90. NEWMAN & ZASLOWSKY, *supra* note 4, at 69.
91. *Id.* at 69-83.
92. *Id.* at 70.
93. Bremen v. Zapata Off-Shore Co., 407 U.S. 1 (1972).

holding that forum selection clauses are *prima facie* valid, the Court left room for some exceptions such as fraud, overreaching in the negotiation of the clause, or the contrary dictate of a strong public policy of the forum in which the suit was brought.[94] This last exception was invoked by a U.S. court in *McDonnell Douglas Corp. v. Islamic Republic of Iran*.[95] In *McDonnell Douglas*, the Eighth Circuit held that, notwithstanding a provision in a contract calling for resolution of disputes in Iranian courts, it would be unjust to require a U.S. litigant to seek a remedy against the Iranian government in the postrevolutionary courts of that country.[96]

The parties' advance choice of law—an issue distinct from their selection of a forum—is also typically enforced by U.S. courts.[97] The court may insist that the designated law have some substantial relationship to the parties or the transaction.[98] If the case requires the U.S. court to make a ruling under a foreign law, that ruling is to be treated as one of law, not of fact.[99] Because neither the U.S. court nor the parties' U.S. counsel can normally profess any expertise on the foreign law, expert opinions by foreign lawyers or law professors, with a suitable description of their expert qualifications, may be submitted to the court by counsel.[100] Given U.S. judges' understandable lack of familiarity with foreign law, and their likely discomfort with opining its substance, the role of expert opinions is crucial.[101] Where opposing experts disagree on their reading of foreign law, a judge's task is particularly unenviable, and the outcome of the case is unpredictable.[102]

F. *Special Rules Involving Foreign Sovereigns*

Foreign states, their subdivisions, and their wholly owned or partially owned trading companies are parties to many international commercial transactions.[103] Even when governments or their entities are not parties, state policies and actions may affect private

94. *Id.* at 15.
95. McDonnell Douglas Corp. v. Islamic Republic of Iran, 758 F.2d 341 (8th Cir. 1985).
96. *Id.* at 346.
97. NEWMAN & ZASLOWSKY, *supra* note 4, at 80-81.
98. *Id.* at 81-83.
99. FED. R. CIV. P. 44.1.
100. *Id.*
101. *See* Harold G. Maier, *The Role of Experts in Proving International Human Rights Law in Domestic Courts: A Commentary*, 25 GA. J. INT'L & COMP. L. 205, 209-10 (1995-1996).
102. *See* David Boyce, Note, *Foreign Plaintiffs and Forum Non Conveniens: Going Beyond* Reyno, 64 TEX. L. REV. 193, 217 n.155 (1985).
103. NEWMAN & ZASLOWSKY, *supra* note 4, at 110-11.

international dealings in significant ways.[104] Special doctrines have necessarily developed in U.S. law to address the distinct issues that may be raised by foreign government involvement, whether direct or indirect, in litigation. *Litigating International Commercial Disputes* accordingly devotes one chapter to the act-of-state doctrine[105] and another to cases under the FSIA.[106]

The act-of-state doctrine, a judicially created doctrine that effectively means that U.S. courts will not adjudicate challenges to the validity of the official acts of a foreign sovereign in its own territory, has a long history dating back to the Supreme Court's 1897 decision in *Underhill v. Hernandez*.[107] The scope of the doctrine and its legal underpinnings have been a source of debate ever since. The Court reexamined the act-of-state doctrine in 1964 in *Banco Nacional de Cuba v. Sabbatino*[108] and declared that the doctrine was required by the U.S. constitutional separation of powers, which precludes courts from impinging on the authority of the executive in making foreign policy. The act-of-state doctrine has been raised most prominently in cases involving challenges to the expropriation of U.S.-owned property by foreign sovereigns.[109] In *Sabbatino*, the Court held that the doctrine precluded U.S. courts from reviewing the validity of the Cuban government's seizure of sugar in that country.[110] The Court concluded that this judicial restraint would be required "in the absence of a treaty or other unambiguous agreement regarding controlling legal principles, even if the complaint alleges that the taking violates customary international law."[111] The U.S. government has indeed sought to include in treaties express "controlling legal principles" regarding expropriation and compensation, rather than to rely solely on customary international law.[112] Where a treaty incorporates rules requiring the payment of prompt, just, and effective compensation, U.S. courts are

104. *See id.*
105. *Id.* at 98-109.
106. *Id.* at 110-30.
107. Underhill v. Hernandez, 168 U.S. 250, 252 (1897).
108. Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 432-33 (1964).
109. *See id.*
110. *Id.* at 436-37.
111. *Id.* at 428.
112. *See* Kalamazoo Spice Extraction Co. v. Provisional Military Gov't of Socialist Eth., 729 F.2d 422, 426 (6th Cir. 1984).

not impeded by the act-of-state doctrine in reviewing the expropriation.[113]

The Supreme Court further restricted the scope of the act-of-state doctrine in *W.S. Kirkpatrick & Co. v. Environmental Tectonics Corp.*[114] In *Kirkpatrick*, the plaintiff alleged that the defendant had, in violation of several U.S. laws, obtained certain government contracts in Nigeria through the use of bribery.[115] The defendant countered that the act-of-state doctrine precluded the U.S. court from inquiring whether Nigerian government officials had received payments in violation of Nigerian law.[116] The Court, however, held that whether or not the inquiry might embarrass the foreign government, the doctrine was not implicated because the legality of the Nigerian contract was not an issue in the U.S. suit.[117] As a result of this holding, there is little enthusiasm left in judicial circles for the act-of-state doctrine, except where the challenge is pinpointed directly at the validity of foreign government official action.[118]

The FSIA codified the restrictive approach to the doctrine of sovereign immunity, whereby foreign sovereigns, their agencies, and their instrumentalities are held immune from the jurisdiction of U.S. courts, both federal and state, unless the case falls within an exception designated in the statute.[119] The Supreme Court has emphasized that the FSIA constitutes the exclusive basis for obtaining jurisdiction over a foreign state.[120] Unfortunately, the language of the exceptions is unclear and continues to generate considerable litigation. Much of the litigation concerns the interpretation of the exception relating to actions based upon "commercial activity" by a foreign state that has the requisite nexus with the United States.[121]

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113. *See id.* at 425-26. The applicability of the act-of-state doctrine is a different issue from that of obtaining subject matter jurisdiction over the foreign state itself, which is governed by the FSIA.

114. W.S. Kirkpatrick & Co. v. Environmental Tectonics Corp., 493 U.S. 400 (1990).

115. *Id.* at 401-02.

116. *Id.* at 402.

117. *Id.* at 409.

118. *See* Dean Brockbank, *The 1995 International Antitrust Guidelines: The Reach of U.S. Antitrust Law Continues to Expand*, 2 J. INT'L L. STUD. 1, 3 (1996); Thomas G. LaRussa, Note, *Human Rights Litigation on Behalf of Children Under the Alien Tort Claims Act and the Foreign Sovereign Immunities Act*, 10 GEO. IMMIGR. L.J. 707, 718-19 (1996).

119. 28 U.S.C. § 1604 (1994).

120. Argentine Republic v. Amerada Hess Shipping Corp., 488 U.S. 428, 439 (1989).

121. 28 U.S.C. § 1605(a)(2) (1994).

Whether the activity was indeed "commercial," as distinct from sovereign, is often a disputed issue.[122] Whether one of the three nexus formulae specified in the commercial activity exception has been satisfied has also spawned contention and numerous appellate opinions. The third clause of the commercial activity exception, for example, confers jurisdiction with respect to acts of foreign states outside the United States that cause "direct effects" in the United States.[123] The definition of a direct effect, as compared to an indirect one, has been a much litigated issue.[124] This vagueness in the statute was addressed, but not wholly remedied, by the Supreme Court's holding in *Republic of Argentina v. Weltover, Inc.*[125] In *Weltover*, the Court held that an effect is direct if it follows as "an immediate consequence" of the defendant's activity.[126]

Litigating International Commercial Disputes discusses these issues with the necessary care. It also considers other immunity exceptions including waiver, enforcement of arbitration agreements, and noncommercial torts (where both the tort and the injury must have occurred in the United States).[127] The special FSIA provisions for service of process on a foreign state are explained,[128] as are the standards and restrictions relating to prejudgment attachment and postjudgment execution with respect to a foreign state's property.[129] Two significant points concerning the assertion of jurisdiction against a foreign state are given insufficient attention, however. The first is that lower federal courts have uniformly ruled that, in addition to meeting the jurisdictional standards of the FSIA, the plaintiff must establish that personal jurisdiction over the foreign state exists under the Due Process Clause's "minimum contacts" requirement.[130] This is important because a finding of a

122. Although the FSIA specifies that the commercial character of an activity shall be determined by reference to the *nature* of the activity rather than by reference to its purpose, 28 U.S.C. § 1603(d) (1994), the courts have struggled with the concept in some cases and have reached inconsistent results on similar fact situations. *See* NEWMAN & ZASLOWSKY, *supra* note 4, at 112-14; J. DELLAPENNA, SUING FOREIGN GOVERNMENTS AND THEIR CORPORATIONS 157-60 (1988).

123. 28 U.S.C. § 1605(a)(2) (1994).

124. *See* Renana B. Abrams, Comment, *The Foreign Sovereign Immunities Act: Inconsistencies in Application of the Commercial Activity Direct Effect Exception*, 5 EMORY INT'L L. REV. 211, 225-29 (1991).

125. Republic of Argentina v. Weltover, Inc., 504 U.S. 607 (1992).

126. *Id.* at 618.

127. NEWMAN & ZASLOWSKY, *supra* note 4, at 118-22.

128. *Id.* at 123-25.

129. *Id.* at 126-29.

130. *See* GARY B. BORN & DAVID WESTIN, INTERNATIONAL CIVIL LITIGATION IN UNITED STATES COURTS 266 (1989). The Supreme Court has not addressed this issue.

direct effect in the United States for purposes of section 1605(a)(2) of the FSIA does not necessarily implicate a finding of sufficient minimum contacts.[131]

The second point that warrants more consideration is the issue generally referred to as "attribution." The Supreme Court has held that agencies and instrumentalities of foreign states that are separate entities are accorded a presumption of independent status.[132] The courts have thus ruled that unless the plaintiff can show sufficient control by the foreign state over its agency or instrumentality to create a relationship of principal to agent, the court lacks subject matter jurisdiction over the foreign state for the acts of the agency or instrumentality.[133] If the plaintiff is unable to establish the agency relationship (a burden of proof which may prove problematic because the evidence is largely in the possession of the foreign state), the foreign state cannot be held responsible.[134] A case under the FSIA only against the responsible agency or instrumentality may still lie, but problems of personal jurisdiction, financial capacity, and so forth, may come into play to render this course unattractive.

G. *Obtaining Evidence Abroad*

The parties' need to obtain evidence for the trial of their case is a universal one in litigation.[135] Yet where "discovery" is concerned, the clash of national cultures continues to be a major irritant in transnational proceedings.[136] There are two main reasons for this clash. First, under the federal rules and in U.S. practice generally, the parties—that is, their counsel—administer the discovery process, whereas in many other countries the judge maintains total control of the evidence-collecting function.[137] Unless the "discoveree" expressly seeks and obtains the protection of the court, the only practical limitations on discovery in U.S. practice are the good faith and imagination of the attorneys.[138] Second, in contrast to the more restrictive attitudes abroad with regard to pretrial dis-

131. *See, e.g., id.* at 78-79 (describing interpretations of the minimum contacts requirement).

132. First Nat'l City Bank v. Banco Para El Comercio Exterior de Cuba, 462 U.S. 611, 626-27 (1983).

133. *See* Foremost-McKesson, Inc. v. Islamic Republic of Iran, 905 F.2d 438, 446-47 (D.C. Cir. 1990).

134. *Id.*

135. NEWMAN & ZASLOWSKY, *supra* note 4, at 138-39.

136. *Id.*

137. *Id.*

138. *See* FED. R. CIV. P. 26(b)(1).

covery, the U.S. federal rules allow discovery of information that—even if it is itself inadmissible in court for some reason—may lead to the finding of admissible evidence.[139]

Outrage on the part of foreign governments at what they perceive as "fishing expeditions" carried on by U.S. litigants, often in pursuit of "extraterritorial" claims against foreign parties, has led a number of nations to enact "blocking statutes."[140] When invoked, these laws direct noncompliance by the foreign litigant with the U.S. transnational discovery demands.[141] The result may be to place the foreign litigant in a "can't win" dilemma between the conflicting demands of the U.S. court and those of the interested foreign government.[142]

Litigating International Commercial Disputes rightly notes that the adoption of the Hague Evidence Convention[143] has helped expedite the process of obtaining evidence among its signatory nations, including the United States, although the limitations of the Convention are significant.[144] The latter include the comparative slowness of the Convention procedures and the provisions of Article 23 of the Convention, which permit signatories to make declarations either prohibiting or restricting pretrial discovery of documents.[145]

In *Société Nationale Industrielle Aérospatiale v. United States District Court,*[146] the Supreme Court rejected the argument that the Hague Evidence Convention prescribes exclusive procedures for obtaining pretrial discovery of information located in the territory of a Convention signatory.[147] The Court held that the Convention procedures are optional for the taking of evidence abroad and do not displace the Federal Rules of Civil Procedure or pertinent state court rules of procedure.[148] The Court declined to articulate specific rules to guide the lower courts in performing the "delicate task" of supervising pretrial proceedings involving foreign liti-

139. *See id.*

140. NEWMAN & ZASLOWSKY, *supra* note 4, at 140.

141. *Id.* at 149-51.

142. *See* Société Internationale pour Participations Industrielles et Commerciales, S.A. v. Rogers, 357 U.S. 197, 205 (1958) (opining that a party claiming that foreign law precludes it from complying with a U.S. discovery order may be required to make a good faith plea to the foreign sovereign to remove or relax the obstacle).

143. *See supra* note 12 and accompanying text.

144. *See* NEWMAN & ZASLOWSKY, *supra* note 4, at 138-41.

145. *Id.* at 140.

146. Société Nationale Industrielle Aérospatiale v. United States Dist. Court, 482 U.S. 522 (1987).

147. *Id.* at 544.

148. *See id.* at 544-46.

gants.[149] It enumerated, however, the nature of the concerns that guide a comity analysis as suggested by the *Restatement of Foreign Relations Law*.[150] The federal court decisions following *Aérospatiale* have generally undertaken a comity analysis but have tended to prefer application of the Federal Rules of Civil Procedure (or local state rules) for discovery abroad rather than the Hague Evidence Convention, giving little weight to the interests and laws of foreign states.[151]

H. *Enforcement of Foreign Judgments*

A U.S. plaintiff who is fortunate enough to establish jurisdiction in U.S. courts against a foreign party, collect the evidence necessary to press the merits, and obtain a favorable judgment, may still face a formidable problem—enforcement of the judgment. If the defendant has no U.S. assets, this entails enforcing the judgment in the defendant's home country or in a third country. Conversely, a litigant who has a foreign court judgment against a U.S. defendant may find it necessary to attempt to enforce the judgment in U.S. courts.

Such transnational enforcement of judgments and other court orders can be a time-consuming, expensive, and uncertain task. *Litigating International Commercial Disputes* discusses the available alternatives and the obstacles encountered, pointing out that the United States is not a signatory to a treaty providing for enforcement of judgments from other countries.[152] Many foreign-country judgments may be enforced in U.S. federal courts on the basis of comity, harking back to the Supreme Court's 1895 decision in *Hilton v. Guyot*.[153] Under the criteria set forth in *Hilton*, the foreign-country judgment will be enforced if the proceeding that gave rise to it meets certain tests of fairness, such as providing an opportunity for a full and fair trial before a court of competent jurisdiction and the benefit of an impartial system of jurisprudence.[154] U.S. courts, however, are not required to recognize judgments for the collection of taxes or fines, judgments that are penal in nature, or judgments that would offend public policy.[155]

149. *Id.* at 546.
150. *Id.* at 544 n.28.
151. *See* NEWMAN & ZASLOWSKY, *supra* note 4, at 143-45.
152. *Id.* at 165.
153. Hilton v. Guyot, 159 U.S. 113 (1895).
154. *See* NEWMAN & ZASLOWSKY, *supra* note 4, at 172.
155. *Id.* at 166-71.

About twenty-five U.S. states have adopted the Uniform Foreign Money Judgments Recognition Act.[156] This Act provides, on principles similar to those under *Hilton*, for the enforcement of foreign-country money judgments.[157] Some states have also imposed as a condition of enforcement the old reciprocity requirement—the foreign court must likewise enforce such a U.S. judgment.[158]

III. Conclusion

Litigating International Commercial Disputes contains a thoughtful discussion of the legal developments in U.S. enforcement of foreign judgements and also of the issues in enforcing U.S. judgments abroad. The United States's disinclination to enter into treaties for the recognition and enforcement of foreign orders and judgments has caused some countries to withhold such recognition and enforcement to U.S. judgments on grounds of lack of reciprocity. The failure of the United States to participate in enforcement treaties also means that each country's law and practice must be studied individually from this viewpoint. The authors offer as examples of foreign procedures those of Germany and England. Although the procedures are different, in both cases the foreign judgment will not be enforced unless it is established that the foreign court had jurisdicton according to the *enforcing* country's standards, and there are special rules where the foreign judgment was obtained by default.[159]

Litigating International Commercial Disputes treats these and a number of other issues in 237 pages of text. It also contains a sizeable appendix which includes key treaties, statutes, and other materials such as the Hague Service and Evidence Conventions, the FSIA, and the U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards. This is a handbook, and the reader should not expect it to have the breadth of the leading reference work in the field, Gary Born's *International Civil Litigation in United States Courts*.[160] This new volume by Messrs. Newman and Zaslowsky provides an excellent starting point for the lawyer or scholar interested in the growing U.S. lore of transnational litigation.

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156. *Id.* at 174.
157. *See* Uniform Foreign Money Judgments Recognition Act, 19 U.L.A. 149, 262 prefatory note (1986).
158. Newman & Zaslowsky, *supra* note 4, at 172.
159. *Id.* at 187-90.
160. *See* Born & Westin, *supra* note 130.