Bringing Orders Across Borders: Planning for International Recognition and Enforcement

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1. FAMILY COURT FOREIGN ORDERS: RECOGNITION, ENFORCEMENT AND CHALLENGES IN THE DOMINICAN REPUBLIC.

The recognition and enforcement of “foreign orders” follow the general principles of International Private Law. In this short essay, we will address how “foreign orders” related to family matters can travel successfully across the Dominican Republic borders. In the process, we will briefly describe the legal enforcement methods, some important differences between concepts and several challenges.

The meaning of “foreign orders” is that of a judgment, decree, decision or order of a court in a foreign state which is entitled to full faith and credit in that state. In this context, we will limit to “foreign orders” dictated in family law matters in contentious matters, but we will also refer to juridical acts that acknowledge personality rights and filial relationships.

1.1 INTERNATIONAL PRIVATE LAW PROVISIONS IN THE DOMINICAN REPUBLIC.

According to the book “Fundamental Perspectives on International Law”, 6th Edition, from William Slomanson, there are four sources of International Law:

a) International conventions, whether general or particular, in our case that have been approved by the Dominican State and afterwards ratified by the National Congress.
b) International customs, as evidence of a general accepted practice.
c) The general principles of law recognized by civilized nations.
d) Judicial decisions and doctrine.

Article 26 of the Dominican Republic Constitution provides that the Dominican Republic is a State member of the international community, that is open to the rules of cooperation and that abides by the international law normative by:

a) Recognizing and applying the international law normative to the extent that it has been adopted by its own competent public power;
b) Recognizing and applying the standing articles of international covenants that have been ratified in its internal ambit, once they are officially published;

In the subject matter herein, our country has approved and ratified international conventions where the main aspects are to obtain and to give recognition to family court foreign rulings, which are:

- Convention of October 5, 1961, Suppressing the Legalization Requirement of Foreign Public Documents;
- Convention of October 25, 1980, on the Civil Aspects of International Child Abduction;
- Convention of May 29, 1993. on the Protection of Children and Cooperation in Respect of Intercountry Adoption;

In addition, the recent International Private Law No. 544-14 dated December 18, 2014, governs in its Title IV the recognition and enforcement of “international and foreign judgments”. The general requirements to enforce a “foreign order” concern to issues of public order and due process.

According to its Article 90, the restrictions to enforce a “foreign order” are:

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1) That the foreign ruling is contrary to the prevailing public order.

2) That the defendant affected by the “foreign order” had not been present at the concerned foreign proceeding and there is no proof that he or she had been summoned;

3) That the “foreign order” is not compatible with a previous “foreign order” between the same parties, in a matter with the same object and this latter decision meets the requirements to be enforced in the DR.

4) That the “foreign order” had violated any provision of Article 11 of the Law.

5) That the “foreign order” does not comply with the formal requirements of its home jurisdiction.

The fourth impediment merits further explanation. The exclusive jurisdiction of the Dominican Courts in certain matters is asserted in Article 11 of Law No. 544-14 in the following subject matters:

1) Rights related to real estate located in the country.

2) Incorporation, validity, nullity and dissolution of a commercial society domiciled at the country.

3) Validity or nullity of inscriptions and recordings in a Dominican public registry;

4) Patent’s registration and other rights submitted to deposit or registry when said deposit or registry had been filed at the Dominican Republic;

5) Recognition and enforcement in the Dominican territory of foreign and arbitral rulings.

6) Conservative measures that are enforceable in the Dominican Republic.

7) Processes related to the determination of the Dominican nationality.

In short, any foreign order that decides on issues reserved to the exclusivity of Dominican Courts could not be locally enforced. Landing these concepts, in family matters, a foreign order that cancels or annuls a marriage or divorce inscription done in the Dominican Republic should not be enforced locally. Also, a foreign order that pursues to cancel a recording of a birth certificate in the Dominican Republic granting the Dominican nationality is not to be enforced.

Landing these concepts, in family matters, a foreign order that cancels or annuls a marriage or divorce registration done in the Dominican Republic should not be enforced locally. Also, a “foreign order” that pursues to cancel a recording of a birth certificate in the Dominican Republic granting the Dominican nationality is not to be enforced.

1.2 OBTAINING RECOGNITION FOR FOREIGN ORDERS IN THE DOMINICAN REPUBLIC: WHAT SHOULD LAWYERS DO?

The decision that acknowledges and recognizes a “foreign court order” making it enforceable is called exequatur and is to be dictated by the Civil and Commercial Chamber of the First Instance Tribunal of the National District of Santo Domingo, in accordance with Article 91 of Law No. 544-14. In addition, we will refer to the apostille but by making clear their differences.
It is important to highlight that in addition to Law No. 544-14, there are international conventions approved and ratified by the Dominican Republic that become incorporated to the legal system such as The Hague Child Protection Convention, on the civil aspects of international child abduction and others already mentioned in this essay. In light of The Hague Child Protection Convention, for example, it is possible that by the effect of the unique decisions of cooperating central authorities (administrative decisions) and without the intervention of a Judge, the return or stay of a minor with his/her parents is perfectly possible.

In custody matters, it may also be necessary that other agencies intervene, such as the International Social Service, an entity that is internationally recognized for its competence to establish the requested psychosocial conditions to be met according to the case.

For better understanding:

a. Obtaining exequatur.

In the Dominican Republic, the exequatur is the recognition of a foreign order dictated in a contentious proceeding. The process to obtain the exequatur is non-litigious. The competent Judge does not examine the merits of the case but only verifies that the requested formalities have been met and in doing so validates that there is no legal impediment (Art. 90 of Law No. 544-14).

In the process of doing so, it is common practice that the following documentation shall be submitted by the interested party:

♣ Apostilled, original or certified copy of the foreign order issued by, the competent foreign judge. That judgment must be definitive and shall comply with the conditions for enforceability of the originating jurisdiction. These conditions must be proven to the exequatur Judge for his examination and decision.

♣ Apostilled certification of the court issuing the decision, giving constancy of that its final and irrevocable.

♣ Sometimes, the main documentation deposited in the home court, on the basis of which was made the decision that is intended to acquire the exequatur.

♣ Documents that are in a language other than Spanish, including the judgment or decision, must be translated to Spanish. According to Article 98 of Law No. 544-14, the translation could be done by a private interpreter but if the translation is contested, the Tribunal may request that the translation is done by a judicial interpreter of the Dominican Republic, expenses being paid by the interested party.

Procedural formalities. The matter is to be known without litigation, in principle. However, in the practice, sometimes the affected party may become aware of the proceeding and request that it becomes contentious and the Judge discretionally may decide it to safeguard the defense rights. In any event the dispute shall focus on the formalities not on the merits. The exequatur decision is subject to appeal in accordance to Article 92 of Law No. 544-14. The Dominican Judge cannot vary the decision submitted to exequatur.
Once the conditions are verified, the Civil and Commercial Chamber of the First Instance Tribunal of the National District of Santo Domingo issues the judgment granting the exequatur, which shall not add, substitute or suppress anything, since the decision decides whether or not to grant the exequatur only.

As we said before, the exequatur decision is subject to appeal. In our view, once said that the process is administrative, the appeal may become an unnecessary burden and it should have been said subject to review by the same court that dictated the exequatur and submitted to the constitutional checking once definitive, by the Constitutional Court. Right now, the appeal means that the matter could also be reviewed by the Supreme Court of Justice in grounds of legality and then once definitive to the Constitutional Court which may be a long road.

b. **Obtaining the apostille (note or annotation).**

The Exequatur proceeding shall not be confused with the apostille that is a simplified method of legalizing documents in order to verify their authenticity that is governed by The Hague Convention of 5 October 1961 Abolishing the Requirement of Legalization for Foreign Public Documents.

The apostille is the formality by which the diplomatic or consular agents of the country in which the document has to be produced certify the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which it bears. It takes the form of a statement to the documents that the competent authority stamps on a copy of the public document to give faith of its authenticity (either attached to the back or on an additional page).

For the purposes of the Convention, the following are deemed to be public documents:

a) Documents emanating from an authority or an official connected with the courts or tribunals of the State, including those emanating from a public prosecutor, a clerk of a court or a process-server ("huissier de justice").
b) Administrative documents.
c) Notarial acts.
d) Official certificates which are placed on documents signed by persons in their private capacity, such as official certificates recording the registration of a document or the fact that it was in existence on a certain date and official and notarial authentications of signatures.

However, Convention shall not apply:

a) To documents executed by diplomatic or consular agents;
b) To administrative documents dealing directly with commercial or customs operations.

**What is then the difference?** It resides in that the exequatur is mandatory for “foreign orders” issued in a contentious matter. However, the apostille is the only requirement for “foreign juridical acts” issued by competent authorities of another State that relate to the capacity of a person, the existence of filial relationships or personality rights in the context of a voluntary proceeding.

c. **Interpretation of national and foreign legal regulations.**

In the Dominican Republic, judicial work cannot be limited to the simple arbitrary choice of a normative interpretation in order to pursue the solution of a case, and through a syllogism, derive the pertinent consequences.
For the solution of antinomies or contradiction between two legal precepts there are three (3) solution criteria:

- **Lex superior derogate inferiori**: between two incompatible norms, the hierarchically superior norm prevails;
- **Lex posterior derogate priori**: between two incompatible norms, one before and one after, the later prevails;
- **Lex specialis derogate generali**: between two incompatible norms, one general and one special, the special prevails.

In other words, the antinomies are solved by resorting to the hierarchical criterion, chronological criterion or the specialty criterion. (SCJ, 1st Chamber, February 5, 2014, num. 23, BJ 1239)

### 1.3 INTERNATIONAL CONVENTIONS SIGNED OR RATIFIED BY DOMINICAN REPUBLIC:

- **The Hague Convention of October 5, 1961, Suppressing the Legalization requirement of foreign Public Documents**: This Convention abolishes the requirement of diplomatic or consular legalization for foreign public documents. In its contents, the provisions to be met are explained in order to obtain the apostille.

- **The Hague Convention of October 25, 1980 on the Civil Aspects of International Child Abduction**: Pursues the international protection of minors, when they are illegally removed or retained from one city to another or from one country to another. This convention establishes procedures to make sure of their return as prompt as possible, to their place of residence. It also establishes these processes with the idea of protecting the best interest of the child and give prompt access to each and every one of their rights.

- **Convention of May 29, 1993 on the Protection of Children and Co-operation in Respect of Intercountry Adoption or Hague Adoption Convention**: “protects children and their families against the risks of illegal, irregular, premature or ill-prepared adoptions abroad. This Convention, which operates through a system of national Central Authorities, reinforces the UN Convention on the Rights of the Child (Art. 21) and seeks to ensure that intercountry adoptions are made in the best interests of the child and with respect of his or her fundamental rights. It also seeks to prevent the abduction, the sale of, or traffic in children”\(^2\).

### 1.4 HOW DOES A COURT ENTER A MIRROR ORDER?

Homologation is the term we use for our country in this type of judgements that are used in adherence to some conventions. This is a comparison of one case with another by having both characteristics in common depending on their nature. In the Dominican Republic these orders are issued by a judge, simply approving a sentence that is different than an exequatur process, although in some respects they are very similar.

This process is administrative, and the decision reflects the same terms used by the main judge in a foreign process. The mirror order or sentence that validates an order in its entirely stated in the order that is intended to be approved but in its own words.

\(^2\)HCCH.NET, Adoption Section.
1.5 LOCAL JURISPRUDENCE.

Then, it is understood that "in order to make the execution of a judgment enforceable or not, to obtain the exequatur, the declaratory, constitutive or condemnatory character of the decision adopted must be determined; that both the doctrine and the jurisprudence of the country of origin and our legislation have been answered by considering that only convictions, which impose the fulfillment of a positive provision of giving or doing, or refusal not to do, are likely to require exequatur so that the judgments constituting state, as it is pronounced on the divorce of a person does not need the aforementioned authorization or exequatur for not requiring its execution a material realization that generally claims, the help of the public force ", as already has been judged by our Supreme Court of Justice of the Dominican Republic (Cas. Civ. Núm 21, Oct. 9, 2002, BJ, 1103, pp182-188).

Recently, on May 17, 2017, one of the rooms of our Supreme Court of Justice, sentence 323-Bis, reiterated the criteria in a very particular way, inviting the judges that, for the ruling to have sufficient legal basis, all the precepts for its validity shall be reviewed and that they shall verify if it is really necessary in the case in question, the exequatur or not. What if the decision depends on it? When this part is not evaluated with the characteristics of laws, treaties, jurisprudence and doctrine, the Judgment is liable to be annulled for lack of legal basis.

1.6 Challenges of crafting orders that can be enforced abroad.

- No Reciprocity.
- Judge capacity limited.
- Little jurisprudence and doctrine.
- Depending on the State or Country, the treatment may complicate the situation that is already delicate because it is a Family issue.

BIBLIOGRAPHY AND RECOMMENDED READINGS.


-HCCH.NET, Adoption Section.


-Convention of May 29, 1993 on the Protection of Children and Co-operation in Respect of Intercountry Adoption or Hague Adoption Convention.

Bringing Orders Across Borders: Planning for International Recognition and Enforcement

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I. Introduction

A family lawyer in the United States with a court order from a foreign country can generally have that order recognized and enforced in state courts, if the court that entered the order had a basis for jurisdiction and followed procedures that satisfy due process requirements of U.S. law. For divorce judgments, recognition is based on comity, and may be denied on grounds of strong public policy. With child support and child custody orders, recognition and enforcement of foreign orders takes place within the framework of the Uniform Interstate Family Support Act (UIFSA) and the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). This outline provides a basic overview and references to representative cases and statutes; for more detail, see Ann Laquer Estin, International Family Law Deskbook (ABA Publishing 2d ed. 2016).

II. Divorce Judgments

Recognition and enforcement decisions may involve foreign decrees terminating a marriage, or foreign financial orders incident to divorce, or both. In both cases, the rules of comity apply, but the two types of orders may be treated differently because our jurisdictional requirements are different for divorce decrees and financial orders.

A. Recognition: Comity

State courts in the United States must give full faith and credit to judgments entered in other states, if the court that entered judgment had appropriate jurisdiction and satisfied other requirements of due process. Recognition in international cases is discretionary, based on the doctrine of comity. See generally Hilton v. Guyot, 159 U.S. 113, 143 (1895); Restatement (Second) of Conflict of Laws § 98 (1971, 1988 Revision). Rules for recognition of family law orders are included in the Restatement (Third) of the Foreign Relations Law of the United States §§ 481-82, 484 (1987).

International divorce was common in the era of strict divorce laws, when people in the United States traveled to other states and countries to obtain divorces under more lenient statutes. In 1971, the Dominican Republic enacted legislation allowing foreigners to obtain divorces based on mutual consent, provided that at least one party was physically present and the other represented by counsel. See Law No. 142, art. I, par. V (May 18, 1971) (Dominican Republic). Several states including New York recognize foreign bilateral divorces from countries such as the Dominican Republic, which do not require domicile as a basis for jurisdiction, but this is the minority rule in the United States. See, e.g., Rosenstiel v. Rosenstiel, 209 N.E.2d 709, 713 (N.Y. 1965); Hyde v. Hyde, 562 S.W.2d 194, 195-97 (Tenn. 1978); cf. Mayer v. Mayer, 311 S.E.2d 659, 665 (N.C. Ct. App. 1984).

1. Due Process Requirements: Jurisdiction, Notice, Hearing

For recognition of financial orders, the rules are different: courts require that a state or foreign court have full personal jurisdiction over the respondent. This gives rise to “divisible divorce,” in which a court may have jurisdiction to terminate marital status but not to adjudicate marital property or support rights. The same rule applies when a state court is asked to extend comity to a foreign financial order. See, e.g., S.B. v. W.A., 959 N.Y.S.2d 802, 817-19 (N.Y. Sup. Ct. 2012); Southern v. Southern, 258 S.E.2d 422, 424-25 (N.C. Ct. App. 1979); Estate of Toland, 329 P.3d 878, 882-83 (Wash. 2014).

Courts also refuse to recognize foreign divorce decrees or financial orders when the respondent did not have notice or an opportunity for a hearing. See, e.g., Marriage of Seewald, 22 P.3d 580, 584-85 (Colo. App. 2001); Isack v. Isack, 733 N.W.2d 85, 89 (Mich. Ct. App. 2007); De Ganay v. De Ganay, 689 N.Y.S.2d 501, 502-03 (N.Y. App. Div. 1999). For more on these questions, see Ann Laquer Estin, International Divorce: Litigating Marital Property and Support Rights, 45 Fam. L.Q. 293-327 (2011).

2. Public Policy Issues

Public policy issues may play a role in the comity determination. Under the rule in Hilton, “a decree confirming or dissolving a marriage, is recognized as valid in every country, unless contrary to the policy of its own law.” 159 U.S. at 167. Courts take the view that this public policy exception should not be a basis for denying recognition to a foreign judgment based solely on differences between the substantive law of the two jurisdictions. See, e.g., Leitch v. Leitch, 382 N.W.2d 448, 450 (Iowa 1986); Dart v. Dart, 568 N.W.2d 353, 358 (Mich. Ct. App. 1997); Downs v. Yuen, 748 N.Y.S.2d 131, 132 (N.Y. App. Div. 2002).


B. Enforcement

In most states, foreign marital property and support orders are enforced in a new civil action, based on the foreign judgment, which is brought in a court where it is possible to obtain jurisdiction over the judgment debtor or the debtor’s property. See, e.g., Wolff v. Wolff, 389 A.2d 413, 419-22 (Md. Ct. Spec. App. 1978) (aff’d 410 A.2d 479 (Md. 1979)); Mackenzie v. Barthol, 173 P.3d 980, 983 (Wash. Ct. App. 2007); cf. Nardi v. Segal, 234 N.E.2d 805, 808 (Ill. App. Ct. 1967). In spousal support cases, an enforcement action may fall within the scope of the Uniform Interstate Family Support Act (UIFSA), which is in force in every state. In property division cases, a few states allow enforcement under the Uniform Foreign Money-Judgments Recognition Act (UFMJRA).

1. Uniform Interstate Family Support Act (UIFSA)

UIFSA applies to spousal as well as child support orders, § 102(28); and to foreign as well as interstate situations, § 105. The statute’s procedures for recognition and enforcement are mandatory for spousal orders that come from a “foreign country,” as that term is defined in § 102(5) (discussed below). Support orders from countries that do not meet the definition of “foreign country” in the statute may be enforced on the basis of comity, using the same procedures. See § 105(b). Cases applying UIFSA to spousal support orders include Willmer v. Willmer, 51 Cal. Rptr. 3d 10, 13-14 (Cal. Dist. Ct. App. 2006); Foreman v. Foreman, 550 S.E.2d 792, 795 (N.C. Ct. App. 2001); and Kalia v. Kalia, 783 N.E.2d 623, 631 (Ohio Ct. App. 2002).
Once a support order from a “foreign country” is registered for enforcement under UIFSA § 601, it is enforceable “in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.” § 603. The state court must recognize and enforce the order, and may not modify it, if the issuing tribunal had jurisdiction. The enforcing court applies its own procedures and remedies, but the law of the issuing state governs “the nature, extent, amount and duration of current payments,” as well as computation of arrearages and interest. § 604. Moreover, under § 211, the court that entered the spousal support order has continuing exclusive jurisdiction for the life of the order. See, e.g., Marriage of Rassier, 118 Cal. Rptr. 2d 113, 115-16 (Cal. Ct. App. 2002); Hook v. Hook, 611 S.E.2d 869, 871 (N.C. Ct. App. 2005) (please note that after these cases were decided, UISFA § 205(f) was renumbered as § 211).

2. Uniform Foreign Money Judgment Recognition Act (UFMJRA)

The Uniform Foreign Money Judgment Recognition Act (UFMJRA), and its successor, the Uniform Foreign Country Money Judgments Recognition Act (UFCMJRA), allow enforcement of foreign judgments in state courts on the same terms as judgments from other states. The application of these statutes to family law judgments varies from state to state. The original UFMJRA excluded “judgments for support in matrimonial or family matters,” § 1(2), but some states enacted the statute without this language. See, e.g., Fla. Stat. Ann. § 55.602 (West 2019). The more recent UFCMJRA has a broader exclusion, which applies to any “judgment for divorce, support, or maintenance, or other judgment rendered in connection with domestic relations.” UFCMJRA § 3(b)(3).


C. Recognition and Enforcement Abroad: Divorce Judgments

As with the United States, foreign divorce judgments may be enforced on the basis of comity in common law jurisdictions including Australia, Canada, England and Wales, and New Zealand. In civil law countries, recognition and enforcement of a foreign financial judgment often requires an exequatur or homologation proceeding, and may depend on proof that that reciprocal treatment would be afforded to comparable orders from that country. If possible, local counsel in the second country should be consulted even before divorce proceedings are commenced, to maximize the likelihood that the judgment will be enforceable in that country.

Spousal support orders from state courts in the United States may be enforced using the same framework that applies to international child support enforcement, described below, including the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Child Support Convention)

III. Child Support Orders

For lawyers in the United States handling cases with foreign child support orders, the good news is that the same laws governing interstate child support enforcement also apply to international cases. The Uniform Interstate Family Support Act (UIFSA) (2008), now in effect in every state, was designed to work with the Hague Child Support Convention and earlier bilateral agreements for cross-border support enforcement. Moreover, under these agreements, administrative and enforcement assistance is available without charge to secure support enforcement both in the United States and in our partner countries. In
the United States, this comes from the state child support enforcement offices funded under Title IV-D of the federal Social Security Act.

A. Uniform Interstate Family Support Act (UIFSA)

Under UIFSA, child support orders from other countries can be registered directly in state court if the country where the order was entered meets the definition of “foreign country” under UIFSA § 102(5). This process can be initiated by the state child support enforcement office, or by a direct filing in a state with personal jurisdiction over the support obligor. If the order originates in a country that does not come within the definition of “foreign country” in § 102(5), it may be recognized and enforced on the basis of comity.

1. What is a “Foreign Country” under UIFSA?

Under UIFSA §102(5), the term “foreign country” includes four specific groups of countries:

(a) Countries that have been declared to be “foreign reciprocating countries” under US law;

Foreign reciprocating countries are designated under 42 U.S.C. § 659a. The list contains a number of countries that have not yet joined the Child Support Convention, including Australia, El Salvador, Israel, Switzerland, and several Canadian Provinces or Territories (Alberta, British Columbia, Manitoba, New Brunswick, Northwest Territories, Nunavut, Newfoundland/Labrador, Nova Scotia, Ontario, Saskatchewan, and Yukon).

(b) Countries that have established a reciprocal arrangement for child support enforcement at the state level;

Several jurisdictions that have not joined the Child Support Convention, including South Africa and a number of Mexican states, have state-level reciprocal arrangements with some states.

(c) Countries that have established laws or procedures for issuing and enforcing support orders that are substantially similar to the procedures under UIFSA;


(d) Countries in which the Child Support Convention is in force with respect to the United States.

The Convention has 39 contracting parties, including United Kingdom and all countries of the European Union, as well as Brazil and Honduras.

UIFSA § 104(a) preserves the possibility that a foreign child support order may be enforced based on comity, and § 105(b) states that in a comity case, courts may apply UIFSA’s procedural and substantive provisions. Courts taking this approach will consider the traditional comity factors, including whether the court had a basis for exercising jurisdiction and whether the parties had notice and an opportunity for a hearing. See, e.g., Gadreau v. Kelly, 826 N.W.2d 164, 166-67 (Mich. Ct. App. 2012) (enforcing order from Quebec); Kalia, 783 N.E.2d at631-32 (enforcing order from India).
2. **UIFSA Procedures**

State child support enforcement offices provide services in every state to locate parents, determine parentage, establish support, and enforce support obligations, including foreign support orders. Under UIFSA § 601, a support order may be registered in the state where enforcement is sought, and the nonregistering party is given an opportunity to contest the validity or enforcement of the order based on one of the defenses listed in § 607.

In international cases, the most common question is whether the court that entered the order had a sufficient jurisdictional basis – applying U.S. principles – to enter the order. See generally Kulko v. Superior Court, 436 U.S. 84 (1978). Numerous decisions have denied enforcement to foreign support orders that were not based on full personal jurisdiction. See, e.g., Department of Healthcare and Family Services ex rel. Heard v. Heard, 916 N.E.2d 61 (Ill. App. Ct. 2009); Luxembourg ex rel. Ribeiro v. Canderas, 768 A.2d 283 (N.J. Super. Ct. Ch. Div. 2000); Claire Lucia D. v. Russell Morris D., Jr., 842 N.Y.S.2d 361 (N.Y. App. Div. 2007).

**B. Recognition and Enforcement Abroad: Child Support**

The Child Support Convention mandates cross-border recognition and enforcement of child and spousal support orders from any contracting state that meet the Convention’s requirements. See Arts. 20 and 22. Under the Child Support Convention and earlier bilateral agreements, the same administrative assistance and cooperation provided in the United States by IV-D offices is available in international cases. The Convention also allows for a direct request in the appropriate tribunal in the country where enforcement is sought, typically in a lawsuit filed on behalf of the support creditor.

In incoming cases, the United States has made a reservation available under the Convention, so that it is not required to recognize and enforce support orders based on three optional jurisdictional grounds that are not consistent with due process requirements in the United States. For outgoing cases, lawyers and judges in the United States should be aware that “tag” jurisdiction is not one of the grounds recognized by the Convention, and orders based on tag jurisdiction in the United States need not be recognized and enforced under the Convention.

**IV. Child Custody Determinations**

As with child support, the framework of uniform state laws enacted for interstate child custody disputes also applies to international cases. All states have enacted the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) except Massachusetts, which uses a version of the older Uniform Child Custody Jurisdiction Act (UCCJA). The United States has joined the Hague Child Abduction Convention, and it has signed but not ratified the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (Child Protection Convention). Without access to the Child Protection Convention, there is no clear path for securing recognition and enforcement abroad for U.S. custody determinations.

**A. Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)**

Under UCCJEA § 105(a), courts are directed to “treat a foreign country as if it were a State of the United States” in making jurisdictional determinations, and § 105(b) requires that a “child-custody determination made in a foreign country in substantial conformity with the jurisdictional standards of this Act] must be recognized an enforced under the [Act].” The UCCJEA defines “Child-custody determination” broadly, to include “a judgment, decree, or other order of a court providing for the legal
custody, physical custody, or visitation with respect to a child.” § 102(3). Return orders under the Abduction Convention may be enforced on the same basis as a child-custody determination. See UCCJEA § 302.

1. International Application

As with custody determinations made in other states, a state court will enforce a foreign country child custody determination provided that the order was made in conformity with the UCCJEA’s jurisdictional standards, and entered with notice and an opportunity for a hearing. See, e.g., Dyce v. Christie, 17 So.3d 892, 893-94 (Fla. Dist. Ct. App. 2009) (enforcing Jamaican custody order).

Under the “escape clause” in UCCJEA § 105(c), a state court need not apply the general rules in §§ 105(a) and (b) “if the child-custody law of a foreign country violates fundamental principles of human rights.” See, e.g., Coulibaly v. Stevance, 85 N.E.3d 911 (Ind. App. 2017); see generally D. Marianne Blair, International Application of the UCCJEA: Scrutinizing the Escape Clause, 38 Fam. L.Q. 547 (2004).

Before the widespread enactment of the UCCJEA, many states considered enforcement of foreign child custody determinations under UCCJA § 23 as a matter of comity, declining enforcement of orders entered without due process or without consideration of the child’s best interests. These cases may be useful precedent in applying the exceptions to recognition and enforcement under the UCCJEA.

Note that in at least one state, the UCCJEA was enacted with language in § 105(c) that allows a state court to refuse application of these rules if the child-custody law of a foreign country “does not base custody decisions on evaluation of the best interests of the child.” N.J. Stat. Ann. § 2A:34-57(c) (West 2019). Several New Jersey cases decided under the UCCJA reflect the same policy. See, e.g., Ali v. Ali, 652 A.2d 253, 259-60 (N.J. Super. Ch. Div. 1994).

2. Massachusetts

The Massachusetts version of the UCCJEA provides for “due recognition” of foreign custody determinations to the extent they have been rendered “in substantial conformity” with the Massachusetts statute. Mass. Gen. Laws c.209B § 14 (2019). These cases interpret this to require both due process protections and a consideration of the child’s best interests. For cases demonstrating this analysis, see Charara v. Yatim, 937 N.E.2d 490, 495-96 (Mass. App. Ct. 2010); and Tazziz v. Tazziz, 533 N.E.2d 202, 205 (Mass. App. Ct. 1988).

B. Mirror Orders and the Abduction Convention

In an international child custody or child abduction dispute, parents often want assurance that an order or agreement entered in one country will be recognized and enforced in another. For orders coming into the United States, the UCCJEA provides a procedure to accomplish this. For outgoing orders, unless and until the United States joins the Child Protection Convention, the process is much less clear. To help navigate this terrain, counsel may ask a judge to seek assistance from the Hague Judicial Network.

A safe harbor or mirror order is made in one country in terms reflecting the provisions of a prior order made in another country. These are often discussed in the context of return orders under the Abduction Convention, when the court ordering return wants to assure that any protections or undertakings made by the party seeking return will be enforceable after the child has been returned. Without a mirror order in place, there is no guarantee that undertakings will be performed. See Danaipour v. McLarey, 286 F.3d 1, 21-25 (1st Cir. 2002).
Because there are no provisions in the Abduction Convention for mirror orders, parties and counsel need to rely on the general rules for recognition and enforcement of foreign orders. In the United States, UCCJEA § 305 provides for a foreign child custody determination to be registered with a state court, with or without a simultaneous request for enforcement. Once registered, § 306 provides that the court may grant any relief normally available under state law to enforce the order. This should include the procedure for summary enforcement under § 308, and a warrant to take physical custody of the child under § 311.

C. International Judicial Communication

The International Hague Network of Judges has become an important resource in cross-border children’s cases. Founded in 1998 to facilitate cooperation in cases under the Child Abduction Convention, the network now includes 133 member judges from 84 jurisdictions, including four judges from the United States. Parties and counsel might consider requesting that the judge seek assistance from the network to answer questions such as whether there is a procedure to obtain a safe harbor or mirror order in the jurisdiction where a child will be returned. See generally Judith L. Kreeger, The International Hague Judicial Network – A Progressing Work, 48 Fam. L.Q. 221 (2014).

D. Recognition and Enforcement Abroad: Child Custody Determinations

Without the Child Protection Convention, lawyers in the United States must utilize whatever procedures are available in the country where they seek recognition and enforcement of a state or federal court order in a child custody or child abduction dispute. Here as well, consulting with local counsel at the earliest possible time will facilitate the process of cross-border enforcement.

1. Comity and Exequatur

When the Child Protection Convention is not available, lawyers may seek recognition based on comity, which is typical in common law countries, or based on an exequatur or homologation proceeding, which is more typical in civil law countries. Jurisdictions taking a comity approach include England and Wales, and Canada, and in these countries a judge weighs the foreign determination to decide if it serves the child’s best interests. See Child Abduction and Custody Act 1985, c. 60 § 16 (2019) (Eng.). In Australia and New Zealand, statutes allow for registration and enforcement of foreign parenting orders. See Family Law Act 1975 ss 70G-70L (Austl.); Care of Children Act 2004 s 83 (N.Z.). See also Marguerite C. Walter, Note, Toward the Recognition and Enforcement of Decisions Concerning Transnational Parent—Child Contact, 79 N.Y.U. L. Rev. 2381 (2004).

In civil law countries, the proceeding in which the court determines whether to recognize a foreign judgment is known as an exequatur. See, e.g., Nina Dethloff, Parental Rights and Responsibilities in Germany, 39 Fam. L.Q. 315, 334-35 (2005). In Mexico, the homologation process for enforcement of a foreign child custody order can be complex and time-consuming, with a range of requirements including an authenticated copy of the judgment and a letter rogatory from the court that entered the order, and translations of the documents certified by a Mexican consular official. See Patricia Begné, Parental Authority and Child Custody in Mexico, 39 Fam. L.Q. 527, 540-41 (2005); Ann Laquer Estin, The Legal Framework for Mediating Parenting and Child Abduction Disputes in the United States and Mexico, 12 World Arb. & Med. R. __ (2018).

2. Child Protection Convention

If it can be accomplished, ratification of the Child Protection Convention by the United States would establish a mechanism to obtain recognition and enforcement of orders from the U.S. state and federal courts in 50 other member countries. At the time of this writing, those countries include Australia,
the United Kingdom, all of the European Union member countries, which account for a significant share of the cross-border children’s cases that arise in the United States. In addition, the Child Protection Convention has been ratified by a number of countries across the Americas, including Cuba, the Dominican Republic, Ecuador, Guyana, Honduras, Nicaragua, Paraguay, and Uruguay. Like the United States, Argentina and Canada have signed but have not yet ratified the Convention, indicating an intention to proceed toward ratification.

V. Conclusion

Cross-border disputes are among the most complex and challenging cases encountered by family lawyers and judges. Uniform laws and international conventions have helped to reduce these challenges, especially for orders coming into the United States, but there is no magic formula or solution. Lawyers handling cases where enforcement in another country may be important should consult counsel in that country with experience in these cases at the earliest possible time.

Hague Children’s Conventions

Detailed information, including lists of the countries that have joined these conventions, is available on the web page of the Hague Conference on Private International Law (www.hcch.net).


*Ratified by the United States in 2017; implemented through the federal child support enforcement system and UIFSA 2008. The U.S. Central Authority is in the Office of Child Support Enforcement in the Health and Human Services Department (https://www.acf.hhs.gov/css/partners/international).*


*Signed by the United States in 2010; amendments to the UCCJEA to implement the Child Protection Convention drafted and approved by the Uniform Law Commission in 2013.*
Bringing Orders Across Borders: Planning for International Recognition and Enforcement

ABA Section of Family Law - 2019 Spring CLE Conference
La Romana, Dominican Republic

Kety Abraham Cadet
Santo Domingo, Dominican Republic

Ann Laquer Estin
Aliber Family Chair
University of Iowa

Introduction: Types of Family Orders

I. Divorce Judgments and Financial Orders
   Recognition in US based on:
   - Comity + UIFSA and UFMJRA (sometimes)

II. Child Support
    - UIFSA + Hague Child Support Convention

III. Child Custody
    - UCCJEA + Hague Children’s Conventions

Hague Children’s Conventions

Child Abduction Convention (1980) (in force in USA and Dominican Republic)
Child Protection Convention (1996) (in force in Dominican Republic but not USA)

Intercountry Adoption Convention (1993) (in force in USA and Dominican Republic)
Family Maintenance Convention (2007) (in force in USA but not Dominican Republic)
Hague Litigation Conventions


Enforcing Foreign Orders in the USA

Comity
  Due Process: Jurisdiction, Notice, Hearing
  Public Policy Issues

Uniform Interstate Family Support Act (UIFSA)

Uniform Foreign Money Judgments Recognition Act (UFMJRA)

Enforcing Foreign Orders in the DR

Exequatur
Enforcing Child Support Orders in the US

Uniform Interstate Family Support Act (UIFSA) provides for enforcement of “foreign country” support orders.

Term is defined in § 101(5) to include four groups of countries:
A. “Foreign reciprocating countries” designated under federal law;
B. Countries that have entered into a reciprocal child support agreement with a particular state;
C. Countries which have established laws or procedures that are “substantially similar” to UIFSA;
D. Countries in which the 2007 Convention is in force with respect to the United States.

Orders from other countries may be enforced on the basis of comity.

Child Support Convention
Contracting States (3-31-19)

- Albania
- Austria
- Belarus
- Belgium
- Bosnia & Herzegovina
- Brazil
- Bulgaria
- Croatia
- Cuba
- Cyprus
- Czech Rep.
- Estonia
- European Union
- Finland
- France
- Germany
- Greece
- Guyana
- Honduras
- Hungary
- Ireland
- Italy
- Kazakhstan
- Latvia
- Lithuania
- Luxembourg
- Malta
- Montenegro
- Morocco
- Netherlands
- Norway
- Poland
- Portugal
- Slovakia
- Slovenia
- Spain
- Sweden
- Turkey
- Ukraine
- United Kingdom
- United States

Enforcing Child Support Orders in the DR
Enforcing Child Custody Orders in the US

Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)

§ 105(a): A child-custody determination made in a foreign country “in substantial conformity with the jurisdictional standards of this Act” must be recognized and enforced under the UCCJEA.

Exception in § 105(c) if “the child custody law of a foreign country violates fundamental principles of human rights.”

"Mirror Orders" in the US

Foreign orders may be registered and enforced in the US under UCCJEA § 305 and § 306.

No comparable procedure to obtain registration and enforcement abroad without joining the 1996 Hague Child Protection Convention!

Enforcing Child Custody Orders in the DR

Exequatur and Homologation

Mirror Orders
Filling Gaps in the Abduction Convention

Hague Child Protection Convention supplements the Abduction Convention by providing a framework:
- For enforcing parental responsibility orders (rather than obtaining a return order);
- To address rights of contact/access;
- To address access issues while Hague proceedings are pending;
- To assure the safe return of the child;
- To avoid abduction (by seeking advance recognition);
- For recognition and enforcement of mediated agreements concerning parental responsibility; and
- For entry of "mirror orders."


Measures taken by the authorities of a Contracting State “shall be recognised by operation of law in all other Contracting States.” (Art 23(1)).

Recognition may be refused (Art. 23(2)) if:
- authority did not have jurisdiction under the Convention rules,
- child was not provided with an opportunity to be heard,
- person claiming parental responsibility was not given an opportunity to be heard, or
- recognition is “manifestly contrary to the public policy of the requested state, taking into account the best interests of the child.”

Advance Recognition:

“[A]ny interested person may request from the competent authorities of a Contracting State that they decide on the recognition or non-recognition of a measure taken in another Contracting State.” (Art. 24)

Enforcement:

Measures taken in one Contracting State and registered or declared enforceable in another Contracting State “shall be enforced in the latter State as if they had been taken by the authorities of that State.” Enforcement takes place based on the law of the requested State, taking into consideration the best interests of the child. (Art. 28)
Child Protection Convention
Contracting States (3-31-19)

- Albania
- Armenia
- Australia
- Austria
- Belgium
- Bulgaria
- Croatia
- Cuba
- Cyprus
- Czech Rep.
- Denmark
- Dominican Rep.
- Ecuador
- Estonia
- Fiji
- Finland
- France
- Georgia
- Germany
- Greece
- Guyana
- Honduras
- Hungary
- Ireland
- Italy
- Latvia
- Lesotho
- Lithuania
- Luxembourg
- Malta
- Monaco
- Montenegro
- Morocco
- Netherlands
- Nicaragua
- Norway
- Paraguay
- Poland
- Portugal
- Romania
- Russian Federation
- Serbia
- Slovakia
- Slovenia
- Spain
- Sweden
- Switzerland
- Turkey
- Ukraine
- United Kingdom
- Uruguay

Thank you!

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INTERNATIONAL FAMILY LAW
DESK BOOK
3rd Edition

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