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J. Noelle Hicks

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ANDREW P. VANCE MEMORIAL WRITING COMPETITION WINNER

FACILITATING INTERNATIONAL TRADE: THE U.S. NEEDS FEDERAL LEGISLATION GOVERNING THE ENFORCEMENT OF FOREIGN JUDGMENTS

*J. Noelle Hicks**

I. INTRODUCTION

IN a decision dictating the United States' ("U.S.") policy on upholding forum selection clauses in international business contracts,¹ the U.S. Supreme Court recognized that "[t]he expansion of American business and industry will hardly be encouraged if, notwithstanding solemn contracts, we insist on a parochial concept that all disputes must be resolved under our laws and in our courts."² Chief Justice Warren Burger spoke wisely, and his words recognize that the promotion of international trade and investment requires a stable legal infrastructure upon which the international business community can

* J.D. (Candidate, December 2002) University of Richmond, School of Law; B.S., 1998, Vanderbilt University. I would like to thank Professors John Paul Jones and Daniel Murphy of the University of Richmond School of Law and my friends Tarek Azhari, Pamela Coleman, and Violet Cox for their encouragement and support throughout my law school experience. I would also like to thank Charles Homiller, Jr., my friend and colleague, for his invaluable editing assistance during an earlier draft of this note. Finally, I would like to thank Professor Kevin Clermont for introducing me to this topic during his International Litigation course offered at the 2001 Cornell Law School Institute of International and Comparative Law.

1. *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 15 (1972).
2. *Id.* at 9.

rely.³ That infrastructure includes some sort of reliability relating to the enforcement of foreign judgments. Because of the need for certainty, the U.S. and forty-eight other countries have begun the negotiation of a treaty that will ensure that judgments issued in the courts of one signatory country will be enforced in the courts of other signatory countries.⁴ The proposed Hague Convention on Jurisdiction and the Enforcement of Foreign Judgments⁵ ("Hague Convention" or "Convention") addresses an important need internationally and has sparked a debate in the U.S. over the need to federalize U.S. law concerning the enforcement of foreign judgments.⁶

In the U.S., the enforcement of foreign judgments is governed on the state, not the federal, level.⁷ In fact, despite the expansion of international business and trade, the U.S. Supreme Court has spoken only once on the issue of the enforcement of foreign judgments, in *Hilton v. Guyot*.⁸ In that decision, the Court outlined the U.S.'s attitude toward the decrees of foreign courts.⁹ *Hilton*, though, is not binding law in the U.S.¹⁰

3. See Antonio F. Perez, *The International Recognition of Judgments: The Debate Between Private and Public Law Solutions*, 19 BERKELEY J. INT'L L. 44, 44 (2001).

4. See Hague Conference on Private International Law, *Future Hague Convention on International Jurisdiction and Foreign Judgments in Civil and Commercial Matters*, at <http://www.hcch.net/e/workprog/jdgm.html> (last visited Jan. 6, 2002). For further information on the history and progress of this proposed Hague Convention, see generally Peter H. Pfund, *The Project of the Hague Conference on Private International Law to Prepare a Convention on Jurisdiction and the Recognition/Enforcement of Judgments in Civil and Commercial Matters*, 24 BROOK. J. INT'L L. 7 (1998). Related matters of importance, which are beyond the scope of this Article, include questions about choice of law and personal jurisdiction over foreign litigants. For a discussion of these issues, see generally Spencer Weber Waller, *A Unified Theory of Transnational Procedure*, 26 CORNELL INT'L L.J. 101 (1993).

5. Hague Conference on Private International Law, Preliminary Draft Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters (Oct. 30, 1999), at <http://www.hcch.net/e/conventions/draft36e.html> [hereinafter Hague Draft].

6. See Linda J. Silberman & Andreas F. Lowenfeld, *A Different Challenge for the ALI: Herein of Foreign Country Judgments, an International Treaty, and an American Statute*, 75 IND. L.J. 635, 635 (2000).

7. Andreas F. Lowenfeld & Linda J. Silberman, *U.S. of America, in ENFORCEMENT OF FOREIGN JUDGMENTS WORLDWIDE* 123, 123 (Charles Platto & William G. Horton eds., 2nd ed. 1993).

8. *Hilton v. Guyot*, 159 U.S. 113 (1895).

9. *Id.* at 202–03.

The American Law Institute has begun to draft federal legislation on this issue, following cues from the Hague Conference on Private International Law ("Hague Conference").¹¹ Any such law will contain an important provision known as the "public policy exception."¹² This provision creates an escape route that allows a sovereign to refuse enforcement of an otherwise valid foreign judgment when that judgment is contrary to the enforcing nation's public policy. Thus, the infrastructure needed to promote international trade is in place, but nations have a way to avoid enforcing judgments that they are opposed to because of some aspect of the foreign judgment.

It is important that such a provision be carefully constructed, so that it can only be interpreted narrowly. This is especially crucial should the proposed international convention ever be finalized, giving nations only a small opportunity to deny enforcement. A narrow construction would help avoid the "parochial concept" that Chief Justice Burger spoke of in *M/S Bremen v. Zapata Off-Shore Co.*¹³ Even if the international convention is tabled for now, as appears to be the fate of the convention in question,¹⁴ such narrow construction in any federal law is important in order to show the international arena what the U.S. finds acceptable. Furthermore, it will give the international business community a sense that its judgments will be enforced uniformly across the U.S., and it will give that same community incentive to encourage other sovereigns to enforce U.S. judgments.

This article proposes the direction that any federal statute concerning the enforcement of foreign judgments should take. First, this article addresses the need to federalize the enforcement of foreign judgments. Second, this article surveys the current state of the law concerning the enforcement of foreign judgments. Third, this article explores the public policy excep-

10. See Lowenfeld & Silberman, *supra* note 7, at 123.

11. Silberman & Lowenfeld, *supra* note 6, at 635-36.

12. *Id.* at 643.

13. *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 9 (1972).

14. See, e.g., Stephen B. Burbank, *Jurisdictional Equilibration, the Proposed Hague Convention and Progress in National Law*, 49 AM. J. COMP. L. 203 (2001); James Love, *Hague Diplomatic Conference Ends, Badly for Now*, CONSUMER PROJECT ON TECHNOLOGY, June 20, 2001, at <http://lists.essential.org/pipermail/info-policy-notes/2001q2/000038.html>.

tion to enforcement, as used in the U.S. and in Germany.¹⁵ Finally, this article makes a recommendation as to which direction any federal statute on the enforcement of foreign judgments should take, regarding the public policy exception.

II. THE NEED TO FEDERALIZE THE ENFORCEMENT OF FOREIGN JUDGMENTS

The international recognition and enforcement of judgments play important roles in facilitating trade. A guarantee of enforcement and recognition provides, to those participating in international trade, a certain security that legal rights will be enforced and adequate remedies provided.¹⁶ However, there is no global guarantee.¹⁷ For judgments flowing from U.S. courts, there is no guarantee at all.¹⁸

Despite this, “the U.S. — without benefit of any treaties or federal statute — [is] among the most receptive nations with regard to recognition and enforcement of foreign-country judgments.”¹⁹ The Full Faith and Credit Clause of the U.S. Constitution²⁰ dictates that the judgment of any U.S. court will have the same force in every court within the U.S. as it would have

15. The scope of this Article is limited to the enforcement of foreign judgments without the privilege of any international treaty. The analysis compares the U.S. use of public policy, see *infra* text accompanying notes 87–135, and Germany’s use of public policy, see *infra* text accompanying notes 136–78. This limited comparison makes the assumption that the policy of Germany is indicative of the policies of other European countries and of civil law regimes.

16. Perez, *supra* note 3, at 44.

17. Unless a country has an enforcement treaty with the country in which the judgment in question originated, enforcement comes about only because of comity, which is “[t]he extent to which the law of one nation . . . shall be allowed to operate within the dominion of another nation.” *Hilton v. Guyot*, 159 U.S. 113, 163 (1895). The best example of a multilateral enforcement treaty is the Brussels Convention on Jurisdiction and the Enforcement of Judgments, 1968 O.J. (L 299) 32 [hereinafter Brussels Convention], which is a multilateral treaty whose membership is comprised of the members of the European Union.

18. The U.S. is not a party to any international treaties that would ensure the enforcement of its judgments abroad. Karen Minehan, *The Public Policy Exception to the Enforcement of Foreign Judgments: Necessary or Nemesis?*, 18 LOY. L.A. INT’L & COMP. L. REV. 795, 798 (1996).

19. Lowenfeld & Silberman, *supra* note 7, at 123.

20. U.S. CONST. art. IV, § 1.

in the rendering court.²¹ Though the Full Faith and Credit Clause applies only to judgments from courts of the U.S., the U.S. tradition of almost automatic enforcement extends to foreign-country judgments.²² However, no federal law on the subject exists, nor is the U.S. party to any treaty with a foreign country that gives the U.S. an obligation to enforce the judgment of a foreign court.²³

In 1992, the U.S. proposed that the Hague Conference begin discussions for an international convention on international jurisdiction and foreign judgments in civil and commercial matters.²⁴ Four years later, those discussions began,²⁵ and in June of 1999 a provisional draft convention was adopted.²⁶ The proposed convention has been modeled after the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters,²⁷ in force among the members of the European Union since 1968.²⁸ Like the Brussels Convention, the Hague Convention seeks to create a standard equivalent to “Full Faith and Credit” for the judgments of signatory countries in the courts of other signatory countries.²⁹ However, negotiations at the Hague have not been finalized,³⁰ and commentators question whether the convention will ever come to fruition.³¹

Whether or not the convention comes about, it — and the discussion it has sparked — remains important. In the U.S., the

21. Lowenfeld & Silberman, *supra* note 7, at 123.

22. *Id.*

23. *Id.*

24. Pfund, *supra* note 4, at 8.

25. *Id.*

26. Hague Conference on Private International Law, *Future Hague Convention on International Jurisdiction and Foreign Judgments in Civil and Commercial Matters*, at <http://www.hcch.net/e/workprog/jdgm.html> (last visited Jan. 6, 2002).

27. Andreas F. Lowenfeld & Linda Silberman, Memorandum, *Proposal for Project on Jurisdiction and Judgments Convention*, Nov. 30, 1998, at <http://www.ali.org/>.

28. *See* Brussels Convention, *supra* note 17. As of March 1, 2002, the Brussels Convention will be transformed into a European Union Regulation. *See generally* Council Regulation 2001/44/EC on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, 2001 O.J. (L 12) 1. That brings no changes to this discussion.

29. *See* Burbank, *supra* note 14, at 204.

30. *See, e.g.,* Love, *supra* note 14.

31. *See, e.g.,* Burbank, *supra* note 14, at 203; Silberman & Lowenfeld, *supra* note 6, at 635–36.

Convention has been the impetus for a new project at the American Law Institute that involves preparing a draft of a federal statute on the enforcement of foreign judgments.³² Currently in the U.S., state law governs the enforcement of foreign judgments, thus creating a sense of uncertainty for foreigners.³³ The U.S. can overcome this uncertainty by creating a federal standard.³⁴

In doing so, Congress should overcome a shortcoming of similar legislation.³⁵ All agreements making mandatory the enforcement of another sovereign's judgments have a public policy exception, whereby the enforcing court is not required to enforce any judgment that frustrates the enforcing state's public policy.³⁶ The draft convention includes such a provision in order to encourage the adoption of the convention.³⁷ However, past international agreements have left the exception open to wide and varied interpretation, thus limiting the security an international agreement could provide to each state's construction of the public policy exception.³⁸ Any federal legislation the U.S. promulgates on this front should narrowly define the public policy exception and bind it to a reciprocity clause. Such legislation will then be in place to provide a model of the U.S. standard for any bi-lateral or multi-lateral enforcement treaties the U.S. may join in the future.

32. Silberman & Lowenfeld, *supra* note 6, at 635.

33. Lowenfeld & Silberman, *supra* note 7, at 123.

34. Congress preempted state law in a similar area when it enacted the Federal Arbitration Act ("FAA"), which created federal standards for the enforcement of arbitral awards. Federal Arbitration Act, ch. 213, 43 Stat. 883 (1925) (codified as amended at 9 U.S.C. §§ 1–14 (2000)).

35. Both the New York Convention, *see infra* note 38, and the Brussels Convention, *see supra* note 17, have aims similar to the proposed Hague Convention and similar to that of the draft legislation being prepared by the American Law Institute. *See also infra* notes 77–100.

36. Silberman & Lowenfeld, *supra* note 6, at 643.

37. Hague Draft, *supra* note 5, at art. 28(1)(f).

38. The use of the public policy exception appearing in the United Nations Convention on Recognition and Enforcement of Arbitral Awards illustrates this point. *See generally* Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 3 [hereinafter New York Convention].

III. THE STATE OF FOREIGN JUDGMENTS IN THE U.S.

There is only one universal principal regarding the recognition and enforcement of foreign judgments — no judgment will be recognized if the court rendering judgment did so without a valid basis of jurisdiction.³⁹ The U.S. is the most receptive of the major countries in recognizing and enforcing foreign judgments.⁴⁰ However, state law, not federal law, governs the enforcement and recognition of foreign judgments.⁴¹

A. *Hilton v. Guyot*

The U.S. Supreme Court has spoken in the area of the enforcement of foreign judgments only once, in 1895.⁴² French citizens brought an action in the Southern District of New York to enforce a judgment rendered in France against their former co-partners, who were U.S. citizens.⁴³ In *Hilton*, the Court defined “comity of nations” as “[t]he extent to which the law of one nation . . . shall be allowed to operate within the dominion of another nation.”⁴⁴ Under notions of comity, the Court defined the conditions under which the final judgment of a foreign nation would be recognized in the U.S.:

[W]here there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court, or in the system of laws under which it was sitting, or fraud in procuring the judgment, or any other special reason why the comity of this nation should not allow it full effect, the

39. ANDREAS F. LOWENFELD, *INTERNATIONAL LITIGATION AND ARBITRATION* 368 (1993).

40. *See id.*

41. Though a survey of how different countries view foreign judgments would be interesting and relevant, this Article is limited to the effect of foreign judgments in U.S. courts as compared to how U.S. judgments fair in foreign courts. For a concise survey of how this procedure operates in other jurisdictions, see *ENFORCEMENT OF FOREIGN JUDGMENTS WORLDWIDE* (Charles Platto & William G. Horton eds., 2d ed. 1993).

42. *Hilton v. Guyot*, 159 U.S. 113 (1895).

43. *Hilton v. Guyot*, 42 F. 249, 249 (C.C.N.Y. 1890).

44. *Hilton*, 159 U.S. at 163.

merits of the case should not, in an action brought in this country upon the judgment, be tried afresh, as on a new trial or an appeal, upon the mere assertion of the party that the judgment was erroneous in law or in fact.⁴⁵

In addition to the requirements outlined above, the Court stated that when the foreign court's decision was in opposition to the policy of the enforcing court, then the enforcing court "will prefer the laws of its own country to that of the stranger."⁴⁶

Ultimately, the French judgment was not enforced because "international law [was] founded upon mutuality and reciprocity," and this reciprocity did not exist.⁴⁷ In other words, the Court held that an otherwise valid foreign judgment should not be conclusive on the merits unless there was "actual proof" that a judgment of the enforcing court would be given the same treatment in the foreign country from which the judgment to be enforced was issued.⁴⁸

In sum, *Hilton* requires that the following be shown before a foreign judgment can be recognized in a court of the U.S.: (1) the foreign court's grounds for personal jurisdiction and for subject matter jurisdiction; (2) that proper notice was given to all parties; (3) that the foreign proceedings were conducted in an impartial manner; (4) that there was no fraud in the foreign proceeding; (5) that the foreign judgment was final; and (6) that enforcing the foreign judgment would not be contrary to the public policy of the enforcing court.⁴⁹

However, *Hilton* does not control.⁵⁰ Justice Cuthbert W. Pound, who sat on the New York State Court of Appeals in 1928, first questioned whether *Hilton* was precedent binding on state courts, in *Johnston v. Compagnie Generale Transatlantique*.⁵¹ In his opposition to the argument that "questions of international relations and the comity of nations [were] to be determined by the Supreme Court of the U.S.," Justice Pound stated that the question of enforcement "[was] one of private

45. *Id.* at 202-03.

46. *Id.* at 164-65 (quoting JOSEPH STORY, COMMENTARIES ON THE CONFLICT OF LAWS § 28 (3d ed. 1846)).

47. *Id.* at 228.

48. *Id.* at 227-28.

49. *Id.* at 202-03.

50. LOWENFELD, *supra* note 39, at 390.

51. *Johnston v. Compagnie Generale Transatlantique*, 152 N.E. 121, 123 (N.Y. 1926).

rather than public international law.”⁵² As such, “[a] right acquired under a foreign judgment may be established in this State [New York] without reference to the rules of evidence laid down by the courts of the U.S.”⁵³ This view became widely accepted in the U.S.⁵⁴ Regardless, *Erie Railroad Company v. Tompkins*⁵⁵ invalidated *Hilton*⁵⁶ by denying the application of federal common law for a federal court sitting in diversity.⁵⁷ However, *Hilton* remains representative of the law in the U.S. The governing law is now dictated at the state level, with most states generally agreeing with the principles of *Hilton* except on the requirement of reciprocity.⁵⁸

B. The Uniform Foreign Money Judgments Act

In 1962, the National Conference of Commissioners on Uniform State Laws completed the Uniform Foreign Money Judgments Recognition Act (“Uniform Act”).⁵⁹ The Uniform Act codified the common law, thereby increasing the likelihood that U.S. judgments will be recognized in countries that have reciprocity requirements for enforcement.⁶⁰ As of October 2002, thirty states, the District of Columbia, and the U.S. Virgin Islands have implemented the Uniform Act in some form.⁶¹ In

52. *Id.*

53. *Id.*

54. LOWENFELD, *supra* note 39, at 390.

55. 304 U.S. 64 (1938).

56. LOWENFELD, *supra* note 39, at 390.

57. *Erie*, 304 U.S. at 76–78.

58. Silberman & Lowenfeld, *supra* note 6, at 636.

59. UNIF. FOREIGN MONEY JUDGMENTS RECOG. ACT, 13 U.L.A. 263 (Supp. 1998), available at http://www.law.upenn.edu/bll/ulc/fnact99/1920_69/ufmjra62.pdf (last visited Oct. 28, 2002) [hereinafter UNIFORM ACT]. For information about the Conference, see Uniform Law Commissioners, The National Conference of Commissioners on Uniform State Law, at www.nccusl.org (last visited Oct. 28, 2002).

60. Robert B. von Mehren & Michael E. Patterson, *Recognition and Enforcement of Foreign Country Judgments in the U.S.*, 6 LAW & POL’Y INT’L BUS. 37, 42 (1974).

61. For a listing of the states that have codified the Uniform Act, see Uniform Law Commissioners, *A Few Facts About the . . . Uniform Foreign Money Judgments Recognition Act*, at http://www.nccusl.org/nccusl/uniformact_factsheets/uniformacts-fs-ufmjra.asp (last visited Oct. 26, 2002).

states that have not formally adopted the Uniform Act, its principles are usually applied.⁶²

The Uniform Act defines a foreign judgment as “any judgment of a foreign state granting or denying the recovery of a sum of money, other than a judgment for taxes, a fine or other penalty, or a judgment for support in matrimonial or family matters.”⁶³ For enforcement in the U.S., the Uniform Act requires that the foreign judgment be final,⁶⁴ “but the fact that a judgment is subject to appeal . . . does not deprive it of the character of final judgment for the purposes of recognition or enforcement.”⁶⁵ Furthermore, the Act makes clear that a foreign judgment is not conclusive if the foreign court fails to provide impartial tribunals and procedures that provide due process safeguards.⁶⁶ Similarly, a foreign judgment cannot be considered conclusive if the foreign court lacked “personal jurisdiction over the defendant”⁶⁷ or jurisdiction “over the subject matter” of the case at hand.⁶⁸ In addition, the Act provides several discretionary grounds by which the enforcing court can refuse recognition.⁶⁹

Discretionary grounds of refusal include the lack of proper notice to the defendant,⁷⁰ the presence of fraud in obtaining the judgment,⁷¹ or the failure of the foreign court in refusing to recognize a contractually agreed-upon forum selection clause.⁷² In addition, a court may refuse enforcement when the cause of action from which the judgment arises “is repugnant to the public policy of [the enforcing] state.”⁷³ In application, the law as codified by the Uniform Act does not differ greatly from the guidelines laid out by the U.S. Supreme Court in *Hilton*.⁷⁴

62. Lowenfeld & Silberman, *supra* note 7, at 124.

63. UNIFORM ACT, *supra* note 59, § 1.

64. *Id.* § 2.

65. Lowenfeld & Silberman, *supra* note 7, at 125.

66. UNIFORM ACT, *supra* note 59, § 4(a)(1).

67. *Id.* § 4(a)(2).

68. *Id.* § 4(a)(3).

69. *See id.* § 4(b).

70. *Id.* § 4(b)(1).

71. *Id.* § 4(b)(2).

72. *Id.* § 4(b)(5).

73. *Id.* § 4(b)(3).

74. *See generally* *Hilton v. Guyot*, 159 U.S. 113 (1895); UNIFORM ACT, *supra* note 59.

Even where the Uniform Act has been enacted, the states differ on the need for a reciprocity requirement.⁷⁵ In *Hilton*, it was the lack of reciprocity in France that stopped the U.S. Supreme Court from enforcing the French judgment.⁷⁶ It was also reciprocity that worried Justice Pound in *Compagnie Générale Transatlantique*.⁷⁷ The majority of states and the Uniform Act follow Justice Pound and reject “any requirement of reciprocity.”⁷⁸

IV. THE PUBLIC POLICY EXCEPTION

No bi-lateral or multi-lateral agreement on the recognition and enforcement of foreign judgments will require a state to commit itself to recognize a judgment that would be contrary to the public policy of the foreign state.⁷⁹ This limitation exists both in the Brussels Convention⁸⁰ and in the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“New York Convention”).⁸¹ Traditionally, this exception has been left undefined, to be interpreted according to the desires of the court.⁸² Below is a survey of cases in which public policy played a role in the decision whether to enforce a foreign court’s judgment or an arbitration award.

75. Silberman & Lowenfeld, *supra* note 6, at 636–37.

76. *Hilton*, 159 U.S. at 228; *see supra* text accompanying notes 47–48.

77. *Johnston v. Compagnie Générale Transatlantique*, 152 N.E. 121, 123 (N.Y. 1926).

78. Silberman & Lowenfeld, *supra* note 6, at 636.

79. The draft convention makes discretionary the recognition and enforcement of foreign judgments when such “would be manifestly incompatible with the public policy of the State addressed.” Hague Draft, *supra* note 5, at art. 28(1)(f).

80. The Brussels Convention does not require recognition of an otherwise enforceable judgment when such recognition would be “contrary to public policy in the State in which recognition is sought.” Brussels Convention, *supra* note 17, at art. 27 (1).

81. The New York Convention does not require enforcement of an otherwise enforceable arbitral award when such enforcement would be “contrary to the public policy” of the enforcing country. New York Convention, *supra* note 38, art. 5(1)(b).

82. *See, e.g., Parsons & Whitmore Overseas Co., Inc. v. Société Générale de L’Industrie du Papier (RAKTA)*, 508 F.2d 969, 974 (2d Cir. 1974) (determining that the public policy exception of the New York Convention should be interpreted narrowly).

A. Public Policy As Applied in the U.S.

Although every state reserves the right to refuse enforcement of a foreign judgment that is contrary to public policy, there are few cases that deny recognition on the grounds of public policy alone.⁸³ The leading case on the public policy exception, *Parsons & Whitmore Overseas Co., Inc. v. Société Générale de L'Industrie du Papier (RAKTA)*,⁸⁴ was decided in the context of the enforcement of a foreign arbitral award.⁸⁵ However, the holding also applies to the enforcement of foreign judgments.⁸⁶

1. The Public Policy Exception According to Parsons

In *Parsons*, the dispute arose out of a delay in the construction of an Egyptian paper mill for Société Générale de L'Industrie du Papier (RAKTA) ("RAKTA") that an American company, Parsons & Whitmore Overseas Co. ("Overseas"), was to build.⁸⁷ Before the contract was completed, Egypt severed diplomatic ties with the U.S.⁸⁸ Overseas then abandoned the project and "notified RAKTA that it regarded this postponement as excused by the [contract's] force majeure clause."⁸⁹ RAKTA, not agreeing that the delay was excused, began arbitral proceedings seeking damages for breach of contract.⁹⁰ The arbitration panel found that the force majeure clause only excused some of the delay and that necessary effort had not been made to complete the contract.⁹¹ Damages in excess of \$300,000 were subsequently awarded to RAKTA.⁹²

In enforcement proceedings in the U.S., Overseas defended using the public policy exception of the New York Convention.⁹³

83. Lowenfeld & Silberman, *supra* note 7, at 129.

84. 508 F.2d 969 (2d Cir. 1974).

85. *Id.* at 969.

86. *See, e.g.*, Lowenfeld & Silberman, *supra* note 7, at 129; Michael L. Morkin, *Recognition and Enforcement of Foreign Country Judgments in Illinois*, 85 ILL. B.J. 364, 367-68 (1997).

87. *Parsons*, 508 F.2d at 972.

88. *Id.*

89. *Id.* The force majeure clause was designed to excuse performance delay when the cause was beyond Overseas' reasonable capacity to control. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.* at 973.

That exception allows the enforcing court to refuse enforcement where “enforcement of the award would violate the public policy of [the enforcing] country.”⁹⁴ The court determined that the public policy defense should be construed narrowly⁹⁵ and enforced the award.⁹⁶

Overseas sought to equate U.S. public policy with U.S. national policy.⁹⁷ The court rejected this argument, because to do otherwise would create “a major loophole” against the aims of the New York Convention.⁹⁸ The rule, as created by the *Parsons* court, is that otherwise enforceable foreign arbitration awards will be enforced unless “enforcement would violate the forum state’s most basic notions of morality and justice.”⁹⁹ Because this defense is so rarely raised, the rule of *Parsons* stands. The U.S. Supreme Court has no cases on point, and the federal appellate courts have only five, including *Parsons*.¹⁰⁰ Each of those quotes the “most basic notions of morality and justice”¹⁰¹ language of *Parsons* and then rejects public policy as a method to deny enforcement based on the case at hand.¹⁰²

2. Public Policy As Applied to the Enforcement of Foreign Judgments

As noted earlier, courts rarely use the public policy exception to deny enforcement.¹⁰³ When the exception is raised, it is in-

94. *Id.* at 972; see New York Convention, *supra* note 38, art. 5(1)(b).

95. *Parsons*, 508 F.2d at 974.

96. *Id.* at 978.

97. *Id.* at 974.

98. *Id.*

99. *Id.*

100. See *Europcar Italia, S.p.A. v. Maiellano Tours, Inc.*, 156 F.3d 310 (2d Cir. 1998); *Waterside Ocean Navigation v. Int'l Navigation*, 737 F.2d 150 (2d Cir. 1984); *Andros Compania Maritima v. Marc Rich & Co.*, 579 F.2d 691 (2d Cir. 1978); *Fotochrome, Inc. v. Copal Co.*, 517 F.2d 512 (2d Cir. 1975).

101. *Parsons*, 508 F.2d at 974.

102. *Europcar Italia, S.p.A.*, 156 F.3d at 313; *Waterside Ocean Navigation*, 737 F.2d at 152; *Andros Compania Maritima*, 579 F.2d at 699; *Fotochrome, Inc.*, 517 F.2d at 516.

103. See *supra* text accompanying note 90; Arthur T. von Mehren & Donald T. Trautman, *Recognition of Foreign Adjudications: A Survey and a Suggested Approach*, 81 HARV. L. REV. 1601, 1670 (1968); see also Monrad G. Paulsen & Michael I. Sovern, “Public Policy” in the Conflict of Laws, 56 COLUM. L. REV. 969, 1015–16 (1956) (voicing concerns about the use of the public policy

frequently found to be the sole basis to preclude the recognition of a foreign judgment.¹⁰⁴

In *Tahan v. Hodgson*,¹⁰⁵ the court refused to find that a difference in procedure amounted to a violation of public policy.¹⁰⁶ The case involved the enforcement of an Israeli default judgment.¹⁰⁷ In that proceeding, the defendant was not given the same notice that he would have received in a U.S. court.¹⁰⁸ The court did not feel this violated public policy because the notice procedures utilized by the Israeli court were not "repugnant to fundamental notions of what is decent and just."¹⁰⁹

In *Ingersoll Milling Machine Co. v. Granger*,¹¹⁰ the district court rejected the public policy argument, a judgment that the U.S. Court of Appeals for the Seventh Circuit affirmed.¹¹¹ In that case, a Belgian court had chosen to apply Belgian law to an employment dispute, despite a contractual agreement to apply Illinois law to the dispute.¹¹² The court held that there was no violation of public policy because it was not clearly inappropriate for the Belgian court to have applied Belgian law.¹¹³ When enforcing the judgment, the district court went on to note that they may have reached the same conclusion about choice of law had they been "faced with the issue."¹¹⁴

In *Somportex Ltd. v. Philadelphia Chewing Gum Corp.*,¹¹⁵ the U.S. Court of Appeals for the Third Circuit upheld a decision

defense in order to apply local law in situations where there are local contacts).

104. See *Ackerman v. Levine*, 788 F.2d 830, 841 (2d Cir. 1986) ("The standard [to meet the public policy exception] is high, and infrequently met."); *Tahan v. Hodgson*, 662 F.2d 862, 866 n.17 (D.C. Cir. 1981) (holding that the public policy exception should apply "[o]nly in clear-cut cases"); *Loucks v. Standard Oil Co.*, 120 N.E. 198, 201 (N.Y. 1918) ("We are not so provincial as to say that every solution of a problem is wrong because we deal with it otherwise at home.").

105. 662 F.2d 862 (D.C. Cir. 1981).

106. *Id.* at 866 n.18.

107. *Id.* at 862.

108. *Id.* at 866.

109. *Id.*

110. 631 F. Supp. 314 (N.D. Ill. 1986), *aff'd*, 833 F.2d 680 (7th Cir. 1987).

111. *Id.* at 318.

112. *Id.*

113. *Id.*

114. *Id.*

115. 453 F.2d 435 (3d Cir. 1971).

that enforced a default judgment obtained in England.¹¹⁶ The public policy defense was raised regarding the decision of the British court to award attorneys' fees.¹¹⁷ The defendant argued that because Pennsylvania law did not allow recovery of attorneys' fees, the British judgment granting such fees should not be enforced as it violated public policy.¹¹⁸ The court easily dismissed that argument, stating that the public policy exception applied only when enforcement would clearly "injure the public health, the public morals, the public confidence in the purity of the administration of the law, or . . . undermine that sense of security for individual rights, whether of personal liberty or of private property, which any citizen ought to feel."¹¹⁹ To the enforcing court, the fact that British law differed with the law of the enforcing court was not sufficient to reject enforcement on the basis of public policy.¹²⁰

3. When Public Policy Is Grounds to Refuse Enforcement

Where U.S. courts do find public policy violations, the forum court usually has "substantial contacts" with the person or transaction involved in the litigation.¹²¹ In *Laker Airways v. Sabena, Belgian World Airlines*,¹²² the plaintiff initiated proceedings in the U.S. seeking an injunction to prevent the defendants from seeking an injunction against the plaintiff in Britain.¹²³ Though this case did not involve the enforcement of a foreign judgment, the court recognized the relationship of an anti-suit injunction preventing a judgment from a foreign court to an enforcement proceeding.¹²⁴ The court found that anti-suit injunctions were justified when they were needed to "prevent litigants' evasion of the forum's important public policies."¹²⁵ The court equated this principle to the rule that foreign judgments will not be enforced in the U.S. "when contrary to the

116. *Id.* at 444.

117. *Id.* at 439.

118. *Id.* at 443.

119. *Id.* (quoting *Goodyear v. Brown*, 26 A. 665, 666 (P.A. 1893)).

120. *Id.* at 443.

121. von Mehren & Patterson, *supra* note 60, at 63.

122. 731 F.2d 909 (D.C. Cir. 1984).

123. *Id.* at 918.

124. *Id.* at 931.

125. *Id.*

crucial public policies of the forum in which enforcement is requested.”¹²⁶

The holding relevant here is that the forum court has an interest in seeing that its public policy is not evaded.¹²⁷ Thus, if a case were to arise involving the enforcement of a foreign judgment where it is clear that the enforcing court's public policy interests had been circumvented because the plaintiff pursued litigation in a foreign court, the court would be justified in using public policy to deny enforcement. In that situation, the interest of the forum court in citing public policy is validated because of its relationship to the litigation.¹²⁸

In *Matusevitch v. Telnikoff*, the court refused to enforce a British libel judgment on the grounds that to do so would be in violation of public policy.¹²⁹ The Supreme Court of Maryland, when asked to certify whether enforcement of the judgment would be in violation of Maryland's public policy, agreed with the U.S. District Court of the District of Columbia.¹³⁰ The court reasoned that the protections offered by the First Amendment “would be seriously jeopardized by the entry of foreign libel judgments granted pursuant to standards deemed appropriate in England but considered antithetical to the protections afforded the press by the U.S. Constitution.”¹³¹ The refusal to enforce the judgment met the concern voiced in *Laker Airways*: that litigants filed suit in a foreign nation in order to circumvent the public policy of the U.S.¹³² *Telnikoff* recognized that the great disparity between the libel law in the U.S. and Britain had created a phenomenon where prominent persons who had received bad press in the U.S. were flocking to Britain to file libel suits.¹³³ The court concluded that to enforce a foreign

126. *Id.*

127. *Id.*

128. von Mehren & Patterson, *supra* note 60, at 63.

129. *Matusevitch v. Telnikoff*, 877 F. Supp. 1 (D.D.C. 1995); *see also* *Bachchan v. India Abroad Publ'ns, Inc.*, 585 N.Y.S.2d 661 (N.Y. Sup. Ct. 1992) (refusing to enforce a British defamation judgment because the British defamation law did not comport with the First Amendment). For a discussion of *Bachchan* and how the First Amendment plays a role in denying the enforcement of foreign judgments, *see* Craig A. Stern, *Foreign Judgments and the Freedom of Speech: Look Who's Talking*, 60 BROOK. L. REV. 999 (1994).

130. *Telnikoff*, 702 A.2d at 236–37.

131. *Id.* at 250 (quoting *Bachchan*, 585 N.Y.S.2d at 664).

132. *See supra* text accompanying notes 121–28.

133. *Telnikoff*, 702 A.2d at 250.

judgment where the law out of which the judgment arose was repugnant to the standards of the First Amendment would be in violation of the U.S. Constitution.¹³⁴

B. The Public Policy Exception As Applied to U.S. Judgments in Germany

A few key cases from Germany illustrate the danger stemming from the assumption that U.S. law and procedure will be applied in the courts of other nations.¹³⁵ German law requires a person to request an order of enforcement of the foreign judgment.¹³⁶ Section 723 of the German Code of Civil Procedure dictates that such an order is to be granted without re-examination of the substance of the judgment.¹³⁷ That order is to be granted only if the judgment has become final under the law of the rendering court.¹³⁸ However, no order is to be enforced if that judgment meets one of the exclusions of section 328 of the German Code of Civil Procedure.¹³⁹ The exclusion

134. *Id.* at 250–51.

135. There is discussion that a fear of the public policy exception is unfounded, that other courts follow the U.S. in interpreting the exception narrowly. However, that assumption is not based on sound analysis. In *The Public Policy Exception to the Enforcement of Foreign Judgments: Necessary or Nemesis?*, Karen Minehan looks at the European Court of Justice's application of the exception as applied to foreign judgments enforced under the authority of the Brussels Convention. Karen Minehan, *The Public Policy Exception to the Enforcement of Foreign Judgments: Necessary or Nemesis?*, 18 *LOY. L.A. INT'L & COMP. L. REV.* 795 (1996). She concludes that Europe construes the exception narrowly. However, her analysis is flawed, because enforcement under the Brussels Convention is equivalent to "full faith and credit." A better analysis would look at the view individual countries have taken toward enforcing foreign judgments outside the coverage of the Brussels Convention.

136. The provisions of German law governing the enforcement of U.S. judgments can be found in the German Code of Civil Procedure at sections 723 and 328. §§ 328, 723 *ZIVILPROZESSORDNUNG (ZPO)*. For a description, in English, of the relevant German law, refer to David Westin, *Enforcing Foreign Commercial Judgments and Arbitral Awards in the U.S., West Germany, and England*, 19 *LAW & POL'Y INT'L BUS.* 325, 339–42 (1987).

137. See David Westin, *Enforcing Foreign Commercial Judgments and Arbitral Awards in the U.S., West Germany, and England*, 19 *LAW & POL'Y INT'L BUS.* 325, 339 (1987).

138. *Id.*

139. *Id.* Section 328 of the German Code of Civil Procedure does not allow the enforcement of foreign judgments in the following circumstances: (1) where the court rendering the judgment did not have jurisdiction under German law; (2) if the defendant did not participate in the proceeding or

relevant to this article does not allow enforcement of judgments that are incompatible with the fundamental principles of German law.

1. *P. & Co. Inc. v. T.* — Germany 1975

In *P. & Co. Inc. v. T.*,¹⁴⁰ a West German Federal Supreme Court decision dated June 4, 1975, the court refused to enforce a judgment issued by a U.S. district court for a New York brokerage house against a German trader.¹⁴¹ The German defendant operated an import/export business in Germany and had significant experience in speculative commodities trading on foreign exchanges.¹⁴² In March 1967, he opened an account with a brokerage house.¹⁴³ After the customer incurred heavy losses, the brokerage house closed the customer's account in July 1967, at which point the customer had a deficit of approximately \$73,000.¹⁴⁴ The brokerage house brought an action against the German customer and obtained a judgment of \$73,421.71, plus costs of \$1,937.77 and interest of \$25,385.81.¹⁴⁵ In enforcement proceedings commenced in Germany, the Federal Supreme Court of Germany refused to enforce the judgment because to do so would be in violation of German public policy.¹⁴⁶ The Federal Supreme Court based this decision on the fact that the customer did not incur any liability for the commodities transactions under West German Law because he was not authorized to trade in futures under the German Stock Exchange Law.¹⁴⁷

otherwise defend himself (so default judgments are not enforced in Germany); (3) if the judgment is somehow contrary to a domestic judgment or a previously enforced foreign judgment; (4) if recognizing the judgment would somehow be against German public policy or otherwise incompatible with the basic laws of Germany; or (5) if there was no guarantee of reciprocity for a German judgment in the nation of the rendering court. *See id.* at 339–41.

140. *P. & Co., Inc. v. T.*, Judgment of June 4, 1975, Bundesgerichtshof, BGH, Federal Republic of Germany, [1975] *Neue Juristische Wochenschrift* 1600; [1975] *Recht der Internationalen Wirtschaft* AWD 500, *translated in* LOWENFELD, *supra* note 39, at 444.

141. *Id.*, *translated in* LOWENFELD, *supra* note 39, at 446.

142. *Id.*, *translated in* LOWENFELD, *supra* note 39, at 444.

143. *Id.*

144. *Id.*

145. *Id.*, *translated in* LOWENFELD, *supra* note 39, at 444–45.

146. *Id.*, *translated in* LOWENFELD, *supra* note 39, at 445–46.

147. *Id.*, *translated in* LOWENFELD, *supra* note 39, at 445.

2. *Solimene v. B. Grauel & Co.* — Germany 1989

In *Solimene v. B. Grauel & Co.*,¹⁴⁸ the German court refused to enforce a judgment initiated in a Massachusetts court and finalized upon appeal to the Supreme Judicial Court of Massachusetts in 1987.¹⁴⁹ The plaintiff, an employee of Eastern Marking Machine Corporation (“Eastern”), sought damages from Eastern and from B. Grauel & Co. (“Grauel”) for injuries sustained while she worked with a machine manufactured by Grauel.¹⁵⁰ On the day of the accident, the plaintiff was operating the machine, which imprinted information onto electronic parts, and one of the parts fell.¹⁵¹ She turned the machine off to retrieve the object.¹⁵² Accidentally, she “reactivated the machine,” and the “oscillating arm [of the machine] descended and pinned the plaintiff’s wrist to the base of the machine.”¹⁵³ For more than twenty minutes, the plaintiff was trapped.¹⁵⁴ The accident resulted in permanent injury, leaving the plaintiff with impaired grip strength and traumatic sympathetic reflex dystrophy.¹⁵⁵

At trial, the jury found that the plaintiff’s employer was not negligent.¹⁵⁶ They determined that Grauel was ninety-five percent negligent, with the remaining negligence assessed to the plaintiff.¹⁵⁷ The jury also found Grauel had violated its warranty of merchantability.¹⁵⁸ The jury awarded \$275,000 to the plaintiff;¹⁵⁹ final judgment, once adjusted to account for the plaintiff’s negligence, was entered at \$261,250, plus interest.¹⁶⁰ The appellate court affirmed this award.¹⁶¹

148. *Solimene v. B. Grauel & Co.*, Landgericht Berlin, June 13, 1989, [1989] RIW 988, translated in LOWENFELD, *supra* note 39, at 440.

149. *Id.*, translated in LOWENFELD, *supra* note 39, at 443; *see also* *Solimene v. B. Grauel & Co.*, 507 N.E.2d 662 (Mass. 1987).

150. *Solimene*, 507 N.E.2d at 664.

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.* at 664–65.

155. *Id.* at 665.

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.* at 665 n.5.

161. *Id.* at 670.

Once the American judgment was final, the plaintiff commenced an enforcement action in Germany,¹⁶² for \$275,000 plus \$207,950.50 in interest.¹⁶³ The action was denied because the German court concluded that to enforce the judgment would be in “violation of German order public” — enforcement would violate German public policy.¹⁶⁴

The German court found several grounds supporting its position. First, the American judgment did “not contain any written statement of reasons” as to why the objections the defendant raised upon appellate review did not result in overturning the jury verdict.¹⁶⁵ Furthermore, the American court had not included a statement explaining the reasoning behind the specific amount awarded.¹⁶⁶ The German court also had difficulty with an award given for breach of warranty without proof that the product was actually defective.¹⁶⁷ The court also disputed the award of interest and the “height of the original award of damages,” an amount far greater than would have been awarded had the case begun in Germany.¹⁶⁸ Finally, the German court felt that, according to German law, the plaintiff's negligence should have been considered more in assessing damages.¹⁶⁹

3. The German Approach Contrasted with the U.S.

In vast opposition to the construction of the public policy exception in the U.S.,¹⁷⁰ the German court in *Solimene* refused enforcement because a different result would have occurred in a German court.¹⁷¹ In *P. & Co. Inc.*, the German court explicitly held that enforcing a U.S. judgment that was in contradiction

162. *Solimene v. B. Grauel & Co.*, Landgericht Berlin, June 13, 1989, [1989] RIW 988, translated in LOWENFELD, *supra* note 39, at 440.

163. *Id.*, translated in LOWENFELD, *supra* note 39, at 443.

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*, translated in LOWENFELD, *supra* note 39, at 444.

170. *Parsons & Whitmore Overseas Co., Inc. v. Société Générale de L'Industrie du Papier (RAKTA)*, 508 F.2d 969, 974 (2d Cir. 1974); see also *supra* text accompanying notes 87–135.

171. See *supra* text accompanying notes 166–71.

with German law was against German public policy.¹⁷² This view of the public policy exception is very broad, and seems to indicate a “loophole” that Germany uses to refuse enforcement of foreign judgments that somehow purports to violate the law of Germany. It was this type of loophole that the U.S. Court of Appeals for the Second Circuit took pains to avoid reading into the New York Convention when formulating the U.S.’s position on the public policy exception in *Parsons*.¹⁷³ Regardless, Germany’s position appears to be that foreign judgments — at least foreign judgments without the protection of a formal enforcement treaty¹⁷⁴ — based on a claim that somehow exceeds or violates the protections and privileges offered by German law, will not be enforced because enforcement would violate German public policy.¹⁷⁵

V. A RECOMMENDATION FOR ANY U.S. FEDERAL LAW ON ENFORCEMENT

As noted previously, the Supreme Court in *Hilton* felt that reciprocity needed to be shown before a foreign judgment could be enforced in a U.S. court.¹⁷⁶ Despite this, the Uniform Act does not require reciprocity, nor do the majority of states.¹⁷⁷ However, any federal law should have some sort of reciprocity requirement.

172. *P. & Co., Inc. v. T.*, Judgment of June 4, 1975, Bundesgerichtshof, BGH, Federal Republic of Germany, [1975] *Neue Juristische Wochenschrift* 1600; [1975] *Recht der Internationalen Wirtschaft* AWD 500, *translated in* LOWENFELD, *supra* note 39, at 445–46.

173. *See Parsons*, 508 F.2d at 974; *see also supra* text accompanying notes 93–102.

174. Though such a discussion goes beyond the scope of this Article, it is likely that a judgment issued from a country privileged to have an enforcement treaty with Germany would not have merited the scrutiny given to the U.S. judgment in *Solimene*. For a discussion on this, *see* Karen Minehan, *The Public Policy Exception to the Enforcement of Foreign Judgments: Necessary or Nemesis?*, 18 *LOY. L.A. INT'L & COMP. L. J.* 795 (1996), Minehan’s article includes a discussion of European judgments enforced under the protection of the Brussels Convention.

175. *See supra* text accompanying notes 163–70.

176. *Hilton v. Guyot*, 159 U.S. 113, 228 (1895); *see also supra* text accompanying notes 47–48.

177. Silberman & Lowenfeld, *supra* note 6, at 636; *see also supra* text accompanying notes 81–83.

Any federal law on the enforcement of foreign judgments should clearly define the public policy exception, so that courts will narrowly construe the exception. The definition stated in *Parsons* — that the public policy exception applies only when “enforcement would violate the forum state’s most basic notions of morality and justice”¹⁷⁸ — provides a working start. Any reciprocity requirement should be tied to the public policy exception. Thus, the result would be that the U.S. reserves the right to refuse enforcement of a judgment coming from a country that defines public policy more broadly, for example, the German definition discussed above.¹⁷⁹

The principle barrier to the enforcement of U.S. judgments in foreign courts has been a broad construction of the public policy exception. However, because the U.S. persists in being receptive to enforcing foreign judgments,¹⁸⁰ other countries have little incentive to change their ways by being more receptive to U.S. judgments.¹⁸¹ Thus, the U.S. needs to provide incentives. If the U.S. makes a statement of a change in its policy of liberal enforcement, other countries will realize that they need to be more receptive to enforcing U.S. judgments.

Such a statement will also have the effect of giving the U.S. more bargaining power at the Hague. The proposed Hague Conference goes beyond the enforcement of foreign judgments.¹⁸² It is a double convention, much like the Brussels Convention, which defines the foundations for jurisdiction over a foreign defendant before addressing the question of recognition or enforcement.¹⁸³ With the current state of affairs, and the U.S.’s weak bargaining position, the U.S. stands in a position where it will be forced to give up, on an international level, many grounds for jurisdiction that it holds dear.¹⁸⁴

178. *Parsons*, 508 F.2d at 974.

179. See *supra* notes and text accompanying notes 136–71.

180. Lowenfeld & Silberman, *supra* note 7, at 123.

181. See *supra* notes and text accompanying notes 90–135.

182. See *generally* Hague Draft, *supra* note 5.

183. See Silberman & Lowenfeld, *supra* note 8, at 638.

184. Kevin M. Clermont, *Jurisdictional Salvation and the Hague Treaty*, 85 CORNELL L. REV. 89, 95–96 (1999).

VI. CONCLUSION

The fate of the proposed Hague Convention on the enforcement of foreign judgments remains unclear.¹⁸⁵ However, the path the U.S. must take is clear. The U.S. needs to create a federal law governing the enforcement of foreign judgments, a process initiated by the American Law Institute.¹⁸⁶ The current state of negotiations at the Hague puts the U.S. in the unique position of being able to increase its bargaining power. Negotiations are close to stalling.¹⁸⁷ In the meantime, the U.S. has begun the process of drafting a federal law.¹⁸⁸ The final law should make a statement expressing a change in U.S. policy toward the public policy exception. The U.S. should be clear that it will not continue to enforce judgments from countries that refuse to enforce U.S. judgments through use of a broad construction of the public policy exception.

The U.S. has created a standard for the world to follow — judgments from foreign courts will be enforced when the foreign court provides an impartial tribunal and due process safeguards,¹⁸⁹ so long as the foreign court has “jurisdiction over the defendant”¹⁹⁰ and “over the subject matter.”¹⁹¹ The U.S. does maintain discretionary grounds for refusal,¹⁹² but the U.S. construes those grounds narrowly¹⁹³ to encourage “[t]he expansion of American business and industry.”¹⁹⁴ *Parsons* defined public policy in terms of the “most basic notions of morality and justice,”¹⁹⁵ in furtherance of the policy articulated by Chief Justice Burger. That policy has served us well. However, the words of

185. See *supra* text accompanying note 12.

186. See Andreas F. Lowenfeld & Linda Silberman, Memorandum, *Proposal for Project on Jurisdiction and Judgments Convention*, at <http://www.ali.org/> (last visited Jan. 6, 2002).

187. See, e.g., Burbank, *supra* note 14, at 203.

188. See generally Silberman & Lowenfeld, *supra* note 6 (discussing the American Law Institute project for a federal statute on the recognition and enforcement of foreign judgments).

189. UNIF. FOREIGN MONEY JUDGMENTS RECOG. ACT § 4(a)(1), 13 U.L.A. 263 (Supp. 1998).

190. *Id.* § 4(a)(2).

191. *Id.* § 4(a)(3).

192. See *id.* § 4(b).

193. See generally Lowenfeld & Silberman, *supra* note 7.

194. *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 9 (1972).

195. *Parsons & Whitmore Overseas Co., Inc. v. Société Générale de L'Industrie du Papier (RAKTA)*, 508 F.2d 969, 974 (2d Cir. 1974).

the Supreme Court in *Hilton* ring true: “international law is founded upon mutuality and reciprocity.”¹⁹⁶ The U.S. needs to take a stand and tell the world that reciprocity is needed, and that valid U.S. judgments should be enforced in foreign courts, so as to facilitate the expansion of foreign trade.

196. *Hilton v. Guyot*, 159 U.S. 113, 228 (1895).