

# Preface

As a basic rule in international law, a judgment rendered in one country is not recognized, per se, in another country in which its recognition or enforcement is sought. The foreign judgment must undergo a process of integration, sometimes called “domestication,” dictated by the laws of the integrating country before it can be recognized or enforced. The difference in status between a foreign and a local, or domestic, judgment necessitates this integration<sup>1</sup>:

The valid ruling of a local court is inherently binding in Israel, as a governmental act of an authoritative entity. A foreign judgment, on the other hand, does not enjoy a similar magisterial status. It is not operative here in its own right. Its local validity is not automatic, nor even self-understood. Where it exists, it is a sign that a local governmental organ – judicial or otherwise – has granted the foreign judgment an entry visa and has set the degree of its validity here according to the pertinent rules of the local law.

As Justice Cheshin observed in C.A. 970/93 **Attorney General of Israel v. Agam**<sup>2</sup>:

A judgment rendered abroad does not operate in Israel as though it was issued by an Israeli court. The Judicial Collection Authority will not enforce it, and the Land Registrar will neither recognize it nor register it in the Land Registry. In order to allow it to operate in Israel, whoever seeks to do so must strip the judgment of its original form as a foreign law, and clothe it in that of Israeli law, and as such, make it part of Israeli law. It is the courts that must transform it in this way, and for this purpose we are served by the Foreign Judgments Enforcement Law.

Thus, for a foreign judgment to serve, e.g., as a collateral estoppel in Israeli litigation, an Israeli court must first recognize, and thus integrate, the foreign judgment. Until this is done, the foreign judgment has no status in Israel, for the

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<sup>1</sup> Amos Shapira, Recognition and Enforcement of Foreign Judgments, **Iyunei Mishpat** 4 (1974) 509 (hereinafter: Shapira, Recognition and Enforcement of Foreign Judgments, or Shapira).

<sup>2</sup> P.D. 49(1) 561, 569 (1995).

purpose of either recognition or enforcement. It can even be said that “a foreign judgment not yet declared enforceable holds the same status as mere pleadings.”<sup>3</sup>

In international law, one of the two distinct legal doctrines commonly underlies the integration of a foreign judgment: the doctrine of the Comity of nations or the obligation doctrine.<sup>4</sup>

## Doctrine of the Comity of Nations

Comity of nations is based on the recognition that a judgment is valid only within the territorial boundaries of the governmental body in which it was rendered. A voluntary act of Comity between nations, usually out of reciprocity or mutual convenience, can, however, allow the recognition and enforcement of a judgment by a foreign court. The seventeenth-century Austrian scholar Ulrich Huber was one of the first to use the Comity of nations to explain why it was appropriate for a sovereign nation to enforce a foreign judgment.<sup>5</sup> As Lord Blackhorn observed in **Godard v. Gray**<sup>6</sup>: “Admitted principle of the law of nations that a state is bound to enforce within its territories the judgment of a foreign tribunal.”

The importance of this doctrine is evidenced in rulings of courts in Israel and throughout the world. A US court first adduced the Comity of nations as the theoretical basis for recognition of a foreign judgment in **Guyot v. Hilton**<sup>7</sup> (**Hilton**). **Hilton** concerned an attempt to enforce in the United States a French court’s award of damages to the French member of an American-French partnership formed in France. Enforcement in France had become impossible: the American defendant had transferred his property and business out of France.<sup>8</sup> Holding that domestic legislation and international law do not grant a mandate to foreign rulings, the US Supreme Court applied the doctrine of the Comity of nations, according to which one nation allows the domestic implementation of another nation’s legislative, executive, or judicial acts.

The US Supreme Court, however, held that reciprocity in the enforcement of money judgments was *sine qua non* for enforcing a foreign money judgment. In the absence of such reciprocity with France, the court dismissed the petition for enforcement. One would assume that US courts would follow this binding legal

<sup>3</sup> Bnk. (T.A.) 1515/04 **Bamira v. Greenberg**, at §4, (Nevo, Jul. 15, 2004).

<sup>4</sup> See Yoav Oestreicher, Recognition and Enforcement of Foreign Intellectual Property Judgments: Analysis and Guidelines for a New International Convention, available at SSRN, <http://ssrn.com/abstract=939093>.

<sup>5</sup> Joel R. Pauk, Comity in International Law, 32 Harv. Int’l. L. J. 1, 14 (1991).

<sup>6</sup> See *Godard v. Gray*, L. R. 6 Q. B. 139, cited by Oestreicher, *supra* n. 4 at 12.

<sup>7</sup> *Guyot v. Hilton*, 159 U.S. 160 (1895).

<sup>8</sup> Katherine R. Miller, Playground Politics: Assessing the Wisdom of Writing a Reciprocity Requirement into U.S. International Recognition and Enforcement Law, 35 Geo. J. Int’l L. 239, 245 (2004).

precedent. Federal courts in the U.S. have, however, ignored this condition. The requirement of reciprocity was, in later judgments, seen as unjust, as it punishes the prevailing party for the policies of the courts in his or her country. U.S. courts were also of the opinion that the reciprocity requirement undermined attempts by Americans who had prevailed in lawsuits domestically from enforcing such judgments abroad.<sup>9</sup>

Yet the Court's definition in **Hilton** of Comity between nations remains valid<sup>10</sup>:

In the legal sense, [it] is neither a matter of absolute obligation, on the one hand, nor the mere courtesy and good will, on the other. But it is the recognition that one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, or of other persons who are under the protection of its law... The Comity thus extended to other nations... is the voluntary act of the nation by which it is offered, and is inadmissible when contrary to its policy, or prejudicial to its interests.

## The Obligation Doctrine

The obligation doctrine, by contrast, completely rejects the concept of recognizing and enforcing foreign judgments as a matter of international Comity. The obligation doctrine rests on the premise that the validity of a foreign judgment is inherent. Thus Roman law did not view a judgment rendered by a foreign court as alien, but as the product of a mechanism for dispute resolution.<sup>11</sup> In other words, from the moment that a judgment was issued and a legal obligation created, it must be enforced everywhere. The first evidence of this legal doctrine is found in **Russell v. Smyth**<sup>12</sup>:

The principle in this case is, that where a competent court has adjudicated a certain sum to be due, a legal obligation arises to pay that sum, and a legal action to enforce the judgment may be maintained. It is in this way that the judgments of foreign and colonial courts may be supported and enforced.

Herzelia, 2012

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<sup>9</sup> *De la Mata v. American Life Ins. Co.*, 771 F. Supp. 1375 (1991); *McCord v. Jet Spray Intern. Corp.*, 874 F. Supp. 436 (1994) (D. Mass.) (NO.C.A. 93-11375-JLT); *In re Joint Eastern and Southern Dist. Asbestos Litigation*, 129 B.R. 710 (1991) (E.D.N.Y.); *Biggelaar v. Wagner*, 978 F. Supp. 848 (1997) (N.D. Ind.); *Hilkmann v. Hilkmann*, 579 Pa. 563 (2004).

<sup>10</sup> *Guyot v. Hilton*, supra n. 9 at 163-164.

<sup>11</sup> Friedrich Juenger, *The Recognition of Money Judgments in Civil and Commercial Matters*, 36 AM. J. Comp. L. 1, 5-6 (1988).

<sup>12</sup> See *Russell v. Smyth*, 9 M. & W. 810 (1842), as cited by Oestreicher, supra n. 4 at 13.



<http://www.springer.com/978-3-642-32002-6>

Foreign Judgments in Israel  
Recognition and Enforcement

Carmon, H.

2013, XXII, 242 p., Hardcover

ISBN: 978-3-642-32002-6