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INTERNATIONAL ENFORCEMENT OF FAMILY MAINTENANCE AND SUPPORT OBLIGATIONS

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FAMILY LAW AND THE FEDERAL SYSTEM

Richard M. Buxbaum

Alexander Lüderitz worked with distinction at the intersection of Private International Law and Family Law, and enriched his work through a profound understanding of Comparative Law. It is both in friendship and in recognition of his achievements in this important sector that this tribute to his memory is presented. In substance, the following is a report on the recent refinement and implementation of methods developed in the United States to transcend, in family law, the impasse created by our well-known aversion to accepting international conventional obligations in fields that domestically are the province of the several states. The original American scholarship about this subject, from which I borrow, is largely the creation of other US friends and colleagues of Alexander Lüderitz; thus, this is in a way also a family tribute to him.

I Introduction

The title of this paper reflects the broad reach of the work of Alexander Lüderitz. The subject covered, however, is of necessity a more narrow one, one that the classic conflict-of-laws literature tends to relegate to the basement of practical implementation. Maintenance/child support was chosen because exactly in this area of implementation it best embodies the second component of the title, the special problem of the federal state.

The decision of the Hague Conference on Private International Law to revisit the issue of child support (maintenance) in order to improve both the substance and the implementation of the four relevant

1 My deep thanks to Professor Carol Bruch, University of California, Davis School of Law, for her careful and critical review of this paper; the remaining shortcomings are mine alone.

2 Carol Bruch, “International Family Law as the Century Turns,” 33 Family Law Quarterly 607 (1999): “For many years the federal government was reluctant to enter into treaty obligations that would preempt state laws because family law was viewed as the proper subject of state rather than national law.” For an important critical voice against this position/attitude from a leading US conflict-of-laws authority, see Cavers, “International Enforcement of Family Support.” 81 Columbia Law Review 999 (1981), especially at 1005ff.

3 See, e.g., the relatively short shrift given the Hague Conventions’ implementation problems in the most recent substantial treatment of the field, in Martiny, “Maintenance Obligations in the Conflict of Laws.” in Vol. 247 Recueil des Cours 131 (1994-III). A noteworthy exception, however, is the mentioned contribution of Müller-Freienfels, supra n. 1, especially at 412ff.

4 It also reflects another family connection. It was our common mentor, colleague, and friend, Albert A. Ehrenzweig who used his mastery of Private International Law to point out to his American colleagues the interstate problems of excessive judicialization of child support that had not been resolved by the first effort at uniform legislation embodied in the Uniform Reciprocal Enforcement of Support Act (URESA) of 1950 and variously amended thereafter. See his “The Interstate Child and Uniform Legislation: A Plea for Extralitigious Proceedings,” 64 Michigan Law Review 1 (1965); see already also the description of this problem, among others, in Brockelbank, Interstate Enforcement of Family Support (The Runaway Pappy Act) (1960; 2d ed., with Infausto, 1971).

Conventions -- Hague 1956, New York [UN] 1956, Hague 1958, and Hague 1973, will provide an interesting test for United States participation in this form of international cooperation. The influence of the United States can be discerned in the formulation of the 1956 UN Maintenance Convention, especially in its treatment of jurisdictional issues and of the special ratification problems of the federal state, and the substantive approach of the Hague Conventions (in their recognition of the need for administrative as well as judicial remedies) parallels even if it does not simply borrow from contemporaneous US debates on the subject. Nevertheless, the UN Convention was more an invitation to the US to reconsider its historic posture than a signal of the latter's willingness to do so. That turn to more direct involvement originally was signalled with the US decision to join the Hague Conference (and UNIDROIT) in 1964, and has been confirmed with its participation not only in the negotiation of the one Convention (on international child abduction) the US has ratified but also in its work on more recent ones that the Hague Conference has produced on related subjects and that are in various stages of consideration and implementation.

The involvement of the United States in the important subsector of Family Maintenance/Child Support international cooperation, however, at least to date has moved in a different direction. The support problem unique to the United States comes from its federal not its international relations. The adoption by the majority of states of the original Uniform Reciprocal Enforcement of Support Act [URESAs already some decades ago reflected the reality that the overwhelming majority of support problems was the result of the interstate mobility of the non-custodial spouse, compared with which the problems of international mobility faded into the background. While recognition of the latter problem, and efforts to enforce its consequences at the intra-US level, have been on the agenda for half a century by now, and while indeed

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10 Supra n. 7.

11 The original Act [URESAs] was adopted by the National Conference of Commissioners on Uniform State Laws in 1950, was variously amended thereafter, and was the subject of a major revision in 1968 [URESAs]. See the review of this period (Editorial Text), 9 Part IB. Uniform Laws Annotated 235
the 1968 revision of the Uniform Law did turn out to be useful in the international context, it is a more recent legislative reform that has re-energized the effort to consider international enforcement as well.

That reform comprises both federal and (uniform) state law. It touches on procedural, substantive, and choice-of-law issues that may have an impact on future efforts at international cooperation. That cooperation by the US with its foreign counterparts in the past was based on what might be called an extra-Conventional regime; the US, however, probably will participate in the negotiations for a new Conventional regime now being planned. As a result, the recent US federal and state reforms not only will need to be reviewed by the foreign partners in both types of regimes, but may bear on the choice of regime in the future. The purpose of the present paper is, first, to recall the origin, constraints, and function of the extra-Conventional, “bottom-up” forms of transnational cooperation that the individual US States had devised over the past several decades; second, to introduce the possible impacts on these forms of transnational cooperation that the welfare-reform legislation of the 1990s has created; and, third, to speculate on the possible future forms of that cooperation that might develop within the same channels or be diverted into the mainstream of a revised Hague Convention on Maintenance enjoying US participation.

II Context

1. The Reciprocity Issue: Phase One

While the original Uniform Act dates back to 1950, its major 1968 revision, that produced RURESA, provides the best starting point for this discussion. As DeHart, on whose article most of the following history is based, has explained, that Act encouraged bilateral efforts that would work for both outbound and inbound support-order enforcement requests. Because the Act defined the responding state (the state in which the non-supporting spouse resided) to include a foreign nation, a US state agency at least could ask the foreign state to accept and under its domestic civil procedure enforce the initiating jurisdiction’s support order. In practice, given immigration and migration trends, this turned out to be of benefit primarily in the reverse situation, providing that, in RURESA’s terms, the foreign state was a jurisdiction “in which... a substantially similar reciprocal law is in effect.” Given this rather informal situation, and given the precedent of an earlier arrangement entered into in 1960 between the State of Michigan and the Province of Ontario, Canada under the original URESA, an official unit of the NCCUSL, the National Conference on Uniform Reciprocal Enforcement of Support, began the negotiation of international arrangement by individual States. The first such arrangement was concluded between California and the United Kingdom in 1972 (the latter’s ability to consider such arrangements having been established in that year thanks to the passage of the Maintenance Orders (Reciprocal Enforcement) Act of 1972). Although this official intergovernmental format could no longer be maintained once the NCCUSL ended its sponsorship of the Support Conference, an unofficial format was developed in the form of a non-

(1999). One of these versions had been adopted by every State by the time both were replaced in 1993 by the NCCUSL in favor of a new Act, the 1992 version of the Uniform Interstate Family Support Act [UIFSA], ibid. See to this history Gloria Folger DeHart, “Comity, Conventions, and the Constitution: State and Federal Initiatives in International Support Enforcement,” 28 Family Law Quarterly 89, 92 (1994). Barely off the press. that Law was revised in 1996. largely to conform it to the newly enacted federal legislation discussed infra in text at n. 28.

14 As, according to Cavers, supra n. 2, did the 1975 revisions contained in the Social Services Amendments of 1974, 42 U.S.C. Secs. 651-662.

15 Id. at 93f.

16 I do not discuss the separate problem of the modification of a support order by either the initiating or responding state.

17 RURESA. Section 2(m).
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profit entity now known as the National Child Support Enforcement Association (NCSEA). That entity, which of course was primarily involved in the implementation of interstate support orders, became the forum through and within which a number of States – led not surprisingly by California – adopted these arrangements with foreign countries. That process was significantly accelerated thanks to a 1979 British Order in Council that extended the California-style arrangement to all other States of the Union that had enacted the appropriate RURESA definition.

Among these, that with the Federal Republic of Germany may be of most interest to readers of this volume although for reasons given below it may not be the most efficient arrangement. It began with discussions between California state officials and the Heidelberg Institut für Vormundshaftswesen, soon joined by state officials from Illinois and Washington, all of whom, it should be recognized, participated in these preliminary negotiations on their own time and at their own expense. That institute, also technically an NGO (though with some Jugendamt support) was the catalyst leading to the first German involvement in this bilateral system, specifically with California. As is well-known in Germany, the practical awkwardness of fitting German civil procedure to the opportunity afforded by the RURESA structure and its single-State implementation led the Federal Ministry of Justice to draft and the Federal Parliament to adopt a statute mirroring these elements of RURESA, and in fact drafted to be available also to other

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18 See DeHart, supra n. 13, at 95. DeHart, then Deputy Attorney General of California, was instrumental in this initiative, and has been centrally engaged in both the state-by-state and federal efforts discussed below. Her engagement has been formally noted and commended by the then-Deputy Legal Adviser of the State Department for Private International Law, Peter Pfund: see same. "The Hague Intercountry Adoption Convention and Federal International Child Support Enforcement." 30 U: C Davis Law Review 647, 658f (1997).

19 DeHart, supra n.13 at 95.

20 Not that this would be their first meeting of the topic: see in particular the meticulous discussion by Müller-Freienfels, supra n. 1.

21 DeHart, supra n. 13 at 96 n. 31. Gloria Folger DeHart, who as mentioned is credited with initiation of this process, also organized her colleagues from other States to participate, and pushed the essential concept of frequent meetings of the international community of working-level participants. As she has pointed out, DeHart, id. at 101:

"The State/NCSEA/ABA Family Law Section ‘team’ returns to many of these countries for follow up. In addition, and very useful for both the states and the foreign countries involved, is the attendance of foreign child support officials at the annual NCSEA training conference where they can meet enforcement officials and attorneys involved in support enforcement from most of the states."


23 In particular, according to one commentator, German applicants could not count on a German court to play the “initiating-request” role without first going through the process of obtaining a judgment ordering payment of a support obligations. See thereto Runzi, supra n. 22 at 424f.
federal regimes, primarily those of Canada. The "inefficiency," if it is one, was that German law apparently required individual certification of each interested US State as one meeting the appropriate standards of reciprocal cooperation, which meant recourse to a variety of more or less formal assurances from State agencies, understandably a time-consuming process. The well-known "Alphonse and Gaston" dance of demonstrating mutual reciprocity to each putative dance partner obviously is made all the more complex when individual federal US States, with little experience in the conduct of foreign relations, come onto the dance floor with varying notions of the steps -- not to mention the differing understanding of their prospective partners of those different notions.

2. The Reciprocity Issue: Phase Two

It is, therefore, not surprising that efforts at more centralized approaches to the crossing of this first threshold barrier to consideration of foreign maintenance obligations have been proposed or adopted both in the United States and in other countries. To start with the latter, some countries, for example Austria and Sweden, simply included all US States that had enacted the Uniform Law in the program at once, and extended their own reciprocity to that group as a whole, either by special legislative action or by executive orders. France also adopted this approach, but only after receiving the assurance of the US Department of State that the conclusion of recognition arrangements by the several States of the Union with a foreign country was within the competence of these States under US constitutional norms. This involvement of the federal authorities (which occurred in 1980, of course with the acquiescence of the state representatives who had been negotiating the French arrangement) may have had an influence on the next stage of the reciprocity dance.

That next step was the direct involvement of the US Department of State, on behalf of the several states, in converting the existing State-foreign country arrangements into federal ones -- still, it should be noted, outside of the framework of the Convention. While this involvement had begun earlier, a strong new impulse for this centralized approach was a provision of the politically high-profile Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [sic], the principal purpose of which is "to get people off the welfare rolls." Section 371 thereof authorizes the Secretary of State, acting in consultation with the Secretary of Health and Human Services, "to designate as reciprocating countries those countries that are substantially able to meet the... mandatory requirements for such designation."


25 This derives from Section 1(3) of the AUG, which characterizes federal states as "states" in the sense of nations; Section 1(2) requires the Federal Minister of Justice to certify and announce by official act the existence in the other "nation" of a law ensuring reciprocity, a condition of application of the AUG’s procedures under Section 1(1).

26 Again, the details may be found in DeHart, supra n. 13 at 98.

27 Id. at 97


These substantive requirements will be discussed below; what is of interest here is the effort to centralize, though on a supplemental rather than an alternative basis, the adoption of bilateral agreements: to move from a cat’s-cradle to a hub-and-spoke system of relationships. Whether this is in fact an improvement or a bureaucratization of the first-described system, and whether it will in turn be supplanted by the possible US ratification of a possible total revision of the Hague Convention structure, is not yet clear.30

What is clear is that so far, as of late 1999, the Department of State had concluded only four of these new arrangements.31 with Ireland, the Slovak Republic, Poland, and the Canadian Province of Nova Scotia.32 A few other negotiations have reached an advanced state, in particular those with The Netherlands and Norway, both of which, it should be noted, had already negotiated earlier bilateral arrangements with at least some States.

II The New Substantive Requirements

A more substantive issue arose with the enactment of the mentioned “Welfare Reform” legislation. The use of the irresistible lure of federal funding of missions that are traditionally and in a sense constitutionally the province of the several States as a mechanism for imposing federal (usually minimum) requirements on the latter that could not be imposed by direct mandate is a well-known if often controversial feature of the United States administrative system.33 The new welfare regime is no exception: indeed, its “command” could not be blunter, though its choice to rest in part on criteria developed not by Congress but in a sense by the State is unique: “In order to satisfy...[funding-eligibility criteria], each State must have in effect the Uniform Interstate Family Support Act, as approved by the American Bar Association....”34 This raises the question, whether the criteria developed for purposes of interstate cooperation fit or can be adapted to the different field of international cooperation; in particular, the way and the degree to which these criteria have become the conditions of international reciprocity.

corresponding foreign declaration, or on a unilateral basis.” Section 659A, supra n. 28. According to a delegation of authority noted in the Notice cited infra n. 32, either the Legal Adviser of the Department or the Assistant Secretary for Consular Affairs is authorized to make the declaration after consultation with the other (and, presumably, after obtaining the concurrence of the Secretary of Health and Human Services).

30  Bruch, supra n. 2 at 614:

“Because the new approach provides benefits to every state each time the United States enters into a bilateral agreement with a foreign country, it is far more efficient than previous negotiations on behalf of individual states. But country-by-country negotiations nevertheless require far more time and effort than ratifying a multinational treaty.”


32  See xxxx Federal Register xxx (2000). Negotiations with the Netherlands and with Norway are well-advanced and may be completed during 2000. One procedural problem, apart from the substantive one next discussed, may be that the practice of “domesticating” even bilateral quasi-treaties may be more formal when implemented at this “high” a level as compared with the bottom-up practice that the earlier system had developed. On the other hand, even then it took the enactment of a statute (in Germany), whereas the Irish and Slovak arrangements have been based on declarations of satisfaction with the reciprocity standard by the Ministry of Justice and the Ministry of Foreign Affairs respectively.


34  42 U.S.C. Section 666(f).
1. The Problem

The reason why these criteria need to be discussed lies in one of the definitional subsections of that Uniform Act, which indirectly may have reintroduced and even sharpened a requirement of reciprocity. In order for its support orders to be honored by another State in the relatively automatic and expeditious way the UIFSA sets out, a State has to have "enacted a law or established procedures that are substantially similar to the [UIFSA] procedures...." Huff. "State" is defined specifically to include foreign nation. Taken alone, that "substantially similar" provision does not seem to differ substantially from the original (1992) UIFSA requirement that the foreign state's procedures should be substantially similar to and honor the Act's principles. The problem lies buried in the technical phrasing of the mentioned definition:

UIFSA Section 101(19). 1992 Version. "State" means a state of the United States....The term "state" includes an Indian tribe and includes a foreign jurisdiction that has established procedures for issuance and enforcements of support orders which are substantially similar to the procedures under this Act.

[Commissioners'] Comment. "Subsection (19) withdraws the requirement of reciprocity demanded by RURESA and URESA. A state need not enact UIFSA in order for support orders issued by its tribunal to be enforced by other states. Public policy favoring such enforcement is sufficiently strong to warrant waiving any quid pro quo among the states. This policy extends to foreign jurisdictions, as well, which is intended to facilitate establishment and enforcement of orders from those jurisdictions. Specifically, if a support order from a Canadian province or Mexican state conforms to the principles of UIFSA, that order should be honored when it crosses the border in a spirit of comity."

UIFSA Section 101(19). 1996 Version. "State" means a state of the United States....The term includes:
(i) an Indian Tribe; and
(ii) a foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this Act, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

[Commissioners'] Comment. "Subsection (19) withdraws the requirement of reciprocity between the several states...formerly demanded by RURESA and URESA. In the original promulgation of UIFSA, the language of Subsection (19) was somewhat ambiguous regarding the necessity of extending reciprocity to...foreign jurisdictions. By reorganizing the statutory language, the 1996 amendment clarifies that reciprocity is not required between the several states....Further, the additional language and reorganization in Subsection (19)(ii) makes clear that in this UIFSA follows the pattern of RURESA to require that a foreign nation must have substantially similar law or procedures to either UIFSA, RURESA, or URESA.

35 UIFSA Section 101(19)(B).
37 The reference to "procedures" is in the statute itself. UIFSA [1992] Section 101(19): the reference to "principles" is in the semi-official "Commissioners' Comment." thereto.
39 Id. at 411.
41 Id. at 259f.
42 The Comment points out that the issue will be moot as soon as all States enact UIFSA. "as mandated [sic] by Congress in its 1996 welfare reform." Id. at 259.
(that is, reciprocity) in order for its support orders to be treated as if they had been issued by a sister state. This is sharply different from the rule for states; amended UIFSA 1996 recognizes that in international relations the concept of reciprocity is crucial to the acceptance of child support orders by other nations."

Because one may expect this understanding of the law to influence future efforts to achieve a larger network of mutual unilateral arrangements—i.e., achieve a network of reciprocal declarations of reciprocity—it becomes necessary to explore the substantive, jurisdictional, and choice-of-laws elements of the new US regime. In particular, it becomes relevant to assure foreign jurisdictions that the new regime should not inhibit their willingness to continue on this path of mutual assurance of equal treatment any more than it should deter a State of the US from doing so. That assurance will be the more convincing the more it is based on the unavoidable details of this new statutory arrangement; that, I trust, will justify the following lengthy review.

2. The Merits

The policies underlying the child-support provisions of the new legislation are above all those of practicality, and only to a minor (though important) degree those of jurisdiction. As a leading participant in the reform process has phrased them:

“The vision for child support enforcement...is that the payment of child support should be automatic and inescapable—'like death or taxes.' This vision is reflected in three key elements: (1) Access to Information—the ability to locate individuals and assets; (2) Mass Case Processing—the capacity to work cases in volume using computers, automation, and information Technology; and (3) Pro-Active Enforcement—the ability to take enforcement action automatically, preferably administratively, without reliance on a complaint-driven process.”

Particularly important implementing elements supporting these policies, at least those important in the international context, are the methods for assuring access to location of debtors. methods that indeed resemble their analogues in the field of taxation: mechanics for the centralization of the location and also the collection functions; steps to simplify rules of civil procedure concerning the conversion of contractual or court-ordered obligations into automatic liens rather than into separately recognized judgments in the state of the debtor's location; mandated response times and deadlines; and availability of professional assistance to the spouse seeking enforcement on a non-fee basis.

3. Their Implications for Transnational Cooperation

Taken by themselves, these criteria are not in principle new. The RURESA policies already reflect them, at least to the extent that the technology of that day permitted that reflection, and of course even the 1956 New York Convention already had introduced the basic concept of administrative (rather than judicial) leadership and public financing of the costs of the process. What is new, and important for present purposes, is the "raising of the stakes" in terms of the modern identification and collection procedures and the division of these specific mandates between the federal legislation (and its implementing regulations) and the cross-referenced new Uniform Act as enacted in the several States (UIFSA). Those domestic improvements in the process have international implications.

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Whether the statute should have been so understood is another matter. For cogent criticism of this understanding, see Caswell. "International Child Support — 1999." 32 Family Law Quarterly 525, 537 (1999). One might add that the last sentence of the 1996 Comment reveals a confusion between unilateral and universal rules occasionally found in the treatment of conflict-of-laws regimes.

This may best be demonstrated by reviewing briefly the new elements of the interstate procedures that States expecting federal funding of their child-support enforcement offices, the so-called IV-D Agencies, are expected to implement. The location of the non-custodial spousal debtor of course is the beginning of the process, but for purposes of international cooperation the least remarkable. That of course, is because it is the United States, not other countries, that lacked a national Identification-Card system and that thus lacked an easy and effective way to help foreign applicants locate the US-resident obligor. The new US interstate location procedures now will give the foreign nation's incoming request a free ride on the new interstate highway. Whatever the frustrations these applicants still may experience with locating the US resident, they will be less than those experienced in the past. The US outgoing applications, on the other hand, pose no new challenges to foreign location procedures in this locational regard and, thus, no new challenges in the context of reciprocity.

More interesting from that perspective is the change in asset seizure. To take one example: If the new domestic requirement that a private financial institution shall use an account-holder's Social Security number as one searchable item permits the State collection agency to kill two birds with one stone—to identify available assets at the same time as it locates the debtor—a reciprocity requirement going this far would create a significant problem under the laws of many foreign jurisdictions. For the receiving jurisdiction to locate the foreign debtor by means of its own standard national identification system is one thing; to require disclosure of financial records, whether as pendant to that process or (as would be the case) as a separate process quite another. Fortunately, that domestic requirement is based on the one critical distinction between interstate and international cooperation, the difference in volume.

Current California statistics suggest that incoming foreign applications might reach 500 per year, of which approximately one-half come from Mexico; European ones typically do not, even in California, exceed 100, with no one country accounting for more than 20 or so. On the perhaps questionable assumption that the outgoing requests are of the same order of magnitude, it would seem that possible exorbitant asset-disclosure requests would not be serious enough to lead the US agency to deny foreign

45 Legler, supra n. 44 at 542f:

"...[The PR WORA...] significantly expands access to information...[providing] that the state child support agency must have access to two important categories of records. The first category is records of state and local government agencies, including vital statistics; state and local tax and revenue records; records concerning real and titled personal property; records of occupational and professional licenses; records concerning the ownership and control of corporations, partnerships, and other business entities;... records of motor vehicle departments; and corrections records....The second category...is certain records held by private entities, including customer records of public utilities and cable television companies and information (including assets and liabilities)... held by financial institutions."

While some of this information may be useful in the search for assets, its primary purpose is to locate the debtor. Of course, it then serves both purposes.

46 Obviously German (and other) rules on data protection and privacy would bar this kind of search were it necessary in order to locate the debtor: but assuming that this is not a significant problem in countries other than the US, the exorbitant nature of such a search, in those terms, should be an academic issue only.

47 Section 317.


49 "Questionable" because it is generally reported that the outflow of requests from California to Mexico exceeds the reverse, but statistics to bear this out, especially as to the magnitude of the difference, do not seem to be available.
applications on the ground that in this one subset the foreign state’s inability to provide that disclosure destroys the general assurance of reciprocity that remains (at least at the level of principles) a requirement. In the context of small-number searches, the location of the debtor should suffice to permit an efficient collection procedure to be initiated. Asset location is an offshoot of debtor location; only where there is a massive caseload should it be considered an important benefit to the collection process in its own right.

The third issue raised by the new procedures, that of automatic implementation of collection procedures, raises some different issues but fits this analysis as well, and permits the same policy conclusion. The single most important change here is the requirement that state law permit the automatic imposition of a lien on various types of assets, on the analogy of the typical tax lien. This kind of short-cut procedure has raised questions of procedural due process even in the United States, though the consensus seems to be that the debtor does not have a right to a pre-seizure hearing. I assume it would raise some questions in foreign jurisdictions as well, depending on its automaticity and on the rights of other claimants against the support debtor. More to the point, it might well require legislative changes in the rules of civil procedure in foreign jurisdictions. The basic point, however, remains the same. Since it is the problem of a massive case volume, and its partial resolution by means of collection efficiencies such as these, that led to the adoption of this procedure, it is not one which the US reasonably needs to insist on in the international context. Thus, its possible absence there again should not lead to a rejection of the assurance of reciprocity by the foreign state.

The underlying social problem of inadequate flow of support obligations, with its attendant burden on the state’s social-welfare norms and budgets, makes it instrumentally appropriate – putting aside questions of fairness – that the state take over from the complainant the burden of pursuing the defaulter. The resolution of this remaining domestic problem now has been expedited by PRWORA, which “externalizes” the initiative required to pursue the defaulting spouse by placing it on the state. That alone has not posed problems in the reciprocity context in the past (other jurisdictions generally also provide this support) and should not do so in the future. It is not only the costs of the process that is at issue in the interstate context, however, but also the power of the governmental complainant to obtain short-cut procedures from its sister-State’s agencies. The new, so-called “expedited” procedures the US States now are obliged to adopt in order to handle the routine situations as a condition of obtaining federal financial support are intended to avoid the need for involvement of the judiciary at any stage of the typical process. While permitting more complicated judicial proceedings for the occasional more complicated situations. In this new, procedural sense, they do go fairly deeply into new territory and indeed “revolutionize the collection process.” The following paraphrase thereof makes the point:

"...[O]rdering a genetic test: subpoenaing information ...: changing payees in cases of assignment:

50 Legler, supra n. 44 at 547:

"Under current law, unpaid support payments become a judgment by operation of law. The PRWORA builds upon this existing law through two crucial changes. It provides that liens on the unpaid child support obligations must additionally arise by operation of law, and that the liens must be able to be imposed administratively."


52 Indeed, even the question of interstate cross-border cooperation in this procedural context remains somewhat problematical. The adoption of a federal legislative mandate that each State was obliged to give full faith and credit to such automatic liens though unregistered in the state of the debtor’s assets’ location, contained in PRWORA Section 368, suggests this concern.

53 Legler, supra n. 44 at 551ff.

54 Id. at 553.
...intercepting or seizing periodic or lump-sum payments: ...attaching and seizing assets of the obligor held in financial institutions; attaching public and private retirement funds; imposing liens; and increasing the amount of the monthly payment to cover...arrearses.\textsuperscript{55}

Of all of the issues discussed so far, this seems to be the only one that could give foreign jurisdictions pause, and by doing so raise the issue of reciprocity against their own applications to US State authorities. To the extent that US States can recharacterize even this set of powers as relevant to and thus limited to the mass-volume situations, that danger can be avoided.\textsuperscript{56}

Finally, the financially induced incentive for States to adopt the newest Uniform Support Law (specifically, the 1992 version of the Uniform Interstate Family Support Act with all amendments adopted through 1997\textsuperscript{57}) brings another major change into the system; namely, the expansion of personal jurisdiction achieved through the long-arm provisions of UIFSA,\textsuperscript{58} coupled with a uniform choice-of-law standard.\textsuperscript{59} That is sufficiently different from the substantive provisions to warrant separate discussion.

4. New Jurisdictional Issues

The jurisdictional issues raised by the new Uniform Act of course are not novel, and should be placed in the context of more general arguments about in-personam jurisdiction. As is well-known, the principal expansion of the forum court's personal jurisdiction over a foreign child-support obligor rests on some specifically identified earlier relations of that obligor to the obligee in their earlier joint domicile; otherwise, in the interstate context, it (unfortunately) remains debatable whether a foreign obligor can without more be haled\textsuperscript{60} into a forum court. Extension of the grounds of personal jurisdiction by statute or treaty may alleviate a constitutional objection, but that depends significantly on the details and the context.\textsuperscript{61}

Older debates about jurisdictional incongruities between US and other, especially Civilian regimes focus on the exorbitance of "tag" jurisdiction as permitted by the former and on the exorbitance of

\textsuperscript{55} Id. at 552. As Legler goes on to point out (id. at 556), each State also is obliged to permit revocation of drivers', professional, occupational, and recreational licenses.

\textsuperscript{56} One interesting indicator of the degree of federal micromanagement of the procedures, worth at least a footnote: One minor condition of obtain IVD funding by the states is their creation of a case-closure system that does not close unresolved cases except under limited conditions. Part 45, Code of Federal Regulations, Section 303.11 provides that a case may not be closed unless one of a set of criteria exist which, as to international cases, includes:

"(6) The noncustodial parent is a citizen of, and lives in, a foreign country, does not work for...a company with headquarters or offices in the United States, and has no reachable domestic income or assets; and the State has been unable to establish reciprocity with the country."

\textsuperscript{57} PRWORA Section 321.

\textsuperscript{58} UIFSA Section 201. 9 U.L.A. Section 501 (1992).

\textsuperscript{59} UIFSA Section 303, 9 U.L.A. Section 503 (1992).


jurisdiction based on the domicile of the spousal/child claimant as permitted by the latter. Those distinctions remain active and bedevil any effort at international harmonization, as the early negotiations of a possible new Hague Convention on Jurisdiction and Recognition of Judgments in Civil and Commercial Matters well demonstrate.

In that sense, UIFSA brings no significant qualitative change to the older debates and, I would argue, presents few no problems.\textsuperscript{62} What is, as a matter of specifics, new is contained in Section 201, characterized by the Conference’s Official Comment thereto as containing “a broad provision for asserting long-arm jurisdiction to give the tribunals in the home state of the supported family the maximum possible opportunity to secure personal jurisdiction over an absent respondent.”\textsuperscript{63} Reasonably assuming, as Bruch does,\textsuperscript{64} that the quoted provision would pass that constitutional muster, it remains to ask whether its use in the international maintenance regime—a matter still to be reviewed\textsuperscript{65}—would seem exorbitant to the jurisdiction responding to a US submission of a maintenance order.\textsuperscript{66} That question is relevant (only) to the extent that denial of a major ground of personal jurisdiction by that jurisdiction would in turn raise the specter of non-reciprocity.

So far as Germany is concerned, that question might be answered by analogical recourse to the jurisprudence interpreting Article 1(2)(1) of the Brussels Convention, which has permitted recognition of even lump-sum judgments for child or spousal maintenance as falling without the Article’s exclusion of suits concerning “rights in property arising out of a matrimonial relationship” from the Convention’s reach.\textsuperscript{67} Extrapolating from that opening, it might be possible then to rely on the bases for personal

\textsuperscript{62} Earlier PUDRs were not held up by this difference between bases of personal jurisdiction: thus, one should expect that only those bases that indeed are new and qualitatively different could cause any problems.

\textsuperscript{63} Comment to Section 201, 9 Part IB U.L.A. 270 (1999). In fact, with perhaps one exception, the text of the statute will sound less revolutionary to a Civilian audience:

“In a proceeding to establish, enforce, or modify a support order or to determine parentage, a tribunal of this State may exercise personal jurisdiction over a nonresident individual...if:

1. the individual is personally served...within this State;
2. ....;
3. the individual resided with a child in this State;
4. the individual resided in this State and provided prenatal expenses or support for the child;
5. ....;
6. the individual engaged in sexual intercourse in this State and the child may have been conceived by that act of intercourse;
7. ....;
8. there is any other basis consistent with the constitution of...the United States for the exercise of personal jurisdiction.”

\textsuperscript{64} Supra n.2 at 613.

\textsuperscript{65} See the discussion at p. infra.


jurisdiction that, within the circle of the Convention Member States, are acceptable in this recognition-and-enforcement context. There are, however, some problems with that syllogism. The principal problem lies in the well-known asymmetry of the Convention when it comes to non-Member States. The acceptance of personal jurisdiction based on the fact that the plaintiff is a "weak party" and should not be required to seek relief abroad is limited to the circle of Member States of the Brussels/Lugano Conventions. It probably would not be available for the benefit of a third-country judgment brought to a Convention state for recognition and enforcement. If, on the other hand, the previously discussed German statute were construed as permitting recognition of, say, California support orders that were based on jurisdictional grounds no broader than those of Brussels/Lugano, a matter of German law I am not competent to discuss, the analogy would fit, and the problem would evaporate.

Substantively speaking, however, it has to be noted that the jurisdictional bases found in the new US regime include some that may be difficult to sell if the sales argument were to be grounded on the jurisdictional bases indirectly accepted in that Convention alone. Especially those bases that relate to the establishment of paternity and conflate this with the support issue may be troublesome, given the fact that the earlier reciprocal arrangements seem to have kept these matters separate. In the end, however, I remain of the opinion that these jurisdictional issues would not, standing alone, create significant roadblocks for the drive towards a larger net of bilateral enforcement arrangements. In the context of the prior statutes and, especially, of the corpus of prior Conventions, they are not a radical breakout towards a limitless reach of the US courts and agencies. Thus they should not trigger reciprocity concerns.

Nor is the choice-of-law provision of the new Uniform Act significantly different, or more homeward-bound, than its predecessors. The basic rule calls for the responding tribunal to apply "the procedural and substantive law, including the rules on choice of law, generally applicable to similar [local] proceedings... and... to determine the duty of support and the amount payable in accordance with the [local] law..." That general provision, however, is subordinate to the specific section providing for the choice of law; specifically, that "[t]he law of the issuing state governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages under the order." In addition, the longer Statute of Limitations is to be applied, whether of the issuing or responding

189/02 (July 28, 1990) on this point. This is the position in Bruch, "The 1989 Inter-American Convention on Support Obligations," 40 American Journal of Comparative Law 817, 826f (1992). Indeed, the drafters' expectation that the new personal-jurisdiction provision of UIFSA would not hinder international enforcement was based on this "weaker-party forum" concept; see Bruch, supra n. 60 at 1055f. As she recognizes, the analogous provisions of the Hague Enforcement Conventions of 1958 and 1973 are only partly applicable, since they bear on the recognition and enforcement of such "weaker-party forum orders, but do not create that type of jurisdiction directly. Bruch, "The 1989 Inter-American Convention on Support Obligations." supra at 827f.

There is an interesting parallel here to the judicially created doctrine that family-law issues, though raised in litigation between persons who are citizens of different States, are outside the realm of diversity jurisdiction, most recently confirmed and limited in Ankenbrandt v. Richards. 504 U.S. 689 (1992).

68 It would also be possible, of course, to base this line of reasoning on the 1973 Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations. supra n. 66. See the decision of the ECJ in Van den Boogaard v. Laumen. supra n. 66 on this point.


70 Weintraub, supra n. 65 at 376f, also points to this basis as a novum even in the interstate context.


72 UIFSA Section 604(a). id. at 357.
It seems to me that only this latter mandate, possibly conflicting with the hoary distinctions between procedure and substance that have grown up around the prescription problem, could create a tension for the development of further non-Conventional bilateral arrangements. This, too, is not significant enough to shake the conclusion that, on balance, none of these issues rise to the level of calling the existence of reciprocity into question.

5. The Adequacy of Partial Reciprocity

The principal reason for this hopeful conclusion lies in the limited role these extensions of substance and procedure actually play in the current system of creating bilateral arrangements, either by each State or by the US, with one country at a time, especially if the arrangements are based on the PUDRs - the parallel unilateral declarations of reciprocity and thus of automatic enforcement. The question is not whether Germany would accept that the described extensions fall within its previous reciprocal arrangements with various US States, but whether, if it does not, these States then would deny reciprocity to German requests for enforcement on the basis that Germany no longer was granting reciprocity to their requests. That question is for each State to answer, and a State would, I submit, be shooting itself and its clients in the foot were it to throw out the baby with the bathwater and scuttle a satisfactory working arrangement because it is not as perfect as the new interstate regime, based, as it is, on the quite different problems of high-volume caseloads. It is true that the new jurisdictional and choice-of-laws extensions (if the latter are such) are less driven by the mass-case phenomenon than are the substantive ones, but that alone should not lead to a different outcome.

This argument, however, assumes a certain flexibility or discretion on the part of the competent State authority to make such a judgment. That assumption has not been controversial in the past, when general congruence of "principles" rather than close congruence of "laws and practices" sufficed to secure mutual assurances of reciprocity. The uncertainty, such as it is, has been introduced by the puzzling retrograde view of the Uniform Law Commissioners that suggests a qualitative difference between interstate and international respect. In that situation, I would argue that both the assumption and the consequences of its inaccuracy are the less problematic the more this is a matter for each individual State to decide. Both the assumption and the consequences are different in the case of the federal takeover of the bilateral arrangements, discussed earlier. It is conceivable that the federal authorities will become mired in the problem of securing a difficult and unnecessary unanimity among their client States as a condition precedent to continuing with what already is a slow process: although to be fair the more recent of the new arrangements were made after both PROWRA and UIFSA II were on the books.

73 UIFSA Section 604(b).
74 See, e.g., Ehrenzweig, Conflict of Laws
75 Another useful approach is that of Spector, "Toward an Accommodation of Divergent Jurisdictional Standards for the Determination of Maintenance Obligations in Private International Law." (unpublished. 1999). By analogy to the practice under the Child Custody and Abduction Conventions, he proposes that the receiving jurisdiction should not look at the basis for personal jurisdiction claimed by the sending jurisdiction when it issued its order, but at whether on the facts of the underlying documentation the former could have asserted personal jurisdiction, in the reverse situation, on a ground available under its law. This would be especially useful in reducing foreign objections to the US exercise of "tag" jurisdiction. Thus, if the jurisdictional bases of Section 201 (3), (4), and perhaps even (6), would have been specifically available to the receiving jurisdiction, the fact that jurisdiction in fact was based on subsection (1) should be irrelevant.
76 As the referenced Federal Register Notice, supra n. 32, indicates, the Ireland, Slovak Republic, Nova Scotia and Poland Declarations of Reciprocity were made after September 10, 1997. By the same token, however, it should be noted that the Notice provides that:
The interesting question, of course, is whether moving these issues and discussions to a new diplomatic conference that seeks to create a revise Maintenance Convention is a way to cut the federal knot, or is a way of rejecting an adequate solution in favor of a better but unreachable one. The Congressional adoption – in part directly in PROWRA, in part by reference through UIFSA – of the described substantive, procedural, and jurisdictional extensions as conditions to be met in future reciprocal arrangements does not augur well for the first conclusion. It is not a constitutional issue: that is, a treaty would override the prior federal as well as state statutory regimes. It is, however, a significant issue of political authority, nerve, and credibility; an issue that, in particular, pits two rival views of states’ rights against each other. It has been close to impossible in the past, and remains difficult to this day, for the US Executive Branch to find support from the Legislative Branch for treaty “intrusion” into subjects historically left to the States, constitutional as that “intrusion” may be.

If the Executive Branch is fated to strive for the full international implementation of the new and therefore by definition more perfect version of the interstate arrangement, it may well be trapped in the paradoxical situation of denying some States their freedom to opt for the less perfect but more feasible arrangement. Since for US States it is Mexico and to a lesser extent Canada that provide the substantial plurality (in some cases the majority) of international issues, and since implementation procedures are frequently revisited and improved by their authorities at the working level, the lessons learned from those experiences may be more effective as heuristic tools for more general improvement than a decade of diplomatic discussions focused on more formal issues. Treaties are a blunt tool for this kind of work.

“[t]hese procedures must be in substantial conformity with mandatory elements set out in the statute: procedures for the establishment of paternity and support orders for children and custodial parents; a system for the enforcement of orders, including procedures for the collection and distribution of payments under such orders; providing administrative and legal services without cost to the U.S. applicant; and the designation of an agency to serve as a central authority.”