PROPERTY-BASED JURISDICTION
AND DUE PROCESS OF LAW

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"In establishing bases for jurisdiction in the international sense, a legal system cannot confine its analysis solely to its own ideas of what is just, appropriate, and convenient. To a degree it must take into account the views of other communities concerned. Conduct that is overly self-regarding with respect to the taking and exercise of jurisdiction can disturb the international order and produce political, legal, and economic reprisals."¹

INTRODUCTION

Denmark's rules of civil procedure (Retsplejeloven, herein: "Rpl.") are presently being revised: the rules governing the extraterritorial jurisdiction of Danish courts must be modified to conform with the European Community's Jurisdiction and Judgments Convention (herein: the EC "Judgments Convention").² The Judgments Convention requires, inter alia, that Denmark modify Rpl.'s "exorbitant" § 248 (2) (godsværneting, literally: "property-jurisdiction") in relation to EC domiciliaries. In the present writer's opinion, however, the time is ripe for a more extensive revision of § 248 (2) than that mandated by the Convention. An example will serve to illustrate the issues involved:

An American businessman (headquartered in New York) starts his holiday abroad at his summer residence near Rome. He then buys an Italian sports car (worth $10,000), enjoys a pleasant tour across the Continent, delivers the car to a transatlantic shipper in Copenhagen, and flies back to his business in New York. Meanwhile, a Swedish domiciliary, who has a claim against the American for $1 million in damages, gets wind of the latter's vacation - and the car's presence in Denmark. Shortly thereafter, the American is duly served in New York with documents naming him as defendant in an action commenced in the Danish High Court (landsret) and alleging jurisdiction based on the presence of the defendant's property in Denmark (godsværneting).³ (As regards the substance of the case, plaintiff alleges that New York law

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² Proposals for legislative amendment are currently being considered by Denmark's Retsplejerad.
³ The presence of the car in Denmark at the time process is served (forkyndelsesstidspunkt) confers jurisdiction irrespective of whether the property has been attached. See Gomard, Civilprocessen (2d ed. 1984) 553f with note 39.

It should be noted that § 248 (2) applies to all formuerelige cases, i.e. re. all claims having economic value and based on private law; see Gomard, id. at 552.
The American fails to enter an appearance, and a default judgment is entered against him for the full amount of plaintiff's claim.

We would of course expect the Swede to seek at least partial satisfaction by proceeding against the defendant's car in Denmark. In the present context, however, two other questions assume greater importance: (1) the extent to which the remainder of the judgment can be satisfied in New York, and (2) the effect of the Jurisdiction and Judgments Convention as regards satisfaction of the judgment within the European Community.

I. RECOGNITION AND ENFORCEMENT IN NEW YORK

A. The General Rule.

Some continental jurists may be surprised to learn that the courts of New York (and most other American states) recognize and enforce a variety of foreign judgments, inter alia "foreign country money judgments". This general rule applies even as regards default judgments and irrespective of the fact that the country rendering the judgment - e.g. Denmark - does not recognize judgments rendered in New York (i.e., "reciprocity" is not a precondition). This judge-made rule is known as the doctrine of "comity". Reaching well beyond the dictates of public international law, it serves the admirable purpose of "discouraging repeated litigation of the same question."

B. The Exception.

While we might expect a doctrine like comity to carry some sort of built-in "safety-valve", there are, in fact, relatively few defences available to a party seeking to resist enforcement: it would not, for example, help the American in our example to establish that the Danish judgment was based on a misunderstanding of New York substantive law. However, to the extent a state is willing to recognize the judgments of a foreign court, requirements

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5 Restatement F.R.L. § 491, Comment i.

6 Restatement F.R.L. § 491, Comment d and Reporters' Note 1. See also Rpl. §§ 223a & 479 and Gomard, supra note 3, at 476 with note 12.

7 See Philip, Dansk international privat- og procesret (3rd ed. 1976) 82.
