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ENFORCEMENT OF JUDGMENTS AND ARBITRAL AWARDS IN MEXICO
JORGE A. VARGAS*

INTRODUCTION

This article is divided into four parts. First, I included a survey from U.S. and Mexican law firms on the enforcement of foreign judgments and the implementation of international commercial arbitration in Mexico. Second, this article addresses the drastic changes that took place in Mexico in order to transform a country which was rather ethnocentric and extremely territorialistic to a country that is open. Mexico is now trying to follow the latest trends in conflicts of law and enforcement of judgments. The third area of focus is a discussion of the enforcement of foreign judgments which will be addressed in three categories: letters rogatory; homologación [homologation]; and additional information concerning the enforcement of foreign judgments in Mexico. Finally, this article focuses on the very specific requirements established by the Código Federal de Procedimientos Civiles [Federal Code of Civil Procedure] in order to be able to enforce a judgment in Mexico. Throughout this note I will be referring to articles that I have previously written, especially Enforcement of Judgments in Mexico: The 1988 Rules of the Federal Code of Civil Procedure.3

I. QUESTIONNAIRE

A questionnaire was sent to several major law firms in the United States, specifically in California, Texas, and New York. The same questionnaire was sent to major law firms in Mexico, specifically in Mexico City, Monterrey, Guadalajara, and Tijuana. The questionnaire consisted of ten questions, namely:

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1. Homologación, "in Spanish law, [is] the tacit consent and approval inferred by law from the omission of the parties, for the space of ten days, to complain of the sentences of arbitrators, appointment of syndics, or assignees of insolvents, settlements of successions, etc. Also the approval given by the judge of certain acts and agreements for the purpose of rendering them more binding and executory." BLACK'S LAW DICTIONARY 735 (6th ed. 1990).


(1) Whether the law firm in question had enforced an American judgment in Mexico, or not;

(2) What kind of judgment was it? Was it a judgment having to do with commercial questions, family questions, criminal law questions, fiscal questions, etc.;

(3) In what Mexican city was the judgment going to be enforced? After all, it is different to enforce a judgment in Mexico City than in Tanguansicaro, Michoacan;

(4) Was this judgment coming from either a U.S. federal or state court;

(5) Was this a recent development or was it based on the enactment of the 1988 amendments to the Código de Procedimientos Civiles para el Distrito Federal4 [Federal Code of Civil Procedure for the Federal District] and the Código de Comercio5 [Code of Commerce];

(6) What does your law firm think about the experience of the Mexican courts handling these types of judgments? Was the Mexican court or the Mexican judge learned in this field, familiar with the international conventions, familiar with the Federal Code of Civil Procedure as amended in 1988;6

(7) In the process of enforcing this judgment did your law firm confront any substantive or procedural problems? Was there local counsel in Mexico opposing the enforcement of this judgment directly before the court or maybe on appeal? Did the Ministerio Publico [Public Prosecutor] have any intervention in this matter;

(8) Did the law firm request coactive enforcement, for instance, the attachment of assets? If so, was the process of homologación7 needed;

(9) What was the final outcome of this international petition; and

(10) How long and how much did it cost to enforce the judgment? Of the law firms that I had contacted, none had ever enforced any judgment whatsoever in Mexico. Therefore, today's discussion is an academic analysis of the enforcement of the foreign judgment's section of the Federal Code of Civil Procedure.

Another survey was conducted concerning contemporary international commercial arbitration in Mexico. The American Chamber of Commerce in Mexico City, the Camara Nacional de Comercio8 (CNC) of Mexico, the Chamber of Commerce of Mexico City, and other types of merchant associations were contacted about their interest in international commercial arbitration. The results are as follows.

There are no official Mexican sources reporting on any international commercial arbitration taking place in Mexico. Therefore, that type of statistical information is not readily available, even from the Secretaria

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7. See supra note 1.
8. Confederation of National Chamber of Commerce
de Comercio y Fomento Industrial [Secretariat of Commerce and Industrial Development]. Other departments of the Mexican executive branch are the Secretaria de Relaciones Exteriores\(^9\) (SRE) or the Mexican consulates. However, neither the SRE nor the Mexican consulates yielded any information.

The Mexican international arbiters, who are thirteen in total, have been recognized by the American Arbitration Association (AAA) and the International Chamber of Commerce (ICC). These organizations stated that there is a clear perception in Mexico today that international commercial arbitration is gaining ground quite rapidly. It is maintained that because of the collapse of the Mexican economy in December of 1994, and its continuing impact on the commercial situation in Mexico, international commercial arbitration in Mexico is nevertheless beginning to increase.

Mexico conducts international commercial arbitration based upon the Code of Commerce as amended in 1989\(^10\) through the two mechanisms that I mentioned earlier, the AAA and the ICC. These Mexican arbiters are not confident about the Inter-American Convention on International Commercial Arbitration, instead they prefer the AAA or the ICC.

According to the AAA, there are five Mexican attorneys who have been listed and recognized as international arbiters. Four of the five are also arbiters for the ICC. The ICC has twelve Mexican attorney arbiters doing this type of work. The financial amount of international commercial arbitration ranges from $100,000 to $250,000 for most businesses, to millions of dollars for other exceptional cases. The international arbiters for the AAA and the ICC, however, did not want to disclose specific amounts.

Regarding the nature of the arbitration, the origin, subject, and substance of this international commercial arbitration focused on two areas; breach of contract and recission of a contract. Currently, the arbitration agreement is becoming a popular type of mechanism included in most international contracts. Accordingly, this is why there are few separate international commercial arbitration agreements. Depending on the amount of the arbitration and the complexity of the issues, the average length of time for international commercial arbitration is about ten months.

Finally, the CNC has two or three minor international arbitrations every year. Because of the North American Free Trade Agreement\(^11\) (NAFTA) and the United States being the largest investor in Mexico today with about 60% to 65% of the total investment in Mexico, one would assume that the ACC has a more active role in promoting international commercial arbitration, but they do not. That concludes the

\(^9\) Secretariat of Foreign Affairs.
update on international commercial arbitration, next is the enforcement of judgments.

II. BACKGROUND

For over half a century, Mexico's absolute territorialism\textsuperscript{12} led to the virtual exclusion of foreign law from that country's court system. From 1932 to 1988, over fifty years, Mexico was so territorialistic that no foreign judgments were enforced in Mexico. Mexico applied Mexican law only, even to tourists or transient foreigners in Mexico. It was a negative situation and many authors in Mexico were critical about that development. As a result of this absolute territorialism in Mexico, four very negative consequences ensued.

First, no enforcement of foreign judgments took place in Mexico. Second, there was no application of foreign law in Mexico. Third, the substantive and procedural codes did not have any provisions on the enforcement of judgments or conflict of laws in Mexico.\textsuperscript{13} Specifically, Article 12 of its Civil Code for the Federal District and Territories of 1932 provided that the Mexican laws, including those which refer to the status and capacity of persons, apply to all the inhabitants of the Republic, whether nationals or foreigners, and whether domiciled therein or transient.\textsuperscript{14} Fourth, for almost a century Mexico adopted a rather isolationist policy, maintaining itself apart from the most important codificatory developments in the area of private international law which were taking place at that time at the global and regional levels. For example, Mexico did not sign the Montevideo Convention of 1889,\textsuperscript{15} or the Bustamante Code of 1928,\textsuperscript{16} nor any of the Hague Conventions\textsuperscript{17} concluded during the first decades of the 20th century. It was not until the early 1970's when Mexico decided to come out of its "domestic or nationalistic

\textsuperscript{12} For a lucid analysis of Mexico's origin, content and application of its territorialist doctrine, see Lionel Pereznieto Castro, \textit{La Tradition Territorialiste en Droit International Prive dans les Pays d'Amérique Latine}, 190 \textit{RECUEIL DES COURS} 271, 330-35 (1986).


\textsuperscript{14} \textit{Codigo Civil para el Distrito y Territorios Federales en Materia Comun y para toda la Republica en Materia Federal} [Civil Code for the Federal District and Territories in Ordinary Matters and for the entire Republic in Federal Matters], 43 (Porrua 52a. ed. 1984), \textit{translated in The Mexican Civil Code} (M.W. Gordon trans., 1980). Arts. 13-15 of this Code should also be considered as essential components of this absolute territorialist doctrine.

\textsuperscript{15} Montevideo, Uruguay was chosen as the venue for the First South American Congress on Private International Law [\textit{Primer Congreso Sudamericano de Derecho Internacional Privado}], held in 1888-89. This congress produced eight international conventions, one on the rules applicable to conflict of laws. See T. Esquivel Obregón, \textit{Conflict of Laws in Latin American Countries, 27 YALE L.J.} 1030, 1042 (1918).

\textsuperscript{16} The Bustamante Code or Code of Private International Law [\textit{Codigo de Derecho Internacion Privado}] devoted 124 articles to rules on private international law questions.

\textsuperscript{17} Mexican authors showed little interest on the codificatory efforts undertaken at the Hague Conferences on Civil Procedure (1905) and on Recognition and Enforcement of Foreign Judgments (1925), nor on the Geneva Protocol on Arbitration Clauses, Sept. 24, 1923, 27 L.N.T.S. 157, or the Geneva Convention on the Execution of Foreign Arbitral Awards, Sept. 26, 1927, 92 L.N.T.S. 301.
cocoon” adopting a more constructive role, particularly at the regional level. 

In 1988, Mexico’s isolationist attitude changed during the administration of Presidente Miguel de la Madrid. President de la Madrid was influenced by a group of leading Mexican jurists. It was a group of Mexican specialists in the area of private international law that approached Presidente de la Madrid through the SRE, and the Secretaria de Gobernacion [Secretariat of the Interior] to make him realize both the convenience and necessity of opening up Mexico to all the latest trends as reflected in most international conventions in use at that time.

As a result, from 1975 to 1985, Mexico adhered to six major Inter-American conventions, including those on Letters Rogatory and its Protocol, Proof of Information regarding Foreign Law, and the Convention on General Rules of Private International Law. Then, in 1987 and 1988, Mexico became party to twelve additional international conventions, the most important conventions are: the Inter-American Convention on Jurisdiction in International Sphere for the Extraterritorial Validity of Foreign Judgments, the United Nations Convention on Contracts for International Sale of Goods, and many others.


19. Mexico became an active participant at the first three of the Inter-American Specialized Conferences on Private International Law [Conferencia Especializada Interamericana sobre Derecho Privado Internacional], reprinted in 14 I.L.M. 325 (1975) [hereinafter CIDIP]. CIDIP-I was held in Panama City, September 14-30, 1975. This conference produced six conventions and Mexico “ratified” five of them; CIDIP-II, held in Montevideo, Uruguay, in April and May of 1979, concluding eight conventions out of which Mexico “ratified” six; and CIDIP-III, held in La Paz, Bolivia, in May of 1984. This conference approved four conventions, all of them “ratified” by Mexico.


Mexico’s adherence to these numerous international conventions resulted in a dual problem at Mexico’s internal level: these conventions formally became the “Supreme Law throughout the Union” pursuant to Article 133 of the Mexican Constitution. Under Mexican constitutional law, this article is interpreted in virtually the same terms as the Supremacy Clause provision contained in the United States Constitution. Therefore, Mexico felt that it needed to incorporate into Mexico’s domestic legislation the principles contained in the applicable international conventions. However, Mexican judges and legal practitioners were unfamiliar not only with the provisions in those conventions, but especially with the idea of applying foreign law in Mexico.

The second problem stemmed from the existence of a dual legal regime controlling international conflict of laws matters. This situation led to the enactment of legislation in Mexico designed to regulate conflict of laws questions.

The legislative technique utilized by the Federal Congress to introduce the needed additions was the following: since the text of the Federal Code of Civil Procedure lacked virtually any provisions on this matter, the legislature decided that it was simpler and more practical to create a special chapter exclusively devoted to addressing international procedural questions in a more detailed and systematic manner. Some minor adjustments were made to the Code of Civil Procedure for the Federal District, making pertinent references to the Federal Code when appropriate.

In December, 1988, Mexico adopted a new domestic legislative policy in symmetry with internationally recognized trends in private international law. This change was accomplished by three presidential decrees that

29. Article 133 reads:

This Constitution, the laws of the Congress of the Union which emanate therefrom, and all treaties in accordance therewith, made or to be made by the President of the Republic, with the approval of the Senate, shall be the Supreme Law throughout the Union. The judges of each State shall conform to the said Constitution, statutes and treaties, notwithstanding any provisions to the contrary that may exist in the Constitutions or statutes of the States.

Constitución Política de los Estados Unidos Mexicanos.

30. U.S. Const. art. VI, § 2. It appears that this provision in the United States Constitution inspired the corresponding articles in Mexico's Constitutions of 1824 and 1857, from which the text was reproduced in the current Article 133.

31. See Const. art. 76, para. 1. (Mexico's constitutional system for approving treaties is patterned after the United States' system: the Mexican Senate has the “exclusive faculty” to approve those international treaties and diplomatic conventions entered into by the Executive).

32. C.F.P.C. arts. 543-77 (a new “Fourth Book,” entitled “International Procedural Cooperation,” comprised of six chapters and 34 articles was added to the C.F.P.C. The titles of each of the six chapters are: I. General Provisions; II. International letters rogatory; III. Competence on procedural questions; IV. Reception of evidence; V. Competence regarding enforcement of judgments; and VI. Enforcement of judgments).

33. According to the decree published in the, D.O., 7 de enero de 1988, the following articles were amended or added to the Code of Civil Procedure for the Federal District: (A) art. 40, paras. II and III; 108, 198, and 284 were amended; (B) arts. 604-08 were amended, although the new ch. VI on “International Procedural Cooperation” was added; and (C) para. IX to art. 193, art. 284 Bis, art. 337 Bis and a second paragraph to art. 893, were added. See C.P.C.D.F. D.O., 23 de mayo de 1996 (as amended) (Mex.).
amended (1) the Civil Code of the Federal District,\(^{34}\) (2) the Code of Civil Procedure for the Federal District,\(^{35}\) and (3) the Federal Code of Civil Procedure.\(^{36}\) These legislative amendments created Mexico’s most profound private international law reform during this century.

III. DESCRIPTION AND ANALYSIS OF THE 1988 AMENDMENTS TO THE FEDERAL CODE OF CIVIL PROCEDURE

The 1988 amendments to the Federal Code of Civil Procedure covered four major legal areas: (1) application and proof of foreign law in Mexico; (2) processing of letters rogatory; (3) international cooperation on evidentiary questions; and (4) enforcement of foreign judgments.

A. Application and Proof of Foreign Law in Mexico

As enacted in 1943, the Federal Code of Civil Procedure contained only three articles regulating matters pertaining to international procedural cooperation questions.\(^{37}\) To correct this deficiency the Mexican legislature decided to create a new section in the Code—*Libro Cuarto* [Fourth Book] formed by one title, six chapters and thirty-four articles,—devoted entirely to these questions.\(^{38}\)

Currently, a Mexican court is legally empowered and probably within its jurisdiction, to apply California law or any other foreign law to a dispute in Mexico. Concurrently, there are a number of cases trying to obtain the deposition of Mexican nationals for suits which were filed before American courts. One of the problems is to determine how the letters rogatory will be admitted; are we going to follow the Inter-American Convention for the Taking of Evidence Abroad, or something else? Is the United States judge going to send that letter rogatory directly to the Mexican counterpart, competent judge, the Mexican consulate, or maybe neither? These are a few of the questions that a law firm will be confronting when the firm is to be involved in this type of international civil litigation.

B. Letters Rogatory

What is a letter rogatory? Traditionally, the word *exhorto* has been utilized to refer to the official communication a judge in Mexico sends

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34. "Decreto por el que se Reforma y Adiciona el Codigo Civil para el Distrito Federal en Materia Comun y para toda la Republica en Materia Federal" [Decree by which the Civil Code for the Federal District on Ordinary Matters, and for the Republic on Federal Questions, is hereby amended and added], D.O., 7 de enero de 1988.


38. *Id.*
to another in the same country requesting the performance of some act within the ambit of the latter's territorial jurisdiction. The term *carta rogatoria* refers to the same kind of communication when used at the international level. However, following the practice of the pertinent Inter-American conventions, the Federal Code of Civil Procedure uses both terms indistinctly. 39

Article 550 of the Federal Code of Civil Procedure provides a general definition of letter rogatory:

Letters rogatory to be sent abroad shall be the official written communications containing a petition to carry out those procedural acts which are necessary in a given case. Said communications shall contain the necessary information, as well as the certified copies, notifications, copies of the complaint and any other pertinent annexes, as may be necessary. No other additional formal requirements shall be necessary regarding letters rogatory received from abroad. 40

For instance, how is a law firm going to be able to send this letter rogatory from a judge in New York City to a judge in Mexico City? According to the Code, there are four avenues to send a letter rogatory. First, the interested parties can send a letter rogatory directly. For instance, the attorney in New York City handling this case can get the letter rogatory, and that letter rogatory then is going to be sent down to Mexico to local counsel. I would recommend for any law firm involved in this process to always hire local counsel because local counsel is the one who knows the judge, knows the judicial and political atmosphere, and is going to provide you with current technical advice regarding the Mexican legal system. Also, local counsel will inform you on the ability and experience of the Mexican judge. Therefore, it is absolutely indispensable to hire local counsel.

One problem is that if you are going to be using the direct approach, then the local counsel in Mexico certainly has to be somewhat familiar, hopefully very well acquainted, with the procedure and with the president of the corresponding superior tribunal in the state where the letter rogatory is going to be served or enforced.

Second, it is likely that, as an interested party, the defendant in Mexico is going to oppose the serving or enforcement of the letter rogatory because it was sent directly through interested parties. Mexicans and Mexican courts perceive that it is more important when the letter rogatory goes through the official channels, or through diplomatic channels. For example, when a U.S. judge sends the letter rogatory to a Mexican judge, Mexican judges sometimes feel threatened if they receive this document written in English and translated into Spanish, legalized and so forth, from a New York City federal court. Mexican judges say, "What am I going to do with this thing? If I make a mistake, they are going to

40. Id. art. 550, D.O., 26 de marzo de 1926.
terminate my judgeship. Forget it. Send it through the diplomatic channels."

The third way to send a letter rogatory is by consular or diplomatic agents. Today, Mexico has 41 consulates in the United States. In most of the consulates, they have one consul who is in charge of serving summons, letters rogatory, and enforcement of judgments. The Mexican consulates can serve them from the United States to Mexico and vice versa. The Mexican consulate officer is a Mexican attorney and, therefore, may also be an additional source of information for your party.

To learn more information, contact the Mexican consulate officer in charge and try to explore the situation. The consulate will tell you how much it is going to cost, who is a good interpreter, a good translator for your document, how the letter rogatory appears from a legal viewpoint, what are the chances to enforce a judgment, and the annexes needed to accompany your document.

The fourth area covered by the 1988 amendments to the Federal Code of Civil Procedure is the competent authority area. The competent authority in most countries usually means that it is either the judicial branch or the executive branch, which has been expressly named in the international convention. For example, Mexico had to provide information indicating which official branch will be handling this information. Under Mexican law, that official agency is the SRE; namely, the Ministry or the Secretariat of Foreign Relations or Foreign Affairs in Mexico City. Therefore, this federal entity is the competent authority to send the letter rogatory.

For example, to send the letter rogatory to the SRE, the federal judge in your city is going to send that letter rogatory to either the State Department or first to the Department of Justice and then to the State Department. The State Department in Washington, D.C. will send that letter rogatory to the American Embassy in Mexico City. Finally, the American Embassy in Mexico City is going to deliver the letter rogatory directly to the SRE. Although this is a convoluted procedure, this is how the letter rogatory proceeds.

Another article that merits a comment is Article 554 of the Federal Code of Civil Procedure. This Article addresses the question of homologación or exequatur [let it be executed]. This is the formal procedure that must be initiated before a competent Mexican court when an international letter rogatory received from a foreign nation does not involve the performance of "procedural acts of a merely formal nature." Rather, it is the coactive enforcement of specific acts, such as the repossession of an asset, access to certain documents or files, compliance of specific conditions, etc.

Known at the international level as exequatur, this procedure consists in the formal procedure that must take place in a court of law. Otherwise it will not fully satisfy or comply with those specific requirements established by the applicable Mexican domestic legislation to provide a foreign judgment, an arbitral award, or a judicial resolution with what is known as para dotarlo de fuerza ejecutiva [executive force] under Mexican law.
Article 555 of the Federal Code of Civil Procedure attempts to simplify the letter rogatory procedure. Article 555 gives discretion to the court at the State of destination [Tribunal exhortado] to allow for the exceptional simplification of formalities, different than the national procedures. Article 555, at the request of the judge of the State of origin or of the interested party, provides that “this shall not result in prejudice to the public order and especially to the constitutional rights [of a Mexican national or corporate entity].” The request in question should contain “the description of the formalities whose application is demanded for the enforcement of the letter rogatory.”

This author knows many Mexican judges and has high regard for federal judges in Mexico, however, the same cannot be said for state judges. Therefore, it is better to handle your business through federal courts in Mexico because state courts continue to be nationalistic, territorialist, and inexperienced when handling these types of questions.

Although the Federal Code of Civil Procedure attempts to simplify the letter rogatory procedure, federal and state judges in Mexico are unwilling to simplify it. The reasons are varied but basically there are a fear of liabilities and political repercussions that keeps federal and state judges from simplifying the letter rogatory procedure.

C. Taking of Evidence

Another requirement is that the letter rogatory must be accompanied by a number of additional documents. For instance, if you are going to try to take evidence abroad, you will need copies of the complaint and written deposition questions. Contracts, deposition questions, or whatever is pertinent to the affair must be enclosed in your letter rogatory. An authentic copy of the judgment has to be duly certified and legalized by the Mexican consulate, and an authentic copy of the constancias [judicial record] must be included.

In Mexico, all of these documents must be translated into Spanish by a properly certified and duly authorized translator or interpreter by the Superior Court of Justice in the Mexican state where the case is occurring. In California, interpreters are usually outstanding, but in other states the translators are not proficient in Mexican-Spanish. Sometimes you have a translator who is, for example, Argentinean, Colombian, Costa Rican or Panamanian, and they use legal terminology that is inapplicable in Mexico. This creates problems. Accordingly, it is strongly recommended to employ a Mexican or Mexican-American translator who is familiar with Mexican legal terminology.

Finally, the party enforcing the judgment in Mexico must give a domicile in Mexico in the same place where the Mexican court is located. Again, this is why you need local counsel. Having local counsel, establishes a local domicile where the judgment is enforced, which is required by the

Federal Code of Civil Procedure. If you do not have that local domicile, that would be one way for a Mexican opposing counsel to file an amparo and to destroy the whole procedure because that would be a violation of due process under Articles 14 and 16 of the Mexican Constitution.

D. Enforcement of Foreign Judgments

Article 571 adds eight conditions that must be complied with to provide the foreign judgment with "executive force" under Mexican law when the judgment is to be enforced in Mexico coactively, pursuant to special proceedings known as exequatur or homologación.

Even when each of these conditions are fully complied with, there is no guarantee the foreign judgment will be enforced. The Mexican judge has discretion to deny the requested enforcement when it is proven that similar foreign judgments are not enforced in the country of origin.

Additionally, the presence of a public prosecutor is required because some legal areas are subject to the exclusive jurisdiction of Mexico and no foreign judgments are allowed to be legally enforced in Mexico.

Such limits to the jurisdiction of a foreign court are found when the Mexican judge encounters an area reserved exclusively to the jurisdiction of Mexico. These areas are enlisted in Article 568: (1) in cases involving lands and waters located in Mexico's national territory, including its subsoil, air space, the territorial sea and the continental shelf, whether with respect to realty or concession rights, or the leasing of said assets; (2) marine resources in Mexico's 200 nautical mile exclusive economic zone; (3) acts of authority or pertaining to the internal regime of the Nation, including federal and state agencies; (4) the regime applicable to the Mexican embassies and consulates abroad, and their official functions; and (5) in the cases provided by other laws.

QUESTIONS AND COMMENTS

Roberto Valeria, Portland, Oregon: Professor Vargas I hope you can prove my memory faulty, but the last time I went into the issue of the

42. C.F.P.C. art. 376-77, D.O., 26 de marzo de 1926.
43. In Mexico, the legal concept of amparo involves legal protection of rights specified in the Law of Amparo by procedural remedies. It has been described as having "five diverse functions: (1) protection of individual guarantees; (2) testing allegedly unconstitutional laws; (3) contesting judicial decisions; (4) petitioning against official administrative acts and resolutions; and (5) protection of farmers subject to the agrarian reform laws." H. Fix Zamudio, A Brief Introduction to the Mexican Writ of Amparo, 9 Calif. W. Int'l L.J. 306, 316 (1979).
44. C.F.P.C. art. 571, D.O., 26 de marzo de 1926; see VARGAS, supra note 3, at 401-03 (for a listing of these eight conditions).
45. C.F.P.C. art. 568, D.O., 26 de marzo de 1926. Art. 42 of the Mexican Constitution enumerates the parts that comprise Mexico's "national territory," such as the thirty-one states; islands; the continental shelf, cays and reefs; the waters of the territorial seas and internal waters, and the air space, in accordance with international law.
46. Id. By a presidential decree published in the, D.O., 6 de febrero de 1976, President Luis Echeverría Alvarez amended art. 27 of the Mexican Constitution to establish a 200 nautical mile exclusive economic zone. See Jorge A. Vargas, La Zona Economica Exclusiva de Mexico, EDITORIAL V. SIGLOS (1980).
47. Id.
Inter-American Convention for Letters Rogatory and its Protocol, I recall that the way that the Protocol affected the convention in Mexican-American disputes was that letters rogatory had to go through the central authorities of the country, and not through the interested parties. This can take approximately six months to a year to go through these procedures. Unless I am mistaken and something has happened in the interim, that is what we are faced with in United States-Mexico disputes, is that right?

Jorge A. Vargas: Well, as I suggested there are four legal authorized avenues in order to send a letter rogatory from the United States to Mexico. Based on the Inter-American Convention on Letters Rogatory and its Protocol, the official competent authority (namely the SRE) is the one that must get the letter rogatory. However, I can tell you that, letters rogatory based upon the Inter-American Convention for the Taking of Evidence Abroad have successfully gone through the judicial channels. That is, from judge to judge, without touching upon or using the competent authority.

Carlos de la Garza Santos, Monterrey, Mexico: Who do you consider official translators in the States of Mexico?

Vargas: Generally, use the translators who have been authorized in Mexico by the Superior Court of the State in question.

Santos: Yes, I prefer those translators too because they have complete authority to authenticate the document in the United States.

Cesar Garcia Mendez: Lastly, when you were referring to the notarization and legalization before the Mexican consulate, it seems that that may not be necessary any more, now with the Apostille,48 [an addition] because the powers of attorney do not need any more legalization because of the Apostille process.

Vargas: Yes, in some areas you do not use them because of the Apostille. And also, I did not mention this, but in international commercial arbitration, you do not need letters rogatory. I should clarify that in these cases one does not need a letter rogatory because the arbiters are not judicial authorities, per se, to issue the award, and therefore they cannot issue a letter rogatory.

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