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**THE JUDICIAL COOPERATION PROJECT BETWEEN
ARIZONA AND SONORA
D. MICHAEL MANDIG, ESQ.***

In the spring of 1993, Dr. Boris Kozolchyk of the University of Arizona Law College in Tucson formed a non-profit organization called The National Law Center for Inter-American Free Trade (NLCIFT), which focused on identifying legal and practical problems in commerce in the Americas. Dr. Kozolchyk asked me to act as the coordinator of a Judicial Cooperation Project for the law center. Initially, the project was designed as a state-to-state initiative between the States of Sonora in Mexico and Arizona in the United States. These two states share a common border and a long history of cultural, business and legal cooperation. Taking advantage of this tie between Sonora and Arizona, the Arizona Supreme Court invited the Supreme Court of the State of Sonora to Phoenix in June 1992 to discuss the exciting future for these two states regarding the law. We defined a project directed toward identifying problems in service of process, collection of evidence, and enforcement of judgments that are shared by our respective judicial systems and practicing lawyers.

In addition, I have analyzed the extent to which border states like Arizona and Sonora have the ability to attack problems such as enforcement of judgments on a local level, rather than waiting for the many, many years that it takes to negotiate and implement a bilateral or a multilateral treaty or convention. In August of 1993, I attended the convention of the Mexican National Congress of State Court Judges' in San Carlos, Sonora, Mexico. The National Congress is an organization comprised of chief justices of the state supreme courts of Mexico that meets annually to discuss a variety of issues. They are reputed to act with a fairly single mind and a single unified voice when they decide to act. At the convention, we reviewed the project launched between Arizona and Sonora. As a result, Justice Julio Patiño of the Supreme Court of Vera Cruz has agreed to draft a model statute dealing with the subject of recognition and enforcement of foreign judgments suitable for adoption by the legislatures of each of Mexico's thirty-one states.

The notion that a particular nation is trying to figure out long-term solutions to international relations problems is probably unheard of in the international law field. It is an idea fraught with uncertainty, but we think the Law Center is on the right track. In the United States, the first question which must be addressed is whether United States constitutional law prohibits such activities which might be regarded as intrusions into the area of foreign relations. It is my opinion that, in the area of

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enactment of rules of what I would call "judicial housekeeping," the state courts and their legislatures are free to establish rules as long as such rules do not conflict with a treaty or a clearly articulated foreign policy. In the area of enforcement of judgments, the United States has neither.

With respect to Mexico, the situation is similar. Although Mexico has a constitutional provision which, like the United States Constitution, prohibits individual Mexican states from making compacts or agreements with foreign powers, the National Congress of Mexico, on January 2, 1992, enacted a law which is rather remarkable. It is called the *Ley Sobre Le Celebración de Tratados*. This law creates what is called an *acuerdo interinstitucional*, an inter-institutional agreement. In effect, the law authorizes the states of Mexico to enter into agreements with states of another country or with international organizations. These agreements may pertain to issues such as recognition and enforcement of judgments. This law is one area in which Mexico's attempt to reform and harmonize the judicial system is a couple of steps ahead of the United States. By authorizing its several states to move into this area, which has been traditionally regarded as one of strictly national concern, Mexico has opened the door to work on a cooperative level to resolve enforcement of judgment problems.

It is important to note that the state courts in Mexico do play, or can play, a very important role in enforcement of foreign judgments. Each of the Mexican states and federal districts has a code of civil procedure that has provisions that deal with this topic, as does the *Código de Comercio*. Loosely speaking, the most antiquated provisions are found in the state codes, and the most modern ones are found in the federal code. There is obvious need for harmonization within Mexico on this issue as well as between the United States and Mexico. In February 1994, an important step was taken to harmonize the enforcement of judgments at a meeting hosted by the Law Center of The Board of Directors of The Mexican National Congress of State Supreme Court Judges with United States judges and legal solicitors in Tucson, Arizona. In attendance at the meeting were the chief justices of several Mexican states, including Sonora, Colima, Zacatecas, Vera Cruz, Baja California del Sur and Querétaro. Three other justices from the Sonoran Supreme Court also attended the conference. The meeting included two days of working sessions. The first working day was an overview presentation to the Mexican justices describing the United States legal system, including constitutional law, tort and product liability law, comparative civil procedure and the law governing asset-based lending. Distinguished scholars in these fields spoke to the Mexican justices.

On the second working day, Chief Justice Julio Patiño spoke about the enforcement of out-of-country judgments in Mexican state courts. As part of his participation in the efforts of the NLCIFT's Judicial Cooperation Project, Justice Patiño authored a proposed state code provision that would govern and improve procedures for enforcement of foreign judgments in Mexican courts. The proposed statute was translated

into English by Dr. Kozolchyk and presented by Justice Patiño to the February conference. The statute, which contemplates direct transfer of judgments from the rendering court to the Mexican state tribunal, is currently under review in the United States and Mexico. Well-received by the Mexican judges, the statute may be presented to selected state legislatures in the fall.

