:	III. III.	Parallel proceedings in civil law countries	81 84
Chapter	II.	Active transborder judicial co-operation	88
Subch	apte	er 3. Transborder service of process and other documents .	89
В.	ope: The	vice of process as an indispensable field of transnational coration	89 92
	III.	The establishment of Central Authorities	94 97 97
	IV. IV.	languages	98 101
C.	Ren	naining problems regarding serving of process (and service other documents)	102
	III. III.	The problem of languages and translations	102107
		 The French solution The US solution 	107 110
		Assistance in due search of the whereabouts of the defendant needed and achievable?	112
		receipt generally to be recommended?	112
Subch	napt	er 4. Transborder discovery, disclosure and taking of evi-	113
		ecific information needed	117
	III.	Specific information needed from the opponent Specific information needed from a third party for the pur-	117
		pose of being used in ongoing proceedings	118
		 The Hague Convention 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters Compelling or even only permitting direct access to information located abroad, a circumvention of the 	119
		Hague Evidence Convention?	125
В.	Ge	neral information needed	127
	III.	US "discovery" and possible co-operation with judicial authorities of other jurisdictions	129
		 American-style discovery and the Hague Convention on the Taking of Evidence	130
		England	133 137
		4. The distinction between discovery from litigants and discovery from third parties and the US efforts, in this	
		context, to facilitate co-operation	141

Judicial and Administrative Co-operation	17
Part II. Judicial co-operation in special fields	225
Chapter III. Recent developments in transborder insolvency	227
Subchapter 8. Brief survey of international insolvency law	227
A. Basic data of transborder insolvency law	227
III. Lack of special provision regarding transborder reorganization III. Lack of convention or treaties	227 228 229 230
 Disadvantages for foreign creditors Access to information on the whereabouts of the debtor's assets 	230231
IV. The limited powers of the administrator to collect assets located abroad	232
B. Specific developments in view of transnational judicial co- operation in an insolvency management	234
III. England	235
 Ancillary winding-up of companies	235237
III. Australia	242
III. United States of America	243
 Ancillary proceedings under § 304 Bankruptcy Code Collective ancillary proceedings under § 303 (b) (4) in conjunction with § 305 American reorganization proceedings limited to American assets by agreement with the foreign administrator . 	244249252
4. The availability of general remedies or devices 5. Conclusion	253 253
IV. Switzerland	254
 Legal assistance only by conducting ancillary collective proceedings The impact of the distribution plan of the main proceed- 	256
ings	256
3. Interim protective measures	258 259
5. Recognition of foreign bankruptcy orders	260
IV. Conclusion	260
Subchapter 9. Two encouraging examples of integrated transnational insolvency management after the collapse of worldwide acting groups of corporations	262
A. The Maxwell case	262
III. The facts of the case	262 267
B. The Bank of Credit and Commerce International case	268
III. The facts of the case	268 275
C. The Maxwell and the BCCI cases — a lesson for civil law countries?	275

Judicial and Administrative Co-operation	15
III. Means of English law for obtaining information from abroad and the issue of its transborder impact	142.
 An innovative impact of the new Civil Procedure Rule? Transnational enforcement of the duty to identify wrongdoers? 	142 145
C. Special devices of co-operation	146
III. Direct action on foreign soil of the court where proceedings are pending	146
son?	148
 The unique liberalism of the United States The reluctance of other legal systems Execution of Letters of Request absent any treaty or 	148 151
convention?	153155
Subchapter 5. Provisional measures as a vehicle for transborder judi-	
cial co-operation	156
A. A brief survey of some systems of interim measures of provisional protection	157
III. Germany	158
1. The "Arrest" as a means to protect money claims	160
 (a) Degree of specificity	160 160
disclose assets	161 162
(e) Prior service of process	162
non-monetary claims	162
(a) Legal nature of the "Einstweilige Verfügung" in gen-	162
eral	163
parties"	164
3. Orders for interim payment or other interim performance	164 165
(a) Interim payments	165 166
III. Romanist countries, in particular France	166
 Degree of specificity	167
parties	168 168 169 169
III. The English "Mareva Injunction"	169
1. The legal nature of the remedy	170

TABLE OF CONTENTS

Introduction. Jurisdiction and the idea of cross-border judicial co-operation	25
Part I. Cross-border co-operation regarding litigation in commercial and other matters involving economic interests	29
Chapter I. Passive co-operation among judicial authorities	31
Subchapter 1. Transborder recognition of judgments	31
A. Recognition of foreign judgment and transborder judicial co- operation	31
III. Recognition contrasted to enforcement	31 34
systems	34
(a) The United States	35
(b) England and Wales	37
2. The civil law approach to recognition and enforcement of foreign judgments	39
(a) Germany and France	39 40
III. "Recognition" of foreign judgments or assimilation of foreign judgments to comparable domestic judgments?	41
B. Developments in some salient aspects of international co-opera- tion in view of securing transnational effectiveness of judicial decisions	42
III. The personal jurisdiction requirement	43 46
III. The Rhine Navigation jurisdiction IV. Recognition of the fruits of sophisticated forum shopping.	48 52
Subchapter 2. Forum non conveniens and parallel proceedings	53
A. Forum non conveniens in general	56
III. United States	56
 Public and private factors weighed in the context of forum non conveniens considerations Identification of an appropriate alternative forum Undertakings of the defendant, and conditions imposed on him, to co-operate in the alternative forum Philosophy and practical impact of the US variant of the forum non conveniens doctrine 	58 63 66
III. England	70 73
B. Avoidance of parallel proceedings	76
III "I to althe mandanc" in common law everence	

ACADÉMIE DE DROIT INTERNATIONAL

FONDÉE EN 1923 AVEC LE CONCOURS DE LA DOTATION CARNEGIE POUR LA PAIX INTERNATIONALE

RECUEIL DES COURS

COLLECTED COURSES OF THE HAGUE ACADEMY OF INTERNATIONAL LAW

2000

Tome 284 de la collection



2001

MARTINUS NIJHOFF PUBLISHERS
The Hague/Boston/London

Subchapter 10. New [draft] conventions on cross-border insolvency.	277
A. The EC [Draft Convention] Regulation on Insolvency ProceedingsB. The UNCITRAL Model Law on Cross-Border Insolvency	278 280
Chapter IV. Family matters	283
Subchapter 11. The enforcement of family support claims abroad	284
A. Co-operation between judicial authorities of more than one State for the purpose of facilitating the enforcement of support claims and of support orders	285
III. Domestic legislation and international Convention on the Recognition and Enforcement of Support OrdersIII. The UN Convention on the Recovery Abroad of Mainte-	285
III. Parallel legislation in the United States and other States IV. Transnational enforcement of interim payment orders IV. Divergencies of legal entitlement to support and transnational enforcement of support orders	287 290 291 293
B. Transborder adaptation of maintenance orders and of other enforceable titles relating to maintenance.C. Miscellaneous points	294 298
II. Finding of the original court binding in adaptation proceedings?II. Maintenance orders made in simplified proceedings.	298 301
Subchapter 12. The transborder protection of minors	302
A. The co-operation within the framework of the Convention of 1961	303
III. The obligation to inform foreign authorities	304 306 306
B. Co-operation and the new Hague Convention on the Protection of Children of 19 October 1996	307
III. Transfer of proceedings	308 308 309
C. The Convention on the Civil Aspects of International Child Abduction and its implementation in the member States	310
III. The deceived parent's option to directly seise the courts	311
 The deceived parent's right to seise the courts abroad The deceived parent's right to seise the courts of "his 	311
own" country	313 313
 The Central Authority in the State of the abduction The Central Authority in a "foreign" State Co-operation among Central Authorities 	314 317 317
III. Collateral safeguards and assisting institutions	318 319
D. Adoption	320
III. Existing forms of co-operation	322

P. Schlosser

		 Passivity for the purpose of avoiding double litigation. Forum non conveniens and the collision of basic philosophies of the legal systems	385 386
	III.	Unilateral judicial activism for the purpose of assisting foreign courts	389
		 Co-operative activities of the court at the mere request of an interested party	389 394
	III.	Joint transborder case management	396
		 Public authorities acting in the field of "public law" Insolvency proceedings Simultaneous and co-ordinated measures of interim pro- 	396 397
		4. Protection of minors	398 401
_		only?	402
В.		e picture of judicial co-operation in terms of special roaches	403
	III.	Central Authorities	403 404 407
		 Lending of remedies to other jurisdictions The use of "foreign" legal devices in the interest of transborder justice 	408 410
	IV.	Centralization of the case management after interim joint preparation	411
	IV.	Transborder judicial co-operation by tolerating foreign authorities acting on domestic soil	413
	VI.	Direct communication between courts prior to the taking of decision	417

Judicial and Administrative Co-operation	19
III. The new Hague Convention of 1993	326
	326
by the Convention	327
E. Co-operation absent any international treaty or convention?	329
Chapter V. On the way to breaking through the "public law taboo"	330
Subchapter 13. Transborder co-operation in the field of taxation	333
A. Co-operation by involving the ordinary courts in the transborder collection of taxes?	334
B. From occasional assistance in providing information to the new trend of mutually collecting taxes	338
III. Mutual information through double-taxation convention III. The mutual collection of taxes	338 341
 The extension of the double taxation conventions Value added tax with the European Communities Recent developments in cross-border tax examination 	341 343
and collection	344
wise assist foreign taxation authorities	345 356
Subchapter 14. Transborder co-operation in criminal matters	346
A. Basic facts	351
 III. The enforcement of foreign judgments involving deprivation of liberty III. Transborder enforcement of sanctions other than detention III. Transborder "recognition" of judgments in criminal matters 	351 353 355
C. Judicial assistance for criminal proceedings conducted or to be conducted abroad	360
 III. Extradition as a provisional measure for ensuring the enforcement of the expected judgment	361 363 366 368 368 369
D. Criminal prosecution at the request of other States E. Recent developments within the European Union	371 372
III. The creation of the Schengen system	373 375
Part III. Final analysis	381
A. The picture of judicial co-operation in terms of various degrees of intensification	381
III. Deliberate judicial passivity as an expression of the will to co-operate	381
1. Recognition of foreign judgments	381

 Ancillary orders Other common law jurisdictions not including the Unit States 	
IV. The United States	
B. Forms of co-operation	
III. Assistance for the main proceedings conducted or to be conducted abroad by interim measures of protection	n-
 England and Ireland The United States Civil law systems Two timid recent decisions of the European Court Justice 	182 184 of
III. Transborder recognition and enforcement of interim measures of protection	as-
 Traditional approaches	188
C. Subsequent interaction of the respective courts for the purpo of avoiding hardships for either party	ose
 The impact of a modification of an interim measure of prefection on the recognition and enforcement of the measure abroad	ro- ure 194
modify or even to set aside a foreign court's measure interim protection	of 196 in
the case of an unsuccessful plaintiff in the main proceedir. 4. The delicate border-line between co-operative measures a undue interference in foreign proceedings	ngs 197 and
Subchapter 6. Enforcement of foreign judgments	
A. Quick access to means of compulsion and safeguarding effect of surprise vis-à-vis the debtor	the 201 202
III. Currency and interest	204
D. Protection of the defendant against double execution E. Enforcement shopping	208 209
 III. Three examples of possible enforcement shopping III. Jurisdiction to enforce and enforcement shopping III. Certification of the court of origin for the purpose of informing the enforcement of recognition authorities abroad 	210 211 rm- 214
Subchapter 7. Judicial co-operation and the costs of judicial proce	
A. Specific deficiencies in access to justice abroad	215
B. Attempts to improve the state of the law	218
III. The embodiment of the access to justice movement in special conventions	