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OBTAINING EVIDENCE IN THE USSR IN INHERITANCE CASES

PYOTR S. RABINOVICH*

I. INTRODUCTION

There exists among American lawyers a dispute about the method of obtaining testimony in the Soviet Union in inheritance cases and the effect of discovery devices under Soviet law. The reason for this dispute revolves around interpretations of Soviet statutes, and, in particular, whether testimony of Soviet citizens can be obtained by letters rogatory or by judicial commissions. This article will analyze relevant United States case law involving Soviet laws on the issue, and will conclude that, contrary to popular belief, letters rogatory are not the only method of obtaining evidence from Soviet citizens.

Letters rogatory have been defined as "[a] request by a court in an independent jurisdiction, that a witness be examined upon interrogatories sent with request."¹ It is a medium "whereby one country, speaking through one of its courts, requests another country, acting through its own courts and by methods of court procedure peculiar thereto and entirely within the latter's control, to assist the administration of justice in the former country."² The rules and practice of the foreign court are the procedural laws in such cases.³

In contrast, "a 'Commission' is a process issued by a court designating one or more persons as commissioners and authorizing them to conduct a recorded examination of a witness or witnesses under oath, primarily on the basis of interrogatories annexed to the commission, and to remit to the issuing court the transcription of such examination."⁴ The distinction between being granted letters rogatory and having a commission issued is important because a witness is not

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1. *Magdanz v. District Ct.*, 222 Iowa 456, 458, 269 N.W. 498, 499 (N.Y. Sup. Ct., Spec. Term 1936).

2. *Tiedemann v. The Signe*, 37 F. Supp. 819, 820 (E.D. La. 1941).

3. *U.S. Neckwear Corp. v. Sinanco Co.*, 176 Misc. 51, 52, 26 N.Y.S.2d 546, 547 (1941).

4. In the Matter of the Application of the District Attorney of Queens County for the Issuance of Letters Rogatory, 132 Misc. 2d 506, 508 n.2 (N.Y. Sup. Ct., Crim. Term 1986) (quoting N.Y. CRIM. PROC. § 680.10(2) (McKinney 1984); *People v. Carter*, 37 N.Y.2d 234, 371 N.Y.S.2d 905, 333 N.E.2d 177 (1975)).

subject to cross-examination under letters rogatory.⁵

In moving for issuance of letters rogatory in a Soviet court to obtain a Soviet citizen's testimony, a lawyer will cite to the translation of section 62 of the Fundamentals of Civil Procedure of the Soviet Union and the Union Republics [hereinafter Fundamentals of Civil Procedure].⁶ The title of this section is "Execution of Letters Rogatory from Foreign Courts and Presentation of Letters Rogatory by the Courts of the USSR to Foreign Courts."⁷ In reviewing this section, the attorney will notice that there is no provision for taking testimony within the territory of the Soviet Union other than by letters rogatory. On the other hand, the opposing attorney may rely on a different translation of the same section of the Fundamentals of Civil Procedure entitled "Execution of Judicial Commissions of Foreign Courts and Application by the USSR Courts with Commissions for Foreign Courts,"⁸ or he could rely on a translation of section 436 of the Code of Civil Procedure of RSFSR⁹ which is entitled "Enforcement of Judicial Commis-

5. Estate of Johannes Heinrich Janes, N.Y.L.J., April 25, 1979, at 12, col. 3.

6. The Fundamentals of Civil Procedure were adopted on December 8, 1961 by the USSR Supreme Soviet. They are in force throughout the Soviet Union. They are found in the official publication of all USSR Legislative acts in the Vedomosti Verkhovnogo Sovieta SSSR (The records of the USSR Supreme Soviet) [hereinafter Ved. Verkh. Sov. SSSR]. The Fundamentals of Civil Procedure and amendments thereto are published in the Ved. Verkh. Sov. SSSR (1961) No. 50, item 526; (1972) No. 33, item 289; (1977) No. 21, item 313; and (1979) No. 42, item 697.

7. *Fundamentals of Civil Procedure of the USSR and the Union Republics*, in LEGISLATIVE ACTS OF THE USSR 178 (Progress Publishers, Moscow 1974).

8. See W.E. BUTLER, *THE SOVIET LEGAL SYSTEM, LEGISLATION & DOCUMENTATION* 448 (1978).

9. Each of the 15 Union Republics of the Soviet Union has its own Code of Civil Procedure. These Codes consist of three groups of rules:

- a) rules that reproduce the USSR civil procedural law, namely, the Fundamentals of Civil Procedure;
- b) rules that implement and develop the USSR civil procedural law and
- c) rules that may be enacted by the Legislative bodies of the Union Republics in accordance with their competence, which govern procedural questions not addressed by USSR law.

These codes are in force within the boundaries of the given Union Republic, and together with the Fundamentals of the Civil Procedure and other Soviet Legislation concerning civil procedure they constitute Soviet civil procedural law. Soviet Supreme Court decisions usually cite to both the Fundamentals of Civil Procedure and Codes of Civil Procedure. The courts of the Union Republic (Supreme Courts of the Union or Autonomous Republics, Court of the Region (oblast, krai) or the people's courts (narodnyi sud)—which usually are the courts of original jurisdiction for both criminal and civil cases) cite only to the Codes of Civil Procedure. All the Civil Procedural Codes of the Union Republics have only minor, editorial or chronological differences, thus, this article will cite to the Code of Civil Procedure of the Russian Republic (RSFSR) of which Moscow is the capital. Under such circumstances the corresponding sections of the civil pro-

sions of Foreign Courts and Application by Soviet Courts with Commissions to Foreign Courts."¹⁰ Both of these translations give a basis to conclude that testimony within the territory of the Soviet Union can be obtained by Judicial Commissions. Finally, if the court considering the motion is not confused with these translations, a possibility exists of presenting a fourth translation of the same section of law, which uses neither the words, letters of request nor letters rogatory, but rather, incorporates the words rogatory commission.

The basis for such different translations is the Russian term "sudebnoye poruchenie." An explanation of the different translations is found in the case of *Estate of Siideroff*.¹¹ In that case, the New York State Assistant Attorney General asked Professor W.E. Butler of the University of London, the translator of the Fundamentals of Civil Procedure from Russian into English, to explain the discrepancies in the translations. Professor Butler answered:

My approach to legal translation is rather more literal than Sdobnikov's, [who translated the words "sudebnoye poruchenie" as letters rogatory]¹² for in my view the English translation should as fully as possible undertake the Russian expression in English without changing the meaning of the Russian term by recourse to terms we commonly use that may have their own nuances in the common law tradition. The two Russian words above made it clear that the courts alone are involved, which is not evident from the English "letters of request;" moreover, the expression "porychenie" is a much stronger term in Russian than request.¹³

Thus, Professor Butler prefers to translate the Russian words "sudebnoye porychenie" to mean judicial commission rather than letters rogatory or letters of request because he thinks that the English expression "judicial commission" better reflects the involvement of the court in the proceeding.

To determine whether Professor Butler's analysis, that the expres-

cedural codes of other Republics will also be understood. The Code of Civil Procedure of RSFSR [hereinafter GPK RSFSR] was adopted on June 11, 1964 by the RSFSR Supreme Soviet and is published in *Vedomosti Verkhovnogo Sovieta RSFSR* (1964) No. 24, item 407.

10. THE CIVIL CODE AND THE CODE OF CIVIL PROCEDURE OF THE RSFSR, (A.K.R. Kiralfy trans. 1964); *The Soviet Codes of Law*, in 23 LAW IN EASTERN EUROPE, (W.B. Simons ed. 1980).

11. N.Y.L.J., Feb. 18, 1982, at 6, col. 6.

12. FUNDAMENTALS OF LEGISLATION OF THE USSR AND THE UNION REPUBLICS 230 (Progress Publishers, Moscow 1974).

13. See *supra* note 11.

sions letters rogatory and letters of request convey a meaning of less court involvement is correct, it is necessary to grasp the full meaning of the Russian word "yuridicheskii." This word can be translated into English as "juridical" or "legal" signifying a branch of government or social institution connected with the enforcement of law. In the Soviet Union, juridical bodies (organs) are not only the courts; they include the notary public offices, the public prosecutors offices (procuratura), arbitrators and even the offices of the Bar Association. Thus, an expression "juridical commission" will mean not only a commission issued by a court, but also a commission issued by any foreign juridical body. The following are commissions of juridical bodies: a commission of a foreign investigation office to collect testimony of crimes committed in the territory of the Soviet Union, during the Second World War; a commission of a United States Surrogate's Court to the Soviet Union's State Notarial Offices for the performance of certain notarial activities such as the protection of inherited property; and a commission of a law office in the United States to the division of the Moscow Bar Association—"Iniurcolleguia"¹⁴ to conduct in the Soviet Union a court procedure to establish a judicial fact concerning family relations between the testator and heirs. All of these commissions are juridical, but not all are issued by the courts.

Soviet Legislation gives an exact definition of juridical commissions. Section 30 of the Law on the State Notariat adopted by the USSR Supreme Soviet on July 19, 1973 names such commissions as "Commissions of Foreign Organs of Justice."¹⁵ The Soviet Union Ministry of Justice adopted on February 28, 1972 "Instructions on the Order of Rendering Legal Assistance by the Courts and State Notarial Offices of the USSR to Foreign Institutions of Justice and Concerning the Order of Application for Legal Assistance to such Foreign Institutions."¹⁶ The terminology of this Soviet law creates a distinction between commissions issued to and by a court and those issued to and by

14. "Iniurcolleguia" is a branch of the Moscow Bar Association and acts on the basis of a by-law, approved March 26, 1937 by the Presidium of the Moscow Bar Association. The Lawyers of "Iniurcolleguia" represent foreigners in the Soviet Union and conduct cases for Soviet citizens abroad.

15. Ved. Verkh. Sov. SSSR (1973) No. 30, item 393. For an English translation see BUTLER, *supra* note 8, at 191.

16. Article 64 of the Statute of the Soviet Union Ministry of Justice (March 21, 1972). The Ministry of Justice coordinates the fulfillment of treaties on the rendering of legal assistance entered into by the Soviet Union. Article 12 of the Statute gives the Ministry of Justice authority to promulgate instructions within the limits of the Ministry's competence. See "Sobranie Postanovlenii Pravitel'stva Syuza Sovetskikh Sotsialisticheskikh Respublik"—the collection of decisions of the USSR Government [hereinafter SP SSSR (1972) No. 6, item 32].

other institutions of justice such as a state notariat office, the public prosecutor's office and a branch of the bar association. Thus, the preferred English translation of the Russian words "sudebnoye porychenie" would not be letters rogatory or juridical commission, but should be Commission of the Courts.

II. THE LANGUAGE OF UNITED STATES CASE LAW

For many years United States courts accepted the view that letters rogatory was the only method of obtaining testimony of witnesses in the Soviet Union and other East European Countries. Such a view nevertheless was the basis for conflicting decisions. In some cases the application to issue letters rogatory was granted, in others the application was denied. It is necessary to analyze at length the typical holdings that brought the courts to contrary conclusions.

In *Estate of Johannes Heinrich Janes*,¹⁷ the court denied petitioner's motion which sought to obtain, pursuant to CPLR 3108, the testimony of two witnesses by way of letters rogatory addressed to an appropriate court or tribunal in the Soviet Union. The court stated that letters rogatory is a disclosure procedure of last resort to be used in obtaining the testimony of a possible recalcitrant party if the country where the witness resides will not permit a designated person to conduct a deposition. The court in this case noted that letters rogatory is not a favored disclosure device because the witness is not subject to cross-examination and, in some instances, the foreign country allows the witness to "have the assistance of their own counsel, thus making it in substance, an ex parte procurement of testimony."¹⁸ Accordingly, the court held that letters rogatory should rarely, if ever, be granted when the person sought to be deposed is a party.

The court noted a line of cases holding that letters rogatory should be liberally granted; any deficiencies flowing from the manner in which the evidence is adduced should be considered in determining the probative effect of such evidence. The court cited the following cases supporting this view: *Matter of Petrova*,¹⁹ *Matter of Kaliszewski*,²⁰ and *Matter of Newman*.²¹ A two-pronged rationale exists in these cases. First, New York courts should be sensitive to the needs and convenience of foreign witnesses or parties. Second, when there is no way of compelling a witness to attend a court proceeding, there is no point in

17. N.Y.L.J., April 25, 1979, at 12, col.3.

18. *Id.*

19. N.Y.L.J., March 26, 1979, at 38, col. 3.

20. N.Y.L.J., Oct. 19, 1978, at 12, col. 6.

21. N.Y.L.J., Aug. 7, 1978, at 5, col. 3.

granting a commission that would be rendered a nullity because of a witness's absence. The *Johannes Heinrich Janes* court, however, did not agree with this rationale. The court held that a party to a proceeding should not be permitted to use his country's policies to shield against the legitimate probes of adverse parties while at the same time seeking a substantial sum of money under another jurisdiction's procedures to the prejudice of his adversaries interests.²²

The court observed that it had broad discretion, based upon all facts and circumstances presented, to determine whether it would be equitable and fair to issue letters rogatory. The court opined that there would be no need to compel a party witness, who seeks financial advantages from the proceeding, to testify. After an analysis of all factual matters, the court concluded that the nonparty witness would be willing to cooperate:

Although the USSR might not aid in compelling the testimony of these witnesses by any method other than Letters Rogatory, it is highly improbable that it would hinder its citizens from voluntarily appearing before a designated person for the purpose of establishing that these citizens are entitled to receive in excess of \$52,000.²³

The court declined the motion primarily because it considered it preferable to appoint a commission and designate a person to conduct the examination in the Soviet Union. For the same or similar reasons United States courts have refused to issue letters rogatory in the *Estate of Podolsky*,²⁴ *Estate of Panasic*,²⁵ *In Re Vilensky Estate*,²⁶ and *Estate of Sideroff*.²⁷

In the case of *Estate of Katie Smith*,²⁸ the court reached the opposite conclusion and recognized the procedural value of letters rogatory executed in the Soviet Union. The court admitted into evidence some answers of party witnesses to letters rogatory executed by a court in the Soviet Union. The court not only considered the admissibility of the answers in accordance with the New York Civil Practice Law and Rules and New York State case law, but also examined the execution of the letters rogatory in the Soviet Union in accordance with the New York Civil Practice Law and Rules. For example, the court denied the

22. N.Y.L.J., April 25, 1979, at 12, col. 3.

23. *Id.*

24. N.Y.L.J., Feb. 2, 1979, at 12, col. 1.

25. N.Y.L.J., Dec. 4, 1979, at 12, col. 1.

26. 102 Misc. 2d 765, 424 N.Y.S.2d 821 (Surr. Ct., Queens Cnty. 1979).

27. N.Y.L.J., Feb. 18, 1982, at 6, col. 6.

28. N.Y.L.J., Jan. 8, 1979, at 13, col. 3.

objection to answer 13, because "the affidavit alluded to by this witness filed in a prior proceeding before the foreign tribunal, lays the foundation to the answer. The question of probative value items involved goes to the weight of evidence and not its admissibility."²⁹ The court, however, did not inquire whether letters rogatory is the only means to obtain evidence in the Soviet Union.

In *Matter of Rasima*,³⁰ the court denied the objection of the New York State Attorney General and granted a motion to issue letters rogatory for the purpose of taking the testimony of two witnesses (one of whom was an alleged claimant) residing in the Soviet Union. The court analyzed the problem in the following way:

The issuance of a Commission or Letters Rogatory is within the discretion of the court where necessary or convenient to depose an out-of-state witness (CPLR 3208). It has been held that Letters Rogatory are the only available means for taking testimony within the Soviet Union. It is also well established that this court will not weigh either the evidence to be adduced or any objection to the procedure of the foreign court which may be raised upon return of the answer.³¹

The court in *Rasima* considered an objection to the lack of reliability that the letters afforded, but found no basis for the denial of relief citing *Matter of Petrova*.³²

In *Matter of Petrova* the court considered the application for an order to take testimony by way of letters rogatory of two witnesses who resided in the People's Republic of Bulgaria. The application was opposed by the New York State Attorney General who contended that no reasons were presented to show why the potential witnesses could not be produced in this court and thus subjected to oral cross-examination. The court was inclined "to agree with the suggestion of the Attorney General that written questions are not a satisfactory method of obtaining full and complete disclosure of all relevant evidences."³³ Such objection, however, concluded the court, afforded no basis for the denial of the relief. Citing the New York courts' sensitivity to the needs of nonresident parties and witnesses, and the liberal policy of disclosure in New York, the court granted the application, but did not discuss the availability of other methods of obtaining evidence in the Soviet Union or Eastern European states.

29. *Id.*

30. N.Y.L.J., May 9, 1979, at 13, col. 12.

31. *Id.*

32. N.Y.L.J., March 26, 1979, at 38, col. 3.

33. *Id.*

In the *Estate of Igor Kaliszewski*,³⁴ the court discussed an alternative to issuing letters rogatory to a court in Poland where the witnesses resided. The Attorney General, the respondent in this case, requested that the letters rogatory be issued to a United States consular official in Warsaw, which the court observed would in effect be a commission. The court commented, however, that Polish Law did not recognize a commission, could not compel attendance or the giving of testimony before a commission, and could not punish a witness for perjury. The court, holding that to grant a commission would be an empty ceremony and wholly meaningless, granted the motion for the issuance of letters rogatory. This is the only case in which the civil procedural law of the witnesses' native country was discussed, and in which the court made a determination as to which discovery device to apply—letters rogatory or a commission.

It is interesting to investigate the basis of the notion that letters rogatory is the only procedural device to obtain testimony in the USSR. Such attempt was made by Surrogate Louis D. Laurino in *In Re Vilensky Estate*.³⁵ In this case, the court considered a motion to take testimony of an alleged distributee and a nonparty witness, both of whom resided in Moscow, by means of letters rogatory addressed to an appropriate court or tribunal in the Soviet Union. The Attorney General, who appeared for the Comptroller and the People of New York, opposed the application for a number of reasons, one of which was that witnesses could attend a hearing in New York and be subject to cross-examination.

The *Vilensky* court was aware of cases which held that letters rogatory was the only available means of taking testimony in the Soviet Union,³⁶ but Surrogate Laurino did not take the findings in these cases for granted. He observed that these cases appear to rely on *Matter of Einhorn*,³⁷ which in turn relied on *Ecco High Frequency Corp. v. Amtorg Trading Corp.*³⁸ The court in *Ecco High Frequency Corp.* held, "It is apparent that the ordinary commission, open or closed, is not available for the taking of testimony in the Union of Soviet Socialist Republics and that letters rogatory are the only means through which testimony may be obtained."³⁹

In *Ecco High Frequency Corp.*, the court in support of this hold-

34. N.Y.L.J., Oct. 19, 1978, at 12, col. 6.

35. 102 Misc. 2d 765, 424 N.Y.S.2d 821 (Surr. Ct. Queens Cnty. 1979).

36. The court cited to the cases of *Matter of Rasima*, N.Y.L.J., May 9, 1979, at 13, col. 12, and *Matter of Newman*, N.Y.L.J., Aug. 7, 1978, at 5, col. 3.

37. 138 N.Y.S.2d 840 (N.Y. Surr. Ct.), *affd.* 142 N.Y.S.2d 357 (1955).

38. 196 Misc. 405, 406, 94 N.Y.S.2d 400, 402 (N.Y. Spec. Term 1949).

39. *Id.* at 406, 94 N.Y.S.2d at 401.

ing relied on two legal sources—*U.S. Neckware Corporation v. Sianco Co.*⁴⁰ and *Moore's Federal Practice*.⁴¹ In *U.S. Neckware Corp.*, however, the court decided whether to issue letters rogatory to a court in Switzerland; thus this decision has no relation to the procedural devices of obtaining evidence in the Soviet Union. *Moore's Federal Practice* makes no specific reference to the Soviet Union, but states that "[s]ome foreign countries do not allow a person appointed by a court of another jurisdiction to sit within their jurisdiction to take testimony by deposition."⁴² In a footnote Moore points out that "[t]his is true, for example, in Switzerland, the USSR and Yugoslavia."^{42a}

The court in *In Re Vilensky's Estate*⁴³ examined a number of cases decided within the last forty years—in essence all relevant case law—each of which declared, as an axiom, that an ordinary commission for taking testimony open or closed is not available in the Soviet Union, and that letters rogatory are the only means through which testimony may be taken. The court stated that the legal basis for such holdings was without legal authority. The court even considered the statement in such an authoritative source as *Moore's Federal Practice* to be an "unsupported statement."

Generally, the next step of a thorough examination should require the court to examine the appropriate Soviet Civil Procedural Law and international treaties on this subject. Surrogate Laurino, however, offered a new approach. He stated that "there is strong evidence, on paper at least, that . . . the Soviet authorities would allow party witnesses and possibly nonparty witnesses who are citizens of the USSR to appear before courts in the United States and/or before Commissioners appointed by such court to give testimony where the right of such citizens may be affected."⁴⁴

The court in *Vilensky* recognized that there could be "extraordinary circumstances" which would demand obtaining evidence within the territory of the Soviet Union. The court suggested that the Final Act of the Conference on Security and Cooperation in Europe [Helsinki Accord] created the possibility of collecting such testimony by a commissioner, appointed by the court of the United States.

40. 176 Misc. 51, 26 N.Y.S.2d 546 (N.Y. Spec. Term 1941).

41. 2 MOORE'S FEDERAL PRACTICE 2555 (1935).

42. *Id.* at 1937.

42a. *Id.*

43. 102 Misc. 2d 765, 424 N.Y.S.2d 821 (N.Y. Surr. Ct. 1979).

44. *Id.* at 768, 424 N.Y.S.2d at 823.

For the Soviet Union to deny . . . the privilege to pursue this right by appearing before this court or a person appointed by it or the laws of New York State to give testimony and to limit the means by which their testimony may be secured to letters rogatory addressed to a Soviet tribunal would appear to be violative of . . . section I, article I(a) of the Helsinki Accord⁴⁵

Commenting on this decision, a United States scholar, M. Free-
mand, wrote, "Important multilateral treaties, as a rule, are not self-executing—they require statutory implementation."⁴⁶ Peter H. Herzog, Professor at Syracuse University College of Law, observed that the remainder of the opinion in *Vilensky* dealing with the Helsinki Accords is quite questionable. Professor Herzog stated that although there is some authority for the proposition that the treaties have a direct effect in the Soviet Union, it is highly questionable, given their vague and general language, whether any party, including the United States, intended them to be self-executing.⁴⁷ After the "Final Accord" was signed, the legislation governing the enforcement procedure of Commissions of the Courts in the Soviet Union has not been changed.

In *Estate of Siiderof*,⁴⁸ the attorneys representing the Soviet citizens, in order to convince the court that the only method of obtaining evidence in the Soviet Union is by way of letters rogatory, submitted in support of their conventions a letter from Robert Dry, Consular Affairs Officer of the Department of State. Mr. Dry wrote, "In September, 1978 when the American Embassy asked the Soviet authorities for clarification of their law in this area, we received a response which in pertinent part reads '[u]nofficial examinations or interrogations of Soviet citizens on the territory of the Soviet Union by representatives of foreign organs of justice or consulates are not provided for in Soviet Law.'" Surrogate Lambert, in denying a motion to issue letters rogatory, mentioned that the letter of Mr. Dry deserved some comment. Besides being unsworn, the letter failed to state the credentials of Mr. Dry, who, as the court discovered from other submitted documents, was not with an Eastern European division of the office of Citizen Consular Services, but was with the Western European and Canada division.⁴⁹ Raising objections to the contentions of this letter, Surrogate

45. *Id.* at 771, 424 N.Y.S.2d at 825.

46. Freemand, *Letters Rogatory and Helsinki Accords*, in 10 INT'L PRACTITIONER'S NOTEBOOK 10 (April 1980).

47. Herzog, *Conflict of Laws*, 32 SYRACUSE L. REV. 169, 207 (1981).

48. N.Y.L.J., Feb. 18, 1982, at 6, col. 6.

49. *Id.*

Lambert quoted *Matter of Estate of Helena Smith*.⁵⁰

In *Estate of Helena Smith*, the attorneys who represented Helena Smith brought a motion to examine some witnesses residing within the Soviet Union. On their request, the "Iniurcolleguia" informed the New York attorneys that the heirs and the witnesses in this proceeding were elderly and a long journey would be difficult for them. Furthermore, it was impossible to persuade them to come to the United States. The letter stated that "we think that it would be better if the parties to this proceeding travel to the Soviet Union and examine the witnesses there."⁵¹ In accordance with this suggestion, Surrogate Laurino granted an order of an open commission and appointed a referee before whom the testimonies should be given. A list of attorneys and referee was sent to the "Iniurcolleguia" with a request to bring the witnesses to Moscow to meet the arrival of the attorneys and referee. The "Iniurcolleguia," in response, made an announcement to the effect that "[e]xamination of witnesses according to the procedural norms of American courts is impossible as jurisdiction on USSR territory is executed by Soviet judicial organs and its transfer to a foreign court is not permissible. The examination and cross-examination of witnesses on USSR territory are possible only by a Soviet Court through commissions by a foreign court forwarding to a Soviet Court."⁵²

D. Golskaya, a Soviet scholar, has expressed the following point of view regarding this problem:

Some courts insist that the identity (of the heirs) should be established only by testimony of the petitioner before a person, appointed by the court (commissioner). It was suggested that the authorized person will go abroad and make the investigation. But it is well known that in accordance with the common recognized principles of the International Law every state exercises jurisdiction only within the boundaries of its territory.⁵³

In *Siiderof*, the attorney submitted an affidavit on Soviet law regarding the issuance of letters rogatory. This affidavit was sworn to by A. Korobov, then chairman of Iniurcolleguia, and stated that "[t]he USSR has not entered into any treaty or agreement, providing for the

50. See *Estate of Siiderof*, Case No. 5138-1972, Surrogates Court County of New, State of New York.

51. *Id.*

52. *Id.* In accordance with section 62 of the Fundamentals of Civil Procedure the execution of commissions should be refused if their performance would contradict the sovereignty of the USSR.

53. D. YOLSKAYA, *THE LEGAL COOPERATION BETWEEN SOCIALIST AND CAPITALIST COUNTRIES IN INHERITANCE MATTERS* 77 (1980) (In Russian).

conducting of any kind of judicial function by a consul or any other representation of a foreign nation on the territory of the USSR."⁵⁴ Dismissing this contention, Surrogate Lambert held that in the appropriate circumstance, although the Soviet Union did not enter into a formal agreement providing for the conduct of judicial functions by other nations on Soviet soil, the Soviet Union would allow such functions to be conducted. In support of this finding, the court cited *United States v. Osidach*⁵⁵ which involved a denaturalization proceeding brought by the United States Justice Department's Office of Special Investigation [OSI]. A significant part of the proof, that the defendant collaborated with the Nazis during World War II, was gathered in accordance with the Federal Rules of Civil Procedure through the use of videotape depositions taken inside the Soviet Union, but outside the presence of a Soviet court. During the course of the litigation, the defendant raised several objections to the videotape depositions, for example, the presence of Soviet prosecutors at the depositions. The court, however, rejected this argument holding that at trial there was no negative impediment caused by the presence of Soviet personnel at the depositions.⁵⁶

Soviet authorities have permitted Soviet citizens to appear before OSI attorneys in cases dealing with the prosecution of Nazi war criminals. Allan Ryan, Jr., the former director of OSI, described the procedure to obtain testimony in the following way:

Because these proceedings were taking place on Soviet soil, a Soviet procurator (prosecutor) was officially in charge. When the witness came into the room, the official formally notified him of the purpose of the testimony, ascertained his identity from his papers, and informed him of the penalties under Soviet law for giving false testimony. Usually, the procurator then asked the witness to recount the events in question. When this was finished, the OSI attorney conducted direct examination, which meant going over the same ground the witness had just covered, usually in more detail. After this questioning was finished, defense counsel who sometimes brought his own interpreter from the USA conducted his cross-examination. From the moment the witness sat down at the table until he left the room at the conclusion of his testimony, an OSI technician recorded the entire process on videotape, which remained exclusively in the hands of OSI until trial. Nothing that happened in the depositions was kept from the judge. One of the benefits

54. N.Y.L.J., Feb. 18, 1982, at 6, col. 6.

55. 513 F. Supp. 51 (E.D. Pa. 1981).

56. *Id.* at 89-96.

of videotaping was that every word was recorded; if the defense believed that something may have been mistranslated, it could play the tape back at trial and explain to the judge what the problem was. The Soviet authorities had agreed that any defendants who wished to attend the depositions would be allowed to do so, with no interference from Soviet authorities, but no defendant chose to go to the Soviet Union.⁵⁷

The question that remains, however, is whether a commission is possible in the Soviet Union, or whether letters rogatory is the only means through which testimony can be taken. To answer this question it is necessary to analyze Soviet civil procedural law, and international agreements to which the Soviet Union and the United States are parties.

III. COMMISSION IN THE SOVIET CIVIL PROCEDURE LAW

The United States courts have paid little attention to Soviet law provisions when deciding which method of obtaining testimony from Soviet citizens is available and permissible. The explanation for this strange attitude may be that these problems have not been discussed in scholarly articles devoted to the problems of legal assistance between the two countries. This author believes that the nature of commissions of foreign courts and their enforcement in the Soviet Union is of paramount interest to courts and practicing lawyers of the United States.

According to part 2 of section 62 of the Fundamentals of Civil Procedure, commissions of foreign courts shall be executed on the basis of Soviet legislation. This provision is repeated in all Codes of Civil Procedure of the Union Republics.⁵⁸ It is very important to emphasize that Soviet civil procedural law does not reduce the execution of the commission of foreign courts only to answers of witnesses to questions prepared in advance. Besides interrogating a witness or party with questions submitted by another court (including those from a foreign country), the court may also ask its own questions. Moreover, the participating parties and their representatives can cross-examine the witness or a party.

In addition, when enforcing a commission of another court, the Soviet court may use other procedural devices such as section 51 of the Code of Civil Procedure which authorizes a court that executes a com-

57. A. RYAN, *QUIET NEIGHBORS—PROSECUTING NAZI WAR CRIMINALS IN AMERICA* 88 (1984).

58. GPK RSFSR, no. 436; Code of Civil Procedure of the Ukraine no. 426.

mission "to take certain procedural steps to collect evidence." Collection of evidence includes not only the examination of a witness, but also the examination of documentary evidence, the appointment of experts and examination of their conclusions, and, if necessary, the examination of third persons. A summoned witness's appearance before a Soviet court is mandatory, and according to section 62 of the Code of Civil Procedure, a witness who evades appearance in the court can be at first fined, and, if he still fails to appear, be compelled to appear. The address bureau which exists in every city in the Soviet Union can give the exact address of the required witness. So, under Soviet civil procedural law there is no obstacle hindering a Soviet court from summoning a witness to a hearing and examining him in order to enforce the commission of a foreign court.

The most important procedural issue in the execution of a commission of a foreign court is the degree to which foreign lawyers may participate. The issue can properly be examined if two questions are addressed. The first question is whether lawyers are permitted to take part in the enforcement of judicial commissions by the Soviet courts, and the second, is whether foreign lawyers are permitted to participate in the civil procedures of a Soviet court. Section 52 of the Code of Civil Procedure establishes the procedure of enforcement of commissions and is applicable both to the commissions of Soviet and foreign courts. Section 52 provides that the performance of a judicial commission be in accordance with the rules established by the Code. The persons taking part in the case are notified of the time and place of the session, and enforcement takes place in open court. According to section 43 of the Code of Civil Procedure, the personal participation in a case by a citizen does not deprive him of the right to be represented in the same case.

The Plenum of the RSFSR Supreme Court, in its leading decision of February 28, 1968, No. 41, explained to the courts that the enforcement of commissions shall be carried out at a hearing by the collegial staff of the court with the observance of all procedural rules established by the law, and instead of the parties and third persons appearing before the court, their representatives can deliver to the court the necessary explanation.⁵⁹ The commentaries to section 52 of the Code of Civil Procedure provide that the persons who participate in the case, if present at the court hearing, should assert their procedural rights, such as the right to examine witnesses.⁶⁰ The lawyers who represent the par-

59. Sbornik Post. Plen. Verkh. Suda RSFSR 54 (1961-1983).

60. THE COMMENTARY OF THE CIVIL PROCEDURE CODE OF RSFSR 102 (Publishing House Yuridicheskaya Literatura 1976).

ties, of course, are also entitled to the same procedural rights.

Persons who can represent parties in the courts are listed in the Code of Civil Procedure. They include advocates (members of the bar), representatives of organizations such as trade unions, and persons admitted by the court trying the case.⁶¹ Soviet citizenship is a prerequisite for membership in the Soviet Bar,⁶² but section 43 of the Code of Civil Procedure does not require Soviet citizenship to be admitted by the court to act as a party's representative. Moreover, section 47 of the Code of Civil Procedure, which provides who may not represent a party in court, does not list foreigners. The Soviet scholars, M. Boguslavsky and A. Rubanov, do not hesitate to conclude that foreign lawyers may represent their clients in Soviet courts. They state:

Section 20 of the 1923 Civil Procedure Code of RSFSR (corresponds to Section 44 of the 1963 Code now in force) provides who can appear in the court as a representative of a party and it does not contain restrictions based on citizenship. That is why the court can admit as a representative in a particular case, a Soviet citizen as well as a foreigner. Thus, a foreigner can appoint as his representative in a Soviet court, for example his friend or acquaintance (Soviet citizen or foreigner) observing the requirements established by the Section 20 of the Code of Civil Procedure.⁶³

In the affidavit submitted in *Estate of Siiderof*,⁶⁴ the deponent stated that "the Soviet law does not give the right to a foreign attorney to participate in a legal action conducted by a Soviet court in the capacity of an attorney."⁶⁵ Soviet civil procedural law, however, does not entitle any attorney, including a Soviet attorney, to participate in court

61. GPK RSFSR, no. 44.

62. Article 5 of the USSR law "Regarding the Bar Association of the USSR" adopted on November 30, 1979 (Ved. Verkh. Sov. SSSR), 1979, No. 49, item 846. For an English translation, see BUTLER, *supra* note 8, at 203.

63. Boguslavsky & Rubanov, *The Rights of Foreigners in Civil Proceedings in the USSR*, *Sovetskiy Yedzhegodnik Mezdunarodnogo Prava*, in THE SOVIET YEAR-BOOK OF INT'L LAW 192 (1960). Professor Boguslavsky recently expressed the same point of view that "[t]he foreigners in the court could be represented by Soviet citizens as well as by foreigners. Foreigners, when pleading their cases, often rely on the association of lawyers 'Iniurcolleguia', which specializes in the pleading of foreigner's cases in the USSR. But another attorney could also be a representative." Boguslavsky, in PRIVATE INT'L LAW 294 (1982). Of course, as Professor R. Hillman observed, in those countries with cultural and legal traditions different from those of the United States, a local lawyer may prove invaluable in assisting an American attorney. Hillman, *Providing Effective Legal Representation in International Business Transactions*, 19 INT'L LAWYER 6 (1985).

64. N.Y.L.J., Feb. 18, 1982, at 6, col. 6.

65. *Id.*

in the "capacity of an attorney." Section 28 of the Fundamentals of Civil Procedure provides that citizens may plead their cases in court either personally or through their representatives, and, in such capacity as a representative, any person could be admitted by the court, including a foreigner. Similarly, foreign lawyers are allowed to plead cases in other Soviet tribunals such as the Foreign Trade Arbitration Commission and the Maritime Arbitration Commission which are attached to the Soviet Chamber of Commerce and Industry.⁶⁶

In accordance with Article 59 of the Fundamentals of Civil Procedure, foreign nationals shall have the right to apply to the courts of the USSR and shall enjoy civil procedural rights equally with Soviet citizens. The Soviet Law concerning civil procedural rights of foreign citizens and stateless persons" was amended on May 16, 1977.⁶⁷ A new Article 60-1 was included in the Fundamentals of Civil Procedure which concerns the jurisdiction of cases to which a foreigner is a party. He establishes that jurisdiction by Soviet courts of civil suits arising from disputes involving foreign nationals, stateless persons, foreign enterprises and organizations, and also arising from disputes in which at least one party resides abroad shall be determined by the legislation of the USSR and in the cases other than those mentioned by the legislation of the USSR rules of jurisdiction established by the legislation of the Union Republics.

The law on the legal status of foreign citizens in the Soviet Union adopted on June 24, 1981 provides in section 21 that "foreign citizens shall enjoy in the courts the same procedural rights as citizens of the USSR."⁶⁸ Thus, neither the Fundamentals of Civil Procedure nor the Code of Civil Procedure prohibit a foreign citizen from inviting a foreign lawyer to be his representative in order to take part in the enforcement of a commission in a Soviet court.

The changes made by the new Soviet law concerning the civil procedural status of stateless persons are also of paramount importance. Previously, according to section 60 of the Fundamentals of Civil Proce-

66. "In accordance with Article 6 of the Statute of the Foreign Trade Arbitration Commission attached to the USSR Chamber of Commerce and Industry, adopted on April 16, 1975 by the USSR Presidium of the Supreme Soviet, "the parties may plead their cases in the Foreign Trade Arbitration Commission either directly or through duly authorized representatives, including foreign citizens and organizations, appointed by the parties at their discretion." *Vedomost' Verkh. Sov. SSSR*, (1975), No. 17, item 269. The same rule is also expressed in Article 11 of the Statute of the Maritime Arbitration Commission attached to the USSR Chamber of Commerce and Industry adopted on October 9, 1980 by the USSR Presidium of the Supreme Soviet *Ved. Verkh. Sov. SSSR* (1980), No. 42, item 368.

67. *Ved. Verkh. Sov. SSSR* (1977) No. 23, item 313.

68. *Ved. Verkh. Sov. SSSR* (1981) No. 26, item 836.

ture, the right to apply to the Soviet court and the right to enjoy the protection of Soviet civil procedure on the same basis as Soviet citizens applied only to stateless persons residing within the Soviet Union. Article 60 barred stateless persons not residing within the Soviet Union, especially persons who emigrated from the Soviet Union to the United States, from applying to the Soviet courts and enjoying the benefit of civil procedural rights, particularly the right to retain a foreign lawyer in a Soviet civil action. Section 60 of the Fundamentals of Civil Procedure, however, excludes the words "residing in the USSR" and provides that a "[s]tateless person shall have the right to apply to courts of the USSR and shall enjoy civil procedure rights on the same basis as Soviet citizens." Thus, today a stateless person, irrespective of the country of his residence, enjoys civil procedure rights including the right to be represented in a Soviet court by a foreign lawyer.

The authority of a foreign lawyer to appear in a Soviet court is stipulated by a power of attorney executed by the client. Legislation, introduced in 1977 by article 126-I of the Fundamentals of the Civil Legislation, provides that the form and period of validity of a power of attorney shall be determined by the law of the country where this power of attorney was issued. Of course, such documents should be legalized by the Soviet Consular Division in accordance with article 35 of USSR Consular Charter.⁶⁹

Thus, there are no obstacles in Soviet law barring foreign lawyers from participating in civil disputes in Soviet courts in general, and in the enforcement of commissions of courts of the United States, particularly when they represent United States citizens or stateless persons residing in the United States. Of course, the ultimate decision to admit a foreign lawyer as a representative of a party or third party belongs to the Soviet court considering the case or enforcing the commission.

The above analysis is also applicable in instances in which a United States lawyer might represent a juridical person in a civil proceeding, for example, the public administrator or the office of the Attorney General when they are parties to an estate proceeding. The law concerning the right to have representatives and the jurisdiction of foreign juridical persons makes no distinction between citizen and noncitizen.⁷⁰

IV. INTERNATIONAL TREATIES

When discussing the participation of foreign lawyers in the enforcement, by the Soviet courts, of commissions from United States

69. Ved. Verkh. Sov. SSSR (1976) No. 27, item 404.

70. The USSR Fundamentals of Civil Legislation, §§ 28 and 6D-1, *supra* note 6.

courts, it is also important to examine international treaties signed by the United States and the Soviet Union. In accordance with section 64 of the Fundamentals of Civil Procedure, when rules, other than those contained in Soviet legislation, are established by an international treaty to which the Soviet Union is a party, the rules of the treaty will prevail. There exists only one treaty concerning civil procedural matters to which both the United States and the Soviet Union are signatories.⁷¹ The name of this treaty in the official publication in English is "Execution of Letters Rogatory." It was concluded by way of an Exchange of Notes between the United States and the Soviet Union and was signed on November 22, 1935 [1935 Agreement].⁷² Two recently published authoritative sources—one in the Soviet Union⁷³ and the other in the United States⁷⁴—cite the 1935 Agreement as an existing viable document.

The Soviet Union in its Note of November 22, 1935 informed the United States of the procedure by which Soviet courts will accept letters rogatory for execution. First, letters rogatory should be delivered through diplomatic channels, that is through the American Embassy in Moscow and the USSR Ministry of Foreign Affairs. Letters rogatory should be addressed to the Supreme Court of that Union Republic which is competent to execute such letters rogatory. If the exact title of the Soviet court is unknown the letters should be addressed to a competent court of the Soviet Union. Requests by United States courts should also specify the name of the court issuing the request, as well as the names of the parties to the action.

71. The Soviet Union was a party to the Hague Convention of March 1, 1954 relating to civil procedure [hereinafter "1954 Convention"]. The 1954 Convention was ratified and has been in force in the Soviet Union since July 26, 1967. On November 16, 1967, the USSR Presidium of the Supreme Soviet issued a decision which defines some questions regarding the implementation of the 1954 Convention in the Soviet Union. See Ved. Verkh. Sov. SSSR (1967) No. 47, item 632. On February 2, 1968, the USSR Supreme Court, with the consent of the Soviet Union Ministry of Justice, adopted an instruction to the courts on how to apply the 1954 Convention. See Bull. Verkh. Suda SSSR (1968) No. 2, item 46. The United States did not ratify the 1954 Convention, but is a party to the Hague Convention of March 18, 1970 relating to the taking of evidence abroad in civil or commercial matters [hereinafter "1970 Convention"]. The Soviet Union did not ratify the 1970 Convention. See Ristau, *International Judicial Assistance—Civil and Commercial*, 1 THE INT'L LAW INSTITUTE (Georgetown University Law Center 1984).

72. Execution of Letters Rogatory, Nov. 22, 1935, United States-USSR, Executive Agreement Series, No. 83.

73. LUNTS & MARYSHEVA, *THE COURSE OF INTERNATIONAL PRIVATE LAW—THE INTERNATIONAL CIVIL PROCESS* 159 (1976) (in Russian).

74. Ristau, *International Judicial Assistance—Civil and Commercial*, *supra* note 71, at CI-216-CI-220, vol. 2 (1984).

The 1954 Hague Convention⁷⁵ and the 1935 Agreement are almost identical concerning the procedure for the enforcement of requests, except that the 1954 Hague Convention provides a wider spectrum of procedural devices than the 1935 Agreement, and provides a means for the application of the requesting party's civil procedural law.

The differences exist in the types of documents comprising the requests. While the 1954 Hague Convention requires only the letter of request itself to be in Russian, the 1935 Agreement requires the translation into Russian of all basic documents, such as the interrogatories themselves and any accompanying instructions to the executing court. The 1935 Agreement even makes it necessary, in the case of documents of second importance, to forward short summaries of their contents in Russian.

The wording of article 6 of the Soviet Note of the 1935 Agreement does not provide a means for the application of foreign procedural law in the execution of letters rogatory, as the 1954 Hague Convention provides. The Soviet courts that execute letters rogatory must give effect to them in accordance with the procedural rules of the Soviet Union. Such wording corresponds to the text of part 2 of section 62 of the Fundamentals of Civil Procedure which also provides for the execution of commissions of the courts on the basis of Soviet legislation. Soviet Legal Literature, however, has expressed the view that this provision of Soviet law should be considered as a general principle allowing the application of the requesting party's procedural law if so requested, but only when its application does not contradict Soviet law.⁷⁶

An expert in Soviet private international law, Professor L.A. Lunts, noticed that a literal adherence to section 62 of the Fundamentals of Civil Procedure in some cases may complicate the utilization of evidence by the foreign court for which the evidence was obtained, and so affect the interests of Soviet citizens who have commissioned their representatives abroad to defend their rights in foreign courts. Thus, Professor Lunts not only suggests that it is rational to permit the employment of foreign procedural laws when the court issuing the commission has so requested, but even propose that section 62 of the Fundamentals of Civil Procedure be amended to comply with this view.⁷⁷

75. For a discussion of the Hague Convention, see *supra* note 71.

76. 2 THE COURSE OF SOVIET CIVIL PROCEDURE LAW 388 (published in Russian by Nauka, 1981).

77. Lunts, *Ways of Filling Gaps in Soviet Legislation on Questions of International Civil Procedure*, SOVIET LAW AND GOVERNMENT, at 48 (Fall 1967). In Soviet legal literature the question has been raised as to what should be done by the Soviet court if it is established that the requested application of foreign procedural law contradicts Soviet law. Should the commission be enforced on the basis of Soviet law or should it be re-

Though the wording of section 62 was not changed, recent new Soviet legislation was introduced which has no less legal authority than the Fundamentals of Civil Procedure and which provides a means for applying foreign procedural law. The USSR Supreme Soviet on November 30, 1979 adopted the law of the USSR Supreme Court. According to article 26(5), the Judicial Division for Civil Cases of the USSR Supreme Court is authorized to decide whether application of procedural legislation of another state is appropriate when fulfilling commissions of foreign courts.⁷⁸ Application of foreign procedural law is also recognized in a guiding decision of the Plenum of the Soviet Supreme Court on June 19, 1959, No. 2, with changes made by the Plenum on July 11, 1972.⁷⁹ Section 3 of this decision provides that "[o]n request of the organization which issued the commission, the foreign procedural law could be applied if it does not contradict Soviet law. This question is decided by the USSR Supreme Court."⁸⁰

The Soviet Note of the 1935 Agreement expressly allows attorneys to participate in the execution of Letters Rogatory. Article 7 of the Note states that "[t]he court issuing the letters rogatory shall, if it so desires, be informed of the date and place where the proceedings will take place, in order that the interested parties or their legal representative may, if they desire, be present."⁸¹ (Emphasis added).

The execution of letters rogatory may be refused under the 1935 Agreement, if its execution would affect the sovereignty or safety of the Soviet Union. A written explanation of such refusal, however, should

turned with an adequate explanation? See N. MARYSHEVA, *THE CONSIDERATION BY COURTS OF CIVIL CASES WITH THE PARTICIPATION OF FOREIGNERS* 64 (Publishing House Yuridicheskaya Literatura, Moscow 1970) (in Russian). No matter what the answer, the discussion itself shows that the request to apply foreign procedural law is considered a routine matter which should be discussed by the USSR Supreme Court. "The USSR Presidium of the Supreme Soviet and Council of Ministers adopted on August 26, 1986 a schedule for the preparation of the new USSR legislation, decisions of the USSR Government and proposals regarding the development of the USSR legislation for the years 1986-1990. Among them is a plan to issue in the first half of 1988 a decree of the USSR Presidium of the Supreme Soviet "Regarding the Enforcement of the Foreign Courts Decisions". It can be readily expected that the question connected with the employment of foreign procedural law by the Soviet courts will be addressed in this Decree. (SP SSSR 31 (1986) item 162).

78. Ved. Verkh. Sov. SSSR (1979) No. 49, item 842.

79. In accordance with section 3 of the law of the USSR Supreme Court, adopted on November 30, 1979, "[g]uiding decisions of the Plenum of the USSR Supreme Court shall be binding upon courts, other agencies, and officials who apply the law regarding which explanation has been given." Ved. Verkh. Sov. SSSR (1979) no. 49, item 842.

80. 1 *THE COLLECTION OF THE DECISIONS OF THE USSR SUPREME COURT 1924-1977* at 98 (Publishing House Izvestia, Moscow 1978).

81. See *supra* note 72.

be affixed under seal to the letters rogatory. Section 62 of the Fundamentals of Civil Procedure states that another reason for refusal would be if the performance of the request is outside the competence of the court. Surrogate Bloom in the matter of *Anthony Podolsky*,⁸² observed that a reading of the 1935 Agreement indicates clearly that the Agreement's purpose is to aid United States nationals obtaining depositions in the Soviet Union and Soviet nationals obtaining relevant testimony in the United States.

Surrogate Bloom also determined that this agreement did not by its term exclude the issuance of commissions. In accordance with article 3 of the Law on the Legal Status of Foreign Citizens in the USSR, reciprocal limitations may be established by the Soviet Council of Ministers with respect to citizens of those states in which there are special limitations upon the rights and freedom of Soviet citizens. Unless such limitations are established, foreign citizens shall enjoy procedural rights in Soviet courts, including the right to enforce a commission.

V. CONCLUSION

The analysis of the relevant Soviet civil procedural laws and the 1935 Agreement supports the following conclusions. Letters rogatory—the examination of a witness or party on questions which were prepared beforehand and submitted for execution to a Soviet court through diplomatic channels—are permitted by the 1935 Agreement, and their execution is governed by that Agreement and relevant Soviet civil procedural law. Letters rogatory, however, despite contrary holdings in many cases, is not the only available method of obtaining evidence in the Soviet Union.

Another method is offered by a commission as provided by Soviet civil procedural law. Under Soviet civil procedural law a commission conducted by a Soviet Court includes a broader spectrum of procedural devices, including, but not limited to, answering questions usually contained in the Letters rogatory. The enforcement of a commission in the Soviet Union provides a possibility means for the application of foreign procedural law, and for the participation of foreign lawyers as representatives of foreign citizens and organizations.

82. N.Y.L.J., Feb. 2, 1979, at 12, col. 1.

