

## COMITY IN CASES INVOLVING RUSSIAN ELEMENT

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## COMITY IN CASES INVOLVING RUSSIAN ELEMENT

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### I. Introduction

Comity is frequently used and yet an elusive concept of U.S. private international law.<sup>2</sup> Guided by comity, courts often recognize and enforce foreign judgments or limit domestic jurisdiction in favor of foreign courts and consider competing foreign and domestic interests. Because U.S. is not a party to any treaty for recognition of judgments, comity is an important consideration, which courts use to enforce foreign judgments in the United States. Comity sometimes leads U.S. courts to analyze and review decisions of foreign courts and determine foreign law, which could be different from the determination made by foreign courts.

Comity in cases involving Russia has long and fascinating history which closely traces economic and political relationship between Russian and the United States. One of the first cases involving comity with Russia was a 1902 case involving Cruiser Varyag, the legendary ship which was glorified in a well-known Russian folk song. After the Bolshevik revolution of 1917 and confiscation of private property, many banks and insurance companies whose interests in Russia were expropriated became parties to legal proceedings involving competing claims to their assets. After the United States' recognition of the Soviet state, some of the "garden variety" cases made their way in the American courts. The break up of the Soviet Union and the development of private

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<sup>2</sup> U.S. law is not the only one which recognizes the principle of comity. Other common law countries such as United Kingdom, Australia, and Canada, as well as civil law countries such as Germany, France, and Brazil also recognize comity. However, the meaning and understanding of comity in these legal systems varies and is different from the U.S. This paper concerns U.S. international private law and does not address law of comity of foreign countries.

commerce between Russia and the United States produced another line of cases in which companies in an attempt to resolve their disputes sought redress in U.S. courts.

This article first reviews traditional definition and application of principle of comity in cases involving enforcement of judgments, enforcement of arbitration clauses, and the application of the Hague Evidence Convention. Second, this article reviews the practical application of comity in cases involving Russian issues. Finally, this article addresses the issue of determining foreign law, which often arises in cases involving comity because courts, first of all, need to understand the law to which they are asked to give comity.

This article is intended to provide only a brief overview of certain issues related to comity and is not a comprehensive guide to this complex and involved topic. For extensive historical, legal, and multi-jurisdictional review of comity the reader is directed to a comprehensive paper on comity by Joel R. Paul.<sup>3</sup>

## **II. The Principle of Comity**

### **A. Enforcement of Foreign Judgments**

Comity is a broad principle designed to help courts to resolve disputes that implicate the laws of multiple jurisdictions. Although not required by international law, comity attempts to ensure the development of a working international dispute resolution system by advocating respect or deference for a foreign jurisdiction's laws. Comity is not a rule; rather it is a principle or policy that supports court-applied rules.<sup>4</sup>

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<sup>3</sup> Joel R. Paul, "Comity in International Law," 32 Harv. Int'l L.J. 1, (1991).

<sup>4</sup> This introduction is adopted from Steven R. Swanson, "The Vexatiousness of a Vexation Rule: International Comity and Antisuit Injunctions," 30 Geo. Wash. J. Int'l L. & Econ. 1.

The classical definition of comity was given by the Supreme Court in *Hilton v. Guyot*, which is the most cited definition of comity in U.S. law.<sup>5</sup> In *Hilton*, the Court faced the issue whether to give full faith and credit to a French judgment against a U.S. citizen. The majority declined to enforce the judgment because France did not give reciprocal treatment to U.S. judgments. Because the United States is not a party to any treaty providing for the enforcement of judgments, comity is employed in such cases the most. Although the decision depended on reciprocity, it was not incorporated in the definition of comity given by the court. The Court stated that

"Comity," in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws.<sup>6</sup>

The court's decision is based on reciprocity. While some commentators criticize the logic of this approach<sup>7</sup>; right or wrong, it means that if courts of one country do not recognize U.S. judgments, U.S. courts would be less likely to give comity to the judicial acts of that country. This issue is especially important in the relationships of the United States with civil law countries in which recognition of foreign judgments largely depends on a specific statute or a treaty.

## **B. Enforcement of Arbitration Agreement**

In *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, Supreme Court faced the issue whether a counterclaim for violation for antitrust laws trumps arbitration

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<sup>5</sup> *Id.*, 159 U.S. 113 (1895).

<sup>6</sup> *Id.*, at 164.

<sup>7</sup> See e.g. Paul, "Comity in International Law"

agreement.<sup>8</sup> Soler was a Mitsubishi distributor in Puerto Rico. The agreement between Soler and Mitsubishi provided for arbitration by the Japan Commercial Arbitration Association of all disputes arising out of certain articles of the agreement or for the breach thereof. A dispute has arisen between Soler and Mitsubishi because of a slackening of the sale of new automobiles and Mitsubishi withheld a shipment of automobiles to Soler, which disclaimed responsibility for them. Mitsubishi then brought an action in Federal District Court under the Federal Arbitration Act and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, seeking an order to compel arbitration of the disputes in accordance with the arbitration clause. Soler filed an answer and counterclaims, asserting, *inter alia*, causes of action under the Sherman Act (antitrust law). The District Court ordered arbitration of most of the issues raised in the complaint and counterclaims, including the federal antitrust issues.

Despite the doctrine that rights conferred by the antitrust laws are inappropriate for enforcement by arbitration, the District Court, held that the international character of the undertaking in question required enforcement of the arbitration clause even as to the antitrust claims. The Court of Appeals reversed insofar as the District Court ordered submission of the antitrust claims to arbitration. The Supreme Court held that Soler's antitrust claims are arbitrable pursuant to the Arbitration Act. Concerns of international comity, respect for the capacities of foreign and transnational tribunals, and sensitivity to the need of the international commercial system for predictability in the resolution of disputes, all require enforcement of the arbitration clause in question, even assuming that a contrary result would be forthcoming in a domestic context. The strong presumption in favor of freely negotiated contractual choice-of-forum provisions is reinforced here by

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<sup>8</sup> 473 U.S. 614 (1985).

the federal policy in favor of arbitral dispute resolution, a policy that applies with special force in the field of international commerce. The mere appearance of an antitrust dispute does not alone warrant invalidation of the selected forum on the undemonstrated assumption that the arbitration clause is tainted. So too, the potential complexity of antitrust matters does not suffice to ward off arbitration; nor does an arbitration panel pose too great a danger of innate hostility to the constraints on business conduct that antitrust law imposes. And the importance of the private damages remedy in enforcing the regime of antitrust laws does not compel the conclusion that such remedy may not be sought outside an American court.<sup>9</sup>

C. **Hague Evidence Convention**

The *Societe Nationale Industrielle Aerospatiale v. United States Dist. Court for Southern Dist.* involves interplay between the Hague Evidence Convention and the principles of comity with respect to a French “blocking statute.”<sup>10</sup> The main issue was whether the Hague Evidence Convention is the exclusive method of taking evidence abroad for use in U.S. court proceedings.

Plaintiffs were injured as a result of the crash of an aircraft built and sold by two state-owned French companies. The companies answered the complaints without objecting jurisdiction and commenced initial discovery without objection. However, when plaintiffs served subsequent discovery requests, petitioners filed a motion for a protective order, alleging that the Hague Evidence Convention dictated the exclusive procedures that must be followed since petitioners are French and the discovery sought

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<sup>9</sup> *Id.*, at 3355-3361.

<sup>10</sup> *Id.*, 482 U.S. 522 (1987). France adopted a statute prohibiting French litigants providing any documents which could be used as evidence in foreign legal proceedings except by way provided by treaties or international agreements. The statute was apparently designed to protect French from expansive U.S. style discovery.

could only be had in France. A Magistrate denied the motion, and the Court of Appeals denied petitioners' mandamus petition<sup>11</sup>, holding, *inter alia*, that when a district court has jurisdiction over a foreign litigant, the Convention does not apply even though the information sought may be physically located within the territory of a foreign signatory to the Convention.

Defendant French companies argued that the Court is required to give comity to the French blocking statute prohibiting the companies to provide any documents, which could be used as evidence in the U.S. proceedings. The Court in rejecting this argument noted that the Hague Evidence Convention does not have any language which would make it exclusive means of obtaining evidence abroad. Moreover, international comity does not require in all instances that American litigants first resort to Convention procedures before initiating discovery under the rules of civil procedure. In many situations, Convention procedures would be unduly time-consuming and expensive, and less likely to produce needed evidence than direct use of the rules. The concept of comity requires in this context a more particularized analysis of the respective interests of the foreign and requesting nations that a blanket "first resort" rule would generate. Thus, the determination whether to resort to the Convention requires prior scrutiny in each case of the particular facts, sovereign interests, and likelihood that such resort will prove effective.<sup>12</sup>

Note that the Court did not flatly reject comity to the foreign blocking statute even though such statute could be viewed as an attempt of the foreign sovereign to regulate

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<sup>11</sup> Writ of mandamus is a special type of proceedings in which the petitioner asks the court to issue an order to the governmental official. In this case, writ of mandamus was used as an appellate device to reverse the Magistrate's denial of the French companies' motion for protective order.

<sup>12</sup> *Id.*, at 541-546.

internal American court rules. Instead, the Court adopted a more flexible approach requiring lower courts to consider a variety of factors to determine whether to allow discovery or not. The Court also cautioned lower courts to be sensitive to foreign laws and differences in legal system, which could offend foreign sovereignty. In a sense this approach could be the ultimate expression of the principle of comity, which requires balancing between interests of two sovereigns.

### **III. Cases on Comity Involving Russian Issues**

#### **A. The Varyag**

One of the first reported cases addressing the issue of comity to Russia in U.S. courts is *Tucker v. Alexandroff*.<sup>13</sup> At the heart of this case is a story of Leo Alexandroff [*Lev Alexandrov*], a sailor from the legendary cruiser Varyag, which is famous for the heroism of her crew at the battle of Port Arthur during the Russia-Japan war. Varyag was stationed at Port Arthur on 27th January 1904 when the Japanese fleet arrived to blockade the port. Varyag's commander, Captain Rudnev, took his ship to engage the substantially exceeding enemy fleet in company with a gunboat. Many of the Varyag's officers and sailors were personally decorated by Russian Emperor and Varyag herself was glorified in a well-known Russian folk song. This year is a 100-year anniversary of the battle of Port Arthur. A lesser known fact is that Varyag was built in Philadelphia, Pennsylvania.

Unfortunately, the *Tucker* case is not about valor of Russian sailors but one of them who decided to desert his ship. Alexandroff, a conscript in the Russian naval service, was sent as one of a detail of fifty-three men to Philadelphia, to become a part of the crew of Varyag then under construction. Alexandroff, who had remained during the winter at Philadelphia in the service and under the pay of the Russian Government,

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<sup>13</sup> *Id.*, 183 U.S. 424 (1902).

deserted the following spring, went to New York, renounced his allegiance to the Emperor, declared his intention of becoming a citizen of the United States, and obtained employment. Shortly thereafter, he was arrested as a deserter from a Russian ship of war, and committed to prison, subject to the orders of the Russian Vice Consul in Philadelphia or commander of the cruiser.

The court held that the then in-force 1832 treaty with Russia required United States to arrest and return the deserted Russian sailor to the Russian authorities. However, the treaty is the *only* basis, which the Russian Government has to request the arrest of the sailor. The power contained in the treaty cannot be enlarged upon principles of comity to embrace cases not contemplated by it. The enumeration of certain powers in written instruments with respect to a particular subject matter is a negation of all other powers with respect to the same subject matter (*expressio unius est exclusio alterius*).<sup>14</sup>

**B. The Expropriation of Expropriators**

The 1917 explosion in Russia indeed “shook the world” as a well-known book states. The debris from this explosion did not spare American courts, which were forced to resolve conflicts arising out of the sudden overhaul of the Russian legal system. The *Moscow Fire Ins. Co. v. Bank of New York & Trust Co.* presents quite a peculiar situation in which the United States government, which did not recognize the Soviet government up until 1933, asked the court to give comity to a Soviet decree, which confiscated the property of private insurance companies.<sup>15</sup> This is the very decree which, along with other expropriation decrees, the United States vehemently opposed and which was one of the reasons for non recognition of the Soviet government by the United States.

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<sup>14</sup> Id., at 436-437.

<sup>15</sup> Id., 280 N.Y. 286 (1939).

Moscow Fire Insurance Company was organized in Russia in 1858 and was authorized to do business in New York in 1899. In 1918, the Soviet government seized assets of Moscow Fire Insurance Company in Russia. However, the company continued transacting business in New York up until 1925. Then, the company went into liquidation and its assets were transferred for safekeeping to the Bank of New York in 1933. Several parties submitted their competing claims against the assets. Meanwhile, on November 16, 1933, the United States government recognized the Soviet government and the Soviet government assigned to the United States government all its interest to the funds deposited in the Bank of New York. At this point, the U.S. government entered the lawsuit with the claim that Soviet government had valid title in the funds at question by virtue of the expropriation decree and that the U.S. government, as an assignee of the Russian government, has a valid title to these funds. Thus, the court was faced with a question whether to give the Russian expropriation decree its intended effect in New York. Another peculiar detail of this case is that the Association of American Creditors of Russia an *amicus curie* in this case, was represented by Allen W. Dulles, the future chief of the CIA.

The court declined to hold that comity should affect distribution of funds in New York bank account because Russian decrees did not apply to the funds at issue. According to New York laws, New York branch of the Russian insurance company was a separate judicial person and Russian decree could not have extraterritorial effect over this entity in the United States. Thus, the United States government simply could not have the title to the funds because the Russian government did not have anything to assign to begin with.

### C. The “Garden Variety” Cases

The issue of recognition of foreign judgments arises not only in commercial context but also in cases involving purely domestic relationships such as divorce decrees and estate matters. For example, in one of such “garden variety” cases decided in Philadelphia in 1963, Philip Malika who resided in Byelorussia claimed that he is the heir of his brother Anton Malika who died in Philadelphia in 1943 and that he is entitled to the estate in the amount of \$1,750.<sup>16</sup> In order to support his claim, Philip provided a power of attorney and a number of certificates allegedly evidencing his family history and proving that he is indeed Anton’s brother. Since Byelorussian records for certain years during the period from 1875 to 1904 were destroyed, the certificates which Philip provided were “reconstructed entries” made in the Archives of the Bureau of Vital Statistics of the City [ZAGS] of Grodno. The reconstructed entries were made in 1955 and 1956. The entries were apparently made pursuant to a court decision of the People’s Court of Dyatlovsky District of the Grodnensky Region, which was confirmed by the Supreme Court of Byelorussian SSR.

The Philadelphia court facing the issue of whether to recognize the decision of the Byelorussian Court explained that judicial decrees rendered in foreign countries depend for recognition in Pennsylvania upon comity. The court recognized that public records in Byelorussia could be destroyed because of the war; however, it emphasized that the facts should be established beyond doubt as unimpeachable and, impartial and trustworthy. The court declined to give comity to the Byelorussian court’s decision because entries

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<sup>16</sup> *Malika Estate*, 31 Pa. D. & C.2d 736 (1963). Note that it took twenty years from the time of the decedent’s death to the time when his estate has finally closed, which is not an unusual case in international estate matters.

appeared to have been specially tailored to meet the facts of the case. The court noted that

“... we must ordinarily grant recognition and credit to the decree of [a foreign] tribunal unless the decree is so palpably tainted by fraud or prejudice as to outrage our sense of justice or where the process of the foreign tribunal was invoked to achieve a result contrary to our laws or public policy or to circumvent our laws or public policy.... Before we give faith and credit to the judgment of a foreign court, we should look carefully into the background of the case and the circumstances under which the decision was made.”<sup>17</sup>

This case illustrates that the decision of whether to give comity to a foreign court judgment often depends on the careful analysis of specific facts and evidence. The determination of fact is generally made by the lower court judge, whose decision in such issue is given considerable weight. In large international commercial cases involving multiple parties and numerous transactions, affidavits, statements, and documents in multiple languages counting thousands and thousands of pages, the determination of facts may be quite a complicated and time consuming matter and in some cases lead to incomprehensible results.

#### **D. The Cheburashka**

In *Films by Jove, Inc. v. Berov*, an American company, as well as Russian plaintiffs, brought an action for copyright infringement based on the allegation that the American company had received an exclusive license to use certain Russian animated films that had been produced by a Soviet film studio.<sup>18</sup> Films by Jove (“FBJ”) purchased the license in the beginning of the 1990’s and invested in restoring and updating the

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<sup>17</sup> Id., at 745.

<sup>18</sup> Id., 250 F. Supp. 2d 156 (E.D.N.Y. Apr. 16, 2003). The films included such well-known Soviet cartoons as Cheburashka and Krokodil Gena, *Yozhik v Tumane*, *Film Film Film*, *Balerina na Korable*, and many others.

library of films over \$3 million. Berov operated several stores on Brighton Beach in Brooklyn where he was selling the films in violation of the FBJ's license. In a separate criminal proceeding, Berov plead guilty for placing fraudulent copyright notice and was convicted for 10 months of imprisonment. The sentence was recently reduced to 2 years of probation in exchange for Berov's agreement to forfeit his property.

In the *FBJ* case Judge Trager initially entered a summary judgment in favor of the FBJ on August 27, 2001 based on his interpretation of the relevant Russian laws and the Russian courts holdings. Several months after the case was decided in the U.S., on December 18, 2001, in parallel litigation between the parties in Russia, the court issued a decision that contradicted certain aspects of the Judge Trager's interpretation of Russian laws. The defendants then moved to reconsider the August 27, 2001 decision based on comity to the Russian court decision. Judge Trager denied the motion because it found specific improprieties in the Russian proceedings which included *ex-parte* meetings with one of the parties and influence on the court. The court explained:

In the ordinary case, this court would be inclined to adopt the [Russian court's] positions with respect to issues of Soviet law. However, this is no ordinary case. First, there are strong reasons to question the accuracy of the December 18, 2001 decision on its face. Furthermore, plaintiffs have presented specific evidence indicating that the decision was, in fact, animated by coordinated efforts ... to re-nationalize studio copyrights, recapturing ... property rights that were acquired nearly a decade earlier by an American investor.<sup>19</sup>

The *FBJ* case is instructive in that courts do not normally deny comity to foreign proceedings based on unsubstantiated allegations of improper influence. Rather they require parties alleging improper influence to show specific evidence to support such

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<sup>19</sup> *Id.*, at 196.

allegations. One may question wisdom of such approach. Indeed, it is only in rare case that the aggrieved party would have specific documented evidence of improper acts as it is unlikely that the wrongdoer would be inclined to documents such acts. However, this approach serves as a sign of respect to foreign sovereignty and avoids conflicts with the management of foreign relations, which is the task of the executive power and not the courts.

E. **Nedagro B.V. v. Zao Konversbank**<sup>20</sup>

*Nedagro* presents situation in which principle of comity is used to resolve the issue of parallel proceedings in the courts of different nations. Plaintiff Nedagro, a Dutch corporation filed action in New York against ZAO Konversbank, a Russian bank to enforce arbitration award rendered by the International Court of Commercial Arbitration ("ICCA") at the Chamber of Commerce and Industry of the Russian Federation in Moscow. On March 29, 2002, the arbitration panel found that Konversbank unilaterally breached an agreement with Nedagro and awarded damages in the amount of \$1.9 million plus interest. Subsequently, Konversbank filed petition with the Moscow City Court to set aside the award but failed to pay appropriate filing fee. Although Moscow City Court permitted Konversbank to re-file the petition, Konversbank appealed the decision to the Supreme Court of Russian on the ground that it cannot pay the court fee. After a number of petitions and movements within Russian judicial system, the case came back to the Moscow City Court, which on August 2, 2002 ordered that the case be transferred to the Moscow Arbitrazh Court. Prior to the hearing, Nedagro sought provisional remedy [*obespechitel'nye mery*] if attachment of Konversbank assets pending determination of

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<sup>20</sup> *Id.*, 2003 U.S. Dist. LEXIS 787 (S.D.N.Y. Jan. 21, 2003)

the enforceability of the ICCA award. However, the Moscow City Court denied the petition on May 13, 2002.

After failing to freeze Konversabnk's assets in Russia, Nedagro on May 23, 2002 obtained an ex parte order of attachment freezing Konversbank assets in two New York bank accounts in Citibank and Deutsche Bank in the amount of almost \$2 million. Konversbank filed its motion to dismiss or to stay the New York action on September 25, 2002. Shortly thereafter, on November 5, 2002, Moscow Arbitrazh Court held that there are no grounds to dismiss the ICCA award. This decision has been reversed and remanded on December 2, 2002 by the Federal Arbitrazh Court for the District of Moscow. Meanwhile, in New York, the court granted Konversbank's motion to stay the proceedings.

In staying the proceedings to enforce the arbitration award in favor of parallel enforcement proceedings in Russia, the court used six factors to determine whether stay was appropriate:

- (1) the general objectives of arbitration--the expeditious resolution of disputes and the avoidance of protracted and expensive litigation;
- (2) the status of the foreign proceedings and the estimated time for those proceedings to be resolved;
- (3) whether the award sought to be enforced will receive greater scrutiny in the foreign proceedings under a less deferential standard of review;
- (4) the characteristics of the foreign proceedings including (i) whether they were brought to enforce an award (which would tend to weigh in favor of a stay) or to set the award aside (which would tend to weigh in favor of enforcement); (ii) whether they were initiated before the underlying enforcement proceeding so as to raise concerns of international comity; (iii) whether they were initiated by the party now seeking to enforce the award in federal court; and (iv) whether they were initiated under circumstances indicating an intent to hinder or delay resolution of the dispute;

(5) a balance of the possible hardships to each of the parties, keeping in mind that if enforcement is postponed under Article VI of the Convention, the party seeking enforcement may receive 'suitable security' and that, under Article V of the Convention, an award should not be enforced if it is set aside or suspended in the originating country; and

(6) any other circumstances that could tend to shift the balance in favor of or against adjournment.<sup>21</sup>

The court was most impressed with the fact that Nedagro first brought the enforcement proceedings in Russia. The pendency of the Russian proceedings could potentially lead to conflicting results, which in the eyes of the court would be offense to international comity. The court stated that it “loath” to risk “the possibility of inconsistent results,” and stayed the proceedings.

This case highlights at least two important points. First, the analysis of comity in context of adjournment in favor of parallel proceedings requires application of the six-factor test. In a similar case, *MGM Prods. Group v. Aeroflot Russian Airlines*, which was decided only five months after *Nedagro*, the same court declined to stay New York proceedings in favor of Swedish proceedings because *inter alia* Swedish proceedings were brought after New York proceedings; Swedish proceedings were brought not to enforce the award but overturn the award. Second is that international comity is given not only to judgments or judicial acts which have already been made but also to future judgments. A mere possibility that the court’s decision may lead to the holding, which is inconsistent with the future decision of the foreign court is loathed by the U.S. court.

#### **IV. Determination of Foreign Law**

The determination of foreign law is closely related to comity. Indeed, domestic courts first need to understand what foreign law stands for before applying it to the

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<sup>21</sup> Id., at 20 (citations omitted).

specific facts to the case and giving it any comity. Federal Rules of Civil Procedure provide:

Rule 44.1. Determination of Foreign Law

A party who intends to raise an issue concerning the law of a foreign country shall give notice by pleadings or other reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence. The court's determination shall be treated as a ruling on a question of law.<sup>22</sup>

The most common way of determining foreign law is presenting expert report from foreign scholars, law professors, or practicing lawyers. In complex commercial litigations involving various issues of different foreign laws, parties might use several experts depending on their qualification and experience. This is some times called “battle of the experts.” In some cases, experts could be deposed to determine the basis for their opinions, their qualifications, possibility of prior conflicting opinions, and other relevant issues. This could be a shocking experience for a civil code specialist, who is not used to American style adversarial cross-examination.

*Itar-Tass Russian News Agency v. Russian Kurier, Inc.* is an example of the case where the U.S. court had to determine certain issues of Russian copyright law.<sup>23</sup> Plaintiffs, Russian news agency and a number of newspapers such as Argumenty I Fauty, Komsomol'skaya Pravda, and Moscovskiye Novosti claimed that defendants, a small Brooklyn newspaper and her publisher, infringed upon the plaintiffs' copyright in articles and news items. District Court Judge Koeltl granted injunction and awarded damages to the news agency. The appellate court Judge Newman held that, with respect to the

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<sup>22</sup> Fed Rules Civ Proc R 44.1.

<sup>23</sup> Id., 153 F.3d 82 (2d Cir. N.Y. 1998).

Russian plaintiffs, Russian law determines the ownership and essential nature of the copyrights alleged to have been infringed and that United States law determines whether those copyrights have been infringed in the United States and, if so, what remedies are available. He also concluded that Russian law, which explicitly excludes newspapers from a work-for-hire doctrine, vests exclusive ownership interests in newspaper articles in the journalists who wrote the articles, not in the newspaper employers who compile their writings. The holding, however, does not address the issue of the law applicable to copyright assignments, which some times arises in international copyright infringement cases where works of authors are assigned to entities in another countries and the infringement takes place in a third country.

**V. Conclusion**

The concept of comity has been evolving in the U.S. system for many years and is used to balance the interest of different sovereigns to avoid potential inconsistencies and embarrassments. While the United States is not a party to any treaty, it does not mean that decision of Russian courts will not be enforced in the United States. If the decision is rendered in accordance with law, the U.S. court would not hesitate to give it due comity.