

**The Frolova Case**, by Anthony D'Amato, *in* Contemporary Issues in International Law: Essays in Honor of Louis B. Sohn (1984) Code C83h

Taking a seminar under Professor Louis Sohn was for me an unprecedented combination of grandiose theme combined with acute attention to the minutest detail. We studied nothing less than world order on the global scale, but we did so by examining at length why the delegates to the United Nations conference in San Francisco in 1945 used a particular word in a particular draft provision when several alternate words might have (but, ah, could they?) served just as well. I began to understand that I could never hope to have as intimate and comprehensive knowledge of the United Nations Charter as my professor, and I rationalized this by saying, "Oh, well, when I need to know something I can always ask him." But then, perhaps, I got a little wiser, and began to understand that Professor Sohn was not, after all, teaching us why that particular wording was chosen, but instead was imparting to us a much more valuable philosophy: If you want to solve the problems of the world and be a lawyer at the same time, you have to pay excruciating attention to detail.

In Professor Sohn's mind resides a national treasure of detailed information and argumentation relating to the pressing legal problems of today's world—on subjects such as disarmament, arms control, international organization, human rights, the law of the sea, and others of the same sweep and importance. Just to mention these categories will recall for the informed reader a leading paper or book by Professor Sohn in each of them. I hesitate to try to add anything to these important fields in a collection of essays devoted to Professor Sohn. My hesitation stems from an insecure feeling that he has already written a better paper on any topic that I might choose, coupled with the traditional insecurity of the student that he might attach to my work a gentlemanly C or perhaps a generous B.

For those reasons I have chosen simply to describe a human-rights case that I undertook in the past year. I feel more secure about description, in the present context, than analysis. I leave to the reader any analytical critique he or she may want to apply to my efforts on behalf of Lois Becker Frolova.

Her case came my way obliquely. In the spring of 1982 my former student Susan Keegan, a practicing lawyer in Chicago, called me at home in the evening on behalf of her friend, Lois Frolova, who needed practical advice on how to handle a press conference the next morning. A press [page 90] conference? About what? Susan said that Lois had just begun a total hunger strike in sympathy with that of her husband Andrei Frolov, who had begun his hunger strike in Moscow, and resolved to continue it "to the death if necessary." The problem was that the Soviet Union would not let Andrei out of the country to join his wife Lois in Chicago.

I had a long talk with Susan and then, later that same evening, with Lois. I knew very little about the "divided families" issue in the developing international law of human rights other than what I had read in the newspapers regarding Soviet Jewry wishing to emigrate. Lois's situation did not fit that latter category; although she is Jewish, Andrei is not, and their problem was neither religious nor ethnic.

But *why* wouldn't the Soviet Union give Andrei an exit visa? Lois could not satisfactorily answer this question. To be sure, she gave me various "answers" —Soviet intransigence, the cold war, bureaucratic obduracy, jealousy on the part of minor Soviet officials who themselves would like to leave Russia and thus did not want to see anyone else leave, and perhaps the fact that Andrei was a freelance photojournalist by profession. None of these reasons seemed to me to be particularly important. In his job Andrei had not seen anything regarding national security; his work was equivalent to photojournalism for our National Geographic Magazine. Yet I persisted in asking Lois these questions, out of a general lawyer's caution that there might be more to the Soviet refusal than met the eye.

However, Lois seemed completely sincere, and she answered my fumbling questions directly and completely. She met and fell in love with Andrei while researching her dissertation on nineteenth-century Soviet liberalism during a student-exchange trip to Moscow, and they were married in the spring of 1981 at the Palace of Marriages. A month later Lois's visa expired and she was compelled to leave the Soviet Union without her husband. She saw him again a year later while on a nineteen-day tourist visa.

I told Lois that I would play the part momentarily of a reporter at the next morning's press conference, and ask her an embarrassing question: "If you love your husband so much that you're willing to go on a total hunger strike for him, why don't you move to the Soviet Union and become a Soviet citizen and live with him there?" Lois replied that Andrei had no close relatives in the Soviet Union, whereas Lois had her parents (one of whom was recently hospitalized for a long time) in Chicago. Besides, she added, she simply did not want to live in the Soviet Union, whereas Andrei was willing to live in the United States. But the best answer to such a question, we later decided, was the simple truth that Lois did not want to bring up her children as Soviet citizens.

Then it was Lois's turn to ask me a question: was she taking a risk in [page 91] holding a press conference? Might the Soviets arrest Andrei if she made a big fuss in the United States? Might he be the victim of an "accident"? I hesitated, because we were speculating, after all, about a human life. Moreover, I was glad that Lois asked me this question, because it indicated that she had not made up her mind about holding the press conference, and therefore she was genuinely asking me for advice rather than simply eliciting information from me about how to hold a press conference. I think the client-attorney relationship between Lois and me in fact began at that moment.

"What do *you* think they might do?" I asked Lois, first of all. "Well," she replied, "when Andrei requested permission to emigrate to the United States, they suggested that he first resign from his union, the Committee of Literary Workers. So he resigned. Then he discovered that he was unemployable. They denied him his exit permit, and he no longer was able to get his stories or photographs published. He was completely out of a job."

"Who is 'they'?" I asked.

"In Russia, 'they' is usually a man dressed in civilian clothes whom citizens can 'spot' just from the way he talks and carries himself. The man tells you something authoritative, something that

he probably would not know unless he were officially connected with the government. But he never produces any papers and never puts anything in writing. Yet Andrei can tell when it's the secret police or a government agent. Once they came to his flat and told him to go along with them."

"What did he do?"

"Nothing. He refused to go along."

"What happened?"

"Nothing. I guess he called their bluff. Or maybe they didn't want to officially arrest him."

Lois continued her account. Andrei was desperate to leave the Soviet Union now that he was out of a job. He heard of four other persons who had begun a hunger strike to join their spouses in the United States and in Western Europe (they were two men and two women). He agreed with them to join their effort. (A photo later appeared in the *New York Times* of the hunger strikers leaning out of an apartment in Moscow, the photo having been taken from the street below.)

Lois found out about Andrei's decision to go on a hunger strike from a reporter for the *Chicago Tribune* who was stationed in Moscow. (Andrei could not call her; she arranged, through friends, to call him at a specific time, but the telephoning process was laborious. Recently, the Soviet Union has made it even more difficult for their citizens to engage in transatlantic phone calls.)

[page 92] When Lois received the word from the *Tribune* reporter, she was in the midst of breakfast. She said, simply, that from then on she could not eat. Her body had made the decision for her—to engage in a parallel hunger strike. But now she was asking me whether telling the press about it might endanger Andrei.

"Your husband has already taken the decisive step," I replied. "The Soviets are already mad at him. If they are going to do anything to him, they already have enough excuses to do it. Of course, I'm only guessing, but I think that you can only help him by generating publicity here in Chicago. My guess is that there is a certain safety in a lot of publicity. If he's in the limelight, he probably is safer than he would be if you do nothing. I can't be sure of this, and it has to be your own decision, Lois, but my recommendation would be for you to go ahead with the press conference."

Lois agreed. What Andrei had done was out of her hands. Publicity, if anything, might help ensure his safety. On the other hand, we agreed that it had to be responsible, serious publicity; a life was at stake.

We agreed to hold the press conference. We decided that the best place would be Northwestern University School of Law, located in downtown Chicago. Susan Keegan agreed to call Dean David Ruder for permission (it turned out he wasn't home, and she left a message on his answering machine.) The law school would be an appropriate place, I thought, both to emphasize the seriousness of the situation and perhaps to create a favorable precedent for others. For

although I was helping Lois in this specific situation, I could not help thinking of others who were not represented by any attorney and who nevertheless had equally strong reasons to leave the Soviet Union. I did not want to do anything for Lois that might have a negative impact upon those other, nameless, people. To Lois's great credit, throughout the ups and downs of the coming weeks, she invariably coupled her case with the many other persons in the Soviet Union who were seeking to leave to be reunited with their spouses or relatives. It seemed to me that Lois would have made an ideal law student if she had not decided to pursue a Ph.D. in history at Stanford, because it took no persuasion on my part to show her the immediate relevance, as a matter of principle, of her case to the situations of others whose lives were devastatingly impacted by the refusal of a government to allow them to live with their spouses.

The press conference the next morning at Northwestern Law School attracted major media attention, and from then on Lois was one of the most recognized persons in Chicago. People stopped her on the street to say that they had seen her on television, or to ask about the latest developments in her situation that they had heard about on radio or seen [page 93] in the daily papers. Lois appeared on national television on an evening program devoted in part to the "divided families" issue; Lois was the only spouse in this country on a parallel hunger strike. She made an enormous impact. At one point she was asked what the Department of State was doing in her behalf, and she replied, "they won't even return my phone calls." The next morning, at 8 a.m., she was awakened by a phone call from the State Department.

I advised Lois to consult a specialist in food deprivation, and to report to him regularly. She found Dr. Sheldon Berger of Northwestern Medical School, and he gave sympathetic and professional assistance throughout. In the next few weeks, I found myself losing weight! Could it be that her hunger strike was contagious? Lois said that all her friends told her they were eating less now that she was eating nothing at all. She also told me how her mother had reacted when she first announced the hunger strike. Her mother said, "A hunger strike can be a good thing. If you must fast, you must fast. Just be sure to eat a little something."

Lois was certainly getting publicity, but there seemed to be no effect upon the Soviet Union. We began to wonder whether now that we had achieved national publicity the Soviets would never give in, lest they seem to be caving in simply because of the power of a free press. And Lois was losing weight rapidly and looking pale. In Moscow, Andrei Frolov and his fellow hunger-strikers were also weakening physically, and unlike Lois they had no benefit of medical advice.

Frustrated and unable to sleep, an idea popped into my head about 3 a.m.: why not sue the Soviet Union? No one had ever sued that nation in a United States court on a human-rights matter, but why couldn't there be a first time? I wondered—who was the plaintiff? Clear-headed reflection the next morning led to the conclusion that Lois, and not Andrei, was the plaintiff. The Soviet Union was harming her directly; it was interfering with her relational interest in living with her husband. And because of the harm to Lois, the "tort" was located where Lois was, namely in Chicago.

Excited, I asked Lois to come to my office, and I also invited a colleague, Professor Steven Lubet of the Northwestern Legal Clinic, a specialist in immigration law. Lois was somewhat flabbergasted at the idea of suing the Soviet Union. Steve was of the opinion that, regardless of

the merits, a lawsuit would probably work to secure added safety to Andrei in the same way that publicity probably had served to add to his personal safety. Lois was convinced. She was already doing everything else—writing letters to members of Congress, appearing on radio and television talk shows, forming (with the help of the Young Republicans) a National Coalition for Divided Families, and hounding the Office of Human Rights [page 94] of the State Department (which she said was singularly unsympathetic to her situation).

Professor Lubet and I went to work immediately on drafting a complaint. We agreed that an action for monetary damages might present intractable problems of collection if we got a judgment, and that the Soviets knew this, but that issue seemed almost irrelevant. Our main purpose was to pressure the Soviet Union to let Andrei Frolov emigrate to the United States. We were working under the shadow of Andrei's vow to fast to the death, and Lois had assured us that her husband was a most serious and stubborn Russian.

The first thing I looked up was the Foreign Sovereign Immunities Act of 1976. Congress' intention in that Act was to remove the defense of sovereign immunity when foreign governments or their instrumentalities were sued in American courts with respect to their commercial activities. Was Lois's human-rights problem a "commercial activity"? Steve Lubet and I pondered that question seriously and thoughtfully for approximately five seconds, and simultaneously concluded that there was no way to construe Lois's case as "commercial."

But there was another provision in the Act relating to torts, intended to handle the problem of diplomatic immunity. Under traditional international law, and by virtue of specific conventions, foreign diplomats are not personally subject to the court jurisdiction of the host country. Nevertheless, if they commit a tort their own countries ought to be liable for the actual damage caused. Under the 1976 Act, there is no sovereign immunity defense for a foreign state for the tortious act, attributable to that state, that is committed in the United States.

Certainly Congress had not contemplated a case such as Lois's in this "diplomatic" section of the Act. Yet the Act speaks of a "tortious act or omission" of the foreign state or its agents with the personal injury "occurring in the United States." It seemed to me that under the plain meaning of these terms, the Soviet Union's tortious act (refusing to let Andrei leave the country) directly caused harm to Lois (her relational interest) in Chicago. Did Congress intend to cover such a case? There was no evidence that Congress did *not* so intend. Congress probably never thought of the possibility. But Lois's case seemed clearly to fit within the statute, was not inconsistent with its purpose, and after all the very process of legislation is to enact general rules that may encompass specific cases that were not specifically foreseen by the legislators.

The next thing I looked up was the Sohn & Buergenthal volume on human rights, the "Bible" of the field. It seemed that we could make out a case for the tortious interference with an internationally protected human right—the right of persons to live together as a family. The family is [page 95] recognized as "the natural and fundamental group unit of society" in the Universal Declaration of Human Rights of 1948, and even the Constitution of the Union of Soviet Socialist Republics provides in Article 53 that "the family enjoys the protection of the state." In a Memorandum of Law I subsequently filed with the federal district court in Chicago, I argued that individuals in appropriate forums have the right to prevent the state from interfering

with their marriage. My citation for this point was L. Sohn and T. Buergenthal, *International Protection of Human Rights* 517-22 (1973).

Under the Helsinki Accords of 1975, officially known as the Final Act of the Conference on Security and Co-operation in Europe, Part I, section IV, provides that the participating states "will deal in a positive and humanitarian spirit with the applications of persons who wish to be reunited with members of their family." The Helsinki Accords are said to have no legal effect (a proposition that may very well be contested), but at least both the United States and the Soviet Union were participating states and they took the Accords seriously. Many concessions were given to the Soviet Union in that document, in return for which the "human rights" provisions were included. Thus the Accords show both that the Soviet Union has made a promise with regard to human rights for which it has received consideration in the very document in which the human-rights provisions are contained, and also that these human-rights provisions are of the highest importance in American foreign policy (a point which will later become important in considering the relevance of the "act of state" doctrine to Lois's case).

Finally, the repeated denials by the Soviet Union to Andrei Frolov's requests for permission to leave his country were in clear violation of an international treaty to which the Soviet Union is a party (regrettably the United States has so far failed to ratify it). The Soviet Union in 1973 ratified the International Covenant on Civil and Political Rights, which entered into force in 1976. In Article 12(2) of this treaty, it is provided that "everyone shall be free to leave any country, including his own." Thus, the outline of Lois's case became clear: the Soviet Union committed an international tort on Lois's relational interest by unlawfully denying her husband his right to leave the Soviet Union and join his wife.

In drafting the Complaint and formulating a strategy for the case, I received two extremely significant suggestions that resulted in important modifications. The first came from Luis Kutner, a famous human-rights attorney in Chicago. Kutner suggested that we sue the United States as well as the Soviet Union. The refusal by the State Department to help Lois established a basis for Lois to sue the United States for failing to protect her human rights vis-a-vis the Soviet Union. As I later thought about this [page 96] point theoretically, it seemed to me that the idea fuses the classical with the modern conception of international law. Under the classical notion, an individual does not have "standing" to sue a foreign government; only that individual's government may act on behalf of the individual. Under the modern concept of human rights, there has been a loosening of the "standing" requirement (for example, explicitly, in the European Court of Human Rights). Along with that loosening is the concept that an individual may sue his own government as well as a foreign government—the primacy of "human rights" suggests that no government should be immune, including one's own government. Thus, merging these conceptions yields the theory that the United States owed to Lois a human-rights obligation to sponsor her claim against the Soviet Union, and thus she has a human-rights claim against the United States for failing to act in her behalf.

But perhaps even more important than these theoretical concerns was the practical consequence that suing the United States would surely be the quickest and most effective way to bring Lois's case to the attention of senior officials of the Soviet Union. We were fighting against time; Andrei, in his small Moscow flat, was losing weight rapidly. By implicating the United States in

our lawsuit, we might underline the significance and immediacy of Lois's claim. And certainly it would not be frivolous to implicate the United States, for the theoretical reasons given above.

But there was even a better way to implicate the United States than simply to add a second defendant to the lawsuit. Under the Federal Rules of Civil Procedure, it was possible to bring in the United States as Co-plaintiff. Accordingly, with Lois's consent, I added the United States of America as "necessary Co-Plaintiff," under the claim that to the extent under international law that Lois's rights were enforceable by the United States in its sovereign capacity the United States should be joined as plaintiff against the Soviet Union. By this tactic, the United States might find itself in an adversarial relationship with the Soviet Union in a federal court in Chicago. Surely if the United States found *this* position unpalatable, the case would get prominent attention in Washington's diplomatic circles.

As I expected, the United States Attorney resisted being dragged into Lois's case, and therefore I had to argue that the United States was an "involuntary co-plaintiff," which again was a permissible position under the Rules of Civil Procedure.

The second significant modification of the Complaint came from a suggestion by Susan Keegan and her senior partner Michael Coffield. They advised me to file for an injunction as well as going for damages. Although my immediate reply was that the Foreign Sovereign Immunities [page 97] Act of 1976 only provided jurisdiction for cases involving "money damages", I realized that the Act might be construed as not explicitly prohibiting injunctions. In my later Memorandum of Law, I contended that Lois's case comes under the terms of the Act because it is one "in which money damages are sought against a foreign state." The request for an injunction was in addition to the money damages. Moreover, I argued at the possibility of an injunction should fairly be implied in the case of a continuing tort where the threat of money damages may be ineffectual. The Act was passed, after all, in the context of the complete merger in Federal courts of law and equity jurisdiction.

Therefore I added to the Complaint a Motion for Preliminary Injunction, asking the federal district court in Chicago to bar the Soviet Union from engaging in any commercial transactions in the Northern District of Illinois unless and until Andrei Frolov is allowed to emigrate to the United States. Since Soviet transactions on the Board of Trade in Chicago in commodities such as wheat and gold run to the many millions of dollars, there was considerable "bite" in the threat of injunction. Indeed, all the Chicago papers and television stations immediately focussed on the possible injunction against wheat purchases and gold sales as soon as the case was filed. The headline in the *Chicago Tribune* read, "Suit Seeks to Bar Soviet Dealings in N. Illinois."

Lois asked me what chance there was that the court would grant the injunction. I replied that she had to assume that all these legal actions had very low probability of actual success on their own terms, and not to get really enthusiastic about the legal maneuvers. At the same time, I said, how does the Soviet Union know what a district court judge in Chicago might do? For all they know, they might find themselves severely interrupted in their major commercial transactions—and if they are interrupted once, it could happen again with respect to other cases in the future. They would thus have to ask themselves whether keeping Andrei Frolov in Moscow was really worth

the chance, at whatever level of probability they might assign to that chance, of such an injunction being issued against them.

I filed the Complaint and Motion for a Preliminary Injunction in federal court within two days, on the morning of May 20, 1982. The rush job led to some inaccuracies, the most important of which were pointed out to me by—of course—Professor Sohn in a kind letter he sent to me after I sent him copy of the court papers. My Memorandum of Law, submitted to the court a couple of days later, presented what I believe was a more accurate statement of the legal principles involved in the case and the precise basis for jurisdiction.

The Memorandum defined Lois's injury as "the loss of consortium with [page 98] her husband, loss of familial rights, deprivation of internationally protected human rights, intense mental and emotional anguish, and physical illness. " I cited the recent case of *Letelier v. Republic of Chile*, 488 F. Supp. 665 (1980), for the proposition that a foreign state may be sued under the Foreign Sovereign Immunities Act for setting in motion a tortious act that occurred within the United States. I also argued that the "act of state" doctrine did not apply in the *Letelier* case, nor should it apply in Lois's case, both because the foreign state's act violated international law and because the act of state doctrine should not allow sovereign immunity to reenter through the back door when the Foreign Sovereign Immunities Act had provided for a restrictive theory of sovereign immunity. As to the traditional fear behind the "act of state" doctrine that a court might be frustrating the foreign-policy objectives of the other branches of the federal government, I found good language to quote in the Memorandum filed by the United States Department of State as amicus in the recent case of *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980). When an individual has suffered a denial of his human rights as guaranteed by international law, the State Department brief said,

there is little danger that judicial enforcement will impair our foreign policy efforts. To the contrary, a refusal to recognize a private cause of action in these circumstances might seriously damage the credibility of our nation's commitment to the protection of human rights.

The remainder of the Memorandum was devoted to the international law questions that I have previously summarized.

On the morning of the filing of the Complaint and Motion, I telephoned the Department of State and the Department of Justice to notify them that I had filed the case, that the United States was named as Necessary Co-Plaintiff, and that I was mailing copies of the papers to those Departments as well as serving them on the United States Attorney in Chicago. A friend of mine in the Justice Department engaged me in about a half-hour's conversation over the points of law in the case, to which he took some exception, and when we found that neither of us was convincing the other, he said "looks like we'll be carrying on this argument in court against each other." I replied, feigning innocence, "why should we argue this in Court? After all, we're on the same side in this case. Your client and mine are both plaintiffs!"

Lois held a second press conference the morning that the case was filed. Dr. Sheldon Berger stated that, in the eleventh day of her hunger strike, Lois's weight had dropped from 112 pounds



to 98 pounds. The *Chicago Tribune* reporter wrote in his news story that Lois "looked weak and wan."

Service of process against a foreign government is a difficult procedure under the Foreign Sovereign Immunities Act. Complete translations of all [page 99] the papers filed in the case and all the relevant statutes must be provided. It would be a while before we could get all the translations, which would be prepared by Lois and her friends. However, because I moved for a preliminary injunction, I notified the Soviet Embassy in Washington D. C. by telegram (both in English and in Russian), and sent them as a preliminary matter copies of the Complaint and Motion by express mail. My guess is that the Soviet officials first received word of the case from the lawyers in the Department of Justice who had to cope with the possibility that they would be involved in a lawsuit against the Soviets in Chicago.

In any event, on the fifth day after I had sent the telegram, Andrei Frolov in Moscow was told to go to the passport office. (We heard word of this through the *Chicago Tribune* reporter who was keeping regular tabs on Andrei in Moscow.) When he went there, "they" told him that, if he wished, he could re-apply for an exit visa. They did not indicate to him what the disposition would be, but they assured him that his re-application would be given "immediate consideration." I appeared in court on the Motion for a Preliminary Injunction, and requested a week's continuance on the ground that there seemed to be positive developments in Andrei's situation.

Andrei's re-application was duly processed. Then word was finally given to the group of hunger strikers in Moscow that Andrei would be given his exit visa. When the others heard this, they burst into cheers and applause. In Chicago, Lois sat down to a hearty meal.

Nothing was done by the Soviet Union about the four other hunger strikers for two long months; then, two of them were told they would get their exit papers. Nevertheless, I was sure that Andrei's case had a beneficial impact upon the other hunger strikers, for it would have been tactically unwise of the Soviet Union only to release the person who sued them. That would have invited many future lawsuits. Thus, to blunt the impact of Andrei's case, I felt sure that some of the other hunger strikers would be released.

At the same time, the Soviet Union would not want to convey the message that going on a hunger strike was a way to get exit papers. For there are many thousands of Jews, among other citizens, wishing to emigrate from the Soviet Union. The hunger strike as a tactic therefore must be officially disavowed. The Soviet Union did nothing for Yuri Balovlenkov, one of the hunger strikers, and Yuri almost died as a result of his strike. At present writing Yuri is alive, has given up his hunger strike, and is still in the Soviet Union without any present prospects of being allowed to leave.

Andrei Frolov arrived at O'Hare International Airport in Chicago on the bright Sunday afternoon of June 20, 1982. He was tired and carried [page 100] with him his entire worldly possessions. The front pages of the next day's Chicago papers were headlined, "From Russia, With Love." In front of the TV cameras and press representatives on the afternoon of Andrei's arrival, Lois Frolova said, "my joy of this day stands in stark contrast to the other divided families who have

been deprived of their elemental human rights." She used the time and TV cameras to name the individuals still seeking to emigrate from the Soviet Union, and described their individual situations briefly.

In court two days later, I dropped the motion for a preliminary injunction but retained the action for legal damages. I also acceded to the United States' motion that it be dropped as Necessary Co-Plaintiff. Judge Stanley Moskowski asked me if Andrei Frolov was in the courtroom. I replied that he was. The judge invited Andrei to stand up from the audience. With the American flag behind him, the judge said simply, "Welcome to the United States."

However, much later, on January 26, 1983, Judge Moskowski filed a brief opinion dismissing the cause of action in *Frolova v. Union of Soviet Socialist Republics* on the basis of the act of state doctrine. He wrote that the "act of state doctrine operates to preclude United States courts from ruling on the validity of foreign governmental acts so as not to hinder or embarrass the Executive Branch in its foreign policy endeavors." I immediately filed a motion for reconsideration, stating that the act of state doctrine needs further examination both as a general proposition and as applied to Lois's case. However, Judge Moskowski denied the motion for reconsideration. I then filed an appeal with the Seventh Circuit Court of Appeals, and as I write this report, I am simultaneously preparing a brief; I am hopeful that Lois's case will provide the Court of Appeals with a substantial basis for continuing the recent trend away from the unfortunate decision in *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398 (1964), which I hope may some day be viewed as the "last gasp" of the act of state doctrine as an impediment to the realization of the international rule of law.

Given Judge Moskowski's viewpoint, it was indeed fortunate that the main objective of Lois's case—to get her husband out of the Soviet Union—was realized before the court had occasion to make any rulings. Very important to me was the fact that, when I saw Professor Sohn in Washington in the fall of 1982, he commented that I had done a good job in the Frolova case. I add this point at the end of my essay in order to make it difficult for my former professor, when he reads this piece, to change his mind.