WITHDRAWAL SHEET
Ronald Reagan Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. memo	from Colin Powell to Sec of State re: national security study directive and multilateral strategic export controls, with attachments (4pp)	1/30/87	P-1
2. memo	from Lou Pugliaresi and Alexander Platt thru Danzansky to F. Carlucci re: national security study directive on export controls, with attachments (4pp)	1/29/87	P-1

COLLECTION: DANZANSKY, STEPHEN I.: Files		db
FILE FOLDER: International Trade XV. (E) ~~[5 of 9]~~ (9 of 16) RAC Box 8		11/8/94

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- **P-1** National security classified information [(a)(1) of the PRA].
- **P-2** Relating to appointment to Federal office [(a)(2) of the PRA].
- **P-3** Release would violate a Federal statute [(a)(3) of the PRA].
- **P-4** Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA].
- **P-5** Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA.
- **P-6** Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA].

Freedom of Information Act - [5 U.S.C. 552(b)]

- **F-2** Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
- **F-7** Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
- **F-8** Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
- **F-9** Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].
- **C.** Closed in accordance with restrictions contained in donor's deed of gift.

International Trade... Danzansky

RONALD W. REAGAN LIBRARY

THIS FORM MARKS THE FILE LOCATION OF ITEM NUMBER 102 LISTED ON THE WITHDRAWAL SHEET AT THE FRONT OF THIS FOLDER.

United States Department of State

The Legal Adviser

Washington, D.C. 20520

I/s with TABS from Cranwell package

January 28, 1987

Mr. Stephen I. Danzansky
Special Assistant to the President
and Senior Director of International
Economic Affairs
Old Executive Office Building
Washington, D.C.

Dear Stephen:

Enclosed is the letter to the editor of the Wall Street Journal which I sent almost two weeks ago. It is cleared by the Secretary. They called me yesterday to say they have not printed the letter because they intended to run another piece today, which I have enclosed. They offered, however, to print my response to both the editorial and today's piece, which I will have prepared by tomorrow.

Also enclosed are some briefs and other materials we have filed in recent cases. All of our positions have been fully coordinated with the Department of Justice which made the submissions on behalf of the U.S. Government. I offered to meet with and try to assist Mr. Gregorian's attorney in response to his claims that we should help Americans, not the Soviet Union. He declined my offer, despite the fact that he had originally asked the Department for assistance in getting the Soviets to respond to his suit.

Weeks ago, when these issues began to arise, I raised with the Secretary the strong governmental interests that we have in ensuring the proper interpretation and implementation of the Foreign Sovereign Immunities Act and, at the same time, indicated the likelihood that we would be accused of "favoring" the Soviet Union if we presented our views. I told him I intended to do nothing for the Soviet Union that as Legal Adviser I would not do and have not done for other nations. At the same time, I told him that I would not be intimidated into doing any less for the Soviets than I feel is in our interests in this technical but sensitive area.

Sincerely yours,

Abraham D. Sofaer

Enclosures:
As stated

United States Department of State

Washington, D.C. 20520

January 21, 1987

Gerald L. Kroll, Esq.
Kroll & Linstrom
One Century Plaza
2029 Century Park East
Los Angeles, California 90067

Re: Gregorian et. al. v. Izvestia, et. al.
Civ. No. 85-0100-KN

Dear Mr. Kroll:

This is a response to your telegram of January 17, 1987, received in this office yesterday, and our conversation of last evening regarding the above-captioned matter. We regret that you decided not to take advantage of the opportunity to meet with the Legal Adviser regarding this case. The Office of the Legal Adviser provides counsel for parties to litigation in which the Department of State is considering making a submission an opportunity to present their views of the litigation and any role they may wish the United States Government to take in that litigation.

In our conversations last week, I conveyed to you the Legal Adviser's willingness personally to meet with you this week to discuss ways the Department might be helpful in resolving this matter short of further litigation. As I noted during our conversation, pursuant to the schedule established by the court, the Department was required to submit views relating to the January 28, 1987 hearing by January 20, 1987, or to inform the court at that time if we intended to submit such views. For that reason, I informed you that the Department was considering whether to submit additional views for that hearing, referring specifically in my conversation with your associate to the issue of libel, and asked that you let me know by yesterday afternoon whether you wished to meet with the Legal Adviser. Instead, both in our conversations and your telegram, you objected to the Department's "political" interference in the case and requested withdrawal of the United States Statement of Interest of December 4, 1986.

The decision of the United States Government to submit its views in this litigation is based upon legal and policy, not political, considerations. The United States has an independent interest in the administration of the Foreign Sovereign Immunities Act. As stated in its original submission, the United States Government considers that both the interests of justice and the foreign policy interests of the United States are served by permitting the defendants in this case the opportunity to present their arguments so that the court may rule on the merits of the issues presented in the litigation. In addition, as stated in the submission mailed late yesterday, the United States Government has an independent interest in an issue to be addressed at the next hearing -- whether a libel action may be brought against a foreign sovereign under the Foreign Sovereign Immunities Act. This is an issue of general application under the Foreign Sovereign Immunities Act upon which the United States Government has not previously commented.

As you are aware, the Department has already provided Mr. Gregorian assistance in regard to the proceedings instituted against him in the Moscow City Court by delivering to that court a message prepared by you on his behalf. The Department is prepared to consider further assistance to Mr. Gregorian in this matter, consistent with its responsibilities and authorities. The Legal Adviser also remains willing to meet with you personally to discuss the California litigation should you change your mind and wish to meet with him.

Very truly yours,

Bruce C. Rashkow

Bruce C. Rashkow
Assistant Legal Adviser

Drafted:
L/SFP:BCRashkow:L/EUR:MPeay
WANG 0958S
1/20/87
7-1074

Cleared:
L:EVerville

Rcv: 01IM/1.04... ...

... ...ATE WSH

WU ...DYPSTER ...-006... ...17/87
ICS IPMW... ...WSH
ZCZC 00111 ... 7 2325P EDT
TLX 89601 SE... ... WSH
...

...-0154075017 01/17/87
I... IPMRNCZ CSP
2135...756 TDRN LOS ANGEL... ... 119 01-17 0204... ...
PMS ABRAHAM SC...ER. ESQ. DLR
AND BRUCE RASHKOW. ESQ RPT DLY MGM. DLR
OFFICE OF THE LEGAL ADV...OR
US STATE DEPT RM 5420
WASHINGTON DC 20520
RE: GREGORIAN VRS IZBESTIA. ET AL

WE HAVE CONSIDERED YOUR RE... THAT WE ADVISE YO... ... THE STEPS WE WOULD LIKE THE STATE DEPART... TO TAKE AT HIS ....

WE STRONGLY OBJECT TO THE ST... DEPARTMENT'S POLI... INTERFERENCE IN THIS CASE AT THE ASKING OF THE SOVIET UNION. POLITICS HAVE NO PLACE IN PRIVATE LITIGATION- ... IF AGENCIES OF A ...EIGN STATE ARE PARTIES.
WE THEREFORE REQUEST THAT THE STATE DEPARTMENT WITHDRAW ITS STATEMENT OF INTEREST IN THE U.S. LITIGATION AND TAKE NO FUR... ACTION ON THE SOVIETS BEHALF. WE WOULD APPRECIATE. HOWEVER. ANY ASSISTANCE YOU CAN PROVIDE IN PREVENTING THE SOVIETS FROM RETALIATI... AGAINST MR GREGORIAN IN THE CASE PENDING IN THE MOSCOW ...Y COURT.

VERY TRULY YOURS
GERALD L KROLL
2029 CENTURY PARK EAST
LOS ANGELES CA 90067

1453 EST

NNNN
1529 EST

SECSTATE WS...

RICHARD K. WILLARD
Assistant Attorney General

ROBERT C. BONNER
United States Attorney
STEPHEN D. PETERSEN
Assistant United States Attorney
312 North Spring Street
Los Angeles, California 90012
Telephone: (213) 894-2434

DAVID J. ANDERSON
ELIZABETH SARAH GERE
Attorneys
Department of Justice
Civil Division, Room 3515
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Telephone: (202) 633-3403

Attorneys for the United States

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

RAPHAEL GREGORIAN and CALIFORNIA INTERNATIONAL TRADE CORPORATION, Plaintiffs, v. IZVESTIA; MINISTRY OF FOREIGN TRADE OF THE UNION OF SOVIET SOCIALIST REPUBLICS; V/O MEDEXPORT, UNION OF SOVIET SOCIALIST REPUBLICS; V/O LICENSINTORG, UNION OF SOVIET SOCIALIST REPUBLICS; UNION OF SOVIET SOCIALIST REPUBLICS; MINE SAFETY APPLIANCES COMPANY; and CATALYST RESEARCH, a division of Mine Safety Appliances Company, Defendants.	Case No. 85-0100-KN

STATEMENT OF INTEREST OF THE UNITED STATES

TABLE OF CONTENTS

TABLE OF AUTHORITIES

RICHARD K. WILLARD
Assistant Attorney General

ROBERT C. BONNER
United States Attorney
STEPHEN D. PETERSEN
Assistant United States Attorney
312 North Spring Street
Los Angeles, California 90012
Telephone: (213) 894-2434

DAVID J. ANDERSON
ELIZABETH SARAH GERE
Attorneys
Department of Justice
Civil Division, Room 3515
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Telephone: (202) 633-3403

Attorneys for the United States

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

RAPHAEL GREGORIAN and CALIFORNIA INTERNATIONAL TRADE CORPORATION, Plaintiffs, v. IZVESTIA; MINISTRY OF FOREIGN TRADE OF THE UNION OF SOVIET SOCIALIST REPUBLICS; V/O MEDEXPORT, UNION OF SOVIET SOCIALIST REPUBLICS; V/O LICENSINTORG, UNION OF SOVIET SOCIALIST REPUBLICS; UNION OF SOVIET SOCIALIST REPUBLICS; MINE SAFETY APPLIANCES COMPANY; and CATALYST RESEARCH, a division of Mine Safety Appliances Company, Defendants.	Case No. 85-0100-KN

STATEMENT OF INTEREST OF THE UNITED STATES[1]

INTRODUCTION AND SUMMARY

V/O Medexport and V/O Licensintorg, instrumentalities of the Union of Soviet Socialist Republics, have recently appeared and moved this Court to set aside the default judgment entered against them, requested the Court to consider their jurisdictional and other defenses, and sought a stay of any further execution on the default judgment. The United States supports these requests as well as those seeking to expedite consideration of these matters.[2]

The United States is filing this Statement of Interest, and the accompanying declaration of Thomas W. Simons, Jr., Deputy Assistant Secretary of State for European and Canadian Affairs, because the United States' foreign policy interests are best served by permitting these Soviet instrumentalities to appear at this time and having this Court consider their defenses to plaintiffs' claims. The United States respectfully requests leave to appear through counsel and participate at any hearing in this case.

---

[1] The United States files this Statement of Interest and appears pursuant to 28 U.S.C. § 517, which authorizes the Attorney General to attend to the interests of the United States in any pending suit.

[2] Medexport and Licensintorg have also moved to dismiss the Complaint pursuant to Rule 12(b), Fed. R. Civ. P. The United States takes no position on that Motion at this time.

The United States has had extensive discussions with representatives of the Embassy of the Soviet Union in Washington and Soviet government officials in Moscow about this case. (Simons Declaration at ¶ 4). The United States has expended considerable diplomatic efforts over the last year and a half to persuade the Soviet government that it is appropriate under international and United States' law for the Soviet defendants to appear, and in the best interest of bilateral relations between the Soviet Union and the United States, that they appear and present their defenses to this Court. (Id. at ¶¶ 4(A)-(C), 8).

The Soviets regard this litigation as a very serious matter and it has become a significant issue in bilateral United States-Soviet relations. (Id. at ¶ 7). Permitting the Soviets to have their day in court will significantly further United States' foreign policy interests; conversely, denying them that day in court is likely to have a negative impact on the United States' interests. (Id. at ¶ 8).

Federal Rules of Civil Procedure 55(c) and 60(b) vest this Court with substantial discretion to set aside default judgments for equitable reasons. There are strong bases for setting aside the default judgment and considering the Soviet instrumentalities' defenses: 1) the Soviet government and Soviet organs' reliance on the absolute theory of immunity as not requiring them to appear and their particular sensitivity to the charge of libel in the present proceedings; 2) the

strong diplomatic efforts made by the United States with the Soviet Union and the important United States' foreign policy interests that will be served by permitting the Soviet instrumentalities to present their views to the Court at this time; 3) the general judicial presumption that resolution on the merits is preferable to default; 4) their assertion that they have well-founded defenses; and 5) the lack of irreparable prejudice to plaintiffs if the default judgment is set aside.

In addition, this Court should stay further actions to enforce the judgment pending resolution of the case on the merits. Should further steps in aid of execution of the judgment be permitted,[3] there would be additional serious problems for United States' foreign policy. (Simons Declaration at ¶ 7). For example, the Soviets could take retaliatory action against the United States. (Id. at ¶ 8). Moreover, a stay of further executions on the judgment is warranted because there is a strong legal basis for setting

---

[3] Plaintiffs have executed on certain property pursuant to this Court's judgment in attachment proceedings in the United States District Court for the District of Maryland. (Gregorian v. Izvestia, et al., Misc. No. 2805, D. Md.) On November 13, 1986, the United States Marshal for the District of Maryland executed on a writ of attachment and removed a typewriter allegedly owned by Izvestia, another defendant in this action. See Defendants' Memorandum In Support of Their Motion to Vacate at 5.

Plaintiffs have also begun attachment proceedings on certain accounts held by the Bank of America in New York. Id.

aside the default judgment, and deferring such actions would not irreparably injure the plaintiffs, while permitting those actions to go forward may cause substantial injury to the United States' foreign policy interests.

STATEMENT

As defendants Medexport and Licensintorg's Memorandum of Points and Authorities in support of their Motion to Vacate the Default Judgment sets forth in some detail, the underlying causes of action, filed on January 7, 1985, involve alleged breaches of contract and libel.[4] The Soviet defendants did not appear in this Court to respond to the action. The Soviet government maintained that the Soviet defendants were immune from suit and were not required to respond in courts of the United States. (Simons Declaration at ¶¶ 4(B), 5). This Court subsequently entered a default judgment against Medexport, Licensintorg and other defendants on June 27, 1986, awarding plaintiffs almost half a million dollars in damages. On October 14, 1986, the Court entered an Order pursuant to the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. § 1610(c), giving plaintiffs the right to attach in aid of execution on the judgment and to execute against property of the Soviet Union in the United States.[5]

---

[4] The action was originally filed on January 7, 1985. On April 9, 1985, plaintiffs filed an Amended Complaint.

[5] Jurisdiction over the Soviet defendants is predicated on the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602, et seq.

Since that time, plaintiffs have taken a variety of steps in aid of execution. (See Defendants' Memorandum in Support of their Motion to Vacate at 5).

From early 1985, when plaintiffs' counsel first contacted the State Department seeking assistance in connection with this litigation, the United States has had on-going contacts with the Soviet Union regarding the matter. (Simons Declaration at ¶ 4). During the pendency of these proceedings, officials of the State Department have sought to explain the requirements of United States' law to the Soviet Union. (Id. at ¶¶ 4(A)-(C)). It was explained that the Executive Branch had no authority to make determinations with respect to a foreign State's claims of immunity or other defenses. In particular, the Department of State attempted to persuade the Soviets that the appropriate way to present their views with respect to sovereign immunity or other defenses is to communicate directly with the Court through counsel, not through diplomatic channels. United States' officials urged the Soviets to seek the advice of private counsel regarding the manner in which their interests could be best protected. (Id. at ¶¶ 4(A) and (C)).

On each of these occasions, the Soviet Union reiterated its long-held views that it and its organs are entitled to absolute immunity from the jurisdiction of foreign courts. (Id. at ¶¶ 4(B) and 5). This includes the belief that it need not even appear in foreign courts to invoke that

immunity. (Id. at ¶ 5). As underscored in defendants' Memorandum in Support of Their Motion to Vacate, the Soviet Union has steadfastly adhered to that position in this case. (Defendants' Memorandum at 5-7).

Defendants Medexport and Licensintorg, however, have now responded to plaintiffs' contentions in this Court. (Notice of Appearance of Counsel, filed November 21, 1986; Motion to Vacate Default Judgment, filed November 26, 1986). As set forth in the Declaration of Thomas W. Simons, Jr., Deputy Assistant Secretary of State for the Bureau of European and Canadian Affairs, who is responsible for eastern Europe and the Soviet Union, this represents a significant step in removing a potentially serious irritant in Soviet-American relations. (Simons Declaration at ¶ 7). Those relations are of special importance to the United States in maintaining a stable environment conducive to working bilaterally with the Soviet Union on critical world issues such as arms control. That this is a matter of high priority in United States' foreign policy is reflected by the frequent meetings of senior United States' and Soviet officials including, most recently, those this fall between President Reagan and Premier Gorbachev in Reykjavik and Secretary of State Shultz and Foreign Minister Shevardnaze in Vienna and New York. (Id. at ¶ 3).

The litigation at bar has been a matter of extreme concern to the Soviet Union as demonstrated by the frequency

and tenor of Soviet diplomatic communications with the Department of State regarding it. (Id. at ¶ 7). In light of the seriousness which the Soviet Union attaches to this litigation, it has become a significant issue in bilateral American-Soviet relations. (Id.). This is particularly true of plaintiffs' recent efforts to enforce their judgment through attachment proceedings. (Id.).[6] Therefore, it is in the interests of the United States' foreign policy to support the Soviet instrumentalities' efforts to present their defenses before this Court; failure to do so can be expected to adversely affect relations and may result in "reciprocal measures against United States' interests in the Soviet Union." (Id. at ¶ 8). This Statement of Interest supports the Soviet instrumentalities' request to vacate the default judgment and have their defenses heard by the Court and to have this Court stay further execution on the default judgment pending disposition on the merits.

DISCUSSION

I. This Court Should Set Aside The Default Judgment Pursuant To Rules 55(c) And 60(b), Federal Rules Of Civil Procedure, And Consider Medexport's And Licensintorg's Legal And Factual Defenses

1. Under Federal Rules of Civil Procedure 55(c) and 60(b), a default judgment may be set aside for, inter alia, mistake, inadvertence, or any other reason justifying relief

---

[6] Indeed, such efforts may cause retaliatory measures. (Id. at ¶ 8).

from the judgment. The provisions of Rule 60(b) and, in particular, the provisions of subsection 6, are equitable in origin and vest the district courts with the discretion to set aside default judgments whenever justice so requires. Thus, the courts have consistently held that Rule 60(b) vests in the district courts power "adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice." Klapprott v. United States, 335 U.S. 601, 609 (1949); Schwab v. Bullock's, Inc., 508 F.2d 353 (9th Cir. 1975); see generally, 7 J. Moore's Federal Practice § 60.18 (2d ed. 1982).

The decision to set aside a default judgment lies within the sound discretion of the district court. Schwab, 508 F.2d at 355. While the district court has the discretion to grant or deny a motion to vacate a default judgment under Rule 60(b), Fed.R.Civ.P., the courts have repeatedly emphasized that "Rule 60(b) is remedial in nature and therefore must be liberally applied." Schwab, 508 F.2d at 355, citing Butner v. Neustadter, 324 F.2d 783, 786 (9th Cir. 1963). Accord Pena v. Seguros La Comercial, S.A., 770 F.2d 811, 814 (9th Cir. 1985); Falk v. Allen, 739 F.2d 461, 463 (9th Cir. 1984); Rodgers v. Watt, 722 F.2d 456 (9th Cir. 1983); Patapoff v. Vollstedt's, Inc., 267 F.2d 863 (9th Cir. 1959).

A liberal construction of Rule 60(b) is further supported by the courts' clear preference for resolutions on the merits rather than default judgments. Schwab, 508 F.2d

at 355, citing Patapoff, 267 F.2d at 865. Finally, as the Schwab Court noted, quoting with approval from 7 J. Moore's Federal Practice § 60.19 at 232-233,

> [w]here timely relief is sought from a default judgment and the movant has a meritorious defense, doubt, if any, should be resolved in favor of the motion to set aside the judgment so that cases may be decided on the merits.

Schwab, 508 F.2d at 355.[7] Thus, in the exercise of their discretion under Rule 60(b), courts should resolve doubts with respect to granting a motion to set aside a default judgment in favor of a judicial decision on the merits of a case. Id.; Blois v. Friday, 612 F.2d 938, 940 (5th Cir. 1980).

These general presumptions against default judgments are, if anything, stronger in cases involving foreign states. The FSIA specifically provides that no default judgment may be entered against a foreign state unless "the claimant establishes his claim or right to relief by evidence satisfactory to the court." 28 U.S.C. § 1608(e). This requirement was drawn verbatim from Rule 55(c), Fed. R. Civ. P., likewise limiting default judgments against the United States. Section 1608(e) of the FSIA represents Congress' determination that foreign states be treated with respect and that liability be imposed only for valid claims. Indeed,

---

[7] In the instant case, the operative default judgment was entered on October 14, 1986. Less than three months have passed since the entry of that Order.

United States courts have been diligent in considering defenses available to foreign sovereigns, even where those foreign sovereigns have not formally appeared. See International Ass'n of Machinists & Aerospace Workers v. OPEC, 477 F. Supp. 553 (C.D. Cal. 1979), aff'd, 649 F.2d 1354 (9th Cir. 1981), cert. denied, 454 U.S. 1163 (1982); Hanoch Tel-Oren v. Libyan Arab Republic, 517 F. Supp. 542, 550-551, n.4 (D.D.C. 1981), aff'd. 726 F.2d 774 (D.C. Cir. 1984), cert. denied, 105 S.Ct. 1354 (1985); Frolova v. U.S.S.R., 558 F. Supp. 358 (N.D. Ill. 1983), aff'd, 761 F.2d 370 (7th Cir. 1985).

In addition, and most relevant here, United States courts have shown a willingness to reconsider relevant legal defenses even if the foreign state did not initially appear. In Jackson v. The People's Republic of China, 596 F. Supp. 386 (N.D. Ala.), aff'd, 794 F.2d 1490 (11th Cir. 1986), the district court set aside its default judgment which was entered after the foreign government failed to appear. The court noted that the controversy raised serious jurisdictional issues as well as implicating "far reaching ramifications on Sino-American relations." 596 F. Supp. at 387. It therefore found that "justice and the public interest dictated that the default judgment be set aside." Id. The United States Court of Appeals for the Eleventh Circuit specifically upheld the district court's exercise of discretion in setting aside the default judgment. 794 F.2d

at 1496. The appellate court concluded that it was entirely appropriate for the district court to have considered "the Secretary of State's assessment of the foreign policy implications of the default judgment." Id.

Similarly, in Siderman de Blake, et al. v. The Republic of Argentina, CV No. 82-1772-RMT (MCx) (C.D. Cal. March 7, 1985), this Court (Takasugi, J.) granted Argentina's Rule 60(b) motion to set aside a default judgment entered against it for failure to appear. The United States supported the motion to vacate the default judgment on grounds similar to those advanced here and in the Jackson case. Accord Castro v. Saudi Arabia, 510 F. Supp. 309, 313 (W.D. Tex. 1980) (request by foreign sovereign to set aside a default judgment granted).

2. In exercising its discretion within the liberal principles for setting aside a default judgment against a foreign State, the Court should consider three factors: "(1) whether plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default." Falk v. Allen, 739 F.2d at 463 (citations omitted). Accord Pena v. Seguros La Comercial, S.A., 770 F.2d at 815.

With respect to the first factor, the present plaintiffs will not be prejudiced. They will be free to continue to assert their claims against the defendants in this Court. They cannot legitimately contend that their ability to pursue

their claim will be hindered by being required to respond to substantial legal defenses available to the Soviet defendants. Falk, 739 F.2d at 463, citing Gross v. Stereo Component Systems, 700 F.2d 120, 123 (3rd Cir. 1983) ("The standard is whether his ability to pursue his claim will be hindered.") Since the defendants have raised a number of potentially dispositive legal issues, the relatively short period of time since entry of the default judgment and the relatively short period of time that will be necessary to resolve this case on the merits, plaintiffs will not be prejudiced in the presentation of their claim. See, e.g., Horn v. Intelectron, 294 F. Supp. 1153, 1155 (S.D.N.Y. 1968). Indeed, permitting the Soviet defendants to present their defenses in the litigation may well increase plaintiffs' prospects for any recovery to which they may be entitled given the difficulty of recovery without the participation of the Soviets. (Simons Declaration at ¶ 8).

A substantial part of the Court's inquiry should focus on whether Medexport and Licensintorg have meritorious defenses to plaintiffs' claims. Schwab v. Bullock's Inc., 508 F.2d at 355. It is not necessary, however, that a party will actually prevail at trial; it is sufficient that a stated defense, if established at trial, would defeat the judgment creditor's claim. Horn v. Intelectron, 294 F. Supp. at 1155-1156; Keegel v. Key West & Caribbean Trading Co., 627 F.2d 372 (D.C. Cir. 1980).

The Soviet instrumentalities have appeared in this proceeding to assert a number of legal and factual defenses. These include, inter alia, lack of sufficient contacts with the United States to establish in personam jurisdiction and lack of subject matter jurisdiction over the libel claim under the FSIA. As a matter of comity and out of respect for a foreign sovereign, these defenses should be considered by the Court at this time.

The United States' support for the Soviet defendants' efforts to set aside the default judgment, however, should not be confused with government interference with the merits of private party litigation against a foreign State. The United States takes no position on the merits of the defenses at this time. In making its determination on the merits the Court must apply and is limited to the provisions under the FSIA. The legislative history of the FSIA unequivocally states that the FSIA sets forth the sole and exclusive standards to be used by the courts in resolving questions of foreign sovereign immunity raised by foreign states. See 1976 U.S. Code Cong. & Ad. News 6604, 6610. The United States Court of Appeals for this Circuit held in McKeel v. Islamic Republic of Iran, 722 F.2d 582, 586-87 (9th Cir.), cert. denied, 105 S.Ct. 243 (1984), that jurisdiction over foreign states and their instrumentalities can only be obtained under the FSIA. Pursuant to 28 U.S.C. § 1604 of the FSIA, which codifies as federal law the restrictive theory of

sovereign immunity, a foreign state is immune from the jurisdiction of the federal and state courts, except as provided in sections 1605 and 1607. See Verlinden B.V. v. Central Bank of Nigeria, 461 U.S. 480, 488, 497 (1983). If one of the specified exceptions to sovereign immunity applies, a federal district court may exercise subject matter jurisdiction under 28 U.S.C. § 1330(a). However, if the claim against the foreign State does not fall within one of the exceptions, federal courts lack subject matter jurisdiction as well as personal jurisdiction. Verlinden, 461 U.S. at 480.

For example, the FSIA, 28 U.S.C. § 1605(a)(5), specifically provides that the exception to the immunity otherwise accorded foreign States and their agencies and instrumentalities does not apply to any claim arising out of libel or slander. Here, where a significant portion of the plaintiffs' claims sound in libel, the defendants' argument that the Court lacks jurisdiction over those claims raises a serious question which warrants judicial review.[8] See also Yessenin-Volpin v. Novosti Press Agency, 443 F. Supp. 849 (S.D. N.Y. 1978).

The third factor to be considered, whether culpable conduct of the defendant led to the default, should be

---

[8] This is not to suggest that other defenses raised by the Soviet defendants do not also create issues which merit consideration by the Court.

resolved in favor of setting aside the default. The Soviet Union has repeatedly asserted that under international law neither it nor its organs are subject to the jurisdiction of a foreign court without its consent.[9] The absolute principle of immunity is still adhered to by a number of foreign states. While the United States now adheres to the restrictive principle of immunity, the codification of that practice and removal of the Executive's authority to recognize a foreign state's immunity in a particular case is relatively recent. See generally, Jackson v. People's Republic of China, 794 F.2d at 1492-1494. As a matter of comity and because of the Soviet government's reliance on its interpretation of international law, this Court should permit the Soviet defendants an opportunity to advance their defenses despite their initial failure to appear. Id. at 1496. As the Jackson Court found:

> Here much more is involved than mistake, inadvertence, surprise, or excusable neglect. The concerns extend to the misconception by an ancient and proud sovereign of its responsibility to reply to the demands of a United States court whose authority it does not recognize as a matter of international law, at a time when concepts of United States law and international law are changing.

---

[9] Private counsel has appeared in a limited number of commercial and tort cases brought jointly against the Soviet government and its instrumentalities. These cases have not included claims of libel where the Soviet Union itself was among the defendants. (Simons' Declaration at ¶ 5).

Id. But see Meadows v. The Dominican Republic, 628 F.Supp. 599, 608 (N.D. Ca. 1986) (interpreting F.R.Civ.P. 60(b)(1)).

Moreover, because this case involves the foreign relations of the United States, this Court should give great weight to the Deputy Assistant Secretary of State's judgment that setting aside the default judgment and permitting the Soviet defendants to have their day in court would serve the foreign policy interests of the United States. (Simons Declaration at ¶ 8). See e.g., Dames & Moore v. Regan, 453 U.S. 654 (1981); United States v. Pink, 315 U.S. 203 (1942); Ex Parte Republic of Peru, 318 U.S. 578, 587 (1943); United States v. Curtiss-Wright Export Corp., 229 U.S. 304, 319-322 (1936).

II. This Court Should Stay Execution On The Default Judgment Pending Resolution Of The Case On The Merits

As set forth in greater detail in the Soviet defendants' Memorandum in Support of their Motion to Vacate the Default Judgment, at 4-5, the plaintiffs have taken certain steps to execute on the default judgment. These include seizure of property and attempted attachment of bank accounts. (Id.) These actions have further exacerbated the strain on American-Soviet relations. (Simons Declaration at ¶ 7). And, unless the execution efforts are stayed pending resolution on the merits, there may be additional repercussions. (Id. at ¶ 8).

The United States therefore urges this Court to stay further execution proceedings pending resolution of the case on the merits. This Court has the inherent power to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for the litigants. Landis v. North American Co., 299 U.S. 248, 254 (1936); Will v. Calvert Fire Insurance Co., 437 U.S. 655, 665 (1978) (Rehnquist, J.). The Court's power includes the discretion not to decide certain issues pending further judicial proceedings on related, but not necessarily identical questions. Leyva v. Certified Grocers, 593 F.2d 857, 863-864 (9th Cir.), cert. denied, 444 U.S. 827 (1979).

"The factors relevant to wise administration * * * are equitable in nature." Kerotest Manufacturing Co. v. C-O-Two Fire Equipment Co., 342 U.S. 180, 183 (1952); CMAX, Inc. v. Hall, 300 F.2d 265, 268 (9th Cir. 1962). Thus, in determining whether to stay peripheral proceedings pending a decision on the Fed. R. Civ. P. 60(b) motion to set aside the default judgment, the Court should consider (a) whether deferring decision will fulfill the judicial objective of simplifying the issues (CMAX, Inc. v. Hall, 300 F.2d at 268); (b) where the public interest lies (see generally, Beverly v. United States, 468 F.2d 732 (5th Cir. 1972)); and (c) the competing interests of the respective parties (CMAX, Inc. v. Hall, 300 F.2d at 268).

a. For the reasons stated in Part I, supra, the Soviet defendants are likely to prevail on their Motion to Vacate the Default Judgment. Many of the defenses raised go to the validity of the default judgment. Because the execution proceedings are based upon that judgment, if it is set aside, all the efforts incident to its enforcement will be halted or subject to additional challenge. Thus in the interest of judicial economy, those peripheral actions should be stayed pending disposition on the merits.

b. Continued attempts to execute on the default judgment will exacerbate the foreign policy problems that have already resulted from this case. (Simons Declaration at ¶ 7). Where judicial proceedings involving a request for a stay affects United States' foreign policy, "a court is 'quite wrong in routinely applying * * * the traditional standards governing more orthodox "stays"'" Adams v. Vance, 570 F.2d 950, 954 (D.C. Cir. 1978), quoting Sampson v. Murray, 415 U.S. 61, 83-84 (1974). That is, "[c]ourts must beware of 'ignoring the delicacies of diplomatic negotiation, the inevitable bargaining for the best solution of an international conflict, and the scope which in foreign affairs must be allowed to the President.'" Adams, 570 F.2d at 954, quoting Mitchell v. Laird, 488 F.2d 611, 616 (D.C. Cir. 1973). Thus, a stay to accommodate legitimate foreign policy concerns of the Executive is permissible. American

International Group, Inc. v. Islamic Republic of Iran, 657 F.2d 430, 448 (D.C. Cir. 1981).

c. The Soviet Union will suffer substantial injury if its property is executed upon and the Court subsequently determines that the default judgment was void or should have been set aside. On the other hand, if plaintiffs ultimately prevail, they still have the same execution and attachment proceedings available to them to collect on the judgment. Accordingly, a stay would not prejudice plaintiffs.

CONCLUSION

For the foregoing reasons the United States respectfully requests that defendants Medexport and Licensintorg's Motions to Vacate the Default Judgment and to Stay Execution Proceedings pending disposition of the case on the merits should be granted.

Respectfully submitted,

RICHARD K. WILLARD
Assistant Attorney General

ROBERT C. BONNER
United States Attorney

STEPHEN D. PETERSEN
Assistant United States Attorney
312 North Spring Street
Los Angeles, California 90012
Telephone: (213) 894-2434

David J. Anderson
DAVID J. ANDERSON

Elizabeth Sarah Gere
ELIZABETH SARAH GERE

Attorneys, Department of Justice
Civil Division, Room 3515
10th & Pennsylvania Avenue, NW
Washington, D.C. 20530
Telephone: (202) 633-3403

Attorneys for United States

OF COUNSEL:

ABRAHAM D. SOFAER
Legal Adviser
Department of State
ELIZABETH G. VERVILLE
Deputy Legal Adviser
MARY BETH WEST
BRUCE C. RASHKOW
CAROL SCHWAB
Attorneys
Department of State

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of December, 1986, a copy of the Statement of Interest of the United States, was mailed by Federal Express to the following:

Gerald Kroll
Kroll & Linstrom
2029 Century Park East
Los Angeles, California 90067

Barbara Enloe Hadsell
Margolis, McTernen, Scope & Epstein
4221 Wilshire Boulevard, Suite 480
Los Angeles, California 90010

Martin Popper
Wolf Popper Ross Wolf & Jones
845 Third Avenue
New York, New York 10022

Elizabeth Sarah Gere

ELIZABETH SARAH GERE

RICHARD K. WILLARD
Assistant Attorney General

ROBERT C. BONNER
United States Attorney
STEPHEN D. PETERSEN
Assistant United States Attorney
312 North Spring Street
Los Angeles, California 90012
Telephone: (213) 894-2434

DAVID J. ANDERSON
ELIZABETH SARAH GERE
Attorneys
Department of Justice
Civil Division, Room 3515
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Telephone: (202) 633-3403

Attorneys for the United States

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

RAPHAEL GREGORIAN and CALIFORNIA INTERNATIONAL TRADE CORPORATION, Plaintiffs, v. IZVESTIA; MINISTRY OF FOREIGN TRADE OF THE UNION OF SOVIET SOCIALIST REPUBLICS; V/O MEDEXPORT, UNION OF SOVIET SOCIALIST REPUBLICS; V/O LICENSINTORG, UNION OF SOVIET SOCIALIST REPUBLICS; UNION OF SOVIET SOCIALIST REPUBLICS; MINE SAFETY APPLIANCES COMPANY; and CATALYST RESEARCH, a division of Mine Safety Appliances Company, Defendants.	)	Case No. 85-0100-KN SUPPLEMENTAL STATEMENT OF INTEREST OF THE UNITED STATES

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes and Regulations

Miscellaneous

RICHARD K. WILLARD
Assistant Attorney General

ROBERT C. BONNER
United States Attorney
STEPHEN D. PETERSEN
Assistant United States Attorney
312 North Spring Street
Los Angeles, California 90012
Telephone: (213) 894-2434

DAVID J. ANDERSON
ELIZABETH SARAH GERE
Attorneys
Department of Justice
Civil Division, Room 3515
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Telephone: (202) 633-3403

Attorneys for the United States

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

RAPHAEL GREGORIAN and CALIFORNIA INTERNATIONAL TRADE CORPORATION, Plaintiffs, v. IZVESTIA; MINISTRY OF FOREIGN TRADE OF THE UNION OF SOVIET SOCIALIST REPUBLICS; V/O MEDEXPORT, UNION OF SOVIET SOCIALIST REPUBLICS; V/O LICENSINTORG, UNION OF SOVIET SOCIALIST REPUBLICS; UNION OF SOVIET SOCIALIST REPUBLICS; MINE SAFETY APPLIANCES COMPANY; and CATALYST RESEARCH, a division of Mine Safety Appliances Company, Defendants.	)	Case No. 85-0100-KN

SUPPLEMENTAL STATEMENT OF INTEREST
OF THE UNITED STATES

STATEMENT

In this contract and libel action against the Soviet Union and several of its instrumentalities, the United States submitted a Statement of Interest urging that the default judgment previously entered be set aside and that the defendants who have now appeared be permitted to present their defenses. It is very much in the foreign policy interests of the United States that foreign governments and their instrumentalities be encouraged to come into United States courts to present their immunity and other defenses as Congress contemplated under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602, et seq. ("FSIA"). Plaintiffs oppose the vacation of the default judgment, but without vigor or case authority. This Court should, therefore, vacate the judgment and consider the defenses raised by the Soviet defendants under the Act.

Among the defenses asserted is the bar to libel actions set forth in the FSIA. The United States has not previously addressed any merits issue in this lawsuit. However, the construction of the FSIA, and its specific provision with respect to libel suits against foreign states, is a matter of importance to the United States and one on which it wishes to

express its views. See 28 U.S.C. § 517.[1] In the view of the United States, the Act precludes libel suits against foreign sovereigns in a manner analogous to the Federal Tort Claims Act, 28 U.S.C. § 2671, et seq. ("FTCA"), which bars such actions against the United States. Such a conclusion is in keeping with the language and intent of the FSIA and is in the interest of United States' foreign policy.

DISCUSSION

I. The Default Judgment Should Be Vacated

Plaintiffs' sole ground for opposing the Motion to Vacate is that the Soviet Union has been involved in other litigation and had sufficient notice to respond to this litigation. (Plaintiffs' Memorandum in Opposition to Motion to Vacate at 3-9.) Even assuming the truth of plaintiffs' assertions, they would not be dispositive of the Motion to Vacate. Indeed, plaintiffs never address the applicable standard for vacating a judgment or how their assertions would satisfy that standard.

Plaintiffs do concede that under Rule 60(b), Fed.R.Civ.P., courts have the power to vacate judgments whenever appropriate to accomplish justice. (Pl. Memo. at 3.) In Falk v. Allen, 739 F.2d 461, 463 (9th Cir. 1985), the Court of Appeals instructed that three factors should be

---

[1] The United States expresses no views on the merits of the contract claim other than its assertion that this Court should consider the Soviet defendants' defenses to the contract claim.

considered: "(1) whether plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default." (citations omitted.) Accord Pena v. Seguros La Comercial, S.A., 770 F.2d 811, 815 (9th Cir. 1985). In their Opposition, plaintiffs have identified no prejudice should the judgment be vacated. Similarly, they do not assert that the Soviets' defenses are without merit. In fact, plaintiffs spend the majority of their 31 page Opposition attempting to respond to those defenses. As to the third factor, culpable conduct of the defendant, plaintiffs do not take issue with the Soviets defendants' contention that the Soviet Union continues to adhere to its view that under international law it is absolutely immune from suits in foreign courts, including those of the United States. A view contrary to plaintiffs', or even the United States, of international law regarding sovereign immunity cannot be characterized as "culpable conduct."

Plaintiffs also fail to take issue with the judgment of Deputy Assistant Secretary of State Thomas W. Simons, Jr., that United States' foreign policy will be adversely affected if the Soviet defendants are denied an opportunity to have their defenses considered. While plaintiffs would like to dispense with this judgment by labelling it as "politics" (Pl. Memo. in Opp. at 2), they clearly are not competent to make or question such a foreign policy judgment. That

determination may be made only by the Executive and should be accorded great weight, see, e.g., Dames & Moore v. Regan, 453 U.S. 654 (1981); United States v. Pink, 315 U.S. 203 (1942); Ex Parte Republic of Peru, 318 U.S. 578, 587 (1943); United States v. Curtiss-Wright Export Corp., 229 U.S. 304, 319-322 (1936), particularly in the context of a Rule 60(b)(6) motion, Jackson v. People's Republic of China, 794 F.2d 1490, 1496 (11th Cir. 1986).

Plaintiffs have failed to demonstrate why the Motion to Vacate should not be granted. Accordingly, this Court should now consider the defenses advanced by the Soviet defendants under the Foreign Sovereign Immunities Act.

II. The Libel Claim Is Barred By The Foreign Sovereign Immunities Act

Plaintiffs contend that the defendants caused the publication of a libelous article about them in Izvestia, also a named defendant in this action. (Amended Complaint, Tenth Claim for Relief.) The Soviet defendants argue in their Motion to Dismiss that libel actions are barred by the Foreign Sovereign Immunities Act, 28 U.S.C. § 1605(a)(5)(B). (Defendants' Memorandum of Points and Authorities in Support of Motion to Vacate Judgment at 16-20.) The United States agrees that such actions are barred by the FSIA. In the FSIA, Congress specifically provided immunity from the tort of libel for foreign sovereigns. Congress thereby intended to afford foreign sovereigns an immunity with respect to libel actions analogous to that granted the United States

under the Federal Tort Claims Act, 28 U.S.C. § 2680(h) ("FTCA"). Under the FTCA, the United States is immune from any libel action. Such immunity should thus also be accorded foreign sovereigns under the FSIA. The failure to recognize immunity from libel suits for foreign sovereigns would not only be a misconstruction of the FSIA, but would pose serious diplomatic problems for the United States in foreign courts.

A. Congress Intended To Bar Libel Actions Under The FSIA

The FSIA provides for jurisdiction against foreign sovereigns for actions based upon commercial activity. 28 U.S.C. § 1602. It also recognizes jurisdiction for actions not otherwise encompassed by the "commercial activity" provisions, in which money damages are sought for personal injury, death or damage or loss of property occurring in the United States and caused by a tortious act of a foreign state or its employees in the course of their official conduct. 28 U.S.C. § 1605(a)(5). However, the FSIA specifically bars such claims as arise out of "malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights." 28 U.S.C. § 1605(a)(5)(B) (emphasis added).

The legislative history of this section of the FSIA reveals that Congress intended to carve out immunity from libel actions for foreign sovereigns similar to that accorded to the United States in the Federal Tort Claims Act. Congress specifically noted that

> The exceptions provided in subparagraphs (A) and (B) of section 1605(a)(5) correspond to many of the claims with respect to which the U.S. Government retains immunity under the Federal Tort Claims Act, 28 U.S.C. 2680(a) and (h).

H.R. Rep. No. 1487, 94th Cong., 2d Sess. reprinted in 1976 U.S. Code Cong. & Admin. News, 6604, 6620.

Section 2680(h) of the Federal Tort Claims Act, referred to above, provides for immunity from suits against the United States for

> any claim arising out of assault, battery, false imprisonment, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights . . . . (emphasis added.)

Thus, Congress, by tracking the language of section 2680(h) of the FTCA in section 1605(a)(5)(B) of the FSIA, intended immunity of the sovereign from libel actions.[2]

The exclusion from liability for libel actions against the United States has been present in the FTCA since its inception. 2 L. Jayson, Handling Federal Tort Claims § 260.01, n.1.1 at 13-36 (1986). The purpose of the exclusion was

> that government officials should not be hampered in their writing and speaking by

---

[2] Under the FTCA, the immunity with respect to libel extends to agencies and instrumentalities of the United States, 28 U.S.C. §§ 2671, 2679(a), including "corporations primarily acting as instrumentalities or agencies of the United States." Id. at § 2671. Similarly, immunity under the FSIA should extend to the instrumentalities of foreign governments.

> the possibility that their actions would give rise to government liability.

Quinones v. United States, 492 F.2d 1269, 1280 (3rd Cir. 1974). Inquiry into the merits of a libel claim against a foreign sovereign under the FSIA would impose the same burdens on that sovereign as would inquiry into the merits of a libel claim against the United States under the FTCA. Congress expressly provided for immunity from those burdens both in the FTCA and the FSIA.

Moreover, the United States and its agencies and instrumentalities publish and distribute hundreds of different documents abroad, many of which are published or distributed on a regular basis. Some of those publications are free, others are sold. The United States is not aware of any instance where it or its agencies has been sued in a foreign court for libel. It would consider any assertion of such jurisdiction to be inappropriate. In the interest of comity as well as the language of the FSIA, the United States can expect no less for a foreign sovereign.

B. Plaintiffs Misread The FSIA

Plaintiffs argue that, despite the explicit bar against libel actions, the FSIA permits suit for a libel which arises in connection with "commercial activity." (Pl. Memo. in Opp. at 9-14.) Neither the FSIA itself nor the legislative history recognizes any such distinction, nor does plaintiff

cite to any.[3] Indeed, to recognize such a distinction would render the libel exception meaningless for it would take only creative counsel to label a claim as a "commercial" or "trade" libel to avoid the bar.[4] As the United States District Court for the Northern District of California stated in an analogous situation under the FTCA

---

[3] Plaintiffs rely primarily (Pl. Memo. at 9-12) on an earlier ruling by this Court that it had general jurisdiction over the action under section 1605(a)(2) of the FSIA. Order of July 17, 1985. However, the Court made no specific ruling upon the libel claim and apparently was not apprised of the libel exception to the FSIA. The Court's preliminary finding was, of course, made without benefit of pleadings from the Soviet defendants.

[4] Plaintiffs attempt to find some support for their theory in Yessenin-Volpin v. Novosti, 443 F. Supp. 849, 855 (S.D. N.Y. 1978), where the court suggests in dicta that the libel exception may not be a complete bar under the FSIA. However, the court concluded that publication in a state organ, Novosti, of official commentary of the Soviet government is not a "commercial activity" which would confer jurisdiction under the FSIA. Rather, the court found it to be "an activity whose essential nature is public or governmental" and thus excluded under the FSIA. Id. at 855. Here, plaintiffs have admitted that Izvestia is "an agency or instrumentality of the government of the Soviet Union." (First Amended Complaint, para. 5). Along with Novosti, Izvestia is one of the entities through which the official views and policies of the Soviet Union are made public. Where such is the case, the Novosti court held that

> to reach around the various organs of the Soviet government which actually published the alleged libels and subject to this Court's jurisdiction a news agency whose ownership by and identification with the Soviet state has been demonstrated . . . or admitted . . . would contravene the spirit of sovereign immunity as well as the letter of the Immunities Act.

Id. at 856.

> The label which a plaintiff applies to a pleading does not determine the nature of the cause of action which he states and a litigant cannot circumvent the [FTCA] by the simple expedient of drafting in terms of negligence a complaint that in reality is a claim as to which the United States remains immune.

Hoesl v. United States, 451 F. Supp. 1170, 1171 (N.D. Cal. 1978), affirmed on the basis of the opinion below, 629 F.2d 586 (9th Cir. 1980) (citations omitted). The district court went on to hold that

> Congress did not intend to make the United States liable for any conduct which fits the traditional and commonly understood legal definition of the tort of defamation . . . and this legislative intent cannot be frustrated by calling plaintiff's cause of action something other than defamation.

451 F. Supp. at 1175 (citations omitted).

More recently, in Art-Metal, Inc. v. United States, 753 F.2d 1151, 1156 (D.C. Cir. 1985), plaintiff attempted to avoid the libel and slander bar under the FTCA by including a different label, "injurious falsehood," on its cause of action. The court, citing the Supreme Court in Kosak v. United States, 104 S.Ct. 1519 (1984), stated that

> the fairest interpretation of [section 2680(h)] is the one that first springs to mind . . .: claims for injurious falsehood, disparagement of property, slander of goods, or trade libel are claims arising out of . . . libel or slander.

753 F.2d at 1156 (emphasis added). The court dismissed the plaintiff's claim as barred by the libel and slander

exception to the FTCA.[5] Plaintiff's attempts here to embrace the same type of conduct within the FSIA should be rejected.

Conclusion

For the foregoing reasons, the Motion to Vacate the Default Judgment should be granted and the plaintiffs' claims for libel dismissed.

Respectfully submitted,

RICHARD K. WILLARD
Assistant Attorney General

ROBERT C. BONNER
United States Attorney

STEPHEN D. PETERSEN
Assistant United States Attorney
312 North Spring Street
Los Angeles, California 90012
Telephone: (213) 894-2434

David J. Anderson
DAVID J. ANDERSON

[5] Reference to the analogous FTCA exceptions in interpreting the FSIA was expressly approved by the Ninth Circuit in Olsen By Sheldon v. Government of Mexico, 729 F.2d 641, 646-647 (9th Cir. 1984) ("To determine the scope of the discretionary function exception of the FSIA, we therefore turn to the interpretation given the similar FTCA provision." (footnote omitted)).

ELIZABETH SARAH GERE

Attorneys, Department of Justice
Civil Division, Room 3515
10th & Pennsylvania Avenue, NW
Washington, D.C. 20530
Telephone: (202) 633-3403

Attorneys for United States

OF COUNSEL:

ABRAHAM D. SOFAER
Legal Adviser
Department of State
ELIZABETH G. VERVILLE
Deputy Legal Adviser
MARY BETH WEST
BRUCE C. RASHKOW
CAROL SCHWAB
Attorneys
Department of State

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of January, 1987, a copy of the foregoing Supplemental Statement of Interest of the United States was mailed by Federal Express to the following:

Gerald Kroll
Kroll & Linstrom
2029 Century Park East
Los Angeles, California 90067

Barbara Enloe Hadsell
Margolis, McTernen, Scope & Epstein
4221 Wilshire Boulevard, Suite 480
Los Angeles, California 90010

Martin Popper
Wolf Popper Ross Wolf & Jones
845 Third Avenue
New York, New York 10022

Elizabeth Sarah Gere

ELIZABETH SARAH GERE

FORM OBD-183
MAR 83