

Withdrawal/Redaction Sheet

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. letter	Janet Atkinson to Kay Bossel [Boesel] re: International Agencies Immunities Act Family Support/Attachments 1-6 (11 pages)	05/27/98	P6/b(6), b(6)
002. letter	Janet Atkinson to Kay Bossel [Boesel] re: International Agencies Immunities Act Family Support/Attachment 9 (2 pages)	05/27/98	P6/b(6), b(6)
003. letter	Janet Atkinson to Kay Bossel [Boesel] re: International Agencies Immunities Act Family Support/Attachments 13-15 (5 pages)	05/27/98	P6/b(6), b(6)
004. letter	Janet Atkinson to Kay Bossel [Boesel] re: International Agencies Immunities Act Family Support/Attachment 17 (2 pages)	05/27/98	P6/b(6), b(6)

COLLECTION:

Clinton Presidential Records
 Domestic Policy Council
 Cynthia Rice (Subject Files)
 OA/Box Number: 15429

FOLDER TITLE:

Child Support-International Agencies [2]

rx35

RESTRICTION CODES

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

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

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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- b(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.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

5008 CLOISTER DR.
ROCKVILLE, MD 20852
301-530-0726
FAX: 301-530-9512

May 27, 1998

Ms. Kay Bossel
Host Country Relations
United States Department of State
Main State Department Building
Washington, D.C. 20520

Re: International Agencies Immunities Act - Family Support

Dear Ms. Bossel:

Enclosed, you will find case studies, collected in response to your request of May 13, 1998. These cases represent only a small fraction of the total number of injured spouses. Nevertheless, they eloquently describe the callous treatment international organizations routinely accord employees' spouses and children following separation or divorce. These brave spouses have surmounted well-founded fears of retaliation by former spouses and/ or their employers, with the earnest hope that sharing their own private, embarrassing and painful experiences would save others from similar fates. We urge you to keep the documents confidential.

The cases eloquently describe international organizations continued use of their institutional immunity to shield staff members from their personal legal obligations to support their families. You will note that each spouse has been impoverished, deprived of support and/ or unfairly divested of marital property, because : (1) She could not obtain reliable and complete information, concerning the staff member's salary, benefits and the value of the pension; (2) The organization refused to implement wage withholding; and (3) The divorce court could not attach the spousal share of an employee pension. Even when a court orders the staff member to maintain medical insurance, pay education benefits to the children or designate the spouse as life insurance beneficiary, the spouse has no means of enforcing that order, and cannot even verify whether or not the staff member is in compliance. If these institutions were subject to state court jurisdiction in family law cases, involving their employees, each spouse and child would now enjoy financial security.

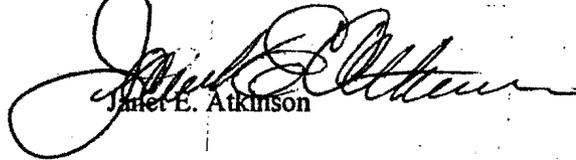
Many spouses accepted unfair settlements, because they could not learn the actual value of the staff member's salary and benefits, and knew that they could not enforce court orders. Dependant spouses seldom have the resources to obtain adequate legal representation, in these difficult cases. Foreign spouses often are unable to remain in the United States long enough to enforce their legal rights, through the contempt power of the courts. Their visas expire 60 days after entry of the divorce decree. Several relate costly and futile attempts to collect court-ordered support, pension payments, or monetary awards. Spouses awarded or promised a portion of the employee's pension, "as, if and when" the staff member retires, frequently fail to receive promised payments. Spouses cannot determine whether or not they have received the proper amount. None of the organizations will notify a spouse or former spouse, when an employee commutes a share of the pension.

Efforts to document cases and determine how many families are affected are hampered by the fact that the organizations claim that they do not maintain such data. Most spouses and their attorneys say they are reluctant to discuss specific cases, lest the employee retaliate, by ceasing all support payments, refusing to authorize the children's education or health insurance benefits, depriving the children of home country

Ms. Kay Bossel
Page 2
May 25, 1998

travel benefits, or refusing to pay a monetary award. I will forward further information to you, as it is received. Nevertheless, I would like to think that the organizations, the Department of State and President Clinton were motivated by principle, not by numbers. Even one case, is one too many.

Yours very truly,



Janet E. Atkinson

cc: President Clinton*
First Lady Hilary Rodham Clinton*
Senator Barbara Mikulski*
Congresswoman Constance Morella*
Congressman Rick Lazio*
Scott Busby
Robin Leeds*
Princeton Lyman*

* Without attachments

ATTACHMENTS

1. Letter to Ruksana Mehta from Harumi Williams, dated May 21, 1998.
2. Letter, to Ruksana Mehta, marked "CONFIDENTIAL," dated May 26, 1998.
3. Letter to Ruksana Mehta from Ileana De Geynt, dated May 24, 1998.
4. Letter to Alan Siff, Esquire, from Jeffrey Weinstock, dated March 13, 1998.
1997. 5. Letter from Alan J. Siff, Sr. Counsel, World Bank to Jeffrey C. Weinstock, dated August 20, 1997.
6. Letter from Helene King to Ruksana Mehta, dated May 20, 1998, including attachments.
7. "Pension benefits for divorced or former spouses; Note by the UN Family Rights Committee."
8. "How the Privileges and Immunities of the United Nations Hurt Families."
9. Letter to Chairman of the Staff Association IMO, London, signed February 2, 1996.
10. Letter to Jennifer Roehl from Patricia Amundrud, dated March 17, 1998.
11. World Bank Volunteer Services, "President's Message" March 1990.
12. "Responses to the President's Message from the March Newsletter" - World Bank Volunteer Services - April, 1990.
13. Letter to Clerk of Court, Montgomery County, from David R. Rivero, Senior Counsel, World Bank, dated April 25, 1994.
14. Letter from daughter of U.N. Civil Servant- no date.
15. Letter from Eve Kouidri Kuhn, UN Family Rights Committee, Vienna, dated March 9, 1998.
16. Letter from Lata Deshpande to Ruksana Mehta, dated May 11, 1998.
17. Case Studies, prepared by Janet Atkinson - spring 1998

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Pension benefits for divorced or former spouses

Note by the UN Family Rights Committee

1. The UN Family Rights Committee was formed in January 1995 out of an increasing awareness of the unique difficulties faced by many abandoned or former spouses of UN staff members in securing basic support or assistance for themselves or their children. The spouses of international staff are brought to the duty station by the Organization. Because their visas are derivative they usually cannot work in the host country. Like national foreign service officials, many must pack up and move the whole household from country to country according to the staff member's postings, depriving them of continuity in social and professional relationships. If the posting is "non-family", the spouse must carry the whole burden of the family alone. If the marriage founders, the spouse is frequently denied such judicial remedies as are available to ordinary people. Until very recently, the UN and the United Nations Joint Pension Fund, on principles of confidentiality, refused legal or court requests to provide information on salaries and allowances of its staff. Such information, which is the basis of maintenance and support orders, is routinely supplied by national employers, and without it the courts will seldom take action. Even if the spouse is able to obtain a court order or a judgement of support, it cannot be enforced because UN salaries are immune from garnishment by national courts or from attachment by legal process.]

2. With the issuance of S/1/A/399 in December 1994 the UN belatedly recognized the predicament in which abandoned or former spouses found themselves, and established a new policy of co-operation with local authorities in that, even without the consent of the staff member involved, it agreed to reveal salary and benefits to the "appropriate authorities" and thus facilitate a judicial resolution. Last year the UNJSPF established a similar policy to reveal pension benefits to a "judicial or civil authority". These new policies have been implemented in a few cases, but the Committee is aware of other cases where the requested information from the UN has not been provided in a timely manner. ✓
Court dates have been missed, court resolution postponed, and enforcement remains a problem, particularly if the staff member is transferred to another duty station or UN agency. (

3. The pensions of international civil servants as do the salaries of those in service continue to enjoy immunity from legal process. The Committee believes the UNJSPF's Regulations should be changed to bring it into line with the regulations of other Organizations which permit payments to divorced or legally separated spouses in cases where the retired participant is under a legal obligation to provide support.

4. The Committee notes that the payment "facility" established by the World Bank in 1995 provides for support payments to former or legally separated spouses only in cases where the retired participant is under a legal obligation, and only when authorized by the written direction of the participant or pursuant to a final decree of a court of

competent jurisdiction. Any support orders honored through this method would cease with the death of the pensioner.

5. The Committee feels that, while it welcomes this model, it provides at best only limited relief. And then only when the participant is cooperative. Relatively few of the spouses that come the UN Family Rights Committee for assistance have been able to obtain a final judgement. A number of factors limit access to the courts, including, in many cases, lack of money for legal costs. In at least two cases the spouse did not even know a divorce had been obtained by the UN staff member. Difficulties are compounded when the staff member spouse has left the jurisdiction, or when national laws on the recognition of marriage and/or divorce conflict.

6. The Committee therefore urges not only the immediate adoption of a World Bank type "facility", but recommends further study of pension sharing schemes which would provide benefit to those ex-spouses who were unable to obtain court ordered support or maintenance due them, because the staff member or pensioner claims immunity, or has left the country or for other reasons. It believes that a far larger proportion of unsupported ex-spouses fall into this latter category.

7. A more equitable model for spousal benefits would be for an interest in the benefit to vest in a spouse after a certain number of years of marriage to a contributing participant in the UNJSPF. Ten years is a minimum for US Social Security benefits and for benefits under the US Foreign Service Act. After ten years, or whatever minimum period is agreed upon the spouse would become entitled, independently, to a pro rata share of the pension benefit, based on the length of the marriage in relation to the period of contributory service after the commencement of the marriage, and regardless of whether or not the marriage is still intact and whether or not there is a legally binding support obligation. For example, the spouse of a participant who retires after 30 years of service, who has been married the whole 30 years, would be entitled to a pro rata 50% of the pension, both lump sum and periodic benefit or any combination of the two. If the marriage lasted for 15 of those 30 years, the pro rata share of the former spouse would be 25%. If, during 30 years of contributory service, the participant has been married twice, both times for more than 10 years, each spouse would be entitled to a pro rata share according to the length of the marriage in relation to the period of contributory service.

8. After the minimum period of marriage has elapsed, the spouse would be routinely notified that a future interest has vested and may become payable if and when the participant qualifies for one of the retirement benefits offered by the UNJSPF, unless a court order or spousal agreement provides to the contrary. For example, a couple who divorce after ten years, but many years before eligibility for a pension, may agree to a divorce settlement that provides for an annuity that would be equivalent to the spouse's future interest. Or when both spouses are employed and both have a pension plan, they may agree to renounce an interest in each other's benefits. Or, in cases where the spouse has independent means, a court order may provide for maintenance in a lesser amount or no maintenance. In cases where there is a dispute about the efficacy or meaning of an

How the Privileges and Immunities of the United Nations
hurt families

"Men and women...are entitled to equal rights as to marriage, during marriage and at its dissolution." (Article 16.1, Universal Declaration of Human Rights).

"In the case of dissolution provision shall be made for the necessary protection of any children." (Article 23.4, International Covenant on Civil and Political Rights).

"Everyone has the right to an effective remedy by the competent national tribunal for acts violating the fundamental rights granted him by the constitution or by law." (Article 8, Universal Declaration of Human Rights).

These basic human rights do not apply within the United Nations community itself. Families of UN staff members who are left without financial support (through divorce, separation or simple abandonment) are virtually without recourse, for even when a spouse succeeds in obtaining an order of child or spousal support there is no means of enforcing it. Because of the immunity accorded the Organization under the Convention on the Privileges and Immunities of the United Nations, salaries cannot be garnisheed. The situation of the older woman upon divorce is even worse for United Nations pensions enjoy an even tighter immunity. Having forfeited any chance of having a career of her own in order to support that of her husband and having spent her entire life moving from country to country, she finds that she has no independent right to a share in his pension. Not only can she be left penniless and without medical coverage; she may even be excluded from her national social security system--where such a system exists--because of her long absence abroad.

These problems arise not only in New York but all over the world. They are not confined to the United Nations but are found throughout the United Nations system since the specialized agencies enjoy similar privileges and immunities. The families affected represent every nationality. Delinquent

The Committee has put forward the following recommendations for change:

(i) A reinterpretation by the United Nations of the immunity of staff salaries in family support matters. The Convention on the Privileges and Immunities of the United Nations requires the Secretary-General to waive the immunity of any official "in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations." No interest of the United Nations is served by denying support to women and children. Staff Rule 103.18 (d) allows the Secretary-General to authorize deduction from salaries "for indebtedness to third parties". There is nothing to prevent the Secretary-General from issuing a blanket authorization to observe court orders of support and deducting family support payments from the salaries of delinquent officials.

(ii) A serious re-examination of the United Nations Joint Staff Pension Fund Regulations with a view to introducing, by the year 2000, some form of pension-sharing or pension credits such as already exists for the United States Foreign Service, US Social Security, Canada, the United Kingdom and most European countries.

(iii) The establishment of an Ombudsman for families at major duty stations who could advise family members of their rights, if any; intercede with the UN administration and with host Governments in cases involving families; and protect the interests of spouses and children of staff members. The Committee believes that the position should either be independently funded or jointly funded by the UN and host Governments in order to preserve independence.

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For information

P6/(b)(6)

17 March 1998

Ms. Jennifer Roehl
United Nations Family Rights Committee for Spouses and Children
P.O. Box 20139
DHCC
New York, New York 10017

Dear Ms. Roehl,

I have, happily, been recipient of a copy of your letter to Ms. Datta concerning her article in the Staff Report. I would like to inform you of and clarify the framework for the Family Status Committee of the United Nations Women's Guild in Vienna.

United Nations Women's Guild Family Status Committee (as publicly published)

The United Nations Women's Guild Family Status Committee was founded in 1990 after the development of an awareness for the concern of spouses, especially for the concerns of spouses whose marriages ended during their stay in the host country and for the concerns of spouses whose careers were disrupted and possibly terminated by their move to the host country. When the original Staff Rules and Regulations were established in 1945, they were geared to a social structure which has changed drastically during recent years. Nowadays separation, divorce and remarriage are more common, and women who have careers of their own are no longer the exception. Needs arise which were never envisaged in 1945. The Family Status Committee has identified the following areas of major concern:

- 1) needs for improvements in the employment opportunities for family members,
- 2) needs for improvements in the rights of divorced spouses in respect to (a) pension rights, (b) repatriation, (c) health insurance, and
- 3) needs for improvement in the rights concerning family entitlements.

The main tasks of the Family Status Committee lie in collecting information and compiling case studies which enable it to identify problems, pinpointing the shortcomings of the UN system, in communicating with other Guilds and Committees throughout the world, in lobbying the relevant people and organizations, in supporting spouses and families in distress with information and referrals, and in making suggestions for improvements.

To meet these ends, the FSC has published (May, 1997) an **Employment Booklet for UN and Embassy Spouses**. Although the Headquarters' Agreements between IAEA/UNIDO and the Austrian government provide for working rights, little has been done to facilitate this. Until 1990 two spouses were prohibited from employment with the same UN organization. With the UNRWA's move to Amman, Jordan, and the down-sizing of UNIDO, employment within the UN, while possible is even more

difficult. Employment within Austria (and especially for those from non-EU countries) is virtually impossible and impossible in any job which might be claimed by a recent immigrant or refugee in Austria. All of these problems are, of course, exacerbated by language problems.

Access to the UN complex in Vienna has a far different import in Vienna than in New York. Until Austrian entry to the EU, food items were extremely expensive and limited for non-European foods, thus the Commissary was an important support unit. We are also dependent upon English language service at banks, postal services, travel agencies, as well as the social support system of the UNWG provided within the UN complex. When a Security Guard confronted a UNWG member with the demand for her UN identity badge because 'her husband didn't want her to have it'. This was a major crisis in her life. When this action occurred the second time, the woman confronted the Guard. The FSC was able to find out that a Guard could not take this action and that only Personnel could withdraw the badge and thus access and privilege to the UN complex.

At this time, our efforts are directed at compiling a crisis handbook. When the employee refuses the spouse entry into the marital home, what does the spouse do (specifically, in Vienna)? The spouse may have no money (and no access to money), there may be no educational funds for children's education, no repatriation monies, etc. which comes only at the request of the employee besides problems with residency (Legitimationskarte) and work permits. Then, of course, there are the problems connected with the extra-territoriality of UN salaries and pensions, even though the JSPB statement (25 July 1997) is a step in the right direction. You are well aware of these problems.

For workshops we have called in experts to offer advice on banking and on obtaining a divorce in Austria. An international women's group in Vienna has already published **the most helpful Crisis in Vienna**, for women needing counseling, a shelter or ways to solve other emergency needs. Our efforts are based on responses to the Divorce Questionnaire (documentation of crisis) and personal interaction with needy spouses.

Since there is no sense in reinventing the wheel, we would appreciate regular communication from you/your group. Some of our problems are unique to the relationship between Austria and the UN agencies while others, perhaps the more important ones, are related to the UN system as a whole. Up to this point the FSC has tried to work quietly on a FSC-to-administrator/minister basis.

Anything sent to this address will reach the Committee regardless of the individual currently in the Chair: Family Status Committee, United Nations Women's Guild, Vienna International Centre F-0919, A-1400 Vienna, Austria, Tel: (+43-1)2060-24276 Fax (+43-1) 20607 or 29156

Patricia Amundrud, Chair



copy to Ms. Jean Datta, D 586



The World Bank/IFC/MIGA

Volunteer Services

MARCH 1990

President's Message

I clearly remember how comfortable I felt when my husband was going to join the World Bank, and I read about all the benefits the family would enjoy. These included "points trips," "home leave," and a good medical insurance plan. I was also told of the excellent life insurance and pension plans available to ensure the family's financial security in any event.

The question we seldom ask is, "How much security is really there for World Bank spouses, particularly wives, many of whom have left their country, family and career behind to be supportive of the staff member?" It is prudent, in fact crucial, to review our financial security and that of our children if suddenly one of us were to be widowed or divorced.

The recent changes of the U.S. Federal Estate Taxes and specifically those of the Technical and Miscellaneous Revenue Act (TAMRA) in November 1988 could severely affect the surviving spouse's financial security. Under this new law, some of us may be liable to a high tax rate that could cut into a sizeable chunk of life insurance and pension benefits. Unless the surviving spouse can prove that he/she financed a share of the property, this property can be deemed for tax purposes to belong exclusively to the staff member, even when it is jointly held. Taxes could also be levied on worldwide assets. Recently, at least one Bank wife has found herself in a serious financial predicament after her husband's death. The diversity of individual circumstances, the complexities of the law and the differences between "citizens," "nonresidents" and "residents" need to be carefully examined to determine how this law would affect each person. The Bank is presenting a proposal to the Board of Directors to help protect against the most serious implications of this law. I will keep you informed about this matter.

In the event of a divorce, the dice seem to be even more heavily loaded against the spouse. According to immigration laws, a dependent G-IV visa holder must leave the U.S. within 30 to 60 days after the divorce has been granted. The possibility exists, however, of converting to a different type of visa, which would allow for a longer stay. Depending on state law, a "no-fault" divorce might be obtained by one party choosing to live apart for a period of six to 24 months, irrespective of the other's desire not to end the relationship. If a divorce is granted in the U.S. with provision for alimony and child support, a staff member is liable to pay, or stand in contempt of court. The Bank though is immune from a court injunction to withhold money from a staff member's salary. However, when it comes to the Bank's attention that staff is not meeting his/her obligation under the order, the Bank does regard this as a serious matter and takes steps to ensure compliance.

A worst-case scenario could be that the spouse has no money for legal advice; the staff member claims to have no savings, and there is no property held jointly by the couple, or if there is, the staff member has taken a loan against the equity, leaving an empty shell to be contested. The only tangible asset then becomes the pension, which cannot be touched because the terms of the plan preclude the staff member's assigning any amount he/she may receive from the plan before the actual amount is received. According to Bank rules, no benefits can be disbursed to a spouse or family member without a staff member's request. Even repatriation of the divorced spouse is financed by the Bank only upon specific request of the employee.

The divorce rate in the U.S. is high. Can we believe it is different in the Bank community? If you are concerned about the situation or have suggestions to make about either of these two issues, please write to me at WBVS. All correspondence will be treated as strictly confidential.

Ruksana Mehta

12
RESPONSES TO THE PRESIDENT'S MESSAGE FROM THE MARCH NEWSLETTER

"He left me with a check providing one month's financial support and told our landlord that he was no longer legally responsible for the rent at our apartment. I did a lot of checking around, but no one would rent an apartment to me as I had no job, no bank account and no legal property settlement. Fortunately, I have a relative who agreed to cosign the lease so that I could have a roof over my head. Other women may not be so lucky and if they have young school-aged children, they would be in a worse predicament."

So wrote one spouse in response to the "President's Message," by WBVS President Ruksana Mehta in the March newsletter, which had asked how the TAMRA Act and divorce settlements affect the financial security of WBVS families. Like the excerpt from the above letter, your responses were powerful, poignant and to the point, revealing deep concern on these issues.

One member said, "It is encouraging to see the spouses' concerns finally addressed and the vulnerable position we are all in, finally acknowledged." Someone else wrote, "you know better than we, that many wives are kept in the dark by their husbands, and many others do not want to show their concern though it is there." A group of spouses wrote, "You raise important points for spouses to consider."

Concern for others was another theme that ran through these letters. "I am going to tell you of my situation, and although you may not be able to help me, you may be able to use this information to help others."

Unfortunately, these letters also revealed that the worse-case scenario of a divorce, which brings about severe financial hardship, has also happened, or is in the process of happening, to some of you. One spouse said that there is a general feeling that "Most people feel it is wonderful to come here with an international organization, which is immune to court orders, and to remain blissfully unfamiliar with local laws (which for one reason or another you are sure don't apply to you) can prove a dangerous combination for family members."

Some spouses do not realize how weak their financial position is until trouble starts, and

then it can be too late.

A recently divorced American spouse found this to be painfully true when her lawyer stated, "Once the divorce is final, had he worked for any other firm, you would be entitled to half his pension." She added, "As a World Bank wife for 20 years, I certainly did my share to encourage and cooperate with World Bank goals, though they often conflicted with personal and family needs."

Another wife separated by her husband, a recent retiree from the Bank, and after a 23-year marriage, was awarded a temporary settlement of \$1,000 per month by a local court to maintain the family home. Her husband was also ordered to pay the medical insurance coverage. He made one house payment, then disappeared. Since she was unable to make the mortgage payments, the bank foreclosed, and she lost her home. To make matters worse, "When I submit an insurance claim form, and ask New York Life to pay the doctor directly, they send the money to my husband. He ends up making money off of me and I end up paying all of the bills."

Your letters also contained constructive suggestions for a fair and equitable settlement when the family falls apart. WBVS is presently drafting a working paper on this issue to outline these points. Please continue writing your letters, because your words tell the story best.

Confidentiality is stressed. All excerpts from letters used in the preceding article were with prior permission from the writers.

Throughout the years, the Bank has shown far-sighted vision, interest and concern for the well-being of its staff and their families. Currently efforts are being made by the World Bank Group to protect international families from the harshest effects of the TAMRA Act (see box). A large institution may sometimes seem impersonal. But the diverse concerns of Bank families cannot always be guessed by the Bank management, and it is easy to forget that effective communication is a two-way process. Bank management does listen, and it does respond, but first it must hear your story.

by *Glenna Habayeb and Ruksana Mehta*

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
003. letter	Janet Atkinson to Kay Bossel [Boesel] re: International Agencies Immunities Act Family Support/Attachments 13-15 (5 pages)	05/27/98	P6/b(6), b(6)

**This marker identifies the original location of the withdrawn item listed above.
For a complete list of items withdrawn from this folder, see the
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COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Cynthia Rice (Subject Files)
OA/Box Number: 15429

FOLDER TITLE:

Child Support-International Agencies [2]

rx35

RESTRICTION CODES

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

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

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

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
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- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]



ASHA
ASIAN WOMEN'S SELF-HELP ASSOCIATION

May 11, 1998

Ruksana Mehta
Chairperson, Spouse Rights
W.B.V.S.
Washington, D.C.

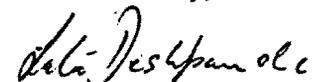
Dear Ms Mehta,

It has come to our attention that you are involved in seeking permanent solution to the difficulties of spouses facing the "immunity" of International organizations, when involved in divorce cases.

As you are aware ASHA is a non -profit South Asian Women's support group in the Washington D.C.- Baltimore metropolitan area. In the past nine years we have been contacted by South Asian spouses of International organization who have voiced a number of concerns. They have mentioned pension problems and divorce settlements and enforcing the divorce settlement. They have not only been emotionally devastated but often do not have enough time to find a job, have no resume and no job history. Some have found jobs, others have returned to their countries. Many were unaware of bank accounts, finances or even salary. Visa problems and having only sixty days to leave the country was a major problem.

This letter is written to express our support to obtaining a solution to a major problem of long standing which is unfair to spouses of International agencies.

Yours sincerely,


Lata Deshpande
ASHA Program Coordinator

Withdrawal/Redaction Marker

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
004. letter	Janet Atkinson to Kay Bossel [Boesel] re: International Agencies Immunities Act Family Support/Attachment 17 (2 pages)	05/27/98	P6/b(6), b(6)

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- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Caryn S. Lennon, J.D.

Suite 400
1825 I Street, NW
Washington, DC 20006

Telephone:
202-429-2089

Facsimile:
703-318-0166

May 23, 1998

Faith Dornbrand
Sherman, Meehan, Curtin & Ain
1900 M Street, NW, Suite 600
Washington DC 20036-3565

Dear Faith,

As you know, representation of an international organization (IO) spouse in a divorce is one of the most difficult kinds of cases you can undertake. There are obstacles from beginning to end, such as:

Obtaining information. The policy of the majority of IOs is to refuse disclosure of any information whatsoever. Citing the immunity granted by the International Organizations Immunities Act, 22 U.S.C. Sec. 288, requests for salary and benefits information on employees are routinely denied, and court orders are ignored. Without accurate data a spouse may be unable to obtain appropriate child or spousal support.

Enforcing obligations. Even if an IO spouse is able to obtain a court order for child or spousal support, all IOs currently refuse to honor civil court orders that attempt to garnish the salary of the employee. Again, citing the IOIA, the 60+ international organizations in the U.S. will not force their employees to support their spouses and children despite a state court order that they do so.

The IOs have been representing to the State Department that there is no problem, because they aren't aware of any pending cases, and because they have adequate internal mechanisms for handling these situations. We know differently. The World Bank, for instance, prides itself on having granted spouses access to the Pension Plan for spousal support. You are no doubt aware of all the reasons that is completely inadequate, starting with the ability of the employee to avoid the court order simply by changing employers and taking his pension plan to any one of the other IOs that don't grant such access.

There is a proposal before the State Department to urge the President of the United States to issue an Executive Order removing the immunity of international organizations to state court jurisdiction in family support cases involving their employees. This proposal has the support of the American Bar Association Section of Family Law, the National Child Support Enforcement Association, and many others. We are asking the State Department to support taking a very controversial action, and we need your help. Although these problems are well-known to family law attorneys, the State Department and other representatives of the federal government are hearing about them for the first time. They need to be convinced that the problems are serious and widespread, and that only drastic action will suffice.

Here's what I'm asking you to do: search your memory and your case files for examples of the kinds of difficulties I've described. Write a letter to the parties listed below describing in as much detail as you can what the problems were and how the IOIA affected the ability of your clients to obtain a fair outcome. Do not include names or identifying details, but the name of the international organization in each case would be helpful. Make your letter as long as possible. Copy and share this letter with your colleagues and ask them to do the same. Only by overwhelming the government with examples and details will it be possible to convince them to begin to remedy this situation.

I know you are busy and this is asking a lot, but any help you can give will be greatly appreciated!

Sincerely,

Caryn S. Lennon

Enclosures

CC: Scott Busby, National Security Council
Janet Atkinson, Esq.

Please send your letters *as soon as possible* to:

Mr. Scott Busby
National Security Council
Office of Democracy, Human Rights and
Humanitarian Affairs
The White House
1700 Pennsylvania Avenue, N.W.
Washington, DC 20504

FAX: 202-456-9140

Ms. Kay Boesel
Host Country Relations
Department of State
2201 C Street, NW, Room 6333
Washington, DC 20520

FAX: 202-647-0039

Copies to the following would be appreciated:

Caryn S. Lennon
Attorney at Law

FAX: 703-318-0166

Janet Atkinson
Attorney at Law

FAX: 301-530-9512

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20504

June 2, 1998

Dear Mr. Kutner:

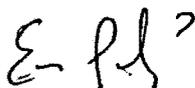
Thank you for your letter to the President urging him to remove the immunity of international organizations from state court jurisdiction in those family support cases involving employees of such organizations. I am responding on his behalf.

We share your concern about cases in which employees of international organizations shield themselves from the jurisdiction of U.S. courts in family support matters by invoking the immunity enjoyed by those organizations. The President has asked the Department of State to conduct a careful review of cases where employees of international organizations are not complying with applicable court orders. The review will include an examination of the feasibility of an Executive order of the type you advocate in your letter.

We expect to reach a decision on how best to address this issue after we receive the results of the State Department review. We will be sure to let you know what conclusions we reach.

Thank you for sharing your views on this important issue.

Sincerely,



Eric Schwartz
Special Assistant to the President
for Democracy, Human Rights and
Humanitarian Affairs

Maurice Jay Kutner
Section Chair
American Bar Association
Section of Family Law
750 North Lake Shore Drive
Chicago, IL 60611

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20504

June 2, 1998

Dear Mr. Caswell:

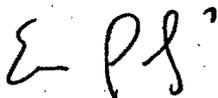
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We expect to reach a decision on how best to address this issue after we receive the results of the State Department review. We will be sure to let you know what conclusions we reach.

Thank you for sharing your views on this important issue.

Sincerely,



Eric Schwartz
Special Assistant to the President
for Democracy, Human Rights and
Humanitarian Affairs

Gary Caswell
Vice President, International Reciprocity
National Child Support Enforcement Association
Hall of the States
444 North Capitol Street
Suite 414
Washington, DC 20001-1512

TO: All members of the Working Group – International Organizations Executive Order
FROM: Patricia E. Apy, Esquire
RE: Following is the legal memorandum in support of the executive order to be signed by the President.
DATE: June 5, 1998

PRELIMINARY STATEMENT

On August 22, 1996, President Clinton signed into law the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193), setting in motion the most significant reform of the nation's welfare system in 60 years. This far-reaching legislation was designed to "end welfare as we know it". The Personal Responsibility and Work Opportunity Reconciliation Act contains the most comprehensive provisions on child support enforcement in the history of the program. Because they have enjoyed such strong bi-partisan support, important changes that took place in the nation's child support program may have been overshadowed by the public debate surrounding other provisions of the Act. However, the primary legislative initiative and the comprehensive provision on child support enforcement is that improved child support enforcement is an integral component of achieving real welfare reform.

The seeds for this legislation were sown in 1988 when, in the Family Support Act, Congress called for the appointment of a United States commission on interstate child support. For two years, the interstate commission combed the country, holding public hearing, consulting legal experts and analyzing successful innovations in the state, looking for effective strategies. In 1993, President Clinton convened the working group on welfare reform which conducted another extensive analysis of the nation's child support system, consulting more experts and hearing further public testimony. In June of 1994 that working group issued its recommendations and legislative proposals which became the basic framework for the bill ultimately enacted by the Congress of the United States. Beginning in 1995, Congress took a hard look at the recommendations, holding committee hearings throughout 1995 and 1996. Hearings were held by the House Ways and Means Committee, Subcommittee on Human Resources, on February 6, 1995, June 13, 1995, May 23, 1996 and September 19, 1996; by the Senate Finance Committee on March 28, 1995. Addressed were the relationship between employers compliance and payment, an improvement of paternity establishment, the effectiveness of license and passport revocation as an enforcement tool, the distribution of collections and the efficiency of collections by wage garnishment and what policies would encourage families to be independent of public assistance.

Recognizing the necessity of the strong interstate enforcement measures, Congress did not include child support in the block grants, nor did it federalize the program as some had advocated. Instead, Congress continued the federal-state partnership that had been the hallmark of child support enforcement for more than 20 years.

The Personal Responsibility and Work Opportunity Reconciliation Act required states to consolidate information, streamline processes and centralize decision-making authority, utilizing automated data to enhance the enforcement of high-volume caseloads. Since 1984, Congress has recognized that the traditional method of taking each case back to court, one by one, was inefficient and ineffective and, therefore, passed a series of laws requiring the states to have mandatory wage withholding, to intercept federal and estate tax returns, to make past-due child support a judgment by operation of law and other significant procedures to streamline processes.

Four strategies legislatively united the Congressional efforts in the Parental Responsibility and Work Opportunity Reconciliation Act to increase the collections and improve the nation's child support program: (a) to re-engineer the processes to use the technology to its fullest, to encourage high-volume, computerized data matches and automatic issuances of notices to collect; (b) to give child support agencies the information they need to do their job, inclusive of licensing and tax information, employer information, banking information, credit bureau and law-enforcement information; (c) to reduce welfare dependency by making it easier for parents to establish paternity; and (d) to remove the unnecessary barriers occasioned by inter-state cases by requiring uniform law and procedures and computer networks.

States continued to strengthen their enforcement remedies with ever-expanding arsenal of tough enforcement tools, ranging from wage assignments and property seizures to "10 Most Wanted" posters and criminal extradition procedures. Focusing on high visibility criminal prosecutions and other tough enforcement initiatives to continue to galvanize public attention and encourage voluntary compliance, accompanied by more sophisticated outreach programs that support positive and responsible involvement of payors. It is in this context of unequivocal, bi-partisan legislative pronouncement that makes standard the use of enforcement tools, such as discovery of employment information, banking matches, passport denial for non-payment of more than \$5,000.00 in support, the vacation of professional and motor vehicle licenses, that the issue now comes to the

President of the United States to effectuate what Congress has already indicated in its most unequivocal terms is the process and procedure in the best interest of the American public.

With executive Order number ____, the President insured that the federal government and its employees would be subject to full participation in the enforcement process. It is the position of this working group that an executive order addressing the immunities international organizations enjoy in this arena.

I. Why an Executive Order is Needed

A. Women and Children are at Risk

Thousands of women and children living in the United States are deprived of the most basic protections of U.S. family law, because the international organizations, which employ their fathers and husbands, use their institutional immunity to shield staff members from their family support obligations.¹ More than seventy international organizations enjoy immunity, pursuant to the International Organizations Immunities Act ("IOIA"), 22 U.S.C. Section 288 *et seq.* ^{and independent treaties.} Each of these institutions claims that its limited jurisdictional immunity entitles it to insulate employees, who do not enjoy diplomatic immunity, from the power of state courts in domestic relations cases.

These institutions refuse to cooperate with any court in any way, in family law cases involving their employees. The organizations will not divulge the amount of an employee's salary or the value of her pension and other benefits, without the express written consent of the employee. They refuse to implement wage-withholding orders in family support cases, and will not permit judicial attachment of the spousal share of an employee's pension. If an employee leaves his family, the economically dependent spouse and children may be forced to rely on public welfare payments, unless the staff member makes voluntary support payments. This is unacceptable.

Victims of domestic violence are particularly at risk; they cannot leave their abusers unless they have some reliable means of obtaining support. Those who do leave continue to be victimized by their abusers, who can withhold support and cancel the spouse's visa and health insurance at any time, even before the marriage is terminated. Most of these spouses suffer from severe depression and a myriad of physical ailments,

¹ Not all injured spouses are women. The writer assumes the staff member is male and the disadvantaged spouse, female, only for reasons of convenience.

stemming from the abuse. Children accustomed to affluent lifestyles and financial security are traumatized by the disruption of their families and sudden impoverishment. Stripped of the protection of the domestic law of any nation or state, their lives become nightmares.

B. Spouses and Children Have No Effective Remedy

No court can enter an adequate support order or order an equitable division of marital property, unless it can obtain reliable information, concerning the amount of the employee's compensation and the value of his pension and other benefits. Documents obtained from the employee, rather than directly from his employer may not be admissible as evidence, as they cannot be authenticated. International organization employees frequently underestimate their income and the value of their pensions, knowing that spouses cannot obtain accurate figures from the employer. Thus, support orders are inadequate, and divorcing spouses are deprived of their fair share of marital property.

Domestic relations attorneys report that the staff member's pension benefit is often the only significant marital asset, when such employees divorce. An employee's pension may equal as much as eighty percent of his highest average three years salary. Even if the divorcing staff member is willing to transfer all of the remaining marital property to his spouse, the spouse will probably not be adequately compensated and may not have adequate support, during her old age.

In many cases spouses of organization employees do not have the professional credentials or work experience providing for employment. Even if she has worked, field office staff are frequently transferred, making it impossible for a spouse to remain in any job long enough to accumulate her own pension benefits. Furthermore, a spouse's visa status frequently prevents her from accepting gainful employment.

Because of the difficulties in obtaining support, dependent spouses and children are particularly vulnerable. Deprived of the spousal share of the staff member's pension, long term spouses are frequently impoverished following separation or divorce. Under the current legal circumstances, the disadvantaged spouse has no adequate available forum in which to assert her legal rights to support and an equitable division of marital property.

C. Internal Remedies are Inadequate.

State Department officials report that the six largest international organizations headquartered in the United States have acknowledged that there had been abuse of the immunities enjoyed by international

organizations, but claim policy changes initiated in 1995 eliminated prior abuses of the organizations' immunities in family law cases.

These organizations did not, however, produce any information supporting the process employed to address the distribution of pension interests, procedures for payment of support orders or policy to insure compliance with state court discovery orders or subpoenas. There was no indication that these organizations had transmitted the information regarding the availability of any revised policy to the federal 4-D enforcement workers for dissemination and use, particularly on public assistance cases. Although the State Department officials alluded to a number of cases, they provided no indication of the origin of the cases, the state courts involved or the process employed to address the problem of uniformity and due process. As such, it strains the credibility of the international organizations position in light of the contrary experience of the spouses, family law attorneys, therapists, child support and caseworkers who report that changes in these cases appear negligible.

Only three organizations, The World Bank, The International Monetary Fund and the United Nations claim to have made any changes at all, while the Inter-Development Bank claims to be contemplating a minor change to its pension plan. An example of the type of contemplated "in-house" remedy is demonstrated by the World Bank's pension plan where the bank volunteered to assign a portion of the stream of payments from an employees pension benefit for "support of spouse" during a retirees lifetime. However, in order to take advantage of this "assignment", a court order had to be rendered which clearly stated that there was no contemplated property interest, nor could the mechanism purport to attach any portion of the employees pension benefit. Even after such a declaration, the spouse's survivor benefit continued to be extinguished upon the entry of the divorce decree, leaving many long-term spouses with no means of support after the retirees' death or requiring them to forego a divorce in favor of a long-term legal separation in order to obtain or maintain benefits.

This limited protection is an example of the illusory nature of the proposed remedy. Even after an "order for support of spouse" had been accepted by the pension benefits office, the employee continues to be permitted to withdraw a lump sum for his personal benefit, or to transfer his entire pension interest to another international organization at will. Since there is no legal assignment or attachment, the subsequent organization will not honor the prior assignment. All this is done without the necessity of notification to the spouse or former spouse. After the alienation of this previously distributed asset, the spouse becomes aware of the withdrawal only when she

receives a reduced payment. She is entitled to no information upon inquiry to determine the reason for the reduction. Absent that information, she could not prove that her former spouse is in contempt of the prior order.

The World Bank and the United Nations claim to have instituted procedures whereby the organization will provide standard salary and benefits information to spouses and their attorneys if the employee does not provide the documents pursuant to a valid subpoena. Again, no document disclosing the process or the legal requirements to exercise the process are suggested. For example, would the payee have to prove contempt in the state court of the employee to provide discovery? Even after obtaining such an order, the international organization can continue to exercise its discretion in the timing and extent of the disclosure of the information. In any event, the two step procedure needlessly increases litigation costs and leaves the dependent spouse without recourse if she is unable to obtain the necessary documentation.

The World Bank claims that its ethics officer will inform an employee that he is expected to comply with family support orders if the spouse informs the ethics officer that the staff member has not complied with family support orders. This procedure has proven inadequate for three reasons. As an initial proposition, the dependent spouse has usually been discouraged from contacting the employer organization directly. Reasons given can include that the employee has threatened to retaliate or staff members have insinuated that such conduct could jeopardize the payee's employment. Second, spouses who have contacted the ethics officers have been told as a predicate that the bank does not actually compel payment or the production of documents, so their activities appear futile. Finally, the spouse has no information regarding account numbers or benefits which make bank employees unwilling or unable to help them.

For example, Anna Chythoa, Esquire, a World Bank attorney, recently told the World Bank Spouse Issues Group, that the bank has only a "slight duty" to protect employees and children, while it has a "significant duty" to protect its employees. This unfortunate attitude undermines any confidence a spouse might otherwise have in the World Bank's internal remedies. It also involves the dependent spouse waiving all of the due process rights that the payee would otherwise enjoy under the processes afforded by state and federal law for the determination and collection of support in favor of the exercise of the individual discretion of the international organization. The United States Commission on Interstate Child Support, in its bold and comprehensive report, "Supporting Our Children: A Blueprint for Reform", reiterated in its detailed recommendations an individualized

enforcement strategy based on the exercise of discretion by an individual case worker or record keeper was antithetical to effect of child support enforcement. Even if one were to assume that the international organizations are entirely heartfelt in their desire to address and resolve these issues "in house", the benefit of the evolution of child support enforcement in this country, and the myriad of enforcement procedures that were examined and legislatively mandated, support the factual assertion and anecdotal experience of spouses and child support workers that the individual exercise of discretion by international organizations require them to be arbiters of family law cases in a way that will do anything but enhance uniformity and will evade meaningful review.

The IMF instituted more conservative pension plan changes. It agreed to permit assignment of a stream of payments from an employee's pension benefit "for support of a spouse or former spouse" consistent with the terms of a family court order, but only to the extent that their employee gave written consent. The IMF has suggested a willingness to amend its policies, to make an employee's failure to support his family an ethics violation. While the sentiment is commendable, it is likely to be ineffectual in that the revised ethics policy would provide no effective remedy to the dependent spouse and children for actual enforcement for breach of that ethical duty. The United Nations and other international organizations enacted such policies years ago,² yet their employees continue to evade their family support obligations.

No international organization proposes as part of its policy change to implement wage withholding in family support cases; none will permit garnishment, none will permit segregation of the spousal share of an employee's assets or pension benefits pursuant to a court order. The Family Support Act of 1998, the Omnibus Budget Reconciliation Act of 1993 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 have complete unanimity in the finding that wage attachment is the only reliable means of enforcing family support obligations. This is particularly true, where the support obligor has the opportunity to move assets internationally. Many such employees remove cash and other assets from the U.S, in order to avoid their family support obligations. International organizations, perhaps unwittingly, cooperate by wiring wages and pension benefits to foreign accounts as part of their normal practice. There is no notice requirement or prohibition when the employee is not in compliance with valid support orders. The employee's salary and pension benefit may often be the only assets, which remain within the jurisdiction of any United States court.

It has been opined that international organizations are deeply concerned about the needless suffering of so many spouses and children and will devise adequate remedies if they are given sufficient time. This is neither a realistic expectation, nor a necessary one. The adequate remedy is already a part of the United States law. International organizations, headquartered in the United States have known for nearly fifty years, that their employee's use the institutions' privileges and immunities as a shield in family support cases.³ World Bank spouses have sought internal remedies for nearly ten years, with negligible results. Most international organizations have not even assigned a staff member to assist divorcing spouses. While thousands of spouses and children continue to suffer, their pleas for help fall on deaf ears; the organizations claim that they do not even exist.

D. The use of an Executive Order is the most appropriate mechanism where Congressional legislative policy is unequivocal and there is no need for additional legislative action to facilitate enactment.

The IOIA gives the President the authority to modify the breadth of the international organizations' immunity by providing that they will be subject to state court jurisdiction in family law cases. Doing so would neither expand, nor limit the exercise of domestic family law on the individual litigants, but will simply insure that rights and responsibilities as they are determined by the family court exercising appropriate jurisdiction over the parties, will be enforceable. Additionally, it will insure that the administrative remedies determined by Congress as available to all are not frustrated by the inappropriate exercise of immunity. Spouses and their attorneys could then obtain necessary documents directly from the employer, using the subpoena power of the divorce court. Once a support order was entered, child support and alimony could be collected efficiently and reliably, at no additional cost to either the organization or the state by serving a wage withholding order directly on the employer. Spouses would be able to enforce judgments for accrued support arrears and monetary awards through wage garnishment actions. Court orders, attaching spousal pension interests and other benefits and accounts could be implemented.

Alas
no

⊗

² See e.g. UN. PERSONNEL MANUAL INDEX NO. 1040 ADMINISTRATIVE INSTRUCTION, dated Dec. 19, 1994, attached hereto.

³ See e.g. 2 Y.B. of the Int'l L. Comm'n ,223 U.N.Doc. CAN 4/1967, citing Gregoire v. Gregoire, N.Y.L.J., p. 810 (Feb.28, 1952).

II. The President has the authority to withdraw international organizations immunity to state court jurisdiction in family law cases involving their employees.

A. An international organization is entitled to immunities only to the extent necessary to fulfill its intended functions and purposes.

International organizations derive their privileges and immunities from those treaties through which they are established, headquarters or host country agreements, multilateral conventions and national implementing legislation. The International Organizations Immunities Act is the United States' implementing legislation. Each statute, treaty, convention and agreement makes it abundantly clear that "International immunities can only be based on functional necessity."⁴ An international organization is entitled to immunities only to the extent necessary for fulfillment of its stated functions and purposes. The intention in affording such organizations immunities is to enhance the organization's capacity for independent international decision-making, and maintain its ability to serve the common interests of all member nations. No authority suggests that immunity is designed to provide an organization entitlement to shield their employees from the discovery, distribution or garnishment of marital property which an American court has already determined is subject to its jurisdiction.

The United Nations, viewed by some analyses to enjoy the broadest immunities, provides an excellent illustration. The immunities to which the United Nations is entitled in the United States are found in the UN Charter, the Convention on Privileges and Immunities of the United Nations and the Headquarters Agreement.

The UN Charter provides:

Article 105

1)The Organization shall enjoy in the territory of its members, such privileges and immunities as are necessary for the fulfillment of its purposes.

(2)Representatives of the Members and Officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the organization. UN CHARTER, June 26, 1945.

⁴ *Relations Between States and Intergovernmental Organizations*, 2 Y.B. Int'l L. Comm. 138, 142 UN Doc. ACN4/1967.

Each international organization's constitutive treaty contains similar language, defining the scope of privileges and immunities, to which the organization is entitled. Article 105 of the UN Charter has been implemented through establishment of a General Convention on the Privileges and Immunities of the United Nations ("General Convention")⁵ and various host country agreements, including the Headquarters Agreement, which is complementary to the General Convention⁶

B.. Privileges and immunities are intended for the sole benefit of the organization, not for the personal benefit of individual employees.

As a cursory review of the General Convention makes abundantly clear, the privileges and immunities enjoyed by the organization, its officers and the representatives of members are for the benefit of the member countries as represented in the collective, not the private interest of individual employees. It is important to recall that the diplomatic immunities enjoyed by individual actors are not implicated or affected by the contemplated executive action. In order to enter any family court order, each state court must acquire jurisdiction over the individual litigants and their property. It is conceded by these organizations that an executive order would not diminish the ability of any person to assert diplomatic immunity in response to the filing of state court process.

Nevertheless, even in the cases where such immunity could be asserted, the Secretary General of the United Nations retains the power to waive the immunity of any official in any case, where the use of that immunity would impede the course of justice. That waiver can be made without prejudice to the purpose for which the immunity is accorded.⁷ The Headquarters agreement provides that "the United Nations shall prevent the headquarters district from becoming a refuge either for persons who are avoiding arrest under the federal state or local law of the United States or are required by the government of the U.S. for extradition to another country, or for persons who are endeavoring to avoid service of legal process., art. III Section 9(b)".

The United Nations Charter, General Convention and Headquarters Agreement and the charters, and conventions pertaining to each of the other international organizations, make it clear that the organization is entitled to only those privileges and immunities, which are essential to achieving the UN's intended functions and

⁵ CONVENTION ON PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS, 1 U.N.T.S.15, 21 U.S.T. 1419 (1970)

⁶ UNITED NATIONS HEADQUARTERS AGREEMENT, June 26, 1947, 11 U.N.T.S. 11, 61 Stat 3416 1947).

⁷ See General Convention, supra, Sections 14, 20, 23.

purposes". The organization's immunities were never intended to enable an individual staff member to shield his personal income and assets from his spouse or former spouse, or to protect an individual employee from his legal obligation to support his family.

C. Documents and information held by international organizations and sought by litigants are not "protected" or "archival".

The General Convention provides that "the archives of the United Nations, and in General all documents belonging to it or held by it shall be inviolable, wherever located."⁸ Similar words appear in treaties, agreements and conventions between the United States and each of the other 72 international organizations, which are entitled to enjoy the privileges and immunities, granted by the IOIA.

That language has been argued to be not only unconditional in nature, but defined to include the employment records of individual employees, including pension balance, bank statements and payroll information. Close examination of these treaties reveals that, like other privileges and immunities of international organizations, the inviolability of archives must be interpreted in the light of functional immunity.

UN Charter art. 105, cited in the preamble of the General Convention, and the ultimate source of every privilege and immunity enjoyed by the United Nations, its staff and representatives of the members, states unequivocally that the organization is entitled to only such privileges and immunities as are necessary to the exercise of its functions and the fulfillment of its purposes. Article XI of Agreement Establishing the Inter-American Development Bank,⁹ which includes a provision that "the archives of the bank shall be inviolable,"¹⁰ limits the scope of this protection to that which is necessary "to enable the Bank to fulfill its purpose and the functions with which it is entrusted."¹¹

Courts which have considered the issue of what constitutes "archives" of an international organizations have concluded that it is not the international organizations possession of the document that inbue it

⁸ Id. art. II Section 3.

⁹ 10 U.S.T. 3029 (1958).

¹⁰ Id. at 3095.

¹¹ AGREEMENT ESTABLISHING THE INTER-AMERICAN DEVELOPMENT BANK, art. XI, Section 1, 10 U.S.T. 3072, 3094 (1958)

with protection. The purpose of the inviolability of archives is to ensure the confidentiality of the those documents that record or reflect the *institution's* decision-making process.

The English courts addressed this issue in Shearson Lehman Bros., Inc. v. Maclaine Watson & Co. Ltd. No. 2, 77 ILR 108 (Ct. App. 1987), 1 All E. Rep. 116 (H.L. 1988). Shearson Lehman involved a contract dispute, which grew out of the financial collapse of the International Tin Council ("ITC"), an international organization headquartered in London. The ITC's headquarters agreement conferred on the ITC "inviolability of official archives", as are accorded those of a diplomatic mission. The ITC appeared as an intervenor in the case, seeking to overturn a High Court order, which had required the ITC to disclose certain information, and to prevent the parties from introducing into evidence documents, which had been supplied to third parties by ITC officials.

In Shearson Lehman No. 2, the Court of Appeal held that the ITC bore the burden of showing that the documents were "official archives", entitled to protection under the host agreement and that there was no justification for extending the definition of the word "archives" to include information derived from such archives, "Id at 124. Under this ruling, information concerning an international employee's salary and benefits, derived from his personal employment file payroll records or other documents held by the organization are not derivative of the organization's archives, but of the individuals interests and assets.

Shearson Lehman's holding is consistent with the UN's response to documents requests in certain cases. When subpoenas were served on three UN officials, in the case of United States v. Keeney, UN officials gave "affidavits which were used by Mrs. Keeney's attorneys." Rather than producing specified UN documents and papers, pursuant to a subpoena duces tecum. In 1952, an international commission of jurists appointed by the UN Secretary General to advise him on specific questions "with respect to staff members of U.S. nationality endorsed the UN's decision to give employees typewritten copies of their applications, for submission to a grand jury, rather than photocopies of the actual documents themselves."¹² It is clear that the commission believed that providing information extracted from UN files, did not violate the organization's archives.

The House of Lords made several findings in Shearson Lehman First, the term "archives" under English law, presumably the same under international law, included all documents belonging to or held by the organization. Second, the purpose of conferring inviolability on the archives is to preserve the confidentiality of the

information, which the documents contain," Id. at 127. Third, not all papers held by international organizations are entitled to protection. The organization is entitled to assert protection only where disclosure would impede the organization's ability to reach policy decisions without undue interference or where it would compromise diplomatic communications. Fourth, the organization, which asserts the privilege bears the burden of demonstrating that the particular documents are entitled to protection.

Applying the holding of Shearson Lehman, documents concerning an individual employee's compensation and pension benefits are not entitled to protection. Producing this information does not in any way compromise diplomatic communications or limit the organization's ability to reach policy decisions without undue interference. The only privacy interest that may be implicated is that of the individual employee, not that of the organization. That interest, of course, could always be asserted by the individual within the state court proceeding in response to the request for information. Furthermore, this information is routinely communicated to third parties to benefit the employee when such a request is made, for example, to assist in the application for mortgage. If disclosure of this type of information would actually impede the organization's ability to achieve its intended goals and purposes, the issue raised by the organizations is not whether the information should be shared with third parties, but whether they can continue to be the unchallenged arbiter of what is and is not to be released. The organization would undoubtedly refuse to disclose the information, regardless of who requested it, even when the employee consented. The organization's inconsistent response, demonstrates that it is susceptible to the interests of and pressure from individual employees and not driven by the interests of the organization.

In J.J.Zwartveld v. Commission, the¹³ European Communities Court of Justice ("E.C.J.") interpreted an identical provision, "Archives of the Community are to be inviolable," which appears in Article 2 of the Protocol on Privileges and Immunities of the European Communities, annexed to the Treaty Establishing a Single Council and Single Commission of the European Communities | April 8, 1965.¹⁴ A Dutch

¹² MARJORY L. WHITEMAN, 13 DIGEST OF INT'L L. 97,98 (1968).

¹³ Case C-2/88, J.J. Zwartfeld and Others v, Commission, __ ECR 3365 (1990),

¹⁴ The American Declaration of the Rights and Duties of Man, the Universal Declaration of Human Rights, the European Convention on Human Rights, the American Convention on Human Rights and the International Covenant on Civil and Political Rights (ICCPR Art. 23, Sec. 4), 999 U.N.T.S. 172.

court had ordered the Commission to produce certain documents, related to fisheries inspections, in connection with litigation between third parties.

The E.C.J. ordered the Commission to produce the documents and made several significant holdings. First, the E.C.J. found that the inviolability of archives has a functional and therefore relative character, being intended to avoid any interference with the functioning and independence of the Communities. , Id. At 3372. Second, the E.C.J. found that, because the Community's privileges and immunities are based on the principle of sincere cooperation, which governs the relations between the Community and its member states, it is incumbent upon every Community institution to give its active assistance to national legal proceedings, by producing documents to the national courts and authorizing its officials to give evidence in the proceedings. Third, the E.C.J., like the British courts, placed upon the objecting institution the burden of showing that its refusal to cooperate sincerely with national authorities is based on the need to avoid any interference with the functioning and independence of the Communities.

Like the relationship between the European Commission and its members, the relationship between the United States and each international organization, which enjoys privileges and immunities under the IOIA, is governed by the principle of sincere cooperation. The General Convention reflects this principle. An international organization's immunity does not imply an immunity in the exercise of unbridled discretion to effectively flaunt the laws of the host country or shelter wrong doers, including employees who refuse to support their families. Information regarding an individual employee's salary and benefits the balance in a bank account or the terms and value of a pension interest are not protected by treaty provisions, which render the archives of an international organization inviolable.

Furthermore, the plain meaning of the phrase "archives are inviolable", supports the notion that compelling disclosure of information concerning the salary and benefits of individual litigants in family law cases would not violate the treaties. Webster's Third New International Dictionary defines "inviolable" as: free from change or blemish, pure, unbroken, free from assault. Courts have similarly construed the word. "Inviolable is defined as intact; not violated; free from substantial impairment," Clark v. Container Corporation of America, Inc. 589 So. 2d 184, 187 (Ala. ____). "Inviolable means pure, unbroken, untouched, intact, free from change or blemish, free from assault or trespass. Decker v. Coleman, 169 SE 2d 487, 489 (NC App ____).

Being compelled by a court order, after an impartial fact finder has determined the necessity of the production of documents held by the organization or information derived from such documents, cannot threaten or impair archival autonomy more than the voluntary production of salary information produced by the organization regularly upon their employees requests. The archives will remain intact, unbroken, free from change, and free from assault and will not be substantially impaired. The archives will suffer no more impairment, if officials of the organization produce photocopies or extract information from the organization's files and records, in response to a state court subpoena, than if they are produced in response to the employee's query.

International human rights treaties and customary international law require the protection of women and children, particularly at the time of divorce, require parents to support, educate and protect their children, require protection of the rights of spouses to equal right as to marriage, during marriage and at its dissolution, and protection of the right to an equitable division of property upon dissolution of the marriage.¹⁵ The ICCPR, ratified by the United States in 1992, obligates members to take measures necessary to give effect to the rights recognized in the Covenant, and to ensure that competent authorities shall enforce remedies required by the covenant, when granted. See generally art. 2.

Article 23, Section 4 of the ICCPR requires that: "States, Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to the marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children."

But most importantly, our Congress has already determined after years of study and legislative will that the collection of child support is integral to the well-being and best interests of our children and have created a comprehensive mechanism to effectuate it. The enforcement procedures which are designed in part to encourage voluntary compliance by demonstrating to the public the inability to thwart the state and federal mandates could find no better example than these cases.

The President, by executive order, should modify international organizations' immunity by removing immunity to state court jurisdiction in family law cases involving their employees. This will provide spouses, former spouses and children of international agency employees with an effective means of protecting their rights. The contemplated action is entirely consistent with the United States law, bi-partisan Congressional will and international law.

Most respectfully submitted,

Janet E. Atkinson
5008 Cloister Drive
Rockville, Maryland 20852
(301) 571-0159
Facsimile (301) 530-9512

June 12, 1998

Senator Barbara Mikulski
Suite 709
Hart Senate Office Building
Washington, D.C. 20510-2003

Re: International Organizations Abuse of Immunity in Family Support Cases

Dear Senator Mikulski:

Thank you very much for your continued support of efforts to obtain an Executive order, withdrawing international organizations' immunity in family law cases, involving their employees. Your commitment to this issue was instrumental in bringing it to the attention of the President and his administration.

Nevertheless, I am exceedingly concerned that the Clinton administration may not fully appreciate the gravity of the situation or the magnitude of the problem. It unfortunately appears that State Department officials are attempting to sweep the problem under the rug, so international organizations can continue to condemn their employees' cast off families to lives of desperate poverty.

I hope you will use your considerable influence to insure that the Department of State reveals the legal basis for the claim that the President lacks authority to withdraw international organizations immunity in family law cases involving their employees. At least one international organization has conceded that the President has the authority by Executive order, to withdraw or limit its immunity, and that no legal authority supports its claim that information related to an individual employee's salary and benefits is protected "archival" information.

Time is of the essence. I am sure you agree that it would be unconscionable to prolong the needless suffering of so many families.

Yours very truly,

JS
Janet E. Atkinson

cc: Princeton Lyman
Scott Busby
Kay Boesel
Mary Katherine Malin
Julia Frifield

Janet E. Atkinson
5008 Cloister Drive
Rockville, Maryland 20852

(301) 571-0159
Facsimile (301) 530-9512

June 12, 1998

Mary Katherine Malin, Esq.
C/O
Mr. Princeton Lyman
Bureau of International Organizations Affairs
State Department
Room 6333
Main State Department Building
Washington, D.C. 20520

Re: International Organizations Abuse of Immunity in Family Support Cases

Dear Ms. Malin:

It was a pleasure to meet with you at the NSC on March 25 and May 13, 1998. On May 13, you suggested that, although the IOIA gives the President the authority to withdraw international organizations jurisdictional immunity in family law cases involving their employees, unspecified treaty provisions prevent President from doing so. I was astounded to hear you raise this issue, since you earlier agreed that international organizations' establishment treaties entitled the organizations to only as much immunity as is absolutely necessary to accomplish their charter functions and purposes.

United States government agencies and private employers have found that complying with subpoenas, wage withholding and wage garnishment orders, and qualified domestic relations orders ("QUADROS") issued in family law cases involving employees does not impede their ability to achieve their intended functions and purposes. Cooperating with the courts is actually less disruptive and time-consuming than attempting to deal with each case individually.

On May 13, you could not provide legal authority for your claim, that United States treaty commitments prevent the President from exercising his authority under the IOIA to withdraw international organizations immunity in family law cases involving their employees. Attorneys representing the interests of international organization families, asked you to provide authority for your legal position, so that legitimate legal issues could be addressed. We continue to await your response.

Families are suffering. Mothers and children are desperate. Time is of the essence. Please provide legal authority for your position as soon as possible. It would be unconscionable to prolong the needless suffering of so many families.

Yours very truly,

JS
Janet E. Atkinson

JANET E. ATKINSON

June 24, 1998

Scott Busby
Office of Democracy, Human Rights and Humanitarian Affairs
Old Executive Office Building
The White House
Washington, D.C. 20504

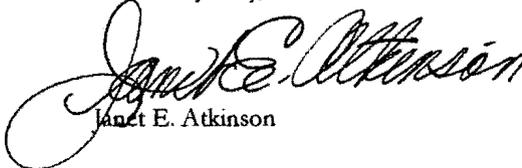
Re: International Organizations - Family Support

Dear Scott,

Enclosed, you will find copies of the draft Executive order and brief supporting memo which you requested. The draft order and memo were prepared with the advice and assistance of Professor William L. Reynolds, II, Gloria DeHart, Esq., Patricia E. Apy, Esq., Gary Caswell, Esq., Edith Fierst, Esq. Susan Friedman, Esq., Caryn Lennon, Esq., Phillip Schwartz, Esq., Jeffrey N. Greenblatt, Esq. and Ruksana Mehta,.

Please contact me, if you have any further questions concerning this matter. On behalf of the entire committee, I thank you for your assistance and your concern for international organization families.

Yours very truly,



Janet E. Atkinson

Cc: Senator Barbara Mikulski
Congresswoman Connie Morella
Congressman Rick Lazio
Gloria DeHart, Esq.
Patricia Apy, Esq.
Gary Caswell, Esq.
Ruksana Mehta
Professor William L. Reynolds, II
Phillip Schwartz, Esq.
Caryn Lennon, Esq.
Jeffrey N. Greenblatt, Esq.

**Memorandum
In Support of Executive Order**

✓ Deprived of the protections of the family law of any state or nation, thousands of women and children living in the United States are impoverished because their spouses, ex-spouses, and/or non-custodial parents are employed by one of the international organizations in which the United States participates. Many become wards of the state, relying on welfare benefits. International organizations refuse to cooperate with any court in family law cases involving their employees. Citing the immunity granted by the International Organizations Immunities Act, 22 U.S.C. 288 *et seq.*, ("IOIA"), international organizations routinely deny requests for information regarding employees' salary and benefits information. Court orders are ignored. No international organization will implement wage withholding in family support cases or honor court orders dividing the employees' retirement benefits upon divorce. Victims of domestic abuse are trapped. If they leave their abusers, they may have no visa, no health insurance, and no adequate means of support.

The IOIA gives the President the authority, by Executive order, to withdraw international organizations' immunity in family law cases involving their employees. Spouses and children of international organization employees would then be able to enjoy all of the protections provided by US family law, and any court order for the benefit of a spouse, former spouse or child would be enforced in the same manner as if the international organization were a private employer.

State Department officials question whether this is necessary or possible, maintaining that: (1) International organizations should be given additional time to fashion internal remedies; (2) Entry of an Executive order would harm the families because international organizations would respond with extensive litigation; (3) Limiting international organizations' immunity would place US diplomats at risk; and (4) Unspecified treaty provisions prohibit the President from exercising his statutory authority. Each argument is flawed.

- Extensive documentation, recently forwarded to State Department and National Security Council officials, shows that international organizations have not effectively addressed the plight of employees' spouses and children. International organizations should not be given additional time to fashion internal remedies. World Bank, UN, and IMF spouses have actively sought internal remedies for at least a decade, with negligible results. Other international organizations refuse to address the problem. An Inter-American Development Bank official seemed to express the position of a majority of international organizations, when he stated that the Bank "will never submit to U.S. family law." Agreements to establish satisfactory internal remedies cannot be negotiated with all seventy organizations entitled to enjoy the privileges and immunities granted by the IOIA. Any purported remedy which leaves international organizations' immunities intact, will leave spouses and children with no adequate forum in which to enforce their legal rights.
- Any threats to mount legal battles, simply reveal the strength of the organizations' determination to maintain the status quo, and demonstrate the need for an executive order.
- U.S. Diplomats will not be affected by withdrawal of international organizations' immunity in family law cases involving their employees. Unlike sovereign immunity, international organizations' immunity based on statutes and treaties, rather than reciprocity. Because they are not sovereign states, international organizations have no power to retaliate against U.S. diplomats. Furthermore, in light of the United States strong commitment to enforce family support obligations, both in the U.S. and worldwide, the Department of State should not be permitted to use its own immunity to shield American diplomats from their individual family support obligations.
- No existing treaty entitles international organizations to shield an individual employee from the legal obligation to support his/her family, or to divest a spouse of his/her share of the employee's pension. International organizations are entitled only to the immunity necessary to achieve their official functions and purposes. This immunity is intended "not for the personal benefit of the

individuals (staff members) themselves, but in order to safeguard the independent exercise of their functions in connection with the organization.”¹

• According to customary international law, all privileges and immunities of international organizations shall be interpreted in light of the doctrine of functional necessity.² The English Courts and the European Court of Justice have determined that a provision that an international organization’s “archives shall be inviolate” does not entitle the organization to protect all documents and information in its possession.³ Each court required disclosure of information derived from the organization’s files and records and held that:

- An international organization is entitled to assert “archival” protection only where disclosure would impede the organization’s ability to reach decisions without undue interference, compromise policy decisions, or interfere with diplomatic communications.
- Documents and information, shared with third parties are no longer part of an international organization’s archives.

In light of these decisions, documents and information related to an individual employee’s salary and benefits are not protected. Disclosure would not impede the organizations’ decision-making ability or interfere with diplomatic communications. International organizations regularly provide information related to an individual employee’s salary and benefits to third parties, including mortgage bankers, spouses and former spouses, in response to the employee’s written request. The only interest being protected by the current policy is the personal privacy interest of the individual litigant. It is eminently clear that the documents and information required in domestic relations cases are not protected.

The International Convention on Civil and Political Rights,⁴ to which the United States is a party, requires that the U.S. ensure that international organization spouses, former spouses and children, residing in the U.S. and subject to its jurisdiction are able to collect court ordered child support and alimony, and to ensure that no spouse is deprived of his/her interest in an international employee’s pension, without due process of law.

Article 23

4. States parties to the present Covenant shall take appropriate steps to ensure the equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.⁵

Justice requires that the President use his authority under the Constitution and the IOIA to issue an Executive order, withdrawing international organizations’ immunity to jurisdiction of competent state and federal courts in family law cases involving their employees.

June 24, 1998

Prepared by,
Janet E. Atkinson, assisted by
Ruksana Mehta
William L. Reynolds, II
Jeffrey N. Greenblatt
Phillip Schwartz,
Patricia Apy
Caryn Lennon

¹ See e.g. UN Charter, art 105; Convention on Privileges and Immunities of the UN, Sections 14, 20, 23.

² See e.g. *Relations Between States and Intergovernmental Organizations*, 2 Y.B. INT’L L. COMM, 138, 142 UN DOC. ACN4/1997.

³ *Shearson Lehman Bros. Inc. v. Maclaine Watson & Co. Ltd.*, 77 ILR 108 (Ct. App. 1987); 1 All E. Rep. 116 (H.L. 1988); *J.J. Zwartwald v. Commission*, Case C-2/88 __ ECR 3365 (1990).

⁴ 999 U.N.T.S. 172 (Mar. 23, 1976).

⁵ *Id.*, art 23.

EXECUTIVE ORDER

WITHDRAWING INTERNATIONAL ORGANIZATIONS IMMUNITY IN FAMILY LAW CASES INVOLVING THEIR EMPLOYEES

The International Organizations Immunities Act, 22 USC 288 *et seq*, was enacted into law on December 19, 1945 in order to provide international organizations in which the United States participates the privileges and immunities necessary to achieve their charter functions and purposes. The Act authorizes the President, in light of the functions performed by any such organization, through appropriate Executive order to withhold or withdraw from any such organization any of the privileges, exemptions and immunities provided or to condition or limit the enjoyment by any such organization or its officers and employees of any such privilege, exemption or immunity.

International organizations routinely use their immunity to shield their employees, including United States citizens and others, who do not enjoy personal diplomatic immunity, from their personal legal obligations, including the duty to support their families. This threatens the health, education and well being of international organization spouses, former spouses and children living in the United States and throughout the world and unnecessarily burdens the public welfare system.

Spouses and children of international organization employees are often impoverished after separation or divorce. Courts have been unable to obtain from international organizations the basic information necessary to establish a support order. States have not been able to enforce spousal and child support orders, because international organizations will not implement wage withholding or garnishment orders. No international organization will permit judicial attachment of the spousal share of an employee's pension. The problem is compounded by the facts that an international organization employee's pension is often the largest marital asset, and his or her salary and benefits, payable in the United States, are frequently the employee's only assets available for attachment within the jurisdiction of any state or federal court within the United States of America.

With this Executive order, my administration acts to assure that the children, spouses and former spouses of international employees are protected in accordance with American law.

Accordingly, by the authority vested in me as President by the Constitution and laws of the United States of America and the Act, it is hereby ordered as follows:

- (1) No international organization or its officers or employees or their individual assets shall be immune from jurisdiction of any court or tribunal of competent jurisdiction in any family support case involving an officer or employee of the organization or in any case arising from the divorce or separation of an officer or employee of the organization.
- (2) No property or asset, held by an international organization for the personal benefit of an employee or officer of the organization, wherever located shall be immune from attachment for the benefit of a spouse, former spouse or child.
- (3) This order shall be construed broadly, to protect the interests of any spouse, former spouse and/or children of an international organization officer or employee.
- (4) This order is intended to enable the spouses and children of international organization officers and employees to enjoy all of the protections provided by United States family law and to insure that any court order for the benefit of a spouse, former spouse or child of an international organization officer or employee will be enforced in the same manner as if the international organization were a purely private party.

- (5) This order does not create any substantive new benefit, enforceable at law by a party against an international organization, its officers or members.
- (6) This order does not in any way withdraw or limit the privileges and immunities of any individual international organization employee, who is entitled to personal diplomatic immunity.

WILLIAM J. CLINTON

THE WHITE HOUSE