

NATIONAL SECURITY COUNCIL

OFFICE OF MULTILATERAL AND HUMANITARIAN AFFAIRS

FAX COVER SHEET

**NATIONAL
SECURITY
COUNCIL**

17th & Penn, N.W.
Washington, D.C.
20504

Did you get a complete,
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(202) 456-9141

From: Scott Busby 456-9141 (phone) / 456-9140 (fax)

FAX

To: CYNTHIA RICE 456-7431

RUSSELL MUNK 622-1956

Date/Time: NORM THOMPSON 401-4678

No. of pages to follow: ~~3~~ 4

RE:

PLS. CLEAR. I'M ATTACHING
INCOMING FOR YOUR
CONVENIENCE AS WELL.

DRAFT

Dear Ms. Atkinson:

I write in response to your letter of September 30 regarding the efforts of the U.S. government to facilitate compliance with court orders by employees of international organizations in family law matters.

There are a number of statements in your letter that do not accurately reflect the substance of our conversations on September 26 and 29 or the Administration's position on this matter. For instance, the Administration has not "decided not to grant [the] spouses and children [of employees of international organizations] access to the courts to protect their marital property rights or assert their legal rights to child support and alimony." Let me clarify the Administration's position on this issue.

The Clinton Administration is deeply concerned by reports of employees in international organizations who refuse to comply with court orders in family law matters and of international organizations that may invoke their immunities in ways that facilitate such non-compliance. Consistent with our commitment to ensuring compliance with obligations in family law matters generally, we are working hard to bring about greater compliance with court orders in these cases.

You and others have urged the President to sign an Executive Order that would limit the immunities provided to international organizations under the International Organizations Immunities Act (IOIA). We have carefully considered this recommendation. While the IOIA clearly authorizes the President to limit the immunities provided by that statute, such authority does not extend to those immunities enjoyed by international organizations under independent agreements. These multilateral instruments are not subject to modification through unilateral action by the President. Thus, we have concluded that an Executive Order of the sort you and others have proposed would

*which include
[list organizations]*

2

DRAFT

not overcome the current obstacles to enforcement of these orders.

Nevertheless, we have energetically engaged international organizations in the United States with the goal of obtaining greater compliance from their employees. As you know, the Secretary of State has officially communicated with each of these organizations to express her concern about this issue and to indicate her strong view that these organizations should voluntarily comply with court orders in these matters. She has also asked the organizations to inform the U.S. Government of what they are doing and intend to do to address this issue. We have received many positive responses to the Secretary's communication and will continue to work closely with the relevant organizations to ensure that cases of non-compliance are dealt with swiftly and appropriately.

The Clinton Administration has devoted considerable attention to this important problem and will continue to do so. While we may not agree with the approach you recommend, we remain committed to finding an effective approach for ensuring that the spouses and children of employees of international organizations obtain the support to which they are legally entitled.

Sincerely,

Scott Busby
Director
Office of Multilateral
and Humanitarian Affairs

JANET E. ATKINSON

September 30, 1998

Scott Busby
Office of Multilateral Organizations and Humanitarian Affairs
National Security Council
Old Executive Office Building
The White House
Washington, D.C.

Re: International Organizations - Family Support

Dear Scott:

I write to confirm our conversations of September 26 and 29, regarding the above-referenced matter. I understand that the Clinton Administration has completed a 6-month investigation of the tragic plight international organization employees' abandoned spouses and children, and determined that:

- Spouses and children are frequently impoverished following separation or divorce, while the employee continues to enjoy a luxurious lifestyle, because international organizations use their institutional immunity to shield United States citizens and others who do not enjoy diplomatic immunity from their legal obligations to support their families;
- Long-term spouses are routinely deprived of their property interest in employee pensions without due process, in violation of the Fifth Amendment of the United States Constitution, because no international organization will give effect to a court order which purports to divide an employee's pension upon divorce. Many former spouses are penniless in old-age, while the retired employee continues to receive generous pension and medical benefits;
- It is highly inappropriate for international organizations to allow their privileges and immunities to be used by employees of the organizations to avoid meeting their just legal obligations to separated and divorced spouses and dependent children;
- The current situation is unconscionable and should not continue.

I understand that President has decided not to use his authority under the IOIA 22 USC 288 *et seq* to remove international organizations immunity in family support cases involving their employees. The Clinton administration has decided not to grant these spouses and children access to the courts to protect their marital property rights or assert their legal rights to child support and alimony. The Clinton Administration and the Department of State have decided that international organization employees' dependent spouses and children should be denied access to the protections of United States family law, because international organizations would probably retaliate against employees' former spouses and dependent children, if the President limits their immunity by executive order.

The administration does not want to appear unsympathetic to the plight of international organization spouses and children. State Department and NSC officials will continue discussions with international organization officials, although no deadline for compliance has been set. Information about international organizations immunities will be placed on the OCSE web site. An ombuds person, probably a State Department official, will

- 2 -

September 30, 1998

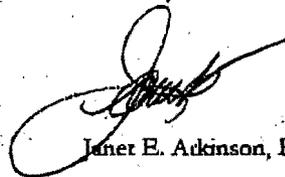
be designated to field calls from aggrieved spouses and their attorneys. This individual will have no real power, but will be expected to act as an intermediary between litigants and the organizations, since the Administration has decided that international organization families, unlike other U.S. residents, should not be permitted to seek redress in the courts. This is meaningless window dressing, which denies international organization families meaningful access to essential legal remedies.

The World Bank has taken a giant step backward, since the President decided not to issue an executive order. In April 1998 World Bank attorneys announced that the Bank had decided to provide basic salary and benefits information in family support cases, with or without the employees' consent. On September 22, 1998, David Rivero, the World Bank attorney responsible for employee benefits, told me that the bank would not provide this information, without the consent of the affected employee. The Bank continues its refusal to withhold wages in family support cases. International organizations, have been promising reforms for at least twenty years. These organizations cannot and will not change their family support policies voluntarily.

Members of my working group, including representatives of World Bank Volunteer Services, the Maryland State Bar Association, the National Child Support Enforcement Association and the American Bar Association have met with you on three occasions. We have documented numerous current cases and provided thoughtful, carefully-researched answers to each legal issue raised by your office and the Department of State. Our memos seem to have been ignored. Neither Mary Katherine Malin nor any other official has responded to our repeated requests for the legal authority upon which she bases her claim that international organizations and their employees are entitled to flaunt the law of the host country.

The Clinton administration acknowledged the desperate plight of international organization families, and deliberately condemned them to continued suffering. The Department of State and the Clinton administration have decided that spouses of international organization employees are not entitled to the same Constitutional protections, which other US residents enjoy. International organizations are permitted to deprive these spouses of marital property without due process of law. The administration refuses to protect these spouses fundamental due process rights, guaranteed by the Fifth Amendment of the United States Constitution, and will not fulfill the United State's commitments under the International Covenant on Civil and Political Rights. I foolishly believed that this was a compassionate administration, committed to protect victims of domestic abuse and dedicated to insure that all parents support their children. I was sadly mistaken.

Sincerely,



Janet E. Atkinson, Esq.

Cc: Hillary Rodham Clinton
Senator Barbara Mikulski
Senator Paul Sarbanes
Congressman Steny H. Hoyer
Senator Jesse Helms
Senator Connie Morella
Patricai E. Apy
Gary Caswell
Susan Elkins
Caryn Lennon
Jeffrey N. Greenblatt
Philip Schwartz
Professor William L. Reynolds, II

Ex-Wives Find That Spouses Who Work for U.N. Are Beyond the Law

Continued From Page A1

am's former husband not worked at the United Nations, a court could have garnished his wages. But the organization is exempt from legal process and refuses to execute family court orders, so that while most of its divorced employees do pay their family obligations, those who do not enjoy a measure of protection.

Diana Boernstein, a lawyer formerly with the United Nations legal department who now advises the spouses group, said the United Nations' immunity privileges were important and were drawn up for a good purpose.

But they were never meant, she said, to protect diplomats from their own families.

United Nations officials fear that waiving immunity even in family court cases could establish a precedent, weakening the organization's independence. But they say they have reduced the number of unpaid support cases to a handful by threatening problem employees with unspecified disciplinary actions.

The precise number of affected spouses is uncertain and a subject of heated debate. The family rights committee and its advisers estimate that more than 100, nearly all of them women, live in metropolitan New York, and hundreds more are around the world. The attendance at the monthly meetings is 20 to 30.

They say the United Nations' estimate of a handful does not account for women like Ms. Nekunam, whose case is considered closed because her husband is retired. International organizations like the World Bank, the International Monetary Fund and the Inter-American Development Bank have also drawn complaints, and spouses' groups have been organized in Vienna, Geneva and Washington.

The Clinton Administration considers the problem significant. In July, Secretary of State Madeleine K. Albright took the unusual step of sending a diplomatic note urging international organizations to comply voluntarily with family court orders. But a State Department official conceded that the United States' credibility on the issue was compromised by its own failure to pay its dues to the United Nations.

For decades, even some United Nations officials now concede, the organization essentially ignored divorced spouses. The spouses lost medical insurance and, in some cases, educational grants for their children. Foreign spouses also faced possible deportation even if they had lived in New York for years and had borne children.

This month, a committee of the United Nations General Assembly has begun considering changes that for the first time could provide a small pension to some divorced spouses. For 20 years, the voting board, currently 28 men and 5 women, that controls the \$20 billion United Nations pension fund had rejected all such proposals, even though pensions have become a commonly divided divorce asset.

The whole rules and regulations of the pension fund, Ms. Boernstein said, reflect a view of the world that went out after World War II.



Audrey Nekunam in her apartment. She has been unable to collect support from her Iranian ex-husband.

But the current proposal contains a catch: A spouse receives a share of the pension only if her former husband, the employee, agrees. Many of these women cannot even find their former husbands, and few believe they would consent.

That's like asking the American public if they want to pay income taxes, said Suzanne Colt, deputy chief of the New York Law Department's Family Court Division, who represents several United Nations spouses.

Left Behind Spouses Find Law Is of Little Use

Audrey Camp Nekunam lives in the Bronx River Parkway in a rent-stabilized apartment decorated with artifacts like a Persian rug, Danish teak furniture and a persimmon chest and a wooden hatbox from Korea that reflect her life as a United Nations spouse. She lived in a three-bedroom house in the Westchester community of Hartsdale until 1972, when one night she said she returned home from an art class and discovered her husband and half of their furniture gone. About a year later, she received a document from Iran notifying her that her husband, Ali Nekunam, a native of Iran, had been granted a divorce in Teheran in her absence. The Iranian court had not awarded any support for her.

The \$200-a-week support order she received from a Westchester family court in 1973 was useless. Within months, her husband transferred to another United Nations agency in Austria. He never paid spousal support, nor did United Nations officials garnish his pay.

I had greater hopes for the U.N., Ms. Nekunam said. We joined the U.N. when it was young and everybody had high hopes. That's the last organization that should be against women. For heaven's sake, what is

the U.N. all about?

With no income or job experience, she rented out the house in Westchester and worked as a textile artist in the garment district, never earning more than \$24,000 a year. Her husband would send money to their three children while they were away in school. She survives today on a \$320 monthly Social Security check and the rent from her house, which she would not disclose.

Her former husband's lawyer in New York, Joseph P. Marro, called Ms. Nekunam vindictive and said his client was an elderly retiree living modestly off his pension in Vienna. United Nations records show that Mr. Nekunam received a lump sum of \$189,362 from his pension upon retiring in 1982. He receives a monthly pension payment of \$4,700, records show.

Because Mr. Nekunam has lived abroad for 25 years, Mr. Marro contended that New York courts did not have jurisdiction. Yesterday, Ms. Nekunam learned that a Yonkers Family Court judge had vacated a \$70,000 judgment in her favor on the ground that the court did not have jurisdiction. Mr. Marro also said both United Nations policy and New York law protected his client's pension from any judgment.

It's not really a question of what is right or wrong, he said. It's a question of law.

The United Nations is above the law in the eyes of Philip L. Kamaras, a lawyer who took on the case of Marie Sall. Her husband, Allone Sall of Senegal, is a staff member of the United Nations Development Program, stationed in West Africa. In 1995, the couple divorced, and court documents show that Mr. Sall fell behind on his monthly support payments. United Nations records say Mr. Sall is paid about \$102,000 a year.

Last March, a judge ordered a default judgment of \$128,000 against him, but Mr. Kamaras could not garnish his wages, and Ms. Sall's financial situation worsened. Then Mr. Kamaras said Mr. Sall took the

two children to France, under the pretense of a vacation, but instead enrolled them in school. If Ms. Sall were to leave the United States, her visa would not allow her to return to pursue her court case. But if she stayed, she would not see her children.

Mr. Kamaras says he has not seen Ms. Sall in months. (Mr. Sall's former lawyer, Thomas Rome, declined to comment. Mr. Sall did not respond to an attempt to get in touch with him via E-mail.)

Even though they are not American citizens, foreign spouses like Ms. Sall are allowed to file for divorce and support in New York. Many of them do so, because family court laws offer them a better chance of receiving a more advantageous settlement than the laws in their own countries. Ms. Colt also said it is the correct place, since their husbands are paid in New York.

For many women from foreign countries, the greatest fear is deportation. Many want to stay in the country where they have lived for decades, where they have established lives and raised children. But while some manage to remain through sponsorship by American-born children or help from a sympathetic United Nations official, others have no such protection.

So some women remain married for little reason beyond fear of divorce and its consequences.

A 53-year-old woman from Western Europe says she lives in limbo, as her husband of 30 years lives with another woman. She has resided in the United States for 20 years, but because her visa and work permit hinge on her marriage to a United Nations employee, the Immigration and Naturalization Service would deport her within 60 days upon divorce.

So she is careful not to disrupt the status quo, insisting on anonymity for fear of upsetting her husband. She is reluctant to return to Europe because her children live in the United States. Yet she does not qualify for Social Security. She has a job

teaching in a Roman Catholic high school.

Basically, the way it is now, she said, I feel I'm going to have to work until I die in order to survive.

The Immunity Issue

Persuasion Can Be A Toothless Weapon

The elasticity of diplomatic immunity is not a new issue in New York City, as anyone who remembers last year's uproar over unpaid parking tickets can attest. Only the highest ranking United Nations officials enjoy diplomatic immunity from civil lawsuits and criminal prosecution. But because United Nations lawyers consider pay and pension as immune assets belonging to the organization, all employees have de facto immunity from salary garnishment. And pensions remain immune after the employee leaves the United Nations, either for retirement or another job.

Just last month, another international agency, the World Bank, amended its policies to allow many spouses to garnish wages for unpaid support. Between 1993 and 1997, World Bank counselors say they handled about 100 cases involving divorced couples in which financial support was an issue.

For its part, the United Nations has become more responsive to complaints, particularly as spouses have become better organized and outside scrutiny has increased. Today, the United Nations will not execute a court order, but it will pressure a delinquent employee to pay.

We have worked very closely with the women involved, said Rafiah Salim, an assistant secretary general for human resources management. We have taken every possible step; shall we say, persuade people to pay up.

Ms. Salim said a working group of 10 officials was completing a policy for handling these cases without canceling immunity. Often, she said, a spouse and an employee may receive conflicting divorce decrees from different countries. The laws of each must be weighed equally, she said.

Critics like Ms. Colt and Ms. Boernstein commend Ms. Salim's office for acting in good faith, but neither is satisfied. They want an ombudsman for spouses within the organization. In a meeting last week with United Nations officials, they again lobbied for the organization to garnish wages without consent. They say persuasion is ineffective.

The issue Ms. Nekunam has been focusing on lately is the pension. What Ms. Nekunam and other spouses want is an automatic pension share upon divorce, determined by the duration of the marriage, is a long way from what is proposed, a share granted only with the permission of the employee. She has spent more than a quarter of her life chasing her former husband.

I gave up a lot being married to him, she said. What is a woman worth? Hire me as a chauffeur to take the kids to school. Hire me as a nanny, as a cook, as a secretary to do the books. Hire me to do all these things a woman does, and a man couldn't afford me.

Immunity at U.N. Covers Divorce, Ex-Wives Find

By JIM YARDLEY

They are mothers and grandmothers from Africa, Europe, Asia and the United States, now scattered throughout New York, and every month they meet in a First Avenue conference room across from the United Nations. They call themselves the United Nations Family Rights Committee, but one woman says "the dumped wives club" is more accurate.

They are estranged or divorced spouses of United Nations employ-

ees, women who followed their husbands to postings around the world and are chasing after them once again. The agenda at their meetings rarely changes. Some cannot collect unpaid support orders from American and foreign courts because the United Nations blocks them from doing so. Most are not entitled to a share of their former husbands' pensions because of United Nations pension board policy.

One woman, a native of the Middle East, lives in a Manhattan rooming house. Her husband, a United Nations diplomat, left her after 40 years of marriage. She won a support order, but knows she may never collect. An American, Audrey Camp Nekunam, 71, has tried and failed to collect court-ordered support since

her husband left their Westchester County home 26 years ago.

"I came out of the marriage an older woman who is no longer attractive, either for marriage or for jobs, with a resume with nothing I could put on it but housework," Ms. Nekunam said. "As an American, I can sue. I have rights to his pension and his wages. I gave these American rights up when I married a U.N.er. I became his ward."

Divorce is rarely simple, nor is it always fair, but these women have discovered it can be uniquely devastating for a spouse of a United Nations staff member. Had Ms. Nekunam

Continued on Page A29

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From: Scott Busby 456-9141 (phone) /456-9140 (fax)

FAX

**To: Kaye Boesel
Mary Catherine Malin
Cynthia Rice
Russ Munk
Norm Thompson**

**647-0037
736-7541
456-7431
622-1956
401-5539**

Date/Time:

No. of pages to follow: 2

RE: FYI, the latest missive from Janet Atkinson on the family support issue. Needless to say, the letter misrepresents the substance of my conversations with her on a number of points. I will be sending her a response.

JANET E. ATKINSON

September 30, 1998

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Office of Multilateral Organizations and Humanitarian Affairs
National Security Counsel
Old Executive Office Building
The White House
Washington, D.C.

Re: International Organizations - Family Support

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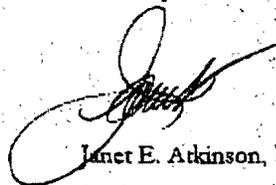
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Janet E. Atkinson, Esq.

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NORM THOMPSON 401-5539

Date/Time: RUSI MUNK 622-1956

No. of pages to follow: 3

RE: FAMILY SUPPORT ORDER COMPLIANCE

POSITIVE DEVELOPMENTS AT

THE BANK.

FROM :

PHONE NO. : 3015309512

Oct 29 1998 11:00AM P4

The Bank Group's Policy on Staff Compliance With Legal Obligations to Provide Salary and Benefits Information and Spousal and Child Support

The World Bank, Washington, D.C. 20433

SHENGMAN ZHANG
Managing Director and Corporate Secretary

October 23, 1998

To All Staff :

The Bank Group's Policy on Staff Compliance With Legal Obligations to Provide Salary and Benefits Information and Spousal and Child Support

For some time, spouses and dependents of staff employed by the Bank Group (IBRD, IDA, IFC, MIGA, and ICSID) and other international organizations have expressed concerns that the organizations' immunities place them at a disadvantage when, upon dissolution of marriage, they attempt to obtain financial settlements or court orders imposing support obligations on staff. Two principal obstacles are often cited: the spouses and dependents find it difficult to obtain a meaningful award of support or alimony if the staff member withholds accurate information concerning salary and benefits, and efforts to recover support or alimony payments from the staff member are sometimes impeded by the immunity of the organizations from garnishment orders.

The Bank Group has taken the general position that its immunities should not be used to shield staff from their personal legal obligations. This principle becomes paramount with regard to support obligations of staff to their own family members. In recognition of this principle, and in response to the efforts of the World Bank Volunteer Services, which represents many spouses of Bank Group staff, the Bank Group will be adopting procedures designed to ensure provision of pertinent information relating to salary and benefits to spouses, and greater compliance with spousal and child support obligations.

FROM :

PHONE NO. : 3015309512

Oct. 29 1998 11:00AM P5

With regard to provision of information, the Bank Group will continue to encourage staff to consent to making benefits information available to their spouses (by completing Form 2298, which may be obtained from the HR Service Center). Additionally, in the absence of consent, and where there is a final court order or request from a judicial or civil authority in the context of divorce or child support requiring the staff member to provide salary and/or benefits information, the procedures described in the following paragraph will apply.

In cases where such a final court order or request is submitted to the Bank Group, the matter will be brought to the attention of the Office of Professional Ethics, which will remind the staff member of the obligations imposed upon all staff to meet their personal legal obligations and counsel the concerned staff member to provide the requested information directly to the spouse or other family member. If the staff member does not provide the Bank Group with evidence of having responded to the court order or request within 30 calendar days thereafter, the Bank Group may provide the spouse, former spouse or child (or a legal representative of any of them) all or some of the following information, as requested by the Court:

- (i) the staff member's net salary, gross compensation (if applicable) and accrued separation grant (if applicable);
- (ii) the staff member's accrued SRP benefit as of the date of the request; and
- (iii) the identity of the staff member's designated beneficiaries, if any, for purposes of SRP death benefits and life insurance benefits.

The Bank Group would provide this information voluntarily, without waiving the organizations privileges and immunities.

Regarding compliance with spousal and child support orders, the Bank Group is adopting a similar policy. In cases where a final court order requiring a staff member to make payments of spousal or child support (or one evidencing the failure to make such payments) is brought to the attention of the Bank Group, the matter will be brought to the attention of the Office of Professional Ethics, which will advise the staff member of the need to comply with personal legal obligations. If, within 30 calendar days thereafter, the staff member has not furnished the Office of Professional Ethics with evidence establishing that the required payments were made in whole or in part, and if the documentation evidences the clear legal obligation of the staff member to make monthly payments of a readily ascertainable amount or percentage of salary, the Bank Group will accordingly commence deductions from a staff member's salary of such percentage or amount. The amounts deducted will then be directed to the spouse, former spouse or child, in accordance with the order. This policy will be consistently applied wherever the legal requirements are fulfilled, without waiving the organizations' immunities.

FROM :

PHONE NO. : 3015309512

Oct. 29 1998 11:01AM P6

The new procedures described above will be effective immediately. The Bank Group strongly encourages staff to comply with their legal obligations -- especially those involving financial support to family members.