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**PARALLEL UNILATERAL POLICY DECLARATIONS –
BILATERAL ARRANGEMENTS AS AN ALTERNATIVE TO CONVENTIONS
ON THE ENFORCEMENT OF SUPPORT (MAINTENANCE) OBLIGATIONS**

Introduction

The United States has not as yet ratified any of the international treaties and conventions related to the recognition of support orders and the enforcement of support obligations. Family law has always been a matter of state law in the United States, and at the time the support conventions were developed by the United Nations and the Hague Conference on Private International Law, the United States federal government had not become involved in family law issues. Since that time, the United States federal government has become more involved in domestic family law matters, and particularly in developing a program for the enforcement of family support both within and among the states. In international family law matters, the United States has been involved, until recently, only with child abduction and adoption issues, not family support.

Lacking federal involvement, the states of the United States have developed their own system of international enforcement. However, legislation has now been proposed to place on a federal government-to-foreign government level the kind of bilateral system developed by the states. The legislation would provide for services at the federal level through a Central Authority to ensure an efficient, workable and uniformly implemented system in cooperation with the states and with the foreign countries which are willing to take part. In addition, the federal government is considering the possibility of the United States becoming a party to one or more of the existing conventions.

The purpose of this paper is to provide a brief explanation of the United States enforcement system generally, the state-developed international system, and the proposed federal level system. While the special commission will be focusing in particular on certain conventions dealing with aspects of child/family support enforcement, we believe that other effective, non-compulsory methods of achieving family support enforcement across international borders are encompassed by the basic purpose of the session. Information on one such method -- parallel unilateral policy declarations -- should be of interest to countries participating in the November session as it is successful in achieving the same purpose and may offer an attractive alternative or supplement to becoming a party to one or more of the conventions. Moreover, the United States would like, in the near future and for the medium term at least, to place the present U.S. state-level arrangements with some 18 countries and future arrangements on a federal government-to-foreign government basis.

The Federal Child Support Enforcement System

In 1974, the United States Congress established a mandatory program for the states for the enforcement of family support by the enactment of Title IV-D of the Social Security Act ("the IV-D program"). Congress has amended the program since that time, most notably in 1984 and 1988, to expand both the coverage of the program (to all families, not just those receiving welfare assistance) and the procedures the states are required to use. Legislation now pending in Congress would make additional changes. The federal program and accompanying regulations established a federal-level agency to administer the program -- the Office of Child Support Enforcement (OCSE) in the Department of Health and Human Services. They also required each of the states to establish an agency at the state level to enforce existing orders, to obtain support orders where necessary, to establish paternity, and to cooperate with the child support enforcement offices in other states in interstate cases. The states must utilize interstate procedures when necessary to obtain support. The program countrywide is providing enforcement services in a total of almost 19 million cases. There is, at present, no federal requirement for U.S. states to provide support enforcement services in international cases. The absence of a mandate to the federal government prompted the states to use the system developed for dealing with interstate cases within the United States to extend their enforcement efforts to cases from other countries.

State Action: URESA and International Enforcement

The URESA System

The Uniform Reciprocal Enforcement of Support Act (URESAs) was first developed in 1950 by the National Conference of Commissioners on Uniform State Laws (NCCUSL), and was revised significantly in 1968 (RURESAs). In August, 1992, an almost wholly new Act was completed to replace URESAs/RURESAs and was renamed the Uniform Interstate Family Support Act (UIFSA). In the United States, NCCUSL is composed of appointed representatives from the various states and has the purpose to develop laws in areas where uniformity of state law or procedure would be beneficial to the states. Enactment of these proposed laws is entirely within the competence of state legislatures. The interstate support laws have been enacted in all of the states, and a majority of the states have now or shortly will enact the new UIFSA. Because the application of the new UIFSA to international cases is unchanged, the arrangements made and discussed below under URESAs are equally applicable to UIFSA.

The procedures set out in URESAs were developed by the states to solve the persistent and growing problems of obtaining support for children and spouses when the separated or divorced parents or spouses live in different states. URESAs provides for a two-state lawsuit where an action is filed by the obligee in one state (the initiating state) and sent to the state where the obligor or his/her assets are located (the responding state). An appropriate court in the latter state establishes jurisdiction over the obligor, and may enter an order of support payable to the obligee in the initiating state. The Act establishes the requirements of the petition, the procedures to be followed, and the duties of both initiating and responding states. The cases are handled by a designated public agency which provides services to the petitioner. No costs or fees are charged to the petitioner, but the obligor may be ordered to pay fees, costs and expenses. In its basic structure, the system is similar to the United Nations Convention on the Enforcement Abroad of Maintenance, but with more detail, more defined procedures, and a requirement of enforcement by public agencies.

In addition to these procedures for establishing and enforcing an order, URESAs/RURESAs also provide for a simple procedure for registering an existing order which then becomes enforceable and may be modified in the state where the obligor resides. UIFSA also provides for the registration and enforcement of orders, but specifically does not permit modification of a registered order in the responding state unless both parties have left the state that entered the order or both parties consent to the transfer of modification jurisdiction.

URESAs Applied to International Support Enforcement

Because the problems of interstate and international enforcement are similar, the URESA procedures proved flexible enough for use when one of the separated parents lives in a foreign jurisdiction. The 1968 RURESAs expanded the definition of "state" to include "any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect." A similar definition is contained in UIFSA: "a foreign jurisdiction that has established procedures for the issuance and enforcement of support orders which are substantially similar to the procedures under this act." By this simple addition to the definition, the reach of the enforcement process of the states was greatly expanded.

Although the United States Constitution prohibits any state from entering "into any treaty, alliance, or confederation" and requires the consent of Congress for a state to "enter into any agreement or compact with another state, or with a foreign power," the consent of Congress is not required for interstate agreements that fall outside the scope of the Compact Clause. The arrangements between the states and foreign countries for the enforcement of support obligations are based on the principle of comity, that is, the voluntary recognition and respect given to the acts of another nation's government, and, as a matter of policy, also on the principle of reciprocity. They do not violate the Constitutional prohibition. In this area, the states and the federal government both have power to act, but if the federal government were to act, the federal power would control.

The Development and Function of the Support Agreements

Standards for Establishing Reciprocity

The states generally determine whether reciprocity is possible based on the following standards: 1) the country will enforce the child support obligation, collect the money and send it to the requesting state, whether or not there is an existing order; 2) the order will be enforced if recognizable under the laws and procedures of the country, and if it is not recognized or no order exists, an order or its equivalent will be obtained; 3) the system will deal with both in and out of wedlock children, and a determination of paternity will be made if possible in the circumstances; 4) each country will use its own laws and procedures; and 5) there will be no means test for legal services, and no charge for legal assistance or the services of government offices or personnel.

Case Procedures

To satisfy the requirement of URESA that a copy of the "state's" reciprocal act accompany the petition, a summary of the law applicable to the enforcement of support was developed, where necessary, by the country involved. Where the language was not English, bi-lingual forms were created based on the forms originally developed in French and English in connection with the arrangement made with France. With the passage of time and experience in their use, the forms are now being revised with the assistance of many of the 18 countries with which the state reciprocal arrangements now exist. Finally, each of these countries has designated an agency to act as a "Central Authority" to supervise the arrangement and ensure that petitions are processed and to provide location services as far as possible.

Petitions in this reciprocal system, whether to or from the United States, are transmitted through one of the official agencies. The bi-lingual forms must be used to transmit cases, and other documents must be translated into the language of the responding country.

In the United States, the cases are handled through the public offices of the states for domestic child support cases -- almost always the state IV-D offices -- for both incoming and outgoing cases.

Private counsel, handling a case, may refer the client to the state public agency or, using the forms, forward the case through the state public agency. States may vary in how such cases are handled. The existence of this system does not, of course, preclude an applicant or counsel, public or private, from also retaining or associating with counsel in the responding country and proceeding directly, using that country's normal court rules and procedures.

The Reciprocating Countries

The states of the United States (varying with the state and country involved) first established reciprocity in support enforcement with the Canadian provinces which have a similar system for inter-province enforcement which they have extended individually to the states on a province-to-state basis. With the success of the Canadian arrangements, the system was used to extend enforcement to other countries: to Australia, Bermuda, Fiji, Jamaica, New Zealand, South Africa, and the United Kingdom with similar reciprocal systems; to Austria and Germany which developed and enacted reciprocal laws, and, based on existing laws and procedures, to the Czech Republic, France, Hungary, Mexico, Norway, Poland, the Slovak Republic, and Sweden. France and Germany (the Deutches Institut für Vormundschaftswesen before the German legislation was enacted) were the pioneers who helped in the development of forms and procedures. The possibility of such reciprocal arrangements has been discussed with a number of other countries throughout the world. Most of the state arrangements have been negotiated by a small "team" of state officials representing their individual states and the National Child Support Enforcement Association (NCSEA), and the Family Law Section of the American Bar Association (ABA).

There has been on-going contact with the reciprocating countries and to varying degrees with those with whom reciprocity has been discussed. The State/NCSEA/ABA Family Law Section "team" returned to many of these countries for follow-up meetings. In addition, and very useful for both the states and the foreign countries involved, has been the attendance of foreign country child support officials at the annual NCSEA training conference where they have had the opportunity to meet enforcement officials and attorneys involved in support enforcement from all of the states. Enforcement officials from Canada and the provinces attend regularly as do officials from Australia, France, Germany, Mexico, New Zealand, Norway and the United Kingdom and at various times, officials from Finland, Poland, Sweden and Turkey.

Proposed Action by the United States Federal Government

Proposed Legislation

Although the U.S. state-level arrangements have been successful and work reasonably well, the consistency and effectiveness of procedures and the extension of the arrangements to other countries present serious problems for the states and for the other countries involved or to become involved. Recognizing this, the United States Department of State and the Department of Health and Human Services, working together and with the states, have developed and proposed to the United States Congress legislation which would authorize the involvement of the United States federal government in international support enforcement.

The proposed legislation for international support enforcement responds to the many concerns that have been voiced -- by NCSEA, the ABA, and many foreign countries -- about the *ad hoc* state-by-state method of attempting to enforce child support obligations across national borders. And it responds to calls for the federal government to create a unitary, national system that would help ensure that parents

cannot evade their support obligations by leaving the United States or by coming to the United States. The legislation does the following:

- o Authorizes the federal government to negotiate international support enforcement arrangements with foreign countries that would be applicable in all fifty states. These arrangements may be by simple declaration or by executive agreement (in effect a treaty) in whole or in part.
- o Provides cost-free support enforcement services in the United States to persons resident abroad who wish to enforce support obligations against individuals living in the United States.
- o Establishes standards to ensure that foreign countries will be declared to be reciprocating countries and receive support enforcement assistance from the United States only if they correspondingly provide U.S. residents needing such assistance with substantially similar services, including cost-free administrative and legal assistance as necessary.
- o Provides that requests for U.S. enforcement assistance from foreign countries that agree to provide reciprocal services qualify for federal funding under the IV-D program.
- o Leaves individual states free to continue existing state-negotiated reciprocity arrangements with foreign jurisdictions in those cases where the United States federal government has not established reciprocity with a particular jurisdiction.
- o Establishes the Department of Health and Human Services as the Central Authority for the United States.
- o Provides an option for the states to enforce spousal support orders.

Developing this system does not preclude, and may facilitate, eventual United States ratification of the 1956 United Nations Convention on the Recovery Abroad of Maintenance and the several Hague Conventions dealing with family support. By adopting an existing and workable system of bilateral arrangements for initial United States government involvement in international enforcement, the legislation provides a framework for United States participation in the existing conventions and a means for the United States to develop enforcement systems with countries which are not parties to the existing conventions.

Plan for Implementation

Designation of Reciprocating Foreign Countries

The State Department and the Department of Health and Human Services will review the existing state arrangements and, with the agreement of the foreign country involved, make the appropriate federal declaration and place the agreement on a federal government to foreign government basis.

In addition, these Departments will contact, and respond to contacts from, other countries, particularly those with whom discussions on possible reciprocal arrangements have already been held. These discussions may also involve the possibility of placing such arrangements, or any part of them including the provision of legal services, on the level of a treaty by executive agreement rather than reciprocal declarations if this proves to be necessary or desirable.

Procedures and Central Authority Functions

The Department of Health and Human Services (HHS) in its Office of Child Support Enforcement (OCSE) has already established the position of International Liaison Officer. This officer is available to work with the State Department, NCSEA, and the states immediately, even before the legislation is passed and in effect. The important revision of the bi-lingual forms will continue with the cooperation of the NCSEA committee established for this purpose and interested foreign officials. In addition, other pending matters of importance to the efficiency of the system will be pursued.

After enactment of the legislation and the establishment of the Central Authority in HHS/OCSE, procedures for handling cases will be discussed with the states and the reciprocating countries. We are interested in getting comments and suggestions from present and potential reciprocating countries on what needs to be done.

While we are present in The Hague, we are interested in providing as much information as possible, and initiating at least preliminary discussions for as many arrangements as possible. In addition, information and comments from countries party to the conventions during the commission session and at the periphery will assist us in our consideration of how the United States should proceed in the future to achieve the most beneficial results.