Ordinary People: Soviet-American Transnational Marriage and The International Implications of Divided Spouses

Julia T. Garrett
Ordinary People: Soviet-American Transnational Marriage and the International Implications of Divided Spouses

The plight of American citizens who are married or engaged to Soviet citizens, but are prevented from being together by the Soviet government, is one which I find to be particularly unacceptable. The Soviets' needless standing in the way of couples who wish to be together is something no American can understand — and my guess is that very few Soviet citizens understand it either.

Soviet law is clear in permitting married couples to select their place of residence. Moreover, the Soviet government signed the Helsinki Accord. The Governments that signed that document agreed to "examine favorably and on the basis of humanitarian consideration requests for exit or entry permits from persons who have decided to marry a person from another participating state." I do not believe it is too much to ask the Soviet government to live up to its own laws and the international agreements it has signed.

During my trips to the Soviet Union, I have visited with some of the Soviet spouses. I am happy to say that some of these cases have been resolved. I am grateful that the Soviet Union has permitted these individuals to live with their loved ones. But I wait impatiently for word on the rest, and for a more humane, sensible policy on the part of the Soviet government.

Foreword by Senator Paul Simon*

* 1988 Presidential hopeful; Democrat, Illinois; Member, Foreign Relations, Labor and Human Resources, Judiciary and Budget Senate Committees.
Our rights . . . are repeatedly violated by the Soviet authorities who ignore their own laws, international agreements to which they are signatories and the dictates of common decency by breaking apart our families . . . . No government has the right to do that. No government has the right to use simple men and women as political pawns, to play with our lives for political gain. We are not toys. We are people.

Statement of the Divided Spouses Coalition

I. Introduction

The United States State Department estimates that each year one hundred American citizens will marry a person living in the Soviet Union. Of these marriages, some will be initially blocked from occurring, and others will be prevented from becoming "true" marriages through the forced separation of the spouses. At present, there are approximately twenty reported cases of these Soviet-American marriages in which the spouses are "divided" and living in different hemispheres.

The dilemma is a direct by-product of Soviet emigration policy

---


3. The term utilized for these separated couples is "divided spouses." This is the term that both the couples themselves and the State Department utilize. See infra note 6 and accompanying text.

4. This figure was the number provided by Jill Goldenberg of Senator Paul Simon's office in October of 1986. Goldenberg, until recently, was the legislative aide in charge of Divided Spouse/Blocked Marriage cases. Figures provided by Ms. Goldenberg included all spouses who had been denied visas once and all spouses who were prevented from initially marrying. Interview with Jill Goldenberg, past Legislative Aide to Senator Paul Simon, in Washington, D.C. (Oct. 14, 1986) [hereinafter Interview with Goldenberg]. It should be noted that the State Department figure for divided spouse/blocked marriage cases is slightly lower (eighteen as of October 1986) due to the fact that the State Department requires two visa denials before a case can qualify for a divided spouse designation. In 1986, the State Department did not include blocked marriage cases in its tabulation of separated spouse statistics. Telephone Interview with Kathleen Lang of the Office of Soviet Union Affairs at the State Department, Contact Person on Divided Spouses (Oct. 23, 1986) [hereinafter Interview with Lang]. According to the present legislative aide in Senator Simon's office, Kim Tilley, who is Ms. Goldenberg's successor, the figure for divided spouses and blocked marriages remains essentially the same; although some cases have been settled, still other cases have been added. Telephone Interview with Kim Tilley, Legislative Aide to Senator Paul Simon (Aug. 3, 1987) [hereinafter Interview with Tilley].

5. Generally, until the advent of glasnost, the Soviet Union promulgated a policy in which it was reluctant to let its citizens emigrate. On January 1, 1987, however, a new policy regarding emigration took effect that will purportedly create an easier, less political process. 31 Sobraniye Postanovleniy Pravitel'stva SSSR: Otel Pervyy 563-66 (1986) amending 18 Sobraniye Postanovleniy Pravitel'stva SSSR 139 (1970). Since the advent of this policy, however, promises made by the Soviet Union regarding settlement of cases have increased with little action actually being taken. Six months have elapsed with only one divided spouse or blocked marriage case being settled. Divided Spouses Coalition Newsl. (Aug. 14, 1987) [hereinafter...
and international politics. In order to be with their American spouses, Soviet citizens must first obtain a visa for emigration to America. The Soviet Union, however, systematically refuses to grant these exit visas to its citizens. Continual refusals of these exit visas to the Soviet spouse create the inhuman situation of married couples divided by national boundaries.

In an effort to eradicate this situation, after two refusals of an exit visa to the Soviet spouse of an American citizen, the United States State Department formally categorizes the Soviet-American marriage as a "divided spouse" case. The Department then monitors the case progress, utilizing tools such as "representation lists" to spur resolution.

In addition to the divided spouse situation, there are currently five cases in which Soviet-American couples have been prevented from marrying. These "blocked marriages" are a relatively new phenomenon, occurring when a Soviet and an American apply to be married in the Soviet Union. The couples typically are granted permission and a license to marry. However, any subsequent efforts to actually marry are thwarted by the Soviet Union's refusal of the American fiance's visa request to return to the U.S.S.R. for the wedding. Although these individuals are recognized on a separate State Department representation list from other divided couples, their experience has been similar to the plight of divided spouses.

---

6. Interview with Lang, supra note 4.
7. Representation lists are simply lists of cases that the United States presents to the Soviet Union for resolution. It should be noted that inclusion on these lists is discretionary with the spouses. See also infra note 10 and accompanying text. Id.
8. Interview with Tilley, supra note 4.
10. As of October, 1986 the representation lists compiled by the State Department included a division entitled "Divided Spouses." Other divisions included "Divided Families" and "Dual Nationals." The names of married spouses who had been refused visas twice were enumerated under the "Divided Spouse" category. Kathleen Lang, State Department Spokesperson for Divided Spouses, states that the blocked marriage cases are brought to the attention of Soviet ministry officials on a "periodic" basis but are not included on the representation list because the relationship of fiancés is legally more "arbitrary" than that of a marital relationship. Interview with Lang, supra note 4. In response to pressure, the State Department has recently changed its representation list divisions and introduced a representation list specifically for blocked marriage cases. Telephone Interview with Keith Braun, Divided Spouse and Divided Spouses Coalition Spokesman (Aug. 12, 1987) [hereinafter 1987 Interview with Braun].
11. An argument has been advanced that blocked marriages should be included on all representation lists and treated similarly to divided spouse cases inasmuch as the relief sought is essentially the same. After years of being prevented from marrying, Soviet blocked marriage victims do not want their American fiancés merely being granted a visa to visit. By granting this visa, the Soviet Union only insures that the American be allowed to return to the Soviet Union for the marriage. This grant, however, does not guarantee that the marriage will not then become "divided." Ideally, the ultimate remedy sought by these victims is that an emigration visa be approved by the Soviet Union so that the Soviet fiancé can emigrate to the
This Comment will discuss the problem of divided spouses and blocked marriages with illustrative case studies. The issue will then be examined within the framework of international law and the complex political gymnastics of the governments of the United States and Soviet Union. Remedies will be suggested, including avenues open to the private citizen as well as tactics available to international actors. Finally, a glimpse is taken of what the future may offer for the handful of these ordinary people whose everyday lives have international implications.

II. Overview of the Problem

A. Current Status

The issue of divided spouses/blocked marriages has recently become the subject of increased attention. Although the Soviet Union has always utilized separation of spouse cases as a tool to demonstrate its underlying disapproval of its citizens marrying Americans, most cases prior to 1982 had been settled within two years and created few political repercussions. The McClellan case, however, broke the pattern. Initially considered to be an anomaly, its resolution took twelve long years. This was the frontrunner of an increasing number of instances where divided spouses had been left in limbo by the Soviet Union, without any type of disposition. Evidently, the Soviet Union has increasingly understood and utilized the political potential of the divided spouse situation. Longstanding cases have demonstrated that separated couples are a national concern and an international problem. Since 1986, the Soviet Union has agreed to settle some divided

United States. In this way, blocked marriages are on an equal footing with the divided spouse cases. Interview with Condon, supra note 9.

12. Professor Woodford McClellan's long-standing divided spouse case was just recently resolved. According to McClellan, lengthy cases are a recent phenomenon. He asserts that Soviet-American marriages, though never regarded highly by the USSR, usually have been settled within two years. Prior to the current influx of long-term cases such as his own, McClellan states that the previously standard two-year delay was attributed to "red tape" and involved various time-consuming application procedures. McClellan implies that this typical delay by the Soviet Union was a product of its wish to make a statement concerning the undesirability of these marriages. Interview with Professor Woodford McClellan, Past Divided Spouse, in Charlottesville, Virginia (Oct. 12, 1986) [hereinafter Interview with McClellan].

13. See infra text of section II.

14. Technically, Anatoly Michaelson's case is the longest; it is still pending after thirty years. The case is distinguishable from the classic separated spouse cases, however, inasmuch as Dr. Michaelson originally defected from the Soviet Union prior to becoming a United States citizen. Thus, although he is currently classified as a divided spouse by the State Department, his defection presents an added wrinkle that may help to explain why the Soviet Union refuses to grant exit visas to his wife, children, and grandchildren. Interview with Goldenberg, supra note 4; News From Paul Simon, supra note 1. The McClellan case was the longest Soviet-American divided spouse case as of October, 1986 involving an American citizen by birth and a Soviet citizen by birth. Interview with McClellan, supra note 12.

15. Interview with McClellan, supra note 12.
spouse cases, relinquishing what they consider minor concessions to leverage their position at the bargaining table.\textsuperscript{16} In fact, against the stark backdrop of intense arms control negotiations, approximately twenty-four cases have been settled.\textsuperscript{17}

The recent attention that has been focused on separated spouses may be attributed to current complexities in negotiations between the United States and Soviet Union.\textsuperscript{18} For the Soviet Union, delaying settlement of cases provides a perfect opportunity to slap the wrist of the United States for bad relations. On the other hand, carefully timed resolution of these cases provides the Soviet Union with a powerful piece of propaganda that generates conciliatory headlines just prior to summit meetings and conferences.\textsuperscript{19} This is evidenced by the number of cases that have been resolved just prior to US-USSR meetings.\textsuperscript{20}

\section*{B. Case Studies}

1. \textit{Divided Spouses}.—Divided spouse cases, past and present, fall far short of clarifying Soviet action with respect to the denial of visas and the creation of divided couple situations. Yet, examination of both the causes and effects of the problem of separated spouses within the complexities of actual cases enhances a proper understanding of the issue. The cases of Woodford and Irina McClellan,\textsuperscript{21} already resolved, and Keith and Svetlana Braun,\textsuperscript{22} still pending, represent typical divided spouse situations.

The American spouse in each case is, and always has been, an

\textsuperscript{16} Almost every spouse interviewed expressed a view linking political tension with the resolution of divided spouse/blocked marriage cases. Similar views are also expressed by Jill Goldenberg. According to the collective viewpoint, failure by the Soviet Union to resolve cases is a political punishment whereas settlement is merely a suspicious goodwill gesture generally utilized for Soviet political gain. \textit{See generally} Interview with Goldenberg, \textit{supra} note 4; Interview with McClellan, \textit{supra} note 12. \textit{See also} Telephone Interview with Keith Braun, Divided Spouse and Divided Spouses Coalition Spokesperson (Oct. 11, 1986) [hereinafter 1986 Interview with Braun]; Interview with Condon, \textit{supra} note 9; Telephone Interview with Francis Pergericht, Past Divided Spouse (Oct. 21, 1986) [hereinafter Interview with Pergericht].

\textsuperscript{17} This figure represents all cases resolved from April, 1983 through August, 1987. Interview with Tilley, \textit{supra} note 4.

\textsuperscript{18} Moreover, attention may be due to the birth of the Divided Spouses Coalition in the Fall of 1985. The Coalition is an organization of private citizens who are or have been divided spouse/blocked marriage victims. Keith Braun, a divided spouse, is currently the leader and spokesperson. Braun and Francis Pergericht, both lawyers, were instrumental in founding the organization. Senator Paul Simon’s office also aided in the organization of the group. 1986 Interview with Braun, \textit{supra} note 16.

\textsuperscript{19} Interview with McClellan, \textit{supra} note 12; \textit{see also} \textit{supra} note 16 and accompanying text.

\textsuperscript{20} Examples included the McClellan case that was resolved just prior to the 1986 Geneva Summit, and the recent release of Roman Kuperman, husband of Francis Pergericht, and of Tamara Tretjakova and son Mark, family of Simon Levin, just prior to the Shultz-Shevardnadze meeting in September of 1986.

\textsuperscript{21} \textit{See infra} text accompanying notes 27-36.

\textsuperscript{22} \textit{See infra} text accompanying notes 37-47.
United States citizen. Further, this American spouse holds no position in the United States that would present a legitimate security problem to the Soviet Union. Moreover, this spouse was already granted a marriage license through ZAGS\textsuperscript{23} and had been allowed to marry the Soviet absent any substantial complications.\textsuperscript{24} In both cases, the wife is a Soviet citizen by birth and has not held a sensitive position in the Soviet government.\textsuperscript{25} This background presents the typical scenario involving divided spouses/blocked marriages, as the separation rests on arbitrary denial of visas by the Soviets.\textsuperscript{26} Nothing in the background of either the American or Soviet spouse suggests a rational reason for keeping them apart. Classic cases such as these present the most prominent view of the Soviet disregard of human rights and demonstrate the political reality behind the issue of divided spouses.

\textit{a. McClellan.}—Woodford and Irina McClellan were married by ZAGS in Moscow in 1974.\textsuperscript{27} The marriage took place during Woodford McClellan’s twelfth visit to the Soviet Union.\textsuperscript{28} Yet, when his visa — the same one that enabled him to marry — expired eight months later, McClellan was forced to leave his wife and was never permitted to return.\textsuperscript{29} Concurrently, his new wife was not allowed to exit the Soviet Union to join her American husband.\textsuperscript{30} This situation of forced separation prevailed for twelve years,\textsuperscript{31} which were punctuated with frustration and struggle for both spouses.\textsuperscript{32} Aside from letters and phone calls, no visits were allowed; moreover, repeated requests by Irina for an exit visa were denied with little or no explanation.\textsuperscript{33}

Irina McClellan was shunned from Soviet society because she had married a foreigner; the KGB had “threatened [her] that the

\begin{flushleft}
\textsuperscript{23.} ZAGS is the Soviet civil registry for marriages, births, and deaths. For a full discussion of the role of this organization, see infra text accompanying notes 119-121. \\
\textsuperscript{24.} Interview with McClellan, supra note 12. \\
\textsuperscript{25.} Id. \\
\textsuperscript{26.} Id. \\
\textsuperscript{27.} Id. \\
\textsuperscript{28.} Id. \\
\textsuperscript{29.} Id. \\
\textsuperscript{30.} Id. \\
\textsuperscript{31.} Id. \\
\textsuperscript{32.} While Professor McClellan continued in his attempts to visit, Irina McClellan was fighting the KGB and demanding explanations for her continual visa denials. During Secretary of State Vance’s 1978 visit to Moscow, Irina chained herself to the fence of the American Embassy in Moscow and was arrested. The next day she “taunted the Kremlin” by appearing on television to protest. Yet her optimism and courage began to wane by 1984, and she sought her priest’s help to obtain a divorce so that her “nightmare” could end. Surprisingly, he denied her request, feeling that a divorce was not the answer. Two years later, her long-sought freedom was finally achieved, perhaps in spite of, or with indifference to, her struggles. \textit{“1986”}: \textit{A Love Story} (NBC television broadcast, Aug. 19, 1986) (transcript vol. 1, No. 9) at 13-15 [hereinafter \textit{“1986”}]. \\
\textsuperscript{33.} Interview with McClellan, supra note 12.
\end{flushleft}
foreigner was a spy and . . . had bad connections.”34 After years of living as a “traitor” in her own country and attempting to “get on their [the KGB’s] nerves” so they would grant her an exit visa, Irina McClellan suddenly and inexplicably received permission to exit prior to the 1986 Reagan/Gorbachev summit meeting in Geneva.35

The resolution of the McClellan case in January, 1986 was a bittersweet success for divided spouses. On the one hand, freedom finally came to the spouses even if it was after a period of long suffering. Realistically speaking, however, the Soviets may have settled this case just prior to the summit for reasons totally unrelated to human rights. As Irina McClellan asserts:

... Why the government [the Soviets] choose these people, no one knows. As if they play cards with people's fates. I don't know. It's just absolutely unexplainable.

They keep these examples to prove others how it's bad to marry foreigner, for example, they keep this material to trade, like they did it before this first — this summit. [sic]36

The “success stories” of divided spouse cases do not demonstrate a lessening of the problem, nor even a recognition by the Soviets of their human rights obligations. However, these cases do suggest that the Soviets utilize divided couples as political bargaining chips, a fact that does not bode well for future resolution of similar cases.

b. Braun.—The case of Keith and Svetlana Braun is a current example of a continuing divided spouse case. Keith B. Braun, an American attorney, and Svetlana I. Braun, now a Soviet engineer, were married by ZAGS in Moscow on August 9, 1984.37 Braun states that he originally “had a feel with the odds that they were heavily in [his] favor that Svetlana wouldn't have problems.”38 Unfortunately, Keith Braun’s predictions proved untrue; his case has been pending before Soviet officials for no apparent reason.39

Svetlana Braun has been denied five exit visas to join her American husband, and after three years of refusals, “she feels terribly alone.”40 As is commonly noted with these cases, most of the refusals

35. Id. at 14.
36. Id. at 19.
38. NBC Today (NBC television broadcast, Oct. 8, 1986) (transcript) at 27 [hereinafter NBC Today].
39. 1986 Interview with Braun, supra note 16.
40. Id. See also 1987 Interview with Braun, supra note 9; McBee and Horn, From Russia With Love, U.S. News & World Rep., Aug. 21, 1986, at 42 [hereinafter U.S. News & World Rep.].
lacked adequate explanation.41

Keith Braun, on the other hand, has been allowed to periodically visit his wife in Moscow.42 Despite these visits, the situation is still frustrating; as Keith Braun points out, he doesn’t just want “to visit her [Svetlana],” he wants “to live with her.”43 His exasperation is compounded by the realization that their situation, like that of the McClellans, is “sort of random”44 with respect to the Soviet decision-makers who “choose in selecting who can leave and which spouses can wait.”45 Svetlana Braun’s latest application for an exit visa has been denied,46 despite earlier indications that Soviet officials had slated the case for settlement.47

2. Blocked Marriages.—These incidents include all of the dynamics of divided spouse cases, yet present an additional hurdle. Ironically, this obstacle surrounds the very cause of the problem — the fact that these Soviet-American couples were prevented from marrying in the first place. According to the State Department, the lack of a marital tie places blocked marriage victims on a separate representation list because they cannot be technically termed divided spouses.48 As a result of this administrative dichotomy, the names of two blocked marriage victims were not included on a State Department list of cases to be discussed at the October 1986 summit meet-

41. Only refusal one was accompanied with an explanation. Svetlana Braun was told that her first application for an exit visa of August 25, 1984 was “not in the Soviet interest” to grant it. No further specifics were given. News From Paul Simon, supra note 1.

42. U.S. NEWS & WORLD REP., supra note 40, at 42. As of September 1987 Keith Braun has been allowed a total of eight visits, the most recent being a 17 day stay in July, 1987; this figure includes visits prior to and after his marriage. He has been denied only one visit to date, that being scheduled for April, 1986. News From Paul Simon, supra note 1. See also 1986 Interview with Braun, supra note 16, 1987 Interview with Braun, supra note 9.

43. U.S. NEWS & WORLD REP., supra note 40, at 42.

44. NBC Today, supra note 38, at 26.

45. Id.

46. This visa request was refused on June 2, 1987, which was within the requisite thirty days of the application, as required by the new Soviet emigration law. As is also provided under this law, Svetlana Braun has appealed to the Supreme Soviet. That appeal is currently pending. Interestingly, the decision will be handed down before October 20, 1987 at which time summit prospects will be clear. An impending summit may spur the Soviet Union to handle this appeal favorably. 1987 Interview with Braun, supra note 9.

47. On January 4, 1987, Keith Braun and another divided spouse, Andrea Wine, met with Yevgeny Antipov, Deputy Director of the Consular Administration of the Foreign Ministry in Moscow. In this unprecedented conference, both representatives of the Coalition left with “a real sense that the question of divided spouses was under intensive review and that a number of cases might be resolved after January 10.” Divided Spouses Coalition Newsl. (Jan. 9, 1987) [hereinafter Jan. 9, 1987 News]. Unfortunately, these impressions were unfounded, as neither Keith Braun nor any other divided spouse case had been settled as of October, 1987. Keith Braun has described the recent turn of events as much encouraging talk without accompanying action. 1987 Interview with Braun, supra note 9. In mid-October 1987, rumors purported to have emanated from the Soviet Union indicate once again that the Braun case may soon settle. As of the end of October, however, no formal settlement has occurred. Id.

48. See supra note 10 and accompanying text.
The reasoning behind this disparate treatment of blocked marriage victims is that the United States may not have as legitimate an interest in a Soviet citizen who is not married to an American as compared to one who is actually married. Within this, human rights confrontations concerning an unmarried Soviet citizen may be a usurpation of Soviet sovereign rights. Blocked marriage victim, Elizabeth Condon and past victim, J. Barkley Rosser, argue that regardless of the reasoning behind their exclusion from certain beneficial lists, they have a right to be included in all US-USSR contact on this topic.

Blocked marriage victims fear that any missed opportunity towards resolution of these cases may lessen United States pressure on the Soviets. The significance of various written contacts on the topic are impossible to discern, evidenced by two blocked marriage cases that were resolved absent inclusion on these key lists. The spouses have recognized, however, that the United States must continue both verbal and written pressure to aid case resolution. Thus, non-inclusion of blocked marriages in certain contacts with the Soviets may well reduce the chances of success.

49. Blocked marriage victim Elizabeth Condon and past victim J. Barkley Rosser became aware of their noninclusion on lists and meeting agendas such as the Iceland Summit through the State Department. Both expressed extreme discontent with this situation. Interview with Condon, supra note 9; Interview with Rosser, supra note 9.

50. In a recent New York Times article, Anthony Lewis stated that with most human rights violation claims on this issue, the Soviets have accepted legitimate United States concern over divided spouses "because Americans are involved." This statement may imply that a marital involvement might seem more substantial to the Soviets whereas an engagement may not be considered as legitimate a form of involvement. Lewis, 'Humane and Positive,' N.Y. Times, October 9, 1986, at A35, col. 1.

51. The right of blocked marriage victims to be granted every energy on their behalf by the United States Government is arguably constitutionally based. Under the Supreme Court's reasoning in Zablocki v. Redhail, 434 U.S. 374 (1978), marriage is a fundamental interest that is constitutionally protected. Thus, the state law in that case, which required certain child custody payments to be adequately paid before a marriage license would be issued, was struck down as unconstitutional. Moreover, the government has a duty to protect the fundamental right of marriage or of its dissolution through divorce when there is a showing that the only forum by which the right could be exercised is being denied. Boddie v. Connecticut, 401 U.S. 371 (1971). In this case, the indigent petitioners were unconstitutionally denied the right to obtain a divorce by reason of a failure to pay the requisite fees, since the court system was the only forum by which they could exercise this right. In cases of blocked marriages, the right of the American to seek a marriage is of fundamental interest. Zablocki, 434 U.S. at 374. Moreover, since absolute governmental pressure may be required to enable that marriage to take place, inclusion on all State Department Representation Lists represents the only forum by which that right to marriage may adequately be exercised. Thus, non-inclusion of blocked marriage victims on all Representation Lists is a denial of a fundamental constitutional right. Boddie, 401 U.S. at 391.

52. Interview with Condon, supra note 9; Interview with Rosser, supra note 9.

53. Kathleen Lang of the State Department stresses that Representation Lists are not the only successful means of achieving case resolutions. Interview with Lang, supra note 4.

54. Most spouses agree that the greater the pressure and the more diversified the sources used, the greater the chance for success. See supra note 16.
a. Condon.—Elizabeth Condon, a Massachusetts school-teacher who teaches Russian and French, became engaged to Victor Novikov in Moscow in 1979. They were blocked from marrying that October because of an “anonymous letter” supposedly sent to the Soviet government that claimed that Novikov already had a wife. The letter was completely unfounded and was later proved false, but the Soviet Union continues to arbitrarily block this marriage.

Anonymous letters have a purportedly “long and tragic history” in the Soviet Union, and have been previously used as tools by the Soviet government. Ironically, Elizabeth Condon reports that in 1986, the Soviet Union publicly spoke against the use of anonymous letters. Yet, the separation of Elizabeth Condon and Victor Novikov, originally justified by an anonymous letter, still continues. Both have been denied visas numerous times since 1979, and as of October, 1987, they have not seen each other in eight years.

b. Rosser.—Dr. J. Barkely Rosser, Jr., and Dr. Marina R. Vcherashnaya, both economists, became engaged in August, 1984. Barkley Rosser stated that the case did not progress well from the start because the couple had “considerable difficulty registering with ZAGS to be married.” The marriage date was finally set for November 13, 1984, but no marriage took place as Dr. Rosser’s visa was rejected without explanation. All of his subsequent efforts to return to the Soviet Union were thwarted, including the denial of a visa allowing him to enter as a Fulbright Scholar.

As a result of this situation, Marina Vcherashnaya had been “harassed in various ways.” Shortly after the couple’s legal engagement, she lost her job as a Senior Economist and was subsequently unable to obtain full-time employment in her profession. She was
also subjected to extended interrogations by the KGB.\footnote{67} Finally, in March, 1987, Marina Vcherashnaya was granted an exit visa to marry her fiance in the United States, following an unexplained three years of denials of similar visa requests.\footnote{68} The couple married on May 24, 1987, and their case appears settled, although the Soviet embassy extended only a 90 day visa and required Dr. Vcherashnaya to purchase a return ticket to Moscow.\footnote{69}

Case studies, thus, demonstrate the seemingly arbitrary Soviet treatment of divided spouse and blocked marriage situations. Given this, resolved divided spouse and blocked marriage cases offer no benchmark by which current victims can evaluate their chances for settlement. This arbitrary treatment of cases by the Soviet Union aside, the fact remains that divided couple situations are clear human rights violations, and international instruments may provide the proper means of compelling case resolution.

III. The Legal Basis of Transnational Marriage as a Protected Human Right

The legal aspects of divided spouse cases and blocked marriage situations, however politically motivated, present essentially international human rights questions. It is in this context that the United States is forced to examine the outcry of the American spouses that their rights are being violated. The right of transnational marriage and the corollary right of emigration\footnote{70} have been subjects addressed in the Helsinki Final Act of 1975 [the Helsinki Accords]\footnote{71} and the Madrid Concluding Document.\footnote{72} These rights are further supported by the letter and spirit of the U.N. Charter,\footnote{73} the Universal Declaration of Human Rights,\footnote{74} and the International Covenant on Civil and Political Rights.\footnote{75}

A. The Helsinki Accords

The Helsinki Accords, to which the United States and the Soviet Union are signatories,76 is a broad sweeping document that is not legally binding but is considered morally compelling.77 The lack of judicial remedies for violations, however, does not affect the Act's significance in international law. Although non-compliance with non-binding agreements leaves no grounds for a claim for legal sanctions, this fact "is quite different from stating that the agreement need not be observed or that the parties are free to act as if there were no such agreement."78 The specific language of the Helsinki Accords should thus be interpreted in light of United Nations supported documents79 that address legally compelling human rights considerations.

The specific language concerning marriages between citizens of different states is located in the so-called "Third Basket"80 of the Accords. Under the heading of "Human Contacts" the Act provides that "[t]he participating States will examine favorably and on the basis of humanitarian considerations requests for exit or entry permits from persons who have decided to marry a citizen from another participating State."81 The Act further provides that the participating states "deal in a positive and humane spirit"82 with respect to

---

76. The European signatories include: Austria, Belgium, Bulgaria, Cyprus, Czechoslovakia, Denmark, Finland, France, German Democratic Republic, Federal Republic of Germany, Greece, Holy See, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Monaco, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Spain, Sweden, Switzerland, Turkey, Union of Soviet Socialist Republics, United Kingdom, and Yugoslavia. Canada and the United States also signed the Accords.


79. See supra text accompanying notes 73-75.

80. The Helsinki Final Act is said to include three "baskets." The first is entitled "Questions Relating to Security in Europe;" the second is entitled "Cooperation in the Field of Economics, of Science and Technology, and the Environment;" and the third, which is the focus of this article, is entitled "Cooperation in Humanitarian and Other Fields." The concluding procedural section that follows the Act, the "Follow-up to the Conference," is sometimes referred to as a fourth "basket." Nafziger, supra note 77 at 395, n.2.

81. The full provision of the Accords provides as follows:

(c) Marriage between Citizens of Different States. The participating States will examine favorably and on the basis of humanitarian considerations requests for exit or entry permits from persons who have decided to marry a citizen from another participating State. The processing and issuing of the documents required for the above purposes and for the marriage will be in accordance with the provisions accepted for family reunification. In dealing with requests from couples from different participating States, once married, to enable them and the minor children to their marriage to transfer their permanent residence to a State in which either one is normally a resident, the participating States will also apply the provisions accepted for family reunification.

Accords, supra note 71, at 1314.

82. The "Marriage between Citizens of Different States" provision of the Accords pro-
married couples, "... to transfer their permanent residence to a State in which either one is normally a resident ..."\(^8\) Thus, the Act requires favorable dealings for entry and exit requests both for persons who have decided to marry and those that have married persons from other participating states.

**B. The Madrid Concluding Document**

The Madrid Concluding Document\(^8\) reaffirms this commitment to resolve the problems inherent in transnational marriages. Moreover, the document provides that "marriages between citizens of different states" in normal practice should be dealt with "favorably within six months."\(^8\) Furthermore, this document places significant emphasis upon the states' obligation to deal "favorably" with regard to transnational marriages. According to this document, this goal can be accomplished through expediting the processes by which transnational marriages are effected,\(^8\) providing comprehensive information regarding procedures for marriage,\(^8\) and moderating fees for visas or registrations pertaining to these marriages.\(^8\)

Taken together, the Helsinki Final Act and the Madrid Concluding Document provide a firm, specific basis for the favorable resolution of transnational marriage cases. Although these documents

---

\(^8\) Id.

\(^83\) Id.

84. The Madrid Concluding Document forms part of the Helsinki Accords, and is studied in conjunction with the Final Act. The document is the product of the Madrid Convention, a convened body of the Helsinki signatories who met and discussed implementation of the Accords. The Madrid Convention is only one such convention provided for in the Accords to which the signatories agreed to schedule and review the Act's provisions. This series of Conferences is known as the "Helsinki Process." The most recent Conference began on November 4, 1986 in Vienna. *United States Department of State, Implementation of Helsinki Final Act*, Special Rpt. No. 146 (October 1, 1985-April 1, 1986) [hereinafter *Implementation of Helsinki Final Act*].


86. The applicable language provides that:
They will decide upon these applications in emergency cases for family meetings as expeditiously as possible, for family reunification and for marriage between citizens of different States in normal practice within six months and for other family meetings within gradually decreasing time limits.

*Id.*

87. As the Document provides:
The participating States will provide the necessary information on the procedures to be followed by the applicants in these cases and on the regulations to be observed, as well as, upon the applicant's request, provide the relevant forms.

*Id.*

88. The Document further asserts:
They will, where necessary, gradually reduce fees charged in connection with these applications, including those for visas and passports, in order to bring them to a moderate level in relation to the average monthly income in the respective participating State.

*Id.*
are only morally compelling, they are a specific implementation of the provisions contained in other documents that create legal responsibility for broader human rights. 88.

C. United Nations' Instruments

Article 55 of the United Nations Charter, which builds upon the general obligations of member states outlined in Article 1(3), 90 requires that states promote "universal respect for, and observance of, human rights and fundamental freedoms for all . . . ." 91 Moreover, Article 15 of the Universal Declaration of Human Rights provides that everyone has a right to a nationality, and a right to change that nationality. 92 Furthermore, Article 13(2) of the same document states that "[e]veryone has the right to leave any country, including his own, and to return to his country." 93 This provision is subject only to Articles 29(2) and (3) of the Declaration which provide that such rights may not usurp the rights and freedoms of others nor be exercised contrary to the purposes of the United Nations. 94

Finally, the International Covenant of Civil and Political Rights establishes the right to "be free to leave any country" but limits this right in cases where "national security, public order, public health or morals or the rights and freedoms of others" need to be protected. 95 The opportunity to emigrate is then a right recognized under both the Declaration and Covenant. However, the rights protected under the latter are subject to restrictions for national security or public health reasons.

Hence, the Helsinki requirement of favorable dealings with respect to transnational marriages is supported by the legally binding language of United Nations instruments. Transnational marriage, as

---

89. See supra text accompanying notes 73-75.

90. Article 1(3) of the Charter establishes human rights obligations of members by stating the following as a purpose of the United Nations:

To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.

U.N. CHARTER art. 1, para. 3.

91. U.N. CHARTER art. 55.

92. Declaration, supra note 74.

93. Id.

94. Articles 29(2) and (3) of the Declaration provide as follows:

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. (3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

95. Article 12 of the Covenant contains these provisions. Covenant, supra note 75.
TRANSNATIONAL MARRIAGE

a human right recognized by the Final Act, may be construed as being a basic right covered under the Article 55 Charter language.\textsuperscript{96} Moreover, the right of emigration implied by the Accords is clearly set out in both the Universal Declaration and the International Covenant.\textsuperscript{97} In short, all aspects of the issue of transnational marriage and the right of emigration are well codified in both morally compelling and legally binding international documents.

IV. The Dividing Wall: Political Perspectives

A. The United States

President Reagan reported to the nation on October 13, 1986, that during his recent meeting with Soviet General Gorbachev:

We didn’t limit ourselves to just arms reduction. We discussed what we call violation of human rights on the part of the Soviets, refusal to let people emigrate from Russia . . ., husbands and wives separated by national borders being able to reunite. In much of this the Soviet Union is violating another agreement — the Helsinki Accords they had signed in 1975.\textsuperscript{98}

The issue of divided couples has risen to a new height of national concern. Formal recognition of the problem now exists in many levels of the United States government — levels that encompass even the White House. Beside the involvement of the President, other concerned governmental bodies include the State Department, the Commission on Security and Cooperation in Europe, and Congressional offices.

1. The State Department.—The State Department maintains a record of the spouses who are separated, and attempts to resolve cases through representation lists\textsuperscript{99} and periodic Soviet-American ministry meetings.\textsuperscript{100} Divided spouses “are in touch frequently” with the State Department, and serve to provide information of recent developments in their cases; they are in turn informed of any State

\textsuperscript{96}. The notion that marriage may be a basic right within the Charter is strengthened by the fact that the Accords, which contain the language specific to marriage, also provide under Principle VII that the human rights obligations conform to the “purposes and principles of the Charter of the United Nations and with the Universal Declaration of Human Rights.” Accords, supra note 23, at 1298.
\textsuperscript{97}. The Accords do not deal specifically with the right to emigrate; however, the Declaration and the Covenant imply that there are emigration rights subject to limitation. See supra notes 93 and 94 and accompanying text.
\textsuperscript{99}. For an explanation of the role of representation lists, see supra note 10 and accompanying text.
\textsuperscript{100}. Interview with Lang, supra note 4.
Department action on their behalf.\textsuperscript{101} Most significantly, representative spouses were granted a recent interview with Secretary of State Shultz,\textsuperscript{102} further displaying the State Department's resolve to actively pursue the issue by way of formal diplomatic channels.

In attempting to change divided spouse/blocked marriage situation, the State Department has emphasized that no single tactic has been uniquely utilized or successful. For instance, representation lists of names, sporadic Soviet-American ministry meetings, and the 1986 Shultz-Shevardnadze talks were all contacts in which the State Department sought to inform the Soviet Union of its human right obligations and to settle divided couple cases.\textsuperscript{103}

A recent exchange that included representatives of the United States State Department and the Soviet government was held in Bern, Switzerland during the Summer of 1986, and headed by United States Ambassador Michael Novak.\textsuperscript{104} Although only one divided spouse case was resolved as a result of this meeting,\textsuperscript{105} Ambassador Novak spoke eloquently on the subject:

Some issues before this experts meeting are difficult and involve large numbers. These cases of separated spouses involve small numbers... Bern might well mark a new beginning in at least this one type of case, of such numerical simplicity. Therefore, Mr. Chairman, can we not recommend that all the governments signatory to the Helsinki Final Act and the Madrid Concluding Document celebrate the Bern meeting by resolving the relatively few cases of the Representation Lists of all of us? Can we not wipe the slate clean? Let these few painfully separated men and women come at last together. Let there be peace in this

\textsuperscript{101} Id.

\textsuperscript{102} This meeting was recently held on June 29, 1987 between Secretary of State Shultz and representatives of the Divided Spouses Coalition. Keith Braun, the Coalition's spokesman, characterized the forty-five minute conference as highly successful and noted that the Secretary of State was extremely interested and sympathetic. 1987 Telephone Interview with Braun, supra note 10.

\textsuperscript{103} Kathleen Lang stresses that many cases that are not on certain representation lists nor on the agendas of certain United States/Soviet meetings are nonetheless resolved. Moreover, many long-standing cases that have been given much State Department attention both on lists and agendas still remain pending. With respect to the State Department's perception of this discrepancy, Ms. Lang offered no particular reason why some cases remain unresolved despite inclusion on every list, while others are resolved without such inclusion. It is assumed, however, that the sporadic nature of case resolution is not so much a product of State Department actions or inactions, but rather a product of Soviet perceptions and perspectives. Interview with Lang, supra note 4.

\textsuperscript{104} The so-called Bern Conference was held from April 15, 1986 to May 27, 1986, and dealt with the "Human Contacts" provisions of the Accords. Transnational marriages are covered under "Human Contacts." The Bern Conference forms part of the Madrid Convention of the "Helsinki Process" which is a series of meetings agreed to by the Accords signatories. A similar meeting, the Vienna Convention, began on November 4, 1986. Novak, \textit{Taking Helsinki Seriously}, Wall St. J., June 4, 1986, at 1, col. 1.

\textsuperscript{105} The case name is not revealed as the spouses wish to remain anonymous. Interview with Goldenberg, supra note 4.
small number of human couples — as a symbol of the wider peace we all seek.\textsuperscript{106}

2. Commission on Security and Cooperation in Europe.—Another concerned body that was represented in Bern is an agency of the Commission on Security and Cooperation in Europe (CSCE), commonly referred to as the Helsinki Commission.\textsuperscript{107} The commission is an independent government agency comprised of twenty-one legislative and executive branch officials.\textsuperscript{108} The commission compiles information, analyses data, and evaluates the implementation of various provisions of the Helsinki Final Act of 1975.

According to the Commission’s April 1986 report on the “Implementation of the Helsinki Final Act”, the United States had been monitoring as many as forty-nine marriages between Americans and Soviets.\textsuperscript{109} Moreover, this report reveals that during this period, the Soviet Union settled nine pending cases that was “more than any recent review period.”\textsuperscript{110} The Commission, then, reports an upward trend in both resolved cases and new cases.\textsuperscript{111} The role of the commission is thus an important one, as it serves to statistically demonstrate Soviet compliance or non-compliance with Helsinki provisions for the settlement of transnational marriage cases.

3. Congress.—Senator Paul Simon, a Democrat from Illinois, has spearheaded one of the most comprehensive congressional crusades for resolution of divided spouse/blocked marriage cases.\textsuperscript{112} He first became acquainted with the issue when two of his constituents were separated from their spouses, and requested his aid.\textsuperscript{113} The requests prompted him to speak with their Soviet spouses during a visit to Moscow.\textsuperscript{114}

After his trip, Senator Simon designated a legislative aide to deal directly with the spouses and maintain computer records of the progress of all cases.\textsuperscript{115} Further, he has worked actively to inform fellow congressmen, the State Department, and the nation as a
whole about the depth of the divided spouse/blocked marriage problem.\textsuperscript{116}

Although many levels of the United States government are already involved with the issue, even more involvement would be desirable as Soviet “response to case resolution is directly proportional to persistence.”\textsuperscript{117} Yet, even with added persistence, Soviet resolution of cases may remain a wild card, dependent on “a little bit of luck.”\textsuperscript{118}

\section*{B. The Soviet Union}

The Soviet response to American claims of Helsinki human rights violations regarding divided spouses/blocked marriages remains essentially ambiguous. The Soviet Union’s underlying reasons behind denying a Soviet citizen either the right to marry an American citizen or the right to emigrate have been characterized as “arbitrary and capricious.”\textsuperscript{119} Soviet governmental perspectives concerning separated spouses are relatively unknown and not fully understood by the United States. However, it is important to address what is known about the processes involved when Soviet-American marriages occur. This discussion will examine these processes in light of the Soviet Union’s interpretation of its national laws, and of international law in general.

\subsection*{1. The Process.—}In order for the USSR to view a Soviet citizen as married,\textsuperscript{120} the marriage must be executed through USSR governmental channels. The Soviet Union is a civil law country, and therefore, all marriages are effected through the “Registry of Acts of Civil Status,” or “ZAGS,” which is the ministry for marriages, births and deaths.\textsuperscript{121} All citizens must first apply to ZAGS ministry officials if they wish to be married and await ZAGS approval before any marriage takes place. However, if a Soviet citizen desires to marry an American, certain evidence has indicated that the ZAGS

\textsuperscript{116} According to Jill Goldenberg, Senator Simon’s efforts with regard to the spouses’ cause have included “Dear Colleague” letters that solicit other congressional signatures on correspondence requesting either State Department or White House action. \textit{Id}. Moreover, in his press releases entitled “News From Paul Simon” and his weekly column “P.S./Washington,” Senator Simon has described cases, cited the law applicable to these cases and appealed to the entire nation to stand up and take notice. He writes:

As contacts between our people [Soviets and the U.S.] grow, as they should, inevitably there will be more marriages. Our governments should not stand in the way of marriages and of people then living together. There are many things governments can do, but they cannot prevent people from falling in love.


\textsuperscript{117} Interview with McClellan, \textit{supra} note 12.

\textsuperscript{118} \textit{Id}.

\textsuperscript{119} 1986 Interview with Braun, \textit{supra} note 16.

\textsuperscript{120} Interview with McClellan, \textit{supra} note 12.

\textsuperscript{121} The English translation of “ZAGS” was provided by Professor McClellan. \textit{Id}.
application becomes a political question handled directly by mid-
level KGB officials.\textsuperscript{122} Thus, at this point, the KGB specifically pur-
sues the status of the impending marriage.\textsuperscript{123} Visa requests go
through another Soviet agency, namely the Office of Visas and Re-
gistrations (OVIR).\textsuperscript{124} OVIR has the substantial power to create di-
vided couple situations, as it can deny both emigration visas to So-
viet spouses and visitation visas to American fiancés.\textsuperscript{125} As this
power creates divided spouse_blocked marriage cases, it can be ar-
gued that the KGB is also involved with denial of visa requests.\textsuperscript{126} It
appears that in a certain percentage of these cases, visa requests are
systematically denied, for the sole purpose of "sending a message
that Soviets and Americans should not marry."\textsuperscript{127}

After two such visa requests have been denied, many spouses
feel that their situations become an inadvertent political ploy perpe-
trated by the Soviet Union. Oftentimes, if two different KGB offi-
cials deny the same visa application, then the case appears "tainted"
to the next reviewing official. This is true even where no complica-
tions in the case exist.\textsuperscript{128}

Refusals are commonly accompanied by little or no explanation.
The Soviet Union has denied visa requests in the past with curt ex-
planations: "not in the Soviet interest," "bad relations with the
United States," and "undesirable."\textsuperscript{129} Clearly, these reasons cannot
be justified under the terms of either the Universal Declaration of
Human Rights or the International Covenant on Human Rights es-
cape clauses, which provide exceptions for cases involving legitimate
national security or public welfare interests.\textsuperscript{130}

2. Soviet Law.—The Soviet Union's reasons for continually
denying visa applications to divided spouse_blocked marriage victims

\textsuperscript{122} Professor McClellan asserts this view. He states that his impression was that lower
level ministry officials knew little regarding transnational marriage applications. Based on this,
he had the feeling that there was direct KGB involvement with his case. Id.

\textsuperscript{123} Id.

\textsuperscript{124} 1986 Interview with Braun, supra note 16.

\textsuperscript{125} American spouses have attempted to clear many different types of visitation visas
through OVIR. Among these are tourist visas, visiting-a-relative visas, and educational visas.
In turning down a request, the Soviets sometimes base their rejection upon a claim that the
visa was of an improper type. Generally, the Soviet Union has vacillated between requiring a
tourist visa and a visiting-a-relative visa in order for the American to gain proper entry into
the Soviet Union. Interview with Condon, supra note 9.

\textsuperscript{126} See supra text accompanying notes 122-24 and accompanying text.

\textsuperscript{127} 1986 Interview with Braun, supra note 16.

\textsuperscript{128} Cases without "complications" are cases in which the American spouse was born in
the United States, never had CIA or government dealings, and never had been a defector or
emigree from the Soviet Union. For the Soviet citizen, a "clean" case is one in which there are
no complications of security clearance or governmental dissidence. Interview with McClellan,
supra note 12. See also supra text accompanying notes 24-25.

\textsuperscript{129} These represent actual "explanations" provided by the Soviet Union when it denies

\textsuperscript{130} See generally, supra text entitled United Nations Instruments.
appears irreconcilable with Soviet law. Article 11 of the Soviet Fundamental Legislation on Marriage and the Family permits that "each of the spouses is free to select his or her own occupation, profession, and place of residence." Moreover, Article 36 of the same legislation provides that "if an international treaty or agreement to which the Soviet Union is a signatory establishes rules other than those contained in the Soviet laws on marriage and the family, the rules of that international agreement shall be given effect." The Soviet Constitution also contains broad civil rights language covering such freedoms as the freedom to marry and the right to exit the state. However, it must be understood that human rights provisions are subject to different interpretations under a communist government. For example, Article 59 of the Soviet Constitution declares that a "[c]itizen's exercise of their rights and freedoms is inseparable from the performance of their duties and obligations." Further, Article 39 requires that the exercise of these rights may not "be to the detriment of the interests of society or the state, or infringe the rights of other citizens.

3. International Law and Soviet Legal Theory.—The language of Articles 59 and 39 of the Soviet Constitution not only explains the problems inherent in the Soviet interpretation of human rights, it demonstrates the crux of the controversy behind separated spouses. In Marxist-Leninist theory, the state is the primary basis of the individual; this notion is entirely irreconcilable with Western political theory. Under Soviet theory, any individual who exercises a right purportedly against a state interest is thus exercising that right against himself and his most basic interests.

This view of the State as the primary basis of the individual is consonant with the Soviet perspective regarding implementation of the international law governing human rights. The human rights

132. Id.
133. Spouses Professor McClellan and Francis Pergericht spoke about the broad human rights language of the Soviet Constitution. According to Francis Pergericht, it is "a wonderful document" in theory. Interview with McClellan, supra note 12; Interview with Pergericht, supra note 16; see also KONSTITUTSIYA (OSNOVNOI ZAKON) (Constitution (Fundamental Law)) (U.S.S.R.).
135. KONSTITUTSIYA (OSNOVNOI ZAKON) (Constitution (Fundamental Law)) art. 59 (U.S.S.R.); see generally supra note 90.
136. Dean, supra note 134.
137. Id.
138. Examples of basic interests that are safeguarded by the Soviet State include the right to work, the right to medical care, the right to housing, and the right to education. Id.
provisions present in international law provide the states with an implementation role for safeguarding individual freedoms. This role gives the Soviet Union the necessary leverage to respect human rights only when they are reconcilable with the communist state interest. Thus, since the state is supreme over the individual, any individual interests will be implemented only insofar as they coincide with the interests of the Soviet state.

Although a discussion of Soviet law and Soviet legal theory somewhat clarifies the Soviet government's view towards human rights, it does not begin to redeem nor explain the Soviet attitude regarding spouses separated by national boundaries. First, and most significantly, by complying with international agreements only when it is in the best interest of the state, the Soviet Union cannot expect United States compliance with these same agreements. In arbitrarily adhering to some international legal standards while ignoring others, the Soviet Union is effectively cancelling the human rights provisions in international law. In the past, the Soviets have settled cases and complied with the international law in divided spouse/blocked marriage situations. This fact suggests that the Soviet Union at least realizes the political importance of compliance, even if it does not seem to recognize its legal significance.

Second, once a Soviet marries an American, that Soviet citizen becomes a "traitor" to the Soviets, and is no longer considered useful to the state. Under this theory, it follows that it would be in the best interests of the Soviet government to let these undesirable citizens emigrate. This reaction seems to be more logical than the current Soviet practice of creating a conflict over an "undesirable" citizen.

Finally, separated couple cases represent merely an insignificant occurrence with respect to the larger picture of Soviet human rights violations. It would appear that Soviet interests would be best served by resolving the few remaining cases and dealing favorably with transnational marriage in the future. Given the current visibility of divided spouse/blocked marriage cases, the present state of affairs is counterproductive, and casts the Soviets in a generally unfavorable light. Accordingly, optimal United States pressure for settlement of cases should not only focus on the legal issues involved, but on the

139. Id.
140. Id.
141. Id.
142. In almost all of the cases, the Soviet spouse has faced public shunning, underemployment or unemployment, and government harassment. The marriage of a Soviet citizen to an American characterizes the Soviet as a traitor to the Soviet government and its citizens. Interview with McClellan, supra note 11.
political aspects implicated by the Soviet interest in its international image.

V. Remedies

A. Private

Private remedies for resolution of divided spouse and blocked marriage cases are few. Since case settlement depends on governmental pressure imposed upon high officials, private citizens are limited in their individual efforts. Generally, private efforts — such as the band of private citizens who represent the Divided Spouses Coalition — are aimed at exerting pressure for governmental action. Moreover, because of the national and international complications with respect to separated couples, these private citizens lack many legal remedies.

Private citizens may not enter the International Court of Justice on their own behalf, as that right is reserved only to states. Further, the national court system that citizens do have access to cannot dictate to other nation-states nor usurp the political rights of its own state by involving itself in international issues. This was demonstrated in the case of Frolova v. Union of Soviet Socialist Republics, in which an American divided spouse brought an action against the Soviet Union. She claimed that their refusal to allow her husband to emigrate was a personal injury to her. Her cause of action was based upon the tort liability of loss of consortium. The court dismissed the case, basing its decision on the Act of State Doctrine. The court held that, "the Soviet Union's actions in this case... are clearly the actions of a sovereign state and this court will defer from sitting in judgment of them."

143. For a discussion of the Divided Spouses Coalition, see supra note 18.

144. Both Woodford McClellan and Keith Braun assert that the organization of private citizens facing a divided spouse or blocked marriage problem is crucial. 1986 Interview with Braun, supra note 16; Interview with McClellan, supra note 12. Moreover, Jill Goldenberg states that many cases have been resolved since the birth of the Divided Spouses Coalition. This factor may be evidence that where individuals may fail to be heard, private organizations may succeed in creating the necessary pressure. Interview with Goldenberg, supra note 4.

145. See generally Statute of the International Court of Justice [hereinafter Statute of ICJ].


147. Frolova, at 364. Although the court dismissed this case based on the Act of State Doctrine, which requires that suits involving political actions of other states should be dealt with diplomatically and not judicially, Frolova presented a compelling argument. The Doctrine of Sovereign Immunity provided for a judicial remedy exception where there was the involvement of a private tortious act committed by a state. The court stated that it perceived that the Frolova case was out of the contemplation of this exception because denial of emigration was essentially a public, not a private, act. Yet, the court seemed unsure of the validity of this distinction, and declined to rest the case on this alone. It was ultimately the court's reasoning with respect to the Act of State Doctrine that provided the basis for dismissal of the action.
B. The Press

Although press coverage may not properly be considered a formal remedy, its capacity to aid resolution of divided spouse and blocked marriage cases cannot be ignored. As a vehicle that crosses private, national and international boundaries, the media provides information and generates concern in the United States over the issue of separated spouses.\footnote{148}

To the Soviets, unattractive media portrayals of these separated spouse cases as human rights violations are undesirable in that they create bad international perceptions of Soviet society.\footnote{149} Yet, the use of bad press to urge Soviet resolution of separated spouse cases can be considered a double edged sword. Many of the American spouses shun publicity because they fear that public condemnation would only provide the Soviets with more reason to decline settlement of their cases.\footnote{150}

Originally, Keith Braun declined publicity for his divided spouse case for this reason. However, after two years, he decided that seeking press coverage could no longer harm his chances for obtaining his wife's exit from the Soviet Union.\footnote{151} Braun claims that the choice of seeking press coverage is "a close call."\footnote{152} In his estimation, two years of quiet persuasion was enough.\footnote{153}

For spouses such as Keith Braun who wish to seek media coverage, the range of options are plentiful. Talk shows,\footnote{154} newspaper articles,\footnote{155} columns,\footnote{156} and magazines\footnote{157} have featured articles about

\footnote{148. Professor McClellan asserts that the media is an important forum by which spouses may gain recognition. Interestingly, in his particular situation, a front-page New York Times article about his case was published just days before the Soviet Union informed his wife that she was free to emigrate. Interview with McClellan, \textit{supra} note 12.

149. Elena Balovlenkov, a divided spouse and a representative for the Divided Spouses Coalition, pointed out in a hearing before the Helsinki Commission that the Soviet Union often complains of unfavorable American press coverage. She implied that if the Soviets did not like the media attacks, then perhaps they should resolve some of the pending divided spouse/blocked marriage cases in order to improve their international press image. Balovlenkov Testimony, \textit{supra} note 130.

150. Interview with Goldenberg, \textit{supra} note 4.

151. 1986 Interview with Braun, \textit{supra} note 16.

152. \textit{Id}.

153. \textit{Id}.

154. Examples include: \textit{NBC Today}, \textit{supra} note 38 and "1986", \textit{supra} note 32.

155. Because of the long list of news articles on the subject, it would be cumbersome to list all of the recent coverages. The Divided Spouse Coalition Newsletter, however, keeps careful data on the many articles about divided spouse/blocked marriage issues in the newspapers. Along with local papers of some of the separated couples, the Newsletter cites that internationally circulating papers such as the New York Times, the Washington Post, the Christian Science Monitor and the Wall Street Journal have all covered the issue. 1986 Interview with Braun, \textit{supra} note 16; 1987 Interview with Braun, \textit{supra} note 10.


157. The best example of a comprehensive magazine article about divided spouses/blocked marriages appeared in \textit{U.S. News \\& World Rep}. This article also included compelling pictures of the Soviet spouses that were provided by Ambassador Novak. \textit{U.S. News \\&}
couples separated by national boundaries, and have termed them violations of human rights. Hence, the press represents a widespread and inexhaustible source for spouses who seek recognition. The power of media attention brings with it not only national concern for the issue of separated spouses, but may also have a positive impact in urging Soviet resolution of cases.

C. National and International

On both the national and international levels, remedies for resolution of separated spouse cases historically have been sought through diplomatic channels rather than by judicial means. Although states may appeal to the International Court of Justice (ICJ) over disputes concerning violations of international law, it is unlikely that the small number of separated spouse cases would prompt the United States to seek such a remedy. Moreover, it is uncertain whether such a remedy would be desirable, as ICJ decisions fall on deaf ears when states choose to ignore the court’s mandates.

Solutions to divided spouse and blocked marriage cases are obtained essentially through national and international diplomacy. Specifically, the “Helsinki process” provided for by the 1975 Final Act establishes a forum for negotiations regarding transnational marriage and human rights. In addition, summit meetings of the superpowers, and smaller scale ministry meetings provide other bases by which bargaining on behalf of separated spouses may be achieved.

Despite the broad range of diplomatic verbiage, however, it is unclear to what extent diplomatic efforts really provide a solution. Given the Soviet Union’s inconsistent actions with regard to separated spouse resolution and the implications that Soviets use these cases as bargaining chips, it appears that cases are often settled not because of diplomatic pressure, but because of beneficial Soviet interest in the settlement. In this way, it is impossible to ascertain which case resolutions have been directly related to diplomatic

World Rep., supra note 40.

158. Under Article 38 of the Statute of the International Court of Justice, the ICJ is authorized to apply international conventions, international custom, and general principles of law. In this way, the non-binding nature of the Helsinki Final Act of 1975 by no means precludes international judicial deference to the force of the document. Statute of the ICJ, supra note 145, art. 38.

159. This was evidenced most recently in the United States’ non-acceptance of the International Court’s decision regarding American intervention in Nicaragua.

160. The “Helsinki Process” is a series of meetings of the Accords signatory nations, such meetings being conducted to discuss compliance with the Final Act of 1975. Implementation of the Helsinki Final Act, supra note 36.

161. Examples of Soviet-American meetings where separated couple issues are discussed include the 1986 Geneva Summit, the 1986 Shultz-Shevardnadze Meetings, and the 1986 Iceland Summit. Interview with Goldenberg, supra note 4.
remedies.

VI. Conclusion

They are indeed ordinary people. Yet, these men and women separated by national boundaries are victims and prisoners of an extraordinary international situation. However politically insignificant they are themselves, they must battle for their basic right to marry and to live together within the intensely political framework of superpower tensions. It is uncertain whether this cold war friction will ever ease to the extent that transnational marriages between Americans and Soviets will cease to be used as international bargaining chips. Even if more agreements compelling favorable treatment of transnational marriages are adopted, it is unlikely that the reality of separated couples would change.

As long as the Soviet perception of human rights remains consistent with Marxist-Leninist theory and existing international legal instruments lack adequate enforcement provisions, international agreements will never compel the Soviet Union to implement human rights provisions when it is not in its own best interest. Given this grim reality, the best hope for the future of transnational marriages is for the United States to make it clear that resolution of divided spouse and blocked marriage cases must be in the Soviet Union's interest if it wishes to negotiate on other matters of importance.

As Ambassador Novak ended his address to the plenary of the Bern conference, resolution of all separated couple cases:

. . . would be but a modest gesture . . . The numbers of cases are small, and love between married persons touches human hearts everywhere. My delegation would welcome — and fully praise — all steps made in this direction. A small gesture, we would regard it as quite significant: wiping the slate clean, for mercy's sake, in the name of a new beginning in the field of human contacts.163

Mercy aside, and for the sake of the Soviet Union's interest in continued relations with the United States, a slate forever free of separated couples may be the most persuasive chip the Soviet government can bring to the bargaining table.

Julia T. Garrett

---

162. See supra text accompanying notes 138-141.
163. Novak Address to Bern Conference, supra note 2.