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President: Sir Douglas COPLAND (Australia).

Present:

The representatives of the following countries: Argentina, Australia, China, Czechoslovakia, Dominican Republic, Ecuador, Egypt, France, India, Netherlands, Norway, Pakistan, Turkey, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Yugoslavia.

Observers from the following countries: Chile, Indonesia, Iran, Mexico, Philippines.

The representatives of the following specialized agencies: International Labour Organisation, United Nations Educational, Scientific and Cultural Organization.

AGENDA ITEM 18

Recognition and enforcement abroad of maintenance obligations (E/2711 and Add.1 to 3, E/L.662)

1. Mr. DONS (Norway) recalled that in pursuance of Council resolution 527 (XVII) the Secretary-General had consulted States Members of the United Nations, and those non-members of the United Nations which were members of specialized agencies, with a view to ascertaining whether they considered it desirable to convene a conference of plenipotentiaries to complete the drafting of the Convention on the Recovery Abroad of Claims for Maintenance,¹ and whether they were prepared to attend such a conference.

2. The Secretary-General's report (E/2711) showed that twenty-seven Governments had submitted affirmative answers to the inquiry concerning the desirability of calling such a conference, whilst nineteen had said that they would attend.

3. Since so many Governments wished the conference to be held, and since the cost to the United Nations would be very small, he hoped that those delegations which were not directly interested would nevertheless not oppose the draft resolution submitted by his delegation (E/L.662).

4. Mr. HOTCHKIS (United States of America) said that his country had always been in sympathy with efforts to ensure that dependants in one country were supported by the persons responsible for their

¹ Official Records of the Economic and Social Council, Seventeenth Session, Annexes, agenda item 17, document E/AC.39/1, annex I.

maintenance living in another country. Nevertheless, his delegation opposed the conclusion of a multilateral convention to achieve that end, since the administrative and financial problems involved might well outweigh any benefits which would be derived by dependants who had been left without support. Actions for non-support involved complex questions of private law which would be complicated still further by differences in the legal systems and currency regulations of various countries.

5. His delegation had supported Council resolution 527 (XVII), which recommended Governments to use the text of the Model Convention on the Enforcement Abroad of Maintenance Orders as a guide for the preparation of bilateral treaties or uniform legislation to be enacted by individual States, and still felt that such bilateral agreements would be the most effective solution.

6. He would therefore vote against the Norwegian draft resolution.

7. Mr. SCHURMANN (Netherlands) expressed his Government's disappointment at the reluctance shown by some Governments in dealing with the subject of the recovery abroad of claims for maintenance. Only the Governments of Belgium, Monaco and Portugal, and the Holy See had expressed their warm approval of the humanitarian motives which had actuated the original sponsors of the draft convention. Every effort should be made to furnish women, children and the aged abandoned by those who should provide for them with the means of redress to which they were entitled. The matter had become one of particular urgency. The social services of the countries in which abandoned persons lived could provide only a bare minimum. The fact that such relief was available should not be a reason for migrants to disregard their own responsibilities. A situation in which a father or husband abroad was practically exempt from the responsibility of contributing to the maintenance of his family was socially unhealthy. Immunity from suit enabled such a person to compete unfairly in the labour market with the citizens of his new place of residence; he could accept lower wages and his employer might escape paying the special family allowances that were due to those having their family with them. The municipal laws of most, if not all, countries had expressly laid down the maintenance obligations which the draft convention sought to render recoverable abroad. Their *ratio legis* lost none of its weight in connexion with cases in which the person who owed maintenance had established his residence in a country other than that in which his dependants lived. Admittedly, the validity, substance and scope of the obligation itself might be affected by the fact that the claimant resided outside the Court's territorial jurisdiction or by differences in nationality or domicile, but countries which recognized that a maintenance obligation existed should be willing to set up effective international machinery to enable claimants to recover what was due to them.

8. The draft convention aimed only at rendering such recovery effective, by making it possible for alien maintenance creditors to submit their case to the court of the debtor's residence. The court would apply its own municipal law in deciding whether it would have to adjudicate. The draft convention attempted to set up machinery for facilitating formalities, which should not be allowed to stand in the way of the rule of law.

9. Accordingly, his Government was in favour of the proposed international conference, but with certain reservations. The Luxembourg Government had proposed that the conference should be postponed until the diplomatic Hague Conference on International Private Law had completed its work. The Hague Conference was dealing mainly with the problem of the conflict of laws in general. When it had undertaken to study maintenance obligations, it had first sought to find whether a single rule could be established which would ensure that a given case would be adjudged according to one and the same law, whatever the country in which it was brought before a court. Once the municipal authorities concerned had realized that every maintenance order, even if given by the judiciary of a foreign country, would be based on the same State-law as if it had been granted by their own courts, there would be no difficulty in obtaining enforcement orders in foreign countries for domestic judgments, except in cases of incompatibility with public policy. A committee of the Hague Conference had adopted a draft convention embodying the rule that international cases would be governed by the law of the habitual residence of the maintenance creditor, but that rule was to apply only to obligations toward minors. It had been considered that that was the most urgent problem. The committee's draft would be discussed by the full Conference in October 1956. The Conference was also considering whether its solution with regard to conflicts of laws could be combined with some system of international legal aid which would enable the law applicable to a given case by general rule to be rendered effective. That could be done on two main principles: that of the enforcement abroad of domestic judgments and that of legal aid facilitating the pleading of a case in the country of the debtor's residence.

10. The Netherlands Government doubted whether the United Nations would be well advised to abandon its work on maintenance obligations in view of the initiative taken by the Hague Conference and could not agree with the Luxembourg Government's proposal to that effect. A United Nations draft convention might usefully supplement the work of the Conference. The problems of the conflict of laws could not, however, be appropriately studied outside The Hague Conference. A United Nations conference, if convened, should seek to establish some contact with The Hague Conference for exchange of information on the progress achieved. The Hague Conference might well be invited to send an observer and care should be taken to see that the dates of the two conferences did not coincide, as there were few experts in that highly specialized field of law. The Netherlands Government would not regard its participation in a United Nations conference as precluding it from supporting any action taken by The Hague Conference with regard to procedure. The Hague Conference was virtually regional, its partici-

pants being linked together by the 1905 Hague Convention relating to Civil Procedure, and could undoubtedly reach an agreement more easily than the larger body of the United Nations. Some members, too, were not Members of the United Nations, and the Netherlands Government would not wish to prejudice their rights.

11. With those provisos, he would support the Norwegian draft resolution (E/L.662).

12. He wished, however, to propose the following amendment: the insertion, after the word "Council" in operative paragraph 1 (b), of the words "as well as The Hague Conference on International Private Law and the International Institute for the Unification of Private Law".

13. Mr. SCOTT FOX (United Kingdom) said that his delegation was conscious of the urgency of the question under consideration but doubted whether a conference to discuss an international convention was either desirable or practicable. Problems which could be successfully treated through international conventions were mainly of a general rather than a specific nature, so that such conventions could be accepted and put into effect by Governments without far-reaching amendments of domestic law and practice. Multilateral conventions usually governed the general international relations of the States parties to them and not their detailed relations with each other. The question of the recognition and enforcement abroad of maintenance obligations involved such detailed relations, and the problems arising affected many aspects of law and practice in different States. The problems raised by the application of a multilateral convention would differ from country to country, so that it would be almost impossible to draft a single convention acceptable to a large number of States.

14. The draft conventions drawn up by the Committee of Experts on the Recognition and Enforcement Abroad of Maintenance Obligations were admirable in themselves and might well serve as a useful guide to Governments in preparing bilateral agreements, which offered the most hopeful prospect of solving the problem.

15. Mr. LOUFI (Egypt) also thought that it would be inadvisable to call a conference to draft a convention. The differences in the legal systems of various countries were bound to lead to fundamental and procedural complications and the preparation of a general multilateral convention would be extremely difficult. His delegation therefore welcomed the suggestion in the Secretary-General's report (E/2711, para. 13) that the Council might request the Secretary-General to consult with Governments and with the organizations more directly concerned regarding ways of facilitating the enforcement abroad of maintenance obligations, but it would be unable to support the Norwegian draft resolution (E/L.662).

16. Mr. EPINAT (France) welcomed the Netherlands amendment.

17. His delegation believed that a conference should be held if a sufficient number of Governments desired to participate and would therefore support the Norwegian draft resolution.

18. Mr. AKANT (Turkey) said that bilateral negotiations represented the only possibility of solving so complex a problem. He would therefore vote against the Norwegian draft resolution.

19. Mr. ZAHIRUDDIN (Pakistan) expressed his delegation's sympathy with the humanitarian objectives of the Norwegian resolution, but felt that the existing arrangements within countries, supplemented where necessary by bilateral arrangements, were largely adequate for dealing with the problem. An international agreement of the type proposed would be most difficult to achieve and for that reason, the proposed conference was not desirable.

20. Mr. HSIA (China) said that his Government had carefully studied the question of the recognition and enforcement abroad of maintenance obligations, particularly in view of the large number of Chinese nationals who resided abroad. It had come to the conclusion that the convening of a conference of plenipotentiaries to complete the drafting of and to sign the Convention on the Recovery Abroad of Claims for Maintenance was desirable. While it appreciated the practical difficulties to which the United States representative had referred, in point of fact the conclusion of a multilateral convention would not preclude States from entering into bilateral agreements if they wished.

21. For the reasons given, the Chinese delegation would support the Norwegian draft resolution and the Netherlands amendment to it.

22. Mr. PRADO (Ecuador) said that his country, while not directly concerned with the question before the Council, would be willing to take part in the conference proposed in the Norwegian draft resolution and would therefore cast an affirmative vote.

23. Mr. RAJAN (India) said that the question of the recognition and enforcement abroad of maintenance obligations was adequately covered under Indian law. Moreover, India had reciprocal arrangements with seventeen States for the purpose of enforcing maintenance orders. As only a very few cases had arisen over a period of several years, the problem was not of immediate concern to India.

24. However, in recognition of the fact that a number of Governments considered an international conference desirable, the Indian delegation proposed to abstain from voting on the Norwegian draft resolution.

25. Mr. GINEBRA HENRIQUEZ (Dominican Republic) said he would vote in favour of the draft resolution in accordance with his Government's affirmative reply to the Secretary-General's inquiry as to whether Governments considered a conference desirable.

26. Mr. BOZOVIC (Yugoslavia) felt that the humanitarian and social aspects of the question outweighed the practical difficulties to which some representatives had referred. Positive action was needed to prevent persons from simply moving to another country in order to shirk their family obligations. Bilateral agreements had failed to provide an adequate solution.

27. While the question was not of vital concern to Yugoslavia, the Yugoslav delegation would vote for the Norwegian draft resolution and the Netherlands amendment.

28. Mr. LOOMES (Australia) said that in Australia the enforcement of maintenance obligations was a matter for the individual states which comprised the Commonwealth. In view of the constitutional or other considerations involved, the Australian delegation was not in a position at that time to state whether or not Australia would participate in the conference proposed in the Norwegian draft resolution.

29. However, in deference to the views of the Governments which considered the conference desirable, he would abstain from voting.

30. Mr. PEREZ PEROZO (Venezuela) doubted that a multilateral convention would provide a solution to the problem. However, he would not oppose the wishes of the Governments in favour of the conference and would therefore abstain from voting. Should the Norwegian draft resolution be adopted, Venezuela would consider whether or not to participate in the work of the conference.

31. Mr. SCHURMANN (Netherlands) observed that the representatives of States opposed to the conference had argued that the problem was too complex to be solved by a multilateral convention. In point of fact, however, the very complexity of the problem precluded its solution by means of bilateral agreements and called for some sort of international arrangement, the more so in view of the differences in the legal systems of countries. The purpose of the conference would be to devise some means whereby a claimant in one country, particularly if unfamiliar with legal matters and unable to afford counsel, could seek redress in another country in respect of a relative's failure to meet his maintenance obligations. There was no question of interfering with the domestic law of any State.

32. Mr. HOTCHKIS (United States of America) maintained his opposition to the proposed conference. If a problem was considered too complex to be solved by bilateral agreement, there was even less reason to believe that it could be solved by a multilateral convention.

33. Mr. MIRANDE (Argentina) said that Argentina had no problems with the enforcement of maintenance obligations, but would not place any obstacles in the way of countries which had. He would accordingly abstain on the draft resolution and, if it was adopted, his Government would decide in due course whether it would attend the proposed conference.

34. Mr. DONS (Norway) accepted the Netherlands amendment.

The Norwegian draft resolution (E/L.662), as amended, was adopted by 7 votes to 3, with 8 abstentions.

AGENDA ITEM 22

Non-governmental organizations (E/2751)

REPORT OF THE COUNCIL COMMITTEE ON NON-GOVERNMENTAL ORGANIZATIONS ON APPLICATIONS FOR HEARINGS (E/2751)

35. Mr. RIVAS (Venezuela), as the Chairman of the Council Committee on Non-Governmental Organizations, introduced the Committee's report (E/2751) and stated that the applications by organizations in

category A for a hearing by the Council would be found in the summary record of the relevant meeting (E/C.2/SR.153 and Add.1).

36. Speaking as the representative of Venezuela, he said that there had been no objection to his delegation's stipulation that speakers on item 16 (Allegations re-

garding infringements of trade-union rights) should bear in mind the terms of Council resolution 277 (X).

The report of the Council Committee on Non-Governmental Organizations (E/2751) was adopted.

The meeting rose at 12.20 p.m.