The United Nations Convention on the Recovery Abroad of Maintenance

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THE UNITED NATIONS
CONVENTION ON THE RECOVERY ABROAD
OF MAINTENANCE

PAOLO CONTINI †

INTRODUCTION

On June 20, 1956 the United Nations Conference on Maintenance Obligations adopted and opened for signature the Convention on the Recovery Abroad of Maintenance. This was the last of a long series of steps taken by the international community in an effort to improve the condition of dependents—mostly women and children—abandoned without support by men who moved to other countries.

The complete text of the Convention is set forth in the Appendix to this Article.

Although there are no reliable statistics on the numbers of persons involved, it is generally recognized that since the Second World War the size of the problem has been magnified by various factors. Large numbers of European refugees and emigrants have moved to countries overseas since the War.

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1 An indication of the numbers of dependents in need of assistance was given by the Director-General of the International Social Service, who stated at the Conference on Maintenance Obligation that in 1955 his agency alone had dealt with 45,600 cases of non-support in seventy-two countries. United Nations document E/CONF.21/SR.4, p. 2
In many cases families have been separated, and dependents have not continued to receive support from breadwinners abroad.\textsuperscript{2} Thousands of soldiers who were stationed in foreign countries have returned to their homes leaving behind illegitimate children, and have failed to provide for their maintenance.\textsuperscript{3}

A dependent seeking to obtain support from a recalcitrant debtor in another country is faced with almost insuperable legal obstacles,\textsuperscript{4} and the cost involved is such as to discourage most claimants from even attempting to commence proceedings in a foreign country.

For many years efforts have been made to devise legal means to assist abandoned dependents in obtaining support from persons responsible for their maintenance who are living in another country.\textsuperscript{5}

In 1929 the League of Nations referred this question to the Rome Institute for the Unification of Private Law. The Institute drew up a preliminary draft Convention in 1938, but the work could not be completed because of the outbreak of war the following year. The subject was discussed in 1947 at the Social Commission of the United Nations, and the Rome Institute prepared a revised draft Convention in 1949.\textsuperscript{6}

The Rome draft generally followed the pattern of existing treaties on the enforcement of foreign judgments. It provided for the recognition and enforcement by \textit{exequatur} of foreign maintenance orders, subject to certain conditions.

\textsuperscript{2} See statement by the International Conference of Catholic Charities, E/C.2/466.
\textsuperscript{3} Some estimates of the number of children of American soldiers stationed abroad are given by Norman M. Lobenz, \textit{The Sins of the Fathers}, Redbook, April 1956.
\textsuperscript{5} A summary of the various steps taken prior to the Conference on Maintenance Obligations may be found in Contini, \textit{The United Nations Draft Conventions on Maintenance Claims}, 3 \textit{Am. J. Comp. L.} 543 (1954).
As not all Governments agreed with the method followed in the Rome draft, the Economic and Social Council, by resolution 390(XIII)H of August 9, 1951, requested the Secretary-General to convene a committee of experts to prepare "the text of a model convention or model reciprocal law, or both." The Secretary-General was also requested to draw up one or more working drafts for the committee.

The Secretariat prepared two projects, a "Model Convention on the Enforcement of Maintenance Obligations" and a "Model Agreement on Maintenance Obligations." The first was substantially similar to the Rome draft. The second, on the other hand, followed an entirely different approach, and was an adaptation of the system of uniform support legislation in force between the various States of the United States. The two working drafts were envisaged as complementary to one another, the first being intended primarily for countries familiar with the *exequatur* procedure, and the second for countries where such procedure is unknown.

The Committee of Experts appointed by the Secretary-General met in Geneva in August 1952. Having considered the various possible approaches, the Committee concluded that a convention for the enforcement of foreign maintenance orders would not reach the heart of the problem. In most cases, the persons liable for support have already gone abroad before a dependent obtains a maintenance order. It would be almost impossible to obtain jurisdiction over an absent respondent and to secure a maintenance order from a court of the country where the claimant resides. In view of the difficulty of obtaining a maintenance order in the first place, a convention for the purpose of enforcing foreign maintenance orders in the country of residence of the respondent, would

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7 E/AC.39/L.3.
9 The main provisions of the Secretariat draft are summarized in the discussion of Article 2 of the Convention. See text at notes 43-47 infra.
10 Prof. E. M. Meijers (Netherlands), Chairman; Prof. H. E. Yntema (United States), Vice-Chairman; Mr. M. Matteucci (Italy), Rapporteur; Mme. M. Kraemer-Bach (France); Prof. K. Lipstein (United Kingdom); Mr. E. A. Saleh (Lebanon); Prof. F. C. de San Tiago Dantas (Brazil), Members.
apply only to a few cases of non-support. On the other hand, the Committee of Experts thought that a convention which would make it easier for dependents to secure a maintenance order in the country of residence of the respondent, would have a great practical value. Accordingly, the Committee devoted most of its time to developing the system envisaged in the second working draft prepared by the Secretariat. The result was a project of a multilateral instrument called Draft Convention on the Recovery Abroad of Claims for Maintenance.\(^{11}\)

In addition, the Committee of Experts considered that the existing procedures for the enforcement abroad of maintenance orders could be usefully improved, and this would benefit a dependent who had obtained a court order in his or her own country. Thus the Committee, following closely the lines of the Secretariat's first working draft, drew up also a Model Convention on the Enforcement Abroad of Maintenance Orders\(^{12}\) which was intended to be used primarily as a model for bilateral treaties between countries permitting the enforcement of foreign judgments by _exequatur_ or registration.

The report of the Committee of Experts was considered at the seventeenth session of the Economic and Social Council in April 1954. The Council adopted resolution 527(XVII) in which it recommended that Governments use the Model Convention as a guide for the preparation of bilateral treaties or uniform legislation to be enacted by individual States. As regards the draft multilateral convention, the Council requested the Secretary-General to ascertain from Governments whether they considered it desirable to convene a conference of plenipotentiaries to complete the drafting of the Convention, and whether they would be prepared to attend such a conference.

As a result of this consultation the Economic and Social Council, by resolution 572(XIX) adopted on May 17, 1955, decided to convene a conference of plenipotentiaries to complete the drafting of, and to sign a Convention on the Recovery Abroad of Claims for Maintenance.

\(^{11}\) E/AC.39/1, Annex I.
\(^{12}\) E/AC.39/1, Annex I.
The United Nations Conference on Maintenance Obligations met at the Headquarters of the United Nations in New York from May 29 to June 20, 1956. Thirty-two Governments\textsuperscript{13} participated in the Conference and nine other Governments\textsuperscript{14} were represented by observers. The Conference was also attended by delegates from the International Labour Organisation, the Inter-Governmental Committee for European Migration, the International Institute for the Unification of Private Law and twenty-one non-governmental organizations. Sir Senerat Gunewardene of Ceylon was elected President of the Conference.

The draft Convention on the Recovery Abroad of Claims for Maintenance prepared by the Committee of Experts was used as the basis of discussion. Each article was first discussed at the plenary session of the Conference, and then referred to a Working Party, composed of the representatives of ten States, for further elaboration. The recommendations of the Working Party were then referred back to the Conference for final approval.

On June 20, 1956, the Conference adopted unanimously, and opened for signature, the Convention on the Recovery Abroad of Maintenance.\textsuperscript{15}

**Preamble**

*Considering* the urgency of solving the humanitarian problem resulting from the situation of persons in need dependent for their maintenance on persons abroad,

*Considering* that the prosecution or enforcement abroad of claims for maintenance gives rise to serious legal and practical difficulties, and

*Determined* to provide a means to solve such problems and to overcome such difficulties,

*The Contracting Parties have agreed as follows:*

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\textsuperscript{13} Afghanistan, Argentina, Austria, Belgium, Bolivia, Cambodia, Ceylon, China, Colombia, Costa Rica, Cuba, Denmark, Dominican Republic, Ecuador, El Salvador, France, Federal Republic of Germany, Greece, Iran, Israel, Italy, Japan, Korea, Mexico, Monaco, Netherlands, Norway, Philippines, Sweden, Uruguay, Vatican City, Yugoslavia.

\textsuperscript{14} Canada, Czechoslovakia, Guatemala, Lebanon, Peru, Switzerland, Turkey, United Kingdom, Venezuela.

\textsuperscript{15} E/CONF.21/5.
Article 1

Scope of the Convention

1. The purpose of this Convention is to facilitate the recovery of maintenance to which a person, hereinafter referred to as claimant, who is in the territory of one of the Contracting Parties, claims to be entitled from another person, hereinafter referred to as respondent, who is subject to the jurisdiction of another Contracting Party. This purpose shall be effected through the offices of agencies which will hereinafter be referred to as Transmitting and Receiving Agencies.

2. The remedies provided for in this Convention are in addition to, and not in substitution for, any remedies available under municipal or international law.

The first article of the Convention was discussed in great detail by the Working Party and the plenary session of the Conference. It presented considerable drafting difficulties, and was finally agreed upon only during the last stage of the Conference.

Meaning of Maintenance

Article 1 of the Committee of Experts’ draft contained definitions of “claimant,” “respondent,” “transmitting agency” and “receiving agency.” After considering a proposal by Israel, to add a definition of “maintenance” and “infant child,” the Conference decided to omit altogether the article on definitions and to replace it with an article describing the scope of the Convention.

The first paragraph of Article 1 provides that “the purpose of this Convention is to facilitate the recovery of maintenance to which a person ... claims to be entitled from another person.” In the absence of a definition of “maintenance” several questions may be asked: is the Convention intended to apply only to obligations arising ex lege from a family relationship or also to contractual obligations of support? Does the word “maintenance” include the pay-
ment of social security or other benefits payable by a juridical person towards the support of a claimant? Can a divorced wife invoke the Convention to obtain payment of alimony?

Article 1 of the Secretary-General's working draft specified that the Convention would apply to "a duty to support established by the applicable law," and it was explained in the commentary that "the words 'established by the applicable law' are intended to exclude . . . any contractual obligation of support not derived directly ex lege." The Committee of Experts, in the process of changing the Secretariat draft for the purpose of adding a definition of the relatives entitled to maintenance, omitted the expression "established by the applicable law." The proceedings of the Committee, however, do not disclose any intent to extend the application of the Convention to contractual obligations. At the Conference, several delegates indicated that the Convention would apply only to maintenance obligations arising by virtue of a family relationship. Since this view was not disputed, it seems clear that the Conference did not intend to extend the Convention to maintenance obligations deriving from contractual arrangements.

The question whether social security and similar payments might be regarded as within the scope of the Convention was raised by the representative of the International Labour Organisation. In replying, a number of delegates unequivocally stated that the word "maintenance" as used in the Convention could not apply to social security or other payments by juridical persons.

Neither the Committee of Experts nor the Conference discussed specifically whether "maintenance" may include alimony payable to a divorced wife. However, the Committee, by defining a "claimant" as "the person who claims to be entitled to maintenance by an ascendant, descendant, or spouse" (Article 1), seemed to indicate that the draft

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18 Id. at 11.
21 See statements by the delegates of the Philippines, Uruguay, El Salvador, Italy, France, Israel, Columbia and the Observer from Canada. Id. at 8-9.
Convention was not meant to apply to a former spouse. The Conference decided to omit any definition of the categories of relatives entitled to maintenance, but in so doing, as will be explained below, it was motivated by reasons entirely unrelated to the subject of alimony. The only reference to this matter was made by the delegate of Japan who expressed the opinion that alimony after divorce was not covered by the draft Convention, a view that seemed to reflect the general understanding of the Conference.

Who is a "Claimant" Under the Convention

The Conference debated at length the question of which dependents should be regarded as "claimants" under the Convention. In the Secretariat draft a dependent was "any person whom the obligor has a duty to support" under the law of the State where the obligor resides. The Committee of Experts decided instead to specify the categories of dependents, and adopted the following clause:

(a) "Claimant" means the person who claims to be entitled to maintenance by an ascendant, descendant, or spouse. The terms "ascendant" and "descendant" mean all persons related in direct line either by blood or by operation of law.

Thus the draft Convention, in addition to applying to the spouse and all lineal ascendants and descendants, was intended to cover adopted children and children born out of wedlock.

At the Conference the delegates of China and Yugoslavia said that the version of the Committee of Experts seemed too restrictive. The representative of China stated that, in accordance with the Chinese conception of family solidarity, the Civil Code established a mutual obligation of maintenance for all ascendants and descendants, brothers and sisters, and the spouse’s parents. The representative of Yugoslavia said that under the law of that country ascen-

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22 E/CONF.21/SR.4, p. 9.
23 E/AC.39/L.6, art. 1(a), (b).
24 E/AC.39/1, Annex I, art. 1(a).
25 E/AC.39/1, ¶ 30.
26 E/CONF.21/SR.2, p. 4.
dants, descendants, the spouse, brothers and sisters, and the divorced spouse, if without means, were entitled to maintenance.\footnote{E/CONF.21/SR.4, p. 11.} Instead, other delegations thought that the Committee of Experts had gone too far. The representative of Israel said that there were not many States under whose legislation a wife was subject to the same maintenance obligations as her husband, and in numerous countries there was no obligation upon a man to support his parents.\footnote{E/CONF.21/SR.2, pp. 9-10.} For these reasons Israel proposed that the Convention should apply only to the maintenance obligations of a man towards his wife or of a parent towards his or her infant child (below the age of eighteen), whether legitimate or illegitimate.\footnote{E/CONF21/C.1/L.1.} The Belgian delegation proposed that the Convention should not apply to children born of an adulterous or incestuous relationship.\footnote{E/CONF.21/SP-8, p. 2.} The Conference finally decided to omit any definition of the categories of persons entitled to maintenance under the Convention and, reverting to a formulation similar to the Secretariat draft, adopted Article 1 which described a claimant simply as a person who “claims to be entitled (to maintenance) from another person.” This solution, as explained by the Chairman of the Working Group,\footnote{E/CONF.21/SR.8, p. 2.} was intended to obviate the possibility that some States might decline to adhere to the Convention because their legislation does not prescribe a duty of support in respect of all the categories of dependents included in the Committee of Experts’ draft.

In the absence of a definition, the question naturally arises as to which dependents are entitled to present a claim for maintenance under the Convention. Article 6, paragraph 3, which deals with the functions of the Receiving Agency in prosecuting an action for maintenance in the State having jurisdiction over the respondent, provides that “... the law applicable in the determination of all questions arising in any such action or proceedings shall be the law of the State of the respondent, including its private international law.”
Accordingly, the existence of a right to, and a duty of, maintenance is established by the law of the State of the respondent, namely the law of the State to whose jurisdiction the respondent is subject (Article 3, paragraph 1). Thus, a grandparent could claim maintenance under the Convention from a grandchild in another country even though, under the law of the State where the claimant resides he would not be entitled to support from his grandchildren. If the law of the State of the respondent makes it a legal duty to maintain one's ascendants, the claimant would be entitled to obtain a maintenance order under the terms of the Convention. At first sight it might seem strange that a person who would have no right to be supported if the respondent were in the same country, should be able to bring an action for support under the Convention when the respondent is in another country. However, the functions of the Transmitting Agency in the State of the claimant are of a ministerial rather than of a judicial nature, and consist essentially of forwarding the application for maintenance and the necessary documents to the Receiving Agency in the State of the respondent. The merits of the case are decided by the competent court of the State of the respondent in accordance with its own law, and the respondent has the same rights and duties as he would have if the action had been brought by another resident of that State.

Some delegates thought that the definition of "claimant" should also include a person claiming maintenance on behalf of his or her infant child, in order to avoid the complications connected with the appointment of a guardian ad litem in case of minor children. A proposal to that effect was made by Israel, but the Conference decided that it would be sufficient to ensure that a claimant may act through a legal representative, as was made clear in Article 3, paragraph 4(a).

Determination of Paternity

Since the Convention applies also to illegitimate children, the question of the determination of paternity assumes an important role in the practical operation of the Conven-

\[32\] E/CONF.21/L.2.
tion. What happens if the respondent denies being the father of a child claiming support? The Committee of Experts discussed this matter at some length, being aware that large numbers of claims would be brought by or on behalf of illegitimate children especially if the Convention could be invoked against members of foreign armed forces after their return to their homes. The Committee finally decided that it would be impractical to include in the draft Convention any uniform rule regarding the determination of paternity because States would be exceedingly reluctant to bring about any changes in their legislation on a subject of such a nature. Accordingly, no reference to this matter was made in the draft Convention. It was explained in the Committee’s report that if the issue of the existence of a family relationship were raised in the course of the proceedings, the court would “according to its law, either declare itself incompetent, or decide the question of status purely as an incidental question and solely for the purpose of the maintenance order.”

At the Conference it was suggested that the Convention might include a few generally recognized rules in respect of the determination of paternity such as, for instance, that an express or implied admission of paternity, made at any time, should be sufficient to support an action for maintenance of the child. In the end, however, the Conference followed the same approach as the Committee of Experts, and the Convention does not include any provision on the subject of determination of paternity. If, therefore, in an action under the Convention, the respondent denies being the father of the claimant-child, the question would have to be decided in accordance with the law of the court seized with the action (Article 6, paragraph 3).

**Applicability Ratione Loci**

Article 1 provides that the scope of the Convention is “to facilitate the recovery of maintenance to which a person . . . who is in the territory of one of the Contracting Parties, claims to be entitled from another person . . . who is subject

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33 E/AC.39/1, ¶ 31.
to the jurisdiction of another Contracting Party." The Secretariat draft applied to "actions for support brought by dependents residing in the territory of one Contracting Party against obligors residing in the territory of the other Contracting Party." Since the legal concept of residence is not uniform in different countries the Committee of Experts, wishing to simplify further the requirements for filing an application for maintenance, adopted a version providing that the draft Convention would apply "in cases where the claimant resides or is present within the territory of one Contracting Party and the respondent is present within the jurisdiction of another Contracting Party." Thus mere presence in the territory of a State would suffice to enable a person to make an application for maintenance to a Transmitting Agency in that State. As regards the respondent, the Committee required presence within the jurisdiction of a Contracting Party, and explained in its report that "the rules of the lex fori relating to jurisdiction would apply." At the Conference the representatives of Mexico and the Philippines questioned the wisdom of allowing even a tourist temporarily present in the territory of a Contracting Party to set in motion the machinery established by the Convention. Nevertheless, the majority of the Conference favored the adoption of a criterion similar to that of the Committee of Experts.

Although the Convention would seem to permit any person who is in the territory of a Contracting Party to make an application to a Transmitting Agency in that territory, it was pointed out by the representative of Italy that a Transmitting Agency could refuse to transmit the documents to the Receiving Agency (Article 4, paragraph 1) if it considered that an application was not in good faith when made by a person who had gone to the State of the Transmitting Agency merely to take advantage of the provisions of the Convention.

35 E/AC.39/L.6, art. 2.
36 E/AC.39/1, Annex I, Preamble.
37 Id. art. 3.
38 Id. ¶ 37.
39 E/CONF.21/SR.8, pp. 4-7.
40 Id. at 7.
As regards the respondent, the Conference slightly changed the formulation of the Committee of Experts ("present within the jurisdiction of another Contracting Party") to "subject to the jurisdiction of another Contracting Party." It would seem therefore that a person owning property in the territory of a Contracting State but not physically present therein, could be the respondent in an action for maintenance under the Convention if the law of that State, being the situs of his property, made him subject to its jurisdiction.

Remedies Outside the Convention

The second paragraph of Article 1 confirms expressis verbis a concept that would have been otherwise implied, namely that a claimant seeking to obtain maintenance from a person abroad remains always free to invoke any remedy outside the Convention that may be available under the laws of the countries concerned or by treaty. A similar provision was contained in the draft Convention prepared by the Committee of Experts 41 and in the Secretariat draft. 42

Article 2

Designation of Agencies

1. Each Contracting Party shall, at the time when the instrument of ratification or accession is deposited, designate one or more judicial or administrative authorities which shall act in its territory as Transmitting Agencies.

2. Each Contracting Party shall, at the time when the instrument of ratification or accession is deposited, designate a public or private body which shall act in its territory as Receiving Agency.

3. Each Contracting Party shall promptly communicate to the Secretary-General of the United Nations the designations made under paragraphs 1 and 2 and any changes made in respect thereof.

4. Transmitting and Receiving Agencies may communicate directly with Transmitting and Receiving Agencies of other Contracting Parties.

41 E/AC.39/1, Annex I, art. 13.
42 E/AC.39/L.6, art. 12.
This article, requiring Contracting States to designate Transmitting and Receiving Agencies, sets up the machinery through which the Convention is to operate.

The Secretariat draft was essentially an adaptation, on the international scale, of the two-State suit procedure, recently established by reciprocal support legislation, between the various jurisdictions of the United States. It provided that a claimant seeking maintenance from a person abroad would file an application in the competent court (called "initiating court") of the State of residence of the claimant. The initiating court, having made a preliminary finding that there was a prima facie cause of action, was required to transmit the documents to an authority designated by the State of residence of the defendant. The documents were then to be forwarded to the competent court in the State of residence of the defendant (called "responding court") and proceedings in that court were to be commenced ex officio for the purpose of obtaining a maintenance order. A claimant was entitled to be represented in the proceedings by an authority designated by the Government of the State of the responding court.

The Committee of Experts agreed with the basic principle of the Secretariat draft, that a claimant must be enabled, without having to go to another country or to incur the expense of retaining a lawyer abroad, to make application for the purpose of obtaining a maintenance order against a defendant in a foreign country. It was considered, however, that States might not be prepared to agree to a dual court system whereby legal proceedings would be commenced in one country and completed in another. The Committee discussed at length the problem of how to obtain the desired

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43 The Uniform Reciprocal Enforcement of Support Act, approved in 1950 and amended in 1952 by the National Conference of Commissioners on Uniform Laws, has been enacted in forty-eight jurisdictions; the Uniform Support of Dependents Law, which is sufficiently similar to the Uniform Reciprocal Enforcement of Support Act to permit reciprocity between States which have adopted either law, has been enacted in New York and in four other jurisdictions. 9A U.L.A. 68 (Supp. 1955).
44 E/AC.39/L.6, art. 3.
45 Id. art. 4.
46 Id. art. 5.
47 Id. art. 6.
result without requiring any significant change in the procedures of the countries concerned.

It was finally agreed that the best solution would be to set up a system of administrative co-operation between Contracting States centered upon "Transmitting Agencies" in the State of the claimant and a "Receiving Agency" in the State of the respondent.

The Conference endorsed and incorporated in the Convention the essential lines of the procedure devised by the Committee of Experts with respect to the establishment and functions of the Transmitting and Receiving Agencies, except for some differences explained below.

The Convention as well as the Committee's draft provides that in each Contracting State there may be one or more judicial or administrative authorities acting as Transmitting Agencies. States are free to vest the responsibilities of Transmitting Agencies in already existing bodies or to create new ones for the purpose. It was envisaged that, especially in large countries, there would be several Transmitting Agencies so as to enable claimants to file an application for maintenance with a Transmitting Agency located within a reasonable distance.

The words "judicial or administrative authorities" are designed to ensure that Transmitting Agencies, having been given a certain degree of discretionary power regarding the forwarding of applications to Receiving Agencies abroad, should be public rather than private organs. The Committee of Experts, wishing to reduce to a minimum the obligations imposed under the draft Convention, did not require Contracting States to designate Transmitting Agencies in their territories. If a State did not designate a Transmitting Agency, it was provided that "any authority having the power to render maintenance orders may act as a transmitting agency." 48 The Conference, on the other hand, decided that there should be no uncertainty as to which body can act as Transmitting Agency, and, in Article 2 of the Convention, required States to designate one or more Transmitting

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48 E/AC.39/1, Annex I, art. 2, ¶ 3.
Agencies at the time when the instrument of ratification or accession is deposited.

Both the Convention and the Committee's draft prescribe that each Contracting State must designate a public or private body to act in its territory as Receiving Agency. There should be a single Receiving Agency (possibly with local branches) in each State in order to simplify the forwarding of documents from Transmitting Agencies in other countries. States are free to designate a private organization (such as a welfare agency) or a public body to act as Receiving Agency. The delegations of Mexico, the Netherlands and El Salvador proposed at the Conference that it should be expressly stated that a "court or tribunal" could not act as Receiving Agency, but the amendment was not carried on the understanding that Contracting States, in view of the fact that the Receiving Agency acts on behalf of claimants in maintenance proceedings (Article 6 of the Convention), would not in fact assign that role to a court.

Paragraph 4 of Article 2 of the Convention enables Transmitting and Receiving Agencies to communicate directly with the same agencies in other States. This clause, which was to be found also in the Committee of Experts' draft, should expedite the proceedings by avoiding the necessity of using the diplomatic or other formal channels in the exchange of correspondence between Agencies in different countries.

*Article 3*

**APPLICATION TO TRANSMITTING AGENCY**

1. Where a claimant is in the territory of one Contracting Party, hereinafter referred to as the State of the claimant, and the respondent is subject to the jurisdiction of another Contracting Party, hereinafter referred to as the State of the respondent, the claimant may make application to a Transmitting Agency in the State of the claimant for the recovery of maintenance from the respondent.

2. Each Contracting Party shall inform the Secretary-General as to the evidence normally required under the law of the State of the

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49 E/CONF.21/L.5.
50 E/AC.39/1, Annex I, art. 2, ¶ 6.
Receiving Agency for the proof of maintenance claims, of the manner in which such evidence should be submitted, and of other requirements to be complied with under such law.

3. The application shall be accompanied by all relevant documents, including, where necessary, a power of attorney authorizing the Receiving Agency to act, or to appoint some other person to act, on behalf of the claimant. It shall also be accompanied by a photograph of the claimant and where available, a photograph of the respondent.

4. The Transmitting Agency shall take all reasonable steps to ensure that the requirements of the law of the State of the Receiving Agency are complied with; and, subject to the requirements of such law, the application shall include:

(a) the full name, address, date of birth, nationality, and occupation of the claimant, and the name and address of any legal representative of the claimant;

(b) the full name of the respondent, and, so far as known to the claimant, his addresses during the preceding five years, date of birth, nationality, and occupation;

(c) particulars of the grounds upon which the claim is based and of the relief sought, and any other relevant information such as the financial and family circumstances of the claimant and the respondent.

The first paragraph would enable a claimant to make application for maintenance from a person abroad to the nearest Transmitting Agency in the State where the claimant is present. Since the documentation required is relatively simple, it should normally be possible for claimants, who are often women and children in poor circumstances, to file an application at little or no cost. Although there is no express clause in the Convention, it may be assumed that Transmitting Agencies would be ready to assist claimants in the preparation of the application.

The second paragraph is an innovation as there was no equivalent clause in the Committee of Experts' draft. Each Contracting Party must inform the Secretary-General regarding the rules of evidence and other requirements to be complied with under its law in an action for maintenance. The Secretary-General will then transmit this information to all
States entitled to adhere to the Convention (Article 19). The next step would be for each Contracting State to forward the same information to all the Transmitting Agencies in its territory so as to apprise them of the requirements of the law of the territory of any Receiving Agency to which an application may be transmitted.\textsuperscript{51}

The word "normally" in this paragraph indicates that the Conference was aware of the difficulty of furnishing complete and accurate information about the requirements of the law of Contracting States in respect of the proof of maintenance claims and, in general, the prosecution of maintenance actions. However, it should be possible for States to inform the Secretary-General as to whether proof should be taken orally or in writing, whether an oath is necessary, how documents should be certified and legalized, whether a translation is required, etc. This type of information should be useful in avoiding delays and helping Transmitting Agencies in completing a dossier in a form acceptable to the Receiving Agency and to the court where maintenance proceedings are commenced.

The third paragraph provides that the application is to be accompanied by all relevant documents "including, where necessary, a power of attorney authorizing the Receiving Agency to act, or to appoint some other person to act, on behalf of the claimant." Under the Committee of Experts' draft, the Receiving Agency "upon receipt of the papers in the case, shall be authorized to cause proceedings to be instituted and prosecuted in a competent tribunal... and shall do so without delay."\textsuperscript{52} As was explained in the report of the Committee of Experts,\textsuperscript{53} the Receiving Agency would thus be required to commence an action for maintenance on behalf of the claimant, either directly or through counsel, in the competent court of the State of the respondent. At the Conference it was pointed out that in a number of countries it was not possible to institute legal proceedings on behalf of

\textsuperscript{51} Although this last step is not specifically mentioned in the Convention, it seems clearly implied from the purpose of paragraphs 2 and 4 of this Article.

\textsuperscript{52} E/AC.39/1, Annex I, art. 7.

\textsuperscript{53} Id. ¶ 43.
another person without a power of attorney. It was there-
fore decided to specify in the Convention that "where
necessary" (i.e., where it is so prescribed by law) a power of
attorney should be added to the documents accompanying the
application.

The fourth paragraph lists the data that must be in-
cluded in any application and provides also that the Trans-
mitting Agency "shall take all reasonable steps to ensure that
the requirements of the law of the State of the Receiving
Agency are complied with." Normally, an Agency in one
country could not be expected to be acquainted with the pro-
visions of the law of another country. Under the Conven-
tion, however, a Transmitting Agency, having received the
information mentioned in paragraph 2 of this Article, would
be sufficiently informed concerning the requirements of the
law of the Receiving Agency to endeavor to ensure that the
applications are properly drawn up in accordance with that
law.

The Committee of Experts' draft authorized a Transmit-
ting Agency to hold a hearing on its own motion or at the
request of the claimant, if permitted by the law of the State
of the Transmitting Agency. This clause was omitted from
the Convention because the majority of the delegations at the
Conference preferred not to give this type of semi-judicial
responsibility to an agency that may be of an administrative
nature.

Article 4

Transmission of Documents

1. The Transmitting Agency shall transmit the documents to the Re-
ceiving Agency of the State of the respondent, unless satisfied that
the application is not made in good faith.

2. Before transmitting such documents, the Transmitting Agency
shall satisfy itself that they are regular as to form, in accordance
with the law of the State of the claimant.

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54 See statements by the representatives of Yugoslavia and Belgium,
55 E/AC.39/1, Annex I, art. 3, ¶2.
3. The Transmitting Agency may express to the Receiving Agency an opinion as to the merits of the case and may recommend that free legal aid and exemption from costs be given to the claimant.

Article 5 of the Committee of Experts' draft provided that the Transmitting Agency "shall summarily determine whether the application . . . make[s] out a case for transmission to the Receiving Agency." If the Agency so determined, it was required to transmit the documents to the Receiving Agency explaining the reasons for such determination. At the Conference this clause was criticized by several delegates. It was noted that the draft Convention failed to indicate which law would be applied by the Transmitting Agency in making the summary determination. Would the form of the application and the existence of a maintenance obligation be governed by the law of the State of the claimant, the State of the respondent, or both? Some delegates said that the Transmitting Agency should not be given the essentially judicial function of making a determination as to whether a case for transmission has been made out. This view prevailed, and the Conference decided that the Transmitting Agency should be required to transmit the documents to the Receiving Agency "unless satisfied that the application is not made in good faith." The exception was intended to reduce the possibility of transmission of fraudulent or clearly frivolous claims, and it was explained at the Conference that in discharging this function the Transmitting Agency would act in a purely administrative capacity.

It is clear from the wording of paragraph 1 of Article 4 that a Transmitting Agency is bound to forward the documents even if the claimant would have no right to maintenance under the law of the State of the Transmitting Agency. Any enquiry as to the entitlement of the claimant to maintenance in the State of the Receiving Agency would be outside the scope of the functions of the Transmitting Agency. There

56 See statements by the representatives of Belgium, Canada, Iran, Israel and Italy, E/CONF.21/SR.6, pp. 6-8.
57 See statements by the representatives of Yugoslavia and Uruguay. Ibid.
58 See statement by the representative of Israel. Ibid.
was some discussion at the Conference on whether a Transmitting Agency could refuse to transmit the documents if an application were considered incompatible with public policy in the country of the Transmitting Agency. The view of the majority of the speakers was that, in the absence of any provision about public policy, a Transmitting Agency would not be authorized to refuse to transmit the documents on that ground.

The Transmitting Agency is required to satisfy itself that the documents are regular as to form, in accordance with the law of the State of the claimant (Article 4, paragraph 2). This is in addition to the responsibility of the Transmitting Agency to take all reasonable steps to ensure that the requirements of the law of the State of the Receiving Agency are complied with (Article 3, paragraph 4). Thus, before an application reaches the Receiving Agency, care should be taken to prepare it, in so far as possible, in accordance with the law of the two countries concerned.

Under paragraph 3 the Transmitting Agency “may express to the Receiving Agency an opinion as to the merits of the case.” The Conference considered that since the Transmitting Agency has direct contact with the claimant, its opinion as to the merits of the case may be useful to the Receiving Agency in the presentation of the action. The Convention, however, does not require the competent court to give any special evidentiary value to such opinion. The Transmitting Agency may also recommend that free legal aid and exemption from costs be given to the claimant, a clause which was originally included in the Committee of Experts’ draft.

Article 5

TRANSMISSION OF JUDGMENTS AND OTHER JUDICIAL ACTS

1. The Transmitting Agency shall, at the request of the claimant, transmit, under the provisions of article 4, any order, final or provisional, and any other judicial act, obtained by the claimant for the payment of maintenance in a competent tribunal of any of the

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69 See statements by the representatives of France, Belgium, Israel and Yugoslavia. *Id.* at 9.

60 E/AC.39/1, art. 5, §1.
Contracting Parties, and, where necessary and possible, the record of the proceedings in which such order was made.

2. The orders and judicial acts referred to in the preceding paragraph may be transmitted in substitution for or in addition to the documents mentioned in article 3.

3. Proceedings under article 6 may include, in accordance with the law of the State of the respondent, exequatur or registration proceedings or an action based upon the act transmitted under paragraph 1.

This article enables claimants who have been granted a maintenance order to take advantage of the system established by the Convention to obtain the enforcement of such order against a respondent in another country. As the representative of France remarked, "a judgment would, of course, constitute much more cogent evidence than the documents specified in article 4." A similar clause was contained in the Secretariat draft and in the draft Convention prepared by the Committee of Experts.

In addition to final orders, this article applies to provisional orders and any other judicial act. In making an express reference to provisional orders the Conference had especially in mind the system in force in many parts of the British Commonwealth and possessions where a claimant for maintenance may apply to a court in the territory where he or she resides to obtain a provisional order which, to be enforceable, must be confirmed by the competent court in the territory where the respondent resides. The expression "provisional orders" may also apply to maintenance orders which are not regarded as final because they are subject to variation depending upon the circumstances of the parties. Other judicial acts would include, for example, consent orders or "transactions judiciaires."

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63 E/AC.39/1, Annex I, art. 6.
64 Maintenance Orders (Facilities for Enforcement) Act, 1920, 10 & 11 Geo. 5, c. 33. A list of the territories where the Act is in force is contained in STONE, JUSTICES' MANUAL 1131 n. t. (86th ed. 1954).
The words "in a competent tribunal of any of the Contracting Parties" were approved only after a considerable amount of discussion. The Committee of Experts' draft applied to any "judgment for maintenance," without any qualification as to where such judgment was rendered. The version adopted by the Working Party, however, referred to maintenance orders and other judicial acts obtained by the claimant "in a competent tribunal in the State of the claimant." At the plenary session of the Conference the representative of Yugoslavia proposed the deletion of the words "in the State of the claimant" thus making it possible to transmit an order obtained in a country other than the State of the claimant. In support of his proposal, the Yugoslav representative said that it was necessary to provide for the case where needy dependents, after obtaining a decision in their favor in their own country, had left for another country which was not the same as that where the respondent lived.

Several delegates opposed this proposal on the ground that while a Transmitting Agency could verify that a judgment of a Tribunal in the State of the Transmitting Agency had been rendered by a competent court, it would not be in a position to do so in respect of a foreign judgment. The Yugoslav amendment, however, was adopted by ten votes to five, with seven abstentions. Whereupon, the representative of Israel proposed that the vote should be reconsidered, and the Conference unanimously agreed. The representative of Yugoslavia proposed, as a compromise, that the words "in the State of the claimant" contained in the Working Party's version, be changed to "of any of the Contracting Parties," and explained that Transmitting Agencies would thus be required to transmit only judgments emanating from tribunals of Contracting Parties, instead of judgments originating anywhere, as he had previously proposed. The new Yugoslav proposal was adopted by the Conference. Although the final version is limited to the transmission of orders and other judicial acts...

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60 E/CONF.21/SR.13, pp. 5-8.
62 See statements by the representatives of Italy, Israel, and the President, speaking as representative of Ceylon, E/CONF.21/SR.13, p. 6.
acts obtained in the tribunals of Contracting Parties, some difficulty would still seem to remain if the Transmitting Agency is expected to verify whether a foreign court was competent to make an order or other judicial act.

A claimant who has been awarded a maintenance order against a respondent abroad may of course apply in the ordinary way for its recognition and enforcement in the country where the respondent resides. If, however, the claimant chooses to make use of the Convention, the Transmitting Agency, at the claimant's request, is required to transmit the order in substitution for or in addition to the documents mentioned in Article 3 of the Convention. After that, two courses are open: (i) the Receiving Agency may treat the maintenance order as an ordinary application under the Convention and, if necessary, institute legal proceedings on behalf of the claimant to obtain a new maintenance order in the competent court of the State of the respondent, in accordance with Article 6; or (ii) the Receiving Agency may apply for the recognition and enforcement of the original maintenance order in the State of the respondent.

These proceedings are governed by the law of the State of the respondent (Article 5, paragraph 3). Therefore, depending upon the procedure obtaining in the country concerned, the maintenance order could be enforced by *exequatur* in some States and by registration in others. On the other hand, new proceedings could be initiated in the com-

69 While under Article 4 the Transmitting Agency may refuse to transmit the documents if satisfied that the application has not been made in good faith, no similar exception is made in Article 5 in respect of the transmission of orders and other judicial acts.

70 Most of the countries of the civil law system apply the *exequatur* procedure. A compilation of the laws and treaties relating to the *exequatur* may be found in Documents 13(1) of 1938 and 13(2) of 1949 printed by the International Institute for the Unification of Private Law under the title *L'Exécution à l'Étranger des Obligations Alimentaires*.

71 *E.g.*, a registration procedure is in force on a reciprocal basis between territories of the British Commonwealth and possessions under the Maintenance Orders (Facilities for Enforcement) Act, *supra* note 64, and between parts of the United Kingdom under the Maintenance Orders Act, 1950, 14 Geo. 6, c. 37. It was also embodied in the treaties of 1934 between the United Kingdom and Belgium and between the United Kingdom and France on The Reciprocal Enforcement of Judgments in Civil and Commercial Matters. In the United States, Section 1963 of the Federal Judicial Code provides for the enforceability of a judgment of a district court registered in any other district.
petent court, alleging the foreign maintenance order as the
cause of action, in those States where neither of the two
preceding methods is practiced.\footnote{E.g., in the States of the United States with respect to judgments of
foreign courts.}

\textit{Article 6}

\textbf{Functions of the Receiving Agency}

1. The Receiving Agency shall, subject always to the authority given
by the claimant, take, on behalf of the claimant, all appropriate
steps for the recovery of maintenance, including the settlement of
the claim and, where necessary, the institution and prosecution of
an action for maintenance and the execution of any order or other
judicial act for the payment of maintenance.

2. The Receiving Agency shall keep the Transmitting Agency cur-
cently informed. If it is unable to act, it shall inform the Trans-
mitting Agency of its reasons and return the documents.

3. Notwithstanding anything in this Convention, the law applicable
in the determination of all questions arising in any such action or
proceedings shall be the law of the State of the respondent, in-
cluding its private international law.

The first two paragraphs, setting forth the functions of
the Receiving Agency, derive from the Committee of Experts’
draft, but the Conference introduced some significant
changes.

Article 7, paragraph 1, of the Committee’s project read:
"In the absence of a duly legalized declaration to the con-
trary by the claimant, the Receiving Agency, upon receipt of
the papers in the case, shall be authorized to cause proceed-
ings to be instituted and prosecuted in a competent tribunal,
as well as to procure the execution of such judgment as may
be rendered, and shall do so without delay." This formula-
tion gave rise to some uncertainty. A number of questions
were discussed at the meetings of the Working Party and at
the plenary session of the Conference, such as: Does the
expression "shall do so without delay" mean that the Receiv-
ing Agency must, unless the claimant has made a "duly legalized declaration to the contrary," invariably commence legal proceedings, even where, for instance, the law of the State of the Receiving Agency does not impose a duty of support? If, on the other hand, the words "shall be authorized" were intended to be permissive and give some discretion to the Receiving Agency on whether or not to commence proceedings, how can those words be reconciled with the injunction to do so without delay? Would a Receiving Agency be bound to appeal a judgment rejecting the claim for maintenance?

The version adopted by the Conference is clearer and more flexible than the Committee of Experts' draft. In paragraph 1 the Receiving Agency is authorized to institute legal proceedings "where necessary." In practice, however, the Receiving Agency, which may be a welfare organization, could perform an even more important role in trying to persuade the respondent to send support to his dependents without coercion, and in some cases it may succeed in bringing the respondent back to his family. These are some of the "appropriate steps" that the Receiving Agency is authorized to take. It is also expressly provided that the Receiving Agency may agree, on behalf of the claimant, to settle the claim on a mutually acceptable basis. If, however, all attempts to arrive at an amicable settlement have failed, the Receiving Agency would prosecute an action for maintenance against the respondent and secure the execution of any judgments so obtained. Any action taken by the Receiving Agency is "on behalf of the claimant" and "subject always to the authority given by the claimant." Thus, without the formality of a "duly legalized declaration" required in the Committee of Experts’ draft, a claimant will be able to give instructions to the Receiving Agency concerning the different phases of the action. A claimant can easily maintain contact with the Receiving Agency through the Transmitting Agency where the application has been made. It will be recalled that, under paragraph 4 of Article 2, Transmitting and Receiving Agencies may communicate directly with Transmitting and Receiving Agencies of other Contracting States.
The Committee of Experts' draft did not contain a provision similar to the second paragraph of Article 6. This ensures that the Transmitting Agency, and therefore the claimant, will be kept informed of the progress of the action or of the reasons why the Receiving Agency may have been unable to act, as would be the case, for example, if the respondent could not be located.

The third paragraph, dealing with the applicable law, embodies one of the cardinal principles of the Convention. Article 7, paragraph 2, of the Committee of Experts' draft provided that "the law of the Tribunal shall govern such proceedings," i.e., the proceedings brought by the Receiving Agency in the competent tribunal of the State of the respondent. At the Conference this clause was criticized on the ground that it was not clear whether the law of the tribunal would govern only the procedure or also the merits of the case. For example, if there was a conflict between the law of the State of the claimant and the law of the State of the respondent with respect to the existence of a maintenance obligation, the draft Convention left some doubt as to which law would prevail. Moreover, the Committee of Experts' formula did not indicate how to resolve problems of renvoi.

The Conference was then confronted with the question whether the Convention should contain a rule which would solve any problem of conflicts of law that might arise. The Secretariat draft had sought to achieve this purpose by providing that the existence of a maintenance obligation would be determined, regardless of the citizenship of the claimant or the respondent, by the law of the State where the respondent resides, as it is applicable to citizens of that State. There was thus established a rule of private international law which was intended to avoid any question of renvoi.

There was general consensus at the Conference that the Convention should not introduce solutions which might conflict with the private international law of the various States. The representative of the Netherlands pointed out at the

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73 See statements by the representatives of Israel, Italy and El Salvador, E/CONF.21/SR.7, pp. 4-6.
74 E/AC.39/L.6, art. 1(b).
Working Party that the Hague Conference on Private International Law was dealing with the question of conflicts of law with respect to maintenance obligations, and this Convention should not concern itself with that subject.

The formulation adopted by the Conference in paragraph 3 of Article 6 followed the principle of the Committee of Experts' draft, but it was made clear that the law of the State of the respondent will apply in the determination of all procedural as well as substantive questions arising in a maintenance action or proceedings. It was also provided that the law of the State of the respondent includes its private international law, and thus the Convention expressly refrained from laying down its own conflict rules.

The Committee of Experts' draft contained also the following paragraph: "If, under the law of the tribunal, the papers submitted do not constitute evidence, the tribunal may, nevertheless, after examining the papers, make an interim order for the payment of maintenance while the proceedings are pending." The purpose of this clause was to authorize the competent court to make an interim maintenance order *pendente lite* where the claimant had urgent need for support and the documents established a *prima facie* case. At the Conference several delegates criticized this provision. It was stated for example that if the Committee had intended to grant a tribunal powers which the latter did not otherwise possess, then the clause would be too far-reaching; if, on the other hand, a tribunal already had the authority under its law to grant *interim* orders, then the clause would be superfluous. It was therefore decided to omit this provision from the text of the Convention.

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76 A Special Committee of the Hague Conference on Private International Law has prepared a working draft of a Convention dealing with conflicts of laws with respect to maintenance obligations towards children (Conférence de la Haye de Droit International Privé, Huitième Session, 1956, Travaux de la Commission Spéciale en matière d'Obligations Alimentaires, Avant-Projet d'une Convention, 1955) which is on the agenda of the eighth session of the Hague Conference (October 1956).

77 E/AC.39/1, art. 7, ¶ 3.

78 See Committee of Experts' report E/AC.39/1, ¶ 44, and statement at the Conference by the representative of France, who had also been a member of the Committee of Experts, E/CONF.21/SR.7, pp. 9-10.

79 See statements by the representatives of the Philippines, Belgium, Yugoslavia, France, Italy, Uruguay and El Salvador, E/CONF.21/SR.7, pp. 8-11.
Article 7

Letters of Request

If provision is made for letters of request in the laws of the two Contracting Parties concerned, the following rules shall apply:

(a) A tribunal hearing an action for maintenance may address letters of request for further evidence, documentary or otherwise, either to the competent tribunal of the other Contracting Party or to any other authority or institution designated by the other Contracting Party in whose territory the request is to be executed.

(b) In order that the parties may attend or be represented, the requested authority shall give notice of the date on which and the place at which the proceedings requested are to take place to the Receiving Agency and the Transmitting Agency concerned, and to the respondent.

(c) Letters of request shall be executed with all convenient speed; in the event of such letters of request not being executed within four months from the receipt of the letters by the requested authority, the reasons for such non-execution or for such delay shall be communicated to the requesting authority.

(d) The execution of letters of request shall not give rise to reimbursement of fees or costs of any kind whatsoever.

(e) Execution of letters of request may only be refused:

(1) If the authenticity of the letters is not established;

(2) If the Contracting Party in whose territory the letters are to be executed deems that its sovereignty or safety would be compromised thereby.

This article, laying down the procedure by which the competent tribunal may obtain evidence from another country, generally follows the lines of Article 8 of the Committee of Experts' draft, and is an adaptation of the rules regarding letters rogatory established by the Hague Convention on Civil Procedure of 1905. Under paragraph (a), a letter of request for further evidence may be addressed directly to the competent tribunal of the other State or to an authority designated by that State. This procedure would be simpler and faster...
than the normal method of transmitting letters rogatory through the consular or diplomatic channels.

*Article 8*

**Variation of Orders**

The provisions of this Convention apply also to applications for the variation of maintenance orders.

This article is identical with Article 9 of the Committee of Experts' draft. If the law of the State of the respondent permits a court to vary maintenance orders to conform with changed family circumstances, a claimant may make application to the Transmitting Agency for the purpose of seeking to obtain a variation of a maintenance order previously rendered by that court. Such application would be treated as an application for a maintenance order under the Convention.

*Article 9*

**Exemptions and Facilities**

1. In proceedings under this Convention, claimants shall be accorded equal treatment and the same exemptions in the payment of costs and charges as are given to residents or nationals of the State where the proceedings are pending.

2. Claimants shall not be required, because of their status as aliens or non-residents, to furnish any bond or make any payment or deposit as security for costs or otherwise.

3. Transmitting and Receiving Agencies shall not charge any fees in respect of services rendered under this Convention.

Under paragraphs 1 and 2 of this article claimants are granted exemptions and facilities similar to those provided in Article 10 of the Secretariat draft and Article 10 of the Committee of Experts' draft. Following a proposal of the Netherlands representative the wording of these para-

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79 E/CONF.21/C.1/L.22.
graphs was amended to conform more closely with Article 17 of the 1905 Hague Convention on Civil Procedure. Thus a claimant may be granted free legal aid under the same conditions as residents or nationals of the State of the respondent, and will not be required to furnish a cautio judicatum solvi or to make any payment which might otherwise be imposed upon aliens or non-residents.

The third paragraph of Article 10 of the Committee of Experts’ draft stated that “no fees shall be chargeable for certification and legalization of documents in any proceeding under this Convention.” The Conference agreed, with a slight amendment, to a proposal by the representative of Japan, and liberalized further the Committee of Experts’ provision by deciding that no fees will be charged by Transmitting and Receiving Agencies in respect of services rendered under the Convention (paragraph 3 of Article 9). This clause does not, however, apply to costs incurred by the Agencies in the performance of those services.

Article 10

Transfer of Funds

A Contracting Party, under whose law the transfer of funds abroad is restricted, shall accord the highest priority to the transfer of funds payable as maintenance or to cover expenses in respect of proceedings under this Convention.

If the Convention is to have any practical effect it is clearly essential that States should permit the transfer of funds payable as maintenance to persons in other countries. Accordingly, the Secretariat draft required Contracting States to “grant any exemption, license or other facility as may be required for the transfer of any sums payable in connexion with any action initiated under this Agreement.” The Committee of Experts’ draft restricted somewhat the scope of this clause providing that transfers of funds should

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81 E/AC.39/L.6, art. 11.
be accorded "the highest priority provided for capital services." Contracting States were permitted to take the necessary measures to prevent transfers of funds for purposes other than the bona fide payment of maintenance obligations and to limit such transfers to amounts necessary for subsistence. The Conference followed a middle course between the Secretariat draft and the Committee of Experts' version, and accorded the highest priority, without qualifications, to the transfer of funds payable under the Convention.

**Article 11**

**Federal State Clause**

In the case of a Federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of Parties which are not Federal States;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the Federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;

(c) A Federal State Party to this Convention shall, at the request of any other Contracting Party transmitted through the Secretary-General, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention, showing the extent to which effect has been given to that provision by legislative or other action.

Following a proposal of the United States member, the Committee of Experts included in its draft a federal state

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82 E/AC.39/1, Annex I, art. 11.
clause stating that the Convention would not be deemed to “affect, or to impose any obligation in respect of, any matter not within the constitutional competence of a federal state.” At the Conference the Belgian representative introduced a proposed clause following more closely the formulation adopted in recent conventions drawn up under the auspices of the United Nations. After considering some amendments suggested orally by the representative of Israel, the Conference adopted the version proposed by Belgium.

**Article 12**

**TERRITORIAL APPLICATION**

The provisions of this Convention shall extend or be applicable equally to all non-self-governing, trust or other territories for the international relations of which a Contracting Party is responsible, unless the latter, on ratifying or acceding to this Convention, has given notice that the Convention shall not apply to any one or more of such territories. Any Contracting Party making such a declaration may, at any time thereafter, by notification to the Secretary-General, extend the application of the Convention to any or all of such territories.

At the Conference, the representative of Yugoslavia proposed that the Convention should apply equally to all non-self-governing, trust or colonial territories administered by a signatory State. The Conference, however, adopted a version proposed by the representative of El Salvador which permits a Contracting Party to exclude one or more of such territories from the application of the Convention. Article 12 in its present form is substantially the same as Article 15, paragraph 2, of the Committee of Experts' draft.

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84 See statement by the representative of Belgium, E/CONF.21/SR.9, p. 10.
85 E/CONF.21/SR.10, p. 4.
87 E/CONF.21/L.16.
Article 13

SIGNATURE, RATIFICATION AND AccessION

1. This Convention shall be open for signature until 31 December 1956 on behalf of any Member of the United Nations, any non-member State which is a Party to the Statute of the International Court of Justice, or member of a specialized agency, and any other non-member State which has been invited by the Economic and Social Council to become a Party to the Convention.

2. This Convention shall be ratified. The instruments of ratification shall be deposited with the Secretary-General.

3. This Convention may be acceded to at any time on behalf of any of the States referred to in paragraph 1 of this article. The instruments of accession shall be deposited with the Secretary-General.

Article 14

ENTRY INTO FORCE

1. This Convention shall come into force on the thirtieth day following the date of deposit of the third instrument of ratification or accession in accordance with article 13.

2. For each State ratifying or acceding to the Convention after the deposit of the third instrument of ratification or accession, the Convention shall enter into force on the thirtieth day following the date of the deposit by such State of its instrument of ratification or accession.

Article 15

DENUNCIATION

1. Any Contracting Party may denounce this Convention by notification to the Secretary-General. Such denunciation may also apply to some or all of the territories mentioned in Article 12.

2. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General, except that it shall not prejudice cases pending at the time it becomes effective.

Article 16

SETTLEMENT OF DISPUTES

If a dispute should arise between Contracting Parties relating to the interpretation or application of this Convention, and if such
dispute has not been settled by other means, it shall be referred to the
International Court of Justice. The dispute shall be brought before
the Court either by the notification of a special agreement or by a
unilateral application of one of the parties to the dispute.

Article 17

Reservations

1. In the event that any State submits a reservation to any of the
articles of this Convention at the time of ratification or accession,
the Secretary-General shall communicate the text of the reserva-
tion to all States which are Parties to this Convention, and to the
other States referred to in article 13. Any Contracting Party
which objects to the reservation may, within a period of ninety
days from the date of the communication, notify the Secretary-
General that it does not accept it, and the Convention shall not then
enter into force as between the objecting State and the State mak-
ing the reservation. Any State thereafter acceding may make such
notification at the time of its accession.

2. A Contracting Party may at any time withdraw a reservation
previously made and shall notify the Secretary-General of such
withdrawal.

Articles 13 to 17 are substantially the same as the equiva-

tent final clauses of other conventions concluded under the
auspices of the United Nations.

Article 18

Reciprocity

A Contracting Party shall not be entitled to avail itself of this
Convention against other Contracting Parties except to the extent
that it is itself bound by the Convention.

The text of this article had been originally included as a
separate paragraph in the Belgian proposal for a federal state
clause \(^{88}\) which was adopted as Article 11. The Working

\(^{88}\) E/CONF.21/L.7.
Party, however, recommended that the Conference approve a reciprocity provision applicable to the Convention as a whole,\(^9\) rather than one limited to the federal state clause. It was stated that a general reciprocity clause would have the effect of reducing reservations,\(^9\) and the Conference adopted this article in the form proposed by the Working Party. However, it does not appear clearly either from the text of this clause or from the discussion at the Conference exactly what practical effect a reciprocity clause would have on this Convention and, in particular, whether it would enable Contracting States to restrict the application of the Convention in their territory even without submitting a reservation for that purpose.

**Article 19.**

**NOTIFICATIONS BY THE SECRETARY-GENERAL**

1. The Secretary-General shall inform all Members of the United Nations and the non-member States referred to in Article 13:
   (a) of communications under paragraph 3 of Article 2;
   (b) of information received under paragraph 2 of Article 3;
   (c) of declarations and notifications made under Article 12;
   (d) of signatures, ratifications and accessions under Article 13;
   (e) of the date on which the Convention has entered into force under paragraph 1 of Article 14;
   (f) of denunciations made under paragraph 1 of Article 15;
   (g) of reservations and notifications made under Article 17.

2. The Secretary-General shall also inform all Contracting Parties of requests for revision and replies thereto received under Article 20.

This article, suggested by the Secretariat,\(^9\) follows the pattern of similar clauses in other United Nations conventions, and in particular the Convention on the Declaration of Death of Missing Persons (Article 16) and the Convention Relating to the Status of Refugees (Article 46).

\(^8\) E/CONF.21/L.17, p. 8.
\(^9\) See statement by representative of Italy, E/CONF.21/SR.12, p. 3.
\(^9\) E/CONF.21/L.11.
Article 20

Revision

1. Any Contracting Party may request revision of this Convention at any time by a notification addressed to the Secretary-General.

2. The Secretary-General shall transmit the notification to each Contracting Party with a request that such Contracting Party reply within four months whether it desires the convening of a Conference to consider the proposed revision. If a majority of the Contracting Parties favour the convening of a Conference it shall be convened by the Secretary-General.

The Secretariat had suggested a revision clause, similar to Article XVI of the Genocide Convention and Article XXII of the Opium Protocol of 1953, providing that any Contracting Party may request revision of the Convention, and the Economic and Social Council would recommend the steps to be taken in respect of such request. It was observed at the Conference that, since some members of the Economic and Social Council might not adhere to the Convention, it should be left to the Contracting Parties themselves to decide on the procedure for the revision of the Convention. Accordingly, the Working Party recommended a new revision clause. The representative of Israel introduced another version suggested by the Secretariat providing that the Convention could be amended either by a new conference or by a two-thirds majority of the Contracting Parties without need for convening a conference. The Conference, however, adopted the revision clause put forward by the Working Party.

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92 Ibid.
93 See statements by the representatives of Israel and Yugoslavia, E/CONF.21/SR.10, pp. 11-12.
95 E/CONF.21/L.25.
LANGUAGES AND DEPOSIT OF CONVENTION

The original of this Convention, of which the Chinese, English, French, Russian, and Spanish texts are equally authentic, shall be deposited with the Secretary-General, who shall transmit certified true copies thereof to all States referred to in Article 13.

This is a standard article of conventions concluded under the auspices of the United Nations.

III. CONCLUSION

The Convention on the Recovery Abroad of Maintenance is the first attempt to combat the problem of non-support on a wide international scale. The system established in the Convention is the fruit of many years of study and has gone through various stages of elaboration before being embodied in a legally binding instrument.

While it has been prohibitively onerous and complicated in the past to enforce a maintenance obligation against a person in another country, the Convention now offers dependents a simple and inexpensive way to commence legal proceedings abroad. It also enables dependents to make a further effort, with the assistance of a welfare or other agency in the country where the respondent resides, to persuade him to support or even rejoin his family, without coercion. These purposes will be accomplished through the system of mutual co-operation, envisaged in the Convention, between judicial, administrative and welfare agencies of Contracting States.

At the same time, the Convention has been drawn up so as not to interfere with the domestic law of Contracting States, and should therefore be easily adaptable to the various legal systems of different countries. Furthermore, the rights of the respondent and the requirements of due process are preserved for the respondent pleads in his own court, and the law of that court governs the procedure and the merits of the case.
The problem of family desertion and non-support has deep social and psychological roots, and cannot be solved by legal means alone. This Convention, however, should provide the means of livelihood to numerous abandoned dependents and contribute to the reconstruction of shattered family units. How effective the Convention will be depends in large measure on the participation of the major countries of immigration and emigration. If enough States are prepared to become Parties to the Convention, its system of inter-agency co-operation will become a living reality, and might serve to indicate a possible method in the solution of other problems of private international law.
APPENDIX

CONVENTION ON THE RECOVERY ABROAD OF MAINTENANCE


PREAMBLE

Considering the urgency of solving the humanitarian problem resulting from the situation of persons in need dependent for their maintenance on persons abroad,

Considering that the prosecution or enforcement abroad of claims for maintenance gives rise to serious legal and practical difficulties, and

Determined to provide a means to solve such problems and to overcome such difficulties,

The Contracting Parties have agreed as follows:

Article 1

SCOPE OF THE CONVENTION

1. The purpose of this Convention is to facilitate the recovery of maintenance to which a person, hereinafter referred to as claimant, who is in the territory of one of the Contracting Parties, claims to be entitled from another person, hereinafter referred to as respondent, who is subject to the jurisdiction of another Contracting Party. This purpose shall be effected through the offices of agencies which will hereinafter be referred to as Transmitting and Receiving Agencies.

2. The remedies provided for in this Convention are in addition to, and not in substitution for, any remedies available under municipal or international law.

Article 2

DESIGNATION OF AGENCIES

1. Each Contracting Party shall, at the time when the instrument of ratification or accession is deposited, designate one or more judicial or administrative authorities which shall act in its territory as Transmitting Agencies.
2. Each Contracting Party shall, at the time when the instrument of ratification or accession is deposited, designate a public or private body which shall act in its territory as Receiving Agency.

3. Each Contracting Party shall promptly communicate to the Secretary-General of the United Nations the designations made under paragraphs 1 and 2 and any changes made in respect thereof.

4. Transmitting and Receiving Agencies may communicate directly with Transmitting and Receiving Agencies of other Contracting Parties.

Article 3

APPLICATION TO TRANSMITTING AGENCY

1. Where a claimant is in the territory of one Contracting Party, hereinafter referred to as the State of the claimant, and the respondent is subject to the jurisdiction of another Contracting Party, hereinafter referred to as the State of the respondent, the claimant may make application to a Transmitting Agency in the State of the claimant for the recovery of maintenance from the respondent.

2. Each Contracting Party shall inform the Secretary-General as to the evidence normally required under the law of the State of the Receiving Agency for the proof of maintenance claims, of the manner in which such evidence should be submitted, and of other requirements to be complied with under such law.

3. The application shall be accompanied by all relevant documents, including, where necessary, a power of attorney authorizing the Receiving Agency to act, or to appoint some other person to act, on behalf of the claimant. It shall also be accompanied by a photograph of the claimant and where available, a photograph of the respondent.

4. The Transmitting Agency shall take all reasonable steps to ensure that the requirements of the law of the State of the Receiving Agency are complied with; and, subject to the requirements of such law, the application shall include:

(a) the full name, address, date of birth, nationality, and occupation of the claimant, and the name and address of any legal representative of the claimant;

(b) the full name of the respondent, and, so far as known to the claimant, his addresses during the preceding five years, date of birth, nationality, and occupation;
(c) particulars of the grounds upon which the claim is based and of the relief sought, and any other relevant information such as the financial and family circumstances of the claimant and the respondent.

Article 4

TRANSMISSION OF DOCUMENTS

1. The Transmitting Agency shall transmit the documents to the Receiving Agency of the State of the respondent, unless satisfied that the application is not made in good faith.

2. Before transmitting such documents, the Transmitting Agency shall satisfy itself that they are regular as to form, in accordance with the law of the State of the claimant.

3. The Transmitting Agency may express to the Receiving Agency an opinion as to the merits of the case and may recommend that free legal aid and exemption from costs be given to the claimant.

Article 5

TRANSMISSION OF JUDGMENTS AND OTHER JUDICIAL ACTS

1. The Transmitting Agency shall, at the request of the claimant, transmit, under the provisions of article 4, any order, final or provisional, and any other judicial act, obtained by the claimant for the payment of maintenance in a competent tribunal of any of the Contracting Parties, and, where necessary and possible, the record of the proceedings in which such order was made.

2. The orders and judicial acts referred to in the preceding paragraph may be transmitted in substitution for or in addition to the documents mentioned in article 3.

3. Proceedings under article 6 may include, in accordance with the law of the State of the respondent, exequatur or registration proceedings or an action based upon the act transmitted under paragraph 1.

Article 6

FUNCTIONS OF THE RECEIVING AGENCY

1. The Receiving Agency shall, subject always to the authority given by the claimant, take, on behalf of the claimant, all appropriate steps for the recovery of maintenance, including the settlement of
the claim and, where necessary, the institution and prosecution of an action for maintenance and the execution of any order or other judicial act for the payment of maintenance.

2. The Receiving Agency shall keep the Transmitting Agency currently informed. If it is unable to act, it shall inform the Transmitting Agency of its reasons and return the documents.

3. Notwithstanding anything in this Convention, the law applicable in the determination of all questions arising in any such action or proceedings shall be the law of the State of the respondent, including its private international law.

**Article 7**

**Letters of Request**

If provision is made for letters of request in the laws of the two Contracting Parties concerned, the following rules shall apply:

(a) A tribunal hearing an action for maintenance may address letters of request for further evidence, documentary or otherwise, either to the competent tribunal of the other Contracting Party or to any other authority or institution designated by the other Contracting Party in whose territory the request is to be executed.

(b) In order that the parties may attend or be represented, the requested authority shall give notice of the date on which and the place at which the proceedings requested are to take place to the Receiving Agency and the Transmitting Agency concerned, and to the respondent.

(c) Letters of request shall be executed with all convenient speed; in the event of such letters of request not being executed within four months from the receipt of the letters by the requested authority, the reasons for such non-execution or for such delay shall be communicated to the requesting authority.

(d) The execution of letters of request shall not give rise to reimbursement of fees or costs of any kind whatsoever.

(e) Execution of letters of request may only be refused:
   (1) If the authenticity of the letters is not established;
   (2) If the Contracting Party in whose territory the letters are to be executed deems that its sovereignty or safety would be compromised thereby.
Article 8

VARIATION OF ORDERS

The provisions of this Convention apply also to applications for the variation of maintenance orders.

Article 9

EXEMPTIONS AND FACILITIES

1. In proceedings under this Convention, claimants shall be accorded equal treatment and the same exemptions in the payment of costs and charges as are given to residents or nationals of the State where the proceedings are pending.

2. Claimants shall not be required, because of their status as aliens or non-residents, to furnish any bond or make any payment or deposit as security for costs or otherwise.

3. Transmitting and Receiving Agencies shall not charge any fees in respect of services rendered under this Convention.

Article 10

TRANSFER OF FUNDS

A Contracting Party, under whose law the transfer of funds abroad is restricted, shall accord the highest priority to the transfer of funds payable as maintenance or to cover expenses in respect of proceedings under this Convention.

Article 11

FEDERAL STATE CLAUSE

In the case of a Federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of Parties which are not Federal States;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional
system of the Federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;

(c) A Federal State Party to this Convention shall, at the request of any other Contracting Party transmitted through the Secretary-General, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention, showing the extent to which effect has been given to that provision by legislative or other action.

Article 12

TERRITORIAL APPLICATION

The provisions of this Convention shall extend or be applicable equally to all non-self-governing, trust or other territories for the international relations of which a Contracting Party is responsible, unless the latter, on ratifying or acceding to this Convention, has given notice that the Convention shall not apply to any one or more of such territories. Any Contracting Party making such a declaration may, at any time thereafter, by notification to the Secretary-General, extend the application of the Convention to any or all of such territories.

Article 13

SIGNATURE, RATIFICATION AND ACCESSION

1. This Convention shall be open for signature until 31 December 1956 on behalf of any Member of the United Nations, any non-member State which is a Party to the Statute of the International Court of Justice, or member of a specialized agency, and any other non-member State which has been invited by the Economic and Social Council to become a Party to the Convention.

2. This Convention shall be ratified. The instruments of ratification shall be deposited with the Secretary-General.

3. This Convention may be acceded to at any time on behalf of any of the States referred to in paragraph 1 of this article. The instruments of accession shall be deposited with the Secretary-General.
Article 14

ENTRY INTO FORCE

1. This Convention shall come into force on the thirtieth day following the date of deposit of the third instrument of ratification or accession in accordance with Article 13.

2. For each State ratifying or acceding to the Convention after the deposit of the third instrument of ratification or accession, the Convention shall enter into force on the thirtieth day following the date of the deposit by such State of its instrument of ratification or accession.

Article 15

DENUNCIATION

1. Any Contracting Party may denounce this Convention by notification to the Secretary-General. Such denunciation may also apply to some or all of the territories mentioned in Article 12.

2. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General, except that it shall not prejudice cases pending at the time it becomes effective.

Article 16

SETTLEMENT OF DISPUTES

If a dispute should arise between Contracting Parties relating to the interpretation or application of this Convention, and if such dispute has not been settled by other means, it shall be referred to the International Court of Justice. The dispute shall be brought before the Court either by the notification of a special agreement or by a unilateral application of one of the parties to the dispute.

Article 17

RESERVATIONS

1. In the event that any State submits a reservation to any of the articles of this Convention at the time of ratification or accession, the Secretary-General shall communicate the text of the reservation to all States which are Parties to this Convention, and to the other States referred to in Article 13. Any Contracting Party
which objects to the reservation may, within a period of ninety
days from the date of the communication, notify the Secretary-
General that it does not accept it, and the Convention shall not then
enter into force as between the objecting State and the State mak-
ing the reservation. Any State thereafter acceding may make such
notification at the time of its accession.

2. A Contracting Party may at any time withdraw a reservation
previously made and shall notify the Secretary-General of such withdrawal.

Article 18

Reciprocity

A Contracting Party shall not be entitled to avail itself of this
Convention against other Contracting Parties except to the extent
that it is itself bound by the Convention.

Article 19

Notifications by the Secretary-General

1. The Secretary-General shall inform all Members of the United
Nations and the non-member States referred to in Article 13:
   (a) of communications under paragraph 3 of Article 2;
   (b) of information received under paragraph 2 of Article 3;
   (c) of declarations and notifications made under Article 12;
   (d) of signatures, ratifications and accessions under Article 13;
   (e) of the date on which the Convention has entered into force
      under paragraph 1 of Article 14;
   (f) of denunciations made under paragraph 1 of Article 15;
   (g) of reservations and notifications made under Article 17.

2. The Secretary-General shall also inform all Contracting Parties of
requests for revision and replies thereto received under Article 20.

Article 20

Revision

1. Any Contracting Party may request revision of this Convention at
any time by a notification addressed to the Secretary-General.
2. The Secretary-General shall transmit the notification to each Contracting Party with a request that such Contracting Party reply within four months whether it desires the convening of a Conference to consider the proposed revision. If a majority of the Contracting Parties favour the convening of a Conference it shall be convened by the Secretary-General.

Article 21

Languages and Deposit of Convention

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General, who shall transmit certified true copies thereof to all States referred to in Article 13.