

# DIPLOMATIC CONFERENCE ON WILLS

Washington, D.C.      October 16-26, 1973

SR/13  
October 26,

## SUMMARY RECORD - THIRTEENTH PLENARY SESSION

Thursday, October 25, 1973

The Chairman opened the Thirteenth Plenary session at 3:00 p.m.

The Chairman of the Drafting Committee told the delegates that the Drafting Committee had worked on the various proposals submitted to it by the Plenary Session. He added that there were still several tasks remaining for the Committee, but that he hoped that the Committee might be able to finish its work this evening.

The Chairman recommended that the Plenary Session expedite its work so that the Drafting Committee could begin considering this work. This was necessary because the Plenary Session could not complete its work until the Drafting Committee had submitted its final draft to the whole Convention. The Chairman opened discussion on the proposed articles listed on Document P/43.

The Delegate of Canada asked that the Delegation's name be included in the joint proposals being discussed.

The Chairman acquiesced.

The Chairman went through the articles and asked if there was any discussion on them. There was none until ARTICLE XII was reached.

The Delegate of the USSR then commented on ARTICLE XII of Document P/43. He felt that the provision that the Convention would apply to territories was unnecessary and in conflict with U.N. General Assembly declaration. Thus he made a formal proposal to delete ARTICLE XI from Document P/43.

The Delegate of the United Kingdom responded by saying that he did not want to debate colonialism. He argued that the clause was an important matter of practicality since it would allow his country, for instance, to ratify the Convention more quickly. Since it was the goal of the Convention to gain as much compliance with the Uniform Law as possible, the clause was both practical and useful.

The Delegate of Switzerland suggested a change that he hoped would satisfy both the UK and the USSR: after the word "responsible" in ARTICLE XII, he proposed the addition of "in accordance with international law."

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NOTE: Unless changes or corrections to this Summary Record are submitted to the Secretary General within two working days, it will be considered Final.

The Delegate of the Netherlands stated that his country also needed the present ARTICLE XII, in view of the degree of autonomy that some of his country's territories had achieved.

The Delegate of Mexico mentioned that he too opposed colonialism but that the Convention had to be practical. Since there were colonies in the world today, he continued, ARTICLE XII was useful. Otherwise, people in territories could not make international wills.

The Delegate of Czechoslovakia expressed opposition to a "colonial clause" but not to a "federal clause" if such was needed by the UK and the Netherlands.

The Delegate from the Netherlands stated that the clause was needed because of the autonomy achieved by so many overseas territories. He had been instructed to stand firm on ARTICLE XII and he therefore requested a vote on the matter.

The Delegate of the USSR also asked for a vote.

The Delegate of France said that the "colonial clause" did not refer solely to colonies and territories. It applied also to nations who had asked other nations to handle their foreign policy for them. He gave the example of France and Monaco.

The Chairman then called for a vote.

The Delegate of Australia asked if the Swiss proposal had been made formally.

The Chairman answered no.

The Delegate of Australia asked that the Swiss proposal be put to a vote also.

The Chairman ruled that the first vote would be on the USSR's proposal to delete ARTICLE XII.

The Delegate of Switzerland expressed doubt regarding the deletion of an article of a UNIDROIT proposal. He was not certain if the Convention could do this. He also requested a division on the question.

The Delegate of the USSR said his proposal referred not only to the UNIDROIT proposal but also to Conference Document P/43. He asked for a vote on Document P/43.

The Delegate of the Netherlands said that the Swiss proposal could have a very ironic effect on the Netherlands and its overseas territories. The Delegate from Switzerland made it clear that there is no formal Swiss proposal on the floor. He also better understood the USSR proposal. He asked that in cases where proposals were misunderstood, a division--that is, a separate vote--be called to clarify the matter.

The Delegate of the USSR asserted that his call for a vote was permitted under the procedures of the Conference.

The Chairman then made several comments on procedural matters as he understood them.

The Delegate of Switzerland said that there was a procedural argument for the division of the issues to be voted on. He concluded by saying that since the Conference was faced with two separate problems, he had a right to call for a division.

The Delegate of the USSR stated that the Uniform Law and the Draft Convention should not contain "colonial clauses."

The Delegate of Italy asserted that the ARTICLE had originally been drafted by a committee of experts, not merely UNIDROIT.

The Chairman ruled that according to RULE 40 a division was permitted. The Chairman called a vote on the Swiss proposal to divide the vote. The proposal carried--14 in favor, 7 opposed, and 6 abstentions. The Chairman then called for a vote on the Soviet proposal to delete ARTICLE XII. The proposal was defeated--4 in favor, 18 opposed, and 7 abstentions.

The Delegate of Zaire explained his abstention. He believed that the question under discussion was an important political question for his country. He felt that whether or not the clause was kept would make little difference in the acquisition of independence by colonies. Hence, his abstention.

The Delegate of Brazil asserted that although the P/43 Document contained the name of Brazil as a sponsor he wanted to tell the Convention that his country had had no role whatever in proposing ARTICLE XII.

The Chairman then called a vote on the deletion of ARTICLE XII. from the Conference Document No. 1. It was defeated--3 in favor, 13 opposed, and 12 abstentions. ARTICLE XII was retained in the final articles.

The Delegate of Canada proposed that in the Canadian Delegation's proposal P/25, the word "received" on page 3 be changed to "made"; and the word "shall" be included after the word "made"; and that the word "internal" on page 3 be deleted.

The Chairman read a note he had just received and asked if the Canadian Delegate was familiar with the note's proposal.

The Delegate of Canada replied that he was familiar with the Australian proposal contained in the note. He said that he now thought that the proposal would raise more problems than it solved and so opposed it.

The Chairman stated that it was his understanding that a consensus had been reached on the federal state clause problems and suggested that the minor changes in the Canadian draft be submitted to the Drafting Committee.

The Delegate of Australia asked that his proposal on which the Canadian Delegate had commented be raised in the Plenary Session. He felt his proposal was not a matter of drafting, but a substantive point. On the last line of page 2 of Document P/25, he proposed to change the word "wills" to "the international will". He felt this wording would avoid conflict. The Delegate then requested a vote.

The Chairman said that he was not quite certain of the effect of the proposed amendment.

The Delegate of Australia commented that the potential conflict lay in the fact that the federal authorities would be implementing the law regarding the international will, while all other wills would be established under the law of each constituent territory.

In commenting on the Canadian and Australian proposals, the Delegate of Switzerland stated that he did not see a possibility of reconciling the alternatives of jurisdiction in the draft unless the alternatives were left open, thus allowing a federal contracting state to apply its own solution.

The Delegate of Mexico agreed with the views of the Swiss Delegate. He noted that the proposal of the Australian Delegate could require a change in the federal constitutions of some states.

The Delegate of Canada pointed out that a federal state decides whether the legislative competence regarding the form of wills falls to the federal government or to the constituent states. He stated that he could not accept the proposed amendment because it did not accurately carry the thrust of the purpose of the federal state clause.

The Delegate of Australia stated that under the circumstances he would not ask for a vote. He noted that he was not addressing situations where the jurisdiction of wills was clear, but rather situations where the jurisdiction was with both the federal and state authorities. The Delegate reserved the right to consult with other delegations on the issue.

The Chairman referred ARTICLE XIII to the Drafting Committee.

Opening the discussion of ARTICLE IV, the Chairman noted that it was drafted in standard language. He pointed out that the ARTICLE proposed that the original of the Convention be in four languages--English, French, Russian, and Spanish.

The Delegate of Switzerland asked the Secretariat and the Rapporteur to make sure that all notifications were included in paragraph 2, including the Polish proposal approved in the morning.

The Delegate of France noted that the word "article" in paragraph 2 section (c) should not be capitalized in the French text.

The Chairman asked that any comments or corrections on the draft outline of the Final Act of the Conference be brought to the attention of the Secretary General or the Deputy Secretary General.

The Delegate of France noted that on page 1 of the Final Act reference should be made to "states," not "countries."

The Delegate of Switzerland proposed that the Drafting Committee meet at 5:15 p.m. and advised that the Plenary could possibly reconvene at 8:30 p.m.

The Chairman adjourned the session at 5:00 p.m.

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