

# DIPLOMATIC CONFERENCE ON WILLS

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## COMMENTS OF THE GOVERNMENT OF ISRAEL ON THE DRAFT CONVENTION AND UNIFORM LAW ON THE FORM OF THE INTERNATIONAL WILL

### GENERAL

The Government of Israel, having been represented on the Committee of Experts which first prepared these Drafts, is in agreement with their basic lines and most of their provisions. Accordingly, the following remarks are, with one or two exemptions, confined to minor points, questions of drafting and the like.

### THE CONVENTION

#### PREAMBLE

For the sake of accuracy, the words "for the applicable law" should be replaced by the words "for the law applicable to the form of a will."

#### ARTICLE I

This provision corresponds to Article I of the 1964 Hague Convention on the International Sale of Goods. It appears that the wording of the latter provision is preferable to that of the present Article. It is, therefore, suggested - also for the sake of conformity of the two Conventions - to adapt Article I to Article I of the Sales Convention.

#### ARTICLE II

For the sake of clarity the words "complete and implement the provisions of the Annex" in paragraph 1, and the word "other" in paragraph 2 should be deleted.

#### ARTICLE III

As worded at present, the provision seems to be unduly complicated and the reference to an internal law seems unnecessary and undesirable. It is suggested to replace the words "as having been made" at the end of paragraph 1 by the words "to be valid with regard to form."

Paragraph 2 should, accordingly, be amended by replacing the words "be considered as having been made" to the end of the paragraph, by the words "also be considered to be valid with regard to form," and by adding the following sentence: "for the purpose of this provision any person who is qualified to attest or receive wills in accordance with the law of such State shall be considered to be an "authorized person" within the meaning attached to that term in this Convention and the Uniform Law."

#### ARTICLE IV

In view of Article 7 paragraph 4 of the Uniform Law this provision appears to be redundant and might be omitted from the Convention.

#### ARTICLE V

Exception is taken to this provision. To refer the question of the witnesses' capacity to any internal law would detract considerably from the usefulness of the unification. It is proposed to transfer this issue from the Convention to the Uniform Law and to deal with it thereby inserting between Articles 5 and 6 a new article in the following or any similar form: "The witnesses shall be persons above the age of (say) 21 years and of sound mind; they shall not be relatives of the testator; they may be of whatever nationality, domicile or residence."

The cumbersome provision now contained in Article 7 paragraph 1(e) of the Uniform Law could then be omitted.

In case Article V should remain, the expression "received" should be clarified.

#### ARTICLE VI

Instead of "the person qualified to receive the will" it should read "the person authorized to act in connection with international wills" as in Article II.

## THE UNIFORM LAW

## Article 1

The words "in the form of an international will" in paragraph 1 should be deleted, as they seem to refer to a form of will already laid down elsewhere.

The fact that non-observance of Article 5 seq. does not invalidate the will should not only be derived from the non-inclusion of these provisions in paragraph 1; it is so important that it should be spelled out in so many words. It is therefore proposed to formulate paragraph 2 as follows:

"The failure to observe any other provision of this Law shall not by itself affect the validity of the international will, nor shall the failure to observe any provision of this Law affect the validity of the document as a will of any other kind."

Such a clause would make redundant Article 7 paragraph 3 where the same rule is expressed with regard to one of the several "secondary" requirements.

## Article 3

It might be advisable to insert the words "under the Convention Providing ....." after the words "a person authorized."

## Article 6

The notion of "reception" seems to have survived from some previous drafts. In the present drafts it is meaningless. The word "reception" in paragraphs 1 and 2 of this Article, should therefore be replaced by "signature by the authorized person."

Paragraph 3 of this Article seems redundant and should be omitted.

## Article 7

In the opening sentence it might be safer to spell out what is explained in the Report and to say "shall place at the end of the will or add to it ....."

Paragraph 1(c) should read: "the witnesses and he himself have...."

In view of what has been proposed above with regard to the capacity of the witnesses, paragraph 1(d) should conclude with the words "... and of the identity and capacity of the witnesses;" and paragraph 1(e) should be deleted.

As to paragraph 3, see remarks to Article 1.

In paragraph 4 the words "Unless impeached by competent proof" are an awkward way of expressing that the certificate "shall be accepted as prima facie proof."

#### Additional Article

It is considered advisable to add a provision stating expressly that the international form of will is additional to any other valid form of will

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