

DIPLOMATIC CONFERENCE ON WILLS
Washington, D.C. October 16-26, 1973

P/1
October 16, 1973

PROPOSAL OF THE DELEGATION OF SPAIN

THE UNIFORM LAW

Article 2

Revision of second paragraph:

"2. It may be written in any language known by the testator,
by hand or by any other means."

Article 7

Delete paragraph 3.

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DIPLOMATIC CONFERENCE ON WILLS

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Original: English
October 17, 1973

PROPOSALS OF THE DELEGATION OF GREECE

THE UNIFORM LAW

1. Article 1, paragraph 1

Delete the words: "irrespective of the place where it is made and irrespective of the nationality, domicile or residence of the testator".

Alternatively

Amend as follows: "irrespective of the place where it is made, the nationality, the domicile, and the residence of the testator and/or any other factor".

2. Article 1, paragraph 2

Amend as follows: "Failure to observe any such provision shall not by itself affect the validity of the will as regards form, if that is valid under the law applicable in accordance with the rules of private international law of the Country concerned (forum)".

Alternatively

Amend as follows: "Failure to observe any such provision shall not by itself affect the validity of the will as regards form, if that is valid under the national law of the country concerned (forum), including the rules of private international law".

3. Article 3, paragraph 1

After the words: "and that he knows" add the words: "and approves".

4. Article 6, paragraph 3

Add at the end: "in accordance with the law of the country concerned (forum)".

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P/2 (Corr. 1)
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October 19, 1973

PROPOSAL OF THE DELEGATION FROM GREECE

THE UNIFORM LAW

Article 6

Delete paragraph 3

Alternatively

Add at the end of paragraph 3: "in accordance with the law
of the country concerned (forum)."

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Original: English
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PROPOSAL OF THE DELEGATION OF THE UNITED STATES OF AMERICA

THE UNIFORM LAW

Article 7

Amend the article to read:

- "1. The authorized person shall add to the will a certificate stating that:
 - (a) in his presence and in that of the witnesses the testator has declared that the document is his will and that he knows the contents thereof;
 - (b) in his presence and in that of the witnesses the testator has signed the will or has acknowledged his signature previously affixed;
 - (c) he (the authorized person) and the witnesses have signed it;
 - (d) he has satisfied himself as to the identity of the testator and of the witnesses as described in the certificate;
 - (e) he and the witnesses were qualified according to the internal law of the place where the will was executed;
 - (f) the date on which the acts specified in (a), (b), and (c) took place.
- "2. The authorized person shall also state his authority and address and the usual occupation of the testator and of the witnesses and their addresses. He shall date and sign the certificate.
- "3. The authorized person shall keep a copy of the certificate and deliver one to the testator.
- "4. Unless impeached by competent proof, the foregoing certificate of the authorized person shall be accepted as sufficient proof in any cause or proceeding of all facts necessary to the due execution of the instrument as a will under this law.

- "5. The absence or ineffectiveness of a certificate shall not as such affect the validity of a will under this Law but adequate proof of the due execution of the instrument as such a will shall be required in any cause or proceeding."

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PROPOSAL OF THE DELEGATION OF THE UNITED STATES OF AMERICA

THE UNIFORM LAW: APPENDIX

Add an appendix containing the following certificate:

Appendix

CERTIFICATE

(Convention of October 26, 1973)

1. I, name, address
and capacity
 2. certify that on Date
 3. (testator) name, address
and usual occupation
in my presence and that of the witnesses
 4. (a) name, address, and occupation
(b) name, address, and occupation
- has declared that the document (attached) is his will and that he knows the contents thereof.
5. I furthermore certify that
 6. (a) in my presence and in that of the witnesses the testator has signed the will or has acknowledged his signature previously affixed;
 7. (b) the testator and the witnesses have signed it;
 8. (c) I have satisfied myself as to the identity of the testator and of the witnesses as designated in the certificate;
 9. (d) the witnesses were qualified according to the internal law of the place where the will was executed.

Finally, I state that under the internal law of the place where the will was executed I am a person authorized to make this certification.

PLACE

DATE

SIGNATURE

SEAL

* * *

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UNITED KINGDOM DELEGATION PROPOSALS

The Annex, Article 4

Under U.K. law a testator who is unable to write (whether from ignorance or because of illness, blindness or injury) can direct another person to sign on his behalf. The U.K. delegation suggests that the uniform law should make this possible in all countries.

They suggest a new Paragraph 2:

"The testator, if unable to sign, may direct the authorized person to sign on his behalf".

The present Paragraph 2 should then be renumbered "3", and Article 7, Paragraph 1(b) amended by adding:

....."or that the authorized person at the direction of the testator signed the will on his behalf in his presence and that of the witnesses".

The Annex, Article 6

"Reception" has no recognized meaning in U.K. law or practice. It is ambiguous and in the case of a will previously signed elsewhere, or subsequently deposited and registered, could relate to one of those occasions. We would suggest for Paragraph 1 a phrase which more precisely relates to the ceremony before the authorized person, such as:

....."(the date) on which the provisions of Articles 2 to 4 have been complied with".

In Paragraphs 2 and 3 "This date" would suffice.

Convention, Article XI

The U.K. delegation suggest a further paragraph:

"3. No such denunciation shall affect the validity of a will already made".

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PROPOSAL OF THE DELEGATION OF THE UNITED STATES OF AMERICA

THE UNIFORM LAW

Add to the Uniform Law a new article on interpretation to read as follows:

Article ____

"In interpreting and applying the provisions of the Uniform Law regard shall be had to its international character and to the need to promote uniformity in its interpretation and application."

Basis for Proposal

An article along these lines appears in a number of draft conventions to which uniform laws are annexed. Two of the most recent are the UNCITRAL draft convention on Prescription, and the Common Market draft convention on a law governing contractual and non-contractual obligations.

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PROPOSAL OF THE DELEGATION OF IRAN

THE UNIFORM LAW

Article 2

The Delegation of Iran proposes, through the Secretary General of the Conference, the following amendment of Article 2 of the Uniform Law:

"From the standpoint of this uniform law, the 'international will' is the written expression of the last will and testament of the deceased in the forms prescribed by this uniform law, whether it is written by hand by the testator himself or by another person or by any other means and in any case in any language."

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P/7 (Corr. 1)
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PROPOSAL OF THE DELEGATION OF IRAN

THE UNIFORM LAW

Article 2

The Delegation of Iran proposes, through the Secretariat of the Conference, the following amendment of Article 2 of the Uniform Law:

"From the standpoint of this uniform law, the 'international will' is the written manifestation of the last wishes of the deceased in the forms prescribed by this uniform law, whether it is written by hand by the testator himself or by another person or by any other means and in any case in any language."

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PROPOSAL OF THE DELEGATION OF GERMANY (FEDERAL REPUBLIC OF)

THE UNIFORM LAW

Article 9, Annex

An authorized person according to the preceding provisions is
..... (to be completed according to the internal
law of the contracting party).

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October 17, 1973

AMENDMENTS PROPOSED BY THE JAPANESE DELEGATION

ANNEX

1. Article 1

We wish to propose that the following phrase be added to the end of paragraph 1: "and if a certificate complying with the provisions set out in paragraph 1 of Article 7 is attached to the will."

The main reasons for this proposal are (1) to let the authorized person carry out his duty more carefully, (2) to prevent the forgery of the will, (3) to avoid any possible dispute as much as possible, and (4) to mitigate any possible burden on the court.

2. Article 3

a. We would suggest that the following phrase be inserted between "declare" and "in the presence of two witnesses" of the paragraph 1: "orally or in script."

The reason for this proposal is to guarantee the freedom of making a will to a person who is unable to speak.

b. We wish to propose that the following provision be added as paragraph 3: "The witnesses shall satisfy the requirements needed according to the internal law of the place where the will is received."

The reason for this proposal is to acquire the minimum circumstantial guarantee of trustworthiness of a will.

3. Article 7

We wish to propose that paragraph 3 be deleted. As to the reasons for this proposal, see the remarks relating to Article 1.

4. Additional Article

We would suggest that the following article be added: "The foregoing articles shall apply to the wills revoking an earlier will."

The reason for this proposal is to recognize the forms for revoking an earlier will and, therefore, to guarantee the freedom of the testator to revoke the international will.

CONVENTION

1. Article IV

We presume that "Article 8" in this provision will be corrected to "Article 7."

2. Article XI

We would suggest that the following provision be added as paragraph 3: "The Contracting Party which denounces this Convention shall, notwithstanding the provisions set out in the foregoing paragraphs, acknowledge the validity of the international will of a testator who dies before the date of such denunciation."

The reason for this proposal is to protect the will of a deceased person who never anticipated that he will would become void.

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AMENDMENTS PROPOSED BY THE JAPANESE DELEGATION

ANNEX

Page 2, last line on page, change the word "he" to "his."

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PROPOSAL OF THE OBSERVER FROM THE INTERNATIONAL UNION OF LATIN NOTARIES

CONVENTION

ARTICLE I

Add a third paragraph:

"3. Each Contracting Party may add provisions aimed at prohibiting authorized persons in its territory from receiving international wills in the absence of certain elements of a foreign status, provided that any invalidity of the will is ruled out."

Comment:

It goes without saying that if the testator does not wish to make the content of the will known even to the authorized person (as provided in Article 3 of the draft Uniform Law), a declaration by the testator concerning the existence of an element of foreign status, included in the certificate drafted by the authorized person, shall be sufficient to exclude any responsibility on the part of the latter.

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PROPOSALS OF THE DELEGATION OF BRAZIL

THE UNIFORM LAW

Amendment to Article 2, paragraph 2:
Add:

"However, the translation of the will may be required as a condition of its domestic validity."

Amendment to Article 3, paragraph 1 of the Annex:

The testator shall declare in the presence of two witnesses who understand his language and of a person authorized....

Amendment to Article 4, paragraph 1 of the Annex, as proposed by Costa Rica in Document 4 of September 12, 1973:

In the presence of the witnesses and of the authorized person, the testator or, if he cannot or does not know how to write, someone at his request shall sign the will....

Amendment to Article 7, paragraph 1, b of the Annex:

(b) the testator or, if he, cannot or does not know how to read, someone at his request, has signed the will or....

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P/12

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PROPOSAL OF THE DELEGATION OF THE NETHERLANDS

THE UNIFORM LAW

Article 1

With a view to avoiding unwanted restrictive interpretations of Article 1 of the Uniform Law, and for stylistic reasons (symmetry with Article IV of the Convention), the Delegation of the Netherlands proposes the following revision:

Article 1 of the Uniform Law becomes Article I bis of the Convention. (It will be necessary to adapt new Article II bis; this could be done by the Drafting Committee.)

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October 17, 1973

PROPOSAL OF THE DELEGATION OF BELGIUM

INTERNATIONAL CERTIFICATE

1. When a will has been made in the form of an international will, the person authorised to receive international wills must deliver to the testator an International Certificate, in accordance with the model annexed to the Convention.

(The Convention should mention this obligation.)

2. The International Certificate constitutes proof of the proper performance of the formalities prescribed by the Uniform Law on the Form of the International Will.

Any challenge in this connexion must be brought before the courts of the authorised person who has delivered the certificate.

3.

INTERNATIONAL CERTIFICATE
Delivered pursuant to Article _____
of the Convention providing a
Uniform Law on the Form of the
International Will

The undersigned.....

(Name Address Country)

Acting as a person authorized to receive an international will,

Certifies, after having assured himself of the identity of:

(1) The testator..... (surname, given name, date and place of birth, stated address)

(2) The witnesses..... (identity) whom he affirms to be qualified as such,

that the aforesaid testator, in his presence and in the presence of the witnesses, has handed him on.....
(indicate the date of the reception of the will)
a document that he has stated to be his will and of which he claims to know the content;

Certifies that the will has been signed by the testator in his presence and in the presence of the witnesses;

Confirms that the provisions of the Uniform Law on the Form of the International Will have been complied with;

Certifies that the will has been received for safekeeping and has not been retracted by the testator.

Date of delivery of the certificate

Signature of the Authorised Person

4. Requests for information on the subject of the International Certificate

Each Contracting State shall designate a national organization to receive requests for information, on the subject of international certificates, from the national organisations of the other Contracting States.

5. Centralisation of information on the addresses of the national organizations

Each Contracting State shall communicate the title and address of the national organisation to.....(for example, the Ministry of Foreign Affairs of a specified country).

6. The specifics to be included in the request for information

The request for information must mention at least:

(a) the surname, given name, date and place of birth and last known address of the testator;

(b) if possible the name, profession, address and country of the authorized person who has received the international will or has it in safekeeping.

It would be desirable to attach to the request for information an extract from the testator's death certificate.

7. Recognition of the International Certificate delivered in a contracting state

The international certificate delivered in a Contracting State by a person authorised to receive international wills shall be considered by other Contracting States as done before a person authorised to deliver an international certificate.

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Original: English
October 18, 1973

PROPOSAL OF THE DELEGATION OF IRELAND

THE UNIFORM LAW

Article 4

Substitute the following for paragraphs 1 and 2:

- "1. The will shall be signed by the testator, or by the authorized person in the presence and at the direction of the testator."
- "2. The signature shall be made or acknowledged by the testator in the presence of the witnesses and of the authorized person, all being present together at the same time; and the witnesses and the authorized person shall there and then, in the presence of the testator and in the presence of each other, attest by their signatures the signature of the testator, but no form of attestation shall be necessary."

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Original: English
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PROPOSAL OF THE DELEGATION OF GREECE

THE UNIFORM LAW

Article 4

Add a paragraph, as follows:

"If the testator declares that he is unable to sign, the witnesses referred to in Article 3, paragraph 1, must be three."

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P/16
Original: English
October 18, 1973

PROPOSAL OF THE SWEDISH DELEGATION

- . Delete Article 8 of the Annex.
- . Insert in the Convention the following new article:

The safekeeping of an international will shall be governed
by the law of the place where the will is received.

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P/17
Original: French
October 18, 1973

PROPOSAL OF THE DELEGATION OF IRAN

Amendment of Article 4, paragraph 1, of the draft Uniform Law:

In order to avoid eventual confusions and difficulties, the Iranian Delegation proposes the following amendment to Article 4, paragraph 1:

1. In the presence of the witnesses and of the authorized person, the testator shall sign the will, or if he has previously signed it, shall acknowledge and confirm "in writing and on the instrument itself or, if need be, on the sealed envelope containing the will," his "prior" signature.

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P/17 (Corr. 1)
Original: French
October 18, 1973

PROPOSAL OF THE DELEGATION OF IRAN

Amendment of Article 4, paragraph 1, of the draft Uniform Law:

In order to avoid eventual confusions and difficulties, the Iranian Delegation proposes the following amendment to Article 4, paragraph 1:

1. In the presence of the witnesses and of the authorized person, the testator shall sign the will, or if he has previously signed it, shall acknowledge and confirm "in writing on the instrument itself or, if the case should arise, on the sealed envelope containing the will," his "prior" signature.

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Original: French
October 18, 1973

PROPOSAL OF THE OBSERVER FROM THE
INTERNATIONAL UNION OF LATIN NOTARIES

UNIFORM LAW

Article 4

Add the following paragraph 2:

"If the testator is unable to sign or does not know how to sign, he shall declare the cause thereof to the authorized person, who shall make note of that declaration on the will itself or in the certificate provided for in Article 7." (The present paragraph 2 will become paragraph 3.)

Comment:

If this amendment were adopted there would be no need for another person to sign the will in place of the testator, as suggested in other proposals.

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Original: Russian
October 18, 1973

PROPOSAL OF THE DELEGATION OF THE USSR

THE UNIFORM LAW

Annex

If the testator cannot sign the will himself because of illiteracy, physical inability or illness, it may be signed on his behalf at his request by another person in the presence of the authorized person. In this case, the authorized person shall state the reasons prevented the testator from signing the will himself.

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DIPLOMATIC CONFERENCE ON WILLS

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P/19 (Corr. 1)
Original: Russian
October 19, 1973

PROPOSAL OF THE DELEGATION OF THE USSR

THE UNIFORM LAW

Article 4

Add the following new paragraph after paragraph 1:

If the testator cannot sign the will himself because of illiteracy, physical inability or illness, it may be signed on his behalf at his request by another person in the presence of the authorized person. In this case, the authorized person shall state the reasons which prevented the testator from signing the will himself.

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Original: Russian
October 18, 1973

PROPOSAL OF THE DELEGATION OF THE USSR

THE UNIFORM LAW

Annex

Article I, paragraph 2 to be revised as follows:

I. "2. Non-observance of any such rule does not affect the validity of any will of another kind, made in accordance with the requirements of domestic law, including the rules governing choice of law."

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DIPLOMATIC CONFERENCE ON WILLS

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Original: French
October 18, 1973

THE DELEGATION OF BRAZIL

THE UNIFORM LAW

Article 3, Paragraph 2

Add at the end: "except in cases where the testator cannot or
does not know how to read or write."

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P/22

Original: French
October 18, 1973

PROPOSAL OF THE OBSERVER OF THE
INTERNATIONAL UNION OF LATIN NOTARIES

UNIFORM LAW

Article 5

If we accept the proposal made with reference to Article 4,
we must add the following clause: 3. If the testator cannot or
does not know how to sign and the will consists of several sheets,
the signatures of the witnesses and of the authorized person, must
be placed on each of them.

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Original: French

October 18, 1973

PROPOSAL OF THE DELEGATION OF IRAN

THE UNIFORM LAW

Article 5

Hoping to have a clearer text for Article 5, which should be more useful in juridical practice, the delegation of my country proposes two revisions of Article 5 of the draft uniform law:

1. Eliminate the expression, "unless the sheets follow each other and form a whole," that is inserted at the end of paragraph 2.

2. Add the following paragraph to Article 5:

- "3. If the signed sheet or sheets of a will consisting of several sheets constitute, independently of the content of the sheet or sheets not signed by the testator, a separate but at the same time complete and distinct will, the lack of the testator's signature on the unsigned sheet or sheets shall not be regarded as a reason for denying the formal validity of the content of the sheet or sheets signed by the testator."

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DIPLOMATIC CONFERENCE ON WILLS

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P/24

Original: French

October 22, 1973

PROPOSAL OF THE IRANIAN DELEGATION

THE UNIFORM LAW

The Iranian Delegation proposes that paragraph 3 of Article 6 be deleted, because if the dispute leads to criminal proceedings each country will follow its own criminal procedures, and if not, the rules concerning evidence in lawsuits answer this question. In any case, there is no need to insert this paragraph in the Draft of the Uniform Law.

In addition "any means" allows for changing the date of the will by legal means, oath, witnesses, as principal evidences, which is certainly not logical.

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DIPLOMATIC CONFERENCE ON WILLS

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P/25

Original: English
October 19, 1973

PROPOSAL OF THE DELEGATION OF CANADA

THE CONVENTION

Article...The Federal State Clause

Experience gained at The Hague Conference, more particularly in 1972, with the type of Convention under discussion at this Diplomatic Conference has demonstrated that there is not merely one type of federal-state clause required but, in proper circumstances, at least three. A good illustration of this fact is found in the provisions of the Convention Concerning the International Administration of the Estates of Deceased Persons (The Hague Conference, 1972).

The first type of federal-state clause covers the situation where two or more systems of law pertain within the geographical boundaries of a single jurisdiction--the different systems arising from religious laws forming part of the civil law of the otherwise unitary state. The State of Israel affords us a good example of this. Consequently, Article 34 of the Convention provides as follows:

In relation to a Contracting State having, in matters of estate administration, two or more legal systems applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State, as applicable to the particular category of persons.

The second type of federal-state clause is required to accommodate the situation where different systems of law apply as a result of the distribution of legislative powers amongst several territorial units. This is the situation in the United States and Canada. Article 35 of the Convention accommodates this politico-legal situation and provides:

If a Contracting State has two or more territorial units in which different systems of law apply in relation to matters of estate administration, it may declare that this Convention shall extend to all its territorial units or only to one or more of them, and may modify its declaration by submitting another declaration at any time.

These declarations shall state expressly the territorial units to which the Convention applies.

Other Contracting States may decline to recognize a certificate if, at the date on which recognition is sought, the Convention is not applicable to the territorial unit in which the certificate was issued.

The third type of federal-state clause is ancillary to that contained in Article 35 supra. This special clause is directed towards the terminology used in the particular Convention rendering its applicability more precise with respect to the constituent units of federal states. Article 36 of the Convention Concerning International Administration reads, in part, as follows:

In the application of this Convention to a Contracting State having two or more territorial units in which different systems of law apply, in relation to estate administration--

1. Any reference to the authority or law or procedure of the State which issues the certificate shall be construed as referring to the authority or law or procedure of the territorial unit in which the deceased had his habitual residence.
2. Etc.

Since the subject matter of the proposed Uniform Law on The Form of The International Will, with us in Canada, at least, falls within the legislative competence of the provincial legislatures it is necessary to be very precise in the federal-state clause to be inserted in this Convention. The proposed federal-state clause appearing in Conf. Doc. 1, p. 21 is deficient in a number of respects by these standards and, accordingly, should be replaced by the following clauses:

Article...

If a Contracting State has two or more territorial units in which different systems of law apply in relation to matters respecting the form of wills, it may at the time of signature, ratification, approval or accession, declare that this Convention shall extend to all its territorial units or only to one or more of them, and may modify its declaration by submitting another declaration at any time.

These declarations shall be notified to...and shall state expressly the territorial units to which the Convention applies.

Article...

In the application of this Convention to a Contracting State having two or more territorial units in which different systems of law apply in relation to matters respecting the form of wills...

1. any reference to the internal law of the place where the will is received be construed as referring to the internal law of the particular territorial unit where the will is received; and
2. any reference to the authorized person to act in connection with the international will or to receive the will shall be construed as referring to the authorized person designated by the internal law of the particular territorial unit where the will is received.

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PROPOSAL OF THE DELEGATION OF AUSTRALIA

THE UNIFORM LAW

Article 7.1 should be amended to read:

7.1. "The authorized person may add to the will a
certificate..."

The basic concept of this amendment is that the issuance of a
certificate is not mandatory but, if the certificate procedure is
used with respect to a particular will, substantial benefits accrue,
namely, the benefits of the facilitated proof of the will.

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October 19, 1973

PROPOSALS OF THE DELEGATION OF GREECE

THE CONVENTION

1. In the Preamble:

Replace the words "which, if employed, would dispense with the search for the applicable law and dispense with the examination of formalities prescribed by such law" by the following: "additional to the form or forms prescribed by the law applicable on such a matter."

2. Article I:

Delete paragraph 2.

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DIPLOMATIC CONFERENCE ON WILLS

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P/27 (Add. 1)
Original: English
October 23, 1973

PROPOSAL OF THE DELEGATION OF GREECE

THE CONVENTION

The Preamble

The following alternative text is proposed:

"Desirous to provide to a greater extent for the respecting of last wills by establishing an additional form of will henceforth to be called an 'international will,' which, if employed, would to a certain degree dispense with the search for the applicable law and /dispense/ with the examination of formalities prescribed by such law."

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Original: French
October 22, 1973

PROPOSAL OF THE DELEGATION OF IRAN

THE UNIFORM LAW

Article 7

The Delegation of Iran proposes the following amendments to Article 7 of the Uniform Law:

1. (Regarding the first part of sub-paragraph e of paragraph 1:)
"the witnesses satisfied the requirements needed according to the internal law of the place where the will is received to the extent that it was possible to determine on the basis of the identity documents and the responses to the necessary legal questions addressed to the witnesses by the authorized person."
2. (Regarding the end of the second part of sub-paragraph e of paragraph 1:) "He shall date in words and sign the certificate."
3. (Regarding the last part of paragraph 4:) ". . . of all facts necessary to the due execution of the instrument from the point of view of the form as an international will."

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October 19, 1973

AMENDMENT BY THE DELEGATION FROM THE NETHERLANDS

(To be inserted in the convention)

"Each Contracting Party undertakes to make certain, in so far as possible, that the certificates provided for in Article 7 of the Annex, delivered in its territory, shall be inscribed in a central register."

* * *

DIPLOMATIC CONFERENCE ON WILLS
Washington, D.C. October 16-26, 1973

P/30
Original: French
October 22, 1973

PROPOSAL OF THE DELEGATION OF BELGIUM

THE UNIFORM LAW

Article 9

Explanation:

1. The international will shall be left in the safekeeping of either the authorized person who has received it or of another person who has the duty of preserving it.
2. The authorized person has the duty to ensure the safekeeping of the will in accordance with the internal law of the place where it was received.
3. The international certificate issued after the deposit of the will certifies that it has been received for safekeeping and has not been retracted by the testator as of the date of issuance of the international certificate (see P/13 (3) last sub-paragraph).
4. If, after the death of the testator, the authorized person is asked for specifics with respect to the international will, he shall state whether the international will has since been retracted or not. The will ceases to be valid as an international will if it was retracted by the testator.

For the reasons stated above, it is proposed that the uniform law provide:

Article 9

"Revocation shall be valid as regards to the form if it is done by means of an international will or by another valid will. Retraction of the will by the testator shall be equivalent to revocation as an international will."

* * *

DIPLOMATIC CONFERENCE ON WILLS
Washington, D.C. October 16-26, 1973

P/31
Original: English

PROPOSAL OF THE DELEGATION OF SWEDEN

THE CONVENTION

Article III

Amend as follows:

- "Each Contracting Party undertakes to recognize as a person authorized to act in connection with international wills
- a) for the purpose of wills made in the territory of another Contracting Party, any person who according to Article II of this Convention has been designated as authorized to act in connection with international wills in that territory,
 - b) for the purpose of wills made in the territory of a State which is not a Contracting Party, any person who is qualified to receive wills under the law of such State."

* * *

DIPLOMATIC CONFERENCE ON WILLS
Washington, D.C. October 16-26, 1973

P/32
Original: French
October 23, 1973

PROPOSAL BY THE OBSERVER OF THE
INTERNATIONAL UNION OF LATIN NOTARIES

UNIFORM LAW

Article 7

Amend paragraph 3 as follows:

"3. The authorized person shall deliver a copy of the
certificate to the testator."

Comment:

It is proposed that the text drawn up by the Drafting Committee
be amended because it is considered that the word "copy," which refers
to the document that is to be kept by the authorized person as well
as to the one that is to be delivered to the testator is ambiguous and can
be interpreted to mean that the authorized person is obliged to draw up
the certificate in two originals. It seems preferable not to include
in the Uniform Law any mention of the nature (original or copy) of
the document that is to be kept by the authorized person.

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DIPLOMATIC CONFERENCE ON WILLS

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

P/33

Original: English
October 23, 1973

PROPOSAL OF THE DELEGATION OF THE UNITED KINGDOM

THE CONVENTION

Article I

Add a new paragraph:

- "3. Each Contracting Party may introduce into its law such further provisions as are necessary to give the provisions of the Annex full effect in its territory."

* * *

DIPLOMATIC CONFERENCE ON WILLS

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

P/34
Original: English
October 23, 1973

PROPOSALS OF THE DELEGATION OF POLAND

THE CONVENTION

1. Article I.

Add the following new paragraph:

"3. Each Contracting Party shall submit to
the text of the rules introduced into its national
law in order to implement the provisions of this
Convention."

2. Article III.

Delete paragraph 2.

3. Article IX.

Eliminate the words: "by" in paragraph 1.

* * *

DIPLOMATIC CONFERENCE ON WILLS

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

P/35

Original: English

October 23, 1973

PROPOSAL OF THE DELEGATION OF THE UNITED STATES OF AMERICA

THE CONVENTION

Article III

Amend the Article to read:

- "1. Each Contracting Party undertakes to recognize the formal validity of a will executed in the territory of another Contracting Party before a person designated in that State in accordance with Article II when the will complies with the provisions of Articles 2 to 4 of the annexed Uniform Law.
- "2. Nothing in this Convention shall preclude the recognition of the formal validity of an international will made in the territory of a non-Contracting Party that complies with the provisions of Articles 2 to 4 of the annexed Uniform Law."

* * *

DIPLOMATIC CONFERENCE ON WILLS

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

P/36
Original: English
October 23, 1973

PROPOSAL OF THE DELEGATION OF THE UNITED STATES OF AMERICA

THE CONVENTION

Article VI

Amend the Article to read:

- "1. The Contracting Parties in which a will is to be produced shall not require legalization or any other authentication by their diplomatic or consular offices as to the authenticity of the signature of the testator, or of any of the witnesses, or of the authorized person before whom the will was executed.
- "2. The Contracting Parties agree that the authenticity of the signature and the capacity of a person designated in another Contracting State to act under the Convention may be conclusively established by the certification of those matters by the competent authority of the State in which the will was made."

* * *

DIPLOMATIC CONFERENCE ON WILLS
Washington, D.C. October 16-26, 1973

P/37
Original: French
October 23, 1973

PROPOSAL BY THE DELEGATION OF FRANCE

Concerning the Safekeeping of the Will

Reasons:

The freedom of the testator concerning the safekeeping of the will should be respected. But the testator may rightly wish that the place where his will is deposited be known in order to facilitate its discovery.

Proposal:

Delete Article 8 of the Uniform Law.

Insert Article 6 bis, reading as follows:

Article 6 bis

"The authorized person shall ask the testator if he wishes to make a declaration concerning the safekeeping of his will;

"At the express request of the testator the place where he intends to have his will kept shall be mentioned in the certificate provided for in Article 7."

Article 7 and the Appendix would be amended in the same way.

* * *

DIPLOMATIC CONFERENCE ON WILLS

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

P/38

Original: French
October 23, 1973

SUGGESTIONS BY THE OBSERVER OF THE HAGUE CONFERENCE

Article III of the Convention

Article III seems to be both too broad and too narrow:

1) Too broad, because it extends the Uniform Law to a will received in a non-contracting State before a person authorized by the law of that state. In such case, the competent authority will not have the obligation to draw up the certificate nor to follow the model form in drawing it up. Considerable difficulties of proof and danger of contestation may result therefrom. Furthermore, as the signatures are exempt from legalization and as the international recognition of the certificate is ensured by Articles IV and V, this liberality may seem excessive in relations with non-contracting States;

2) Too narrow, because the text does not provide for the signature of wills received, whether in a contracting State or not, by a diplomatic or consular agent of a Contracting State. Now, it might be well for a Frenchman, for example, to be able to make an international will in French before his consul, since French law authorizes consuls to receive wills.

Consequently, the following text is suggested:

Article III

"In order to be considered an international will, the will must have been signed by a person so authorized by the law of a Contracting State."

This text excludes the authorities of non-contracting States but includes consuls authorized by their national law.

Article II

The words "in its territory" should therefore be deleted from Article II, paragraph 1.

* * *

DIPLOMATIC CONFERENCE ON WILLS

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

P/39
Original: English
October 24, 1973

PROPOSAL OF THE DELEGATION OF SWEDEN

THE UNIFORM LAW

Article 1

Replace the word "document" in paragraph 2 by "will."

Comments: This Article is not confined to wills in a written form. It follows from Article 2, par. 1, that a will is not valid as an international will if it has not been made in writing. In such a case Article 1, par. 2, should be applicable.

* * *

DIPLOMATIC CONFERENCE ON WILLS

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

P/40

Original: Russian

October 24, 1973

PROPOSAL OF THE DELEGATION OF THE U.S.S.R.

CONVENTION

Article II, paragraph 3:

Nothing in the present Convention and its Annex shall prevent a person authorized to act in connection with international wills to exercise the rights and fulfill the obligations prescribed by the law of the Contracting Party designating such person.

* * *

DIPLOMATIC CONFERENCE ON WILLS
Washington, D.C. October 16-26, 1973

P/41
Original: English
October 24, 1973

PROPOSAL OF THE DELEGATION OF BRAZIL

THE CONVENTION

Delete Article VII.

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DIPLOMATIC CONFERENCE ON WILLS

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

P/42
Original: English
October 24, 1973

PROPOSAL OF THE DELEGATION OF THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA

THE CONVENTION

Article V

Paragraph 1 of Article V of the Convention sets out certain conditions as to the applicable law governing who may qualify as a witness to an international will.

However, no rules are established governing a case in which procedures may be necessary to determine the declaration of a testator who is deaf and dumb, or only dumb, or who does not understand the language of the authorized persons and the witnesses, and who states that the submitted document is his will and that he knows the contents thereof, as provided for in Article 3 of the Annex.

For this reason, the Delegation of the Socialist Federal Republic of Yugoslavia proposes the following amendment clarifying the above provision:

After the words: "The conditions to be a witness of an international will" insert: "as well as to be an interpreter concerning the acknowledgment of the signature of the testator, that the document is his will and that he knows the contents of the will."

Should the above amendment be accepted, paragraph 1, of Article V of the Draft Convention, would then read as follows: "The conditions to be a witness of an international will as well as to be an interpreter concerning the confirmation of the signature of the testator, that the document is his will and that he knows the contents of the will, shall be governed by the internal law of the place where the will is received."

* * *

DIPLOMATIC CONFERENCE ON WILLS

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

P/43

Original: English
October 24, 1973

PROPOSAL OF THE DELEGATIONS OF BRAZIL, IRAN, SPAIN, THE UNITED
STATES OF AMERICA AND THE UNITED KINGDOM

THE CONVENTION

FINAL ARTICLES

Replace or complete the text of the final articles
in Doc. 1 to read as follows:

Article VIII

1. The present Convention shall be open for signature at Washington from October 26, 1973, until December 31, 1974.
2. The Convention shall be subject to ratification.
3. Instruments of ratification shall be deposited with the Government of the United States of America, which shall be the Depositary Government.

Article IX

1. The Convention shall be open indefinitely for accession.
2. Instruments of accession shall be deposited with the Depositary Government.

Article X

1. The present Convention shall enter into force six months after the date of deposit of the fifth instrument of ratification or accession with the Depositary Government.

2. In the case of each State which ratifies this Convention or accedes to it after the fifth instrument of ratification or accession has been deposited, this Convention shall enter into force six months after the deposit of its own instrument of ratification or accession.

Article XI

1. Any Contracting Party may denounce this Convention by written notification to the Depositary Government.

2. Such denunciation shall take effect twelve months from the date on which the Depositary Government has received the notification, but such denunciation shall not affect the validity of any will made during the period that the Convention was in effect for the denouncing State.

Article XII

1. Any State may, when it deposits its instrument of ratification or accession or at any time thereafter, declare, by a notice addressed to the Depositary, that this Convention shall apply to all or part of the territories for the international relations of which it is responsible.

2. Such declaration shall have effect six months after the date on which the Depositary shall have received notice thereof or, if at the end of such period the Convention has not yet come into force, from the date of its entry into force.

3. Each Contracting Party which has made a declaration in accordance with paragraph 1 of this Article may, in accordance with Article XI, denounce this Convention in relation to all or part of the territories concerned.

[Numbers XIII and XIV have been reserved for the unnumbered articles that appear in Doc. P/25, at pp. 2 and 3]

Article XV

1. The original of the present Convention, in the English, French, Russian and Spanish languages, each version being equally authentic, shall be deposited with the Government of the United States of America, which shall transmit certified copies thereof to each of the signatory and acceding States and to the International Institute for the Unification of Private Law.

2. The Depositary Government shall give notice to the signatory of acceding States, and to the International Institute for the Unification of Private Law, of:

- (a) any signature;
- (b) the deposit of any instrument of ratification or accession;
- (c) any date on which this Convention enters into force in accordance with Article X;
- (d) any notice received in accordance with Article II, paragraph 2;
- (e) any declaration received in accordance with Article XII, paragraph 2, and the date on which such declaration takes effect;
- (f) any denunciation received in accordance with Article XI, paragraph 1, or Article XII, paragraph 3, and the date on which the denunciation takes effect.
- (g) any declaration received in accordance with Article XIII, paragraph 2, and the date on which the declaration takes effect.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized to that effect, have signed the present Convention.

DONE at Washington this twenty-sixth day of October, one thousand nine hundred and seventy-three.

* * *

DIPLOMATIC CONFERENCE ON WILLS
Washington, D.C. October 16-26, 1973

P/43 (Corr.1)
October 25, 1973

PROPOSAL OF THE DELEGATIONS OF BRAZIL, IRAN, SPAIN, THE UNITED
STATES OF AMERICA AND THE UNITED KINGDOM

THE CONVENTION

FINAL ARTICLES

In the above heading, please add the Delegation of "Canada."

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DIPLOMATIC CONFERENCE ON WILLS
Washington, D.C. October 16-26, 1973

P/43 (Corr. 2)
November 2, 1973

PROPOSAL OF THE DELEGATIONS OF BRAZIL, CANADA, IRAN, SPAIN,
THE UNITED STATES OF AMERICA AND THE UNITED KINGDOM

THE CONVENTION

FINAL ARTICLES

In the above heading, please delete the Delegation of "Brazil."

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DIPLOMATIC CONFERENCE ON WILLS

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

P/44

Original: English
October 24, 1973

PROPOSAL BY THE SECRETARIAT

DRAFT FINAL ACT OF THE DIPLOMATIC CONFERENCE ON THE UNIFICATION OF LAW GOVERNING THE FORM OF THE INTERNATIONAL WILL

The Diplomatic Conference on the Uniform Law governing the Form of the International Will met at Washington, D.C., from 16 to 26 October 1973 at the invitation of the Government of the United States of America.

The Governments of the following 42 States were represented at the Conference:

Australia
Belgium
Brazil
Bulgaria
Canada
China, Republic of
Czechoslovakia
Ecuador
France
Germany, Federal Republic of
Greece
Guatemala
Honduras
Iran
Iraq
Ireland
Italy
Ivory Coast
Japan
Jordan
Khmer Republic
Laos
Mexico
Netherlands
Nicaragua
Panama
Paraguay
Philippines
Poland
Portugal
Senegal

Sierra Leone
Spain
Sweden
Switzerland
Thailand
USSR
United Kingdom
United States
Vatican City
Yugoslavia
Zaire

The Governments of the following six States were represented by observers at the Conference:

Argentina
Denmark
Jamaica
South Africa
Trinidad and Tobago
Viet-Nam

The following intergovernmental organizations accepted the invitation to be represented as observers at the Conference:

Hague Conference on Private International Law
International Union of Latin Notaries
UNIDROIT
United Nations

At the invitation of the Government of the United States of America the Union of Latin Notaries was also represented by an observer at the Conference.

The Conference elected the Honorable Richard D. Kearney (U.S.A.) as President.

The Conference elected Attorney General L. A. M. Brewah (Sierra Leone), Professor Elliseo Perez Cadalso (Honduras), Minister Toshio Yamazaki (Japan), Mr. Jonkheer T. Van Sasse Van Ysselt (Netherlands), First Deputy Minister of Justice Aleksandre J. Sukharev (U.S.S.R.) as Vice-Presidents.

The Secretary General of the Conference was Mr. Francis J. Seidner, and the Deputy Secretary General was Mr. Jean Pierre Plantard.

The Conference had before it:

- (1) the draft of a Uniform Law on the Form of the International Will, text prepared by the Committee of Governmental Experts, convened by UNIDROIT, with Explanatory Report;

- (2) the Observations presented by various Governments relating to the draft of a Uniform Law on the Form of the International Will;
- (3) a Draft Convention providing a Uniform Law on the Form of the International Will prepared for the Conference by the Committee of Governmental Experts, convened by UNIDROIT, with Explanatory Report.

The Conference also had before it other documentation prepared by the Secretariat.

The Conference set up, in accordance with Article 29, paragraph 1, of the Rules of Procedure, the following Committees:

Credentials Committee:

Chairman: Mexico

Members: Australia
Italy
Mexico
Poland
Sierra Leone

Drafting Committee:

Chairman: Switzerland

Members: Brazil
Canada
France
Germany, Federal Republic of
Iran
Ivory Coast
Japan
Mexico
Nicaragua
Philippines
Spain
United Kingdom
USSR
USA

As the result of its deliberations as recorded in the records of the Plenaries and the records of the Committees, the Conference has drawn up the following Convention:

Convention providing a Uniform Law on the Form of the International Will, with Annex

The foregoing Convention was opened for signature on October 26, 1973, at the Department of State of the United States of America.

In addition, the Conference adopted a Resolution concerning the safe-keeping of wills, annexed to this Final Act.

IN WITNESS WHEREOF the undersigned representatives have signed this Final Act.

DONE at Washington, D.C., this twenty-sixth day of October one thousand nine hundred and seventy-three, in the French, English, Russian and Spanish languages, each text being equally authentic. The original of this Final Act shall be deposited with the Government of the United States of America.

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DIPLOMATIC CONFERENCE ON WILLS

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

P/45

Original: English
October 25, 1973

PROPOSAL OF THE DELEGATIONS OF AUSTRALIA AND IRELAND

Article 14 A

In the application of this Convention to a Contracting State having two or more territorial units in which different systems of law apply in relation to matters respecting the form of wills, but not the form of the international will:

1. any reference to the internal law of the place where the international will is made shall be construed as referring to the federal law of the Contracting State; and
2. any reference to the authorized person to act in connection with the international will shall be construed as referring to the authorized person designated by the federal law of the Contracting State.

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DIPLOMATIC CONFERENCE ON WILLS
Washington, D.C. October 16-26, 1973

P/46

Original: English
October 26, 1973

PROPOSAL OF THE DELEGATIONS OF CANADA AND THE UNITED STATES OF AMERICA

Amend the proposal in Document P/45 to read as follows:

Article 14

In the application of this Convention to a Contracting State having two or more territorial units in which different systems of law apply in relation to matters respecting the form of wills, any reference to the internal law of the place where the will is made or to the law under which the authorized person has been appointed to act in connection with international wills shall be construed in accordance with the constitutional system of the State concerned.

* * *