

DIPLOMATIC CONFERENCE ON WILLS

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

SR/3 (Final)
October 30, 1973

SUMMARY RECORD - THIRD PLENARY SESSION Wednesday, October 17, 1973

The Chairman opened the second day's session at 10:15 by mentioning yesterday's suggestion that the Deputy Secretary General, the Observer from the Hague Conference and the Observer from the International Union of Latin Notaries comment on the previous day's activities.

The Deputy Secretary General gave some historical background concerning the wording of the seven articles of the uniform law. He stressed the rationale for the wording of Article I as it appeared in the text. With respect to the essential criteria for validity, the Deputy Secretary General stressed that the experts who drew up the uniform law wanted to limit the conditions for validity; they wanted to maintain only the most essential conditions for the validity of a will. These necessary conditions, said the Deputy Secretary General, are included in Articles 2, 3 and 4. Other matters were considered useful but not necessary. He then turned to a point of contention--the necessity of the certificate for validity. The Deputy Secretary General emphasized that at no time was the certificate considered necessary for the validity of the will by experts. He expressed anxiety that if the two documents (the will and the certificate) were necessary for validity, the will itself would not be valid if the certificate got lost. This would necessarily frustrate the wishes of the testator who made the will in all good faith.

The Observer from the Hague Conference asserted that he had no criticism of the text of the uniform law.

The Delegate from Italy suggested that the Convention nominate a rapporteur who would, at the end of the Conference, draw up a report showing the decisions of the Conference on the basis of the summary records. This system which is followed by the Hague Conference would facilitate the interpretation of the Uniform Law. The Chairman suggested that discussion on this point be delayed.

The Delegate from the Netherlands wondered whether Article 1 should not be placed in the draft convention rather than the uniform law, since the article referred to international law. The Delegate from Switzerland mentioned that since the previous point was one of form it should be set aside for discussion later. The Delegate from the Netherlands agreed.

The Delegate from Ecuador reintroduced his proposal to amend Article 1, Paragraph 2. He also wished to add a third paragraph saying the following:

"The authorized person shall deliver or send the will and certificate (referred to in Article 7) to the proper party as soon as required by the competent authority in the place where the succession is to be located."

The Delegate from Australia endorsed the previous day's comments by the Delegate of Ireland. He urged the delegates to give detailed consideration of Article 7 and said that he preferred having Article I placed in the draft convention. He approved the Greek Delegate's proposal to add "or any other matters" after "testator" in Article 1, paragraph 1. He also agreed with the Costa Rican proposal made the previous day.

The Chairman suggested that discussion of Article 7, paragraph 3 be deferred until the conference considered Article 7.

The Delegate from Australia said that he understood the Chairman's previous point to mean that discussion of the interrelationship between Article 1 and Article 7 would be deferred until we considered Article 7. The Chairman assured him his interpretation was correct.

The Delegate from Spain thanked the Deputy Secretary General for his clarifications but expressed reservations about not making the certificate necessary for the will's validity. He stressed that most countries had laws stipulating that special validating techniques be required for wills. He then listed three reasons for this procedure. The Delegate from Spain also mentioned that many countries have statutes saying that if certain requirements are not met the will is null and void. He asserted that if the uniform law was to be accepted by as many nations as possible the norms and standards of the various countries with respect to making wills null and void should be respected.

The Chairman responded by saying that the proposal of the Delegate of Spain would change the nature of the conference.

The Delegate from Spain answered that almost all countries have certain provisions making the will null and void if certain requirements are not followed. He argued that the countries themselves should impose sanctions if the rules on international wills are not followed.

The Chairman suggested that we could discuss this point after discussing the other articles.

The Delegate from Japan reiterated his belief that the certificate be made necessary for validating wills and pointed to the danger of forgery and the burden placed on the courts to verify validity if this procedure were not followed.

The Delegate from Switzerland asked the convention to proceed with caution in discussing and adding stricter conditions for validity. He felt that adopting such conditions would hinder the formulation of international wills in an age of increasing mobility. He urged that the Uniform Law be kept in its simplified form.

The Delegate of Spain again raised a question concerning the nullity of the will for non-compliance with requirements and stated that each country will have to determine the effect of non-compliance with requirements in individual cases. When questioned on this point by the Delegate of Switzerland, the Spanish Delegate clarified his position by stating that he was not proposing additional requirements for validity, but only pointing out the necessity for domestic law to decide non-compliance cases.

The aforementioned question of the Swiss Delegate included comment that the "international will" should also, as provided in the Draft, be valid in domestic situations, and not reserved only for "international" estates. Any attempt to limit the scope of the Convention and of the Uniform Law to "international" estates would raise serious problems, and it is far better to retain the present system of the Draft. To illustrate this, one need only think of the case of a testator who acquired property situated abroad subsequent to the drawing up of his will, and conversely, one who draws up an international will and subsequently relinquishes his foreign holdings. He stated that by limiting the scope of the will to "international" estates, we would be complicating procedures, and possibly not abiding by the wishes of the decedent.

The Delegate of the USSR expressed his delegation's general acceptance of the draft documents, and its willingness to cooperate in the settlement of conflicting ideas. He also stated that uniform law of an international nature should perhaps take precedence over domestic law, as he foresees conflict between internal regulations and the proposed documents. In this effort, he suggested that an addition to Article 1 or possibly a new article should be created, to provide for the effective coordination between internal and international laws. He also suggested that perhaps the mandatory nature of the certification of this will should be provided for in the convention, not in the uniform law. The delegate concluded by expressing the hope that a new Convention on Wills would not conflict with the efficacy of wills under domestic regulations.

Reconvening of the Conference

The Chairman re-convened the Third Plenary Session at 12:00.

Discussion of Article 1 of the Uniform Law

The problems and difficulties with the working of Article 1 of the uniform law were discussed by a number of delegates.

The Delegate of Greece discussed the difficulties of applying the international form within various internal laws. He said that the Convention and the Uniform Law, as an international treaty, would constitute, in principle, autonomous law, in the meaning that it has to be interpreted by its own powers. The internal law of a party to a treaty may fill gaps, but not be invoked to clarify terms used in the treaty.

The Delegate of the United States had two drafting suggestions: (1) to change Article 1, paragraph 1, line 3 to read "is executed in the form of a will...." (2) to change paragraph 2, line 2 to read "of the document as a will under other applicable law."

The Delegate of France suggested that in the pending proposal to change Article 1, paragraph 1, line 3 the words "drawn up" replace "executed." He went on to discuss the question of nullity, calling for a final law which will severely limit the chances of nullification of the uniform law by national laws.

The Delegate of Honduras agreed and noted that Article 7 (concerning the certificate of internationality) must be applied in all cases to give credibility and potency to the will.

The Delegate of Canada commented on Article 7. He noted that paragraph 1, subsection e of Article 7 was too strict a requirement and that his country opposed it.

The Chairman recommended that the discussion concerning articles other than number I should only be in terms of instructing the drafting committee as regards its approach to Article 1.

The Delegate of Switzerland commented on the nullity question brought up earlier by Spain. He also gave his support for a more precise wording of Article 1, paragraph 2.

The Delegate of Yugoslavia suggested that Article 1, paragraph 1, line 4 read "2 to 5."

The Delegate of Belgium suggested that some delegates' questions could be discussed more appropriately later, during discussion of the model certificate to be issued. The certificate should have some printed text requiring compliance with the provisions of the uniform law and furnishing proof of such compliance.

The Delegate of Spain suggested that, because of obvious difficulties, the conference might discuss a definition of requirements now and leave the discussion of validity for later.

The Delegate of Brazil noted that the goals of the conference should be to compensate for the simplicity and conciseness of the uniform law by making it as generally acceptable as possible to the various national laws.

The Chairman agreed with the Delegate of Brazil. He summarized the discussion by noting that since most of the debate centered on the drafted form of Article 1, it would be proper to refer Article 1 to the drafting committee with decisions on paragraph 1, line 4, left open for later decision. There being no objection, he asked those who had made proposals to submit them in writing.

The meeting recessed at 1:00 p.m.

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