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

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

The Chairman opened the afternoon session at 3:15 p.m., by asking the Deputy Secretary General to comment upon the provisions of Article II.

The Deputy Secretary General stated that Article 2 is on an uncomplicated topic, and was intended to be liberal in scope. In UNIDROIT'S discussion of the article, the essential point was the matter of language. He stated that after lengthy discussion, UNIDROIT agreed that any language would suffice, be it the language of the testator, the country in which the will is written, or the language of the person receiving the will. He stated that under Article 2, the will could be handwritten or typed. In general, this article is intended to take into consideration the special characteristics of the international situation.

The Delegate from Vatican City raised a question about paragraph 2 of the Article. He was concerned that, since the testator need only be familiar with the content of the will, and not necessarily with the language thereof, the possibility of fraud exists. He asked the conference to consider the possibility that the testator could be deceived.

The Chairman commented that this appears to be a problem in choosing between evils. The problem of possible fraud exists, as does the problem of a testator in a foreign country who must rely on a foreign attorney.

The Delegate from Italy spoke to the problem posed by the Vatican City Delegate. He said that Article 3, paragraph 1, requires that the testator state that he knows and understands the contents of the will. He asserted that this statement presupposes that the testator has had the document read to him, and has verified it.

The Delegate from Greece proposed to clarify the word "writing" in paragraph 1 to include BRAILLE writing for the blind. He also commented that the word "language," (paragraph 2) should mean both living or dead languages. He disagreed with the Delegate from the Vatican, and would not restrict the meaning of paragraph 2.

The Delegate from Spain stated that he had submitted a written proposal which would restrict paragraph 2 to read "any language known to the testator." He cited UNIDROIT'S provision that the testator knew the wills' contents, and stated that the problem is whether the testator's knowledge need be direct or indirect. If the testator's knowledge needed only to be indirect, then he must rely on the writer of the will and the writer's interpretation thereof.

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 from the Ivory Coast requested a clarification on Article 2. He wanted to know if a person who couldn't read (due either to illiteracy or blindness) could make a will. In his opinion Article 2 does not preclude such persons from making a will.

The Delegate from Switzerland spoke to the points raised by the Vatican and Spanish delegations. He stated first that the possibility of fraud must be considered, but should not become an obsession. Secondly, he stated that many testators would not comprehend the legal tone of a will, even in their native language. He suggested that this problem was the same as that of the illiterate testator. The Swiss Delegate disagreed with the idea that the testator must know the language of the will, due to the fact that this complicates the making of wills in foreign states. He believed that the simplicity of the text should be retained.

The Delegate from Sierra Leone stated that the problem of illiterate testators was not a large one, and that oral clarification of questions usually sufficed in such cases.

The Delegate from Canada spoke to the Ivory Coast Delegate's question concerning braille. He contended that "ditto marks" are often used in wills, and do not constitute "words," as such, although they are considered to be "in writing."

The Delegate from Ireland suggested that the problem of writing was encountered more in Article 4 (which concerns signatures) than in Article 2. He stated that Irish law provides for the signing of an "X" by an illiterate or disabled testator, and for the subsequent signing of the will by a person in the testator's presence.

The Delegate from Belgium agreed with the present text, but expressed concern about the abuse of confidence, or fraud. He stated that UNDROIT considered the possibility of such fraud, and discussed the use of a sworn translator. UNIDROIT, however, later abandoned this idea, because of the problems inherent in its implementation. A pragmatic solution, he stated, would be to prohibit the use of the will if an authorized person could not understand the document. He also suggested the possibility of inserting a standard text into the will which would state the person understood the content.

The Delegate from Sierra Leone suggested that a problem does not exist with illiterate testators, but only with those who are both illiterate and deaf. Deaf illiterates could not have a will interpreted to them. He stated that he agrees with the text of the draft, and sees no way of circumventing the problem in the written draft.

The Delegate from Czechoslovakia suggested that the previous discussion and contention could be resolved by referring to Article IX of the October 1965 draft of the UNIDROIT Committee of Experts. The article, he said, clarified the points of dispute.

The Delegate from Sweden favored leaving the draft of Article II as it was. He felt that the amendment of Spain's Delegation would cause more problems than it solved.

The Delegate from the Federal Republic of Germany agreed with Sweden's Delegate. He mentioned that if Article II was read in the context of Articles III and VII it would be clear that Article II would not need changing.

The Delegate from France asked if the notion of "writing" in the draft was sufficiently clear. He asked if microfilm and tape recordings could be considered "writing" and added that in some nations "writing," in a legal sense, could have a broader interpretation than in others.

The Delegate from Australia stated that the present wording of Article II was both practical and flexible and should remain intact. He agreed with those other nations which wanted a broad interpretation of "writing." He suggested that the concerns brought up by various delegates be considered by the drafting committee.

The Delegate from Iran proposed the following amendment to Article II: "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."

The Observer from the International Union of Latin Notaries proposed the points of contention could be resolved by changing Article IV of the Uniform Law from "if he has previously signed it" to "if it has been previously signed."

The Delegate from the Ivory Coast stated the Swiss, Canadian and Sierra Leone had convinced him that Article II needed no change.

The Delegate from Switzerland expressed his reservations about inserting definitions into the uniform law unless absolutely necessary. He felt that the Iranian amendment would do just this and thus might open the door to other difficulties. He added that definitions might undermine the simplicity of the uniform law.

The Chairman mentioned that he was not certain whether tape recordings and microfilms could be included as a form of "writing" as understood by the uniform law. He suggested that the amendment of the Spanish Delegate go to the Drafting Committee.

The Delegate from Spain directed the following question to the Delegate of Switzerland: Is our amendment that the testator know the language in which the will is written a matter of form or substance?

The Delegate from Switzerland responded that he felt the question was one of substance not of form and therefore should not be considered by the drafting committee. He also felt that the Spanish amendment would remove the practical usefulness of international wills and might cause other problems.

The Delegate from the Federal Republic of Germany also asserted that the amendment brought up a question of substance not of form. He did not think it advisable to adopt the proposed amendments of the Spanish Delegate.

The Delegate from France said that he proposed no change whatever in Article II and asked the opinion of the Observer from the Hague conference.

The Observer from The Hague Conference mentioned that cases of fraud by notaries were extremely rare even when the testator was illiterate. If the convention adopted the Spanish amendment, the delegate stressed that it would be extremely difficult to verify whether the testator actually had knowledge of the language in which the will was written. The ensuing litigation on such a question might last 100 years, he warned.

The Chairman, with the agreement of the Delegate of Spain, referred Article 2 of the Annex to the Drafting Committee.

The Chairman opened discussion of Article 3 of the Annex and asked the Deputy Secretary General to review the provisions of Article 3.

The Delegate of Greece proposed amending Article 3 by adding "and approves" after "and that he knows" in paragraph 1, line 3.

The Delegate of Honduras suggested the Drafting Committee consider adding "officially" after "person" in Article 3, paragraph 1, line 1.

The Chairman said he believed that Article 2 of the Draft Convention covers this matter.

The Deputy Secretary General stated although he felt Article 2 of the Convention was sufficient, he would agree with the Delegate of Honduras in that the Annex should be self-sufficient and not refer to the Convention while it is acceptable for the Convention to refer to the Annex.

The Delegate of Honduras withdrew his suggestion.

The Delegate of the Philippines commented that Article 3, paragraph 1, line 2, of the Annex is sufficient and obviates the need for the amendment proposed by the Delegate of Greece.

The Delegate of the Federal Republic of Germany stated there is no need for separation of the Convention and the Uniform Law in his country as they would be presented and acted upon together.

He also suggested a possible Article 9 of the Annex to state that the "person authorized" as referred to in Article 3 should be defined by internal law.

The Delegate of Japan offered two proposals:

(1) In Article 3, paragraph 1, line 1, add "orally or in script" after "declare", and

(2) Add the following paragraph 3: "Witnesses shall satisfy the requirements needed according to the internal law of the place where the will is received."

The Chairman suggested the second point raised might already be covered by Article 5, paragraph 1, of the Draft Convention.

The Delegate of Japan stated it was his suggestion to make Article 3, paragraph 3 of the Annex a condition of validity of the international will form.

The Delegate of Switzerland stated his understanding that the draft Annex was intended to limit the causes of nullity rather than to expand them.

The Delegate of Ireland spoke in opposition to the Greek amendment.

The Delegate of the United Kingdom questioned the different phrasing in the French and English texts on Article 3, paragraph 1, line 2. The French reads "à recevoir", the English "to act in connexion."

The Deputy Secretary General explained that the use of apparently different phrasings was explained by differences in the English and French legal systems. The two phrases are intended to mean the same thing. He said the Drafting Committee might decide on a better translation.

The Delegate of Switzerland answered the Irish Delegate's question on simultaneous presence by saying that Articles 3 and 4 as written mean that the witnesses and authorized person are simultaneously present with the testator.

The Delegate of Canada discussed Greece's formal amendment. He agreed with it in substance but felt it was not proper to be added at this point of the Article because it applied to validity and not to form. This is not pertinent to the uniform law as formulated.

The Delegate of Sweden felt that in the matter brought up by the Delegate of the United Kingdom, the English translation should predominate.

The Delegate of Greece acknowledged the comments on his proposal and suggested that perhaps Article 3, paragraph 1, line 3 be deleted altogether.

The Delegate of Australia commented on the question of simultaneous presence.

The Delegate of Switzerland asked if the Delegate of Greece wished to rescind his amendment and if so whether the Conference wished to accept the Philippine amendment.

The Delegate of Yugoslavia, the Deputy Secretary General and the Chairman discussed the question of whether the authorized person may participate in the drafting of the will. They agreed that he may do so.

The Observer from the Union of Latin Notaries said that line 3 should be kept in the text because the will may be written in a language of which he is ignorant.

The Delegates from the Federal Republic of Germany and Belgium discussed the FRG's proposed Article 9 which the FRG will discuss later.

The Delegate of Switzerland noted three tendencies in the discussion: (1) to accept the original Greek amendment, (2) to eliminate line 3, and (3) to accept the original draft proposal which he favored.

The Chairman summarized the discussion. He asked if the Conference was willing to adopt the Swiss Delegate's suggestion that the Drafting Committee consider all suggestions with the basic guidance being that the present text is acceptable with only minor changes. There being no objection he referred Article 3 to the Committee on that basis.

The session adjourned at 6:15 p.m.

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