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

SR/5
October 18, 1973

SUMMARY RECORD - FIFTH PLENARY SESSION
Thursday, October 18, 1973

Convening of the Session

The Chairman began the Fifth Plenary Session by suggesting that the Deputy Secretary General be named by the Convention as the official rapporteu The delegates unanimously approved the nomination.

The Deputy Secretary General began discussion on Article 4 by saying that the Article was crucial because without the signature the will was null and void. He then discussed the problem of whether, when a testator comes in with a will already signed, he should be asked to sign it again. The Rome Conference decided that the testator would only have to acknowledge his signature. The Deputy Secretary General also said that it was to be left to each nation to decide just what constituted a "signature." He added that his interpretation of Article 4, paragraph 1, required that the witnesses and the person authorized to receive the will should be present in the same room during the signing ceremony.

The Delegate from Italy felt that the text should be more explicit about what constitutes a signature if the law was to be truly uniform. He stated that the authorizing person should take note when the testator is illiterate or paralyzed. He wanted the text to be as clear as possible to avoid possible sources of conflict.

The Delegate from Nicaragua asked whether the authors of Article 4 wished to preclude the possibility that the witness could sign a sealed envelope when a will was so contained.

The Delegate from Canada felt that Article 4 precluded signatures on envelopes. He also felt that Article 4 made it possible for a testator to acknowledge his own signature but not for a witness to acknowledge his own signature. He also questioned whether the signatures could occur over a period of time rather than simultaneously. He also stated that there was no requirement that witnesses sign in each other's presence.

The Delegate from Greece supported the move to interpret the word signature as broadly as possible. He suggested that this could be done by citing various laws.

The Delegate from Zaire asked for a clarification of paragraph 2, Article 4.

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The Delegate from Switzerland and the Deputy Secretary General both addressed the query by asserting that the signature of the witnesses on the will did not certify that they knew its contents but that they were present when the will was transferred.

The Delegate from Australia interpreted Article 4 as allowing consecutive rather than simultaneous signatures. He mentioned that under Australian law a mere gesture was sufficient for acknowledgement.

The Delegate from the Federal Republic of Germany asked whether the Australian Delegate was proposing an amendment.

The Delegate from Australia answered that what he had asked was whether individual countries would interpret the "acknowledgement" for themselves. He thought that the convention should discuss this point if uniformity was desired. He was not suggesting an amendment, however.

The Delegate from the Federal Republic of Germany suggested that an amendment introduced by the United States would clarify the matter.

The Delegate from Switzerland felt that since no particular form of acknowledgement was referred to in the text each country was free to interpret "acknowledgement" as it wished. He also stressed that the text made it unnecessary for the witnesses to see the testator's signature.

The Delegate from the United Kingdom favored a broad interpretation of acknowledgement and did not think it was necessary for the testator to sign the will in the presence of witnesses.

The Delegate from the International Union of Latin Notaries asked if the following change would satisfy the Canadian Delegate: Change Article 4, paragraph 2, from "shall then and there sign" to "shall simultaneously sign."

The Delegate from the United Stated of America stated that Article 7, paragraph 1 (A), (B) and (C) clarified many of the points of contention. He then presented a scenario to illustrate his belief that if the execution and signature of a will satisfied local law it should satify the uniform law of international wills.

The Delegate from Switzerland suggested that the Drafting Committee take the previous discussions into account.

The Delegate from Canada mentioned that "and in the presence of each other" should be added to Article 4, paragraph 2, because Article 7, paragraph 1(B) did not cover all situations.

The Delegate from Thailand asked the meaning of "witness" in the text and asked what the qualification of the witnesses were.

The Chairman responsed by saying that ARTICLE V of the Draft Convention stipulated that local law would govern on the matter of witnesses.

The Delegate from Iran proposed the following addition after the word acknowledge in Article 4, paragraph 1: "in writing on the instrument itself or, if the case should arise, on the sealed envelope containing the will," his "prior" signature.

The Delegate from Ireland felt that too many witnesses were being required. He was not certain whether both witnesses had to be present at the same time with the testator, but he felt that they need not be together for the attestation. He continued by saying that testator should satisfy himself on identities before he signed, not vice versa. He felt that local law should not be made applicable on many of these questions.

The Delegate from Japan asked whether, when a person acting as a witness does not fulfill the requirements to so act by the internal law of the country, this act by definition invalidates the will.

The Deputy Secretary General and the Observer from The Hague Conference commented that in such a case the will is invalid because the conditions of Article V of the Convention are not fulfilled.

The Delegate of Belgium suggested revisions on the question of the testator's signature to the effect that 1) the witnesses should attest to the identity of the testator no matter what the nature of his signature, and 2) a model certificate might be included.

The Delegate from Italy said that he planned to draw up an amendment to Article 4 of the Uniform Law to the effect that "in the event the testator is unable to sign, the authorized person will so note on the will or in the certificate and state the reasons for that inability."

The Delegate from Switzerland felt that since Article 3, paragraph 2, notes that the witnesses need not know the will's contents, the question brought up by Belgium is answered therein. He noted that the Irish comment on the number of witnesses is worth study, that the Italian proposal brings in numerous ambiguities which should be eliminated, and that the question of sealing the will is implicitly covered in Article 3, paragraph 2 of the Uniform Law.

The Delegate from the USSR discussed the question brought up by Italy and proposed an alternate text: "If the testator cannot for some reason sign, he may call upon another person who will sign the will in the presence of the authorized person. The authorized person will then state the reasons why the testator has not signed."

The Observer from the League of Latin Notaries noted that the authorized person cannot certify the reasons for the testator's not signing, but can only attest to the reasons the testator has given him.

The Delegate from Brazil stated that if illiterates were to be included in Article 4, then the Conference should return to the discussion of Article 3, paragraph 2, as an illiterate cannot communicate the contents of his will when he does not know its contents. He stressed the need for a clarification of Article 3, paragraph 2, as it concerns illiterates.

The Chairman commented that the situation in which this problem would occur would be an unusual one, as it would involve an illiterate testator, and two separate authorized persons serving him.

The Delegate from Brazil replied that the situation could be quite common in certain areas of the world where the proportion of illiterate persons is high.

The Delegate from Switzerland admitted that the authors did not include consideration of the illiteracy problem in their draft. He stressed that, in the case of an illiterate testator, Article 3, paragraph 2 does not oppose the idea of the testator communicating the content of his will to an authorized person, and that therefore the problem could be solved by interpretation of the law. The Swiss Delegate felt that a revision of the text was unnecessary.

The Delegate from France proposed to return briefly to the amendment of the Delegation from the USSR, and stressed its importance. He stated that the conference should resolve, before drafting, the problem of definition of a signature. He further stated that a provision for signature by a third party on behalf of the testator could go one step further in the clarification of the law.

The Chairman indicated that he saw no basic disagreement among delegates on principle, but only on the method best suited to implement these principles. He stated that no one seemed to object strongly to any proposal; the real question is in choosing the best means to accomplish clarification.

The Delegate from the Netherlands raised the question of the secret, or mystic will. He stressed the uncertainty among the delegates by stating that previously it had been stated that Article 3, paragraph 2, allowed for the sealing of a will. Later, it was stated that Article 4, paragraph 2 precluded the sealing of a secret will. He was of the opinion that those who wish to draw up a secret will, and maintain its secrecy, should be accorded the privilege of doing so.

The Chairman said that there appeared to be a substantive difference of opinion on the matter of secret wills. He continued that the present draft provides for the testator's signing of the will to be followed directly by the signature of the witnesses. A new idea was for the witnesses to sign not the will, but, instead, the envelope containing it.

The Delegate from Switzerland stated that the Delegate from the Netherlands had summed up well the drafters' attempts at compromise. He contended that Article 3, paragraph 2 tends toward the allowance of a secret, sealed will. He stressed that the draft contains no contradiction about a secret will, but, instead, an attempt toward a compromise.

The Delegate from the Hague Conference stated that the Committee which met in Rome precluded a secret will under Article 5 of the draft. Article 5, however, is not a mandatory Article under the regulations.

The Delegate from Canada also stated that Article 5 precludes the secret will. He suggested that perhaps Article 5 should be included in the nullifying articles, (i.e., that non-compliance with it would void the will). He stated that he could not see how a mystic will could possibly be acceptable under Articles 4 and 5, and that the signing of an envelope is not the signing of a will. He commented that in order to include a secret will under the present draft, the wording of the present convention would have to be altered.

The Delegate from Honduras was concerned as to why the Committee of experts had precluded the secret will under the draft. He added that in many parts of the world a secret will is normal, and the most common form of testament. He called upon the Committee to explain its omission of this form of will. Responding to a request for clarification from the Chairman, he stated that the area defined under the Draft Convention is narrow, since it does not include secret wills, and limits itself to public documents. The Delegate from Honduras maintained that the signing of a will in the presence of witnesses voids the secret nature of any will. He suggested that perhaps a viable solution would be the addition of a phrase in Article 5 stating that the signature of witnesses could appear only on the envelope containing the will. This, he added, should be considered if the experts did not have a reason for precluding the use of the secret will.

The Delegate from the United Kingdom interpreted the secret will as a holograph will, and referred to page 29 of the draft document, paragraph 3, which excludes the use of such wills. He stated that the United Kingdom was willing to sacrifice this form of will (which is standard in UK countries) and felt that other countries which use secret wills would also have to sacrifice their use in accepting the Draft Convention.

The Delegate from the Netherlands suggested that the Conference take a vote to ascertain opinions on the keeping or precluding of a secret will. The Delegate from the Federal Republic of Germany concurred in the suggestion to vote. However, he disagreed that a secret will is precluded in the draft. He contended that a secret will is admissible under Article 3, paragraph 2. He supported the text as written.

The Chairman adjourned the session at 1:05 p.m.

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