

DIPLOMATIC CONFERENCE ON WILLS

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

SR/6
October 19, 1973

SUMMARY RECORD - SIXTH PLENARY SESSION Thursday afternoon, October 18, 1973

Discussion of Article 4 of the Uniform Law

The Chairman began the sixth plenary session of the Conference at 3:10 p.m. by calling for the continuation of the discussion of Article 4 of the Uniform Law.

The Delegate of Switzerland discussed the question of secrecy as it applies to Article 4. He felt that there were sufficient safeguards of secrecy in Article 4 so that there would be no need for extra clauses to cover the problems of mystic wills and holographic wills. He then offered in behalf of the Delegate of the Netherlands an amendment that Article 4, paragraph 2 shall read "The witnesses and the authorized person will refrain from informing themselves of the contents unless the testator authorizes them to do so."

The Delegates of Zaire and Switzerland and the Chairman discussed the role of witnesses as signatories or attestees. The Drafting Committee was asked to come up with wording such as that of the Irish proposal which avoids saying that witnesses sign the will.

The Delegate of the Federal Republic of Germany wondered if the Drafting Committee had sufficiently clear instructions as to the sense of the Conference on these matters or if it was just being given many proposals without sufficient guidelines.

The Chairman summed up the discussion on Article 4. He asked that the Conference agree to instruct the Drafting Committee to take up the matter of revisions based on the Netherlands' proposal as regards secrecy, and on other proposals as regards insuring safeguards for illiterates and those physically unable to sign. There being no objection, he so ordered. He then asked for a discussion of the Greek proposal for a third witness when the testator cannot sign. After discussion the proposal was withdrawn.

The Observer from the Union of Latin Notaries offered an amendment to add a new paragraph to read "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."

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The Chairman, after noting that this in essence agreed with previous proposals, asked if the Conference would agree to send Article 4 to the Drafting Committee. There being no objection, he so ordered.

Discussion of Article 5 of the Uniform Law

The Deputy Secretary General introduced Article 5 by stating that it was the first of several articles to spell out formalities not required for the validity of the will. He stressed that these are advisory articles and are not to be considered as optional formalities. Non-compliance with them, however, does not void a will. Specifically, Article 5 covers the signature of the testator and the location of that signature. Paragraph 1 simply calls for a signature at the end of the will, while paragraph 2 deals with signatures on a will consisting of several pages. The Deputy Secretary General stressed that common sense should be the guiding factor in following the dictates of this Article, and that the sanction of invalidity will not be implemented in cases of material error.

The Delegate from Greece asked whether, in paragraph 2 of the Article the connection of pages need be physical or substantive. He was answered by the Swiss Delegate who stated that the intended sense of the draft was that of a physical connection.

The Delegate from Australia suggested deleting the final clause of paragraph 2 of the Article. ("unless the sheets follow each other and form a whole.") The Delegates from Ireland, Sierra Leone, the United Kingdom, and Iran subsequently agreed with this suggestion. The Irish Delegate further proposed to delete all of paragraph 2, due to the complications it could introduce. He cited Irish Law on Wills to demonstrate the complications inherent in this sort of provision.

The Delegate from Canada pointed out that there are certain advantages in paragraph 2, and suggested that it be left in the draft. He further suggested that the testator initial all but the final sheet of the will, instead of signing all the pages.

The Delegate from the United Kingdom pointed out that many wills are contained on a single page.

The Observer from the International Union of Latin Notaries noted that the provision concerning the location of signatures was placed under Article 5 intentionally to avoid the invalidity sanctions.

The Delegate from France suggested that it may be advantageous to have several specimens of the signature contained in the will to provide verification in cases where a signature is challenged. The Delegate from Mexico concurred in this opinion, and commented that the establishment of rules for a provision that is not required seemed pointless.

The Iranian Delegate suggested the addition of a third paragraph providing for additional sheets of a will which constitute a separate will. The lack of the testator's signature on these separate pages would not invalidate those sheets which had been signed.

The Observer from The Hague Conference suggested a provision for numbering sheets of a will, and the notation by an authorized person of the number of pages included in the will. He added that this would not be a requirement for validity, but only a safeguard against fraud.

The Delegate from Belgium pointed out the problems of domestic officials dealing with non-mandatory articles of the Convention. He stated that a certificate provides a safeguard by verifying that provisions have been respected.

The Delegate from Spain expressed concern that the numbering of sheets would not safeguard against fraud, due to the fact that substitution of pages could be easily effected. He suggested requiring a signature on all pages. He also noted that when the Conference discussed Article 1, the question of which articles would fall under the military-for-non-compliance sanctions was left pending, and will be subject to further discussion.

The Delegate from Switzerland stated he believed that the system in the draft has provided sufficient safeguards. Noting that he would support deletion of the final words of paragraph 2, he did not support inclusion of the second Iranian amendment.

The Delegate from the Ivory Coast also favored deleting the last clause of paragraph 2. He proposed modifying paragraph 2 by substituting "may also be" for "shall also be."

The Delegate from France favored retaining the provision for signatures on each sheet and agreed that the end of paragraph 2 should be deleted.

The Delegate from Switzerland submitted a compromise proposal whereby sheets must bear either the signature or the initials of the testator.

The Delegate from Australia stated that he could support either a proposal for a full signature or for initials.

The Observer from the International Union of Latin Notaries stated if a safeguard was desired it should require a full signature.

The Delegate from France commented that he did not see a practical advantage to replacing a signature by initials, noting a signature is more easily identified.

The Delegate from the Ivory Coast indicated he would not oppose the Swiss Delegate's proposal concerning signatures or initials on each sheet of a will.

The Delegate from Yugoslavia favored a full signature on each page.

The Delegate from Canada declared he would support a provision for full signature if the consensus was that full signature was desirable and necessary.

The Chairman commented that there was no basic objection to Article 5 until the word "testator," paragraph 2. He noted there was considerable sentiment supporting a signature on each sheet as a valuable means of protection which could be diminished if the "unless" clause were retained. He suggested that the Drafting Committee consider the second proposal of the Iranian Delegation, with the possibility of referring it back to the Plenary.

The Delegate from Iran stated that the unsigned pages of a will would not have juridical value.

The Chairman stated that Article 5, unlike Articles 2 to 4, does not affect the validity of an international will. He also pointed out that Article 1, paragraph 2, would not affect the validity of a will under internal law.

The Delegate from Iran stated that the Conference was concerned only with an international will. He noted that the absence of signature on some pages of a will may create uncertainty as to their origin. He also suggested that the signed pages may be accepted as a separate will.

The Chairman stated that unsigned pages may cause the Court to ask for proof of origin but would not necessarily affect the validity of the will.

The Delegate from Switzerland agreed with the Chair's interpretation and pointed out that there was no substantial disagreement on this point.

There being no objection, the Chairman referred Article 5 to the Drafting Committee.

Discussion of Article 6 of the Uniform Law

The Deputy Secretary General emphasized that the date of the will was the date of the ceremony of the will. He stated that paragraph 2 provided an essential safeguard on the date of the will and that paragraph 3 was designed to allow concerned parties to establish the date of a will in rare situations when it might be disputed.

The Delegate from Czechoslovakia proposed the deletion of paragraph 3 and the inclusion of Article 6, paragraphs 1 and 2, under the jurisdiction of Article 1, paragraph 1.

The Delegate from Honduras raised three questions regarding the translation of paragraphs 1 and 2 and submitted them to the Drafting Committee.

The Delegate from Greece questioned the propriety of including a clause on the date of a will which he regarded as a question of substance, not form. He stated that if a clause on date was necessary he would recommend deleting paragraph 3. Alternatively, he suggested supplementing paragraph 3 with the clause proposed in P/2.

The Delegate from the United Kingdom stated that he regarded Article 6 as essential but favored clarifying the "date of reception" as indicated in P/5.

The Delegate from Canada stated that the date of reception could only refer to the date the testator executed the will. The Delegate from France and the Delegate from Switzerland agreed. The Delegate from Switzerland stated it was essential to have some provision on date. He thought paragraph 3 was not indispensable, but it had been felt that the date of reception was not beyond dispute. He said the solution to the matter raised by the Delegate from the United Kingdom could be solved in drafting.

The Delegate from Sierre Leone stated that paragraph 3 was ambiguous. He noted that the difficulty of the date could be removed through the US proposal which called for a certificate of receipt to be lodged the date the will is received.

The Delegate from Ireland strongly supported the Czechoslovakian proposal to delete paragraph 3 and include paragraphs 1 and 2 under the provisions of Article 1, paragraph 1. The Delegate noted wills made prior to international wills are not invalid if they cover a different portion of a testator's property.

The meeting was adjourned at 5:35 p.m.

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