

# DIPLOMATIC CONFERENCE ON WILLS

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

SR/8

October 22, 1973

## SUMMARY RECORD - EIGHTH PLENARY SESSION

Friday afternoon, October 19, 1973

### Convening of the Conference

The Chairman opened the session at 3:20 p.m. with a continuation of the discussion of Article 7.

The Delegate from Australia stated that the certificate should not be mandatory. He suggested changing the language in the first line of the draft of Article 7 from "shall" to "may."

The Delegate from the Netherlands requested a clarification of the difference between the words "attestation" and "certification." The Deputy Secretary General responded that the use of these two words was interchangeable, and that the use of two terms was only a translation device.

The Delegate from Iran suggested two changes in Article 7. He was particularly concerned with the second part of 1(a) of the Article.

The Delegate from Canada summed up the common grounds of agreement which he felt had been reached by the Conference concerning Article 7. They were: that there should be a certificate, that a certificate should be mandatory, that a copy of it should be added to the will, and that copies should go to the testator and the authorized person. He also noted his approval of the proposed United States amendment to Article 7. He stated his delegation's opposition to mandatoriness for the certificate.

The Delegate from Mexico asked about the distinction between establishing the certificate and filing a copy of it. He stated that he would like to see a copy attached to the will itself, and that the filing of such certificate seems of secondary importance.

The Delegate from Japan was concerned about guaranteeing the validity and integrity of the will. He stated that the real value of the certificate was not to the testator, but to the authorized person. He said that a major concern was to limit the possibilities of forgery.

The Delegate from Italy expressed his approval of the United States amendment, suggesting that several copies of the certificate be delivered so as to safeguard it.

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The Observer from the League of Latin Notaries commented that sanctions should be applied against an authorized person who mishandles the certificate.

The Delegate of Switzerland felt that errors in the certificate should not invalidate the will since they are separate documents which, though closely aligned, are not inseparable.

The Delegate from the Ivory Coast, the Chairman, and the Deputy Secretary General discussed the wording of paragraph 1 in regard to "suivre" and "add to." They agreed the Drafting Committee should consider the matter.

The Delegate from France discussed the differences between "attestation" and "certification," the matter of sanctions, and the question of extra copies of the will.

The Delegate from the Federal Republic of Germany discussed the Questions of sanctions, validity and copies. He noted his approval of the United States proposal's essence.

The Delegate from Ireland commented that when no certificate is present there will be suspicions of illegality and thus the conference should pay careful attention to the need for it.

The Delegate from the United States of America discussed the United States proposal (P/3) and model certificate (P/4). He felt both made Article 7 and the Annex more easily understood by those unfamiliar with the matter. He recommended its acceptance with minor changes, e.g., in paragraph 4 using the word "a" instead of "foregoing."

The Delegate of Spain believed it important to determine the consequences when a certificate does not exist, thus establishing the objective of the certificate. If a judge receives an international will without a certificate, how is he to know if the requirements were met in drawing up the will? The Delegate agreed that a simple error in the certificate should not be cause for nullification of the will. If it is decided that the certificate is not necessary as proof, he said, then the United States proposal should be accepted. In the absence of a certificate, adequate proof must be established.

The Delegate of Switzerland felt that, in general, the United States proposal is an improvement over the draft Annex. He pointed out that P/3, paragraph 1, sub-paragraph (3) seems to be based on another idea and not the draft Uniform Law. The place of execution does not seem to correspond with the place of reception. The Delegate confirmed the general consensus that errors in the certificate do not necessarily lead to invalidation of the will. He felt the question of no certificate at all would actually be quite rare and that judges would then handle international wills in the same manner as national wills, meaning that establishment of proof by some other means would take place in light of foreign local laws. He felt the problem was neither new nor insurmountable.

The Delegate of Sweden thought the United States proposal to be generally an improvement, although he cited problems with paragraphs 4 and 5. In paragraph 4, the concept of "execution" is unknown in Sweden and therefore difficult to translate; therefore he suggested changing it to read "...all facts therein." The first part of paragraph 5 corresponded to paragraph 3 (Article 7) in the draft Annex and was therefore unnecessary, he said. He also questioned the necessity of the second half of paragraph 5.

The Chairman suggested that, in this instance, "execution" actually meant "completion of acts A, B and C" and that perhaps the Drafting Committee could take this wording into consideration.

The Delegate of the Holy See discussed Article 7, paragraph 3, of the draft Annex. He felt "established" was unclear in meaning and suggested a more simple text along the lines of "The omission or absence of the certificate does not affect the validity of the will."

The Delegate of France agreed with the United States proposal and offered several comments on its text. The inclusion in P/3, paragraph 2 of "shall also state his authority" is not necessary since the draft certificate form establishes the same information. P/3, paragraph 5 should, perhaps, end with "under this Law." The Delegate saw no need for the second half of the paragraph believing paragraph 3 to be sufficient.

The Delegate of the USSR commented that the Uniform Law will represent a legislative basis for international cooperation. He believed a certificate should be mandatory but that human errors in a certificate should not be cause for invalidation of an international will. He stated that Article 7, paragraph 3, is a problem in its present form since it establishes two forms of international wills--those with and those without certificates.

In responding to a point raised by the Delegate of Australia regarding the provision of receipt, the Chairman stated that the problem may be one of translation or drafting.

The Deputy Secretary General said that the term should not be given too much importance. He stated that when the authorized person retains the will it would be useful for the testator to have a record of the act of deposit and added that this receipt would also enable the heirs to find the will.

The Delegate from Brazil referred to Article 7, paragraph 1-b, and called the attention of the Drafting Committee to the Brazilian amendment, P/11, providing for persons who cannot read.

In summarizing the discussion on Article 7, the Chairman noted that there was general agreement that the certificate was necessary and that

it should be added or attached to the will and copies made available to the testator. He noted that there had been some discussion on making copies available to the heirs, but that he had the general impression that it was preferred to leave such requirements to local law. The Chairman observed that there was also general agreement that Article 7, as drafted, was lacking in that it did not contain requirements with respect to establishing the date on which all concerned parties signed the will. The Chairman noted general agreement that a certificate containing mistakes should not have an effect on the validity of the will, but that there remained a question as to the effect of the absence of the certificate. The Chairman observed that a majority of delegations seemed to feel that absence of the certificate should not automatically result in invalidity. However, he noted that a number of delegations felt that the absence of the certificate should make the will invalid. The Chairman pointed out that the idea of paragraph 5 of the United States proposal may have value in making it clear that while the absence of a certificate may not affect the validity of the will it does perhaps impose a requirement of greater inquiry on the court. The Chairman asked if any delegation which felt that the absence of a certificate should make the will invalid would wish a vote on this question.

The Delegate from Ireland proposed a vote. The Delegate from Switzerland suggested a possible extension of discussion before a vote. The Delegate from the Federal Republic of Germany and the Delegate from France supported a vote.

The Delegate from Belgium, in a point of order, stated that in his view, a certificate was advisable and that this point could be settled in discussion in the context of the Convention.

The Delegate from the Federal Republic of Germany stated that the United States proposal should be voted on and that such a vote would not preclude further discussion. The Delegate from Switzerland supported this position.

The Chairman proposed a vote on the question, phrasing the issue by using the wording contained on the first half of paragraph 5 of the United States proposal: "The absence or ineffectiveness or a certificate shall not as such effect the validity of a will under this Law."

The Delegate from the USSR pointed out that the words "absence or ineffectiveness" raised two different questions and that it had been generally agreed that faults or errors would not affect the validity of the will.

The Chairman concurred and proposed a vote on paragraph 5 with the deletion of the words "or ineffectiveness." The proposal was carried with 17 affirmative votes, 10 negative votes, and no abstentions. There being no opposition, the Chairman referred Article 7 to the Drafting Committee.

The Chairman then raised the question of whether the form to be followed should be appended to the Uniform Law.

The Delegate from Greece supported inclusion of the form in an appendix, noting that the certificate would obtain unity with regard to the application of the Uniform Law.

The Delegate from Italy stated that he was reluctant to make a form obligatory, noting that some flexibility may be desirable in adapting the certificate to the needs of a case and that actual practice may show that the form is not adequate.

The Observer from the Hague Conference on Private International Law stated that with regard to international circulation of documents it was advisable to use a standard form.

The Delegate from Ireland suggested that the Drafting Committee, which included representatives of the various legal systems, determine the actual form. Raising a drafting point, the Delegate stated that the Uniform Law or the Convention should make references to the Appendix.

The Delegate from the United Kingdom concurred that there was a need for a clause in Article 7 regarding the form and suggested a formula used in British statutes.

There being no further comments, the Chairman referred the two proposed forms of the certificate, P/4 and P/13, to the Drafting Committee for consideration as the basis for a certificate to be annexed to the Uniform Law together with the proposals for insertion of the appropriate language making reference to the form in Article 7.

The Chairman asked that the Drafting Committee consider the drafting points raised by the Delegates from Belgium, the USSR, Ireland and France.

The Delegate from the Netherlands stated that the last sentence of the Belgian proposal could be discussed under Article 8.

#### DISCUSSION OF ARTICLE 8 OF THE DRAFT UNIFORM LAW

The Deputy Secretary General commented on the history of Article 8, noting that the Article has the simple purpose of stating what law is applicable with regard to the date of the will. He stated that Article 8 stressed the duty of the authorized person to see to the safeguarding of the will and to apply the law of his own jurisdiction in this regard.

Noting that the Swedish Delegate, who had submitted a proposal on Article 8, would be present for the Tuesday Plenary Session, the Chairman adjourned the meeting at 6:50 p.m.