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

SR/9
October 23, 1973

SUMMARY RECORD - NINTH PLENARY SESSION
Tuesday, October 23, 1973

The Chairman convened the session at 10:20 a.m. He announced the Drafting Committee had completed the draft revision of the Uniform Law and proposed that today's schedule conclude discussion of the Annex, any proposals for additions and a review of the Draft Convention.

The Delegate from Sweden continued the discussion of Article 8 of the Annex (P/16) by suggesting the subject of safekeeping of international wills might be more appropriate for the Convention itself rather than the Annex. He also suggested P/16 might be further revised as he was not entirely satisfied with the wording therein. He pointed out a discrepancy in the French translation of P/16.

The Delegate from the Netherlands said that Article 8 of the Annex is superfluous as it now stands. He proposed an amendment recommending that a central registration of wills be set up in each signatory county of the Convention. Article 8 in the draft Annex leaves such action up to the Authroized Person, which the Delegate did not feel to be sufficier

The Delegate from Switzerland stated the Conference must decide if an international obligation for the safekeeping of international wills should be inserted in the Convention.

The Delegate from the Federal Republic of Germany stated his support for the Swedish proposal; however, he believed the proposal of the delegate of the Netherlands goes beyond the intent of the Convention.

The Delegate from the Netherlands clarified his earlier point by stating his amendment does not establish an obligation but an invitation.

The Delegate from France supported the Netherlands proposal, stating the issue of safekeeping must be dealt within either in the Uniform Law or in the Convention. He particularly pointed out the need for the safekeeping of handwritten wills.

The Delegate from Canada agreed with the need for some form of central registration, stating this could be accomplished by a central registration of pertinent data but not the will itself. The difficulty with such a practice would be that of sanctions, e.g., would validity

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rest on such registration? The Delegate from Canada supported the principle of the Netherlands amendment, at least regarding the registratio of certificates so inquiries could be made. This would be a step toward t registration of local wills as well.

The Delegate from Belgium stated his support of the proposals of Sweden and the Netherlands.

The Delegate from Yugoslavia also supported the Netherlands proposal, stating that such a system of registration should be in the Convention rather than the Uniform Law.

The Delegate from the United Kingdom concurred with the Swedish proposal that Article 8 of the Annex be revised and placed in the Convention rather than in the Uniform Law. Although a central registry for all wills was not acceptable to his delegation, he supported the idea of a central registry for international wills and supported the inclusion of this provision in the Convention.

The Delegate from the Federal Republic of Germany stated that his delegation's position on P/29 would be different if the proposal were a declaration of intent and not an obligation to create a central registry.

The Delegate from the Netherlands stated that his amendment was meant to be an expression of intention and proposed a rewording to indicate an invitation rather than an obligation. He added that he supported the idea of the Swedish amendment, but that he thought that as drafted it contained the same problem of ambiguity as Article 8.

The Delegate from Greece supported the proposals of the Netherlands and Swedish Delegations.

The Delegate from Canada stated that he would support the Swedish proposal. He also indicated that he would support a central registry for the certificate but that he saw little to be gained in asking for the deposit of a will, which would risk breaching the secrecy of the will, when all that was really required was the information contained in the certificate.

The Delegate from France pointed out that the registration of the will and the safekeeping of the will were two separate ideas.

The Delegate from Switzerland noted that there seemed to be a certain consensus in favor of the oral proposal of the Netherlands which called for a recommendation on registration, rather than an obligation. He suggested a proposal to the effect that each of the contracting parties undertake to assist, through appropriate means of internal law, the safekeeping of the international will as well as, so far as possible,

the registration of the certificate in a central register. He noted that such a recommendation would not infringe on the freedom of each state to enforce its domestic law and that the proposal could be consolidated with the Swedish proposal (P/16).

The Chairman commented that an operative clause cast in the nature of a recommendation could lead to problems of interpretation and perhaps dispute. He suggested that the proposal accompany the Convention as a resolution recommending to states a desirable course to follow with respect to safekeeping and registration of wills.

The Observer from the Hague Conference on Private International Law commented that he thought the recommendation in favor of a registry was very good. He stated that safekeeping should be flexible and noted that a testator might not make an international will if he were not allowed to keep it.

The Delegate from the United States supported the Swedish proposal. He stated that it would be difficult to accept mandatory registration and that he would favor the idea of the Swiss proposal but would also defer to the suggestion of the Chairman.

The Delegate from the Federal Republic of Germany stated that a declaration of intent could be put in the final act of the Conference. He indicated that he was basically in agreement with the suggestion of the Swiss Delegate, but that he did not believe registration arrangements should be restricted to a central registry.

The Delegate from Sweden agreed that the recommendation could be included in the final act of the Conference. He also suggested replacing the (French) word "favoriser" with "contemplate" or "investigate.

The Delegate from the Netherlands supported the suggestion of the Federal Republic of Germany. Regarding the Swiss proposal, he suggested tha the word "certificate" be replaced with "will" or "testament."

The Delegate from Spain expressed his full agreement with the proposals of the Swedish and Swiss Delegates. He wished only to make certain modifications of style. He felt that the Swiss proposal had two distinct advantages because it provided for the safekeeping and the registry of wills. The Delegate from Spain asserted that the Swiss proposal should be incorporated in the Draft Convention rather than remaining as an independent recommendation.

The Delegate from Australia agreed that the Swiss proposal should be included as part of the Draft Convention. He also asked that the precise text of the Swiss proposal be made available in writing.

The Delegate from Ireland commented on the original Article 8 without the subesquent amendments. He mentioned that the original article referred to the safekeeping of wills. He proposed that the word "required" be changed to "allow" or "permit." He also asked that the various proposals be made in writing since he was not precisely sure what the Swiss proposal was.

The Delegate from Switzerland said that his oral proposal was not a formal Swiss proposal but an improvised attempt to facilitate discussion. He had simply drawn on a previous Dutch proposal and added to it what he thought was a consensus of the Convention. He suggested that the Draft Committee be allowed to consider his informal proposal making certain that it incorporates the consensus of the Convention. He summarize his opinion of the majority sentiment in the following manner. Article 8 should be made more exact and should be included in the Draft Convention, not the Uniform Law; Article 8 should also mention some technique or procedure for the safeguarding of wills. He said that the Draft Committee would incorporate these sentiments in its deliberations.

The Delegate from France asserted that he was not worried about safekeeping of the will. He felt, however, that provisions should be made so that the will could be easily found when necessary if the testator had agreed to relinquish it for safekeeping. He proposed to add another change to Article 7 which would "let the testator declare whether he will conserve or retain the will himself or whether he will deposit the will at a place that will be designated."

The Chairman ruled the previous proposal, amending the Drafting Committee's Article 7 as non-germane, and asked the French Delegate to submit it in writing and agree to discuss it at a later time.

The Delegate from Japan supported Sweden's original proposal because Japan had no deposit or registration system for wills. The establishment of such a system was thus necessary.

The Chairman noted that the Swedish and Dutch proposals were supported by a large majority of the delegates and suggested that the Drafting Committee be allowed to consider them. He also asked the Swiss Delegate to put his thought on paper.

The Delegate from the Federal Republic of Germany proposed the addition of an "Article 9," identifying the authorized person.

The Delegate from Switzerland suggested the the opinion of the Observer from the Hague Conference be considered on this point. The Observer stated that a specific indication of the identity of the authorized person was not used at the Hague Conferences. However, he acknowledged that it may be of practical importance in regard to probate of the will. The Swiss Delegate added that perhaps it would be preferable to employ the same legal technique as the Hague Conference did, rather than adding an "Article 9."

The Delegate from the Federal Republic of Germany clarified his proposal by stating that it is for inclusion in the Uniform Law, and not in the Convention. He further stated that it would have no influence or effect on Article 2, paragraph 2.

Support for the proposal of the Federal Republic of Germany was added by the Delegate from Canada, who noted that it was important to federal states. The Delegate from Greece also supported the proposal, with the reservation that it may need to be redrafted if it is included in the Uniform Law. The Delegate from Italy also voiced support for the proposal, but stated that certain modifications in the official power of attorneys and solicitors would be needed in cases of countries which do not have notaries.

Disagreement with the proposal of the Federal Republic of Germany was voiced by the Swedish Delegate. He suggested that the designation of an authorized person be left to the individual countries. The Swiss Delegate agreed with this objection, due to the difficulties it would present in connection with Swiss Federal law. He suggested that "Article 9 be accomplished by internal decree, and stated that the Swiss Delegation could not approve it as presently written. Further opposition to the proposal was voiced by the Delegates from the United Kingdom, Yugoslavia and the Observer from the Hague Conference.

The Delegate from Mexico supported the proposal with modifications in its drafting.

The Delegate from the Federal Republic of Germany stated that he hoped that his proposal would still prove acceptable, despite the various objections to it. He added that the Conference cannot hope to conform to all internal laws. The Swiss Delegate later replied that he would be willing to modify his position if the advantages to Article 9 could be seen to outweigh the disadvantages. At this point, however, he stated the advantages were unclear to him.

The Delegate from Honduras stated that the Conference must definitivel establish the scope of the law, for without a larger scope and better definitions, there would be problems for all Spanish-speaking countries. He was also concerned about the lack of clarification on the subject of secret wills. He stated that the Convention as it stands is inoperative as regards secret or closed wills.

On the subject of the German proposal, the Chairman stated that the problem appeared to be a conflict between states which are Federations and those which are unitary states. The Chairman adjourned the session at 1:20 p.m.

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