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

SR/10 (Final)
October 31, 1973

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

The Delegate of the Federal Republic of Germany withdrew his proposal for the creation of Article 9 of the Annex.

The Delegate of the United States of America introduced an amendment to the Uniform Law (P/6) regarding the uniform interpretation of the draft Uniform Law. Citing the use of similar clauses in recent international conventions, he stated that the inclusion of a similar clause in this Uniform Law could be of advantage. The clause could be called to the attention of the courts.

The Delegate of Switzerland differentiated between expressed obligations for each state as contained in the Uniform Law and implicit obligations. He suggested that the inclusion of a proposal such as that of the United States might infer that the absence of such a proposal meant there was no implicit obligation. He also questioned the use of "international" in the phrase "....regard shall be had to its international character...." since the amendment would actually be dealing with a will in terms of domestic law only.

The Delegate of Greece suggested the United States proposal, redrafted appropriately, be included in the preamble to the Convention rather than in the operative portion of the treaty.

The Delegate of Italy agreed the United States proposal was useful but suggested the wording might be revised, particularly the phrase "....need to preserve uniformity..."

The Delegate of Canada supported the United States proposal, stating the clause would not work any miracles but would not do any harm. He suggested it would be most useful when a judge was in doubt.

The Delegate of Mexico commented the interpretation of a will was always up to the judge and that it was impossible to unify inheritance law.

The Delegate of Ireland supported the United States proposal in general but suggested the object of the proposal might be further clarified. He suggested that for the words "....its international character" the words "its object, purpose and spirit" might be substituted.

The Delegate of the United States of America thought that, for practical purposes, the proposed amendment should be in the Uniform Law rather than the Convention since a judge and parties would not see it in the Convention. He also commented that the French translation of the United States proposal seemed to diminish the obligations of the treaty.

The Delegate of the Federal Republic of Germany supported the United States proposal and agreed it should be placed in the Uniform Law.

The Delegate of Australia supported the United States proposal in general and agreed it should be placed in the Uniform Law.

The Chairman concluded there was general support for the United States proposal and that most delegations seemed to feel it should be in the Uniform Law rather than the Convention. He referred the matter to the Drafting Committee, leaving the issue of placement of the amendment open.

The Delegate of Czechoslovakia asked whether joint testaments were a question of form or substance.

The Delegate of Belgium posed three questions on the Uniform Law, which he stated, could be referred to the Drafting Committee.

The Chairman suggested that discussion on the contents of the Uniform Law as revised be deferred until the session dealing with the report of the Drafting Committee.

The Delegate of the USSR expressed doubts regarding the inclusion of the United States proposal in the Uniform Law and asked the Drafting Committee to consider both the wording and the appropriate place of introduction for the proposal. He explained that including the United States proposal in the Uniform Law might infringe on the right of interpretation which is a prerogative of the State itself.

The Delegate of Japan stated that he still felt his delegation's proposed additional amendment was necessary. He also noted that he shared the question of the Czechoslovakian delegate.

Regarding the point raised by the Czechoslovakian Delegate, the Deputy Secretary General stated that it was not the intention to include conjunctive wills and that it was felt that the prescriptions of the Uniform Law preclude the possibility of joint wills.

The Chairman stated that there were three possibilities with regard to revocation: (1) leave the question of revocation to internal law; (2) provide, as in the Belgian proposal, that any form of revocation meeting the requirements of internal law is sufficient to revoke

an international will; (3) provide, as in the Japanese proposal, that revocation take place only by the formalities of an international will.

The Observer from The Hague Conference on Private International Law citing The Hague Conference, stated that an international will can be revoked by another international will and can also be revoked by a purely domestic will.

The Delegate of Belgium commented that a statement on revocation would make the intentions of the Conference clearer.

The Delegate of the United States of America agreed with the observations of the Observer from The Hague Conference and cautioned against dealing with a provision on the revocation of an international will, which, he said would raise many questions.

The Delegate of Greece stated that revocation of a will as well as modification of it are questions of substance, because they touch the contents of the will, which may be kept secret, according to article 3 paragraph 2 of the draft. On the other hand, revocation of a will, which may be express or implicit, and total or partial, is in reality a new will, therefore the present text of the Uniform Law includes revocation.

The Delegate of France stated that he shared the views of the United States and Greek Delegations.

The Delegate of Canada stated that the matter of revocation could be left to local law but pointed out that by not saying anything about revocation in the Uniform Law, the Conference indicates that it is content to accept the fact that an international will can be replaced by a local will, or revoked in a non-international form.

The Delegate of Ireland referred to the remarks made by the Deputy Secretary General on joint testaments and asked if there should not be a provision in the Convention specifically saying that the Uniform Law does not apply to testaments made by two or more persons. He added that if the Uniform Law is not to cover a joint will, this should be stated in specific terms.

The Delegate of Switzerland stated that he shared the views of the United States, Greek and French delegations on revocation. Referring to the remarks of the Canadian delegate, he stated that the maximum solution should be the formula of The Hague Conference.

The Delegate of Honduras commented on the importance of the remarks of the Irish delegate.

The Observer from The Hague Conference on Private International Law stated that the question of joint wills opens many problems and that he did not think it possible to draw up a joint will under the Draft Convention.

The Delegate of Ireland referring to the matter of joint wills, asked that the Convention adopt a clause saying that the Uniform Law

applies only to testaments made by one person. This would remove any ambiguity on the point.

The Delegate of the Netherlands expressed his belief that the Draft Convention applied only to single-person wills. If that was not the case, th Netherlands would be put in an embarrassing position, since the country had no provision for joint wills.

The Chairman, summarizing the two previous points of discussion, suggested that these matters be referred to the Drafting Committee. When no further comments ensued, the Chairman briefly recessed the proceedings.

On reopening the session, the Chairman suggested that the Conference decide on a title for the Convention only after all the clauses of Uniform Law had been considered. The Chairman then invited comments on the preamble of the Convention.

The Delegate of Greece asserted that the wording of the preamble was very important for four reasons. He suggested that it be made more precise and offered several additions to the text including the word "additional" before the word "form" as well as the words "to a certain degree" before the words "dispense with the search."

The Delegate of Switzerland said that the Greek modifications were useful and asked that they be referred to the Drafting Committee without further discussion from the floor of the plenary session.

The Chairman asked if there were any other proposals. There were none. He then suggested that the Greek proposals be taken up by the Drafting Committee.

The Delegate of Greece then suggested that paragraph 2 of Article I of the Convention be deleted, saying that it would recognize the language of every ratifying country as the "official" language. He added that paragraph 2 looks like advising States how to proceed with a question provided for by the Constitution of every nation.

The Delegate of Ireland asked whether Article I did not require that a nation's internal laws be changed before the nation adhered to the Convention. He felt that the present wording of the Article requiring nations to adhere to the Convention before changing their internal laws should be reversed.

The Chairman thought the problem raised by the Delegate of Ireland might be one of translation.

The Observer from The Hague Conference on Private International Law explained the reason for the wording of Article I and the six-month period of grace given the ratifying nation to change its internal laws. He also suggested that Article I and Article X be made more harmonious with each other by ironing out the slight differences between the two clauses.

The Delegate from Switzerland felt that the question of deletion or inclusion of the Greek proposal should be discussed in Plenary and not merely referred to the Drafting Committee.

The Delegate from the United Kingdom supported the Greek proposal for deletion of paragraph 2 of Article I, and stated that it solved a problem treated in the United Kingdom proposal, P/33.

The Delegate from France supported the Greek proposal, while the Delegate from the Federal Republic of Germany disagreed with it, as he wanted to retain the officiality of the German tongue, which is not one of the Convention's official tongues.

After further discussion, the Chairman suggested that confusion might stem out of various connotations of the word "language." He stated that several delegations were construing the word language to mean "spoken tongue," and others were using it to mean "legislative form." The Chairman said that for a country's internal purposes, any country's tongue was official while the languages of the Conference would serve for purposes of interpretation.

The Delegate from Poland suggested the addition of a new third paragraph to Article I; he would not object, he said, if his proposal (P/34) were discussed only by the Drafting Committee.

The Delegate from Switzerland agreed with the nature of the Polish proposal but stated that it became ambiguous if not considered together with the United Kingdom's proposal (P/33). He asked whether the United Kingdom had withdrawn P/33. The Delegate from the United Kingdom replied that his proposal had not been withdrawn. He stated that it was an attempt at compromise, were the Greek proposal not accepted.

The Chairman suggested that perhaps the Polish proposal would be better incorporated into Article II, paragraph 2.

The Observer from the International Union of Latin Notaries presented his proposal, P/10, to be added to Article I, in order to encourage adherence to the Convention by the largest number of countries possible. The Delegate from Switzerland saw many problems in the Observer's proposal. The Delegates from France and Greece also objected to the Observer's proposal.

The Observer from The Hague Conference was then called on to present his proposal, which dealt with Articles II and III. It concerned the rights and responsibilities of consular and diplomatic officers in this Convention. He suggested that whether a consul's will would be acceptable in States which were not signatories of the Law should be clarified.

The Delegate from Belgium supported the Observer's proposal.

The Chairman suggested that the Conference adjourn to study these proposals, and further suggested that the following day's session commence at 9:30 a.m. He adjourned the session at 6:30 p.m.

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