DIPLOMATIC CONFERENCE ON WILLS
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SR/11
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SUMMARY RECORD - ELEVENTH PLENARY SESSION
Wednesday, October 24, 1973

The Chairman convened the Eleventh Plenary Session at 9:35 a.m., and called for further discussion on ARTICLE II.

The Delegate from the USSR pointed out that neither the Convention nor the Annex provided for the authorized person to retain his rights, obligations, and authority to act with respect to the internal law of his country, besides taking actions related to the international will. He suggested the addition of a third paragraph to ARTICLE II to that effec

The Chairman noted that the UK proposal was similar to that of the USSR. He suggested that the USSR proposal be referred along with the UK proposal to the Drafting Committee and that perhaps the two proposals could be merged in some way.

The Delegate from Belgium noted that the USSR proposal points out that every country is free to fix the authority of its own representative. The Delegate suggested that ARTICLE II, paragraph 2, could be completed with the following text: ".... it can also empower its diplomatic and consular representatives abroad to the extent that they may be so authorize by their domestic legislation."

The Delegate from the US stated that he was sympathetic in principle to the Belgian proposal. He noted that it might be advantageous to give protection to the receiving state by requiring that performance of those functions by diplomatic and consular officials be not contrary to the laws of receiving states.

The Delegate from Belgium supported the US statement.

Regarding the matter of the Belgian proposal, the Delegate from Sweden stated that the Convention should also contain a provision regarding the law which would apply to the witnesses in such a testament.

The Observer from the Hague Conference on Private International Law called the attention of the Drafting Committee to modifications that would have to be made in ARTICLES II and V if the principles of the proposals regarding the functions of consular and diplomatic officials were accepted.

The Delegate from the Federal Republic of Germany stated that the Drafting Committee could consider the question of the functions of consular and diplomatic officials in drafting other articles.

The Delegate from Mexico stated that he believed ARTICLE II, paragraph 1, should be extended to provide that each Contracting Party shall complete the provisions of the Annex establishing the manner in which the international will shall be safeguarded.

The Delegate from the USSR suggested that the article include provision concerning bilateral and multilateral agreements on consular matters.

The Chairman stated that the Drafting Committee will keep in mind that the authority of the consular officer is limited by treaties and internal laws of the country to which he is assigned. There being no further comments, the Chairman referred ARTICLE II to the Drafting Committee along with the proposals made by the USSR, UK and Mexican Delegations and the matter of consular and diplomatic agents acting as persons authorized under the Convention.

DISCUSSION OF ARTICLE III OF THE DRAFT CONVENTION

The Observer from the Hague Conference on Private International Law discussed the suggestions made in P/38 regarding ARTICLE III.

The Delegate from Canada asked the Deputy Secretary General to explain the background of paragraph 2 of ARTICLE III.

The Deputy Secretary General stated that it had been desirable to enable a testator to make an international will even in a state which had not adhered to the Convention. He noted that empowering consular and diplomatic officers to draw up international wills might resolve the problem that had been raised by ARTICLE III.

The Delegate from France supported the proposal of the Observer from the Hague Conference to delete paragraph 2 of ARTICLE III. He also suggested that consideration be given to proposal P/35 of the US Delegation, as well as to the Swedish proposal. The Chairman suggested consideration of the Polish proposal, P/34. Other delegations agreeing to deletion of paragraph 2 were those from Belgium, Canada, the US, Sweden, the USSR, Yugoslavia, and Greece. The latter delegate commented that were it not possible to delete paragraph 2, he considered a modification along the lines of the US proposal, P/35, to be an excellent alternative. The Swiss Delegate agreed.

The Delegate from the Ivory Coast questioned the deletion of paragraph 2, stating that it might have drawbacks for nationals of countries not represented world-wide by diplomatic emissaries. The Chairman stated that he foresaw no disadvantages for countries less widely represented, since an authorized person would be available in any foreign country, even if a diplomatic or consular officer were not.

The Chairman stated that the consensus of the Conference was to

delete paragraph 2. He then called for discussion of paragraph 1 of ARTICLE III, for which the Belgian Delegate had previously proposed a new text. The US Delegate pointed out his delegation's concern about this paragraph, which had been included in US proposal P/35. The Swedish Delegate said his position in proposal P/31 was similar to that of the US in P/35, and expressed no preference between the two proposals. The Delegate from the USSR pointed out a drafting problem in proposal P/35.

The Chairman then called for proposals concerning ARTICLE IV. The Delegates from Ireland and Belgium suggested deleting the word "effectiveness" from the first line of the ARTICLE. The Delegates from Mexico and the USSR pointed out that the reference to "ARTICLE 8 of the Annex" was incorrect, and should be changed to "ARTICLE 7 of the Annex."

The Chairman suggested that the afternoon session be devoted to making proposals and laying sound ground work for the benefit of the Drafting Committee.

The Delegate from Honduras suggested that the Drafting Committee follow the French text in ARTICLE V because it was more precise.

The Delegate from Yugoslavia argued that if the testator were deaf or illiterate, ARTICLE V should make some provision for an interpreter. He proposed the following oral amendment: that ARTICLE V be changed from "The conditions to be a witness of an international will shall..." to "The conditions to be a witness of an international will or an interpreter shall..."

The Delegate from the USSR supported the statement of the Delegate from Honduras.

The Delegate from Switzerland raised a point of order. He mentioned that the previous proposals would present no problem for the Drafting Committee. He then asked if it would be possible for the delegates to advise the Drafting Committee in writing of their various proposals. He urged that because the Convention was running short on time it might not be necessary for members who were on the Drafting Committee to raise their proposals in plenary sessions.

The Chairman seconded the thoughts of the Swiss Delegate.

The Delegate from Honduras argued that there were certain questions that were not drafting questions and that had to be discussed in plenary sessions, although he would make every effort to curtail unnecessary discussions in plenary session.

The Delegate from Greece mentioned that in his country's opinion the word "alien" in ARTICLE V also included a "stateless person."

The Delegate from Belgium proposed that ARTICLE V, paragraph 1 be

changed from "the internal law of the place where the will is received" to "the law applied by the person authorized to sign the testament."

The Delegate from the Ivory Coast asked if ARTICLE V allowed countries who had no provisions for witnesses to make such provisions to comply with the procedures of an international will.

The Delegate from Switzerland replied that countries that have no requirements for witnesses would have to institute them under the Uniform Law.

The Delegate from the US asserted that he believed that ARTICLE V should be included in the annex of the Uniform Law rather than in the Draft Convention.

The Delegate from the Philippines stated that in his country it was illegal for a non-resident to be a witness. He added that the disqualification was not due to the would-be witness's alien status. He then asked how ARTICLE V dealt with this situation.

The Deputy Secretary General answered that the problem raised by the Delegate from the Philippines was resolved by the French version of ARTICLE V.

The Delegate from Switzerland agreed with the Deputy Secretary General. He also expressed reservations about the US proposal to transfer ARTICLE V to the annex of the Uniform Law.

The Delegate from Honduras pointed to the problem raised by the Delegate from the Philippines and reiterated his preference for the French version of ARTICLE V because it was more precise.

The Delegate from the Federal Republic of Germany stated that the Drafting Committee could easily handle the problems thus far discussed.

The Chairman suggested that the Drafting Committee be allowed to resolve the problems discussed and to consider the US proposal. He then opened discussion on ARTICLE VI.

The Delegate from France asked the US Delegate to give his reasons for his proposed amendments to ARTICLE VI.

The Delegate from the US answered that the thrust of his proposal was to clarify what the Convention meant by eliminating certain verification procedures and to provide that local officials be authorized to establish the capacity and identity of the testator.

The Delegate from France thanked the US Delegate and asserted that the US Delegate had helped eliminate some of his previous reservations about the US proposal.

The Delegate from Greece raised a question about paragraph 1 of the US proposal as it related to his country's laws.

The Delegate from the Netherlands stated that he was completely satisfied with ARTICLE VI as it stood. He felt that the US proposal might complicate the matter.

The Delegate from the UK stated his belief that even if paragraph 2 of ARTICLE VI were superseded by the US proposal, the testator's signature could still be required to be verified if thought to be a forgery.

The Delegate from Switzerland stated his opinion that paragraph 2 of the US proposal did not replace the second paragraph of ARTICLE VI but merely added to it.

The Delegate from the Federal Republic of Germany asserted that he too wished to keep ARTICLE VI as it was.

The Delegate from Ecuador alluded to the problem raised by the Delegate from Greece concerning paragraph 1 of the US proposal. He also wanted to prevent any changes in ARTICLE VI except to change the last words of ARTICLE VI, paragraph 1 from "any legalization" to "any type of legalization whatever."

The Delegate from Ireland expressed his support of ARTICLE VI as it stood but did suggest that the words "any legalization" be changed to "any form of legalization or authentication." He proposed the following changes in paragraph 2 : "the competent authorities" to "any competent authorities" and "may verify the authenticity of such signatures" to "that the authenticity of such signatures be proved."

The Observer from the Hague Conference on Private International Law mentioned that in previous conventions ARTICLE VI, paragraph 1 was stated in words like these: "No legalization or any other formality will be required." He also believed that the non-requirement for legalization referred not only to the signature on the will but also to the signature on the certificate.

The Delegate of the US explained that the US proposal to amend ARTICLE VI of the Convention was not meant to change ARTICLE VI but to add a point to it. The amendment seeks to eliminate the requirement of legalization in the traditional and technical senses and does not change the concept that the authority of the authorized person would be expected or required. The amendment does not intend to preclude the proof of forgery of the testator's or witnesses' signatures.

The Delegate of Switzerland agreed that the U.S. proposal was really an addendum and suggested it be considered as a new paragraph 3 to ARTICLE VI of the Convention, as a compromise between those who favored the amendment and those who wished ARTICLE VI to remain unchanged. If

this compromise were agreed to, he suggested the word "nevertheless" be eliminated from ARTICLE VI, paragraph 2, and inserted as the first word in the new paragraph 3.

The Chairman asked for comment from other delegations.

The Delegate of France felt it preferable to keep ARTICLE VI as it exists in the original draft of the Convention.

The Delegate of the Netherlands commented the U.S. proposal would have no effect in the Netherlands since the proposal presupposes the existence of a competent authority in each state for verification purposes and such an authority does not exist in the Netherlands. He felt the proposal was unnecessarily complicating the issue.

The Delegate of Mexico pointed out that ARTICLE VI, paragraph 2 of the Convention cites "signatures," implying that witnesses are included. He felt the verification of signatures should be expressly limited to that of the authorized person and not include the testator or the witnesses

The Delegate of the Philippines had some doubts about ARTICLE VI, paragraph 2 and requested further clarification because, as it now reads, he feels paragraph 2 could nullify paragraph 1, should there be a challenge.

The Chairman commented that the draft could be interpreted to mean a court could seek verification on its own power, should there be any suspicion regarding signatures.

The Delegate of Canada suggested ARTICLE VI, paragraph 2 be changed to read "... may require verification of the authenticity..." to leave the option of verification open to the receiving tribunal.

The Delegate of Belgium suggested the Belgian draft proposal be sent to the Drafting Committee and made the distinction between verifying the signatures and judging the capacity of the persons acting.

The Chairman noted the general consensus that the U.S. proposal, as drafted, was not acceptable and he therefore did not refer it to the Drafting Committee. There being no objections, ARTICLE VI and other proposed amendments, but not the U.S. proposal, were sent to the Drafting Committee.

In discussing ARTICLE VII of the Convention, the Delegate of the USSR noted the right of reservation was the right of a sovereign state and not an international right. Since this Conference is of an international nature, not one provision of the draft Convention should digress from this principle. Citing a variety of international treaty precedents, the Delegate introduced a formal proposal to delete ARTICLE VII from the draft Convention.

The Delegate of Zaire also advocated the deletion of ARTICLE VII. He commented that ARTICLE VII seemed to be contrary to a number of legal principles and that its wording was too rigid.

The Delegate of Brazil concurred with the proposals of the USSR and Zaire, noting the Convention could still be in effect with reservations.

The Delegate of France supported the inclusion of ARTICLE VII of the draft Convention. Recognizing that each state has sovereignty and that no state wants impositions, he pointed out that an international convention is basically only a contract. Each state enters into the Convention of its own free will and, in this instance, there is an opportunity for discussion before signing. No rigid obligation is imposed on any state.

The Delegate of Australia made a procedural suggestion that ARTICLE VII be considered after discussion of the federal clause, since some delegations could not take a position on ARTICLE VII until the disposition of the federal clause was decided.

The Chairman remarked that the often-used phrase "... except as provided in this Convention..." might be a solution to the problem.

The Delegate of Switzerland remarked that the Rome drafters had no intention whatever to infringe on sovereign rights. Rather, their intention was to establish a single system which sovereign states could then deem acceptable or not. He agreed with the Delegate of Australia that the Conference could make a decision if it were known that there were concrete, substantive issues regarding which certain states would like to make reservations.

The Observer from the Hague Conference stated that the clause existed in a number of current international conventions and that the clause was included for practical and not political reasons.

The Delegate of Mexico commented that according to international law, reservations could be made regarding secondary aspects of the treaty only and not its fundamental parts. He felt that in this draft Convention nothing is secondary, that thus any reservations made would invalidate the work of the Conference. He stated the clause was not infringing upon a sovereign state.

The Delegate of Czechoslovakia supported the proposals of the USSR and Zaire to delete ARTICLE VII.

The Delegate of Zaire commented that perhaps the problem was one of drafting in that ARTICLE VII might be revised to reflect the possibility of limited reservations.

The Chairman remarked the issue seemed to reflect two opposing philosophies of treaty-making and that discussion would resume after lunch. The meeting adjourned at 1:10 p.m.

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