

DIPLOMATIC CONFERENCE ON WILLS

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

SR/12 (Final)
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SUMMARY RECORD - TWELFTH PLENARY SESSION Wednesday, October 24, 1973

Report of the Credentials Committee

The Chairman opened the twelfth plenary session at 3:25 p.m. by asking the Chairman of the Credentials Committee for a preliminary report of its work.

The latter reported all credentials to be in proper form. He listed the nations having plenipotentiary power to sign the final Convention and also those whose credentials were in order enabling them to sign the Final Act.

Discussion of Article VII of the Convention

The Delegate of Switzerland continued the discussion on Article VII by asking that the Australian proposal to vote on Article VII be deferred until the remaining Articles were discussed.

The Chairman asked if there were any objections to this procedure, and there being none, he so ordered.

He then proposed a procedure for taking up the remaining matters before the Conference. He suggested that Articles VIII to XIII be prepared in consultation with the delegations outside the plenary sessions. He proposed that the Conference discuss next the Article on federal and non-unitary states, followed by consideration of the Drafting Committee's proposals on the final form of the Uniform Law. There being no objection, he so ordered.

The Delegates of Ireland and Greece said the Article on federal and non-unitary states should be discussed only by states to which it applies, outside the plenary sessions.

The Delegate of Australia stated that the federal clause was an important matter which should be considered by all states in full plenary session. He felt that inclusion of a clause as drafted by UNIDROIT, or in the alternative form suggested by the Delegate of Canada, would substantially weaken the application of the Convention to a federal state and was therefore undesirable. In his view Contracting States should be equal partners in the international community, with equal benefits and responsibilities from participation. Such a federal clause

allowed federal states to accept lesser responsibilities upon ratification of the Convention than those accepted by unitary states, which was an unfortunate discrimination between States. The fact that federal states may possibly have to go through a more complicated domestic procedure than unitary states in order to comply with obligations consequent upon ratification of a Convention was essentially a domestic problem of federal states.

The Delegate of Switzerland stated that an extensive discussion of principles was inappropriate at this juncture, and suggested that the Australian Delegate could submit a written proposal to clearly state his point.

The Delegate of Australia agreed to meet with delegates from other federal states for discussion of this point.

The Delegate of Canada pointed out that his federal state clause, P/25, was not an option, but a necessity in the Convention. Without it, Canada could not ratify the law. He hoped that the insertion of this clause would make it possible for all states to accept the Convention.

The Chairman then called the Delegate of Switzerland as Chairman of the Drafting Committee to the podium for discussion of his Committee's proposals. The Drafting Committee Chairman thanked all the members of the Committee for their work, their spirit of compromise, and their legal imagination in drafting. After his explanation of the changes proposed in Article I, discussion was opened. The Delegate of Ireland suggested that if joint wills are prohibited by the Convention, this should be specifically stated in the law or Convention. He also suggested, in the wording of paragraph 2, changing "document" to "instrument." The Delegate of Sweden later suggested replacing "document" with "will," and the Delegate of Ireland concurred.

In response to a question from the Delegate of Czechoslovakia concerning the substitution of specific paragraph citations for "articles 2 to 4," the Drafting Committee Chairman suggested we maintain the text be kept as simple as possible, even if it is consequently not as perfect as one might wish.

The Delegate of Greece suggested the addition of the word "formal" to precede the word "validity" in paragraph 2. The Drafting Committee Chairman suggested a similar change which would insert "as to form" at the beginning of that sentence.

The Delegate of Switzerland's brief commentary on Article II was followed by no objection or proposal. The Chairman therefore announced that it was acceptable. Similarly, the changes in Article III brought about no discussion, and were accepted as drafted.

Article IV was then introduced by the Drafting Committee Chairman with two alternatives to consider.

Czechoslovakia and the United Kingdom preferred Alternative #1. France, the Federal Republic of Germany and Greece favored the second alternative.

The Delegate of Canada explained it was quite common in UK/Canadian/US law for a will to be accepted as valid without the signature of the testator. Furthermore, it was not necessary for the person who signs on behalf of the testator to have knowledge of the contents of the will. The Delegate supported Alternative #1.

The Delegate of the Federal Republic of Germany stated it was unthinkable in German law for someone else to sign on behalf of the testator. He stated there was no possibility of compromise on this issue and supported Alternative #2.

The Delegate of the United Kingdom reiterated the Canadian Delegate's explanation and stated the contents of the will can but need not be read to the person who signs on behalf of the testator.

The Chairman suggested a compromise that would include both Alternatives, with the word "or" between them.

The Delegate of the USSR stated that in the USSR, it is impossible to have a valid will without the signature of the testator. He supported Alternative #1 and reserved his position on any compromise proposals.

The Delegate of the Federal Republic of Germany stated a combination of the alternatives was not acceptable and pointed out that Alternative #1, although supported by the USSR, did not really meet that country's domestic law requirements.

The Delegate of Switzerland offered another possible compromise by suggesting that Alternative #2 be kept as is, adding the following second sentence: "Local law may, in addition, allow the testator to designate another person to sign on his behalf."

The Delegate from Canada said that his delegation was prepared to accept alternative 2 in the spirit of compromise.

The Delegate from France proposed another compromise: If the testator is unable to sign he shall declare the cause thereof to the authorized person who shall make note of that declaration on the will itself or on the certificate provided for in Article VII.

The Delegate from the Federal Republic of Germany thought that the French suggestion was more acceptable than alternative 1.

The Chairman of the Drafting Committee suggested that the matter now could be handled by the Drafting Committee.

The Delegate from the Netherlands asserted that the question of certification should still be considered by the Drafting Committee.

The Delegate from Ireland agreed with the Swiss delegate. The Delegate from the USSR and the Chairman voiced the same views.

The Delegate from Mexico mentioned that there were still some slight differences of meaning in the French and English versions of Article IV.

The Chairman of the Drafting Committee said he understood the Mexican delegate's objection but that the Drafting Committee had not considered the differences serious enough to attempt to resolve them.

The Delegate from Ireland said that as far as he was concerned the attestor attested the signature, not the will itself. He also felt that the witnesses were not required to be present together when they attested the signature.

The Chairman suggested that the Drafting Committee could consider this point.

The Chairman of the Drafting Committee said that the matter had been considered and that the committee should not consider again the question of compulsory simultaneous presence of witnesses.

The Chairman of the Drafting Committee asked that comments on Article V be withheld until Article IV was re-drafted. The Convention agreed. The Chairman of the Drafting Committee then explained Article VI and noted some of the changes made by the Drafting Committee.

The Delegate from France asked if a slight addition could not be made to Article VI specifying that the date would appear adjacent to the testator's name.

The Chairman of the Drafting Committee responded by saying that it can be specified that the date will be placed at the end of the will.

The Delegate from Canada mentioned that in Canada the date appeared at the beginning of the will.

The Observer from the International Union of Latin Notaries commented on the Canadian delegate's point and tried to clarify and resolve the problem raised.

The Delegate from the United States of America stated that paragraph 2 of Article VI was redundant and thus could be eliminated.

The Delegate from Greece agreed with the United States delegate.

The Chairman responded saying that the Drafting Committee could handle this matter.

The Delegate from Czechoslovakia supported the Drafting Committee's version of Article VI.

The Delegate from the USSR pointed to the problem raised by the United States proposal and the importance of making absolutely clear every provision relating to the "date" of a testament.

The Chairman responded by saying that he hoped he had not given any wrong impressions when he suggested that the matter could be dealt with by the Drafting Committee. He did not wish to imply, he said, that the Drafting Committee would delete any of the precise language concerning dates. He was merely referring to the possibility that when the Drafting Committee considered this matter they might combine a couple of paragraphs by eliminating some verbiage.

Discussion of Article VI was completed with comments of the Delegates of Ireland and Spain. The former stated that the date of the will should be the date of the signature of the authorized person.

The Spanish Delegate suggested that the Conference retain the Drafting Committee's version of the Article.

The Drafting Committee Chairman introduced the proposed Article VII. Concerning paragraph 1, he pointed out that alternative 1 of the draft was much simpler than alternative 2, and then asked for discussion.

The Delegate of France pointed out that the adoption of alternative 1 does not necessarily preclude the addition of further requirements. Several Delegations (Federal Republic of Germany, Ivory Coast, the Observer from the Hague Conference) supported the adoption of alternative 1, while others (Mexico, the Observer from the International Union of Latin Notaries, Brazil, United Kingdom) favored a compromise between the two.

The Chairman concluded the discussion of paragraph 1 by noting that there were two provisions in the law that were not contained in alternative 2. He stated that the consensus seemed to be that a simplified but modified form of paragraph 1 would be desirable.

The Drafting Committee Chairman then introduced paragraph 2 of Article VII. He stated that this was a new paragraph, and that it embodies many changes requested by several delegations.

The Delegate of Ireland and the United States objected to the requirement for the dates and places of birth of the witnesses, on the grounds that this was too detailed. The United Kingdom and Mexican Delegates stated that these personal facts were useful. The Drafting Committee Chairman thought it would be simple to delete the requirement for date and place of birth of the witnesses. The Chairman reminded the Conference that this information was not a determinant of validity. Although it appeared unnecessarily detailed, he suggested retention of paragraph 2 as it stands. He calmed the fears of delegates who graciously spoke up for the age-old feminine reluctance to reveal one's age by facetiously advising such timid sorts not to witness wills!

Discussion of paragraph 3 ensued. The only problem with this paragraph was the translation of the word "copy" into the French text. This was pointed out to the Drafting Committee.

Discussion of paragraph 4 was brief, and concerned only the modification of the text. These drafting problems were referred back to the Drafting Committee.

After the Drafting Committee Chairman introduced paragraph 5, the only point made concerning it was that of the Delegate of the Federal Republic of Germany. He suggested that this paragraph is superfluous, and need not be included.

The next topic of discussion was to be the Appendix. The French Delegate, however, suggested a proposal to be inserted before the certificate regarding the safekeeping of the will. Under this proposal, the testator could choose to deposit the will wherever he chose. His proposal was supported by the Delegates of Italy, Belgium and Ireland, and opposed by the Delegate of the Federal Republic of Germany. The Chairman suggested that the proposal be referred to the Drafting Committee for a possible solution to the problem.

The discussion of the Appendix ensued. The Chairman reminded the delegates that any drafting problems should be referred in writing to the Drafting Committee.

The Delegate of Brazil inquired whether the United States was retaining its proposal to transform the certificate into an article of the law. Support for this proposal was also voiced by the Delegate of the Federal Republic of Germany. The Observer of the Hague Conference stated that he had never seen this done.

The Chairman suggested that the problems of locations of appendices and annexes be referred to the Drafting Committee.

The Chairman closed the meeting, announcing that only the Drafting Committee would meet on the following morning, and that the Plenary would not reconvene until 2:30 p.m. He adjourned the session at 7:15 p.m.

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