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

SR/14
October 29, 1973

SUMMARY RECORD - FOURTEENTH PLENARY SESSION
Friday Morning, October 26, 1973

The Chairman opened the Fourteenth Plenary Session of the Conference at 10:00 a.m., by discussing the agenda for the day.

He proposed and the Conference agreed to consider the Draft Resolution (Doc. DC/3), the Draft Convention (Doc. DC/2, Rev. 1), and the Annex (Doc. DC/4) in that order.

Consideration of the Draft Resolution of the Drafting Committee

The Chairman of the Drafting Committee said the Draft Resolution was an attempt to provide a means of including the Uniform Law and Draft Convention within individual internal law systems.

The Delegates of Canada and Brazil suggested changes in wording which were accepted as amendments to the resolution. The Conference then unanimously adopted the Draft Resolution as amended.

Consideration of the Draft Convention

The Chairman called for a discussion of the title to be used for the Convention.

The Delegate of France, the Federal Republic of Germany, the Chairman, and the Chairman of the Drafting Committee discussed the wording of the title and agreed that the classic wording used in such documents should be used here also. The Conference then unanimously adopted the following wording for the title: "Convention providing a uniform law on the form of an international will."

Preamble

The Delegates of Ireland and Canada and the Chairman of the Drafting Committee made suggestions as to wording, including deletion of the phrase "and dispense with the examination of formalities prescribed by such law" in the Preamble.

The Conference then unanimously adopted the preamble as amended.

Article I

The Conference unanimously adopted Article I of the Draft Resolution without amendment.

Article II

The Delegates of Ireland, Ecuador, Spain, and the U.S. and the Chairman of the Drafting Committee suggested the deletion of the phrase "or other persons under its jurisdiction" in Article II.

The Delegate of France, the Chairman and the Chairman of the Drafting Committee discussed the phrase "insofar as the local law does not prohibit it" and asked the Conference to adopt it as written.

There was a brief discussion concerning use of the term "nationals" as opposed to "citizen." The Conference agreed that each state should interpret the word "rationale" in terms of its own laws.

The Conference then unanimously adopted Article II as amended.

Responding to a request for clarification on Article II raised by the Delegate from Zaire, the Chairman of the Drafting Committee stated that Article II does not relate to the safekeeping of the will.

Article III

The Delegate of Ireland suggested that the word "granted" be changed to "confirmed."

There being no further comments, the Conference unanimously adopted Article III.

Article IV

The Chairman of the Drafting Committee stated that in studying the Belgian proposal to delete the words "the effectiveness of," the Drafting Committee preferred to maintain the text.

The Delegate of Ireland suggested that the phrase be reworded to read that the "certificate shall be recognized." The Chairman of the Drafting Committee noted that the wording had been discussed at length in the Drafting Committee and that an overwhelming majority had preferred to retain the existing text.

There being no objection, the Conference unanimously adopted Article IV.

Article V

In commenting on Article V, the Chairman of the Drafting Committee reported that the first paragraph incorporated the proposal of Yugoslavia. He also noted that paragraph 2 had been harmonized with the French text to make it more precise, upon the request of the Delegate of Honduras.

The Delegates of Mexico, Ireland, the USSR, the U.K and Spain discussed drafting and translation problems regarding the use of the word "competence."

The Chairman of the Drafting Committee pointed out that for reasons of substance the Drafting Committee did not choose to use the word "capacity" instead of "competence" in either the French or English texts. He stated that it was a matter for the Plenary to decide since it was an issue of both formality and substance.

In other drafting points, the Delegate of Canada proposed the word "nonetheless" replace "nevertheless;" the Delegate of Ireland suggested "by" replace the phrase "in accordance with;" and the Delegate of the U.K. proposed that "designated" replace "appointed" in both Article V and Article VI Bis.

The Delegate of the Federal Republic of Germany stated that he felt the Plenary should limit its discussions to questions of substance and that the Drafting Committee should meet to deal with problems of translation.

The Chairman and the Delegate of Mexico noted that choice of language could also affect the substance of the text.

Commenting on the use of the word "competence," the Chairman suggested a literal translation of the French text as follows: "conditions requisite to acting as a witness."

There being no objections, the Conference unanimously accepted Article V as amended.

Article VI

There being no comments, the Conference unanimously adopted Article VI.

Article VI Bis

The Chairman of the Drafting Committee noted that the draft expressed a principle which had been unanimously accepted by the Conference.

The Delegates of France and Ireland raised drafting points.

There being no further comments, the Conference unanimously accepted Article VI Bis.

Article VII

The Chairman noted that there were divergent views on Article VII and that he did not consider additional debate to be necessary. The Chairman asked if any Delegation wished to propose the deletion of Article VII.

The Delegate of Poland stated that, while Article VII would make the law uniform, the number of countries accepting the Convention might diminish if the possibility of reservation were not allowed. He proposed the deletion of Article VII.

The Delegates of France and Ireland favored retaining Article VII.

The Delegate of Brazil supported the proposal of the Delegate of Poland to delete Article VII.

In reply to a question from the Delegate of Belgium, the Chairman stated that the Conference would vote on the proposal of the Delegate of Poland to delete Article VII from the Convention. The proposal was defeated with nine affirmative votes, fifteen negative votes and eight abstentions, and Article VII was retained in the Convention.

Articles VIII, IX, X, and XI were unanimously adopted by the Conference with no objections.

Article XII was adopted by the Conference, with a reservation expressed by the Delegate of Czechoslovakia.

Article XIII was adopted with the Delegations of the USSR and Australia expressing objections.

Article XIV had been revised by the Drafting Committee. The new draft, available only in English and French versions, contained provisions of implementation for federal states. Article XIV was accepted unanimously, with a suggestion by the Delegate of Ireland that conformity in wording of the term "contracting state" be used in Articles XII and XIV.

The Annex of the Uniform Law was then discussed. Article 1 of the Annex was adopted, with objections by the Delegates of Ireland and Spain, who felt that the scope of the Article was not broad enough.

Article 1 Bis was adopted unanimously, after minor drafting changes were suggested by the Delegate of the U.K.

Article 2 was accepted unanimously.

Article 3 was adopted, with the Delegate of Brazil stating his opposition.

Article 4 was adopted after wording changes were suggested by the Delegates of the U.K., Canada and Ireland. The text of paragraph 2 was corrected to read:

> "When the testator is unable to sign, he shall indicate the reason therefor to the authorized person who shall make note of this on the will. Moreover, the testator may be authorized by the law under which the authorized person was designated to direct another person to sign on his behalf."

Article 5 was introduced by the Drafting Committee Chairman, who stated that this Article was worded to effect a compromise between states which allow someone to sign on behalf of the testator, and those which do not allow it. The Article was adopted unanimously.

The Chairman asked for comments on Article 6. It was accepted unanimously.

The Chairman of the Drafting Committee remarked that Article 6 Bis was quite ingenious and commended the French Delegate for proposing it.

The Delegate from Italy mentioned that the phrase "the law that applies to the authorized person" should be referred to explicitly in Article 6 Bis.

The Deputy Secretary General mentioned that Article 7 rather than Article 8 should be referred to in Article 6 Bis because it was more precise.

The Chairman of the Drafting Committee agreed.

The Chairman announced that Article 6 Bis was accepted unanimously.

The Delegate from Spain asked the Chairman of the Drafting Committee for clarification on the wording of Articles 7 and 8 because he felt that the English version was not as precise as the French one.

The Chairman of the Drafting Committee agreed that this was the case and added that the matter would be rectified.

The Delegate from the United Kingdom asserted that the phrase "add to the will" was ambiguous.

The Delegate from Canada agreed and suggested that the word "add" be changed to "append."

The Delegate from the United Kingdom mentioned that he would prefer the word "annex."

The Delegate from Ireland asked the U.K. Delegate if the word attach was satisfactory. The U.K. Delegate replied that it was.

Article 7 was then adopted unanimously with the word "attached" instead of "add."

The Chairman of the Drafting Committee proposed to delete the words "on his behalf by" and "at the direction of the testator" from Article 8, paragraph 6(a)(2).

The Delegate from Ireland proposed that the word "completed" be deleted from the first line of Article 8.

The Delegate from the United States of America agreed with the Irish Delegate and suggested that an asterisk be placed adjacent several items in Article 8 with the words "fill in if necessary."

The Chairman of the Drafting Committee supported the proposed change.

The Delegate from Canada proposed to add the word "attached" before the word "document" in Article 8, paragraph (4)(b).

The Delegate from the United Kingdom asked why the numbers 6 to 10 were included in the Article.

The Chairman of the Drafting Committee explained that the numbering system might avoid problems with the various languages since one could simply refer to the number.

The Delegate from the United Kingdom asked if Article 8, paragraph 6(a)(1), made it mandatory to follow one of the two procedures outlined in the sentence. The Chairman answered that this could be provided for.

The Delegate from Italy asked that the word "competent" in paragraph 10 be changed.

The Delegate from Ireland stated that if this change was made the French text should also be changed.

The Chairman of the Drafting Committee proposed that the phrase "fulfilling the requisites under law" replace the word "competent."

The Delegate from Ireland suggested that the phrase "in the presence of" be added before the word "witnesses."

Article 8 was accepted unanimously, as were Articles 9, 10 and 11, subsequently.

The Chairman of the Drafting Committee stated that Article 13 corresponded to an original proposal and that the USSR now supported it.

The Delegate from Czechoslovakia raised an objection.

The Delegate from Canada asked why the word "Law" in the Article was capitalized. He was told it was a clerical error.

The Article was accepted, with the objection of the Delegate from Czechoslovakia noted.

The Delegate from Spain asked for an explanation of Article 12. The Chairman of the Drafting Committee answered several questions from the Spanish Delegate about Article 12 until the Delegate was satisfied. Article 12 was then accepted unanimously.

The Chairman then asked the delegates to accept all the documents of the Convention.

The Delegate from Zaire asked about the numbering system of the Annex and was told it would be changed.

The documents of the convention were unanimously accepted and the Chairman announced that the official signing would take place at 3:00 p.m.

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