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INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

WORKING COMMITTEE ON THE ELABORATION OF AN INTERNATIONAL FORM OF WILL

REPORT ON THE INTERNATIONAL CONVENTION ON THE FORM OF WILLS AND ON THE UNIFORM LAW ANNEXED THERETO

by

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FOREWORD

Testamentary succession is very variously regulated in different systems of law, so much so that at first sight this subject would seem to be particularly unsuitable for any attempt to unify the law governing the very basis of the legal rules.

After due consideration, however the unsuitability of possible moves towards unification ceases to be obvious. If national systems of law on this subject in effect differ on nearly all points, the nature of this difference is not always the same.

The variety of the rules governing the necessary capacity to make a will, or relating to the extent to which the de cujus may leave out of the succession his legitimate heirs, is linked with the very conception that is held of the family and of property; this then is a matter which is fundamental, and, subject only to a change in the climate of opinion, will not be altered. On the other hand, the diversity of forms of will does not present the same characteristic. To be convinced of this, one has only to consider two matters. The first is that national systems of law, more often than not, have many forms of will, and these different forms, as a general rule, have no relation to the capacity of the testator nor to the protection of legitimate heirs; all forms of will-making are permitted on an equal basis; whoever has the capacity to make a will may, at choice, resort as a general rule (1) to any one or other of these forms. Moreover, and this is our second point, rules of conflict, admitted in different places, permit with great liberality a valid will to be made by recourse to forms permitted by some foreign law. With the well-known exception that in Holland a holograph will made abroad by a person whose capacity is governed by Dutch law, will not be recognized, the rule locus regit actum has been admitted without objection or reservation. The Convention on the Conflict of Laws relating to the form of testamentary dispositions concluded at The Hague on the 5th October 1961 (2), by Article I, admits with extreme liberality that a testator may make his

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(1) An exception is found in Austrian law: a different age is required to make a holograph will or a public will.

(2) The Convention, signed by 12 States, has been ratified on November 25, 1964, by 4 States (Austria, Japan, United Kingdom, Jugoslavia). The other States which have signed but not yet ratified the Convention are Federal Republic of Germany, Denmark, Finland, France, Greece, Italy, Norway and Sweden.

will according to the law of the place where he makes the will, or according to the law of the State of which he is a national, at the time of the making of the will or at his death, or according to the law of the State where he is domiciled or has his habitual residence at the time the will is made, or again when it concerns movables according to the law of the State where those movables are situated. The Convention thus includes not less than seven or eight systems of law permitting the testator to use the forms of will admitted by them.

These circumstances led the governing body of the Rome Institute, in 1960 to consider if further progress might not be realised, going beyond the provisions agreed on at The Hague in 1961. Seeing that the facility of having recourse to such diverse forms of will is admitted so easily, might it not be possible, by taking a further step, to agree on a definite form of will which the internal law of every country might accept? The benefit is obvious: if a testator makes his will in this form, questions which now fall to the judge to settle on the content of foreign law would be eliminated; the judge would know that a will, formally valid according to his national law, would be equally valid in form according to the national law (lex loci actus, or law of the domicile or of the habitual residence or of the nationality of the testator) that he may have to apply. It would be the same at least when the national law was that of a State which had adopted the uniform law on the form of wills.

The governing body has charged the Committee of Experts to study the problem of the creation of a uniform law on the form of wills on these lines. The Committee was composed of Mr. WORTLEY, Professor in the University of Manchester, as Chairman; Messrs. BLAGOJEVIC, Professor in the University of Belgrade, CIPROTTI, Professor in the Pontifical University of the Latran and in the University of Camerino, DAVID, Professor in the University of Paris, GUTZWILLER, Professor in the University of Fribourg, LOEWE, Director at the Austrian Ministry of Justice, and YADIN, Director at the Ministry of Justice of Israel, as members.

Mr. LALIVE d'EPINAY, Professor in the University of Geneva, replaced Mr. GUTZWILLER at the first and second working sessions of the Committee. Mr. MOSCHUNA-SION acted as Secretary for the Committee.

The Committee of Experts held three meetings at the Head Office of the Institute in Rome:

26th September to 1st October 1963 (1st session)
6th to 9th January 1965 (2nd session)
4th to 8th October 1965 (3rd session).

Mr. MATTEUCCI, Secretary-General of the Institute, took part in the work of the Committee throughout.

Mr. PASCAL, Professor in the State University of Louisiana, and Mr. TURNER, Professor in the University of Manchester, and of the English Chancery Bar, also took part in the work of the first session. Mr. HAYES, Head of the Law Reform Branch of the Ministry of Justice of Eire, took part in the work of the third session.

Written observations on a first draft settled by the Committee of Experts were furnished by Mr. BOURNE of the Lord Chancellor's Office, London, by the Federal Chamber of German Notaries and by the Commission for European Business of the International Union of Latin Notaries (1).

A draft Convention, to which is annexed a draft uniform law, represents the conclusion of the work of the Committee of Experts. The present report comments in the first place on the draft uniform law, then on the draft international Convention to which the draft law is annexed.

I. - Draft uniform law.

II. - Draft international Convention.

(1) Hereafter designated by the initials UINL.

I. - DRAFT UNIFORM LAW

Four preliminary observations should be made on the draft uniform law.

First, the draft, prepared by the Committee of Experts, has dealt only with the form of wills. The Committee, conscious of the difficulties that any other approach might raise, decided at its second session, not to deal with capacity to make a will. They also refrained from dealing with questions of revocation, modification or destruction of wills (subject to what will be said with regard to article 13).

Secondly, the draft law does not attempt to deal with every matter concerning the forms of wills. From the start of their work, the Committee felt that they should not, in a quest for complete unity, tackle all the forms of wills permitted by different systems of law at the present day, nor should they attempt to unify them. The draft in no way changes national laws: the forms of wills now available are neither abolished nor modified. The draft only requires that, besides and in addition to these forms, the various countries should admit a new form, which it is hoped practice will bring into use mainly, but not exclusively, when a will, because of the circumstances, has some international characteristics.

Thirdly, it should be stressed that the new form of will proposed by the Committee is not the result of mere abstract speculation by members. The Committee was able to supply a solid basis of comparative law for its work, in particular by utilising the very considerable report provided for it by the Institute of Comparative Law of Belgrade. The Committee did consider the different forms of will used in a large number of countries and sought the reasons for the forms preferred in those countries, and they felt obliged to propound a form which is certainly new, but which tries to meet the needs shown no exist in different places. Continental European lawyers will not find in the international will which the draft sets out, the holograph(°) will or the authentic will or the mystic will with which they are familiar; common lawyers will not find in it the will made before witnesses which is familiar to them; however, each will find in the draft some different characteristics, which we shall bring out, that are derived from these different forms of will. A lawyer from the Continent of Europe will be reminded by the draft of the international will, more especially of the mystic will, shorn of excessive

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(°) Also used in Scotland, translator.

formalities; an Englishman will also see in it his will before witnesses, with a further task given to the solicitor, a task which, however, merely corresponds in most cases to a practice usually followed.

One last observation concerns the whole draft; it is as follows. By the word "will" the Committee has intended to cover every disposition by a last will made unilaterally. The will to which the draft relates can be either a disposition that does not include the institution of any heir, nor any designation of a universal legatee: it will include therefore a will strictly so-called and the codicil of Austrian law.

It is hardly necessary to set out the basis on which so short a law as this has been made. The order in which the articles follow one another has, however, had the attention of the members of the Committee and on this matter, as well as on the presentation and the style of the articles, have made every effort to put forward a scheme which, as much as possible, meets the requirements of good legislative technique.

Article 1

Article 1 sets out the object of the draft uniform law and determines its applicability according to what we have already said. The draft law simply aims at establishing a new type of will, which will be governed in the same way in all countries as regards its form: this will is to be called an international will. The draft law leaves in being all other forms of will known to various national laws.

The place where the testator has his domicile is not relevant to the validity or invalidity of the international will, any more than are various other circumstances (see paragraph 1). Mr. Hayes, the Irish observer, would have liked to see the mention of the word "domicile" in paragraph 1, disappear. The Committee thought it preferable to keep this mention; this seems to present no danger, once it is said that domicile has no importance whatever in regard to our will.

The UINL made the suggestion, in article 1, paragraph 1, of using the word "received" instead of the word "made". This change of word, which was made in other articles at the request of the UINL, would not seem to be appropriate here. The word "made", which is more general than the word "received", seems to be preferable in a provision that does not accord any importance to any particular place.

Certain difficulties, connected with the place where the will is made, are settled by Article III of the Convention.

Each provision regarding form, laid down in the draft, carries the sanction that its non-observance will render the will void as an international will. It is only different in one case, where the contrary rule has been expressly given (Article 6). When the will has been declared void as an international will, it may well be, however, that it remains valid because it satisfies the formal conditions of a holograph will (French law) or of a will attested by witnesses (English law) or of some other type of will. Paragraph 2 of the article makes this clear.

Article 2

Article 2 lays down an essential condition for the validity of the will as an international will; the will must be made in writing.

On the other hand, the two following paragraphs lay stress on the very liberal approach of the draft to various matters. The will may, for example, be written in any language, (paragraph 2); a provision which contrasts with the rules laid down in various countries for public wills. It will be noted that the uniform law does not even require that the will be written in a language which the testator knows (but compare, on this point, article 9, paragraph 2).

The will may be written by hand or by any other means (paragraph 2): this formula includes, in particular, a type-written will.

The will need not necessarily be written by the testator himself (paragraph 3). This provision departs from the holograph will, to come nearer to other types of will: the public or mystic will, and especially the will of English law. An English will is often very long and is only rarely written by the testator himself. Note of translator: The last sentence here should be deleted, since no-one makes his will seriously, using a will form. What should be said is, I think, as follows:

"Les complications du droit fiscal et la pratique de créer des établissements de famille auxquels les testaments sont souvent étroitement liés, surtout quand il s'agit des intérêts dans les sociétés, nécessitent l'emploi d'un juriste qui comprend des formules nécessairement compliquées que le laïque ne saurait pas employer."

("The complications of the law relating to income tax and death duties and the practice of creating family settlements with which wills are often closely bound, especially when they deal with interests in companies, necessitate the employment of a lawyer who understands the necessarily complicated formulas which the layman would not know how to use.")

Article 3

The liberal approach in article 2 brings out the need for certain safeguards.

A first safeguard is provided by the requirement of article 3, paragraph 1: a testator must declare, in the presence of two witnesses and a person qualified to receive wills, that a certain document, presented to those persons, is his will.

Paragraph 2 of the article makes it clear that the declaration shall suffice: it is not necessary that the testator give the witnesses or the qualified person "a knowledge of the provisions of the will." The will so laid down can only be inapplicable in exceptional cases (article 9). This makes the international will different from the public will, and brings it nearer to other types of will: the holograph will and, above all, the mystic will or the will of English law.

The "person qualified" to receive wills is well understood in countries that are familiar with the public will. On the other hand, it may appear to be, in common law countries, something of an innovation. In England, however, a common practice is to go to a solicitor who makes the will and holds it for the testator. In the case of the international will, that practice will be made obligatory, each State being able, in addition, to extend as it wishes the list of persons qualified to receive a will. The word "person" in this context may mean not only a particular physical person, but also an official of an office or of some institution, such as the Registry of Wills which exists in Eire.

The simultaneous presence of the testator, of the two witnesses and of a qualified person, is necessary for the validity of the will.

The uniform law does not itself lay down what must be understood by a person qualified to receive wills. It will be open to each State to settle this and to make this known to other States (Convention, Articles II and XIII); one provision of the Convention attempts as far as possible to establish what must be understood by a qualified person in States which have not signed the Convention (Article III, paragraph 2).

The UINL would have liked to have seen it laid down in article 3, paragraph 1, that the will should be signed in the presence of a person qualified by the local law to receive it. The Committee of Experts did not accept this suggestion: not that they were in disagreement with the view of the UINL, but because it is a matter for the Convention and not for the uniform law to make any such clarification.

However, the Committee of Experts did accept a suggestion by the UINL, asking that at paragraph 1 of the article, the word "document", rather than the word "Act", should be used.

Article 4

A declaration made by the testator that a certain document is his will, does not suffice: it is necessary that the testator sign his will in due presence of the witnesses and of the person qualified to receive the will (paragraph 1).

He will do this by putting his signature at the end of the will (paragraph 2).

The provision laid down in article 1, paragraph 1, introduces a certain formality. The Committee of Experts did not think this out of place. They excluded the possibility, known to English law (but which has been abolished in Israel) of having the will signed by a representative. Neither did the Committee judge it sufficient for the testator to acknowledge his signature in the presence of the witnesses. No provision, however, requires any mention in the document of the circumstances in which a testator's signature was affixed in the presence of the witnesses.

The signature should be affixed at the end of the will. It may not, in consequence, be simply affixed on the envelope in which the will is contained. The international will is, on this point, different from the French mystic will. The Committee of Experts deliberately excluded the possibility of affixing the signature on "a document forming a single whole with the will."

A provision giving effect to article 4, paragraph 2, will be found in article 7, paragraph 3.

Article 5

The witnesses and the person qualified to receive the will must sign it immediately in the presence of the testator.

This provision does not call for comment. It underlines the informal character that it is intended to give to the international will. The will is void as an international will if the witnesses and the person qualified to not sign it immediately. The validity of the will as an international will does not, on the other hand, need an express clause in the will itself witnessing this fact (°).

Article 6

The Committee of Experts had, in its first draft, intended that the will should be dated. However, as a result of an observation made by UINL, a new formula has been introduced: the date of its reception must be indicated in the document (para. 1). The word "document" applies to the will properly so called, completed by the statements added at its reception.

It is eminently desirable that it should be possible to know the date when the will, by the fact of its reception, takes effect as an international will. The absence of the date or the indication of an erroneous date does not, however, cause the invalidity of the will (para. 2). This solution, which is that for example of German and Austrian (°°) and English law, has received the approval of the UINL.

(°) It would be desirable to use one, and this is the English practice, though it is not obligatory. (Translator).

(°°) Translator's suggested addition.

Article 7

In its first paragraph, article 7 deals with the case where a will comprises several sheets; it requires in that case that each sheet should be signed, or at least initialled, by the testator (para. 1). This requirement is not necessary, however, if the sheets "follow each other and form a whole".

It will be for the judges to interpret this formula, deciding above all if there is or is not a suspicious element which raises doubts whether the document produced really is the will as it has been made by the testator. Judges can easily admit that the sheets, for example, follow each other and form a whole, if the will has been written by the hand of the testator or if the sheets include indications on the manuscript by him, proving that they are his work.

Any correction in the body of the will must be signed or initialled by the testator (para. 2). The draft is less strict than in Swiss law, which requires that corrections be signed and dated. The word correction comprises not only corrections in the strict sense, but also any scratching out, writing over and addition, which cannot without excessive subtlety be distinguished from corrections. The wide meaning of the word correction appears from reading paragraph 3, which reserves for additions a particular treatment when they follow the signatures: for the validity of such additions, the signature of the testator is required, as well as the signatures of witnesses and of the person qualified to receive the will.

Article 8

No provision in the uniform law settles what must be understood by signature. The Committee of Experts had long discussions on this, but came to the conclusion that in this matter it was necessary to follow local law and practice.

One element of uniformity, however, has been introduced by article 8, according to which the signature or the initials of the testator may in all cases be replaced by the testator's fingerprint.

The UINL accepted this provision, noting however that the usual practice, which perpetuates tradition in Latin and in Anglo-Saxon countries, was for those who cannot read to make a cross called a mark in English (Tr.). The fingerprint, which identifies him who makes it with more certainty, does, however, seem to be more and more used in practice.

UINL had indeed proposed to restrict the use of the fingerprint to the case where the testator cannot sign. The Committee did not think it should accept this restriction. It had in mind the fact that in some countries, is not normally used. It feared, too, that difficulties might be raised about the question of knowing whether in any particular instance the testator was or was not able to sign. The general formula used in the text eliminates these difficulties. Moreover, it is evident that in practice an individual will proceed by signature rather than by a fingerprint, in all cases where he can sign.

A provision had at first been envisaged for the case when the testator could neither sign nor apply his fingerprint. The Committee of Experts rejected this. It is possible, in such a case, to make some other type of will: it is not possible to make an international will.

Article 9

Article 9 deals with two special cases: one when the testator cannot read, and the other where his will has been drawn up in a language he does not know.

Limiting the rule in article 3, paragraph 2, it is necessary in the first case that the will be read to the testator, in the presence of witnesses and the person qualified. In the second case, it is necessary that the will, translated into a language known to the testator, be read in the presence of the same persons.

These circumstances must be mentioned in the document (para.3).

The UINL did not offer any observation on this article, apart from the substitution for the word "will" of the word "document"; this suggestion was accepted by the Committee.

On the other hand, the question was raised of deciding whether the translation of the will should be made by a person specially qualified by the law of the country where the will is received. The Committee of Experts did not think it opportune to formulate any such requirement.

Article 10

The person who recovers the will is bound to satisfy himself of the identity of the testator and of the witnesses.

Mr. Bourne doubted the practical utility of this provision. The article dit not, however, seem to the Committee of Experts to be without use: national laws will settle the conditions in which a qualified person becomes liable for not having satisfied the obligation imposed on him.

The UINL would have liked to have completed this article by a further provision, laying down that the person receiving the will should mention, in the document, above his signature, particulars regarding the identity of the testator, of the witnesses, of any translator and of himself. It dit not seem opportune to the Committee to add to the uniform law any provision the failure to observe which might be sanctioned by the international will. But it is obvious that it is expected of the person qualified that he be capable, by one means or another, of furnishing such particulars, without which the will might not be able to be put into effect.

Article 11

The capacity to be a witness is governed by the internal law of the place where the will is received (para. 1). The person who receives the will has, therefore, only to concern himself with the internal law of his country on this matter with which he will be familiar. The UINL approved this provision, only requesting, and with reason, that the word "received" be used instead of the word "made", initially proposed by the Committee of Experts.

A certain misunderstanding occurred with regard to paragraph 2 of the article. The Committee of Experts wished, by this provision, to take into account the fact that neither the witnesses nor the person who receives the will necessarily know the content of the will (article 3, para. 2). Suppose the will contains a provision in their favour (or in favour of their parent spouse or close relation including relation by marriage). Should we, by this fact, decide that they did not have the capacity to receive the document or to be witnesses, and should the will be accordingly rendered void as an international will? The uniform law answers this question in the negative. The will will therefore be valid; those laws which to-day take a contrary view will be altered by the uniform law in those States where the contrary solution is now accepted.

Will a legacy given to a witness or to a person who receives the will be valid and should it be executed? This is quite a different question. The reply to this question is to be found not in the uniform law, but in the international Convention introducing the uniform law. Article IV of that Convention makes it clear that States will prescribe such laws on this point as they think should be made: they have complete liberty.

This provision of the Convention clarifies the position which the UINL asked to be clarified.

Article 12

The will shall be left in the custody of the qualified person who has received it.

The meaning of this provision is made clearer by Article VI of the Convention. To keep the will does not necessarily signify that it be kept at one's residence. The person who has custody of a will may take steps to keep it by depositing it in a public record office where its custody may be assured by some public body.

Article 13

A will ceases to be valid as an international will if it is withdrawn by the testator from the custody of the person authorised to receive it (°).

An essential element of the international will is that it be given into the custody of a person qualified to receive it for that purpose by law. If the testator withdraws the will, the will may remain valid as a will of some other type; but it will nc longer be valid as an international will.

Article 13 lays down only one condition as regards form. The draft does not regulate the question of the revocation of wills; this is one to be considered by the various national laws with all their diversities. The Committee did not deal with this matter, considering that there was no need, at least on this point, to lay down rules peculiar to international wills.

(°) Added by Translator.

Final Observation

This question has been raised with the Committee of Experts to know whether it might not be possible to lay down a system by means of which one would be able to discover, after the death of a person, any international will that he may have made.

This certainly would be a desirable thing, but two considerations deterred the Committee from making proposals about it. It seemed, first of all, that there was nothing special here as regards international wills. Secondly, it seemed that this scarcely concerned unification of law comprised in the scope of the International Institute of Rome.

Nevertheless, the Committee consider it opportune to call the attention of practitioners and of their associations to the utility and the practically realisable character of the registration - national or international - of wills, to make it discoverable, after a person's death, whether or not he has made a will. There should be no obstacle to such a system of (°) registration, on two conditions: 1) that it be optional (some persons hope that it will not be known that they have made a will), and 2) that information regarding the existence of a will may only be requested by qualified persons in whose professional discretion complete confidence can be reposed.

(°) Added by Translator.

II. - DRAFT INTERNATIONAL CONVENTION

The preambule indicates the principal object of the Convention: the use of a form of "international will", which form is to be added to the forms of will already known to national legal systems and which will avoid the application of the rules of private international law and of provisions of foreign law - which may be difficult to ascertain - designated by such conflict rules. By "will", for the purpose of the Convention and its annexe, must be understood any unilateral instrument of last will, whatever it be called by some national system of law.

The first article imposes an obligation on contracting States to introduce the uniform law on international wills into their legislation. The period of six months after the entry into force of the Convention as regards any State seems enough, because as a general rule, States will have already prepared their legislation to apply the law at the time they deposit their instrument of ratification or of adhesion. The uniform law must be promulgated as it stands, either in its original text or in translation.

The uniform law does not indicate which persons are qualified to receive international wills, it will fall to each contracting State, by virtue of article 2, to designate the category or categories of persons who, in its territory, will have this capacity. This designation will be brought to the notice of the interested States (article 13) by means of the depositary of the original copy of the Convention.

It is obvious that the categories of persons qualified will differ from State to State. Paragraph 1 of article 3 will ensure the recognition of the competence of persons qualified by the law of any other contracting State.

Paragraph 2 of the same article will tend, on the other hand, also to permit the recognition as an international will of an instrument of last will made in a non-contracting State. For this purpose, it will be necessary that two conditions be complied with: the will must be made according to the formalities laid down in the annexe and the person who fulfils the functions of the "qualified person" should be required by the local law to receive wills made in the forms laid down by such law and to undertake the custody thereof at least on a temporary basis.

Article 11(2) of the Annexe allows beneficiaries under wills and their parents, spouses or close relations including relations by marriage to act as witnesses or even to fulfil the functions of a person qualified to receive the will. However, by virtue of article 4 of the Convention, contracting States must have the power to exclude witnesses and the person qualified, as well as their relations, affines or spouses or some of such persons, from any benefit from the provision in their favour under the will.

Article 5, to avoid formalities that might be required by national law, makes it clear that signatures on the will shall be exempt from legalisation. It is implied that this principle is even valid as regards the will itself, whatever be the nature, public or private, that is attributed to this document. Nevertheless it will be permissible to cast doubt on the authenticity of signatures which, in that case, will be verified by all the means available to the authority seized.

It will be for the contracting parties to settle the manner of keeping international wills (art. 6). This conservation need not necessarily be made in the archives of the person qualified to receive the will and in whose custody it was first left.

The contracting parties are not permitted to make reservations to the Convention or to its annexe (art. 7).

Articles 8 to 13 contain clauses usual in Conventions for the unification of legal rules and which relate to signature, ratification, entry into force, adhesion, extension of field of application, denunciation and any necessary notifications.

To the Draft Convention is added, pro memoria, a reproduction - slightly amended to meet the requirements of the present Convention - of article XI of the New York Convention of 10.6.58 on the recognition and execution of foreign arbitral awards. This details the obligations of federal or non-unitary States that may become Parties to the Convention.

ANNEX I

DRAFT UNIFORM LAW

Article 1

(1) A will shall be valid as regards form, irrespective of the place where it is made and irrespective of the nationality, domicile or residence of the testator, if it is made in the form of an international will complying with the provisions set out hereafter.

(2) Failure to observe any such provision shall not by itself affect the validity of the document as a will of another kind.

Article 2

(1) The will shall be made in writing.

(2) It may be written in any language, by hand or by any other means.

(3) It need not be written by the testator himself.

Article 3

(1) The testator shall declare in the presence of two witnesses and of a person qualified to receive the will that the document is his will.

(2) The testator need not inform the witnesses, or the person qualified to receive the will, of the content of the will.

Article 4

(1) The will shall be signed by the testator in the presence of the witnesses and of the person qualified to receive it.

(2) The signature of the testator shall be placed at the end of the will.

Article 5

The witnesses and the person qualified to receive the will shall there and then sign the will in the presence of the testator.

Article 6

(1) The date of reception shall be indicated on the document.

(2) The absence of a date or the indication of an erroneous date shall not affect the validity of the will.

Article 7

(1) If the will consists of several sheets, each sheet shall be signed or initialled by the testator, unless the sheets follow each other and form a whole.

(2) Every correction in the body of the will shall be signed or initialled by the testator.

(3) Additions subsequent to the signatures shall be signed by the testator, the witnesses and the person qualified to receive the will.

Article 8

The signature or initials of the testator required by this law may be replaced by the fingerprint of the testator.

Article 9

(1) If the testator is unable to read, the will shall be read to him in the presence of the witnesses and of the person qualified to receive the will.

(2) If the testator does not know the language in which the will is drawn up, the will shall be read to him, translated into a language which he knows, in the presence of the witnesses and of the person qualified to receive the will.

(3) Such circumstances shall be mentioned in the document.

Article 10

The person who receives the will shall satisfy himself of the identity of the testator and of the witnesses.

Article 11

(1) The capacity of the witnesses shall be governed by the internal law of the place where the will is received.

(2) The fact that a will contains a disposition in favour of a witness or of the person who receives the will or in favour of a parent, relation, including relation by marriage, or spouse of any of them, shall not affect his capacity to act as a witness or to receive the will.

Article 12

The will shall be left in the custody of the qualified person who has received it.

Article 13

The will shall cease to be valid, as an international will, if it be withdrawn by the testator.

ANNEX II

DRAFT INTERNATIONAL CONVENTION

The States signatories to the present Convention,

Desirous to provide to a greater extent for the respecting of last wills by establishing a form of will henceforth to be called an "international will" which, if employed, would dispense with the search for the applicable law and dispense with the examination of formalities prescribed by such law;

Have resolved to conclude a Convention for this purpose and have agreed upon the following provisions:

Article I

1. Each Contracting Party undertakes that within six months of the date of entry into force of this Convention in respect of that Party it shall introduce into its law the rules regarding an international will set out in the Annex to this Convention.

2. Each Contracting Party may introduce the provisions of the Annex into its law either by reproducing the actual text, or by translating it into its official language or languages.

Article II

1. Each Contracting Party shall complete and implement the provisions of the Annex in its law, within the period provided for in the preceding article, by designating the persons who, in its territory, shall be qualified to receive international wills.

2. The Party shall notify such designation, as well as any other later modification thereof, to .....

Article III

1. A will made in the form of an international will in the territory of a Contracting Party shall, in the territories of the other Contracting Parties, be considered as having been made in the presence of a person qualified to receive it whenever such person in so qualified according to the law of the Contracting Party in whose territory the will was made.

2. A will made in the form of an international will in the territory of a State which is not a Contracting Party shall, in the territories of the Contracting Parties, be considered as having been made in the presence of a qualified person whenever, in accordance with the law of such State, it has been received by a person qualified to receive wills and has been placed in this custody.

Article IV

Each Contracting Party may provide in its law that the persons listed in Article 11, paragraph 2 of the Annex may not benefit from any dispositions in their favour that the will may contain.

Article V

1. The signature of the testator, of the person qualified to receive the will and of the witnesses of an international will shall be exempt from legalisation.

2. Nevertheless, the competent authorities of the Contracting Parties may verify the authenticity of such signatures.

Article VI

Each Contracting Party may in its law provide for rules relating to the custody of international wills.

Article VII

No reservation shall be admitted to this Convention or to its Annex.

Article VIII

1. This Convention shall be open for signature from ..... to ..... .

2. This Convention shall be ratified.

3. Instruments of ratification shall be deposited with ..... .

Article IX

1. This Convention shall be open to accession by ..... .

2. Instruments of accession shall be deposited with ..... .

Article X

1. This Convention shall come into force six months after the date on which the fifth instrument of ratification or accession has been deposited.

2. In the case of each State which ratifies this Convention or accedes to it after the fifth instrument of ratification or accession has been deposited, this Convention shall come into force six months after the deposit of its own instrument of ratification or accession.

Article XI

1. Each Contracting Party may denounce this Convention by a notice addressed to ..... .

2. Such denunciation shall take effect twelve months from the date on which the ..... has received notice thereof.

Article XII

1. Each State may, when it deposits its instrument of ratification or accession or at any time later, declare, by a notice addressed to ..... , that this Convention shall apply to all or part of the territories for whose international relations it is responsible.

2. Such declaration shall have effect six months after the date on which the ..... shall have received notice thereof or, if at the end of such period the Convention has not yet come into force, from the date of its entry into force.

3. Each Contracting Party which has made a declaration in accordance with paragraph 1 of this Article may, in accordance with Article 11, denounce this Convention in relation to all or part of the territories concerned.

Article XIII

The ..... shall give notice to the signatory or acceding States, and to the International Institute for the Unification of Private Law, of:

a) any signature;

b) the deposit of any instrument of ratification or accession;

c) any date on which this Convention enters into force in accordance with Article 10;

d) any notice received in accordance with Article 2, paragraph 2;

e) any declaration received in accordance with Article 12, paragraph 2 and the date on which such declaration takes effect;

f) any denunciation received in accordance with Article 11, paragraph 1, or Article 12, paragraph 3, and the date on which the denunciation takes effect.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto, have signed this Convention.

DONE at ....., the ....., in ....., the ..... texts being equally authoritative.

The original of this Convention shall be deposited with ..... who shall transmit certified copies thereof to each of the signatories and acceding States and to the International Institute for the Unification of Private Law.

Clause concerning federal and non-unitary States

(for possible insertion)

Article ....

a) With respect to those articles of this Convention and its Annex that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to that extent be the same as those of Contracting States which are not federal States;

b) With respect to those articles of this Convention and its Annex that come within the legislative jurisdiction of constituent States or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent states or provinces at the earliest possible moment;

c) It shall also be the duty of the federal Government to notify the designation of persons qualified to receive international wills, in accordance with Article 2, paragraph 2, and also any designation made by constituent States or provinces.