UNIFORM WILLS RECOGNITION ACT (1977)*

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

And by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

At its

ANNUAL CONFERENCE
MEETING IN ITS EIGHTY-SIXTH YEAR
AT VAIL, COLORADO
JULY 29 – AUGUST 5, 1977

WITH PREFATORY NOTE AND COMMENTS

Approved by the American Bar Association at its Meeting in
New Orleans, Louisiana, February 14, 1978

February 3, 2015

*The Executive Committee changed the title of the *Uniform International Wills Act* to the *Uniform Wills Recognition Act* at its January 24-25, 2015 meeting.

JOINT EDITORIAL BOARD FOR
UNIFORM PROBATE CODE

Conference Representatives:
CHARLES HOROWITZ, Supreme Court, Temple of Justice, Olympia, WA 98504, Co-*Chairman*
CLARKE A. GRAVEL, 109 S. Winooski Ave., Burlington, VT 05401
BERT McELROY, 205 Denver Building, Tulsa, OK 74119
EUGENE F. SCOLES, University of Oregon, School of Law, Eugene, OR 97403
ALLAN D. VESTAL, University of Iowa, College of Law, Iowa City, IA 52242
DON J. McCLENAHAN, 310 Simplot Building, Boise, ID 83702, *Chairman, Division A, Ex Officio*
JAMES M. BUSH, 363 N. First Ave., Phoenix, AZ 85003, *President, Ex Officio*
RICHARD V. WELLMAN, University of Georgia, School of Law, Athens, GA 30602, *Reporter*

American Bar Association Representatives:
J. PENNINGTON STRAUSS, 1719 Packard Building, Philadelphia, PA 19102, *Co-Chairman*
PETER J. BRENNAN, 111 W. Monroe St., Chicago, IL 60603
HARRISON F. DURAND, 250 Park Ave., New York, NY 10017
J. THOMAS EUBANK, JR., 3000 One Shell Plaza, Houston, TX 77002
MALCOLM A. MOORE, 4200 Seattle First National Bank Building, Seattle, WA 98154

ADVISORS TO JOINT EDITORIAL BOARD
FOR UNIFORM PROBATE CODE

ROBERT E. DALTON, Department of State, Washington, DC 20520
RICHARD KEARNEY, Department of State, Washington, DC 20520

Copies of this Act may be obtained from:

UNIFORM LAW COMMISSION
111 N. Wabash Ave., Suite 1010
Chicago, IL 60602
312/450-6600
www.uniformlaws.org

UNIFORM WILLS RECOGNITION ACT (1977)

PREFATORY NOTE

Introduction

The purpose of the Washington Convention of 1973 concerning international wills is to provide testators with a way of making wills that will be valid as to form in all countries joining the Convention. As proposed by the Convention, the objective would be achieved through uniform local rules of form, rather than through local or international law that makes recognition of foreign wills turn on choice of law rules involving possible application of foreign law. The international will provisions, prepared for the National Conference of Commissioners on Uniform State Laws by the Joint Editorial Board for the Uniform Probate Code which has functioned as a special committee of the Conference for the project, should be enacted by all states, including those that have not accepted the Uniform Probate Code. To that end, this statute is framed both as a free-standing act and as an added part of the Uniform Probate Code. The bracketed headings and numbers fit the proposal into UPC; the others present the proposal as a free-standing act.

Uniform state enactment of these provisions will permit the Washington Convention of 1973 to be implemented through state legislation familiar to will draftsmen. Thus, local proof of foreign law and reliance on federal legislation regarding wills can be avoided when foreign wills come into our states to be implemented. Also, the citizens of all states will have a will form available that should greatly reduce perils of proof and risks of invalidity that attend proof of American wills abroad.

History of the International Will

Discussions about possible international accord on an acceptable form of will led the Governing Council of UNIDROIT (International Institute for the Unification of Private Law) in 1960 to appoint a small committee of experts from several countries to develop proposals. Following week-long meetings at the Institute's quarters in Rome in 1963, and on two occasions in 1965, the Institute published and circulated a Draft Convention of December 1966 with an annexed uniform law that would be required to be enacted locally by those countries agreeing to the convention. The package and accompanying explanations were reviewed in this country by the Secretary of State's Advisory Committee on Private International Law. In turn, it referred the proposal to a special committee of American probate specialists drawn from members of NCCUSL's Special Committee on the Uniform Probate Code and its advisers and reporters. The resulting reports and recommendations were affirmative and urged the State Department to cooperate in continuing efforts to develop the 1966 Draft Convention, and to endeavor to interest other countries in the subject.

Encouraged by support for the project from this country and several others, UNIDROIT served as host for a 1971 meeting in Rome of an expanded group that included some of the original panel of experts and others from several countries that were not represented in the early

drafting sessions. The result of this meeting was a revised draft of the proposed convention and annexed uniform law and this, in turn, was the subject of study and discussion by many more persons in this country. In mid-1973, the proposal from UNIDROIT was discussed in a joint program of the Real Property Probate and Trust Law Section, and the Section of International Law at the American Bar Association's annual meeting held that year in Washington, D.C. By late 1973, the list of published, scholarly discussions of the International Will proposals included Fratcher, *"The Uniform Probate Code and the International Will"*, 66 Mich.L.Rev. 469 (1968); Wellman, *"Recent Unidroit Drafts on the International Will"*, 6 The International Lawyer 205 (1973); and Wellman, *"Proposed International Convention Concerning Wills"*, 8/4 Real Property, Probate and Trust Journal 622 (1973).

In October 1973, pursuant to a commitment made earlier to UNIDROIT representatives that it would provide leadership for the international will proposal if sufficient interest from other countries became evident, the United States served as host for the diplomatic Conference on Wills which met in Washington from October 10 to 26, 1973. 42 governments were represented by delegations, 6 by observers. The United States delegation of 8 persons plus 2 Congressional advisers and 2 staff advisers, was headed by Ambassador Richard D. Kearney, Chairman of the Secretary of State's Advisory Committee on Private International Law who also was selected president of the Conference. The result of the Conference was the Convention of October 26, 1973 Providing a Uniform Law on the Form of an International Will, an appended Annex, Uniform Law on the Form of an International Will, and a Resolution recommending establishment of state assisted systems for the safekeeping and discovery of wills. These three documents are reproduced at the end of these preliminary comments.

A more detailed account of the UNIDROIT project and the 1973 Convention, together with recommendations regarding United States implementation of the Convention, appears in Nadelmann, "The Formal Validity of Wills and the Washington Convention 1973 Providing the Form of an International Will", XXII The American Journal of Comparative Law, 365 (1974).

Description of the Proposal

The 1973 Convention obligates countries becoming parties to make the annexed uniform law a part of their local law. The proposed uniform law contemplates the involvement in will executions under this law of a state recognized expert who is referred to throughout the proposals as the "authorized person". Hence, the local law called for by the Convention must designate authorized persons, and prescribe the formalities for an international will and the role of authorized persons relating thereto. The Convention binds parties to respect the authority of another party's authorized persons and this obligation, coupled with local enactment of the common statute prescribing the role of such persons and according finality to their certificates regarding due execution of wills, assures recognition of international wills under local law in all countries joining the Convention.

The Convention and the annexed uniform law deal only with the formal validity of wills. Thus, the proposal is entirely neutral in relation to local laws dealing with revocation of wills, or those defining the scope of testamentary power, or regulating the probate, interpretation, and construction of wills, and the administration of decedents' estates. The proposal describes a

highly formal mode of will execution; one that is sufficiently protective against imposition and mistake to command international approval as being safe enough. However, failure to meet the requirements of an international will does not necessarily result in invalidity, for the mode of execution described for an international will does not pre-empt or exclude other standards of testamentary validity.

The details of the prescribed mode of execution reflect a blend of common and civil law elements. Two attesting witnesses are required in the tradition of the English Statute of Wills of 1837 and its American counterparts. The authorized person whose participation in the ceremony of execution is required, and whose certificate makes the will self-proved, plays a role not unlike that of the civil law notary, though he is not required to retain custody of the will as is customary with European notaries.

The question of who should be given state recognition as authorized persons was resolved by designation of all licensed attorneys. The reasons for this can be seen in the observations about the role of Kurt H. Nadelmann, writing in The American Journal of Comparative Law:

> The duties imposed by the Uniform Law upon the person doing the certifying go beyond legalization of signatures, the domain of the notary public. At least paralegal training is a necessity. Abroad, in countries with the law trained notary, the designation is likely to go to this class or at least to include it. Similarly, in countries with a closely supervised class of solicitors, their designation may be expected.

Attorneys are subject to training and licensing requirements everywhere in this country. The degree to which they are supervised after qualification varies considerably from state to state, but the trend is definitely in the direction of more rather than less supervision. Designation of attorneys in the uniform law permits a state to bring the statute into its local law books without undue delay.

Roles for Federal and State Law in Relation to International Will

Several alternatives are available for arranging federal and state laws on the subject of international wills. The 1973 Convention obligates nations becoming parties to introduce the annexed uniform law into their local law, and to recognize the authority, *vis a vis* will executions and certificates relating to wills, of persons designated as authorized by other parties to the Convention. But, the Convention includes a clause for federal states that may be used by the United States as it moves, through the process of Senate Advice and Consent, to accept the international compact. Through it, the federal government may limit the areas in this country to which the Convention will be applicable. Thus, Article XIV of the 1973 Convention provides:

> 1. If a state has two or more territorial units in which different systems of law apply in relation to matters respecting the form of wills, it may at the time of signature, ratification, or accession, declare that this Convention shall extend to all its territorial units or only to one or more of them, and may modify its

declaration by submitting another declaration at any time.

2. These declarations shall be notified to the Depositary Government and shall state expressly the territorial units to which the Convention applies.

One alternative would be for the federal government to refrain from use of Article XIV and to accept the Convention as applicable to all areas of the country. The obligation to introduce the uniform law into local law then could be met by passage of a federal statute incorporating the uniform law and designating authorized persons who can assist testators desiring to use the international format, possibly leaving it open for state legislatures, if they wish, to designate other or additional groups of authorized persons. As to constitutionality, the federal statute on wills could be rested on the power of the federal government to bind the states by treaty and to implement a treaty obligation to bring agreed upon rules into local law by any appropriate method. Missouri v. Holland, 252 U.S. 416 (1920); Nadelmann, *"The Formal Validity of Wills and the Washington Convention 1973 Providing the Form of An International Will"*, XXII The Am. Jn'l of Comp.L. 365, 375 (1974). Prof. Nadelmann favors this approach, arguing that new risks of invalidity of wills would arise if the treaty were limited so as to be applicable only in designated areas of the country, presumably those where state enactment of the uniform law already had occurred.

One disadvantage of this approach is that it would place a potentially important method for validating wills in federal statutes where probate practitioners, long accustomed to finding the statutes pertinent to their specialty in state compilations, simply would not discover it. Another, of course, relates to more generalized concerns that would attend any move by the federal government into an area of law traditionally reserved to the states.

Alternatively, the federal government might accept the Convention and uniform law as applicable throughout the land, so that international wills executed with the aid of authorized persons of other countries would be good anywhere in this country, but refrain from any designation of authorized persons, other than possibly of some minimum federal cadre, or of those who could function within the District of Columbia, leaving the selection of more useful groups of authorized persons entirely to the states. One result would be to narrow greatly the advantage of international wills to American testators who wanted to execute their instruments at home. In probable consequence, there would be pressure on state legislatures to enact the uniform law so as to make the advantages of the system available to local testators. Assuming some state legislatures respond to the pressure affirmatively and others negatively, a crazy quilt pattern of international will states would develop, leading possibly to some of the confusion and risk of illegality feared by Prof. Nadelmann. On the other hand, since execution of an international will involves use of an authorized person who derives authority from (on this assumption) state legislation, it seems somewhat unlikely that testators in states which have not designated authorized persons will be led to believe that they can make an international will unless they go to a state where authorized persons have been designated. Hence, the confusion may not be as great as if the Convention were inapplicable to portions of the country.

Finally, the federal government might use Article XIV as suggested earlier, and designate some but not all states as areas of the country in which the Convention applied. This seems the

least desirable of all alternatives because it subjects international wills from abroad to the risk of non-recognition in some states, and offers the risk of confusion of American testators regarding the areas of the country where they can execute a will that will be received outside this country as an international will.

Under any of the approaches, the desirability of widespread enactment of state statutes embodying the uniform law and designating authorized persons, seems clear, as does the necessity for this project of the National Conference of Commissioners on Uniform State Laws.

Style

In preparing the International Will proposal, the special committee, after considerable discussion and consideration of alternatives, decided to stick as closely as possible to the wording of the Annex to the Convention of October 26, 1973. The Convention and its Annex were written in the English, French, Russian and Spanish languages, each version, as declared by Article XVI of the Convention, being equally authentic. Not surprisingly, the English version of the Annex has a style that is somewhat different than that to which the National Conference is accustomed. Nonetheless, from the view of those using languages other than English who may be reviewing our state statutes on the International Will to see if they adhere to the Annex, it is more important to stick with the agreed formulations than it is to re-style these expressions to suit our traditions. However, some changes from the Annex were made in the interests of clarity, and because some of the language of the Annex is plainly inappropriate in a local enactment. These changes are explained in the Comments.

Will Registration

A bracketed Section 10[2-1010], is included in the International Will proposal to aid survivors in locating international and other wills that have been kept secret by testators during their lives. Differing from the Section 2-901 of the Uniform Probate Code and the many existing statutes from which Section 2-901 was derived which constitute the probate court as an agency for the safekeeping of wills deposited by living testators, the bracketed proposal is for a system of registering certain minimum information about wills, including where the instrument will be kept pending the death of the testator. It can be separated or omitted from the rest of the Act.

This provision for a state will registration system is derived from recommendations by the Council of Europe for common market countries. These recommendations were urged on the group that assembled in Rome in 1971, and were received with interest by representatives of United Kingdom, Canada and United States, where will-making laws and customs have not included any officially sanctioned system for safekeeping of wills or for locating information about wills, other than occasional statutes providing for ante-mortem deposit of wills with probate courts. Interest was expressed also by the notaries from civil law countries who have traditionally aided will-making both by formalizing execution and by being the source thereafter of official certificates about wills, the originals of which are retained with the official records of the notary and carefully protected and regulated by settled customs of the profession. All recognized that acceptance of the international will would tend to increase the frequency with which owners of property in several different countries relied on a single will to control all of

their properties. This prospect, plus increasing mobility of persons between countries, indicates that new methods for safekeeping and locating wills after death should be developed. The Resolution adopted as the final act of the 1973 Conference on Wills shows that the problem also attracted the interest and attention of that assembly.

Apart from problems of wills that may have effect in more than one country, Americans are moving from state to state with increasing frequency. As the international will statute becomes enacted in most if not all states, our laws will tend to induce persons to rely on a single will as sufficient even though they may own land in two or more states, and to refrain from making new wills when they change domicile from one state to another. The spread of the Uniform Probate Code, tending as it does to give wills the same meaning and procedural status in all states, will have a similar effect.

General enactment of the will registration section should lead to development of new state and interstate systems to meet the predictable needs of testators and survivors that will follow as the law of wills is detached from provincial restraints. It is offered with the international will provisions because both meet obvious needs of the times.

Documents from 1973 Convention

Three documents representing the work of the 1973 Convention are reproduced here for the convenience of members of the Conference.

CONVENTION PROVIDING A UNIFORM LAW
ON THE FORM OF AN INTERNATIONAL WILL

The States signatory to the present Convention,

DESIRING to provide to a greater extent for the respecting of last wills by establishing an additional form of will hereinafter to be called an "international will" which, if employed, would dispense to some extent with the search for the applicable 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 not later than six months after 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.

3. Each Contracting Party may introduce into its law such further

provisions as are necessary to give the provisions of the Annex full effect in its territory.

4. Each Contracting Party shall submit to the Depositary Government the text of the rules introduced into its national law in order to implement the provisions of this Convention.

Article II 1. Each Contracting Party shall 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 authorized to act in connection with international wills. It may also designate as a person authorized to act with regard to its nationals its diplomatic or consular agents abroad insofar as the local law does not prohibit it.

2. The Party shall notify such designation, as well as any modifications thereof, to the Depositary Government.

Article III The capacity of the authorized person to act in connection with an international will, if conferred in accordance with the law of a Contracting Party, shall be recognized in the territory of the other Contracting Parties.

Article IV The effectiveness of the certificate provided for in Article 10 of the Annex shall be recognized in the territories of all Contracting Parties.

Article V 1. The conditions requisite to acting as a witness of an international will shall be governed by the law under which the authorized person was designated. The same rule shall apply as regards an interpreter who is called upon to act.

2. Nonetheless no one shall be disqualified to act as a witness of an international will solely because he is an alien.

Article VI 1. The signature of the testator, of the authorized person, and of the witnesses to an international will, whether on the will or on the certificate, shall be exempt from any legalization or like formality.

2. Nonetheless, the competent authorities of any Contracting Party may, if necessary, satisfy themselves as to the authenticity of the signature of the authorized person.

Article VII The safekeeping of an international will shall be governed by the law under which the authorized person was designated.

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

Article IX 1. The present Convention shall be open for signature at Washington from October 26, 1973, until December 31, 1974.

2. The Convention shall be subject to ratification.

3. Instruments of ratification shall be deposited with the Government of the United States of America, which shall be the Depositary Government.

Article X 1. The Convention shall be open indefinitely for accession.

2. Instruments of accession shall be deposited with the Depositary Government.

Article XI 1. The present Convention shall enter into force six months after the date of deposit of the fifth instrument of ratification or accession with the Depositary Government.

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 enter into force six months after the deposit of its own instrument of ratification or accession.

Article XII 1. Any Contracting Party may denounce this Convention by written notification to the Depositary Government.

2. Such denunciation shall take effect twelve months from the date on which the Depositary Government has received the notification, but such denunciation shall not affect the validity of any will made during the period that the Convention was in effect for the denouncing State.

Article XIII 1. Any State may, when it deposits its instrument of ratification or accession or at any time thereafter, declare, by a notice addressed to the Depositary Government, that this Convention shall apply to all or part of the territories for the international relations of which it is responsible.

2. Such declaration shall have effect six months after the date on which the Depositary Government 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 XII, denounce this Convention in relation to all or part of the territories concerned.

Article XIV 1. If a State has two or more territorial units in which different systems of law apply in relation to matters respecting the form of wills,

it may at the time of signature, ratification, or accession, declare that this Convention shall extend to all its territorial units or only to one or more of them, and may modify its declaration by submitting another declaration at any time.

2. These declarations shall be notified to the Depositary Government and shall state expressly the territorial units to which the Convention applies.

Article XV If a Contracting Party has two or more territorial units in which different systems of law apply in relation to matters respecting the form of wills, any reference to the internal law of the place where the will is made or to the law under which the authorized person has been appointed to act in connection with international wills shall be construed in accordance with the constitutional system of the Party concerned.

Article XVI 1. The original of the present Convention, in the English, French, Russian and Spanish languages, each version being equally authentic, shall be deposited with the Government of the United States of America, which shall transmit certified copies thereof to each of the signatory and acceding States and to the International Institute for the Unification of Private Law.

2. The Depositary Government shall give notice to the signatory and 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 XI;

(d) any communication received in accordance with Article I, paragraph 4;

(e) any notice received in accordance with Article II, paragraph 2;

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

(g) any denunciation received in accordance with Article XII, paragraph 1, or Article XIII, paragraph 3, and the date on which the denunciation takes effect;

(h) any declaration received in accordance with Article XIV, paragraph 2, and the date on which the declaration takes effect.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized to that effect, have signed the present Convention.

DONE at Washington this twenty-sixth day of October, one thousand nine hundred and seventy-three.

Annex

UNIFORM LAW ON THE FORM OF AN INTERNATIONAL WILL

Article 1 1. A will shall be valid as regards form, irrespective particularly of the place where it is made, of the location of the assets and 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 in Articles 2 to 5 hereinafter.

2. The invalidity of the will as an international will shall not affect its formal validity as a will of another kind.

Article 2 This law shall not apply to the form of testamentary dispositions made by two or more persons in one instrument.

Article 3 1. The will shall be made in writing.

2. It need not be written by the testator himself.

3. It may be written in any language, by hand or by any other means.

Article 4 1. The testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is his will and that he knows the contents thereof.

2. The testator need not inform the witnesses, or the authorized person, of the contents of the will.

Article 5 1. In the presence of the witnesses and of the authorized person, the testator shall sign the will or, if he has previously signed it, shall acknowledge his signature.

2. 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.

3. The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.

Article 6 1. The signatures shall be placed at the end of the will.

2. If the will consists of several sheets, each sheet shall be signed by the

testator or, if he is unable to sign, by the person signing on his behalf or, if there is no such person, by the authorized person. In addition, each sheet shall be numbered.

Article 7 1. The date of the will shall be the date of its signature by the authorized person.

2. This date shall be noted at the end of the will by the authorized person.

Article 8 In the absence of any mandatory rule pertaining to the safekeeping of the will, the authorized person shall ask the testator whether he wishes to make a declaration concerning the safekeeping of his will. If so and at the express request of the testator the place where he intends to have his will kept shall be mentioned in the certificate provided for in Article 9.

Article 9 The authorized person shall attach to the will a certificate in the form prescribed in Article 10 establishing that the obligations of this law have been complied with.

Article 10 The certificate drawn up by the authorized person shall be in the following form or in a substantially similar form:

CERTIFICATE
(Convention of October 26, 1973)

1. I, _____ (name, address and capacity), a person authorized to act in connection with international wills

2. Certify that on _____ (date) at _____ (place)

3. (testator) _____ (name, address, date and place of birth) in my presence and that of the witnesses

4. (a)_____ (name, address, date and place of birth)

(b)_____ (name, address, date and place of birth) has declared that the attached document is his will and that he knows the contents thereof.

5. I furthermore certify that:

6. (a)in my presence and in that of the witnesses

(1) the testator has signed the will or has acknowledged his signature previously affixed.

*(2) following a declaration of the testator stating that he was unable to

sign his will for the following reason _____

---I have mentioned this declaration on the will
*---the signature has been affixed by _____
(name, address)

7. (b) the witnesses and I have signed the will;

8. *(c) each page of the will has been signed by _____ and numbered;

9. (d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;

10. (e) the witnesses met the conditions requisite to act as such according to the law under which I am acting;

11. *(f) the testator has requested me to include the following statement concerning the safekeeping of his will:

_____
_____

*To be completed if appropriate

12. PLACE
13. DATE
14. SIGNATURE and, if necessary, SEAL

Article 11 The authorized person shall keep a copy of the certificate and deliver another to the testator.

Article 12 In the absence of evidence to the contrary, the certificate of the authorized person shall be conclusive of the formal validity of the instrument as a will under this Law.

Article 13 The absence or irregularity of a certificate shall not affect the formal validity of a will under this Law.

Article 14 The international will shall be subject to the ordinary rules of revocation of wills.

Article 15 In interpreting and applying the provisions of this law, regard shall be had to its international origin and to the need for uniformity in its interpretation.

RESOLUTION

The Conference

Considering the importance of measures to permit the safeguarding of wills and to find them after the death of the testator;

Emphasizing the special interest in such measures with respect to the international will, which is often made by the testator far from his home;

RECOMMENDS to the States that participated in the present Conference

-that they establish an internal system, centralized or not, to facilitate the safekeeping, search and discovery of an international will as well as the accompanying certificate, for example, along the lines of the Convention on the Establishment of a Scheme of Registration of Wills, concluded at Basel on May 16, 1972;

-that they facilitate the international exchange of information in these matters and, to this effect, that they designate in each state an authority or a service to handle such exchanges.

Section 1. Definitions.

In this [act]:

(1) "International will" means a will executed in conformity with Sections 2through 5.

(2) "Authorized person" and "person authorized to act in connection with international wills" mean a person who by Section 9, or by the laws of the United States including members of the diplomatic and consular service of the United States designated by Foreign Service Regulations, is empowered to supervise the execution of international wills.

COMMENT

The term "international will" connotes only that a will has been executed in conformity with this act. It does not indicate that the will was planned for implementation in more than one country, or that it relates to an estate that has or may have international implications. Thus, it will be entirely appropriate to use an "international will" whenever a will is desired.

The reference in paragraph (2) to persons who derive their authority to act from federal law, including Foreign Service Regulations, anticipates that the United States will become a party to the 1973 Convention, and that Congress, pursuant to the obligation of the Convention, will enact the annexed uniform law and include therein some designation, possibly of a cadre only, of authorized persons. See the discussion under "Roles for Federal and State Law in Relation to International Will", in the Prefatory Note, *supra.* If all states enact similar laws and designate all attorneys as authorized persons, the need for testators to resort to those designated by federal law may be minimal. It seems desirable, nonetheless, to associate whoever may be designated by federal law as suitable authorized persons for purposes of implementing state enactments of the uniform act. The resulting "borrowing" of those designated federally should minimize any difficulties that might arise from variances in the details of execution of international wills that may develop in the state and federal enactment process.

In the Explanatory Report of the 1973 Convention prepared by Mr. Jean-Pierre Plantard, Deputy Secretary-General of the International Institute for the Unification of Private Law (UNIDROIT) as published by the Institute in 1974, the following paragraphs that are relevant to this section appear:

> The Uniform Law gives no definition of the term will. The preamble of the Convention also uses the expression 'last wills'. The material contents of the document are of little importance as the Uniform Law governs only its form. There is, therefore, nothing to prevent this form being used to register last wishes that do not involve the naming of an heir and which in some legal systems are called by a special name, such as 'Kodizill' in Austrian Law (ABGB § 553).

Although it is given the qualification "international", the will dealt with by the Uniform Law can easily be used for a situation without any international element, for example, by a testator disposing in his own country of his assets, all of which are situated in that same country. The adjective "international", therefore, only indicates what was had in mind at the time when this new will was conceived. Moreover, it would have been practically impossible to define a satisfactory sphere of application, had one intended to restrict its use to certain situations with an international element. Such an element could only be assessed by reference to several factors (nationality, residence, domicile of the testator, place where the will was drawn up, place where the assets are situated) and, moreover, these might vary considerably between when the will was drawn up and the beginning of the inheritance proceedings.

Use of the international will should, therefore, be open to all testators who decide they want to use it. Nothing should prevent it from competing with the traditional forms if it offers advantages of convenience and simplicity over the other forms and guarantees the necessary certainty."

Section 2. International Will; Validity.

(a) A will is valid as regards form, irrespective particularly of the place where it is made, of the location of the assets and of the nationality, domicile, or residence of the testator, if it is made in the form of an international will complying with the requirements of this [act].

(b) The invalidity of the will as an international will shall not affect its formal validity as a will of another kind.

(c) This [act] shall not apply to the form of testamentary dispositions made by two or more persons in one instrument.

COMMENT

This section combines what appears in Articles 1 and 2 of the Annex into a single section. Except for the reference to later sections, the first sentence is identical to Article 1, Section 1 of the Annex, the second sentence is identical to Article 1, Section 2, and the third is identical to Article 2.

Mr. Plantard's commentary that is pertinent to this section is as follows:

"The Uniform Law is intended to be introduced into the legal system of each Contracting State. Article 1, therefore, introduces into the internal law of

each Contracting State the new, basic principle according to which the international will is valid irrespective of the country in which it was made, the nationality, domicile or residence of the testator and the place where the assets forming the estate are located.

"The scope of the Uniform Law is thus defined in the first sentence. As was mentioned above, the idea behind it was to establish a new type of will, the form of which would be the same in all countries. The Law obviously does not affect the subsistence of all the other forms of will known under each national law . . .

"Some of the provisions relating to form laid down by the Uniform Law are considered essential. Violation of these provisions is sanctioned by the invalidity of the will as an international will. These are: that the will must be made in writing, the presence of two witnesses and of the authorised person, signature by the testator and by the persons involved (witnesses and authorised person) and the prohibition of joint wills. The other formalities, such as the position of the signature and date, the delivery and form of the certificate, are laid down for reasons of convenience and uniformity but do not affect the validity of the international will.

"Lastly, even when the international will is declared invalid because one of the essential provisions contained in Articles 2 to 5 has not been observed, it is not necessarily deprived of all effect. Paragraph 2 of Article 1 specifies that it may still be valid as a will of another kind, if it conforms with the requirements of the applicable national law. Thus, for example, a will written, dated and signed by the testator but handed over to an authorised person in the absence of witnesses or without the signature of the witnesses and the authorised person could quite easily be considered a valid holograph will. Similarly, an international will produced in the presence of a person who is not duly authorised might be valid as a will witnessed in accordance with Common law rules.

"However, in these circumstances, one could no longer speak of an international will and the validity of the document would have to be assessed on the basis of the rules of internal law or of private international law.

"A joint will cannot be drawn up in the form of an international will. This is the meaning of Article 2 of the Uniform Law which does not give an opinion as to whether this prohibition on joint wills, which exists in many legal systems, is connected with its form or its substance.

"A will made in this international form by several people together in the same document would, therefore, be invalid as an international will but could possibly be valid as another kind of will, in accordance with Article 1, paragraph 2 of the Uniform Law.

"The terminology used in Article 2 is in harmony with that used in Article 4 of The Hague Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions."

Section 3. International Will; Requirements.

(a) The will shall be made in writing. It need not be written by the testator himself. It may be written in any language, by hand or by any other means.

(b) The testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is his will and that he knows the contents thereof. The testator need not inform the witnesses, or the authorized person, of the contents of the will.

(c) In the presence of the witnesses, and of the authorized person, the testator shall sign the will or, if he has previously signed it, shall acknowledge his signature.

(d) When the testator is unable to sign, the absence of his signature does not affect the validity of the international will if the testator indicates the reason for his inability to sign and the authorized person makes note thereof on the will. In these cases, it is permissible for any other person present, including the authorized person or one of the witnesses, at the direction of the testator, to sign the testator's name for him, if the authorized person makes note of this also on the will, but it is not required that any person sign the testator's name for him.

(e) The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.

COMMENT

The five subsections of this section correspond in content to Articles 3 through 5 of the Annex to the 1973 Convention. Article 1, Section 1 makes it clear that compliance with all requirements listed in Articles 3 through 5 is necessary in order to achieve an international will. As re-organized for enactment in the United States, all mandatory requirements have been grouped in this section. Except for subsection (d), each of the sentences in the subsections

corresponds exactly with a sentence in the Annex. Subsection (d), derived from Article 5, Section 2 of the Annex, was re-worded for the sake of clarity.

Mr. Plantard's comments on the requirements are as follows:

"Paragraph 1 of Article 3 lays down an essential condition for a will's validity as an international will: it must be made in writing.

"The Uniform Law does not explain what is meant by 'writing'. This is a word of everyday language which, in the opinion of the Law's authors, does not call for any definition but which covers any form of expression made by signs on a durable substance.

"Paragraphs 2 and 3 show the very liberal approach of the draft.

"Under paragraph 2, the will does not necessarily have to be written by the testator himself. This provision marks a moving away from the holograph will toward the other types of will: the public will or the mystic will and especially the Common law will. The latter, which is often very long, is only in exceptional cases written in the hand of the testator, who is virtually obliged to use a lawyer, in order to use the technical formulae necessary to give effect to his wishes. This is all the more so as wills frequently involve inter vivos family arrangements, and fiscal considerations play a very important part in this matter.

"This provision also allows for the will of illiterate persons, or persons who, for some other reason, cannot write themselves, for example paralysed or blind persons.

"According to paragraph 3 a will may be written in any language. This provision is in contrast with the rules accepted in various countries as regards public wills. It will be noted that the Uniform Law does not even require the will to be written in a language known by the testator. The latter is, therefore, quite free to choose according to whichever suits him best: it is to be expected that he will usually choose his own language but, if he thinks it is better, he will sometimes also choose the language of the place where the will is drawn up or that of the place where the will is mainly to be carried out. The important point is that he have full knowledge of the contents of his will, as is guaranteed by Articles 4 and 10.

"Lastly, a will may be written by hand or by any other method. This provision is the corollary of paragraph 2. What is mainly had in mind is a typewriter, especially in the case of a will drawn up by a lawyer advising the testator.

"The liberal nature of the principles set out in Article 3 calls for certain guarantees on the other hand. These are provided by the presence of three

persons, already referred to in the context of Articles III and V of the Convention, that is to say, the authorised person and the two witnesses. It is evident that these three persons must all be simultaneously present with the testator during the carrying out of the formalities laid down in Articles 4 and 5.

"Paragraph 1 of Article 4 requires, first of all, that the testator declare, in the presence of these persons, that the document produced by him is his will and that he knows the contents thereof. The word 'declares' covers any unequivocal expression of intention, by way of words as well as by gestures or signs, as, for example, in the case of a testator who is dumb. This declaration must be made on pain of the international will being invalid. This is justified by the fact that the will produced by the testator might have been materially drawn up by a person other than the testator and even, in theory, in a language which is not his own.

"Paragraph 2 of the article specifies that this declaration is sufficient: the testator does not need to 'inform' the witnesses or the authorised person 'of the contents of the will'. This rule makes the international will differ from the public will and brings it closer to the other types of will: the holograph will and especially the mystic will and the Common law will.

"The testator can, of course, always ask for the will to be read, a precaution which can be particularly useful if the testator is unable to read himself. The paragraph under consideration does not in any way prohibit this; it only aims at ensuring respect for secrecy, if the testator should so wish. The international will can therefore be a secret will without being a closed will.

"The declaration made by the testator under Article 4 is not sufficient: under Article 5, paragraph 1, he must also sign his will. However, the authors of the Uniform Law presumed that, in certain cases, the testator might already have signed the document forming his will before producing it. To require a second signature would be evidence of an exaggerated formalism and a will containing two signatures by the testator would be rather strange. That is why the same paragraph provides that, when he has already signed the will, the testator can merely acknowledge it. This acknowledgement is completely informal and is normally done by a simple declaration in the presence of the authorised person and witnesses.

"The Uniform Law does not explain what is meant by 'signature'. This is once more a word drawn from everyday language, the meaning of which is usually the same in the various legal systems. The presence of the authorised person, who will necessarily be a practising lawyer will certainly guarantee that there is a genuine signature correctly affixed.

"Paragraph 2 was designed to give persons incapable of signing the possibility of making an international will. All they have to do is indicate their incapacity and the reason therefor to the authorised person. The authorised

person must then note this declaration on the will which will then be valid, even though it has not been signed by the testator. Indication of the reason for incapacity is an additional guarantee as it can be checked. The certificate drawn up by the authorised person in the form prescribed in Article 10 again reproduces this declaration.

"The authors of the Uniform Law were also conscious of the fact that in some legal systems -- for example, English law -- persons who are incapable of signing can name someone to sign in their place. Although this procedure is completely unknown to other systems in which a signature is exclusively personal, it was accepted that the testator can ask another person to sign in his name, if this is permitted under the law from which the authorised person derives his authority. This amounts to nothing more than giving satisfaction to the practice of certain legal systems, as the authorised person must, in any case, indicate on the will that the testator declared that he could not sign, and give the reason therefor. This indication is sufficient to make the will valid. There will, therefore simply be a signature affixed by a third person instead of that of the testator. Although there is nothing stipulating this in the Uniform Law, one can expect the authorised person to explain the source of this signature on the document, all the more so as the signature of this substitute for the testator must also appear on the other pages of the will, by virtue of Article 6.

"This method over which there were some differences of opinion at the Diplomatic Conference, should not however interfere in any way with the legal systems which do not admit a signature in the name of someone else. Besides, its use is limited to the legal systems which admit it already and it is now implicitly accepted by the others when they recognise the validity of a foreign document drawn up according to this method. However, this situation can be expected to arise but rarely, as an international will made by a person who is incapable of signing it will certainly be a rare event.

"Lastly, Article 5 requires that the witnesses and authorised person also sign the will there and then in the presence of the testator. By using the words 'attest the will by signing', when only the word 'sign' had been used when referring to the testator, the authors of the Uniform Law intended to make a distinction between the person acknowledging the contents of a document and those who have only to affix their signature in order to certify their participation and presence.

"In conclusion, the international will will normally contain four signatures: that of the testator, that of the authorised person and those of the two witnesses. The signature of the testator might be missing: in this case, the will must contain a note made by the authorised person indicating that the testator was incapable of signing, adding his reason. All these signatures and notes must be made on pain of invalidity. Finally, if the signature of the testator is missing, the will could contain the signature of a person designated by the testator to sign in

his name, in addition to the above-mentioned note made by the authorised person."

Section 4. International Will; Other Points of Form.

(a) The signatures shall be placed at the end of the will. If the will consists of several sheets, each sheet will be signed by the testator or, if he is unable to sign, by the person signing on his behalf or, if there is no such person, by the authorized person. In addition, each sheet shall be numbered.

(b) The date of the will shall be the date of its signature by the authorized person. That date shall be noted at the end of the will by the authorized person.

(c) The authorized person shall ask the testator whether he wishes to make a declaration concerning the safekeeping of his will. If so and at the express request of the testator, the place where he intends to have his will kept shall be mentioned in the certificate provided for in Section 5.

(d) A will executed in compliance with Section 3 is not invalid merely because it does not comply with this section.

COMMENT

Mr. Plantard's commentary about Articles 6, 7 and 8 of the Annex *[supra]* relate to subsections (a), (b) and (c) respectively of this section. Subsections (a) and (b) are identical to Articles 6 and 7; subsection (c) is the same as Article 8 of the Annex except that the prefatory language "In the absence of any mandatory rule pertaining to the safekeeping of the will . . . " has been deleted because it is inappropriate for inclusion in a local statute designed for enactment by a state that has had no tradition or familiarity with mandatory rules regarding the safekeeping of the wills. Subsection (d) embodies the sense of Article 1, Section 1 of the Annex which states that compliance with Articles 2 to 5 is necessary and so indicates that compliance with the remaining articles prescribing formal steps is not necessary.

Mr. Plantard's commentary is as follows:

"The provisions of Article 6 and those of the following articles are not

imposed on pain of invalidity. They are nevertheless compulsory legal provisions which can involve sanctions, for example, the professional, civil and even criminal liability of the authorised person, according to the provisions of the law from which he derives his authority.

"The first paragraph, to guarantee a uniform presentation for international wills, simply indicates that signatures shall be placed at the end of international wills, that is, at the end of the text.

"Paragraph 2 provides for the frequent case in which the will consists of several sheets. Each sheet has to be signed by the testator, to guarantee its authenticity and to avoid substitutions. The use of the word 'signed' seems to imply that the signature must be in the same form as that at the end of the will. However, in the legal systems which merely require that the individual sheets to be paraphed, usually by means of initials, this would certainly have the same value as signature, as a signature itself could simply consist of initials.

"The need for a signature on each sheet, for the purpose of authentifying each such sheet, led to the introduction of a special system for the case when the testator is incapable of signing. In this case it will generally be the authorised person who will sign each sheet in his place, unless, in accordance with Article 5, paragraph 2, the testator has designated another person to sign in his name. In this case, it will of course be this person who will sign each sheet.

"Lastly, it is prescribed that the sheets shall be numbered. Although no further details are given on this subject, it will in practice be up to the authorised person to check if they have already been numbered and, if not, to number them or ask the testator to do so.

"The aim of this provision is obviously to guarantee the orderliness of the document and to avoid losses, subtractions or substitutions.

"The date is an essential element of the will and its importance is quite clear in the case of successive wills. Paragraph 1 of Article 7 indicates that the date of the will in the case of an international will is the date on which it was signed by the authorised person, this being the last of the formalities prescribed by the Uniform Law on pain of invalidity (Article 5, paragraph 3). It is therefore, from the moment of this signature that the international will is valid.

"Paragraph 2 stipulates that the date shall be noted at the end of the will by the authorised person. Although this is compulsory for the authorised person, this formality is not sanctioned by the invalidity of the will which, as is the case in many legal systems such as English, German and Austrian law, remains fully valid even if it is not dated or is wrongly dated. The date will then have to be proved by some other means. It can happen that the will has two dates, that of its drawing up and the date on which it was signed by the authorised person as a

result of which it became an international will. Evidently only this last date is to be taken into consideration.

"During the preparatory work it had been intended to organise the safekeeping of the international will and to entrust its care to the authorised person. This plan caused serious difficulties both for the countries which do not have the notary as he is known in Civil law systems and for the countries in which wills must be deposited with a public authority, as is the case, for example, in the Federal Republic of Germany, where wills must be deposited with a court.

"The authors of the Uniform Law therefore abandoned the idea of introducing a unified system for the safekeeping of international wills. However, where a legal system already has rules on this subject, these rules of course also apply to the international will as well as to other types of will. Finally, the Washington Conference adopted, at the same time as the Convention, a resolution recommending States, in particular, to organise a system facilitating the safekeeping of international wills (see the commentary on this resolution, at the end of this Report). It should lastly be underlined that States desiring to give testators an additional guarantee as regards the international will will organise its safekeeping by providing, for example, that it shall be deposited with the authorised person or with a public officer. Complementary legislation of this kind could be admitted within the framework of paragraph 3 of Article 1 of the Convention, as was mentioned in our commentary on that article.

"These considerations explain why Article 8 starts by stipulating that it only applies 'in the absence of any mandatory rule pertaining to the safekeeping of the will'. If there happens to be such a rule in the national law from which the authorised person derives his authority this rule shall govern the safekeeping of the will. If there is no such rule, Article 8 requires the authorised person to ask the testator whether he wishes to make a declaration in this regard. In this way, the authors of the Uniform Law sought to reconcile the advantage of exact information so as to facilitate the discovery of the will after the death of the testator, on the one hand, and respect for the secrecy which the testator may want as regards the place where his will is kept, on the other hand. The testator is therefore quite free to make or not to make a declaration in this regard, but his attention is nevertheless drawn to the possibility left open to him, and particularly to the opportunity he has, if he expressly asks for it, to have the details he thinks appropriate in this regard mentioned on the certificate provided for in Article 9. It will thus be easier to find the will again at the proper time, by means of the certificate made out in three copies, one of which remains in the hands of the authorised person."

Section 5. International Will; Certificate.

The authorized person shall attach to the will a certificate to be signed by him establishing that the requirements of this [act] for valid execution of an international will have been complied with. The authorized person shall keep a copy of the certificate and deliver another to the testator. The certificate shall be substantially in the following form:

CERTIFICATE
(Convention of October 26, 1973)

1. I, _____ (name, address and capacity), a person authorized to act in connection with international wills

2. Certify that on _____ (date) at _____ (place)

3. (testator) _____ (name, address, date and place of birth) in my presence and that of the witnesses

4. (a) _____ (name, address, date and place of birth)

(b) _____ (name, address, date and place of birth)

has declared that the attached document is his will and that he knows the contents thereof.

5. I furthermore certify that:

6. (a) in my presence and in that of the witnesses

(1) the testator has signed the will or has acknowledged his signature previously affixed.

*(2) following a declaration of the testator stating that he was unable to sign his will for the following reason _____, and I have mentioned this declaration on the will

* and the signature has been affixed by _____ (name, address)

7. (b) the witnesses and I have signed the will;

8. *(c) each page of the will has been signed by _____ and numbered;

9. (d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;

10. (e) the witnesses met the conditions requisite to act as such according to the law under which I am acting;

11. *(f) the testator has requested me to include the following statement concerning the safekeeping of his will:

_____

12. PLACE _____

13. DATE _____

14. SIGNATURE _____

and, if necessary, SEAL

* to be completed if appropriate

COMMENT

This section embodies the content of Articles 9, 10 and 11 of the Annex with only minor, clarifying changes. Those familiar with the pre-proved will authorized by Uniform Probate Code Section 2-504 should be comfortable with Sections 5 and 6 of this act. Indeed, inclusion of these provisions in the Annex was the result of a concession by those familiar with civil law approaches to problems of execution and proof of wills, to the English speaking countries where will ceremonies are divided between those occurring as testator acts, and those occurring later when the will is probated. Further, since English and Canadian practices reduce post-mortem probate procedures down to little more than the presentation of the will to an appropriate registry and so, approach civil law customs, the concession was largely to accommodate American states where post-mortem probate procedures are very involved. Thus, the primary purpose of the certificate, which provides conclusive proof of the formal validity of the will, is to put wills executed before a civil law notary and wills executed in the American tradition on a par; with the certificate, both are good without question insofar as formal requirements are concerned.

It should be noted that Article III of the Convention binds countries becoming parties to recognize the capacity of an authorized person to act in relation to an international will, as conferred by the law of another country that is a party. This means that an international will coming into one of our states that has enacted the uniform law will be entirely good under local law, and that the certificate from abroad will provide conclusive proof of its validity.

May an international will be contested? The answer is clearly affirmative as to contests based on lack of capacity, fraud, undue influence, revocation or ineffectiveness based on the contents of the will or substantive restraints on testamentary power. Contests based on failure to follow mandatory requirements of execution are not precluded because the next section provides that the certificate is conclusive only "in the absence of evidence to the contrary". However, the Convention becomes relevant when one asks whether a probate Court may require additional

proof of the genuineness of signatures by testators and witnesses. It provides:

> *Article VI* 1. The signature of the testator, of the authorized person, and of the witnesses to an international will, whether on the will or on the certificate, shall be exempt from any legalization or like formality.
>
> 2. Nonetheless, the competent authorities of any Contracting Party may, if necessary, satisfy themselves as to the authenticity of the signature of the authorized person.

Presumably, the prohibition against legalization would not preclude additional proof of genuineness if evidence tending to show forgery is introduced, but without contrary proof, the certificate proves the will.

The authorized person is directed to attach the certificate to the will, and to keep a copy. The sense of "keep" intended by the draftsman is "continuously keep," or "preserve."

If the will with attached certificate is to be retained by the authorized person or otherwise placed for safekeeping out of the possession of the testator, good practice would involve an unexecuted copy of the will that could be given to the testator for disposition or retention as he saw fit. It would seem that good practice in these cases also would involve attachment of the testator's copy of the certificate to testator's copy of the will. The statute is silent on this point, however.

Mr. Plantard's commentary on the articles of the Annex that are pertinent to section 5, are as follows:

> "This provision specifies that the authorised person must attach to the international will a certificate drawn up in accordance with the form set out in Article 10, establishing that the Uniform Law's provisions have been complied with. The term 'joint au testament' means that the certificate must be added to the will, that is, fixed thereto. The English text which uses the word 'attach' is perfectly clear on this point. Furthermore, it results from Article 11 that the certificate must be made out in three copies. This document, the contents of which are detailed in Article 10, is proof that the formalities required for the validity of the international will have been complied with. It also reveals the identity of the persons who participated in drawing up the document and may, in addition, contain a declaration by the testator as to the place where he intends his will to be kept. It should be stressed that the certificate is drawn up under the entire responsibility of the authorised person who is the only person to sign it.
>
> "Article 10 sets out the form for the certificate. The authorised person must abide by it, in accordance with the provisions of Article 10 itself, laying down this or a substantially similar form. This last phrase could not be taken as authorising him to depart from this form: it only serves to allow for small changes of detail which might be useful in the interests of improving its

comprehensibility or presentation, for example, the omission of the particulars marked with an asterisk indicating that they are to be completed where appropriate when in fact they do not need to be completed and thus become useless.

"Including the form of a certificate in one of the articles of a Uniform Law is unusual. Normally these appear in the annexes to Conventions. However, in this way, the authors of the Uniform Law underlined the importance of the certificate and its contents. Moreover, the Uniform Law already forms the Annex to the Convention itself.

"The 14 particulars indicated on the certificate are numbered. These numbers must be reproduced on each certificate, so as to facilitate its reading, especially when the reader speaks a foreign language, as they will help him to find the relevant details more easily: the name of the authorised person and the testator, addresses, etc.

"The certificate contains all the elements necessary for the identification of the authorized person, testator and witnesses. It expressly mentions all the formalities which have to be carried out in accordance with the provisions of the Uniform Law. Furthermore, the certificate contains all the information required for the will's registration according to the system introduced by the Council of Europe Convention on the Establishment of a Scheme of Registration of Wills, signed at Basle on 16 May 1972.

"The authorised person must keep a copy of the certificate and deliver one to the testator. Seeing that another copy has to be attached to the will in accordance with Article 9, it may be deduced that the authorised person must make out altogether three copies of the certificate. These cannot be simple copies but have to be three signed originals. This provision is useful for a number of reasons. The fact that the testator keeps a copy of the certificate is a useful reminder for him, especially when his will is being kept by the authorised person or deposited with someone designated by national law. Moreover, discovery of the certificate among the testators' papers will inform his heirs of the existence of a will and will enable them to find it more easily. The fact that the authorised person keeps a copy of the certificate enables him to inform the heirs as well, if necessary. Lastly, the fact that there are several copies of the certificate is a guarantee against changes being made to one of them and even, to a certain extent, against certain changes to the will itself, for example as regards its date."

Section 6. International Will; Effect of Certificate.

In the absence of evidence to the contrary, the certificate of the authorized person shall be conclusive of the formal validity of the instrument as a will under this [act]. The absence or irregularity of a certificate shall not affect the formal validity of a will under this [act].

COMMENT

This section, which corresponds to Articles 11 and 12 of the Annex, must be read with the definition of "authorized person" in Section 1, and Articles III and IV of the 1973 Convention which will become binding on all states if and when the United States joins that treaty. Articles III and IV of the Convention provide:

> **Article III.** The capacity of the authorized person to act in connection with an international will, if conferred in accordance with the law of a Contracting Party, shall be recognized in the territory of the other Contracting Parties.
>
> **Article IV.** The effectiveness of the certificate provided for in Article 10 of the Annex shall be recognized in the territories of all Contracting Parties.

In effect, the state enacting this law will be recognizing certificates by authorized persons designated, not only by this state, but by the United States and other parties to the 1973 Convention. Once the identity of one making a certificate on an international will is established, the will may be proved without more, assuming the presence of the recommended form of certificate. Article IX (3) of the 1973 Convention constitutes the United States as the Depositary under the Convention, and Article II obligates each country joining the Convention to notify the Depositary Government of the persons designated by its law as authorized to act in connection with international wills. Hence, persons interested in local probate of an international will from another country will be enabled to determine from the Department of State whether the official making the certificate in which they are interested had the requisite authority.

In this connection, it should be noted that under Article II of the Convention, each contracting country may designate its diplomatic or consular representatives abroad as authorized persons insofar as the local law does not prohibit it. Since the Uniform Act will be the law locally, and since it does not prohibit persons designated by foreign states that are parties to the Convention from acting locally in respect to international wills, there should be a considerable amount of latitude in selecting authorized persons to assist with wills and a correlative reduction in the chances of local non-recognition of an authorized person from abroad. Also, it should be noted that the Uniform Act does not restrict the persons which it constitutes as authorized persons in relation to the places where they can so function. This supports the view that local law as embodied in this statute should not be construed as restrictive in relation to local activities concerning international wills of foreign diplomatic and consular representatives who are resident here.

The certificate requires the authorized person to state that the witnesses had the requisite capacity. If the authorized person derives his authority from the law of a state other than that where he is acting, it would be advisable to have the certificate identify the applicable law.

The Uniform Act is silent in regard to methods of meeting local probate requirements contemplating deposit of the original will with the court. Section 3-409 of the Uniform Probate Code, or its counterpart in a state that has not adopted the uniform law on the point, becomes pertinent. The last sentence of UPC Section 3-409 provides:

> A will from a place which does not provide for probate of a will after death, may be proved for probate in this state by a duly authenticated certificate of its legal custodian that the copy introduced is a true copy and that the will has become effective under the law of the other place.

One final matter warrants mention. Implicit in local proof of an instrument by means of authentication provided by a foreign official, is the problem of proving the authority of the official. The traditional, exceedingly formalistic, method of accomplishing this has been through what has been known as "legalization", a process that involves a number of certificates. The capacity of the official who authenticates the signature of the party to the document, if derived from his status as a county official, is proved by the certificate of a high county official. In turn, the county official's status is proved by the certificate of the area's secretary of state, whose status is established by another and so on until, ultimately, the Department of State certifies to the identity of the highest state official in a format that will be persuasive to the receiving country's foreign relations representative.

Article VI of the 1973 Convention forbids legalization of the signature of testators and witnesses. It provides:

> 1. The signature of the testator, of the authorized person, and of the witnesses to an international will, whether on the will or on the certificate, shall be exempt from any legalization or like formality.
>
> 2. Nonetheless, the competent authorities of any Contracting Party may, if necessary, satisfy themselves as to the authenticity of the signature of the authorized person.

Thus, it would appear that if the United States, as contracting party, satisfies itself that the signature of a foreign authorized person is authentic, and so indicates to those interested in local probate of the document, the local court, though presumably able to receive and to act upon evidence to the contrary, cannot reject an international will for lack of proof. This is not to say, of course, that the authenticity of the signature of the foreign authorized person must be shown through the aid of the State Department; plainly, the point may be implied from the face of the document unless and until challenged.

Mr. Plantard's commentary on this portion of the uniform law is as follows:

"Article 12 states that the certificate is conclusive of the formal validity of the international will. It is therefore a kind of proof supplied in advance.

"This provision is only really understandable in those legal systems, like the United States, where a will can only take effect after it has been subjected to a preliminary procedure of verification ('Probate') designed to check on its validity. The mere presentation of the certificate should suffice to satisfy the requirements of this procedure.

"However, the certificate is not always irrefutable as proof, as is indicated by the words 'in the absence of evidence to the contrary'. If it is challenged, then the ensuing litigation will be solved in accordance with the legal procedure applicable in the Contracting State where the will and certificate are presented.

"The principle set out in Article 13 is already implied by Article 1, as only the provisions of Articles 2 to 5 are prescribed on pain of invalidity. Besides, it is perfectly logical that the absence of or irregularities in a certificate should not affect the formal validity of the will, as the certificate is a document serving essentially for purposes of proof drawn up by the authorised person, without the testator taking any part either in drawing it up or in checking it. This provision is in perfect harmony with Article 12 which by the terms 'in the absence of evidence to the contrary' means that one can challenge what is stated in the certificate.

"In consideration of the fact that the authorised person will be a practising lawyer officially designated by each Contracting State, it is difficult to imagine him omitting or neglecting to draw up the certificate provided for by the national law to which he is subject. Besides, he would lay himself open to an action based on his professional and civil liability. He could even expose himself to sanctions laid down by his national law.

"However, the international will subsists, even if, by some quirk, the certificate which is a means of proof but not necessarily the only one, should be missing, be incomplete or contain particulars which are manifestly erroneous. In these undoubtedly very rare circumstances, proof that the formalities prescribed on pain of invalidity have been carried out will have to be produced in accordance with the legal procedures applicable in each State which has adopted the Uniform Law."

Section 7. International Will; Revocation.

The international will shall be subject to the ordinary rules of revocation of wills.

COMMENT

Mr. Plantard's commentary on this portion of the uniform law is as follows:

"The authors of the Uniform Law did not intend to deal with the subject of the revocation of wills. There is indeed no reason why the international will should be submitted to a regime different from that of other kinds of wills. Article 14 therefore merely gives expression to this idea. Whether or not there has been revocation-for example, by a subsequent will-is to be assessed in accordance with the law of each State which has adopted the Uniform Law, by virtue of Article 14. Besides, this is a question mainly concerning rules of substance which would thus overstep the scope of the Uniform Law."

Section 8. Source and Construction.

Sections 1 through 7 derive from Annex to Convention of October 26, 1973, Providing a Uniform Law on the Form of an International Will. In interpreting and applying this [act], regard shall be had to its international origin and to the need for uniformity in its interpretation.

COMMENT

Mr. Plantard's commentary on this portion of the uniform law is as follows:

"This Article contains a provision which is to be found in a similar form in several conventions or draft Uniform Laws. It seeks to avoid practising lawyers interpreting the Uniform Law solely in terms of the principles of their respective internal law, as this would prejudice the international unification being sought after. It requests judges to take the international character of the Uniform Law into consideration and to work towards elaborating a sort of common caselaw, taking account of the foreign legal systems which provided the foundation for the Uniform Law and the decisions handed down on the same text by the courts of other countries. The effort toward unification must not be limited to just bringing about the Law's adoption, but should be carried on into the process of putting it into operation."

Section 9. Persons Authorized to Act in Relation to International Will; Eligibility; Recognition by Authorizing Agency.

Individuals who have been admitted to practice law before the courts of this state and who are in good standing as active law practitioners in this state, are hereby declared to be authorized persons in relation to international wills.

COMMENT

The subject of who should be designated to be authorized persons under the Uniform Law is discussed under the heading "Description of the Proposal" in the Prefatory Note.

The first draft of the Uniform Law presented to the National Conference at its 1975 meeting in Quebec City included provision for a special new licensing procedure through which others than attorneys might become qualified. The ensuing discussion resulted in rejection of this approach in favor of the simpler approach of Section 9. Among other difficulties with the special licensee approach, representatives of the State Department expressed concern about the attendant burden on the U.S. as Depositary Government, of receiving, keeping up to date, and interpreting to foreign governments the results of fifty different state licensing systems.

[Section 10. International Will Information Registration.

The [Secretary of State] shall establish a registry system by which authorized persons may register in a central information center, information regarding the execution of international wills, keeping that information in strictest confidence until the death of the maker and then making it available to any person desiring information about any will who presents a death certificate or other satisfactory evidence of the testator's death to the center. Information that may be received, preserved in confidence until death, and reported as indicated is limited to the name, social-security or any other individual-identifying number established by law, address, and date and place of birth of the testator, and the intended place of deposit or safekeeping of the instrument pending the death of the maker. The [Secretary of State], at the request of the authorized person, may cause the information it receives about execution of any international will to be transmitted to the registry system of another jurisdiction as identified by the testator, if that other system adheres to rules protecting the confidentiality of the information similar to those established in this state.]

COMMENT

The relevance of this optional, bracketed section to the other sections constituting the uniform law concerning international wills is explained in the Prefatory Note. Also, Mr.

Plantard's observations regarding the Resolution attached to the 1973 Convention are pertinent. He writes:

> "The Resolution adopted by the Washington Conference and annexed to its Final Act encourages States which adopt the Uniform Law to make additional provisions for the registering and safekeeping of the international will. The authors of the Uniform Law considered that it was not possible to lay down uniform rules on this subject on account of the differences in tradition and outlook, but several times, both during the preparatory work and during the final diplomatic phase, they underlined the importance of States making such provisions.
>
> "The Resolution recommends organising a system enabling . . . 'the safekeeping, search and discovery of an international will as well as the accompanying certificate' . . .
>
> "Indeed lawyers know that many wills are never carried out because the very existence of the will itself remains unknown or because the will is never found or is never produced. It would be quite possible to organise a register or index which would enable one to know after the death of a person whether he had drawn up a will. Some countries have already done something in this field, for example, Quebec, Spain, the Federal Republic of Germany, where this service is connected with the Registry of Births, Marriages and Deaths. Such a system could perfectly well be fashioned so as to ensure respect for the legitimate wish of testators to keep the very existence of their will secret.
>
> "The Washington Conference also underlined that there is already an International Convention on this subject, namely the Council of Europe Convention on the Establishment of a Scheme of Registration of Wills, concluded at Basle on 16 May 1972, to which States which are not members of the Council of Europe may accede.
>
> "In this Convention the Contracting States simply undertake to create an internal system for registering wills. The Convention stipulates the categories of will which should be registered, in terms which include the international will. Apart from national bodies in charge of registration, the Convention also provides for the designation by each Contracting State of a national body which must remain in contact with the national bodies of other States and communicate registrations and any information asked for. The Convention specifies that registration must remain secret during the life of the testator. This system, which will come into force between a number of European States in the near future, interested the authors of the Convention, even if they do not accede to it. The last paragraph of the Resolution follows the pattern of the Basle Convention by recommending, in the interests of facilitating an international exchange of information on this matter, the designation in each State of authorities or services to handle such exchanges.

"As for the organisation of the safekeeping of international wills, the resolution merely underlies the importance of this, without making any specific suggestions in this regard. This problem has already been discussed in connection with Article 8 of the Uniform Law.

"The Council of Europe Convention on the Establishment of a Scheme of Registration of Wills of May 16, 1972 and related documents were available to the reporter and provided the guidelines for Section 10 of this Act."