Declarations of Death–A New International Convention

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NOTES AND COMMENT

Declarations of Death — A New International Convention

Introduction

At Lake Success, on April 6, 1950, an international conference, convened by the United Nations,¹ established and opened for accession by states an international convention on the declaration of death of missing persons.²

The Convention, though limited in scope, marks a first step toward the solution, on an international basis, of a problem of considerable complexity.

It seems that two considerations led to the recognition of the necessity for an examination of the problem by international organizations and for international action:

(a) During and after World War II the number of cases in which declarations of death were helpful or necessary increased in an unprecedented manner, and the proportion of cases of international character increased even more;

(b) National laws differed fundamentally in their treatment of the problem and as a result insurmountable difficulties were apt to arise in cases involving an international element.

In order fully to understand and appreciate the significance of the Convention it will be useful to proceed by considering these two facts first.

I. World War II and the Increasing Number of Declarations of Death

Declarations of death have always been considered an exceptional and merely subsidiary method of legally ascertaining and establishing a person’s death. The death of a human being ordinarily occurs under circumstances which enable other persons, and especially the appropriate authorities, to establish death with logical and legal certainty, and thus to issue death certificates or other public documents of a similar type, generally recognized as competent evidence of such

However, if no such public document can be issued, because no one has identified the body of the alleged decedent, the circumstances of disappearance and the period of the absentee’s unexplained absence may give rise to a presumption of his death.

In order to avoid the continuance of detrimental uncertainty, necessity may arise in certain proceedings to obtain a declaration of the absentee’s presumed or certain death. Declaring a person dead is an artificial act: the crossing out of a person’s name from the imaginary register of the living. And this is done in spite of the fact that no one has testified to having seen him die, or to having identified his body, so that there always remains some doubt, however slight, as to his being alive or dead. Hence, a declaration of death is something that will, and should, be required very rarely under normal circumstances.

In earlier times, and even one or two generations ago, declarations of death were confined to the cases of supposed victims of natural calamities such as earthquakes and floods, to passengers of ships that failed to return, and to persons presumed to have perished in a conflagration. Thus, uncertainty about the death of a missing person and the ensuing need for a declaration of death, was due mostly to technical difficulties, e.g. the inadequacy of transportation, the lack of a world-wide search system, and the shortcomings of existing international postal and similar services.

While one might have thought that the need for declarations of death would diminish with the development of modern techniques and of civilization in general, such has not proved to be the case.

4 "He may not be dead, but he will be presumed to be dead for the purpose of fixing the rights of those known to be living." Matter of Wagener, 143 App. Div. 286, 288, 128 N. Y. Supp. 164, 166 (1st Dep't 1911). Justice Holmes delivering the opinion of the United States Supreme Court upholding the constitutionality of a Massachusetts statute which limited the time in which a person may recover his property after having been presumed dead, likewise refers to the element of chance: "Now and then an extraordinary case may turn up, but constitutional law like other mortal contrivances has to take some chances, and in the great majority of instances no doubt justice will be done." Blinn v. Nelson, 222 U. S. 1, 7 (1911).  
5 See the opinion of Lord Mansfield concerning the case of a missing person last heard of in 1778 on board a vessel which, sailing from the Cape of Good Hope, ran into a heavy storm. Patterson v. Black, 29 E & E Dig. 388, case 3092 (1780); 2 PARK’S MARINE INSURANCES 644 (7th ed. 1817); Hopewell v. De Pinna, 2 Camp. N. P. 113, 22 E & E Dig. 164, case 1396 (1809); Glass v. Glass, 114 Mass. 563 (1874).  
6 It seems that modern medico-legal techniques of identification of human bodies tend to eliminate in many cases the necessity for a declaration of death. See Day and Thompson, Medico-Legal Identification of Disaster Victims, 28 CAN. B. REV. 661 (1950). According to this report, out of the 108 victims of the vessel “Noronic” destroyed by fire on Sept. 17, 1949, in Toronto Harbor, Canada, all but three could be successfully identified, though most of the victims were burned beyond recognition.
On the contrary, after World War II, declarations of death, formerly an exceptional and extraordinary method of legal casework, have become, in an unprecedented manner, the means by which the deaths of millions of people are established and the legal relations and interests of other millions ascertained. Responsible for this trend are the total war with its air raids and mass killings and the fury of totalitarian governments, which have often consigned their opponents to the fate of concentration camps, mass deportation and mass extermination.

It has thus become a matter of common and tragic knowledge that during World War II millions of human beings were killed by mass bombings or were deported from their homes and exterminated under circumstances making accurate identification difficult or impossible. As a result, after a period of patient waiting, those who

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7 The Memorandum of the Preparatory Commission for the International Refugee Organization (PCIRO) on Necessity of Coordinating Procedures for Declarations of Death, United Nations, Economic and Social Council (ECOSOC), doc. E/824 (June 15, 1948), estimated the number of people missing from European countries alone, excluding the U.S.S.R., at 8-12 million.

8 Testifying in Nuremberg on April 15, 1946, the former commandant of the extermination camp at Oswiecim (Auschwitz), Poland, Rudolf Franz Ferdinand Hoess, estimated with reference to that camp alone and only to the period between May 1, 1940 and Dec. 1, 1943: "...that at least 2,500,000 victims were executed and exterminated there by gassing and burning, and at least another half million succumbed to starvation and disease making a total dead of about 3,000,000.” 11 The Trial of German Major War Criminals, Proceedings of the International Military Tribunal Sitting at Nuremberg 359 (published by the British Stationery Office 1947). A German post-war treatise estimates the number of concentration camp inmates in Germany from 1933 to 1945 at 7,800,000. Of these an estimated 7,125,000 perished, 5,500,000 being killed in gas chambers or exterminated by similar methods, while only about 700,000 are believed to have survived. Kogon, Der SS-Staat, Das System der Deutschen Konzentrationslager 146 (2d ed. 1947). For additional figures on missing persons from various European countries, see FRAENKEL, Missing Persons, The Law in the United States and Europe 51-57 (1950). In Feb., 1949 the representative of the United States, dealing with charges brought by the American Federation of Labor (AFL) in the ECOSOC, had estimated the number of persons subjected to forced labor in the U.S.S.R. at between eight and fourteen millions. (Proceedings of the ECOSOC No. 236 at 15, Feb. 16, 1949). For a recent discussion of legal problems involved in the system of concentration camps, see Brecht, The Concentration Camp, 50 Col. L. Rev. 761 (1950). Statistical figures have been included here because, as is generally known, concentration camps and similar institutions are not only the customary means by which totalitarian regimes dispose of their alleged enemies and one of many manifestations of their disregard for elementary human rights, but unfortunately are also the locale of mass “disappearance,” and thus an inexhaustible reservoir of declaration of death cases.

9 As a matter of simple logic there is no reason why the death of victims of political prejudice in extermination camps should not have been established and recorded in the usual way, those deaths having occurred under circumstances satisfying the normal requirements for death certificates, and even under the control of authorities. However, experience in all countries that have endured the ordeal of a totalitarian régime, goes to show that not only
had vital legal relations\textsuperscript{10} dependent upon the death of those millions who were missing, instituted proceedings involving declarations of death, in proportions almost amounting to a mass movement.

II. \textit{Differences between National Laws on Declaration of Death}

Proceedings connected with declarations of death were frequently hampered by manifold difficulties. These difficulties were largely due to the divergent concepts of such declarations, prevailing in the various legal systems.

1. \textit{The common law system.} The common law does not recognize any special procedure for a decision solely on the issue of death, independent of other legal relations in issue. At common law the presumption of death must be raised incidental to a pending proceeding in which the absentee's death is one of the issues.\textsuperscript{11} Whenever it is important in any particular action or proceeding to ascertain whether a person is dead or alive, this issue must be met and solved. The means thereto is, in absence of adequate proof of his death, the specific presumption that after seven years of unexplained absence a person is no longer alive.\textsuperscript{12} However, the legal effect of this pre-


\textsuperscript{11} U. S. Comments on Draft Convention on Declaration of Death of Missing Persons, ECOSOC Doc. E/1071/Add. 3. 3-5 (Feb. 11, 1949).

\textsuperscript{12} On the whole, the courts do not consider the mere fact of a seven years' absence sufficient to warrant the presumption of death. Something more is required: as a general rule a sincere and diligent search must have been instituted. In addition, some unusual facts, the circumstances of the disappearance or some other circumstances, must often be proved in order "to justify the inference that the death of the absentee is the probable reason why nothing is known about him." Matter of Sullivan, 130 Misc. 501, 502, 224 N. Y. Supp. 442, 444 (Surr. Ct. 1927). New York courts tend towards a strict interpre-


The establishing of a period of seven years has been deemed arbitrary. 9 WIGMORE ON EVIDENCE §2531b (3d ed. 1940); 5 FORT. L. J. 280; 6 FORT. L. J. 43 (1936). In some jurisdictions the period of absence of seven years —itself deemed arbitrary—has arbitrarily been reduced to five years: e.g., Arkansas [ARK. DIG. STAT. §§ 5120 (1937)] (for residents of Arkansas only); Indiana [IND. STAT. ANN. §§ 6-401, 6-402, 7-419 (Baldwin 1934)] (for the distribution of estates of residents only); New York (DOMESTIC RELATIONS LAW §7-a) (for the dissolution of marriage). The Uniform Absence of Evidence Property Act which eliminates the seven-year absence rule and substitutes as a criterion the individual circumstances of disappearance, has been adopted by only three states: Maryland [MD. ANN. CODE GEN. LAWS Art. 857, §1536 (1941)]; Tennessee [TENN. CODE ANN. §102 (Michie 1941)]; Wisconsin [WIS. STAT. §268, 22-34 (1943)]. The law of Louisiana (CIVIL CODE ANN. Arts. 51-75) also fixes a period of five years' absence. However, this law follows the French system discussed infra: the presumptive heirs of an absentee may be granted provisional possession, which after 30 years, ripens into absolute possession. The law of Louisiana (CIVIL CODE §§936-939) also follows the intricate system of a scale of presumptions of survival followed by the French law (FRENCH CODE CIVIL ARTS. 720-722). This was applied in the case of the Succession of Langles, 105 La. 39 (1900), which concerned a 52-year-old mother and her 35-year-old daughter who perished in the same shipwreck. Each had made a will in favor of the other. By means of the specific presumptions of the Louisiana law where differences as to sex and age are determinative of the artificial solutions of the questions of
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sumption remains entirely restricted to the pending action or proceedings in which it is invoked.

2. The system of a special and final declaration of death. The essential feature of such a system is the existence of special proceedings under special rules of practice which have as their sole purpose the attainment of a judicial decision of the declaration of death of a missing person, based on unexplained absence for varying periods, depending on the absentee's age and the kind of peril, if any, to which the absentee was exposed at the time of his disappearance. This period varies from country to country, and may also vary within a particular country. It is most frequently three, five or ten years. The period is generally shorter if the missing person was very old or if he was exposed to an enhanced danger. Under such a system applications may be filed by any interested person, and decisions must be preceded by periods of public notice. Once made, the decision, though rebuttable, is valid for all purposes, and fixes the time up to which the absentee is deemed to have lived and from which he is deemed to be dead. It is a quasi-judicial substitute for a death certificate.

The main difference between this system and that of the common law obviously lies in the fact that in common law jurisdictions some particular proceedings must be initiated (e.g. for the dissolution of marriage, or the distribution of an estate), and in them the death of an absentee may be established as incident thereto. The effects are, therefore, restricted to such proceedings, whereas, in the other system just discussed, a declaration of death cannot be established as an incident to other proceedings. Rather, special proceedings are

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13 Many countries (e.g., belligerent countries after both World War I and II) enacted special statutes after events involving mass-disappearances, under which missing persons could be declared dead by simplified proceedings and after shortened periods of absence and of public notice [see, e.g., Hungary, Government Order 28,000/1919, I.M. of Oct. 31, 1919, Government Order 12,200/1948, (1948) MAGYAR KÖZLÖNY, No. 267]. The main purpose of such rules was to avoid a protracted period of indecision regarding the fate of marriages and estates in the great number of cases where disappearance in war probably ended in death.

14 See VOGEL, VERSCHOLLENHEITSRECHT 15 (1949).
required which have no other purpose than that of declaring a missing person dead, and once such a decision has been rendered, it can be used for any purpose in any proceedings whatsoever. Thus, it has the same legal effect as the person’s death, or, as it is preferable to say, it takes the place of a death certificate.

This latter system has been adopted in Austria, Czechoslovakia, Finland, Germany, Greece, Hungary, Poland, Portugal, Rumania, Sweden, Yugoslavia, and with some qual-

15 For English translations of European statutes, see EUROPEAN LEGISLATION ON DECLARATIONS OF DEATH, compiled by the Office of General Counsel, European Headquarters, American Joint Distribution Committee, Paris (1949) (hereafter cited as EUROPEAN LEGISLATION).
19 Buergeliches Gesetzbu.ch §§ 13-20; 1 Strohal, Placces Kommentar zum Buergelichen Gesetzbuch 54 (1923); Law of July 4, 1939, (1939) I REICHS-GESETZEBLATT 1186. After World War II this law was amended in the states of the British Zone (Dec. 16, 1946), of the French Zone (Feb.-April, 1947) and of the U. S. Zone (Oct.-Dec., 1947). See EUROPEAN LEGISLATION 89-92. The situation in the Eastern Zone of Germany was more confused, since the courts there felt that the period of absence required to precede a declaration of death by Law of July 4, 1939, Section 4, had not yet begun to run and that consequently any application for a declaration of death would be premature. However, with Decree No. 15 of March 9, 1949, (1949) ZENTRALVERORDNUNGSBLATT DER DEUTSCHEN JUSTIZVERWALTUNG 124, “any participant of the war started by the Hitler-Government in 1939” and also any civilian with the German armed forces may be declared dead from August 1, 1949. See Vogel, op. cit. supra note 14, at 65-67.
20 Legislative Decree A69 of April 17/18, 1948.
23 Civil Code Arts. 346-348.
25 Civil Code ch. 8, §§ 1-7. See 1 Schlegelberger, op. cit. supra note 18, at 28.
26 Law of April 1, 1946, Art. 53. See EUROPEAN LEGISLATION 179.
3. The system of declarations of absence does not go so far as the system of a special and final declaration of death. In countries adhering to the system of declarations of absence, an absentee is not declared dead. However, under certain circumstances of disappearance and after a certain period of absence, special proceedings may be instituted with the sole purpose of obtaining a declaration of absence. Such declaration, while not generally depriving the absentee of his legal capacity, limits such capacity to a certain extent. It generally does not affect his personal status (e.g., marriage), but it does affect his property rights, and his assets are distributed upon such declaration as if he had died. The essence of such a decision is not to establish any presumption of death or survival. It leaves the question of life or death open, but it allows certain steps to be taken within the laws of property and inheritance, in the same manner as if the absentee were dead, or, at least, it gives the presumptive heirs provisional possession of his assets.

The countries adhering to this system are Belgium, France, and Switzerland. China, Japan, and Iceland are also reported to have adopted the concept.


28 Civil Code Arts. 32, 35-38, providing for declarations of absence only, such declarations having the effect of a declaration of death, however, as regards the termination of a marriage (Civil Code Art. 102).

29 See Vogel, op. cit. supra note 14, at 85, 178. The present writer had no opportunity to check the laws of the last named three countries from primary sources.

30 However, in view of the mass disappearances during World War II, some of the jurisdictions following this system have enacted auxiliary statutes on special and final declarations of death with effects limited to the absentees of that war.

31 In this respect Belgian law closely follows the French law (see infra note 32). The Law of Aug. 20, 1948, (1948) MONITEUR BELGE of Aug. 27, however, provides for possibility of declarations of death that are "equivalent to civil status documents" (Art. 7), such declarations being restricted to the cases of persons who disappeared between May 10, 1940 and Dec. 31, 1945.

32 CODE CIVIL Arts. 112-143 provide for a declaration of absence after four years from the moment the missing person was last heard of, with the effect of permitting provisional possession of the property by the presumptive heirs; such provisional possession maturing into final ownership after 30 years of absence or at the time the absentee attains the age of 100 years (Arts. 115, 120, 129). See 1 Planiol, TRAITÉ ELEMENTAIRE DE DROIT CIVIL 219, 347-348 (1915). However, with regard to certain victims of World War II, France seems to have adopted a mixed system and permits an application for declaration of death four years after the declaration of absence. Law of Sept. 22, 1942, amended by Ordinance of April 5, 1944. Ordinance No. 45/256 of Oct. 30, 1945. Law No. 46/855 of April 30, 1946, amending Arts. 87-92 of the CODE CIVIL empowers the competent departments of the French Government to issue declarations of death having "the same effect as a personal status
Israel,33 Luxemburg,34 Netherlands,35 Norway,36 and with some qualifications, Spain.37 It further seems that this system is in operation in Afghanistan, Egypt, Iran, Iraq and in some countries in Central and South America.38

4. The mixed system. This system embraces elements of both the system of final declaration of death and the system of declarations of absence. It provides for a declaration of absence as well as a declaration of death, both considered as basic institutions, so that the one is not auxiliary to the other, as is the case in some countries discussed under the former systems.

There are but a few countries which have adopted this mixed system. In such countries declarations of absence may be issued with effect on property rights if certain requirements are met, and declarations of death may be issued if certain other statutory requirements are met. As a rule, a declaration of death is not contingent upon a previous declaration of absence. The countries adopting this system are Denmark,39 Italy,40 and the U. S. S. R.41

34 Luxemburg, however, a country generally adhering to the French CODE CIVIL system, allowed declarations of death of war victims who may be supposed to have died between May 10, 1940 and Dec. 31, 1945. The new provisions resemble the concept of the system of special and final declarations of death.
35 Netherlands, having formerly dealt rather cautiously with the problem (Civil Code Arts. 50-73, 523-527), have adopted a more liberal viewpoint in regard to victims of World War I and II. Laws of March 26 and Dec. 4, 1920, (1920) STAATSBLAD Nos. 148, 864, and Law of June 29, 1925, (1925) STAATSBLAD No. 309. The same approach was adopted as to persons who left their residence between May 9, 1940 and June 1, 1945. Law of June 2, 1949, (1949) STAATSBLAD No. J 227.
37 Civil Code Arts. 193-197: declaration of death not extending to the personal status of the absentee.
38 See Vogel, op. cit. supra note 14, at 86, 178-179. The present writer had no opportunity to check the laws of the last named countries from primary sources.
39 Missing Persons Act, No. 397, of July 12, 1946, with special provisions for preliminary distribution of the estate even before declaration of death. §§ 16-24.
40 Civil Code §§ 48-68. Period of two years for a declaration of absence, independent of proceedings for a declaration of death. According to private information received by the writer, a bill dealing solely with the declarations of death of children has recently been introduced in the Italian Parliament.
41 Civil Code Art. 12 (1948). Period of one year for declaration of absence; period of three years (six months in case of military operations or of an accident) for a declaration of death. See also Vogel, op. cit. supra note 14, at 86, 179; Freund, Das Zivilrecht in der Sowjetunion 65-67 (1927); Maklezw, Das Recht Sowjetrußlands 258, 350 et seq. (1925).
III. Problems Arising in Cases Involving an International Element

The systems outlined above also present other differences. The reasons for such great variety probably lie in the fact that a declaration of death necessarily has a primary effect on marriage and inheritance, two relationships which for historical reasons are perhaps more deeply rooted in national history than any others. The treatment of these problems is beyond the scope of this discussion.

There are, however, difficulties in this legal field, which can possibly be solved on a broad international basis. There is little hope of achieving the unification of the principles governing the effects of declarations of death in all national laws. But an attempt at unifying certain procedural requirements and principles applicable to cases in which international relationships are involved, would appear to be within the realm of practical politics.

As regards this latter problem, the initial questions involved are (1) how is an application for the declaration of death of an alien treated in domestic law, and (2) what faith and credit is given to a declaration of death issued abroad. The latter problem comprises a number of further questions: does country A recognize a declaration of death issued in country B if the missing person was a national of country A? A national of country B? A national of country C? A stateless person? These questions may be further complicated according to the type of legal interest the missing person held in country A.

With regard to declaring aliens dead, a number of countries adhere to the principle of nationality. In these countries an alien cannot, except under very exceptional circumstances, be declared dead. Among the countries which were faced with the problem of declarations of death of missing persons on a particularly large scale, yet whose laws restricted declarations of death to their own nationals, are Austria,\(^{42}\) Czechoslovakia,\(^{43}\) Finland,\(^{44}\) and France.\(^{45}\) Other countries base jurisdiction not, or not solely, on the missing person's nationality, but on his last residence. This principle is

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\(^{42}\) § 12 of Law of July 4, 1939, (1939) I REICHSGESETZBLATT 1186 (see supra note 16), with qualifications in case the foreigner had a spouse who was a former Austrian national, or if he had property situate in Austria, or legal relations governed by Austrian law.

\(^{43}\) With some qualifications, Law No. 41 on Private International Law of March 11, 1948, published on April 10, 1948 (see supra note 17), §§ 3-6.

\(^{44}\) § 1 of Law of April 23, 1901 (see supra note 18), supplemented to include foreigners having served with the Finnish armed forces by §§ 1, 4 of Law No. 752 of July 27, 1945.

\(^{45}\) Ordinance No. 45/256 of Oct. 30, 1945 (see supra note 32), as amended by Law No. 46/855 of April 30, 1946. § 5 of Art. 88 of the CODE CIVIL as amended by Art. 1 of Law No. 45/256 of Oct. 30, 1945, permits the issuance by administrative authorities of a death certificate in the case of an alien who disappeared in French territory. This provision is liberally construed: In re Nussbaum, Tribunal Civil de Seine, April 25, 1947.
adopted in the common law system and, outside the common law area, in Belgium,\textsuperscript{46} Denmark,\textsuperscript{47} and Norway\textsuperscript{48} among others. The picture does not become clearer if we consider the various qualifications by which the basic concepts are modified in the national laws. As an illustration: a national of country $A$, whose last residence was in country $B$, disappears while serving with the armed forces of country $C$ in country $D$. He has property situated in country $E$ and a surviving heir in country $F$. It is a matter of pure chance whether none of the countries $A-F$, or some, or all of them have jurisdiction to declare the man dead. And there is a further problem, that of ascertaining the national law which the court should apply. Even in those countries whose national laws admit of declarations of death of aliens, it may depend on purely fortuitous circumstances whether the application for a declaration of death is granted or dismissed. It may well happen that proceedings instituted simultaneously in different countries will end in a declaration of death in one and a refusal to make such declaration in another. Again, the positive decisions rendered in different countries may establish different times of death. Considerable confusion and duplication may of course arise from such a situation.\textsuperscript{49}

Another urgent problem of international importance is that of the recognition of a foreign declaration of death in another country. In the case of the illustration given above the following question arises. Let us assume that one of the countries $A-F$, exercising its jurisdiction, has issued a declaration of death of the missing person. Various interests may require that the countries originally concerned, or even other countries, recognize such declaration of death as a document establishing the death of such missing person. But will they? There are countries which will under no circumstances recognize a declaration of death of their own national issued by a foreign court (\textit{e.g.} Austria,\textsuperscript{60} Hungary,\textsuperscript{61} Italy\textsuperscript{52}). Other countries leave

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\item \textsuperscript{46} Art. 1 of Law of Aug. 20, 1948 (see \textit{supra} note 31). Belgian nationality or residence in Belgium at the time of disappearance establish the jurisdiction of Belgian courts.
\item \textsuperscript{47} § 8 of the Missing Persons Act (see \textit{supra} note 39): jurisdiction based on last permanent residence, or in the absence thereof on last residence in Denmark with qualifications not here pertinent.
\item \textsuperscript{48} See Helweg, \textit{Note}, \textit{EUROPEAN LEGISLATION} 150.
\item \textsuperscript{49} Complications are further increased in the case of stateless persons for certain national laws are reluctant to declare such persons dead. It would seem that stateless persons were particularly affected by the problem under discussion during and after World War II. The number of such persons seems to have multiplied in the last decade due to more or less voluntary emigration coupled with measures of expatriation. See Weis, \textit{Preface}, \textit{EUROPEAN LEGISLATION} 7, 8.
\item \textsuperscript{50} See Sokal, \textit{Note}, \textit{EUROPEAN LEGISLATION} 20.
\item \textsuperscript{51} § 735 Civil Practice Act (1911:1) (see \textit{supra} note 21). For construction of the rule, see \textit{Note} by the present writer, \textit{EUROPEAN LEGISLATION} 120-122.
\item \textsuperscript{52} See \textit{EUROPEAN LEGISLATION} 120.
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the matter to the discretion of the trial court (e.g. Belgium\textsuperscript{53} Luxembourg\textsuperscript{54}). In many countries the problem is still under discussion (e.g. England\textsuperscript{55}, Netherlands\textsuperscript{56}, Rumania\textsuperscript{57}, Switzerland\textsuperscript{58}).

It seems that among the jurisdictions of this country, it has been mainly, if not exclusively, the New York courts that have been called upon to deal with declarations of death involving a foreign element. Prior to World War II a declaration of death issued by a German court was admitted in evidence.\textsuperscript{69} After World War II the courts, dealing with two different cases involving Latvian nationals who had been deported from Latvia (probably to Siberia) in June 1941, applied Latvian law and held that the circumstances attending the deportation and the time that had since elapsed (3 years) constituted circumstantial evidence sufficient to warrant the assumption that the deportees had died in the meantime.\textsuperscript{60} Two other cases were concerned with persons deported from France to extermination camps in eastern Europe. The courts, having taken judicial notice of the treatment which the Third Reich, prompted by racial prejudice, accorded to persons in concentration camps, received in evidence certificates of presumed death issued by the French authorities, without, however, deeming them to be conclusive evidence of death.\textsuperscript{61} In another case a Czechoslovak declaration of death was received in evidence.\textsuperscript{62}

The Court of Appeals of the State of New York passed upon the problem in the case of \textit{Goldstein v. National City Bank}.\textsuperscript{63} Adopt-

\textsuperscript{53} Arts. 8, 13 of Law of Aug. 20, 1948 (see supra notes 31 and 46).

\textsuperscript{54} See Bonn, \textit{Note}, \textit{EUROPEAN LEGISLATION} 134.


\textsuperscript{56} See Karlsberg, \textit{Note}, \textit{EUROPEAN LEGISLATION} 143-144.

\textsuperscript{57} See Schwefelberg, \textit{Note}, \textit{EUROPEAN LEGISLATION} 169.

\textsuperscript{58} See Schnitzer, \textit{Note}, \textit{EUROPEAN LEGISLATION} 176.


\textsuperscript{60} Matter of Jansons, 189 Misc. 554, 73 N. Y. S. 2d 685 (Surr. Ct. 1947); Matter of Gauds, 189 Misc. 861, 73 N. Y. S. 2d 779 (Surr. Ct. 1945).


\textsuperscript{63} 299 N. Y. 43, 48, 85 N. E. 2d 425, 426 (1949).
ing a less liberal view than was taken in the decisions of the lower courts referred to above, the Court of Appeals held that a Dutch decree directing the recording of a document which certified that the missing person had died in a concentration camp in Poland, was insufficient proof of death.  

Cases involving a foreign element became frequent during and after World War II. The complexities which stemmed from such cases soon gave rise to the need for some analysis of the subject.

IV. International Action Prior to the Convention

The Preparatory Commission for the International Refugee Organization (PCIRO), on May 9, 1948 in Geneva during the sixth part of its first session, adopted a resolution on action with a view to the international coordination of procedure for declarations of death.

In a communication to the Secretary-General of the United Nations dated June 3, 1948, the Executive-Secretary of the PCIRO requested that the item “Action for the solution of legal difficulties arising from the absence, due to war events or persecution, of persons whose death cannot be conclusively established” be placed on the agenda of the seventh session of the Economic and Social Council of the United Nations (ECOSOC). This communication was accompanied by a memorandum discussing the reasons and emphasizing the importance of international cooperation on the problem.

The ECOSOC considered the question at its seventh session in July-August, 1948. Since, as pointed out above, the initial step was taken by the PCIRO, the representative of the United States felt it necessary during this session to emphasize that the problem was not limited to refugees, but affected the relatives of all those who disappeared during the war. The majority having agreed on the necessity of international action, the ECOSOC adopted a resolution.

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64 The daughter and administratrix of the missing person brought discovery proceedings against the defendant bank. The Court of Appeals emphasized the possibility of the reappearance of the absentee and followed Scott v. McNeal, 154 U. S. 34 (1894), where it was held that the distribution of the property of an absentee became unconstitutional upon his reappearance, he having been deprived of his property without due process of law. A subsequent decision of the United States Supreme Court, Cunnius v. Reading School District, 198 U. S. 458 (1905), held that a statute providing for such distribution was not unconstitutional if it provided for notice to and protection for the absentee. See also note 4 supra. In the Goldstein case the Court of Appeals held that if the absentee was alive he had no notice of the discovery proceeding. For a discussion of Goldstein v. National City Bank, see Szabad and Blum, supra note 22, at 589-591.


66 E/824.
on August 24, 1948,\textsuperscript{67} which recognized that the problem was urgent and might best be solved by an international convention. It requested the Secretary-General of the United Nations to prepare a draft convention in collaboration with the PCIRO \textsuperscript{68} and the other competent organizations.

Complying with this request, the Secretary-General of the United Nations, after consultation with the competent organizations prepared a draft convention and transmitted it to member governments for comment on October 20, 1948.\textsuperscript{69}

The ECOSOC, at its eighth session adopted an amended proposal of the United Kingdom \textsuperscript{70} which called for the establishment of an \textit{ad hoc} committee composed of seven members of the United Nations. This \textit{ad hoc} committee was to study the draft convention prepared by the Secretary-General and to prepare a draft convention or to draft any other proposals in case it did not consider the drafting of a convention practicable. This committee \textsuperscript{71} met at Geneva from June 7 to June 21, 1949 and prepared a draft for submission to the ECOSOC at its ninth session.\textsuperscript{72}

The ECOSOC at its ninth session considered the report of the \textit{ad hoc} committee. On August 9, 1949, it adopted a resolution \textsuperscript{73} recognizing the urgency of the problem and requesting the Secretary-General of the United Nations to transmit the draft convention and other material to member governments immediately. The General Assembly was advised to consider the draft convention during its fourth session.

The sixth committee of the General Assembly (fourth session), stressing the importance of internal measures in the national laws, prepared a report, which was considered by the General Assembly on December 3, 1949. The representative of Denmark felt that the report of the sixth committee was not adequate and submitted a proposal, which called for an international conference. This proposal, together with the amended draft resolution, was adopted by twenty-nine votes to one with fifteen abstentions. The resolution called for an international conference of the representatives of governments to be held not later than April 1, 1950, with a view to concluding a multilateral convention on the subject.\textsuperscript{74} The draft convention was referred to member states and upon the instructions received by the

\begin{itemize}
  \item \textsuperscript{67} No. 158/VII, E/1029 (Aug. 26, 1948).
  \item \textsuperscript{68} Which on Aug. 20, 1948, became the International Refugee Organization (IRO).
  \item \textsuperscript{69} E/1071 (Oct. 26, 1948).
  \item \textsuperscript{70} 209(VIII) (March 2, 1949).
  \item \textsuperscript{71} Composed of representatives of Brazil, Denmark, France, Lebanon, Poland, U.S.S.R. and United States.
  \item \textsuperscript{72} E/1368, E/Ac 30/47 (June 21, 1949).
  \item \textsuperscript{73} 249(IX). See note by the Secretary-General of the U.N. A/999 (Sept. 27, 1949).
  \item \textsuperscript{74} 369(IV) (Dec. 3, 1949).
\end{itemize}
General Assembly the Secretary-General issued invitations to all member governments to attend the Conference.

The Conference met at Lake Success from March 15 to April 6, 1950, and the governments of twenty-five states were represented by delegations. The governments of another six states and the IRO were represented by observers. During the three weeks the Conference met eleven times and a drafting committee appointed by the Conference simultaneously held fifteen meetings. The result of these deliberations was a Final Act and the establishment of an international Convention on Declaration of Death of Missing Persons, signed on April 6, 1950.

V. Analysis of the Convention on the Declaration of Death of Missing Persons

The Convention, consisting of twenty articles, has two main objectives: (1) to facilitate issuance of declarations of death of missing persons by affording a convenient choice of tribunals, and (2) to provide for the recognition of declarations of death made under the Convention by other states who are parties to the Convention.

The main provisions of the Convention are as follows:

1. Effects of declarations of death. The basic idea of the Convention is that each contracting state is obligated to recognize declarations of death of certain specified categories of missing persons issued within the framework of the Convention in another contracting state.

Article 5, paragraph 1, of the Convention establishes the degree of such recognition. Declarations of death issued in conformity with the present Convention in one Contracting State shall constitute in the other Contracting State prima facie evidence of death and the

75 Belgium, Bolivia, Brazil, Burma, China, Cuba, Denmark, Ecuador, France, Greece, India, Israel, Netherlands, Nicaragua, Pakistan, Peru, Philippines, Sweden, Syria, Turkey, United Kingdom, United States, Uruguay, Venezuela, Yugoslavia.
76 Canada, Egypt, Ethiopia, Iran, Mexico, Thailand. As it appears, neither the U.S.S.R., nor the government of any other country of the Soviet bloc attended the Conference, either as participants, or as observers. The representative of Poland, Byelorussian S.S.R. and the U.S.S.R. consistently opposed the conclusion of an international convention in the course of the preliminary negotiations referred to above. For the attitude of Yugoslavia, see infra note 92.
77 Signed by 21, out of 25, delegates present on April 6, 1950. Those not present signed the Final Act later.
78 Accepted by 20 votes to 0, with one (Yugoslavia) abstention.
80 See Maktos, United Nations Conference on Declaration of Death of Missing Persons, 23 DEP'T STATE BULL. 264, 266 (1950).
81 See Nisot, LA CONVENTION DU 6 AVRIL 1950 CONCERNANT LA PREUVE DU DECES DES PERSONNES DISPARUES AU COURS DES ANNEES DE GUERE 3 (1950).
NOTES AND COMMENT

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date of death until contrary evidence is submitted.” This final text of the Convention, in recognizing declarations of death as “prima facie evidence” only, remains far behind the preliminary drafts, with their much broader provisions.

The Convention sets no time limit for submitting contrary evidence to rebut the effect of prima facie evidence accorded to the declaration of death in the Convention. Such evidence may be produced at any time and may result first of all from the reappearance of the absentee. In view of the rather limited effect of declarations of death under the Convention, a special corrective provision is contained in Article 5, paragraph 2, to the effect that the contracting states may by special arrangement grant broader effects than those provided for in paragraph 1 of the same article. This provision would appear to represent the result of a compromise between two conflicting positions: unqualified mutual recognition of the validity of declarations of death on the one hand, and limited recognition of their effects, as provided in the final text of the Convention, on the other. 82

2. Categories of missing persons under the Convention. The Convention does not provide for a declaration of death system of general international application. It does not affect every declaration of death that may be issued by a contracting state. On the contrary, it expressly limits its application to cases well-defined as to the time, the place, the background, and the circumstances of disappearance. Article 1, paragraph 1, states that the Convention provides for declarations of death of those persons whose last residence was in Europe, Asia or Africa, and who have disappeared in the years 1939-1945, “... under circumstances affording reasonable ground to infer that they have died in consequence of events of war or of racial, religious, political or national persecution.” (Art. 1, par. 1).

The representative of the United States pointed out at the Conference, that he wanted it understood that the word “persecution” as used in Article 1, paragraph 1, covers the idea of “mass persecution

82 Compare the French official version of the Convention “... font foi jusqu'à preuve du contraire...”

83 The Convention solves the problem in a cautious manner, by granting foreign declarations of death recognition as prima facie evidence only, and denying them the full effect of a domestic decree. The reasons that the Convention did not go beyond this are to be found in the compromising tendency governing the Conference, which aimed at the widest possible acceptance of the Convention; in the differences existing between national laws; and in the problems inherent in the idea of a declaration of death itself. It seems that in adopting this wording the Convention has created almost as many problems as it has solved for by granting the effect of a prima facie evidence only, it leaves the construction of the effect of a prima facie evidence entirely to the national laws.

84 “... members of armed forces serving in Europe, Asia or Africa shall not, by reason only of such service, be considered as having had their residence in those continents.” (Art. 1, ¶ 1).
in a country.” There was no opposition to this construction and it was placed on the record.\textsuperscript{85}

Article 1, paragraph 2, further provides that the contracting states may, by notification to the Secretary-General of the United Nations, extend the application of the Convention to persons who disappeared after 1945 under similar circumstances and that such extension shall apply only as between those states which have made such notification. It is obvious that the intention of this article is to define with final effect the class of missing persons in whose cases the provisions of the Convention shall apply. These limits seem to be clear enough, at least as regards the criteria of last residence\textsuperscript{86} and of the circumstances under which the persons concerned disappeared.\textsuperscript{87} The time limits laid down by the Convention, however, are less definite. Article 1, paragraph 1, merely applies to missing persons who disappeared in the years 1939-1945, thus substantially restricting the effect of the Convention to those who disappeared during World War II; and since the summary wording “years 1939-1945” does not cover precisely the period of World War II, the Convention apparently applies to all those who disappeared in connection with the upheavals immediately preceding and immediately following the war. This means that the Convention excludes from its scope all people whose disappearance has no connection whatsoever with political events (war, persecution), such as the victims of earthquakes, airplane crashes and shipwrecks outside the war areas. A possibility of indefinite extension in time is implied in Article 1, paragraph 2, with respect to cases of missing persons who disappeared after 1945, though the practical effects of such extension appear to be restricted (see also 10 “Duration” \textit{infra}). No such extension is provided for by the Convention in respect of persons who disappeared prior to 1939, but such retroactive extension would in any case have been in practice of very limited importance.

3. \textit{Authorities competent under the Convention to issue declarations of death.} Article 2 contains an exhaustive enumeration of the tribunals which are competent \textit{ratione loci} to issue declarations of death. The article further provides that the term “tribunal” as used in the Convention, shall apply “... to all authorities empowered \textit{ratione materiae} to determine the fact of death under the governing

\textsuperscript{85} See Maktos, \textit{supra} note 80, at 266.

\textsuperscript{86} Europe, Asia or Africa. The mere fact of service with armed forces on these continents does not establish such residence. Consequently, United States citizens cannot be affected by the Convention, unless their last residence has been in one of these continents and, of course, unless they are involved not as missing persons, but rather as applicants for declarations of death.

\textsuperscript{87} Circumstances affording reasonable ground to infer that death ensued in consequence of events of war or of racial, religious, political or national persecution—the last word (persecution) being understood as “mass persecution in a country.”
domestic law.” (Art. 2, par. 1). The tribunals that shall be competent *ratione loci* are alternatively the tribunal of the place of the last domicile of the missing person, or the tribunal of his last voluntary or involuntary residence. Further alternative criteria upon which the jurisdiction of the courts may be based are nationality, *situs* of property, place of death, and place of domicile or residence of the applicant.

By Article 2, paragraph 4, “When an applicant has applied to a tribunal considered by him as competent under the preceding paragraphs of the present article, he shall not be entitled to make a subsequent application to another tribunal unless he has withdrawn his first application before judgment has been rendered or unless the first tribunal does not regard itself as competent to deal with the application.”

4. Application for declaration of death. Article 3 rules that any competent tribunal must issue a declaration of death of a missing person, provided that the conditions of Article 1, paragraph 1 (see above) are met, provided that at least five years have elapsed since the last known date on which the person was probably alive and provided further that in the course of the proceedings public notice, reasonably designed to afford the absentee an opportunity to make known that he is alive, has been given. Article 3 further provides that proceedings may be instituted upon application of any natural or juridical person having a legal interest in the matter, or

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88 It seems that this definition covers not only judicial tribunals, but any other, namely, administrative authorities of jurisdiction in the domestic law.

89 Involuntary residence: e.g., concentration camps, areas of deportation, etc.

90 Ascendants, descendants, adopted children and their issue, brothers, sisters, and their issue, uncles, aunts, spouse. (Art. 2, ¶2.) It would seem that the domicile or residence of the applicant is an unusual and heretofore unknown basis for the competency of a tribunal in declaration of death matters. It would mean that, e.g., a person deported from Denmark to Poland could be declared dead upon application of a relative who happens to live in Pakistan, by a Pakistani court. In addition to considerations of convenience, a reason for such extension of the competency *ratione loci* seems to be the fact that because of currency restrictions introduced throughout numerous countries, relatives living in certain countries were by law forbidden to transmit the amounts needed for declaration of death proceedings (attorney’s fees, costs of search, documents, etc.) to be introduced in another country.

91 Since under the Convention United States state courts would have been competent and also obligated to issue declarations of death, the representative of the United States, in order to avoid difficulties that might result from this provision, suggested, that any contracting state should have the authority to designate one or more tribunals to which the competence of issuing declarations of death with respect to the preceding paragraph could be transferred. This suggestion was accepted. (Art. 2, ¶3.)

92 An amendment of the Yugoslav representative, suggesting that certain tribunals be given priority, was rejected by the Conference. Thereafter the representative of the Yugoslav Government abstained from voting on the Convention as a whole, but signed the Final Act of the Conference.

93 See Art. 2 discussed in 3 *supra*.

94 Art. 3, ¶2, contains an enumeration of legal interests within the meaning
5. Date of death. "In issuing a declaration of death, the competent tribunal shall determine the date and the time of death, taking into consideration any evidence or indication regarding the circumstances or the period in which death occurred" (Art. 4, par. 1). In the absence of such evidence or indication, the date of death shall be fixed at the date of disappearance (Art. 4, par. 2), which shall be the date of the last known indication of the existence of the missing person. Such last known indication shall be determined by facts brought to the tribunal's attention and, in particular, by the last news of the missing person (Art. 4, par. 3). If there is no evidence regarding the time of death, it shall be declared to have taken place at the last moment of the declared day of death (Art. 4, par. 4).98

6. Declarations of death issued prior to the Convention. The Convention naturally affects only such declarations of death as are issued after it becomes operative. Under Article 6, however, if in the territory of a contracting state a competent tribunal, having issued a declaration of death prior to the Convention, certifies that such declaration of death satisfies all the requirements of Articles 1-3 of the Convention, the declaration of death shall have the same validity in the territory of the contracting states, as if it had been issued under the Convention. It seems that the Conference did not of this article: (a) interest in the missing person's estate, other than that of a creditor; (b) interest (other than that of a creditor) in property the devotion or distribution of which may depend either on the survival or death or on the date of death of the missing person; (c) personal status affected by survival or death of the missing person; (d) desire to adopt the minor children of the missing person. This last category (desire of adoption), although very practical, seems to extend the concept of "legal interest" far beyond its normal scope.

95 For instance, a competent department of the government.

96 This will not seem so unusual when it is recalled that, according to Article 2, paragraph 1, administrative authorities may under certain circumstances become competent to issue declarations of death.

97 In the French version of the Convention: "... l'heure..."

98 The draft convention of the ad hoc committee provided that in the absence of any other indication, the tribunal should establish as the date of death the last day of the year, during which death probably occurred. This date, however, should have no effect in causing the lapse of an insurance policy for non-payment of premiums during that year. This special provision as to effects on insurance policies was suggested by the representative of the United States Government in order to avoid a forfeiture of insurance policies, which, in the absence of special statutory amendments, could have occurred if the insured person had disappeared in the course, and even at the beginning of a year, and had discontinued the payment of premiums. This special provision concerning insurance policies became superfluous and was eliminated, since under the final text it is not the last day of the year but the date of disappearance which is established as the date of death. See Maktos, supra note 80, at 267.
intend to withhold the benefits of the Convention from the very numerous declarations of death that have been issued in many states during, after and in connection with World War II.

There is no contradiction between the provisions of Article 6, outlined above, and Article 7, which states that the Convention shall not be construed as impairing the force or the res judicata status of final declarations of death issued before the effective date of the Convention.

7. International Bureau for Declarations of Death. Articles 8 and 15 provide for the establishment of an International Bureau for Declarations of Death within the framework of the United Nations. This Bureau shall also be entitled to receive from governments or individuals authenticated copies of declarations of death of missing persons, issued before the entry into force of the Convention. This provision has nothing to do with the rule of Article 6 (applicability of the Convention to previously issued declarations of death if adequately certified)\(^9\) since here there is no question of specially certifying a previous declaration of death in order to bring it under the provisions of the Convention. The purpose of the provision is simply to increase the effectiveness of the Convention and to ensure the efficient working of the Bureau by providing it with adequate material, thus enabling it to be fully informed of all declarations of death made in the different contracting states, and, finally, to eliminate duplication of proceedings.

Article 15 requires the approval of the General Assembly of the United Nations to the establishment of the International Bureau. It has been held that Articles 8 and 15 amount to an offer made by the contracting states to the United Nations, asking for the latter's cooperation in the establishment of the Bureau.\(^10\) The report of the Secretary-General on the Convention is included as item 48 on the agenda of the Fifth Regular Session of the General Assembly, which opened at Flushing Meadow on September 16, 1950, and it may be that the question of the establishment of the Bureau will be raised on that occasion.

8. Communication of applications. Any tribunal to which an application for a declaration of death is made or which has initiated such proceedings on its own motion (Art. 3, par. 1) shall within 15 days communicate to the Bureau the particulars of the application as detailed in Article 9. These particulars include the missing person's name, place and date of birth, habitual residence, last known voluntary or involuntary residence, information as to nationality and last known date of having been alive, names and addresses of the closest relatives and of the applicant, the applicant's interest in and

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9 See discussion under 6.
10 NiSOT, op. cit. supra note 84, at 7 n. 1.
relationship, if any, to the missing person, and finally the date of institution of the proceedings.

If the Bureau finds that proceedings are already pending before another tribunal, it immediately will notify the tribunal to which the later application has been made. Such tribunal is to suspend its proceedings pending a final decision by the other tribunal, and is to notify the tribunal to which the first application has been made about the subsequent application (Art. 9, par. 2).

9. Publication and communication of decisions. A tribunal issuing either a positive or a negative decision under the Convention shall communicate it to the Bureau within 15 days from the date on which such decision became final (Art. 10, par. 1). The Bureau shall publish periodically lists of all applications, final decisions and certifications (under Art. 6101) which are communicated to it and also declarations of death which it has received under Article 8, paragraph 4.102 It shall also notify any close relatives whose names have been communicated under Article 9, paragraph 1, of applications, decisions, and certifications.103 Finally, the Bureau shall transmit to any tribunal in which application has been filed for a declaration of death the reasons for any previous denial of the declaration of death of the same person by any other tribunal (Art. 10, par. 2).

Article 10, paragraph 4, contains a provision corresponding to Article 8, paragraph 4,104 and equally designed to insure an efficient information service. According to this paragraph, if a final declaration of death is under reconsideration in the country where it was issued under the Convention, the application for reconsideration and the decision which will be rendered thereon shall be subject to Article 10, paragraphs 1 and 2.105 This provision applies also to certified cases under Article 6 (Art. 10, par. 4).

Another rule prohibits the issuance of a declaration of death under the Convention until the expiration of three months from the publication of the application by the Bureau (Art. 10, par. 3). This provision is intended to provide a sufficient period of time for interested persons to react to the publication.

10. Duration. The Convention shall be valid for a period of five years from the date of its entry into force106 (Art. 17, par. 1). However, proceedings initiated during, but not concluded before, the expiration of the validity of the Convention may be continued and the effects of final decisions in such proceedings will be the same as

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101 See discussion under 6.
102 See discussion under 7.
103 See discussion under 8.
104 See discussion under 7.
105 See preceding paragraphs of this discussion.
106 Which according to Art. 14 is the thirtieth day following the day of deposit of the second instrument of accession by any state (Art. 13).
if they had been rendered before the expiration of the Convention (Art. 17, par. 2).

11. **National laws. Reservations.** The Final Act of the United Nations Conference on Declaration of Death of Missing Persons contains this statement placed on record at the request of some delegations: “All matters not specifically dealt with by the Convention including the question of reappearance of missing persons, remain within the domain of the domestic law of the Contracting States; ...” This again shows with what respect national laws are treated by the Convention. The same respect is manifested in the rule under which any state may subject its accession to the Convention to reservations, which may be formulated only at the time of accession (Art. 19). This seems a somewhat unusual clause. Its wording is the result of an extensive debate concerning such reservations.\(^{107}\) If a contracting state does not accept such reservation, it may, within 90 days after the Secretary-General of the United Nations has transmitted the reservations to it, notify the Secretary-General that it considers the accession not in force between itself and the state having made the reservation (Art. 19).

12. **Settlement of disputes.** Disputes between the contracting states relating to the interpretation or application of the Convention, if not settled by other means, shall be referred to the International Court of Justice (Art. 18). This provision is intended as an effective guaranty against arbitrary interpretation on the part of any contracting state and is a means of efficiently pursuing the solution of practical difficulties, which may arise in the course of the functioning of the Convention.\(^{108}\)

13. **Other provisions** of the Convention deal with letters rogatory,\(^{109}\) with free legal aid and the exemption from costs,\(^{110}\) with the accession to the Convention,\(^{111}\) with notifications by the Secretary-

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\(^{107}\) See Maktos, *supra* note 80, at 270.

\(^{108}\) See Nisot, *op. cit. supra* note 81, at 11.

\(^{109}\) Art. 11: relating to proceedings under the Convention in accordance with domestic law and with agreements transmitted by usual methods or through the Bureau.

\(^{110}\) Art. 12: granted to aliens only in the case of reciprocity, indigent applicants are exempt from the requirement of posting security for costs which are imposed on aliens alone.

\(^{111}\) Art. 13: the Convention is open for accession by (a) member states of the United Nations, (b) non-member states which are parties to the Statute of the International Court of Justice, (c) other non-member states to which an invitation has been addressed by the ECOSOC passing upon the request of the state concerned. There was an exchange of opinions between the delegates of Belgium, Netherlands, United Kingdom and United States on the meaning of the word “state” under the Convention, in view of the fact that the Netherlands and the United Kingdom customarily consult with some of their overseas territories before accepting international obligations on behalf of them. Finally the amendment supported by the representative of the United States was
General of the United Nations, which are required under the Convention, and with the deposit of the Convention and the languages of its authentic texts.

VI. Summary: Significance of the Convention

Any attempt at evaluating the Convention as a whole must start from the limitations it sets upon itself. In other words, in order fully to appreciate what it includes, it is necessary to realize what it excludes from its province. Some important restrictions have already been pointed out in part V of the present note.

The Convention is limited in scope. It does not provide for a uniform international system of declarations of death, nor did its authors intend to lay the foundations for such a system. The Convention merely facilitates certain types of applications for declarations of death, and provides for some measure of extraterritorial effect of such declarations. It does not apply to all factual circumstances that may give rise to a declaration of death, but is restricted to cases that have a political background (warlike events or mass persecution).

The Convention is limited in effect. It does not afford full extraterritorial effect to declarations of death made under it, but merely provides for their recognition as prima facie evidence.

The Convention covers a limited period of time. It is primarily applicable to cases of disappearance during World War II. And here, it may have come too late, large numbers of such cases having already been passed upon by the courts of various countries. Moreover, the Convention shall be valid for five years only.

Finally, the Convention has a limited area of operation. On the one hand, it applies only to cases of disappearance in Europe, Asia and Africa. On the other hand, it excludes in practice all states not members of the United Nations or not within the categories of Article 13 (see note 111). Hence it tends to exclude from its operation the states defeated in World War II (which are, of course, the countries most concerned in the matter) and some states that were neutral during World War II. In addition, the Convention does not, of course, operate in the states that are not parties to it.

We are thus faced with a Convention of limited scope and effects. As pointed out above, the Conference felt that were the scope of the Convention too broad, the chances of adoption by many governments would be reduced.

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112 Art. 16.
113 Art. 20.
In spite of this the Convention may be regarded as a document of considerable practical and moral significance.

As to its practical value: despite the limitations listed above, it is estimated that there still remain a considerable number of cases in which the Convention will serve as the sole means of attaining the ends of justice. There are still many people who can benefit by the Convention, and it will enable them to solve long-delayed problems of marriage, adoption, and property.

The theoretical significance and moral value of the Convention is still greater. The Conference which adopted the Convention was the first conference of states called by the General Assembly of the United Nations itself, and the Convention was the first within the framework of the United Nations, the subject of which did not fit into the customary classifications of United Nations' problems. The declaration of death of missing persons would appear to be strictly a problem in private law.\(^ {114} \)

The Convention thus constitutes a first step in various directions. Such first steps may sometimes have but a limited practical value: their true importance lies in the fact of their being first steps. In this regard the Convention certainly possesses a far-reaching moral value. It is a moral tribute paid by the United Nations and its member states to the victims of hatred and misery, of slave labor, mass killing and extermination. Looked at from this angle, the Convention is a grim reminder of the unparalleled tragedies of modern warfare and of political bias and prejudice. In order to help survivors of the millions who disappeared in World War II, at least some measure of international cooperation has been reached in the Convention. Doubtless this is a step forward sincerely to be welcomed.

Andrew Friedmann.*

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THE HUMAN RIGHTS PROVISIONS OF THE U.N. CHARTER AND LOCAL COURTS

Introduction

The international law of the past—a system of jural relations between absolute sovereigns—may be entering upon a new era; one in which rapid sociological and economic changes are acknowledged

\(^ {114} \) See Opening Address by the Assistant Secretary-General, Ivan Kerno, at the Conference on March 15, 1950. A. Conf. 1/Sr. 1 at 3 (March 15, 1950).

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