EXPLANATORY REPORT

Adopted by the General Assembly in Rome on 6 September 1984

A. GENERAL REMARKS

The international status of refugees is governed by the Convention signed at Geneva on 28 July 1951, as amended by the Protocol of 31 January 1967 relating to the Status of Refugees. These instruments define the term refugees and regulate the rights and duties of refugees resident in the territory of the Contracting States.

Article 25 of the Convention deals with the administrative assistance to be afforded to refugees and provides,*inter alia*, that:

" **1.** When the exercise of a right by a refugee would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting States in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities or by an international authority.

2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities.

3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities, and shall be given credence in the absence of proof to the contrary."

These provisions are of great importance for refugees since they enable them to obtain, from the authorities of their country of asylum, the documents which they need and particularly documents replacing copies of or extracts from civil status records which, on account of their refugee status, they cannot obtain from their national authorities. Indeed, it was because the ICCS was aware of the practical importance of this measure that, in its Recommendation No. 1, adopted by the General Assembly on 6 September 1967, it invited the member States to confer the necessary powers on authorities responsible for issuing to refugees documents serving as civil status records and to take the steps needed in order, on the one hand, to allow direct contacts between the authorities concerned and, on the other hand, to ensure that the documents so issued would be internationally recognised.

It appeared that the mechanism set up in the various States to give effect to Article 25 of the 1951 Convention would be more efficient if closer international co-operation could be organised that would enable information on the civil status and identity of refugees who have resided in several States in turn to be collected and verified.

Such is the aim of the present Convention.

There already exists, of course, a European Convention on the Obtaining Abroad of Information and Evidence in Administrative Matters, done at Strasbourg on 15 March 1978. It should, however, be noted that the scope of that Convention is very broad, with only fiscal and criminal matters being in principle excluded; moreover, it does not take into account the special situation of refugees which, in some cases, calls for great caution in the disclosing of information. Besides, the European Convention specifies, in Article 12, that it does not affect existing or future agreements between Contracting States which relate to similar matters.

As well as setting up international co-operation, the present Convention exempts from any legalisation or equivalent formality, such as an ad hoc certificate (apostille), documents concerning the identity and civil status of refugees that emanate from the authorities of their country of origin. Although such a provision is not directly related to the principal object of the Convention, it nevertheless falls within the framework of the application of Article 25 of the Convention of 28 July 1951, and especially paragraph 1 thereof.

B. COMMENTARY ON THE ARTICLES

Article 1

This Article deals with the organisation of consultations between States with a view to gathering the information on the identity and civil status of refugees that is required before documents designed to replace civil status records can be issued.

Under paragraph 2 of Article 25 of the 1951 Convention, it is the refugee's State of residence that is responsible for issuing those documents. Article 1 of the ICCS Convention specifies that it is a question of â€œregularâ€ residence, namely residence that complies with the law or regulations in force and is generally evidenced by a residence permit. It thus falls to the State in whose territory the refugee is so resident to gather, by appropriate enquiries, the information required to enable it to draw up the document requested, that is to say a document or a certification relating to the refugee's civil status, to his or her situation or to the composition of his or her family.

When the refugee has previously resided in one or more other States, it is desirable to obtain from them precise details on the identity and civil status under which he or she was registered there by the competent administrative authority; such information does not imply that the refugee was authorised to reside in the requested State. This is because foreigners who have recently fled from a country where they fear persecution and find a first place of asylum, albeit temporary, in a State are generally interrogated there by its competent authorities. The information that they give on that occasion is extremely valuable and often more correct than the information given later, sometimes several years after leaving their country.

Article 1 accordingly entitles the State of current residence to contact the State of previous residence in order to obtain the information it needs. However, paragraph 2 stipulates that such a request may never be submitted to the refugee's State of origin, namely the State of which he or she is a national or, in the case of a stateless person, the State where he or she was resident and has a well-founded fear, under the terms of Article 1 of the Convention of 28 July 1951, of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion. Furthermore, the State of residence must refrain from sending such a request for information whenever doing so could affect the safety of the refugee or members of his or her family.

Finally, paragraph 3 of Article 1 provides that information obtained in pursuance of the Convention cannot be used for purposes other than the drawing up of identity or civil status documents.

Article 2

Under this Article, the request for information is to be made by means of a multilingual form a model whereof is appended to the Convention. The form may contain solely information concerning the identity and civil status of the refugee and his or her family. The current State of residence will indicate therein the information in its possession, which it is asking the State of previous residence to verify.

The request and the information it contains may be transmitted either directly between the authorities designated for this purpose by the Contracting States or through diplomatic or consular channels.

After verifying that the information in the request is correct and, if appropriate, inserting therein any different information in its possession, the competent authority of the requested State will return the form, duly dated and signed and bearing its seal, to the requesting State. These steps are to be carried out free of charge and in the shortest possible time.

The requested State will, however, refrain from supplying the information requested when it considers that communication thereof would run counter to its public policy; this would be so if, for example, disclosure was prohibited by its laws on the protection of private life. It will likewise decline to provide information that would be liable to jeopardise the safety of the refugee or members of his or her family.

Article 3

This Article provides that each State shall designate the authority empowered to request and to provide the information in question. In principle, this should be a central authority, which will be better placed than a local authority to assess the refugee's situation and identify the precautions that have to be taken. However, federal States have the option of designating several authorities for this purpose. The European Convention of 15 March 1978 also makes provision for such designation, which affords a guarantee of proper implementation. Of course, the designation of the authority in question does not necessarily mean that it is itself empowered to issue the identity or civil status papers requested by the refugee.

Articles 4 to 7

These Articles describe the form and are based on the corresponding provisions in other ICCS Conventions envisaging the use of multilingual forms.

Article 7 exempts the form from any legalisation; it is sufficient that it be dated and signed and bear the seal of both the requesting and the requested authority.

Article 8

Finally, as mentioned above, civil status and identity documents produced by refugees and issued by the authorities of their States of origin are, under this Article, exempted from any legalisation or equivalent formality. Besides, this is the practice in the majority of countries, on account of the material difficulties that refugees would encounter in obtaining the traditional legalisations.

Articles 9 to 15

These Articles contain the final clauses of the Convention. It is to be noted that, in addition to the member States of the ICCS, the member States of the Council of Europe and of the European Communities may accede to the Convention.

THE FORM

The form appended to the Convention comprises, on the front, three distinct parts:

– in the first part the requesting State is to indicate the refugee's place and period of residence in the requested State; it goes without saying that the said place and dates should be as precise as possible, so that the person concerned can be identified and the information requested can be sought; accordingly, either the full address (town, road, numberâ€¦) or, for example, the name of the camp should be given; there are also spaces in this part to indicate the requesting and the requested authorities (name and address);

– the second part contains five columns. The first of these, printed in advance, includes the number and then the nature of each item of information. These can only be items of information that concern the refugee and his or her current spouse and children. If a marriage has been dissolved or annulled, the identity of the spouse whose marriage has been annulled or dissolved is to be indicated. In case of repudiation the symbol Div is to be inserted. The second column is reserved for the requesting State; it will indicate therein, for each item of information, the particulars in its possession which it wishes the requested State to verify. The last three columns are designed to enable the requested State to indicate the result of its researches, namely that its own information corresponds to that inserted by the requesting State (column 3), or that it has no information (column 4), or finally that it has other information. In the first two cases it will simply put a cross opposite each item of information; in the last case, it will indicate the information in its possession.

In the event that, in accordance with Article 2 of the Convention, the requested State considers that it cannot provide all or part of the information requested, it will score through the corresponding space or spaces; if the requested State has been unable to identify the refugee, it will simply return the form to the requesting State after putting a cross in the fourth column, opposite the items "name" and "forenames".

– in the third part of the form, the dates and signatures will be inserted and the seals of the competent authorities affixed. Finally, this part contains the symbols to be used in completing the form (sex, nationality, matrimonial situation).

The reverse of the form contains a reference to the Convention, as required by Article 6, paragraph 3, thereof, the translation of the standard headings appearing in the first column on the front and, finally, a summary of Articles 4 and 5 of the Convention.

* *
*

For practical reasons, the form is designed for a consultation involving only one spouse and three children per refugee. In the rather rare cases involving a polygamist, a second or even a third form should be joined to the first; the same will apply if the number of children exceeds three or if the refugee is known by two different identities. In these cases, each form must be numbered.

As regards the information to be given on the form, the competent authority of the requested State should ensure that it is entered very legibly, if possible with a typewriter, and that the spelling of names, forenames and places, capital and small letters and also the symbols indicated in the Convention are carefully followed.

The space after the indication of the symbol relating to the matrimonial situation is for the insertion of the date and place of the relevant event, be it a marriage, the spouse's death, the divorce, the separation or the annulment of the marriage.