

EXPLANATORY REPORT

Adopted by the General Assembly in The Hague on 9 September 1994

A. GENERAL REMARKS

The purpose of this Convention is to facilitate the international circulation and the understanding of civil status documents. It is intended to meet a number of needs. For some years now, non-member States of the International Commission on Civil Status have been showing increasing interest in the Organisation's activities and conventions. Many of these conventions provide for the use of multilingual forms. The accession of further States to the existing conventions would necessitate adding new pre-printed translations to these forms. However, the prescribed formulation and layout of the multilingual forms do not leave enough room for such additions. The idea therefore emerged of giving each entry a code number, which would enable the reader to find a translation in an official glossary appended to the Convention.

The Convention was also inspired by the development of computing in local administration, a development which has already prompted efforts by the International Commission on Civil Status to harmonise the content of civil status records. These efforts led to the adoption of two instruments, the Recommendation of 10 September 1987 relating to the harmonisation of civil status records and that of 7 September 1990 on the harmonisation of extracts from civil status records. Computers extend the capacity of civil registration departments to exploit the data contained in such standardised records, including foreign ones. The introduction of translation programmes will enable any document covered by this Convention to be translated automatically into the language of the State in which it is presented. These facilities will also make multilingual forms redundant. Lastly, it should be noted that the Convention itself standardises the translations of terms which are not pre-printed on the forms to be used under the conventions, thus preventing the discrepancies which inevitably occur in the absence of an official glossary.

Initially, attempts were made to develop a coding system embracing all the national extracts issued in the member States of the International Commission on Civil Status. These attempts came up against considerable difficulties, particularly the fact that the legislation of some States provided for very numerous entries. Subsequently, work was centred on preparing a glossary covering the entries in extracts prepared pursuant to the Convention of 27 September 1956 on the issue of certain extracts from civil status records for use abroad and the Convention of 8 September 1976 on the issue of multilingual extracts from civil status records and in the harmonised extracts provided for in the aforementioned Recommendation of 7 September 1990. Here again, considerable technical difficulties were encountered, given that a wide variety of terms appear under the heading "other entries". In order to arrive at a manageable instrument, certain similar but not quite identical concepts were grouped under a single term. Where no exact equivalent for a concept could be found in a given language, a description was given so as to obviate any misunderstandings about its meaning.

The Convention was drafted as a dynamic instrument, in that the coding system can later be extended to other conventions of the International Commission on Civil Status and other national documents issued in the Contracting States. The glossary will have to be adapted to any future developments.

B. COMMENTARY ON THE ARTICLES

Article 1

Article 1 sets out the principle underlying the Convention and defines its scope. The Contracting States undertake to ensure that documents drawn up pursuant to the Conventions and Recommendations listed in Appendix 1 are coded. Coding consists of giving each entry in a document the corresponding code number from the glossary in Appendix 2. This glossary, which can later be extended, currently covers all the terms liable to be used in extracts prepared in accordance with the aforementioned Conventions of 27 September 1956 and 8 September 1976 and with the Recommendation of 7 September 1990, to the extent that the latter has been followed in the member States.

Research conducted after the glossary was finalised showed that some national documents other than those covered by the aforementioned Recommendation could already be coded without any need to add new terms to the glossary; again, other national documents could be coded with slight amendments to the glossary. Article 1, paragraph 2, takes account of this state of affairs by providing that each Contracting State may issue national documents in which the entries bear the code numbers prescribed by the Convention. If the issuing State wishes such documents to be accepted in the other Contracting States, it must notify its decision to the Swiss Federal Council, which will then bring it to their attention.

Article 2

Since the Convention aims at replacing the pre-printed translations of the existing forms by a system of coding, it follows that any of the documents mentioned in Article 1 can, if duly coded, be presented to civil registrars in another Contracting State without an accompanying translation. They will have the means of decoding and understanding the coded document. Acceptance of the coded document does not prejudice any legal appraisal of its content or recognition of the facts recited therein.

Of course, a Contracting State can refuse to accept a document without a translation if it contains non-coded entries.

Where a document drawn up in Contracting State A is to be submitted in Contracting State B to a body or authority other than a civil registrar, that body or authority must be able to obtain a decoded document. Under Article 2, paragraph 2, State B undertakes to take the necessary steps to ensure that the content of the document can be understood in its official language or one of its official languages. This paragraph is worded in such a way as to take account of the extent of the technical resources which are or will be made available in the Contracting States. A civil registrar who is not equipped with computers could comply with this paragraph by, for example, adding the translations found in the glossary to a photocopy of the original document. Computer systems currently utilised by civil registration departments in some member States cater for making a list of the code numbers used in the document, followed by the corresponding translations. More efficient systems might well be developed in the near future, that could reproduce the document in its initial form in any target language. The last sentence of the paragraph anticipates such a development.

Article 3

Contracting States may have decoding effected by their civil registrars or any other authority of their choice. A central department may, if necessary, be made responsible for this work. Ratification of or accession to the Convention entails an obligation to supply a translation of the terms in the glossary.

Articles 4 and 5

Articles 4 and 5 lay down the procedure for ratification or accession. Any State may become a party to the Convention.

Article 6

Given that every ratification and accession requires the other Contracting States to issue the necessary instructions to the departments concerned and make any requisite alterations to their computer systems, the period for entry into force was fixed at six months.

Article 7

Article 7 deals with the extension of the substantive scope of the Convention. It emerged from a survey conducted among the national sections of the International Commission on Civil Status that there would be no objection under the constitutional law of the member States to having this kind of extension effected by means of a decision taken by the member States and the non-member States which have acceded to the Convention. This procedure obviates the need for protocols, with their inherent complications.

Paragraph 1 concerns two types of modification, namely the addition of other conventions to Appendix 1 and changes to the coding system or the terms appearing in the glossary. Such decisions require unanimity.

Paragraph 2 lays down a simpler procedure for any additions to the glossary, namely a decision taken by a simple majority.

Article 8

Article 8 is geared to solving the thorny problem of the succession of conventions. Some existing conventions of the International Commission on Civil Status provide for the use of standard forms appended thereto. The new convention does not abolish use of these forms, but its implementation makes the pre-printed translations appearing thereon superfluous. It will be sufficient for the entries to appear in the language of the issuing State together with the corresponding code numbers. Since any immediate abolition of multilingual forms would be at variance with the relevant provisions in the earlier conventions, Article 8 provides that multilingual forms can be abolished only when all the States party to the earlier conventions have ratified the new convention. Until then, those States will continue to use the traditional multilingual forms, but will add the code numbers listed in this Convention.

The question arose as to how States which are not parties to the conventions listed in Appendix 1 can benefit fully from the facilities afforded by this Convention. In view of the purpose of the new instrument, it was considered unnecessary to induce such States to accede to the earlier conventions as well, because this would mean, at least for a time, that they would have to use the multilingual forms. They need do no more than arrange for documents with the same content as the forms provided for in the earlier conventions to be drawn up in their official language. These documents, if duly coded, will be accepted in the other Contracting States as national documents within the meaning of Article 1, paragraph 2.

Articles 9 to 12

Articles 9 to 12 call for no particular comment. They contain the technical clauses to be found in a good many previous conventions drawn up by the International Commission on Civil Status.