



Explanatory Report to the Agreement on the Transfer of Corpses

Strasbourg, 26.X.1973

I. The Agreement on the Transfer of Corpses, drawn up within the Council of Europe by the European Public Health Committee, was opened for signature by the member States of the Council of Europe on 26 October 1973.

II. The text of the explanatory report of this Agreement does not constitute an instrument providing an authoritative interpretation of the text of the Agreement although it might be of such a nature as to facilitate the application of the provisions therein contained.

General remarks

1. The origin of action within the Council of Europe on the international transport of corpses is to be found in the desire to adapt the provisions of the international Arrangement concerning the conveyance of corpses, signed at Berlin on 10 February 1937, to the new situation arising from developments in the field of communications systems, international relations and commercial and tourist activities. A proposal to examine anew the problem of the transfer of corpses with a view to drawing up a new instrument was approved by the Committee of Ministers of the Council of Europe in 1967 and this task was entrusted to the European Public Health Committee which, in the course of its work, gave due consideration to the observations, among others, of the European Federation of Funeral Directors (Brussels) and the European Funeral Directors Association (Vienna). The text of the draft Agreement was submitted to the European Committee on Legal Co-operation (CCJ) before its final adoption by the Committee of Ministers of the Council of Europe in April 1973. It was opened for signature by member States of the Council of Europe on 26 October 1973.

2. From the outset of the drafting of the Agreement on the Transfer of Corpses, there was considerable discussion over the need for a new instrument to replace the Berlin Arrangement of 1937 concerning the conveyance of corpses. Initially, experts from some States which were Parties to the Berlin Arrangement expressed doubts as to the need for a new instrument but finally they were convinced that improved communications today, the considerable increase in tourism and the extensive employment of foreign manpower, coupled with new means of transporting corpses (such as jet aircraft) and advances in medical knowledge, had brought about a situation warranting the drawing up of a new international instrument.

3. Another difficulty concerned the legal relationship between the two instruments. A number of member States of the Council of Europe which are Parties to the Berlin Arrangement were at first concerned as to their position in international law if they were to be Parties to both instruments. Article 10 of the Berlin Arrangement was frequently cited. It states that "the provisions, both general and specific, of the present Arrangement embody the maximum requirements (other than in the matter of charges) which may be stipulated in connection with the acceptance of corpses coming from any one of the contracting countries. *The said countries remain free to grant greater facilities, either by means of bilateral arrangements or by decisions in particular cases arrived at by common accord*".⁽¹⁾

4. Since the Berlin Arrangement will remain in force for those member States of the Council of Europe which will be Parties both to it and to the new Agreement, one of the prime concerns of the framers of the new Agreement has been to ensure that its provisions in no way conflict with those of the Berlin Arrangement.

5. However, it was pointed out that even if all the provisions of the European Agreement were less stringent than those of the Berlin Arrangement - and that was questioned with regard to some of them - the co-existence of both instruments raised a number of problems. It was pointed out that under Article 2 of the European Agreement, the provisions of that Agreement constituted the maximum that could be required and consequently it was quite possible that, in a specific case where the transport of a corpse was being effected in accordance with the terms of the European Agreement, it might meet with a refusal since the State concerned, if it were a Party to the Berlin Arrangement only, might not be prepared to grant the facilities provided for under Article 10 of the Arrangement.

6. It was also noted that where certain provisions of the European Agreement were, as it was claimed, more stringent than those of the Berlin Arrangement, difficulties of the same kind could arise, since a State which was a Party to the European Agreement was not bound to accept the greater facilities under Article 2, paragraph 2, of the Agreement where a transfer had been initiated in pursuance of the Berlin Arrangement.

7. For this reason, Article 9 of the Agreement provides that any Contracting Party to it which is also a Party to the Berlin Arrangement may, in order to ensure the acceptance of the transport by a State involved in this transport, but which is a Party to the Berlin Arrangement only, request another State Party to the European Agreement to comply with the relevant provisions of the Berlin Arrangement.

Commentary to the provisions of the Agreement

Preamble

8. When the Agreement was being drafted, the European Public Health Committee discussed whether it might not be appropriate to make some reference to embalming. It was considered unnecessary however to include a special reference to this effect, since the Preamble refers to "appropriate measures" while Article 6 provides that "if the cause of death is a contagious disease, the body itself shall be wrapped in a shroud impregnated with an antiseptic solution".

Article 1

9. Paragraph 1 of this article must be read in the light of the comments concerning the relationship of this Agreement to the Berlin Arrangement (see paragraphs 2 to 7 of the General remarks above and the commentary on Article 2, paragraph 2, of the Agreement).

(1) The sentence is in italics for the purposes of this report.

10. During the drafting of paragraph 2 of this article, the question was raised as to whether the term "corpse" should be regarded as covering bones. While it was realised that the transport of bones was a very rare occurrence, it was agreed that it was often a matter of considerable difficulty to define clearly the difference between a corpse and bones, hence it was decided only to distinguish between corpses (which would cover bones) and ashes.

11. In view of the fact that ashes do not constitute a risk to public health, the precedent set by the Berlin Arrangement was followed, and the transport of ashes was excluded from the preview of the Agreement, although the drafters of the Agreement were of the opinion that the formalities for the transport of ashes should be no more complicated than those required for the transport of corpses under the Agreement.

Article 2

12. According to the terms of Article 2, paragraph 1, the Contracting Parties to the Agreement may not refuse to admit a corpse from the State of departure either in their capacity of transit State or State of destination if the conditions stipulated in Articles 3 to 7 are satisfied. A proposal to the effect that the issuing of the *laissez-passer* should be subject to the prior authorisation of the burial by the competent authorities of the State of destination was rejected on the grounds that it would hinder rather than facilitate the conveyance of remains from one country to another. Where there was at least one State which was a Party to the Berlin Arrangement but not to the European Agreement among the States involved in a specific transfer, the relations between the Contracting Parties to the European Agreement would be governed by the provisions of Article 2, paragraph 1, of the European Agreement, having regard to the possibility afforded by Article 9 of the Agreement (see paragraphs 2 to 7 of the General remarks above).

13. Paragraph 2 is designed to permit the Contracting Parties to reduce the requirements contained in Articles 3 to 7 in special cases and in particular where the transport, as is the case in frontier regions, can be effected speedily and without risk to public health. It is, of course, understood that existing bilateral or multilateral arrangements, whose requirements are less severe than those of the Agreement, will not be affected by its entry into force.

14. Article 2, paragraph 2, sub-paragraph 2, specifies that the conditions imposed by the Agreement may be waived only with the consent of all the States Parties to the Agreement which are involved in the transfer concerned. Sometimes, in particular if the transfer is made by road, States not Parties to the agreements or decisions referred to under paragraph 2 of Article 2 could be involved. Article 2, paragraph 2, sub-paragraph 2, does not restrict the right of States to conclude such agreements or take such decisions but is merely a reminder of the principle that States involved in a specific transfer, in particular transit States not Parties to such an agreement or decision, cannot be obliged to apply its provisions unless they have agreed to do so.

Article 3

15. This provision stipulates that the corpse must be accompanied during any international transfer by a *laissez-passer* for a corpse, made out according to the model appended to the Agreement. In order to provide transit States or the State of destination with guarantees as to the authorities empowered to issue the *laissez-passer* in the State of departure, Article 15 (g) of the Agreement provides that the names of the authorities so empowered shall be notified by the Secretary General of the Council of Europe.

16. Article 3, paragraph 2, requires the *laissez-passer* to include at least the information set out in the model appended to the Agreement. If any of this information is missing, transit or receiving States may refuse to allow the corpse to enter their territory. When Article 3, paragraph 2, was being drafted, it was also agreed that the language requirements referred to the language in which the model of the *laissez-passer* is to be drawn up rather than to the language in which it is to be completed. However, the cause of death is to be stated in

English or French, or in the numerical WHO code of the International Classification of Diseases (see note 2 to the *laissez-passer*). It is essential for this information to be clearly understood by the States of departure, transit and destination in order that compliance with the provisions of Article 6, paragraph 2, concerning contagious diseases may be checked.

Article 4

17. This article is complementary to Article 3 ; it is designed to reduce the number of documents accompanying the corpse during international transport to a minimum. The only document which may be required by the transit or receiving State is the *laissez-passer*, except for any others which might be necessary under existing international instruments relating to transport in general or such as may in the future be concluded in relation to specifically the conveyance of corpses. With regard to the latter point, the article is in particular aimed at facilitating the adoption of regulations regarding certain kinds of apparatus such as radioisotopic cardiac stimulators without recourse to a new convention or agreement.

18. It did not seem necessary to require specifically, as in Article 2 of the Berlin Arrangement, the presentation of a certified true copy of the death certificate to the authority empowered to issue the *laissez-passer* since there was little reason to suppose that in States which are not Parties to the Berlin Arrangement a *laissez-passer* would be issued without the presentation of such a certified copy. In any event, Article 5 (a) and Article 9 provide satisfactory guarantees in this respect.

Article 5

19. According to Article 5 of the Agreement, the issuing of the *laissez-passer* is subject, on the one hand, to the medical, health, administrative and legal requirements of the regulations in force in the State of departure relating to the transfer of corpses and, where appropriate, to burial and exhumation and, on the other hand, to the conditions laid down by the Agreement concerning the coffin and its contents.

20. The conditions laid down by the Agreement regarding the coffin are, according to Article 2, the maximum requirements which may be stipulated for the international transfer of a corpse. National legislation and regulations, however, may impose other conditions with regard to human remains concerning questions other than those relating to the coffin. The Agreement is based on the principle that in these matters it is necessary to adhere to the legislative provisions and regulations in force in the State of departure without being concerned with the possibly differing provisions in force in the State of destination or, as the case may be, the transit State. The Agreement therefore makes no mention of the formalities to be completed before the issue of the *laissez-passer* and limits itself to referring to the formalities required in the State of departure.

21. This solution was adopted at the time of the elaboration of this provision because it was realised that to insist on any other conditions would be tantamount to endeavouring to harmonise the regulations in force in the member States of the Council of Europe and in other States which might subsequently accede to the Agreement, which was something considerably beyond the Agreement's intention. In any case, it was felt that in spite of the differences in medical, health, administrative and legal requirements in the different States concerned, the legislation of member States of the Council of Europe was sufficiently similar for each to be able to accept the conditions imposed by another with regard to the issue of a *laissez-passer*. In the case of other States not members of the Council of Europe which might wish to accede to the Agreement in accordance with Article 12, the Committee of Ministers could always ask them for appropriate guarantees before inviting them to accede.

22. It is in this way that the Agreement, far from making conditions for the issuing of the *laissez-passer* more difficult to fulfil constitutes a not inconsiderable simplification of the international transfer of corpses ; by determining in relation to specific questions (*laissez-passer*, coffin, corpse) the maximum requirements which may be stipulated by the State of destination or transit State, this Agreement has resulted in the removal of a certain number of obstacles which hinder, at the present time, the transfer of human remains.

23. However, since the Agreement contains no clause corresponding to Article 4 of the Berlin Arrangement, which prohibits for one year after death the transfer of the remains of persons who have died of plague, cholera, smallpox or typhus, and to its Article 11 which states that nothing in the Arrangement shall "in any way affect the regulations in force in the respective countries in respect of burial and exhumation", it was thought necessary to make a specific reference to the formalities required for burial and exhumation in the State of departure, with a view in particular to the difficulties which might arise where the legislation of the State of departure contained a general rule prohibiting exhumation for a given period after death.

24. When sub-paragraph (c) of this article was being drafted, the question was raised whether the coffin might contain the bodies of more than one person, for example a woman who died in childbirth and her stillborn child. It was decided that no such exception could be allowed as it might lead to others.

25. With regard to the question of whether or not permission should be granted for personal effects to be transported with the corpse, such as wreaths, bunches of flowers, crucifixes, etc, it was agreed that subject to the law concerning the import and export of such objects in the States involved in a particular transfer, they should be permitted to accompany the corpse provided that they were to be buried or cremated with it.

Article 6

26. The purpose of this provision is to ensure that the transfer of corpses, by whatever means of transport, should be carried out in such a way as to eliminate any danger to public health or any inconvenience which might be caused by either the length of time taken for transporting the corpse, climatic factors or the special problems created by conveyance in jet aircraft at high altitude. The general provisions laid down in paragraph 1 of this article apply to all forms of transport, whether road, rail, sea or air, subject to the special provisions governing transport by air contained in paragraph 3. It is, however, understood that this article, which is concerned solely with the transfer of corpses, can in no way affect existing practice among States signatory to the Berlin Arrangement in pursuance of its Article 9, which deals with the special situation of death on board ship. The addition of "or of any other material which is self-destroying" has been made in order not to exclude new materials at present being produced, such as self-destroying plastics.

27. With regard to the provisions requiring the use, in certain cases, of a purifying device, it was agreed that although there were no such provisions in the Berlin Agreement, they would nonetheless have to be considered in the context of the facilities referred to in Article 10 of the Arrangement since they could make it possible to transport corpses by means not envisaged when the Berlin Arrangement was concluded. According to the general principles embodied in Article 5 of the Agreement, it was incumbent upon the authorities of the State of departure to assess the need for a purifying device and, where necessary, in the case of air transport, to ascertain that there were adequate guarantees of resistance.

28. There would seem to be no contradiction between the first sentence of Article 6, paragraph 1, and sub-paragraph (ii) of the same paragraph. In fact, the paragraph specifies, without prejudice to the particular cases mentioned in paragraphs 2 and 3, a certain number of conditions which must be observed as concerns the coffin, namely its imperviousness, the use of an absorbent material, a purifying device if the competent authority of the State of departure considers it necessary, and certain requirements as to the construction of the coffin. These conditions are placed side by side : each one of them must be observed in all

cases in question. Thus, the coffin must always be impervious ; as a result, if the coffin is constructed in conformity with the variant in sub-paragraph (ii) and is nevertheless discovered not to be impervious, the conditions laid down by Article 6, paragraph 1, are not fulfilled. It would then be obligatory to do the requisite to attain the imperviousness required by the first sentence of this provision.

29. As for the case where the cause of death is a contagious disease, paragraph 2 of Article 6 stipulates that the corpse must be wrapped in a shroud impregnated with an antiseptic solution. There is a question of a supplementary condition being laid down for a particular case of the transfer of the corpse ; it clearly results from the text of the Agreement that this condition must necessarily be observed in all cases.

30. Paragraph 2 of Article 6 was inserted on the insistence of delegations which recalled the stipulation in Article 4 of the Berlin Arrangement that "the conveyance of the corpses of persons deceased by reason of plague, cholera, smallpox, or typhus shall not be authorised as between the territories of the Contracting Parties until one year at the earliest after the decease". It was agreed that there was no longer any need for such a stringent provision provided that appropriate measures were taken, in particular with regard to the imperviousness of the coffin or the wrapping of the corpse in a shroud impregnated with an antiseptic solution before it is placed in the coffin.

Article 7

31. As in the case of Article 6, the competent authorities ought to be satisfied that the provisions of this article have been complied with before issuing the *laissez-passer* in pursuance of Article 5.

Article 8

32. The purpose of this article is to avoid that the Contracting Parties are in any doubt as to the application of the provisions of this Agreement (especially Articles 3 and 5), and that they may obtain the information necessary to facilitate the transfer of the corpse concerned.

Article 9

33. (See General remarks, 2 to 7)

Articles 10 to 15

34. These articles follow the model of the final clauses approved by the Committee of Ministers of the Council of Europe for European conventions and agreements drawn up in the Council of Europe.

35. It should be noted that under the terms of Article 12, paragraph 1, this Agreement is an "open" one, which is to say that the Committee of Ministers may invite non-member States of the Council of Europe to accede to it.

Appendix – *Laissez-passer* for a corpse

36. For the general remarks relating to this Appendix, see those on Articles 3 and 5 above.

37. Footnote 3 of the Appendix is designed to allow both for the requirements of professional secrecy, which may mean that the cause of death cannot always be divulged in the *laissez-passer*, and for the need for the authorities in the State of destination and possibly in the transit State, to have access to specific information on this point.

38. Although there is nothing in the Appendix regarding the manner in which the official stamp of the competent authority is to be affixed to the *laissez-passer*, it was considered preferable that it should be done by perforation.