

EXPLANATORY REPORT

Adopted by the General Assembly in Munich on 3 September 1980

1. GENERAL REMARKS

Many countries issue certificates of legal capacity to marry to those of their nationals who need such a document to marry abroad. The countries which are still bound by the 1902 Hague Convention governing Conflicts of Laws Concerning Marriage issue such certificates under Article 4 of that Convention, but other countries which have denounced it or have never acceded to it nevertheless issue such certificates to their nationals. The Convention on Celebration and Recognition of the Validity of Marriages drawn up by the Hague Conference in 1976¹, which is intended to replace the 1902 Convention, does not regulate this matter. In view of the importance and usefulness of certificates of legal capacity to marry, the International Commission on Civil Status considered it desirable to conclude a Convention regulating the issue of such certificates in a uniform multilingual form.

The purpose of the Convention is to facilitate proof that the persons concerned satisfy the conditions laid down for conclusion of the marriage. It does not stand in the way of the application of rules in force in the Contracting States which do not require a certificate of legal capacity to marry. The Convention does not, furthermore, prevent the authorities of a Contracting State from issuing a certificate relating to the provisions of its national law on marriage when one of its nationals needs such a document in order to be able to marry abroad.

2. COMMENTARY ON THE ARTICLES

Article 1

Article 1 contains the main provision of the Convention. It obliges a State to issue a certificate of legal capacity to marry on the request of one of its nationals who wishes to marry in any foreign country and, under the law of his or her State, satisfies the conditions for entering into that marriage. The question of whether those conditions are satisfied will be resolved on the basis of the documents submitted by the applicant. States in which it is compulsory to give notice of the marriage, even if it is to be contracted abroad, may make the issue of the certificate conditional on such notice being given.

The Convention does not oblige the authority of the place where the marriage is to be celebrated to perform the marriage. Nor does the 1902 Convention lay down such an obligation. In practice, however, certificates of legal capacity to marry issued under that Convention have always been accepted. It seems, therefore, that there is good reason to expect that the same will apply to certificates issued under this Convention. It can also be anticipated that Contracting States which undertake to issue certificates of legal capacity to marry to their nationals will in practice recognise the certificates issued by the other Contracting States. Should the authority of the country where a marriage is to be celebrated consider that the details given in the certificate are inadequate to permit the marriage to take place, the Convention does not prohibit it from requesting additional documents. If an impediment to the marriage exists, the authority can refuse to perform it. If the future spouses are of the same nationality, the issue of a single certificate is sufficient.

Article 2

The idea of assimilating refugees and stateless persons to nationals of the State in which they have their domicile or residence, which is expressed in this Article, is to be found in other international agreements.

Article 3

The provisions of this Article are to be found in several Conventions drawn up by the International Commission on Civil Status, in particular the Convention on the issue of multilingual extracts from civil status records, signed at Vienna on 8 September 1976.

Article 4

The manner of entering dates and using symbols is also to be found in other Conventions of the International Commission on Civil Status.

Paragraph 2 stipulates that places must be identified by giving the name of the State in which they are situated at the time of issue of the certificate, if that State is not the one in which the certificate is issued.

Paragraph 3 specifies the symbols to be used to indicate sex, nationality and the condition of refugee or stateless person. If the nationality of the foreign party is unknown, the space on the form provided for that information is to be scored through, as provided in Article 5.

An entry indicating absence can be made only if remarriage is possible.

Article 5

This Article corresponds to provisions already adopted in Conventions of the International Commission on Civil Status, inter alia the above-mentioned Convention of 1976.

Article 6

Paragraphs 1, 2 and 3 do not call for comment. Only the French text of the form is fixed by the model appended to this Convention. The approval by the Bureau of the International Commission on Civil Status of any translation into other languages, provided for in paragraph 4, guarantees that not only translations into the various languages of the Contracting States but also translations into the languages of States subsequently acceding to the Convention will be verified before being incorporated into the form.

Article 7

The value of the certificate can be guaranteed only if it is of recent date. For this reason the period of validity of the certificate is limited to six months from the date of issue.

Article 8

Each State must designate the authorities empowered to issue certificates of legal capacity to marry. It is to be understood that the authorities which can be designated will be restricted to officials of the civil registration service (see the form), that is to civil registrars, civil status supervisory authorities and professional diplomatic or consular agents who are entitled to perform the functions of civil registrar.

Article 9

Experience has shown that it is difficult to avoid errors in multilingual forms. There should be a simple way of correcting these errors. Furthermore, the accession to the Convention of a State whose language does not appear in the form will mean that that language will have to be inserted. Lastly, it is possible that changes in legislation in the Contracting States will necessitate amendment of the form. To avoid in all these cases having to draw up a new Convention, Article 9 provides that such amendments can be made after approval by the International Commission on Civil Status.

Article 10

This Article deals only with exemption from legalisation. Owing to the requirements of revenue law in some member States of the International Commission on Civil Status, it was not possible to prescribe that certificates issued in pursuance of the Convention should be free of charge. However, since civil registration constitutes a public service, it would be desirable for States to do everything possible to enable the certificates to be issued free of charge or at least at a reduced cost.

Articles 11 to 17

These Articles contain the final clauses governing ratification of the Convention and its entry into force and duration.

The Convention is an open Convention, which means that any State, whether a member of the International Commission on Civil Status or not, may accede to it.

¹ Concluded on 14 March 1978.