

26. CONVENTION ON CELEBRATION AND RECOGNITION OF THE VALIDITY OF MARRIAGES¹

(Concluded 14 March 1978)

The States signatory to the present Convention,
Desiring to facilitate the celebration of marriages and the recognition of the validity of marriages,
Have resolved to conclude a Convention to this effect, and have agreed on the following provisions –

CHAPTER I – CELEBRATION OF MARRIAGES

Article 1

This Chapter shall apply to the requirements in a Contracting State for celebration of marriages.

Article 2

The formal requirements for marriages shall be governed by the law of the State of celebration.

Article 3

A marriage shall be celebrated –

- (1) where the future spouses meet the substantive requirements of the internal law of the State of celebration and one of them has the nationality of that State or habitually resides there; or
- (2) where each of the future spouses meets the substantive requirements of the internal law designated by the choice of law rules of the State of celebration.

Article 4

The State of celebration may require the future spouses to furnish any necessary evidence as to the content of any foreign law which is applicable under the preceding Articles.

Article 5

The application of a foreign law declared applicable by this Chapter may be refused only if such application is manifestly incompatible with the public policy ("*ordre public*") of the State of celebration.

¹ This Convention, including related materials, is accessible on the website of the Hague Conference on Private International Law (www.hcch.net), under "Conventions". For the full history of the Convention, see Hague Conference on Private International Law, *Actes et documents de la Treizième session (1976)*, Tome III, *Marriage* (ISBN 90 12 01697 5, 317 pp.).

Article 6

A Contracting State may reserve the right, by way of derogation from Article 3, sub-paragraph 1, not to apply its internal law to the substantive requirements for marriage in respect of a future spouse who neither is a national of that State nor habitually resides there.

CHAPTER II – RECOGNITION OF THE VALIDITY OF MARRIAGES

Article 7

This Chapter shall apply to the recognition in a Contracting State of the validity of marriages entered into in other States.

Article 8

This Chapter shall not apply to –

- (1) marriages celebrated by military authorities;
- (2) marriages celebrated aboard ships or aircraft;
- (3) proxy marriages;
- (4) posthumous marriages;
- (5) informal marriages.

Article 9

A marriage validly entered into under the law of the State of celebration or which subsequently becomes valid under that law shall be considered as such in all Contracting States, subject to the provisions of this Chapter.

A marriage celebrated by a diplomatic agent or consular official in accordance with his law shall similarly be considered valid in all Contracting States, provided that the celebration is not prohibited by the State of celebration.

Article 10

Where a marriage certificate has been issued by a competent authority, the marriage shall be presumed to be valid until the contrary is established.

Article 11

A Contracting State may refuse to recognise the validity of a marriage only where, at the time of the marriage, under the law of that State –

- (1) one of the spouses was already married; or
- (2) the spouses were related to one another, by blood or by adoption, in the direct line or as brother and sister; or
- (3) one of the spouses had not attained the minimum age required for marriage, nor had obtained the necessary dispensation; or
- (4) one of the spouses did not have the mental capacity to consent; or
- (5) one of the spouses did not freely consent to the marriage.

However, recognition may not be refused where, in the case mentioned in sub-paragraph 1 of the preceding paragraph, the marriage has subsequently become valid by reason of the dissolution or annulment of the prior marriage.

Article 12

The rules of this Chapter shall apply even where the recognition of the validity of a marriage is to be dealt with as an incidental question in the context of another question.

However, these rules need not be applied where that other question, under the choice of law rules of the forum, is governed by the law of a non-Contracting State.

Article 13

This Convention shall not prevent the application in a Contracting State of rules of law more favourable to the recognition of foreign marriages.

Article 14

A Contracting State may refuse to recognise the validity of a marriage where such recognition is manifestly incompatible with its public policy ("*ordre public*").

Article 15

This Chapter shall apply regardless of the date on which the marriage was celebrated. However, a Contracting State may reserve the right not to apply this Chapter to a marriage celebrated before the date on which, in relation to that State, the Convention enters into force.

CHAPTER III – GENERAL CLAUSES

Article 16

A Contracting State may reserve the right to exclude the application of Chapter I.

Article 17

Where a State has two or more territorial units in which different systems of law apply in relation to marriage, any reference to the law of the State of celebration shall be construed as referring to the law of the territorial unit in which the marriage is or was celebrated.

Article 18

Where a State has two or more territorial units in which different systems of law apply in relation to marriage, any reference to the law of that State in connection with the recognition of the validity of a marriage shall be construed as referring to the law of the territorial unit in which recognition is sought.

Article 19

Where a State has two or more territorial units in which different systems of law apply in relation to marriage, this Convention need not be applied to the recognition in one territorial unit of the validity of a marriage entered into in another territorial unit.

Article 20

Where a State has, in relation to marriage, two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the system of law designated by the rules in force in that State.

Article 21

The Convention shall not affect the application of any convention containing provisions on the celebration or recognition of the validity of marriages to which a Contracting State is a Party at the time this Convention enters into force for that State.

This Convention shall not affect the right of a Contracting State to become a Party to a convention, based on special ties of a regional or other nature, containing provisions on the celebration or recognition of validity of marriages.

Article 22

This Convention shall replace, in the relations between the States who are Parties to it, the Convention Governing Conflicts of Laws Concerning Marriage, concluded at The Hague, the 12th of June 1902.

Article 23

Each Contracting State shall, at the time of signature, ratification, acceptance, approval or accession, inform the Ministry of Foreign Affairs of the Netherlands of the authorities which under its law are competent to issue a marriage certificate as mentioned in Article 10 and, subsequently, of any changes relating to such authorities.

CHAPTER IV – FINAL CLAUSES

Article 24

The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Thirteenth Session.

It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Article 25

Any other State may accede to the Convention.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Article 26

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that the Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect at the time the Convention enters into force for that State.

Such declaration, as well as any subsequent extension, shall be notified to the Ministry of Foreign Affairs of the Netherlands.

Article 27

A Contracting State which has two or more territorial units in which different systems of law apply in relation to marriage may, at the time of signature, ratification, acceptance, approval or accession, declare that the Convention shall apply to all its territorial units or only to one or more of them, and may extend its declaration at any time thereafter.

These declarations shall be notified to the Ministry of Foreign Affairs of the Netherlands, and shall state expressly the territorial unit to which the Convention applies.

Article 28

Any State may, not later than the time of ratification, acceptance, approval or accession, make one or more of the reservations provided for in Articles 6, 15 and 16. No other reservation shall be permitted. Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the Ministry of Foreign Affairs of the Netherlands.

The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

Article 29

The Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance, approval or accession referred to in Articles 24 and 25.

Thereafter the Convention shall enter into force –

- (1) for each State ratifying, accepting, approving or acceding to it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance, approval or accession;
- (2) for a territory to which the Convention has been extended in conformity with Article 26, on the first day of the third calendar month after the notification referred to in that Article.

Article 30

The Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 29 even for States which subsequently have ratified, accepted, approved it or acceded to it.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Netherlands, at least six months before the expiry of the five year period. It may be limited to certain of the territories or territorial units to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 31

The Ministry of Foreign Affairs of the Netherlands shall notify the States Members of the Conference, and the States which have acceded in accordance with Article 25, of the following –

- (1) the signatures and ratifications, acceptances and approvals referred to in Article 24;
- (2) the accessions referred to in Article 25;
- (3) the date on which the Convention enters into force in accordance with Article 29;
- (4) the extensions referred to in Article 26;
- (5) the declarations referred to in Article 27;
- (6) the reservations referred to in Articles 6, 15 and 16, and the withdrawals referred to in Article 28;
- (7) the information communicated under Article 23;
- (8) the denunciations referred to in Article 30.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at The Hague, on the 14th day of March, 1978, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Netherlands, and of which a certified copy shall be sent, through the diplomatic channel, to each of the States Members of the Hague Conference on Private International Law at the date of its Thirteenth Session.