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THE PROBLEM OF STATELESSNESS

Information from States in pursuance of Economic and Social
Council resolution 352 (XII) on the
problem of statelessness 1/

The Secretary-General has the honour to circulate the following note, dated 15 May 1951, which he has received from the Ministry of Foreign Affairs of Belgium.

1/ Information previously communicated by States in pursuance of resolution 319 B iii (XI) on the problem of statelessness has been distributed under symbols E/1869 and E/1869/Add.1 to 19.

Brussels, 15 May 1951

The Department of Foreign Affairs has the honour to acknowledge receipt of the note of the Secretary-General of the United Nations No. SOA 325/04 of 5 April 1951 requesting information on Belgian legislation on nationality.

Enclosed the Secretary-General will find a pamphlet setting forth the laws in force in Belgium on the subject. The basic provisions are laid down in the Royal Order of 14 December 1932, co-ordinating the Acts of 15 May 1922, 4 August 1926, 30 May 1927 and 15 October 1932 on the acquisition, loss and recovery of nationality.

The Department of Foreign Affairs wishes to point out that Belgian legislation has been designed to reduce to a minimum all provisions which might cause persons to find themselves without nationality.

Thus, a person may renounce his Belgian nationality only after furnishing proof that he has already acquired or will acquire another nationality (Articles 4, 5 and 18, paragraph 1, sub-paragraph 2 of the Co-ordinated Acts).

Similarly, a person loses his nationality automatically only when he possesses another nationality (Article 18).

Moreover, Belgian nationality is not forfeited through prolonged stay abroad or birth in a foreign country (Article 1, paragraph 1).

Lastly, acquisition of Belgian nationality through option or naturalization is open to stateless persons on the same conditions as to aliens coming under the provisions of ordinary law.

The wife and the children under age of a person who acquires Belgian nationality may at any time acquire the same status (Articles 5 and 15).

Certain provisions of the Belgian law may, however, in a very limited number of cases, lead to statelessness.

Such would be the case for the following: a legitimate child, born in Belgium of a stateless father; an illegitimate child recognized first by its mother whose country's law does not extend her nationality to the child; an illegitimate child recognized by its father either before or after recognition by its mother, if the law of the father's country does not extend the father's nationality to the child.

/For reasons

For reasons of public security, further legislation has been passed regulating loss of Belgian nationality.

Thus, the Act of 30 July 1934 provides that persons who seriously fail in their duties as Belgian citizens may lose their Belgian nationality, while under the Decree of 6 May 1944, as amended by the Decree of 7 September 1946, persons sentenced to a penalty under criminal law for offences committed in time of war against the external security of the State, automatically lose their Belgian nationality.

The Department of Foreign Affairs hopes that the above information, as well as that furnished in the communication of 21 December 1950 bearing the same reference number as the present letter, will give the Economic and Social Council an adequate outline of Belgian law on nationality.

ANNEX

Act concerning the acquisition, loss and recovery
of nationality -- Consolidation of 14 December 1932

Supplemented by the Act of 30 July 1934 concerning loss of nationality and the Decree of 6 May 1944 concerning the loss of nationality and the deprivation and suspension of certain rights for offences committed in time of war against the external security of the State, as amended by the Decree of 7 September 1946.

(Extracts)

Article 1. The following are Belgian nationals:

1. Legitimate children, even if born abroad, of fathers having Belgian nationality at the time of their birth;
2. Children born in Belgium of legally unknown parents.

A foundling discovered in Belgium is presumed, pending proof to the contrary, to have been born in Belgian territory.

Article 2. An illegitimate child whose maternal filiation is legally established during its minority and before its emancipation follows the nationality of its mother at the time of the act of recognition or judgment of filiation. Where such judgment is rendered only after the mother's death, the child follows the nationality of the mother at the time of her decease.

If voluntary or judicial recognition of paternal filiation precedes or coincides with that of maternal filiation, the child follows the father's nationality.

Article 3. An illegitimate child legitimized during its minority and before its emancipation follows the nationality of its father, if the latter is a Belgian national or the national of a country under whose laws legitimized children are given the nationality of their father.

Article 4. A foreign woman who marries a Belgian national, or whose husband becomes a Belgian national by option, acquires the nationality of her husband.

However, she may renounce Belgian nationality by means of a declaration made in the form prescribed in article 22, during the six months subsequent to the date of marriage or to the date on which her husband acquired Belgian nationality, provided that she can prove that she possesses foreign nationality or that she recovers it upon making the declaration.

/She may

She may at any time, subject to the conditions described above, renounce Belgian nationality after the dissolution of the marriage.

Article 5. Minor children who have not been emancipated acquire Belgian nationality when the parent who has custody of them voluntarily acquires or recovers Belgian nationality.

Provided, however, that they prove that they possess foreign nationality or that they recover it upon making the declaration, they may, until the completion of their twenty-second year, renounce Belgian nationality by means of a declaration made in the form prescribed in article 22.

Article 6. The following may acquire Belgian nationality by option, under the conditions and in the form prescribed hereunder:

1. Children born in Belgium;
2. Children born in the colony or abroad of parents, one of whom is or formerly was a Belgian national.

Article 7. The option may not be exercised where under the national law of his own country the person concerned may obtain authorization to retain his nationality in the event of his acquiring another.

Article 8. The option may be exercised subject to the following two conditions:

1. the optant must have been habitually resident in Belgium or in the colony during the year immediately preceding the declaration of option. In addition, he must have been habitually resident in Belgium or in the colony either from his fourteenth to his eighteenth year of age, or for a period of not less than nine years.
2. The declaration of option must be made before the optant has completed his twenty-second year.

Residence abroad during minority for such time as the father is in Belgian Government service abroad shall be deemed to constitute residence in Belgium or in the colony.

In the case of a child born of foreign parents one of whom was formerly a Belgian national, the residential qualification laid down in paragraph 1 above is confined to the year immediately preceding the option.

Article 9. In the case of an applicant who proves that he has been prevented from making his declaration of option since attaining the age of twenty-one, disqualification may be removed by the court which gives its ruling with respect to the approval of the option.

/Article 10.

Article 10. A declaration of option shall be filed in Belgium or in the colony with the parquet of the court of first instance of the place in which the declarant is habitually resident. The declaration shall be recorded in writing by the Public Prosecutor (procureur du Roi). The Public Prosecutor shall immediately publish it; in Belgium, by notices posted at the entrance to the town hall and by advertisement in a newspaper of the province, and in the Congo, in the manner prescribed by the Minister for the Colonies.

The notice shall state the time-limits within which the Public Prosecutor will investigate the fitness of the declarant.

In Belgium, the judge of the court of first instance shall in all cases be required to state his opinion.

The court of first instance in Belgium or in the colony shall give its ruling with respect to the approval of the option after consultation with the Public Prosecutor and after the declarant has been heard or summoned. The ruling shall be accompanied by a statement of reasons and shall be notified to the declarant through the Public Prosecutor.

During the fifteen days following the date of notification, the declarant and the Public Prosecutor may lodge an appeal against the court's decision with the court of appeal. The latter shall give a final ruling, after consultation with the Procureur-General (procureur général) and after the declarant has been heard or summoned.

All summonses and notifications shall be transmitted through the administrative channel.

The final confirmatory ruling shall at the request of the public legal department (ministère public) be entered in the register referred to in article 22. The option shall have effect only from the date of entry in the register.

Article 11. Naturalization confers Belgian nationality. However, ordinary naturalization does not confer the political rights for which final naturalization is required under the Constitution or the laws.

/Article 12.

Article 12. In order to qualify for final naturalization, a person must:

1. have completed his thirtieth year;
2. have been habitually resident in Belgium or in the colony for a period of not less than fifteen years. This period, however, is reduced to ten years in the case of an alien who is married to a woman of Belgian nationality by birth or is the widower or divorced husband of a woman of Belgian nationality by birth by whom he has had one or more children, and in the case of an alien woman who has married a Belgian national.

Final naturalization may be granted, without further condition, for outstanding services to the State or the colony.

Article 13. In order to qualify for ordinary naturalization, a person must:

1. have completed his twenty-second year;
2. have been habitually resident in Belgium or in the colony for a period of not less than ten years. This period, however, is reduced to five years in the case of an alien who is married to a woman of Belgian nationality by birth or is the widower or divorced husband of a woman of Belgian nationality by birth, by whom he has had one or more children.

Article 14. An application for naturalization shall not be receivable where under the national law of his own country the applicant may obtain authorization to retain his nationality in the event of his acquiring another.

Article 15. A foreign woman whose husband acquires Belgian nationality by naturalization, follows the nationality of her husband if, within six months of the registration of the instrument of naturalization, she declares her intent to claim the benefit of the present article. The said declaration of intent shall conform to the formalities stipulated in article 10. However, she may apply for naturalization jointly with her husband and, in this case, she is exempt from the requirements prescribed by articles 12 and 13.

The same applies to sons and unmarried daughters having attained their majority or obtained their emancipation, whose father acquired Belgian nationality by naturalization before the completion of their twenty-fifth year.

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/Article 17.

Article 17. The naturalization order, having been voted by the Chambers and approved by the King, shall be notified to the applicant through the Minister of Justice.

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Article 18. The following persons lose Belgian nationality:

1. A person who voluntarily acquires a foreign nationality.

A foreign nationality shall be deemed to have been voluntarily acquired by a person who, after automatically acquiring that nationality, renounces Belgian nationality by a declaration in conformity with article 22.

However, if the person concerned is still liable to military service on the active or reserve list, the acquisition of a foreign nationality will not entail loss of Belgian nationality except by authorization of the King.

2. A woman marrying a foreigner of a specified nationality, if she acquires the nationality of her husband under the law of the foreign country concerned;

3. A woman whose husband voluntarily acquires foreign nationality, if the nationality of the husband is conferred upon her under the foreign law.

However, a Belgian woman, unless she acquired Belgian nationality only by marriage, may, in these two cases, retain her Belgian nationality if, within six months of the date of marriage or the date upon which the husband changed nationality, she makes a declaration in conformity with article 22.

4. Non-emancipated minor children of a Belgian national who has become an alien under the provisions of this article and has custody of them, if they acquired foreign nationality at the same time as their father.

Article 18 bis.

Paragraph 1. A Belgian national who does not derive his nationality at birth from a Belgian father may, if he seriously fails in his duties as a Belgian citizen, be deprived of his nationality at the instance of the public legal department.

The charges shall be specified in the notice of summons.

/Paragraph 2.

Paragraph 2. The deprivation proceedings shall be conducted in the court of appeal of the defendant's place of domicile or, in the absence of a known place of domicile, of his last place of residence. In the absence of any known place of domicile or residence in Belgium, the court of appeal at Brussels shall have jurisdiction.

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Paragraph 8. The wife and children of a Belgian national deprived of nationality may renounce Belgian nationality within six months of the date of registration of the judgment of deprivation.

In the case of minor children, this time-limit is extended until the expiry of a period of six months after they attain their majority; at the age of sixteen, however, they may renounce Belgian nationality in conformity with the provisions of article 21 of this Act.

Article 18 ter. Any person who has been sentenced, by an order or judgment by default, to a heavy penalty (peine criminelle) for an offence or attempted offence in time of war within the meaning of chapter II, book II, title 1 of the Penal Code or of articles 17 and 18 of the Military Penal Code, no objection having been lodged against the said order or judgment and the sentence not having been executed against his person, shall automatically be deprived of Belgian nationality on the expiry of the time-limit for objection.

Article 18 quater.....

Paragraphs 8 and 9 of article 18 bis shall apply in cases of deprivation of nationality in pursuance of article 18 ter.

Article 19. A Belgian national by birth who has lost this status in pursuance of article 18, paragraph 1, first sub-paragraph, may recover his nationality by a declaration of option, always provided that he has been habitually resident in Belgium or in the colony during the two years immediately preceding his declaration. Such an option shall be subject to the provisions of Article 7.

A woman of Belgian nationality by birth, who has lost this status in pursuance of article 18, paragraphs 2 and 3, may recover her nationality, upon the dissolution of her marriage, by a declaration of option, always provided that she has been habitually resident in Belgium or in the colony during the year immediately preceding her declaration.

/A child

A child who has lost Belgian nationality in pursuance of article 18, paragraph 4, may recover his nationality between the ages of 16 and 22, by a declaration of option, always provided that he has been habitually resident in Belgium or in the colony during the year immediately preceding his declaration. Such an option shall be subject to the provisions of article 9.

A declaration of option made in pursuance of this article shall be submitted to the judicial authority for approval and the confirmatory ruling shall be registered in conformity with article 10.

Article 20. The acquisition, loss or recovery of Belgian nationality for whatsoever reason shall be without retroactive effect.

Article 21. A minor child shall have capacity, on completing his sixteenth year, to make the declaration referred to in articles 5, 10, 18 and 19, in the presence of the persons whose consent he must obtain, under the provisions of book 1, title V, chapter 1 of the Civil Code, to contract a valid marriage.

This consent shall be recorded either in the same document as the declaration, or in a separate document drawn up before a civil registrar; which separate document must be attached to the document of declaration.

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Article 23. Belgian nationality by descent shall be deemed to have been sufficiently established by a claimant if he proves that the parent whose nationality he follows enjoys Belgian status.

Belgian status is acquired by the exercise of the rights conferred by such status.

Evidence to the contrary shall be admissible.

Article 24. For the purposes of this Act, a person of Belgian nationality by birth shall be deemed to be any person who possesses Belgian nationality otherwise than by naturalization or by marriage.

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