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Chairman: Mr. Omar LOUTFI (Egypt).

AGENDA ITEM 63

Draft Convention on the Nationality of Married Women (A/2944 and Corr.1, A/2943, chapter VI, section XI, paras. 704 to 707) (continued)

GENERAL DEBATE (continued)

1. Mr. TSAO (China) said that he would be happy to support the draft Convention on the Nationality of Married Women (Economic and Social Council resolution 587 E (XX)), as he approved not only of its objectives but also of its substantive provisions. According to Chinese law, marriage did not automatically affect the nationality of the wife. A Chinese woman marrying an alien lost her Chinese nationality only if she made a request to that effect, and an alien woman marrying a Chinese acquired Chinese nationality only when the law of her country of origin did not require her to retain her original nationality. It was the spirit of the Nationality Law of China to respect the wish of the women concerned and the legislation of other countries. The spirit of the law was therefore fully compatible with the draft convention.
2. He congratulated Miss Mañas on the part she had played in the preparation of the draft convention and on the unflagging efforts she had made.
3. He reserved the right to put forward his delegation's views on any amendments that might be submitted.
4. Mr. McCLURE-SMITH (Australia) said that the item was an important one. The question of the nationality of married women was only one part of the general problem of nationality and the related problem of statelessness. However, the International Law Commission had said it was unable to deal with that question for some years to come and for that reason the Economic and Social Council and the Commission on the Status of Women had proceeded with the drafting of a convention dealing with that one aspect of the general problem.
5. The draft convention derived from article 15 of the Universal Declaration of Human Rights, which stated that "everyone has the right to a nationality". Its aim was to ensure that the nationality of a married woman should not be conditional on that of her

husband. It provided that marriage, or the change of nationality of a husband during marriage, should not automatically affect the nationality of the wife.

6. The draft was not, of course, perfect and none of its supporters would maintain that it offered a satisfactory solution to all the legal problems raised by mixed marriages. Nevertheless, it contained a number of safeguards which would eliminate the most flagrant injustices and anomalies arising out of the diversity and confusion of national laws on the subject. It consisted of only a few substantive articles of limited scope. The authors had realized that the convention could be signed by a large number of States and thus be of practical value only if it was not unduly comprehensive in scope.

7. With regard to the text of the draft, he said that articles 1 and 2 were satisfactory. His delegation had proposed an amendment¹ to article 3, which article had been the subject of lengthy discussion in the Commission on the Status of Women. As originally drafted, the article had been unacceptable to countries which granted privileged naturalization procedures to the alien wife of one of their nationals but did not grant nationality to her as a matter of right. The text had been amended and now contained two paragraphs: paragraph 2 applied to States which granted to the alien wife of one of their nationals the right to acquire her husband's nationality; paragraph 1 referred to States, like Australia, which did not grant such a right but provided for specially privileged naturalization procedures. Under Australian law, the Minister concerned could always refuse an application for nationality. The Australian delegation proposed that paragraph 1 of article 3 should be replaced by the following text:²

"The Contracting States agree that, whenever the alien wife of one of its nationals requests the grant of the nationality of her husband, specially privileged naturalization procedures shall apply."

That amendment made the language more precise and omitted the last phrase of the paragraph, a phrase to which some Governments had objected. The naturalization procedures referred to in the amendment would cover considerations of national security and public policy.

8. Commenting on the other articles of the draft convention, he said that he intended to maintain his delegation's amendment to article 4, paragraph 1, of the final clauses (Council resolution 587 E (XX), annex A). He would also support the United Kingdom proposal for the inclusion, after article 6, of a

¹ See *Official Records of the Economic and Social Council, Twentieth Session, Supplement No. 2*, para. 83.

² See Economic and Social Council resolution 587 E (XX), annex B.

provision regarding the application of the convention to non-metropolitan territories (Council resolution 587 E (XX), annex A).

9. Mrs. CISELET (Belgium) congratulated the Commission on the Status of Women, its Chairman, Miss Bernardino, and the Cuban representative, Miss Mañas, on the excellent work which they had accomplished despite the difficulties involved.

10. Her delegation had not regarded the first draft convention prepared by the Commission on the Status of Women as satisfactory and had abstained in the vote on it at the sixteenth session of the Economic and Social Council. The text had since been modified to take into account the observations of Member States, and the Belgian Government had no substantive objections to it in its present form.

11. The first three articles of the draft convention contained principles concerning nationality which had been followed in Belgium since 1922. Under Belgian law, marriage did not automatically affect the nationality of the wife; she was required to state, within a certain time limit, whether she intended to keep her original nationality or to acquire that of her husband.

12. Although her delegation was on the whole in favour of the text before the Committee, it would not oppose amendments designed to improve the text. It was untrue to say, as the preamble appeared to imply, that all conflicts in law arose as a result of provisions concerning the results of marriage on the nationality of the wife. That was certainly not the only cause of difficulty in that respect. Further, article 2 did not seem altogether necessary; it stated in other words the principle already contained in article 1.

13. She did not share the misgivings expressed at the previous meeting by the Netherlands representative. She did not think that the draft convention was likely to impair the unity of the family. After all, mixed marriages were the exception and the understanding and happiness of the spouses did not necessarily depend on their having the same nationality. Moreover, everyone recognized that it was desirable that all members of a family should have the same nationality and that, subject to any limitations imposed in the interest of national security, the wife should be able, if she so desired, to acquire her husband's nationality. She must, however, be free not to acquire it, and that was precisely what the convention provided.

14. It would appear inadvisable to include provisions concerning the nationality of children in the draft or to provide for the solution of problems arising in connexion with divorce, property or succession because it might greatly delay the adoption of the convention. Those questions were currently governed, not entirely satisfactorily it was true, by the principles of private international law or domestic legislation.

15. She hoped that the members of the Committee would approve the draft convention, which embodied principles to which they attached high importance. It was most desirable that agreement should be reached on a text which, by promoting some degree of uniformity in national legislation, would eliminate certain conflicts of law and many cases of statelessness and would to a certain extent ensure respect for article 15 of the Universal Declaration of Human Rights.

16. Mrs. NIKOLAYEVA (Union of Soviet Socialist Republics) said that in the Soviet Union men and women enjoyed equality of treatment in the matter

of nationality, as could be seen from article 122 of the Constitution, which proclaimed the civic equality of men and women, and from the Soviet Citizenship Act of 19 August 1938. Article 5 of that Act provided that a Soviet woman did not automatically lose her nationality when she married an alien, and article 3 defined the conditions in which aliens, whether men or women, could be naturalized. Soviet law thus did not discriminate against women in any way.

17. The Commission on the Status of Women had sought to eliminate all discrimination in the matter of nationality. The three substantive articles embodied the principle of the equality of the two sexes. Moreover, no distinction was made between married women on the basis of race, colour, religion or on any other ground. The articles were therefore entirely acceptable to her delegation, which was ready to vote in their favour. By stipulating that marriage with an alien did not necessarily force the wife to change her nationality, the draft convention would help to eliminate the discrimination to which women were still subjected in countries that did not recognize the civil equality of husband and wife.

18. She reserved the right to speak again on the final articles of the draft and on any amendments that had been or might be submitted to the Third Committee.

19. Mr. GHANEM (Egypt) congratulated the members of the Commission on the Status of Women on their excellent work.

20. His delegation approved the general principle underlying the draft convention and the rules which it laid down. Since 1950, Egyptian legislation had conformed to the spirit of the convention. Since that date a foreign woman who married an Egyptian acquired Egyptian nationality only if she opted for that nationality and subject to a minimum of administrative control designed to prevent sham marriages. An Egyptian woman who married an alien lost her nationality only if she acquired that of her husband through her marriage. When a marriage was dissolved, an alien woman married to an Egyptian or an Egyptian woman married to an alien could recover her nationality of origin. If, during marriage, an Egyptian husband changed his nationality, his wife did not automatically lose Egyptian nationality, unless she opted for her husband's new nationality one year after he had become naturalized.

21. It was essential that the independence of women should be safeguarded and that it should not be possible for them to be arbitrarily deprived of their nationality. In that connexion the importance of the emotional ties inherent in nationality must not be underestimated. His delegation accordingly favoured the draft convention, which might promote the elimination of certain conflicts in law with reference to nationality. Nevertheless, after listening to the interesting suggestions of the Netherlands and Australian delegations, he reserved the right to examine any amendment which might improve the draft or make it acceptable to a greater number of delegations.

22. Miss BERNARDINO (Dominican Republic) stated that the draft Convention on the Nationality of Married Women was the second international instrument which the Commission on the Status of Women had submitted to the General Assembly. The first was the Convention on the Political Rights of Women, which had been adopted by the General As-

sembly in 1952 (resolution 640 (VII)) and had so far been signed by forty countries and ratified by twenty-two.

23. The Convention on the Political Rights of Women was the first treaty signed under United Nations auspices which was intended to eliminate discriminatory measures based on sex. Its adoption at the seventh session of the General Assembly constituted a milestone in the history of human progress and showed that the Members of the United Nations were sincerely interested in giving effect to the principles of the Charter. The success achieved in the field of political rights had undoubtedly prompted the United Nations to tackle another important problem, that of nationality.

24. It was inadmissible that the laws of some States still deprived women of an inalienable right and made them strangers in their own country. That was why the Commission on the Status of Women had studied the problem of nationality on several occasions and had reached the conclusion that a convention was the best solution and the one most appropriate to the conditions of the modern world. As the International Law Commission had been unable to undertake the drafting of a convention based on the principles adopted by the Commission on the Status of Women, the latter had itself done so and had revised the draft originally submitted by the Cuban delegation, taking into account the observations submitted by Governments at the Secretary-General's request.

25. The real importance of the convention became evident in the light of the fact that the unfair position of women in some countries retarded progress for all human beings. The Dominican Republic, which since the Seventh International Conference of American States held at Montevideo in 1933, had at all international conferences unceasingly defended the cause of equal rights for women, would unreservedly support the draft Convention on the Nationality of Married Women and hoped that the year of the tenth anniversary of the United Nations Charter would see its adoption.

26. She wished to thank the Secretary-General for the assistance he had given to the Commission on the Status of Women, and also to thank the Status of Women Section of the United Nations Secretariat for its valuable co-operation.

27. She reserved the right to speak again later in the debate.

28. Mrs. QUAN (Guatemala) thought that before proceeding to consider the preamble and the first three articles of the draft convention, the Committee would do well to ask itself precisely what object it had in mind.

29. Originally, under Economic and Social Council resolution 242 C (IX), the object of the convention had been to assure women equality with men and especially to prevent a woman from becoming stateless or otherwise suffering hardships arising out of conflicts in law. In 1950, the Commission on the Status of Women had stated that there must be no distinction based on sex, and the term "spouse" had then been used.³ That concept had also been embodied in the draft of 1953, entitled "Convention on the Nation-

ality of Married Persons".⁴ Subsequent to the observations made by Governments, the principle of the quality of rights had been diluted, and the draft convention before the Third Committee dealt only with the nationality of married women. Her delegation thought the time had come for the Committee to ask two questions. The first was whether the convention aimed at eliminating discriminatory measures to which women were still subject in the matter of nationality; and the second, whether it aimed only at eliminating those conflicts in law relating to provisions for the loss or acquisition of nationality by women as a result of marriage or as a result of the dissolution of marriage or of the change of nationality by the husband during marriage. A reply to those questions would put the problem in its proper perspective and make the Committee's work easier.

30. She fully appreciated the force of the arguments advanced to justify the inequality of rights that still existed in the draft convention, namely, a desire to preserve family unity, to eliminate statelessness and to avoid dual or multiple nationality in the case of children born of mixed marriages. Such inequality was perhaps inevitable at the current stage, but there was no denying that discrimination still existed in the draft convention and would continue to exist as long as the husband's nationality was given preponderance and that of the wife considered subordinate.

31. Her delegation reserved the right to submit comments or amendments when it had become clear concerning the purposes which the Committee intended to pursue in the convention.

32. Mrs. SAYERS (United Kingdom) said that her delegation attached great importance to the question of the nationality of married women and had therefore been very pleased to take part in the work of the Commission on the Status of Women when it became clear that the International Law Commission, owing to its heavy programme of work, would be unable to deal with the question for some time.

33. She hoped that the Committee would be able during the current session to adopt a text along the lines of the draft before it.

34. Before taking up the actual text of the draft convention, she would like to make a procedural proposal. The text was in two parts; the second part, which had not really been considered by the Commission on the Status of Women owing to lack of time, contained the final clauses and the various amendments submitted thereto; the first part, consisting of the preamble and articles 1, 2 and 3, contained the substantive provisions. She proposed that the Committee should take up the first part first and deal with it as a whole, since that, in her opinion, would save time. Once the first part had been dealt with, it was possible that the United Kingdom delegation would make a proposal with regard to the method of consideration of the final clauses.

35. Turning to the draft convention itself, she observed that it had the very limited objective of establishing provisions by which the nationality of a married woman would not always depend on the nationality of her husband. There was thus no question of giving married women a privileged status in the matter of nationality, nor, on the other hand, of

³ See *Official Records of the Economic and Social Council, Eleventh Session, Supplement No. 6*, para. 37, resolution C.

⁴ *Ibid.*, *Sixteenth Session, Supplement No. 2*, para. 26.

depriving them of the rights they enjoyed in certain countries. With so limited an objective, the draft convention should not encounter excessive difficulties due to differences in legislation.

36. The text itself was very simply framed. The preamble, which referred to article 15 of the Universal Declaration of Human Rights, was acceptable to the United Kingdom delegation as it stood. Articles 1 and 2, containing the fundamental substantive provisions of the convention, should be examined together.

37. Article 1 provided that neither the celebration nor the dissolution of a marriage between a national of a country and an alien could automatically affect the nationality of the wife. However, that article also contained a provision that the nationality of the wife would likewise be unaffected in the event of the husband's changing his nationality during the marriage. In her delegation's opinion, the latter provision should have been included in article 2, and article 1 should have dealt solely with the effects of the celebration and dissolution of marriage.

38.* The inclusion of that provision in article 1 had given rise in some quarters to the allegation that article 2 had become superfluous. That, however, was not so, for article 2 was wider in scope than the provisions of article 1 referring to "the change of nationality by the husband during marriage", which would not, for example, apply to cases of dual nationality or to cases where the husband acquired a second nationality without renouncing his nationality of origin. Article 2 should consequently be kept as it stood. As to article 1, in spite of the observation she had just made, her delegation was prepared to accept it as it stood.

39. Article 3 was also acceptable to her delegation. As it considered, however, that the amendment to paragraph 1 of that article proposed by the Australian delegation might improve the text, it would support that amendment. However, her delegation interpreted the words "specially privileged naturalization procedures" in a general rather than a technical sense.

40. She digressed to point out that the English text contained a grammatical error, which occurred in all the articles. The use of the possessive adjective "its" in relation to "The Contracting States" was an obvious mistake which could be rectified merely by replacing the words "The Contracting States agree" by the words "Each Contracting State agrees" in all the articles.

41. Briefly, then, the United Kingdom delegation was prepared, as far as substance was concerned, to accept both the preamble and the first three articles of the draft convention. The draft, admittedly, might make difficulties for some other countries, among them the Netherlands, whose attitude—which incidentally was very reasonable—had the full sympathy of her delegation. If, however, the Committee, in drafting the convention, was to take account of the problems peculiar to all the countries represented on the Committee, there would be a danger either of running into insuperable difficulties or of producing a text which represented no progress at all. Clearly, the final draft of the convention must be acceptable to the largest possible number of States and be applicable to the largest possible number of legal systems. The existing text, with its very limited scope, nevertheless represented a serious attempt to satisfy a very large number

of States, and any substantive changes in its provisions might gravely jeopardize its chances of early adoption.

42. The United Kingdom delegation accordingly hoped that the draft would be adopted with as few substantive changes as possible.

43. Replying to a question from the CHAIRMAN, Mrs. SAYERS (United Kingdom) confirmed that the procedural proposal made by her delegation was a formal proposal.

44. Miss KALINOWSKA (Poland) declared that women in her country enjoyed equality of rights with men in all fields of social and political life. That was a fundamental principle of human rights embodied in the Constitution and legislation of Poland and confirmed in everyday practice. Her delegation accordingly considered the preamble and the first three articles under discussion by the Committee to be a constructive draft; it had supported them in the Commission on the Status of Women.

45. She would like to give some information on how the question of the nationality of married women was dealt with in Polish law. The general principle underlying the legislation on that subject was that of the absolute equality between men and women. As indicated in the report by the Secretary-General on the *Nationality of Married Women* (E/CN.6/254),⁵ article 5, paragraph 2, of the Polish Nationality Act contained the essence of the provisions of the draft convention. Under that Act, an alien of either sex could acquire Polish nationality if he renounced his nationality of origin. Although there was no special procedure covering the case of a foreign spouse of a Polish national who wished to acquire Polish nationality, the Polish authorities in practice tried to do everything possible to help such spouse to do so. The Act also provided that a Polish national who married an alien could apply for the nationality of the spouse if he had previously obtained permission from the Polish authorities to renounce his nationality of origin. The Act thus made it possible for cases of dual nationality and statelessness to be avoided.

46. The Polish Nationality Act went even further in the direction of equality than did the draft convention, for it provided that a child born of a marriage between a Polish national and an alien was of Polish nationality but that either parent could choose for the child the nationality of the alien spouse by making a statement to that effect to the Polish authorities. That provision was applicable, however, only if the legislation of the foreign State granted its nationality to the child in question.

47. Thus, Polish legislation was not only in conformity with the principles on which the draft convention was based but even went further than the draft. The Polish delegation would therefore have no difficulty in accepting the preamble and the main articles of the draft convention. It reserved the right to state its opinion subsequently on the final clauses and the United Kingdom proposal.

48. She concluded by saying that the convention was a positive achievement which would certainly encourage women to seek equality of rights in all the fields in which such equality had not yet been attained.

⁵ United Nations Publication, Sales No.: 1955.IV.1.

49. Mr. ASIROGLU (Turkey) wished, first of all, to pay a tribute to the representative of the Dominican Republic for the important part she had played, as Chairman of the Commission on the Status of Women, in the struggle against discrimination on grounds of sex.

50. With regard to the draft convention, the Turkish delegation supported the principles and legal concepts on which it was based. In Turkey, there was no discrimination on grounds of sex in either the law or practice governing the nationality of married persons. The principle of the equality of the spouses, on which the convention was based, therefore raised no difficulty for the Turkish delegation. It could not, however, approve the draft as it stood; the text was unsatisfactory on a number of points because it fell short of the Turkish legislation on nationality. For example, under article 1 of the draft, neither the celebration nor the dissolution of a marriage between a national and an alien nor the change of nationality by the husband during marriage could automatically affect the nationality of the wife. The same principle was embodied in Turkish law. However, under article 13 of the Turkish Nationality Act, an alien woman who had become Turkish by virtue of her marriage had the right to re-acquire her original nationality within three years from the date of dissolution of the marriage. The draft convention before the Committee contained no such provision.

51. There was no difference between article 3 of the draft convention and the corresponding article of the Turkish Act.

52. Article 3, which allowed the wife to assume or reject her husband's nationality, would conflict with the Turkish Act, under which the husband's nationality was automatically granted to a foreign woman who married a Turkish man. In that respect, the convention disregarded the unity of the family, which Turkish law sought to uphold.

53. Moreover, the opinion expressed by the International Law Commission and referred to in paragraph 3 of the note by the Secretary-General (A/2944 and Corr.1) should be taken into account, for a draft convention which only partially dealt with so complex a problem certainly could not provide a satisfactory solution. There was, for example, no provision concerning the nationality of children. Under article 13 of the Turkish Nationality Act, when a foreign woman married a Turkish man, the nationality of the children born to her by a previous foreign husband remained unchanged. Another specific case was that of former Turkish nationals who had acquired a foreign nationality or who had forfeited their nationality and whose children could obtain Turkish nationality by a decision of the Council of Ministers, without having to fulfil the conditions of residence.

54. Such examples showed that his country's legislation was more comprehensive than the draft convention proposed by the Economic and Social Council. It would therefore be difficult for his delegation to approve of the draft as it stood, for if Turkey signed and ratified the convention, that instrument would take precedence

over Turkey's national legislation. That would be a step backwards, as the legislation in force was much more liberal than the convention.

55. His delegation reserved the right to speak later on the amendments.

56. Miss KUSUMO OETOJO (Indonesia) thought that the mere fact that the United Nations was discussing the text of the convention was proof of the interest of Member States in the matter. That was all the more encouraging because the problem was not merely to end the state of inferiority to which women had for centuries been subjected in many countries of the world, but also to improve their position in international private and public law. Such a development would redound to the well-being of mankind as a whole, for human dignity became a reality only in so far as it was granted to women. In that respect, the efforts of the Commission on the Status of Women deserved the highest praise, and from the point of view of international law, the importance of the draft convention, which was the fruit of those efforts, could not be over-emphasized.

57. Turning to the principles adopted in the draft, she pointed out that the Indonesian Constitution, which was still provisional, provided in its article 7 that all persons were equal before the law. Sex was not a factor in the exercise of human rights and fundamental freedoms. Other articles of the Constitution clearly established that women enjoyed the same rights as men. The most important were article 28 concerning equal pay, article 26 concerning economic rights, and article 30 dealing with educational opportunities. The Indonesian people felt that by establishing equality between the sexes in all spheres it was laying the foundations for its prosperity. However, the Indonesian woman's position with regard to nationality did not entirely conform to the general principle. Her position had improved since the attainment of independence in 1945 and would soon be regulated by a law on nationality which was being drafted. For the time being, the relevant law was Provisional Act No. 3 on Indonesian nationality. Under that Act, a married woman had her husband's nationality during marriage and could not change it either by application or by declaration. An Indonesian woman who had lost her nationality through having contracted marriage with an alien could, on the dissolution of the marriage, recover her nationality by a simple declaration addressed to the Minister of Justice. A woman who had acquired Indonesian nationality by marriage retained it after the dissolution of the marriage unless, within a year from the date of such dissolution, she informed the Minister of Justice of her intention of renouncing that nationality.

58. She hoped that the discussion would make it possible to draw up a satisfactory text which would serve as a basis for definitive legislation on the nationality of married women.

59. Her delegation reserved the right to speak again in the debate if the occasion so required.

The meeting rose at 12.30 p.m.