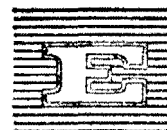


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COMMISSION ON THE STATUS OF WOMEN Ninth session

COMMENTS OF GOVERNMENTS ON THE TEXT OF THE DRAFT CONVENTION ON NATIONALITY OF MARRIED WOMEN

Report by the Secretary-General

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INTRODUCTION

1. By resolution 504 B (XVI) the Economic and Social Council, pursuant to a recommendation by the Commission on the Status of Women,^{1/} requested the Secretary-General to circulate the text of a draft convention on the nationality of married persons to Governments for their comments, these comments to be considered by the Commission on the Status of Women at its eighth session.
2. The Commission at its eighth session took into account the observations and suggestions of Governments^{2/} and prepared a text of a "draft convention on nationality of married women"; it decided to recommend to the Economic and Social Council that this text be circulated to Governments, together with some amendments proposed by the United Kingdom; and that Governments which had not yet commented on the earlier "draft convention on the nationality of married persons" in accordance with resolution 504 B (XVI) be urged to do so.^{3/} The Council, by resolution 547 C (XVIII) acted upon the Commission's recommendations.
3. The Secretary-General accordingly circulated to Governments of the States Members of the United Nations the text of the second draft convention and the annex thereto.
4. As of 15 January 1955, the Governments of Belgium, Brazil, Canada, China, Cuba, Denmark, the Dominican Republic, Egypt, Greece, Haiti, India, Nicaragua, Philippines, the United Kingdom and the United States of America, have communicated to the Secretary-General their observations on the draft convention on nationality of married women.^{4/}

^{1/} E/2401, para. 26.

^{2/} E/CN.6/243, and addenda.

^{3/} E/2571, para. 33.

^{4/} For observations on the draft convention on Nationality of Married Persons received pursuant to Council resolution 504 B (XVI) see E/CN.6/243 and addenda.

I. BELGIUM

...Belgium has always been in favour of a convention based on the following principles:

- marriage will not in principle affect a woman's nationality;
- a woman will be required to state at the time of marriage whether or not she intends to acquire her husband's nationality;
- the Government of the country of which the woman intends to acquire the nationality will be able in certain cases and under certain conditions to oppose such acquisition;
- where a woman does not acquire her husband's nationality, she retains her nationality of origin;
- a change of nationality by the husband during the marriage will not affect the wife's nationality, unless she so requests;
- the dissolution of a marriage will not affect the wife's nationality as established during the marriage, unless she declares that she wishes it to do so.

"The Belgian Government wishes, however, to make certain observations with regard to form. In the first place it fears that there is some inconsistency between articles 1 and 2 as they now stand. Article 1 applies to marriage between a national and an alien woman*and to any change of nationality by the husband during marriage, while article 2 deals only with a change in the husband's nationality during the marriage resulting from voluntary acquisition of the nationality of another State or renunciation of his nationality. The case of a marriage between an alien and a woman who is a national is not considered.

"The Belgian Government considers that article 1 should provide for the case in which the Contracting State agrees not to grant the wife its nationality by operation of law and article 2 for the case in which the Contracting State agrees not to divest the wife of its nationality unless she expressly so requests.

"It should also be noted that:

- (1) the draft convention refers only to 'the voluntary acquisition' of a nationality by the husband. It might be preferable to use only the word

'acquisition', which would include acquisition by operation of law as well as voluntary acquisition.

(2) The words 'of such national' at the end of article 2 seem to be awkward and in any case redundant. They can only refer to the second part of the sentence and bear no relation to the first part.

(3) The phrase 'n'empêcheront pas l'épouse du dit ressortissant de conserver sa nationalité' at the end of article 2 appears to be inadequate as it might be taken to imply that in the cases referred to in article 2 the wife may lose her nationality automatically unless provision is made to allow her to apply to retain it. Such an interpretation is certainly contrary to the spirit of the convention, since it is recognized that the nationality of a married woman may only be changed, whether by acquisition or by loss of nationality, if she expressly so requests. Accordingly, my Government, while in agreement with the substance of the draft, would prefer the following wording for articles 1 and 2:

"Article 1: Each of the Contracting States agrees that neither the celebration nor the dissolution of a marriage between one of its nationals and an alien woman nor the acquisition of its nationality by the husband during marriage shall automatically affect the nationality of the wife.

"Article 2: Each of the Contracting States agrees that neither the celebration nor the dissolution of a marriage between a woman of its nationality and an alien nor the acquisition by one of its nationals of the nationality of another State nor the renunciation of its nationality shall automatically affect the nationality of the wife.

"It is understood that the Belgian Government regards the draft in question as applying only to the metropolitan territory."

II. BRAZIL

"...The Permanent Representative has the honour to inform the Secretary-General that the Brazilian Government has no comment to offer on the draft convention besides those already transmitted in his note No. 83, of July 9th, on the draft Convention on the Nationality of Married Persons."^{*}

^{*}/ See E/CN.6/243/Add.7.

III. CANADA

"...The Canadian authorities are satisfied with the text of the Draft Convention on the Nationality of Married Women. The provisions set forth in the operative part of the Draft Convention, Articles one to four inclusive, are already a part of Canadian legislation on citizenship, i.e. the Canadian Citizenship Act.

Similarly, the amendments proposed by the United Kingdom in the Annex of the Draft Convention would be acceptable to the Canadian authorities."

IV. CHINA

"...the provisions of the draft convention on the nationality of married women are not incompatible with the existing Chinese laws and regulations pertaining to nationality, and the Chinese Government is therefore in general agreement to the draft convention."

V. CUBA

"The Cuban Government believes that article 2 of the draft would be improved if it were drafted as follows:

'Article 2: Each of the Contracting States agrees that neither the voluntary acquisition of the nationality of another State nor the renunciation of its nationality by one of its nationals will prevent the wife of such national from retaining the nationality that she possesses.'

"The Cuban Government believes that article 3 of the draft should be worded as follows:

'Article 3: Each of the Contracting States agrees that the alien wife of one of its nationals shall have the right to acquire the nationality of the latter at her request, subject to the limitations imposed by the law of the State whose citizenship she wishes to acquire.'

"The suggested amendment of article 2 is merely a change in wording for the sake of greater clarity. In the case of article 3, the words 'su nacionalidad' are ambiguous since it is not clear whether the nationality the alien wife may acquire at her request is her original nationality or that of the national she has married. The references to security and public policy are redundant since all States impose limitations of this kind in their naturalization laws.

Article 4 also appears to be redundant since it repeats provisions embodied in article 15 of the Universal Declaration of Human Rights and in article 3 of the present draft convention."

VI. DENMARK

"The Ministry for Foreign Affairs, after having consulted the Ministry of the Interior, has only one observation to the proposed text, namely a Danish reservation with regard to Article 3 in the proposed draft. According to existing Danish legislation an alien wife of a Danish national has not the right to acquire his nationality at her request. There is no reason to believe that the Danish legislation in the immediate future will be changed in this respect".

VII. DOMINICAN REPUBLIC

"The Department of State for Foreign Affairs has pleasure in informing the Secretary-General of the United Nations that the Dominican Government reiterates the terms of this Department's Note No. 4560 of 1 March 1954 and that, accordingly, it is in agreement with the draft convention to the extent that the provisions of the draft convention are in conformity with the contents of the above-mentioned note."^{1/}

^{1/} See E/CN.6/243/Add.3.

VIII. EGYPT

"...the Egyptian Government has examined the Draft Convention on the Nationality of Married Women and found it in conformity, in principle as well as in details, with the provisions of the Egyptian Law for Nationality, and corresponds with the provisions of the Convention on Nationality signed by the Member States of the Arab League."

IX. GREECE

"In reply to the note of 28 July 1954 containing a draft convention on the nationality of married women, the Permanent Representative of Greece has the honour to refer to his note No. 6326 of 28 December 1953 to the Secretary-General concerning the nationality of married persons in general.^{1/} The Permanent Representative of Greece explained in that note that there would be some difficulty in reconciling certain rules laid down in the draft convention on the nationality of married persons with the corresponding provisions of Greek law, which adheres to the principle that a married woman follows the nationality of her husband. Naturally, the same difficulties exist with respect to the accession of Greece to the draft convention on the nationality of married women.

While not excluding the possibility of the subsequent amendment of Greek legislation on the lines of the draft convention, the Greek Government is bound to point out that such amendment would be possible only after prolonged preparatory work."

^{1/} See E/CN.6/243, page 11.

X. HAITI

"Article 1:

This article conflicts with Haitian law with regard to a marriage between one of its nationals and an alien woman. An alien woman automatically acquires Haitian nationality by marriage to a Haitian but neither the dissolution of the marriage nor a change of nationality by the husband during the marriage affects the wife's nationality.

Consequently, article 1 of the draft convention is at variance with a provision of Haitian law in so far as the celebration of marriage is concerned.

The question arises whether Haiti should take steps to secure the amendment by the competent authorities of the Legislative Decree of 23 October 1942, which grants an alien woman Haitian nationality on her marriage with a Haitian, or should make a reservation to article 1.

In our opinion it would not serve the purpose for which the convention was drafted to accept reservations in respect of particular articles.

The object is in fact to draft an international convention 'designed to eliminate conflicts in laws arising out of provisions' in force in Member States.

If reservations are made, the conflicts will remain and the purpose of the convention will be frustrated.

Article 2:

As this article is in conformity with Haitian legislation there is no objection to be made regarding it.

Article 3:

As Haitian law automatically grants Haitian nationality to an alien woman marrying a Haitian, the question of the alien wife's right to acquire Haitian nationality at her request does not arise.

As an alien wife is already granted Haitian nationality automatically there can be no objection to the provision granting her the right to acquire Haitian nationality at her request, 'subject to such limitations only as may be imposed by law in the interests of security and public policy'.

This restriction would, however, oblige Haiti to amend the Haitian law which makes an alien woman marrying a Haitian a Haitian national solely by reason of her marriage.

Article 4:

This article maintains the right of an alien woman marrying a national to acquire the latter's nationality.

As there is no discrepancy between this article and Haitian law, Haiti has no objections to make.

Articles 5, 6, 7:

These articles contain only formal provisions relating to accession, signature and entry into force.

Article 8:

It has become clear that in view of different or conflicting interests, States would be compelled to make reservations to certain clauses or articles of the convention.

Provided these reservations do not affect essential articles and do not nullify the effect of the convention itself, they should be accepted in the spirit of conciliation which is a sine qua non of agreements and conventions.

Article 9:

Clauses relating to denunciation and cessation of effect. No objection.

Article 10:

Clauses relating to any disputes which may arise between any two or more States concerning the interpretation or application of the convention.
No objection.

Articles 11 and 12:

Clause relating to application and administration. No objection.

Annex:

The two texts attached to the draft as 'new article to be inserted after article 7' and 'paragraph 3 to be added to present article 8' relate only to the territories and colonies for whose international relations a State is responsible. They are clauses relating to application specifically concerned with the juridical and international situation of certain states. No objection."

XI. INDIA

"...the Government of India are not in a position to offer any suitable comments till an Indian Citizenship Act is finally enacted. The Government of India cannot, therefore, accept the model Convention or offer any comments thereon for the present."

XII. NICARAGUA

"The Ministry of Foreign Affairs has the honour to inform the Secretary-General of the United Nations that the Nicaraguan Government has no observations to make concerning the Economic and Social Council resolution in question" (ECOSOC resolution 547 C (XVIII) of 12 July 1954).

XIII. PHILIPPINES

"Article 1:

Under Philippine laws, an alien woman who marries a citizen of the Philippines, and who might herself be lawfully naturalized, shall become a Filipino citizen (Commonwealth Act No. 473, section 15); while a Filipino woman who marries a foreigner loses her Philippine citizenship if, by virtue of the Laws in force in her husband's country, she acquires his nationality (Commonwealth Act No. 63, section 1 (7)). Thus, the loss or acquisition of Philippine citizenship, as the case may be, is automatic. (Opinion of the Secretary of Justice, No. 28, s. 1950 and No. 290, s. 1951). These provisions are at variance with article 1 of the draft convention.

Philippine laws also provide that a Filipino woman who lost her citizenship by reason of her marriage to an alien may be repatriated after the dissolution of the marriage bond (Commonwealth Act No. 63, section 2 (2)). Repatriation is effected by merely taking the necessary oath of allegiance to the Republic of the Philippines, and filing said oath with the proper civil registry. (Id., section 4). As for the alien woman who acquired Philippine citizenship by marriage to a Filipino husband, said statute does not consider her husband's death as a cause for losing Philippine citizenship (Id., section 2). Therefore, the draft convention is in conformity with our laws in so far as it provides that the dissolution of the marriage shall not automatically affect the nationality of the wife.

With respect to the change of nationality by the husband during marriage, section 15 of our Naturalization Law (Commonwealth Act No. 473) provides that the naturalization of the husband confers Philippine citizenship upon the wife, if the latter may herself be lawfully naturalized. The change in the nationality of the wife occurs ipso facto upon the naturalization of the husband. Our statutes are silent, however, on the citizenship of a Filipino woman whose husband is naturalized under foreign law, although section 1 of Commonwealth Act No. 63 may be applied - i.e., when her husband becomes a foreigner, she automatically loses her Philippine citizenship if, by reason of the law of the husband's new country, she acquires her husband's new nationality. Again, it will be observed that our laws are at variance with the draft convention on this point.

Article 2:

There is no law that expressly divests a Filipino wife of her Philippine citizenship should her husband renounce Philippine citizenship or voluntarily acquire the nationality of another State. But the principle implicit in our laws is that the wife follows the husband's citizenship during coverture. This is inferable from Commonwealth Act No. 63, which provides that a Filipino woman loses her Philippine citizenship, by reason of her marriage to a foreigner, if by the laws of her husband's country she acquires his nationality (Section 1 (7)); and that, upon the termination of the marital status, she may reacquire her citizenship by repatriation (Section 2 (2)). The draft convention is in conflict with the first of the aforementioned rules.

Article 3:

The acquisition by an alien woman of Philippine citizenship as a consequence of her marriage to a Filipino is thus not dependent 'on her request'. It takes place by operation of law provided only that she belongs to the class of persons who may be lawfully naturalized. The clause 'might herself be lawfully naturalized' does not require that the wife must have the qualifications necessary in naturalization proceedings. It is enough that she is of the class and race of persons who may be naturalized under existing law. (Opinion of the Secretary of Justice, No. 63, s. 1948). Again, it will be noted that a fundamental difference, on this score, exists between the draft convention and our municipal law.

Article 4:

The Philippines does not have such existing legislation or practice which might be affected by this Convention. As above stated, our law provides for the automatic acquisition of Philippine citizenship by the alien wife. Should this statutory provision be repealed, there would be a need for enacting legislation which will enable the alien wife to acquire Philippine citizenship either at her request or through privileged naturalization procedures."

XIV. UNITED KINGDOM

"Her Majesty's Government, while they reserve the right to comment on points of detail at a later stage, consider the provisions of the draft satisfactory in their general lines. They wish at this stage to say only that they consider that Articles 1 and 2 should be among the Articles to which reservations should be permitted, and that they attach importance to the inclusion in the draft Convention of the amendments proposed by the United Kingdom and circulated, at the request of the Commission on the Status of Women, as an annex to the draft Convention."

XV. UNITED STATES OF AMERICA

"...the United States has regularly supported United Nations recommendations looking toward equality for women in regard to nationality, and initiated the resolution adopted by the Commission on the Status of Women at its eighth session urging Governments to assure a woman the same right as a man to retain her nationality on marriage to an alien spouse. In order to give full effect to the principle of equality for men and women in the field of nationality, the United States has repeatedly advocated that the situation of married women be considered in relation to nationality as a whole, and that for this purpose the recommendations of the Commission on the Status of Women be referred to the International Law Commission, which has already begun the study of the entire subject of nationality.

Special problems arising for women from conflicts in nationality laws are usually of two types; first, the possibility that a woman may lose her nationality on marriage to an alien husband, thus becoming stateless; and second, that she may acquire her husband's nationality in addition to her own without her express consent. Problems also arise as to the nationality of the children born to parents of different nationalities.

The International Law Commission has already prepared draft conventions for the reduction and elimination of statelessness, which include provisions to safeguard a woman against loss of nationality through marriage to an alien and to assure that the children of stateless persons receive a nationality. The International Law Commission is also examining the problem of multiple nationality. Its rapporteur on this subject, Dr. Cordova of Mexico, has advanced bases for discussion to prevent the bestowal of a husband's nationality on his alien wife without her expressed consent, and to clarify the situation of children born to parents of differing nationalities.

The United States therefore welcomes the action of the Economic and Social Council in forwarding the Draft Convention on the Nationality of Married Women, prepared in the Commission on the Status of Women, together with the comments received from Governments, to the International Law Commission for information, and continues in its belief that the International Law Commission should be allowed to proceed with its study of nationality, including proposals regarding the nationality of married women."