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

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Introductory note

1. At its seventh session, the Commission on the Status of Women, after considering the action taken by the International Law Commission and the Economic and Social Council with respect to the drafting of a convention on the nationality of married women, <sup>1/</sup>recommended that the Economic and Social Council adopt a resolution containing the text of a draft convention on the nationality of married persons and requesting that the text be circulated to governments for their comments. <sup>2/</sup>

2. At its sixteenth session, the Economic and Social Council adopted resolution 504 B (XVI) in which the Council noted the Commission's recommendation that a Convention on the Nationality of Married Persons be opened for signature and requested the Secretary-General

"to circulate to the Governments of Member States, for their comments, the following text of a draft Convention on Nationality of Married Persons, the substance of which the Council has not considered, together with the records of the discussions held and amendments submitted at the sixteenth session, with the request that such comments be sent to the Secretary-General by 1 January 1954, to be made available to the Commission on the Status of Women for consideration at its eighth session."

3. The Secretary-General circulated to governments the text of the draft convention together with the records of the discussions and amendments, in accordance with the Council's request, and as of 10 February, replies have been received from twenty-three countries.

4. The delegations of Australia, El Salvador, Mexico, Pakistan and the Philippines acknowledged receipt of the resolution containing the text of the draft convention with the Secretary-General's request for comments and suggestions and have informed him that it has been forwarded to their respective governments. The delegation of the Netherlands informed the Secretary-General that its government had appointed a committee to study the question and that, since the report by this Committee would be completed in January 1954, the comments of the government would not be forthcoming before February 1954.

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<sup>1/</sup> See E/2343 and E/CN.6/217.

<sup>2/</sup> E/2401, para. 26.

The Governments of Burma, Canada and Venezuela informed the Secretary-General that the matter was under consideration. The Government of Indonesia informed the Secretary-General that, since a new law on Indonesian nationality was expected to be promulgated in the near future, it was not in a position to give its comments on the draft convention, but would transmit those comments at a later date.

The Governments of Argentina, Belgium, Cuba, Denmark, Greece, Iceland, India, Luxembourg, Norway, Sweden, the Union of South Africa, the United States of America and Yugoslavia, after acknowledging receipt of the resolution containing the draft convention and the Secretary-General's request for comments, replied as follows:

## ARGENTINA

"... The Argentine Government approves of articles 1 and 2 of the draft convention, in which the Contracting States agree to make no distinction based on sex or marriage in their legislation; this principle is in conformity with Argentine law, under which neither sex nor marriage affect nationality. The Argentine Republic has also upheld this principle at the international level. Article 6 of the Convention on Nationality signed on 26 December 1933 at the Seventh International Conference of American States provided that 'neither matrimony nor its dissolution affects the nationality of the husband or wife or of their children' and article 1 of the Convention on the Nationality of Women signed at that Conference provides that 'there will be no distinction based on sex as regards nationality in legislation or practice'.

"With regard to article 10 of the draft, providing for compulsory arbitration by the International Court of Justice, my Government regrets that this provision is a departure from the formula proposed by Argentina in 1899 and from customary Argentine practice, which excludes arbitration in matters affecting the constitutional principles of any of the Parties."

BELGIUM

"Comments

"The draft convention on the nationality of married persons, the subject of resolution 504 B (XVI) adopted by the Economic and Social Council on 23 July 1953, is unacceptable in practice.

"Two principles underlie the draft convention. The first of these is that in regard to nationality there should be no distinction based on sex either in legislation or in practice.

"There are two aspects of this principle, which is stated in article 1, to be considered.

"It is true that Belgian law still adheres to the principle that married women do not have legal capacity. But there has already been a considerable departure from that principle in nationality matters, with regard to declarations made at the time of marriage with a view to retaining Belgian nationality (case of marriage between a Belgian woman and an alien) or renouncing it (case of marriage between an alien woman and a Belgian) and to declarations made in pursuance of the provisions allowing further time limits.

"Although it is considered that the consent of the husband is necessary for any other acts relating to nationality performed during the marriage, the absence of such consent merely entails the relative nullity of the acts.

"There would be no great objection to taking a further step forward and, following a practice which is becoming increasingly common in the legislation of other countries, granting married women full legal capacity in nationality matters.

"The second aspect of the principle of the equality of the sexes will be considered later.

"Neither marriage nor the dissolution of marriage should affect the nationality of either of the spouses.

"This essential principle is stated and defined in several articles of the draft convention, though in somewhat modified form, since under these provisions the effect of marriage on nationality is not automatic.

"Article 2. Each of the Contracting States agrees that neither the celebration nor the dissolution of a marriage between one of its nationals and an alien shall affect the nationality of the spouse who is its national.

"Article 4. 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 affect the retention of its nationality by the spouse of such national.

"Article 3.

"1. Each of the Contracting States agrees that it will, whenever possible, give to the alien spouse of one of its nationals the right to acquire its nationality at his/her request.

"2. Each of the Contracting States agrees that this Convention shall not be construed as affecting any existing legislation or practice which gives to the alien spouse of one of its nationals the right to acquire the latter's nationality, either at his/her request or through privileged nationalization procedures."

"The system may be summed up as follows: marriage does not affect the nationality of the spouses; countries will provide in their domestic legislation for the grant of their nationality to the alien spouses of their nationals on request.

"The Belgian Government has always favoured the principle of unity of nationality within the family and continues to consider it natural that the nationality of the head of the family, which of necessity will be that of the children, should be acquired by the mother of the family.

"It might be added that the possession of different nationalities by the spouses gives rise to disputes, in cases of divorce, for example, and in matters of inheritance.

"Belgian law has, however, departed in certain respects from the principle of unity of nationality in order to safeguard the freedom of women, with the reservation that their exercise of the option must not have the effect of depriving them of nationality altogether.

"A general convention on the nationality of married women which would eliminate in the future - the somewhat distant future - all conflicts of laws in this connexion is likely to be adopted only if further steps are taken towards achieving women's independence.

"The Belgian Government would regard as acceptable a system based on the following rules:

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 the marriage will not affect the wife's nationality as established during the marriage, unless she declares that she wishes it to do so.

"Unfortunately, however, the draft convention deviates substantially from these basic rules, more especially in the following respect:

"In accordance with the first principle stated in the draft convention (equality of the sexes in matters of nationality) the facilities for acquiring the nationality of the spouse should be the same for both husbands and wives. This is clearly reflected in the title of the draft convention, referring as it does to the nationality of "married persons", thus going beyond the more usual question of the nationality of "married women".

"An alien marrying a Belgian woman would be able to acquire Belgian nationality at the time of marriage on the same conditions as an alien woman marrying a Belgian.

"Such a solution could hardly be accepted, since its effect would be either to afford the alien husband of a Belgian wife a means of acquiring Belgian nationality which would be too easy and which could not readily be supervised, or to deprive the alien wife of a Belgian husband of the normal facilities for acquiring Belgian nationality.

"Furthermore, the proclaimed principle of the equality of the sexes in matters of nationality would very soon undermine the principle of the attribution of nationality by reason of relationship. In cases where the parents had different nationalities, the result would soon be to attribute the mother's nationality, as well as the father's, to the children, according to their choice.

"The conclusion of the competent Belgian authorities is that the draft convention prepared by the Commission on the Status of Women cannot be regarded as acceptable.

"Articles 1 and 3 give rise to objections so great as to be completely incompatible with one of the basic principles stated in the draft.

"The Belgian Government would be obliged to state that it reserved the right to maintain or establish certain discriminations based on sex the effect of which would be to make access to Belgian nationality at the time of marriage or during marriage easier for the alien wife of a Belgian husband than for the alien husband of a Belgian wife.

"Articles 2 and 4 would not be open to objection if, as we advocate, the principle were adopted that marriage and the dissolution of marriage would not automatically affect nationality, each State remaining competent to specify in its internal legislation the conditions on which the alien spouse of a national may accede to the latter's nationality."



CUBA

" ... The draft convention on the nationality of married women does not call for observations, since the draft does not contain any provision that conflicts with the legislative provisions in force in Cuba and, at the same time, it lays down principles already accepted in our Constitutional Act and in regulations concerning citizenship and migration."

DENMARK

" ... The Danish Ministry of the Interior... has no objections to the Draft. The Ministry wishes, however, with regard to Articles 1 and 3, to draw attention to the practice of naturalization followed in Denmark according to which a foreign man who is married to a Danish woman can only expect a minor reduction in the usual demands as to residence as a result of his marriage, whereas a foreign woman who is married to a Danish man can expect to be naturalized after having had her residence in Denmark together with her Danish husband in one year and a half ..."

GREECE

" ... A detailed study of the draft convention by the competent departments of the Greek Ministry of Justice has shown that some of its provisions, and especially those derived from the Universal Declaration of Human Rights, are in conformity with the relevant provisions of Greek law, but that others conflict with it. There would be some difficulty in reconciling certain rules laid down in the draft convention with certain standards of a national law which adheres to the principle - though in a modified form - that a married woman follows the nationality of her husband.

Hence, before Greece could accede to this draft convention, there would have to be a radical change in its laws governing the nationality of married persons, and that could be contemplated only after prolonged preparatory work, ..."

ICELAND

" The Ministry for Foreign Affairs ... has the honour to state that as the Draft Convention is in conformity with Icelandic law on Nationality it does not see any obstacle for Iceland acceding to the said convention."

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. However, the terms of the convention will be taken into consideration before our Citizenship Law is finalized ..."

LUXEMBOURG

" ... Examination of the text has shown that the laws at present in force in Luxembourg correspond closely in all essential particulars with the provisions of the draft convention. The Luxembourg Government would therefore see no objection to acceding to this convention when it is opened to accession by States. The Government finds the draft text satisfactory and accordingly does not wish to make any comments in this connexion."

## NORWAY

" ... Norway is in agreement with the principle that no distinction should be made between men and women in regard to the acquisition and loss of nationality and that neither the celebration nor the dissolution of a marriage should place a woman in an exceptional position in that regard. This principle is being applied by the Norwegian Nationality Act of 8 December 1950 (No. 3) which was the result of close co-operation between Norway, Denmark and Sweden.

Therefore, the Norwegian Government finds itself in agreement in principle with the Draft Convention on the Nationality of Married Persons in its present form. However, in its view, some of its provisions are incomplete and not quite clear.

In Article 1, for instance, the term 'legislation or practice in regard to nationality' might give rise to doubt as to the scope of this Article. It is presumed that the Article does not intend to bind the Contracting Parties in their legislation with regard to the question of the nationality of the children in case the husband and the wife are nationals of different states. As regards the legislation of Norway, the desire to avoid dual nationality has prompted it to provide that, as a rule, the children will only acquire nationality through their father in such a case.

As regards Article 3, it is presumed that the Contracting Parties are free to choose whether a woman who marries one of its nationals should acquire its nationality through option or through naturalization. It is further presumed that states whose legislation (as is the case in Norway) has adopted the line of naturalization, should not be required to grant naturalization until certain requirements with regard to residence etc. are fulfilled, provided that these requirements are not more exacting than those which must be met by a married man.

The Norwegian Government does not, at the present time consider it necessary to go further into the details of the Draft Convention as it is taken for granted that the present draft will be submitted to the International Law Commission in connexion with its consideration of nationality problems".

SWEDEN

" ... As the object of the proposed Convention on Nationality of Married Persons is the protection of women the Convention should not, it is deemed, prevent a State from giving women a more favourable status than men. An alien woman married to a Swedish national has according to Swedish legal practice a more favourable status than an alien man married to a Swedish woman. Article 1 of the Draft Convention is thus not compatible with current Swedish law. In this connexion it should be mentioned that certain problems dealt with in the present draft are also treated in the International Law Commission's draft Conventions regarding "Elimination of Future Statelessness" and "Reduction of Future Statelessness".

In view of the above the Government feel inclined to suggest that the question should be deferred until it is clear whether these Conventions will be adopted".



UNION OF SOUTH AFRICA

" ... the Government of the Union of South Africa has no comments to offer on this Draft Convention.

It may be added that the South African Citizenship Act of 1949 gives expression to the principles of the Draft Convention".

UNITED STATES OF AMERICA

" ... the United States Government wishes to reaffirm its support for the principle on which the Draft Convention is based, namely that with regard to nationality, no distinction based on sex shall be made in legislation or in practice. The United States believes this is an important principle and should be given full and consistent effect in all aspects of nationality law and practice. Among the matters closely related to the nationality of married persons in which it is believed this principle should be taken into account are the prevention of statelessness, to which the International Law Commission has already devoted considerable attention, and the nationality of children born to parents of differing nationalities, with which this Commission will presumably be dealing in the course of its study of nationality. The United States Government therefore believes, consistent with the views previously expressed by its representatives in the Commission on the Status of Women and the Economic and Social Council, that the draft Convention on the Nationality of Married Persons, together with the comments of Governments thereon, should be referred to the International Law Commission for its use in developing proposals in the field of nationality.

"The United States wishes also to point out that the draft Convention is similar in principle to the Montevideo Convention on the Nationality of Women, adopted by the Seventh International Conference of American States in 1933, and to which eleven of the American Republics, including the United States, are parties."

YUGOSLAVIA

" ... In accordance with resolution 504 B (XVI) of the Economic and Social Council, the Government of the Federal People's Republic of Yugoslavia has studied the text of the Draft Convention on the Nationality of Married Persons and, in principle, it agrees with the text of the Draft.

In regard to Article 3 of the Convention, the Yugoslav Government is of the opinion that its acceptability is difficult in its present form where in the instances of marriage unions of persons of different nationality the right of one spouse to acquire the nationality of the other spouse is created automatically on the basis of such a request (statement) by either of them. With this situation there could be created a possibility for undesirable misuse of right to nationality and, therefore, with a more precise wording of this Article such possibilities should be avoided. In the opinion of the Government of Yugoslavia, perhaps, if the word 'give' in Article 3 would be substituted with 'facilitate' it would improve the meaning of the Article and render it sufficiently precise.

Further, the Yugoslav Government supports the amendment submitted by the Philippine Delegation for inclusion in the Draft Convention a new Article on the territorial clause as presented in the Social Committee."

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