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ANALYSIS OF CONFLICTS OF LAWS IN THE FIELD
OF NATIONALITY OF MARRIED WOMEN

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ANALYSIS OF CONFLICTS OF LAWS IN THE FIELD
OF NATIONALITY OF MARRIED WOMEN

(Prepared by the Secretary-General)

Introductory Note

1. The Economic and Social Council declared in its resolution 242 (IX) C of 1 August 1949:

"Considering that a Convention on the nationality of married women, which would assure women equality with men in the exercise of this right (to a nationality) and especially prevent women from becoming stateless or otherwise suffering hardships arising out of these conflicts in law should be prepared as promptly as possible ..."

It therefore requested the Secretary-General:

"... to prepare and circulate to Member States, an analysis of the conflicts in law demonstrated in documents E/CN.6/32, E/CN.6/82/Add.1 and 2, and E/CN.6/81/Rev.1 and in any further replies received from Governments ..."

2. In addition to the information supplied by Member States and incorporated in the documents mentioned in the resolution of the Economic and Social Council, the Secretary-General has received as of 1 November 1949 replies to Part I Section G (Nationality) of the Questionnaire on the Legal Status and Treatment of Women from the Governments of the United Kingdom and Australia (E/CN.6/82/Add.3), and from the Government of Egypt (document E/CN.6/82/Add.4).

3. The present analysis is based on the replies to the Questionnaire received from Governments and from non-governmental sources, supplemented by documentation compiled by the Secretariat as a result of research in the legislation of Member States which have not replied to the Questionnaire, as well as of countries other than Members of the United Nations.

4. The review of the present solutions adopted in the systems of national law with regard to conflicts of laws in the field of nationality of married women forms Chapter II of this document.

In order to present a clear picture of the internal legislation in this field, it has been found practical to divide the various legal systems into three main categories or groups, according to the basic legal principle followed. Each of these groups has been sub-divided into sub-groups according to the modalities of application of the basic principle; each sub-group is illustrated by one or two examples of legislation found to be typical for the given legal system.

5. Chapter III contains a brief analysis of the existing international conventions and is largely based upon the documentation presented by the Secretary-General in documents E/CN.6/79 and E/CN.6/79/Corr.1 (Treaties and Conventions in the Field of Nationality of Married Women).

CHAPTER I

Sources of conflicts of laws in the field
of nationality of married women

Conflicts of laws^{1/} in the field of nationality of married women arise where various legal systems apply divergent principles with respect to the effect, on the nationality of the wife, of the marriage itself, of the change of nationality by the husband during marriage and of the dissolution of the marriage.

As shown in the "Report based on Replies to Part I Section G (Nationality) of the Questionnaire on the Legal Status and Treatment of Women" (E/CN.6/82), three main systems prevail in the world of today.

(i) In the first system, the basic principle is that the nationality of the wife follows the nationality of the husband. Marriage itself, the change of nationality by the husband during marriage, and the dissolution of the marriage have therefore a direct effect on the nationality of the wife. The application of this system may lead either to negative conflicts of law (statelessness) or to positive conflicts (double nationality), depending on the legislation of the other country concerned.

(ii) The second system also recognizes the principle of inequality of sexes in the field of nationality; however, in order to avoid statelessness or double nationality of the woman, the principle of the unity of nationality in the family is subjected to the requirements of the law of the other country concerned. Thus, the woman marrying an alien loses her original nationality only when she acquires her husband's national status through marriage, and an alien woman marrying a national acquires her husband's nationality if, as a result of her marriage, she is deprived of her original status. Similar principles are applied to the dissolution of marriage and to the changes of nationality by the husband during marriage.

^{1/} "Conflicts of laws" for the purposes of this paper are "inconsistencies or differences between national legislative systems of different States or countries, arising in the case of persons who have acquired rights or a status within the territory of two or more jurisdictions" (Black's Law Dictionary, "Conflict of Laws", page 396 in the 1933 edition). It must be distinguished from the branch of jurisprudence known as "conflict of laws" or "private international law", "which decides which law or system is to govern in each particular case or settles the degree of force to be accorded to the law of another jurisdiction" (Black's Law Dictionary, *ibid.*).

((iii) The third

(iii) The third system is based on the principle of equality of sexes in the field of nationality: marriage, its dissolution and the change of nationality by the husband during marriage have no effect on the nationality of the wife. The application of this system by one country may result in statelessness, where the other country concerned applies the principle of the unity of nationality in the family and deprives the woman marrying an alien of her original nationality, or in double nationality, where the other country imposes upon an alien woman marrying a national her husband's national status. It is obvious that, if all the countries of the world followed either one of the three prevailing systems, the causes of statelessness and of double nationality of women resulting from marriage would be eliminated; if the first system became general, the wife would always lose her original nationality but would always acquire the nationality of her husband; she would become stateless only if the husband were stateless; if the second system were universally applied, the loss of her own nationality by the wife would occur only if she acquired her husband's nationality and vice versa; if the third system prevailed, the wife would in all circumstances retain her own nationality and would not acquire that of her husband; she would be stateless only if she was stateless before marriage.

It does not seem possible, however, to classify the legal systems of the countries of the world into three groups, according to the three main principles outlined above, because very few countries apply any one of these principles consistently and without exceptions. In most legal systems, the main principle of one of the systems prevails but it is subject to more or less serious exceptions and reservations, such as the right of choice given to the wife in certain cases. On the other hand, many countries apply one principle to one aspect of the problem and a different principle to the other. For example, it appears from the replies of fourteen Member States to the Questionnaire that the woman national marrying an alien loses her nationality only if the law of her husband's country grants her husband's nationality; on the other hand, in only two of the Member States which have replied, does the alien wife acquire her husband's nationality subject to her release from her own nationality by the country of which she is a national.

Thus, the real cause of statelessness and double nationality of married women does not reside in any one of the prevailing systems, but in the co-existence in the world of three main different systems of solution of conflicts of laws, differently applied in various countries.

CHAPTER II

Present solutions of conflicts of laws in the field of
nationality of married women: Systems of National Law

SECTION I. FIRST GROUP

The nationality of the wife follows the nationality of the husband

A. General

The application of this general principle of law can affect the nationality of the woman either as a result of her marriage to a man of a different nationality or upon a change of nationality by her husband during marriage, or after the dissolution of her marriage to a man whose nationality she had acquired through marriage.

The nationality of the married woman is generally affected in two different ways: on the one hand, she acquires a new nationality (or she resumes her original nationality) - a positive effect; on the other hand, she loses either her original nationality or her nationality acquired through marriage - a negative effect.

If fully applied, the principle "that nationality of the wife follows the nationality of the husband" has the following effects:

The alien woman marrying a national acquires her husband's nationality;
The woman national marrying an alien loses her original nationality.

The alien woman whose alien husband acquires the nationality of the country during marriage, acquires automatically his new nationality;
The woman national whose husband, a national, loses his nationality during marriage, loses automatically her nationality.

The alien woman, married to a national, loses her nationality acquired through marriage, upon dissolution of the marriage;
The woman national married to an alien re-acquires automatically her original nationality (lost through marriage), upon dissolution of the marriage.

No internal legislation applies all these rules without any exception or reservation. Each one of the legal systems in force based on the principle of law enunciated above departs somewhat from its strict implementation.

The legal systems of the various countries can, however, be classified in groups depending on how closely they follow this general principle.

An attempt will be made to give some typical examples of each group, starting with the legislation, which depart the least from the idea of the unity of nationality in the family and ending with that in which the application of this

/idea is

idea is subject to the most serious exceptions.

B. Legal systems where the wife acquires her husband's nationality through marriage and retains this nationality after the dissolution of the marriage

The distinctive character of these legal systems is the concern for the preservation of the unity of nationality in a family even after the dissolution of the marital tie. The family continues to exist after the death of the husband, national of the country concerned; in many cases, this family continues to live in that same country, of which the children are nationals. Similar situations may occur after a divorce, particularly when the children are left in the custody of the mother.

The legal systems of this group are characterized by the following common features:

The alien woman marrying a national acquires her husband's nationality.

The woman national marrying an alien loses her original nationality.

The alien woman whose alien husband acquires the country's nationality during marriage, acquires her husband's new nationality.

The woman national whose husband, a national, loses his nationality during marriage, loses her nationality.

The alien woman married to a national retains her nationality acquired through marriage, even after its dissolution.

The woman national married to an alien does not automatically re-acquire her original nationality, lost through marriage, even after its dissolution.

The Law of Costa Rica of May 1889^{1/} is typical for this group of legislation:

"Article 3. The foreign woman who marries a national of Costa Rica becomes a national; she retains the Costa Rican nationality even after the dissolution of the marriage ..."

"Article 4. The national of Costa Rica who marries a foreigner takes the nationality of her husband and retains it even after the dissolution of the marriage ..."

The same general principles are applied in the Hungarian Nationality Law IX of 1948 (issued on 30 December 1948). The pertinent provisions of this law read as follows:

"Article 3. (1) Hungarian nationality by marriage is acquired by any woman of non-Hungarian nationality who marries a Hungarian citizen.

(2) The woman shall keep her Hungarian nationality acquired in accordance with the provisions of paragraph (1) upon the death of her husband or if

^{1/} Text from enclosure with Despatch No. 54, 10 December 1924, from the American Minister to Costa Rica to the Secretary of State, published by Flournoy & Hudson, "Nationality Laws", page 185.

the Court dissolves the marriage or separates the spouses from bed and board."

"Article 12. Any woman contracting marriage with a foreign citizen shall lose her Hungarian nationality unless she does not acquire by such marriage the nationality of her husband."

"Article 19 (1) The Minister of the Interior may renaturalize also in default of the requirements set out in paragraph (a) of Article 4:

... 2. any woman having lost her Hungarian nationality through marrying a non-Hungarian national if

- (a) she has become a widow or
- (b) her marriage has been dissolved by a judicial decision valid according to Hungarian law or
- (c) if she has been living for more than a year in Hungary separated from her husband.

(2) In applying paragraph (1) item 2 (b), a decision separating the spouses from bed and board shall be regarded equivalent to a decision dissolving the marriage if the marriage cannot be dissolved according to the law of the country of the husband."

"Article 22 (1) Any woman having lost her Hungarian nationality by marriage shall re-acquire her Hungarian nationality if her marriage has been declared invalid by Court decision provided such judgment is valid according to Hungarian law. The re-acquisition of Hungarian nationality takes place on the day on which the judicial decision becomes valid."

C. Legal systems where the nationality of the wife follows that of her husband as the result of the marriage, but not through his loss of nationality during marriage

Certain countries dissociate the nationality of the wife from that of the husband when the latter changes his nationality during marriage. This exception to the general principle of the unity of nationality in the family is based on the reluctance of the legislators to deprive the wife of her nationality when the latter is lost by her husband either by a voluntary act of renunciation on his part, or through deprivation of nationality which is of the nature of a punishment and must not therefore be automatically extended to the members of his family. This rule does not extend, however, to the acquisition of the new nationality which is considered as being in the interest of the unity of the family and in most cases is considered as a favour to the wife.

The main characteristics of the first sub-group are the following:

The alien woman marrying a national acquires her husband's nationality.

The woman national marrying an alien loses her original nationality.

The alien woman whose alien husband acquires the country's nationality during marriage acquires his new nationality.

/The woman

The woman national whose husband, a national, loses his nationality during marriage, does not automatically lose her nationality.

The German Law of Nationality of 22 July 1913^{1/} can be taken as an example of this legislative group:

"Section 6. Marriage with a German bestows the citizenship of the husband on the wife.

"Section 16, para. 2. If, during marriage, the husband acquires German nationality, this nationality is extended to the wife.

"Section 17, 6. The German woman who marries an alien loses her German nationality.

"Section 18. If the husband loses his German nationality, this loss will be extended to the wife only with her consent."

D. Legal systems where the nationality of the alien wife follows that of her husband, a national, but the nationality of the woman national is not affected by her marriage to an alien.

Many countries follow the principle of the unity of nationality in the family where the husband is a national and the wife an alien, but depart from it where a woman national marries a citizen of a foreign country. Their concern is to preserve this unity when the whole family can be integrated in the nationality of the country and to preserve at the same time the tie of allegiance to the homeland of all its nationals, including women married to aliens.

The main features of these legal systems are as follows:

The alien woman marrying a national acquires automatically her husband's nationality;

The woman national marrying an alien retains her own nationality.

Typical for this group is the Turkish Law of 12 June 1928^{2/}:

"Article 13. Alien women who marry Turks become Turkish citizens. Turkish women who marry aliens remain Turkish."

^{1/} Text from the enclosure with Despatch No. 846, 3 September 1913, from the American Consul General in Berlin to the Secretary of State, published by Flournoy & Hudson, "Nationality Laws", pp. 306-307.

^{2/} Reply of the Turkish Government to the Questionnaire on the Legal Status and Treatment of Women, quoted in document E/CN.6/82, p. 93.

Another example can be found in the Peruvian Constitution of
April 1933:^{1/}

"Article 6. An alien woman married to a Peruvian acquires the nationality of her husband. A Peruvian woman who is married to an alien retains Peruvian nationality unless she expressly renounces it."

E. Legal systems where the wife acquires the nationality of her husband, unless she declines it, and loses her own nationality, unless she makes a declaration to the contrary

In this group of legal systems, the idea of unity of nationality in the family is combined with a certain right of choice of the woman.

In some of these, this right of choice is the same for the alien woman marrying a national and for the woman national marrying an alien. In such systems:

The alien woman marrying a national acquires her husband's nationality, unless she declines it;

The woman national loses her own nationality when marrying an alien, unless she declares her wish to retain it.

The Belgian Law of Nationality of 4 August 1926, amended by the Law of 15 October 1932^{2/}, is a case in point:

"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 if she can prove that she possesses foreign nationality or that she recovers it upon making the declaration. (Law of 4 August 1926, Article 12, amended by the Law of 15 October 1932, Article 1.) ..

"Article 18. The following persons lose Belgian nationality:

...
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;

^{1/} English text published in "Constitutions of the Americas" (as of 1 January 1948) by Russell H. Fitzgibbon, University of Chicago Press, 1948, p. 666.

^{2/} Reply of the Government of Belgium to the Questionnaire on Nationality, reproduced in document E/CN.6/82, pp. 60-61.

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 only acquired Belgian nationality 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. ..."

In certain other countries, the right of choice has the effect of giving the woman - whether a national or an alien - the nationality of that country unless she declines it expressly. Its main features are the following:

The alien woman marrying a national acquires her husband's nationality, unless she declines it;

The woman national marrying an alien retains her own nationality unless she declares her wish to be released from it and to acquire her husband's nationality.

The French Nationality Code of 19 October 1945^{1/} is typical for this group of legislations:

"Article 37. Subject to the provisions of Articles 38, 39, 40 and 41, a foreign woman marrying a French national acquires French nationality upon the celebration of the marriage."

"Article 38. The foreign woman whose national law permits her to retain her nationality, has the right to declare, prior to the celebration of the marriage, that she declines the French nationality."

"Article 94. A French woman marrying a foreign national retains her French nationality unless, before the celebration of the marriage, she makes an express declaration, under the conditions and in the form established in Article 101 et seq., that she renounces the said nationality.

...
In that case, the woman is released of her allegiance to France as from the date of the marriage ceremony."

^{1/} Reply of the Government of France to the Questionnaire on Nationality, reproduced in document E/CN.6/82, pp. 72-74.

SECTION II. - SECOND GROUP

The nationality of the wife does or does not follow the nationality of the husband, depending on the requirements of the law of the other country concerned, in order to avoid statelessness and double nationality.

A. General

This group of legal systems is not primarily based on the principle of the unity of nationality in the family: the main object is to avoid statelessness or double nationality of married women. These legal systems present, therefore, a certain character of flexibility, in order to meet the requirements of the legislation of the other country concerned.

However, three main sub-groups can be distinguished within this group: in the first, the nationality of the wife follows as a rule that of her husband, except where the application of this principle would result in statelessness or double nationality. In the second sub-group, the concern to avoid conflicts with the legislation of the other country involved extends only to women nationals marrying aliens, while the alien woman who marries a national acquires the nationality of her husband whether or not she loses her own nationality as a result of her marriage. In the third sub-group, the nationality of the woman does not as a rule follow the nationality of her husband, except where the application of this principle results in statelessness or double nationality.

B. Legal systems where the nationality of the wife follows the nationality of her husband, except if the application of this rule leads to statelessness or double nationality.

This group of legal systems comes close to the system analyzed in "FIRST GROUP" above, as far as the basic principle is concerned, but this basic principle is overruled here by the practical concern to avoid conflicts of law resulting either in double nationality or in statelessness.

The main features of this group are the following:

The alien woman marrying a national acquires his nationality, except where she retains her own in accordance with the law of her country.
The woman national marrying an alien loses her nationality, except where her husband's nationality is not extended to her.

The alien woman whose alien husband acquires the country's nationality during marriage, acquires his new nationality, except where she retains her previous nationality.

The woman national whose husband, a national, loses his nationality during marriage loses her nationality except where her husband's new nationality is not extended to her.

Pakistan and China seem to be the only countries whose legal systems correspond to this definition.

In Pakistan, the British Nationality and Status of Aliens Act of 1914^{1/}, as amended, is in force; it provides:

"Section 10 (1) - Subject to the provisions of this section, the wife of a British subject shall be deemed to be a British subject, and the wife of an alien shall be deemed to be an alien."

"Section 10 (2) - Where a woman has (whether before or after the commencement of this Act) married an alien, and was at the time of her marriage a British subject, she shall not, by reason only of her marriage, be deemed to have ceased to be a British subject unless, by reason of her marriage, she acquired the nationality of her husband."

"Section 10 (4) - Where a man ceases, during the continuance of his marriage, to be a British subject and, by reason of his acquisition of a new nationality, his wife also acquires that nationality, she may, whether her marriage is still continuing or not, at any time within the period of twelve months from the date on which she so acquired that nationality, or at such later time as the Secretary of State may in special circumstances allow, make a declaration that she desires to retain British nationality, and thereupon she shall be deemed to have remained a British subject."

The Chinese law on Nationality of 5 February 1929^{2/} states:

"Article 2, para.1: A foreign woman who marries a Chinese national and who thereby loses her nationality under the law of her own country, acquires Chinese nationality."

"Article 10, para.1: A Chinese woman who marries a foreigner and applies to the Ministry of the Interior for authorization to renounce Chinese nationality, loses her Chinese nationality."

"Article 8: The wife of a naturalized person and his children recognized as such by the law of their own country, shall concurrently acquire citizenship in the Republic of China, unless a provision to the contrary exists in the laws of their original country."

C. Legal systems where the concern to avoid statelessness and double nationality of married women extends only to women nationals marrying aliens and not to alien women marrying nationals.

In a large number of countries the principle of unity of nationality in the family is applied to alien women marrying nationals, but it is overruled by the concern to avoid statelessness and double nationality for their women nationals marrying alien citizens.

^{1/} Reply of the Government of Pakistan to the Questionnaire on the Legal Status and Treatment of Women.

^{2/} Reply of the Government of China to the Questionnaire, quoted in document E/CN.6/82, pp. 66-69.

The main features of this group are therefore the following:

The alien woman marrying a national acquires her husband's nationality.

The woman national marrying an alien loses her original nationality if her husband's national law grants to her his nationality.

The alien woman whose alien husband acquires the country's nationality during marriage acquires his new nationality.

The woman national whose husband, a national, loses his nationality during marriage, loses her nationality except where her husband's new national law does not grant to her his new nationality.

The legislation of Thailand (Nationality Act BE 2456 and Naturalization Act R. S. 130)^{1/} is typical of this group:

"Section 3. - It is enacted that the following persons are nationals of Thailand:

.....

(4) women of foreign nationality who are married to Thailand nationals according to law and usage."

"Section 4. - A Thai woman who marries an alien loses her Thai nationality if the national law of her husband provides that she may acquire the nationality of her husband."

"Section 5. - Except as provided by Sections 4 and 10, a Thailand national cannot lose his or her Thai nationality by naturalization or by other means, unless he or she has obtained the permission of the Government."

"Section 11. - A Thai woman who has acquired foreign nationality by marrying an alien resumes her Thai nationality upon dissolution of the marriage."

"Section 12. - The wife of a naturalized person becomes as of right a Thailand subject."

The nationality law of Japan^{2/}, while implementing the same ideas, appear to be the only one in the world to provide that a man who marries a Japanese woman "head of a family" acquires Japanese nationality.

The pertinent provisions of the Japanese law read as follows:

"Article 5: An alien acquires Japanese nationality in the following cases:

- (1) by becoming the wife of a Japanese
- (2) by becoming the "nyufu" [a man who marries the female head of a family and becomes a member thereof] of a Japanese woman."

^{1/} Reply of the Government of Thailand to the Questionnaire, quoted in document E/CN.6/32, p. 86.

^{2/} Law No. 66 of March 1899, as revised by Law No. 27 of March 1916, and by Law No. 19, of July 1924. (Text from British Parl. Papers, Misc. No. 2 (1927) Card. 2852, p. 39).

"Article 8: The wife of an alien cannot become naturalized, except in conjunction with her husband."

"Article 13: The wife of a person who acquires Japanese nationality, acquires Japanese nationality in conjunction with her husband.

The provisions of the preceding paragraph do not apply when the law of the wife's country contains provisions which are contrary thereto."

"Article 14: If the wife of a person who has acquired Japanese nationality has not acquired Japanese nationality in accordance with the provisions of the preceding article, she may become naturalized although she may not have fulfilled the conditions of paragraph 2 of Article 7."

"Article 18: A Japanese who, on becoming the wife of an alien, has acquired her husband's nationality, loses Japanese nationality."

"Article 19: A person who has acquired Japanese nationality by marriage ... loses Japanese nationality by divorce ... only when he or she thereby recovers his or her foreign nationality."

"Article 21: If the wife and child of a person who loses Japanese nationality acquire the said person's new nationality, they lose Japanese nationality."

D. Legal systems where the nationality of the wife does not follow the nationality of her husband, except if the application of this rule leads to statelessness or double nationality.

This situation occurs either for the alien woman marrying a national, where her national law deprives her of her original nationality, or in the case of a woman national marrying an alien where the national law of her husband grants to her his nationality.

The main characteristics of this group are the following:

The alien woman marrying a national does not acquire her husband's nationality, except where her national law deprives her of her original nationality.

The woman national marrying an alien does not lose her nationality, except where her husband's national law grants his nationality to her.

The alien woman whose alien husband acquires the nationality of the country during marriage does not acquire his new nationality, except where her national law deprives her of her previous nationality.

The woman national whose national husband loses his nationality during marriage does not lose her nationality, except where the new national law of the husband grants his new nationality to her.

The Constitution of Venezuela, promulgated 5 July 1947^{1/}, is an example of this type of legislation.

1/ Reply of the Government of Venezuela listed in document E/CN.6/82, page 101. This Constitution has not been in force since 4 November 1948.

"Article 12 - Venezuelans by naturalization are:

1. An alien woman married to a Venezuelan if, in conformity with her national law, she loses her previous nationality by reason of matrimony."

.....

"Article 14 - A Venezuelan woman who marries an alien will retain Venezuelan nationality unless she manifests her contrary wish and provided that such manifestation may be sufficient to acquire the nationality of the husband according to the national law of the latter."

The legislation of the Dominican Republic^{1/}, as summarized in the reply of the government of the Dominican Republic, is also typical of this group:

"..... a Dominican woman married to an alien may acquire her husband's nationality and will then lose her Dominican nationality of origin."

"This loss of her nationality of origin by a married woman as a result of her acquiring her alien husband's nationality is an automatic process, and no exceptions are provided."

^{1/} Reply of the Government of the Dominican Republic to the Questionnaire. See document E/CN.6/82, p. 15.

SECTION III. THIRD GROUP

The nationality of the wife is independent of that of her husband

A. General

Numerous countries have adopted this system in recent years. It is based on the principle of the independence and equality of women in the field of nationality.

In certain countries, this principle is absolute: the nationality of the wife is never affected by her marriage to a man of a different nationality, and, a fortiori, by her husband's change of nationality during marriage or by the dissolution of the marriage. The only means for the spouses to achieve a unity of nationality in the family is for the wife to apply for her husband's nationality by way of ordinary naturalization proceedings or for the husband to apply for his wife's nationality through similar proceedings.

Another large group of countries, while recognizing the principle of independence and equality of the woman in the field of nationality, grants the wife the right to obtain her husband's nationality by privileged or simplified procedures.

B. Legal systems where marriage, change of nationality by the husband during marriage and dissolution of the marriage have no effect at all on the nationality of the wife.

The main features of this group are the following:

The alien woman marrying a national does not acquire her husband's nationality.

The woman national marrying an alien does not lose her original nationality.

The alien woman whose husband acquires the country's nationality during marriage does not acquire his new nationality.

The woman national whose husband, a national, loses his nationality during marriage, does not lose her nationality.

The legislation of the USSR is typical for this group of countries. The Law of Citizenship of the USSR of 19 August 1938, Article 5^{1/}, provides as follows:

"Matrimony by a citizen of the USSR with one not such a citizen entails no change of citizenship."

^{1/} Before 1938, marriage to a Soviet citizen permitted a simplified acquisition by the alien spouse of USSR citizenship, a system similar to those analysed in C. below.

Several Latin American countries follow similar principles in their Constitutions.

The Constitutions of Ecuador, of 31 December 1946, article 12^{1/} and of Honduras of 28 March 1936, article 9^{2/}, provide as follows:

"Neither matrimony nor its dissolution affects the nationality of husband and wife." (Ecuador)

"Neither matrimony nor its dissolution affects the nationality of husband, wife, or their children." (Honduras)

C. Legal systems where marriage and changes of nationality by the husband during marriage give the wife the right to obtain her husband's nationality by privileged procedures and to renounce her original nationality

A large group of countries apply the same basic principles as in B. above, but give the wife the possibility to achieve the unity of nationality in the family, if she so desires: she can acquire her husband's nationality by simplified procedures if she complies with certain conditions specified by the law.

The main features of this group are as follows:

The alien woman marrying a national does not acquire her husband's nationality automatically, but may acquire it through a simplified procedure.

The woman national marrying an alien does not lose her original nationality, except if she renounces it.

The alien woman whose alien husband acquires the country's nationality does not acquire his new nationality, except through independent naturalization proceedings.

The woman national whose husband, a national, loses his nationality during marriage, does not lose her nationality.

The legal systems of the United States and of the United Kingdom provide the most important examples of this type of legislation.

^{1/} English text published in "The Constitutions of the Americas" (as of 1 January 1948) by Russell H. Fitzgibbon, University of Chicago Press, 1948, page 324.

^{2/} Ibid., page 470.

Under the statutory provisions in force in the United States^{1/}, a woman citizen does not lose her United States nationality by marriage to an alien. An alien spouse of a national must seek naturalization independently. If this person is otherwise eligible for naturalization, certain privileges are granted her, such as the reduction of the period of continuous residence in the United States and the exemption from the declaration of intention.

The British Nationality Act of 1948 applies a similar system. It constitutes a marked departure from the previous legislation of the United Kingdom and of the British Commonwealth, under which the nationality of the wife followed as a rule that of her husband, and which is still in force in certain countries of the Commonwealth (see Pakistan, Section II - B, above).

The general principles of the British Nationality Act of 1948 (Sections 6 and 19) are the following:

The woman national marrying an alien does not lose her nationality, except if she renounces her British nationality.

An alien woman who marries a national becomes a national if she applies to become a citizen and takes an oath of allegiance. She may also seek naturalization independently if she wishes, but would then have to fulfill the normal requirements.

If an alien husband acquires the British citizenship, the wife may register as a citizen or she may apply on her own behalf to be naturalized provided she fulfills the ordinary requirements.

The Czechoslovak Law of 13 July 1949, No. 194, applies similar rules to the effects of marriage on the nationality of married women. The Constitutions of several Latin American countries contain similar provisions. For example, the Constitution of Nicaragua of 22 January 1948^{2/} reads as follows:

"Article 16 - Naturalized citizens are ...

An alien woman who contracts matrimony with a Nicaraguan, if while residing in Nicaragua, she declares her desire to acquire Nicaraguan nationality."

"Article 17 - Neither marriage nor divorce will affect the nationality of the spouses or that of the children."

^{1/} 54 Statutes 1146; 8 USC 717, 710 and 711.

^{2/} Text published in "La Gazetta", Managua, 22 January 1948. English translation by the United Nations Secretariat.

CHAPTER III. INTERNATIONAL CONVENTIONS

General

In documents E/CN.6/79 and E/CN.6/79/Corr.1, "Treaties and Conventions in the Field of the Nationality of Women", prepared by the Secretary-General in accordance with resolution 154 C (VII) of the Economic and Social Council, the Secretary-General presented to the Commission on the Status of Women a survey of all the relevant international conventions and agreements, irrespective of whether they are in force or are obsolete, both those which deal with problems of nationality of women as their main purpose and those which contain arrangements concluded in accordance with territorial changes and exchanges of populations.

For the purpose of the present document, however, and in order to present a simple and up-to-date picture of the solutions given at the present time to conflict of laws in the field of nationality of married women on the international level, only such international conventions are being considered as are in force and deal directly with the nationality of married women. Such conventions are not numerous, none of them has been adhered to or ratified by a large number of states. The importance of these conventions lies therefore mainly in the fact that they represent recent developments of the problem of nationality of women, and that they show the application on the international level of the basic principles illustrated in Chapter I (Systems of National Law).

Section I - Bilateral Convention

The only bilateral convention on the nationality of married women which is at present in force is the Franco-Belgian Convention of 9 January 1947^{1/} (document E/CN.6/79/Corr.1), which has replaced the convention of 12 September 1928.^{2/} This change, made necessary by the change in the internal legislation of France (French Nationality Code of 1945, see above Section I-E), does not affect the principle embodied in the convention of 1928, according to which the nationality of the Belgian woman marrying a Frenchman as well as that of the French woman marrying a Belgian follows the rules of the law of the country where the marriage is celebrated, if this country is France or Belgium; no provision is made in the convention concerning the effect on the nationality of the wife of a Franco-Belgian marriage celebrated outside of both countries.

^{1/} Registered with the United Nations under No. 568, 9 September 1949.

^{2/} League of Nations Treaty Series, Volume CXXIII, page 93.

The Convention of 9 January 1947 reads as follows:

"Article 1 - Through her marriage to a Belgian, celebrated in Belgium, a French woman shall acquire Belgian nationality unless she declares within six months from the date of her marriage and in the forms laid down by Belgian law that she desires to retain French nationality."

"If the marriage is celebrated in France, a French woman marrying a Belgian shall retain her nationality, unless before the marriage she expressly declares in the forms laid down by French law that she desires to acquire, in accordance with the provisions of Belgian law, her husband's nationality...

.....
"Article 2 - A Belgian woman marrying a Frenchman in Belgium shall acquire French nationality unless within six months from the day of her marriage she declares in the forms and conditions stipulated by Belgian law that she desires to retain her nationality."

"If the marriage is celebrated in France, a Belgian woman marrying a Frenchman shall acquire French nationality unless she expressly declares, before the marriage and in the forms and time limits laid down by French law that she desires to retain her nationality ..."

.....
This convention applies exclusively to marriages between nationals of the two countries, parties to the convention, and only to marriages celebrated on the territory of one of these two countries.

A bilateral convention has a limited field of application. Moreover, the law of the place of celebration of the marriage (lex loci) can be applied only between countries the legal systems of which in the field of nationality of married women are based on similar principles, which is the case for France and Belgium (see Section I, E above). Inasmuch as there is no necessary permanent link between the personal status of the spouses and the place of celebration of their marriage, it is doubtful whether the law prevailing in this place could in general be made the law governing as important a part of the personal status as the nationality of the wife.

Section II - Multilateral Conventions

Among the multilateral conventions concluded for the regulation of the questions of nationality, three conventions deal specifically with the problem of nationality of married women. One is the Hague Convention of 12 April 1930, the two others are the Conventions of Montevideo of 1933.

/A. The Convention

A. The Convention on certain questions relating to the conflict of nationality laws, signed at the Hague, 12 April 1930.^{1/}

The primary purpose of this Convention was the elimination of statelessness and of its causes. Its authors did not seek to promote the recognition of women's rights nor to achieve equality of these rights in the field of nationality: they sought primarily to reconcile these various legislations so as to eliminate cases of conflicts of laws leading to statelessness and, in some cases, to double nationality. The provisions of the Convention dealing with the nationality of married women are therefore based essentially on the principle that neither marriage nor the change of nationality by the husband during marriage should deprive women of their nationality; this idea is similar to the basic principle applied in the legislations of the SECOND GROUP analyzed above (see Section II).

These provisions read as follows:

"Article 8 - If the national law of the wife causes her to lose her nationality on marriage with a foreigner, this consequence shall be conditional on her acquiring the nationality of the husband."

"Article 9 - If the national law of the wife causes her to lose her nationality upon a change in the nationality of her husband occurring during marriage, this consequence shall be conditional on her acquiring her husband's new nationality."

"Article 10 - Naturalization of the husband during marriage shall not involve a change in the nationality of the wife except with her consent."

"Article 11 - The wife who, under the law of her country, lost her nationality on marriage, shall not recover it after the dissolution of the marriage except on her own application and in accordance with the law of that country. If she does recover it, she shall lose the nationality which she acquired by reason of the marriage."

^{1/} As of the date of 10 July 1944, this Convention had been ratified by twelve countries, namely: Australia, Belgium, Brazil, Great Britain and Northern Ireland, (Burma), Canada, China, India, Monaco, The Netherlands, Norway, Poland, Sweden.

Twenty-seven countries had signed the Convention but have not yet ratified it. They are: Chile, Colombia, Cuba, Czechoslovakia, Free City of Dantzig, Denmark, Egypt, Estonia, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Luxembourg, Mexico, Peru, Portugal, Salvador, Spain, Switzerland, Union of South Africa, Uruguay, Yugoslavia.

The Supplement to the Twenty-first list (League of Nations - Official Journal - Special Supplement No. 195) issued on 31 July 1946 indicates no change.

/The purpose

The purpose of Article 8 is to alleviate the consequences of the deprivation of their own nationality of women marrying foreigners by making this deprivation conditional on their acquiring the nationality of their husbands.

Similarly, Article 9 of the Hague Convention does not attempt to change the principle followed in internal legislations which deprive a wife of her nationality upon a change in the nationality of her husband during marriage, but seeks to limit its application to cases where the wife would acquire her husband's new nationality.

Article 10 has the effect of making the nationality of the wife independent of that of her husband in case of acquisition by the latter of a new nationality through naturalization during marriage. This provision avoids the statelessness and double nationality which would have ensued for the wife as a result of the application of two conflicting systems of national law.

Article 11 of the convention deals with the case of double nationality resulting from the dissolution of marriage; this provision states that the wife will not recover her own nationality after the dissolution of the marriage, except if she so desires, in which case she shall lose her husband's nationality acquired marriage.

In its report to the Hague Conference, the First Committee of the Conference, which had heard the views of women's international associations, stated that the text of Article 8 was a compromise between the conception of equality of sexes and that of the subordinate status of the wife (nationality of the wife follows that of her husband). The Committee did not attempt to decide in favour of either of these two systems, leaving it to the legislature of the various countries, but proposed the texts of articles 8 and 9 "simply to remedy some of the defects resulting from existing conditions".^{1/} However, "Recommendation VI" proposed by the First Committee and adopted by the Conference reads as follows:

- "VI. The Conference recommends to the States the study of the question whether it would not be possible:
- "(1) To introduce into their law the principle of the equality of the sexes in matters of nationality, taking particularly into consideration the interests of the children;
- "(2) And especially to decide that, in principle, the nationality of the wife shall henceforth not be affected without her consent either by the mere fact of marriage or by any change in the nationality of her husband."

^{1/} League of Nations, Official No. A.19.1931.V.

In July 1931, the Committee of Representatives of Women's International Organizations transmitted to the Secretary-General of the League of Nations a report stressing the principle of equality between men and women in the field of nationality, pointing out its most important applications and protesting against the writing in the Convention of "an unequal treatment of men and women"; it was declared that "the spirit of the Codification should not confine itself to the mere registration of existing rules but should aim at adapting them, as far as possible, to contemporary conditions of international life."^{1/}

Similar requests were embodied in reports presented in the following years to the Secretary-General of the League of Nations by several other women's organizations. The Committee of Representatives of Women's Organizations expressly recommended the reconsideration of the Hague Nationality Convention and the deletion from this Convention of the "four articles that discriminated against women. (Articles 8, 9, 10 and 11)."^{2/}

B. The Montevideo Conventions of 1933

The Montevideo Convention on the Nationality of Women, signed on 26 December 1933^{3/}, has been the first to proclaim in its Article 1 the principle of equality of sexes as regards nationality. The pertinent part of this Convention reads as follows:

"The Governments represented in the Seventh International Conference of American States:

"Wishing to conclude a convention on the Nationality of Women... have agreed upon the following:

Article 1

"There shall be no distinction based on sex as regards nationality in their legislation or in their practice."

1/ Annex to League of Nations, Official No. A.19.1931.V.

2/ League of Nations, Official No. A.23.1932.V.)

3/ At the date of 1 January 1949, this Convention had been ratified by eleven countries, namely: Brazil, Chile, Colombia, Cuba, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama and the United States. The number of signatures not yet perfected by ratification was eight: Argentina, Bolivia, Dominican Republic, El Salvador, Haiti, Paraguay, Peru and Uruguay.

Implementing this principle, the Montevideo Convention on Nationality of the same date^{1/} has declared that marriage or its dissolution will not affect the nationality of the husband or wife, and that the naturalization or loss of nationality by the husband will not affect any member of his family. Its provisions dealing with this problem read as follows:

"Article 5 - Naturalization confers nationality solely on the naturalized individual and the loss of nationality whatever shall be the form in which it takes place, affects only the person who has suffered the loss."

"Article 6 - Neither matrimony nor its dissolution affects the nationality of the husband or wife or of their children."

In 1935 the Women's Consultative Committee on Nationality, created by the Council of the League of Nations, asked the Assembly of the League to give its approval to the "Equal Nationality Treaty" of Montevideo, declaring that the question of nationality was only "one phase of the whole issue of equality between men and women."

^{1/} At the date of 1 January 1949, this Convention had been ratified by six countries: Brazil, Chile, Ecuador, Honduras, Mexico and Panama. Uruguay had signed the Convention but has not yet ratified its signature.