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COMMISSION ON THE STATUS OF WOMEN

COMPILATION OF COMMENTS AND SUGGESTIONS OF GOVERNMENTS IN REGARD TO CONFLICTS OF LAWS IN THE FIELD OF NATIONALITY OF MARRIED WOMEN

Subsequent to the issuance of document E/CN.6/142, the Secretary-General has received the comments of the Governments of Argentina, Brazil, Luxembourg and Sweden on the "Analysis of Conflicts of Laws in the Field of Nationality of Married Women" (document E/CN.6/126), which are being reproduced hereinbelow.

/ARGENTINA

ARGENTINA

The analysis is intended to provide background material for a convention concerning the nationality of married women which is to guarantee to women equality with men in the exercise of the rights laid down in Article 15 of the Universal Declaration of Human Rights ("1. Everyone has the right to a nationality; "2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality"), and which is also to cover the status of women who become stateless or otherwise suffer hardships arising out of conflicts of law in this matter.

I. As its title indicates, the Economic and Social Council's document -- prepared on the basis of replies from governmental and non-governmental sources to a question circulated on the subject -- analyses the conflicts of laws relating to the nationality of married women.

II. The analysis contains three chapters prefaced by a short introduction stating the purpose of the analysis and outlining the plan followed. The first chapter deals with the sources of conflicts of laws in the field of nationality of married women, the second with the solutions of such conflicts adopted by systems of national law and the third with the solutions provided by international conventions.

I need not discuss each of the subjects mentioned at length. I shall merely say that the classification of the various types of legislation is the result of detailed and exhaustive study.

Naturally I have no suggestions, comments or remarks to make regarding each of the main groups or sub-groups since they have been drawn up on the basis of a wide range of material and accurately reflect the present state of legislation on this matter.

III. Nevertheless, no reference is made to Argentine legislation although it is a pure type having all the characteristics of the third of the three groups mentioned. It is not embodied in any legislative text since the question is not dealt with in the Civil Code or in the Act of 1869 (346) -- a fact which has given rise to differing opinions among our leading jurists -- nor has this view always prevailed; it is, however, the solution which has been favoured in current legal practice and theory, ever since the opinion of Dr. Malaver, the then Procurator of the Supreme National Court.

/IV. In the brief

IV. In the brief summary of international conventions on this subject, reference is made to the Hague Convention of 1930 and to the Seventh International Conference of American States held at Montevideo in 1933. Different principles are embodied in the two conventions, since the first established that the nationality of the wife might or might not follow that of the husband, depending on the requirements of the conflicting law of the other country, in order to avoid statelessness or double nationality while the second laid down the following specific principle: "There shall be no distinction based on sex as regards nationality in their legislation or in their practice".

This would appear to be the best solution for the problem with which we are dealing and is that advocated by the most influential women's organizations, such as the Inter-American Commission of Women, an organization registered with the Secretary-General of the Organization of American States.

/BRAZIL

BRAZIL

The provisions of our present Constitution, promulgated in 1946, do not deal specifically with the problem of nationality of married women. There is no provision that a married woman acquires the nationality of her husband, no precise ruling on the matter, as in Article 6 of the Constitution of Peru. But our Constitution does make possible the adoption of one or another norm for ordinary legislation -- as Article 129, establishing the conditions for Brazilian nationality, includes: "Those naturalized by the form which the law establishes" (No. IV). Thus it is permitted for ordinary law to establish that a woman who marries a Brazilian may acquire Brazilian nationality, if she does not already have it.

Law No. 818, of 18 September 1949, allies itself with the system of independence of the nationality of the married woman. Brazilian nationality of the husband only permits for the foreign woman a reduction of the naturalization requirement of legal residence in the country from five to two years (Law cit., Art. 8, No. II, and Art. 9, No. I); and if the husband is a Brazilian diplomat on active service, the wife is not subject to the conditions set forth in Article 8, Nos. I and II, IV and VI, for naturalization (Art. II).

Therefore, Brazilian law can be classified among those 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". (p. 19, Section III, par. C. of the Secretariat's report).

The Conventions of The Hague and of Montevideo were accepted or ratified by Brazil and thus were incorporated into our legislation. The provisions of these Conventions are not in conflict with our ruling legislation, which can be characterized then by two principles, affirmed clearly in Articles 1 and 6 of the Montevideo Conventions, as follows:

> "There shall be no distinction based on sex as regards nationality in their legislation or in their practice."
> (Art. 1)
> "Neither matrimony nor its dissolution affects the nationality of the husband or wife or of their children."
> (Art. 6)

/By following

By following the above system, we are applying the principle of equality of the sexes, nowadays incorporated in the most advanced legislation, and do not feel that the two opposing principles: subordination of the married woman to her husband's nationality and unity of nationality in the family -- justify its abandonment. The subordination of the woman to her husband's nationality is an obsolete preoccupation, inadmissible in our present-day civilization. The unity of the family still implies certain restrictions on the activities of a married woman, and a certain autonomy in the initiatives of the husband, who is considered the head of the family; but it cannot justify the imposition on the woman of the husband's nationality, especially when by so doing the psychological peculiarities of that same nationality have not been eliminated.

The matter has been discussed at great length by essayists and statesmen, notably in the Institute of International Law. See J. B. Scott "Observations on nationality".

The inconveniences, pointed out in the Secretary-General's report, which can be derived from the endorsement of the third system, are the loss of nationality, or double nationality, of the married woman. Concerning the loss of nationality, this can be remedied by naturalization, which our law, as we have seen, in certain cases, even facilities for a foreign woman married to a Brazilian. However, in the majority of cases, naturalization can only be obtained after five years of uninterrupted residence in Brazil. Double nationality does occur in several other cases.

In order to avoid these inconveniences -- and others which are present in various systems -- there is really only one remedy, and that is the adoption of the same system by the various legislations.

/LUXEMBOURG

LUXEMBOURG

1. In accordance with Article 19, paragraph 3, of the Act of 9 March 1940 on Luxembourg nationality, an alien woman who marries a Luxembourg citizen may acquire Luxembourg nationality by option. It follows from this provision that Luxembourg nationality is not acquired automatically by an alien woman; she is therefore free to choose between her nationality of origin and that of her husband.

2. On the other hand, a Luxembourg woman who marries an alien of fixed nationality loses her Luxembourg citizenship only if she acquires the nationality of her husband compulsorily under the law of the foreign country; in that event, if the woman is a Luxembourg citizen by origin, she may still retain her Luxembourg nationality by a simple declaration made within six months from the date of the marriage (Article 25, paragraphs 2 and 3 of the Act of 9 March 1940).

3. The option and the declaration of retention are inadmissible if the law of the foreign country authorizes the person concerned to retain or to obtain an authorization to retain the foreign nationality in the event of her acquiring or retaining Luxembourg nationality and if the option and the declaration of retention are incompatible with the obligations which the person concerned has to fulfil in respect of the foreign State to which she belongs or if difficulties may arise therefrom (Article 22, paragraphs 1 and 2 of the Act of 9 March 1940).

4. From the above provisions, it will be seen that Luxembourg law takes into consideration to the widest possible extent the right of a married woman to choose freely between her nationality of origin and that of her husband.

Thus, any difficulties concerning the nationality of a woman in connexion with marriage between a Luxembourg national and an alien can only arise out of the provisions of the law of the foreign country; these difficulties can be avoided only if the foreign legislators adopt provisions analogous to those of Luxembourg law.

/SWEDEN

SWEDEN

The Swedish Government has just submitted to the Riksdag (the Swedish Parliament) a bill on Swedish nationality, to replace the existing law on the subject, which dates from 1924.

According to this Bill, a married woman's status in regard to her nationality will be absolutely independent of that of her husband. Marriage between an alien woman and a Swede will not involve the automatic acquisition of Swedish nationality. If, in such a case, the woman wishes to acquire Swedish nationality, she will have to submit a request for naturalization. Provision has been made for the conditions of naturalization to be less stringent in such cases than in respect of ordinary naturalizations. The acquisition of Swedish nationality by the husband during the marriage will not involve the automatic acquisition of the same nationality by the wife.

In regard to loss of Swedish nationality, the Bill provides as a general rule that a Swedish subject will lose his Swedish nationality if he acquires a foreign nationality and if such acquisition is the result of the special request or the express consent of the person concerned. Thus, if a Swedish woman acquires foreign nationality by marriage or through her husband's acquisition of foreign nationality, she will not automatically lose her Swedish nationality. If, as a result of her marriage with a foreigner, a woman simultaneously possesses Swedish nationality and a foreign nationality, she may, on request, be declared to have lost her Swedish nationality. Loss of Swedish nationality by the husband will in no way affect the Swedish nationality of the wife.

Similar Bills have been prepared in Denmark and Norway.

In consideration of the Bill which has been summarized above, the Swedish Government is of the opinion that it would be desirable to undertake a study of the possibilities of drawing up an international convention on the following bases:

1. The principle that the marriage of two persons of different nationalities should not involve the acquisition by the wife of the husband's nationality, unless the wife expressly states her wish to acquire the nationality of her husband;

2. Articles 8 to 10 of the Hague Convention of 12 April 1930 concerning certain questions relating to conflicting laws on nationality.