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DRAFT CONVENTION ON THE NATIONALITY OF MARRIED WOMEN

Report of the Third Committee

Rapporteur: Mr. Hermod LANNUNG (Denmark)

1. The General Assembly, at its 530th meeting on 30 September 1955, decided to allocate item 63 of the agenda of its tenth session, entitled "Draft Convention on the Nationality of Married Women", to the Third Committee for consideration and report.
2. The Third Committee discussed the item at its 662nd to 667th meetings held between 16 and 21 November. It had before it chapter VI, section XI, paragraphs 704 to 707 of the report^{1/} of the Economic and Social Council and a note (A/2944 and Corr.1) by the Secretary-General.
3. The basis of the Committee's discussion was Economic and Social Council resolution 587 E (XX) of 3 August 1955, by which the Council recommended the adoption by the General Assembly of a convention on the nationality of married women, and submitted to the Assembly for consideration the text of the preamble and substantive articles 1 to 3 recommended by the Commission on the Status of Women at its ninth session, together with the final articles and amendments thereto which had been submitted to the Commission (annex A to the resolution), and an amendment to article 3 submitted by Australia at the twentieth session of the Council (annex B to the resolution).
4. The debate was for the most part directed to the scope and substance of the preamble and substantive articles of the draft convention.

^{1/} See Official Records of the General Assembly, Tenth Session, Supplement No. 3, document A/2943.

5. Certain representatives, however, considered that the adoption by the General Assembly of a draft convention was inadvisable, and urged that the proper course was to refer the proposed text to the International Law Commission for consideration at such time as that Commission again took up the entire subject of nationality. On the other hand, many representatives noted that the International Law Commission had decided not to comply with the request of the Economic and Social Council to draft a convention on the nationality of married women and that, in view of its heavy agenda, the Commission was unlikely, in the near future, to deal with the subject of nationality and, in this connexion, with the question of the nationality of married women.

6. While it was recognized that the substance of the draft convention concerned but one phase of the whole nationality problem, most members deemed separate treatment of the nationality of married women to be appropriate. The simplicity of the text of the draft convention, its basis in article 15 of the Universal Declaration of Human Rights, and the lengthy and thorough study devoted to it by the Commission on the Status of Women were cited. Several members pointed out that the Council had requested the circulation of two successive texts to Governments for comments; those comments had been carefully considered by the Commission prior to recommending the text presently under discussion.

7. The limited scope of the draft convention was deplored by some representatives, who considered that other problems arising from mixed marriages, such as the nationality of children and conflicts of law on divorce and inheritance, should be dealt with at the same time. Many members, however, deemed it wise to adopt the proposed draft convention which would, in their opinion, neither prejudice nor complicate the solution by the International Law Commission or other United Nations organs of other related problems. It was believed that the convention would in itself serve two useful purposes: first, it would afford to married women the right expressed in article 15 of the Universal Declaration of Human Rights, by providing that the wife's nationality should not be conditional on that of her husband; and second, it would remove some of the difficulties suffered by a woman married to a national of another country by ensuring more consistency in nationality laws.

8. With respect to the substantive articles of the convention, two general objections were raised: certain representatives expressed disappointment that the draft convention fell short of providing absolute equality of the sexes in nationality matters; certain other members felt, on the contrary, that the text over-emphasized the principle of equality of husband and wife in nationality laws, at the expense of the more vital principle of unity of the family.

9. In the opinion of certain representatives, whose preference was for a convention on nationality of married persons, article 3 of the draft convention was discriminatory in providing only for the voluntary acquisition by the wife of her husband's nationality and not for the equal treatment of spouses. In this connexion, supporters of the convention stressed the fact that comments by Governments on the first text, dealing with "nationality of married persons" without distinction as between husband and wife, had indicated that such a convention would not be generally acceptable. Therefore, it was explained, the Commission on the Status of Women had decided to propose a text which would be broadly acceptable while providing for the removal of the most severe inequities based on sex existing under some nationality laws; abolition of the automatic loss or automatic acquisition of nationality by married women was the primary aim of the draft convention.

10. It was pointed out that the draft convention in its present form was concerned only with the nationality of married women and therefore provided, in article 3, for preferential treatment of alien wives rather than alien spouses of nationals; it was not intended that the article should be construed as precluding equality of rights or privileges as between alien husbands and wives of nationals.

11. Some representatives who objected to the draft convention on the ground of its neglect of the principle of family unity deemed that automatic acquisition by the wife of her husband's nationality was beneficial to her and to the family. Certain representatives, while expressing approval of the principles of the draft convention, considered that it should be amended to allow for legislation whereby the wife acquired her husband's nationality on marriage, subject to her right to retain her original nationality at her express request.

12. It was, however, contended that unity of nationality was not a prerequisite to family unity, that national sentiments could not be altered by operation of law, and that the wife's right expressly to choose her husband's nationality was more consistent with family unity than was the automatic imposition on her of such nationality. Several members considered that any change in the nationality of a woman resulting solely from the fact of her marriage, and not from a request to acquire or renounce her nationality, was inconsistent with article 15 of the Universal Declaration of Human Rights and with the basic principles underlying the draft convention.

13. During the debate, amendments to the text of the draft convention were submitted by the Netherlands (A/C.3/L.490 and Corr.1 and A/C.3/L.492), Australia (A/C.3/L.494) and Peru (A/C.3/L.493); a draft resolution providing for the adoption by the General Assembly of the draft convention was submitted jointly by Cuba and the Dominican Republic (A/C.3/L.491).

14. A working party, consisting of the representatives of the Dominican Republic (Chairman), Australia, Belgium, Cuba, Guatemala, the Netherlands, Pakistan, Sweden and the United Kingdom, was formed at the Committee's 664th meeting, pursuant to a proposal by the representative of the United Kingdom; it considered the preamble and substantive articles 1 to 3, the first Netherlands amendment (A/C.3/L.490 and Corr.1), and the Australian amendment (A/C.3/L.494). The Netherlands amendment was presented in the form of three alternative proposals, two of which affected substantive articles 1 and 2 while the third alternative dealt with the article on reservations. The Australian amendment concerned article 3, paragraph 1, and was submitted in lieu of the Australian amendment which had been proposed in the Economic and Social Council and annexed to Council resolution 587 E (XX) (see paragraph 3 above).

15. The working party recommended that the Third Committee should adopt the text of the preamble, with a minor drafting change, and the first two articles of the draft convention as set forth in the Council resolution; the Chairman of the working party reported to the Committee that the Australian amendment to paragraph 1 of article 3 had been favoured by most of its members.

16. The representative of the Netherlands withdrew the first two of the three alternative proposals contained in documents A/C.3/L.490 and Corr.1 and submitted a differently worded amendment to article 1 (A/C.3/L.492). The Committee also considered the amendment to article 1 submitted by the representative of Peru.

17. A drafting amendment affecting each of the substantive articles was proposed by the representative of the United Kingdom.

18. An oral procedural proposal by the representative of the United Kingdom, as amended by the representative of the Dominican Republic, to refer the final articles to the Sixth Committee for consideration at the current session of the General Assembly was adopted by 32 votes to 3, with 9 abstentions.

19. The Committee proceeded to vote on the preamble and first three articles as contained in Economic and Social Council resolution 587 E (XX). The voting was as follows:

Preamble:

The preamble was adopted (with minor drafting changes in the French and Spanish texts) by a roll-call vote of 37 to none, with 11 abstentions. The voting was as follows:

In favour: Argentina, Australia, Belgium, Burma, Byelorussian Soviet Socialist Republic, Canada, Chile, China, Colombia, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Ethiopia, Greece, Guatemala, India, Indonesia, Iraq, Liberia, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Pakistan, Poland, Saudi Arabia, Sweden, Syria, Thailand, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, Yugoslavia.

Against: None.

Abstaining: Afghanistan, Brazil, Haiti, Iceland, Iran, Israel, Paraguay, Peru, Philippines, United States of America, Venezuela.

Substantive articles:

The Netherlands amendment (A/C.3/L.492) to article 1, according to which the nationality of the wife would not be deemed automatically affected "if, by the law of the Contracting State concerned, she is given an opportunity to retain its nationality by giving notice of her desire to do so", was rejected by a roll-call vote of 17 to 3, with 30 abstentions. The voting was as follows:

In favour: Netherlands, New Zealand, United Kingdom of Great Britain and Northern Ireland.

Against: Byelorussian Soviet Socialist Republic, Colombia, Cuba, Czechoslovakia, Denmark, Dominican Republic, Egypt, Greece, Guatemala, Iceland, Norway, Poland, Sweden, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Yugoslavia.

Abstaining: Afghanistan, Argentina, Australia, Belgium, Bolivia, Brazil, Burma, Canada, Chile, China, Costa Rica, Ecuador, Ethiopia, Haiti, Honduras, India, Indonesia, Iran, Iraq, Israel, Liberia, Mexico, Pakistan, Paraguay, Peru, Philippines, Thailand, United States of America, Venezuela, Yemen.

The Peruvian amendment (A/C.3/L.493) to article 1, to replace the words "one of its nationals and an alien" by the words "a national of one State and a national of another State" was rejected by 17 votes to one, with 30 abstentions.

Article 1, with the drafting change suggested by the representative of the United Kingdom to replace the first words "The Contracting States agree" by the words "Each Contracting State agrees", was adopted by a roll-call vote of 34 to one, with 14 abstentions. The voting was as follows:

In favour: Argentina, Australia, Belgium, Bolivia, Burma, Byelorussian Soviet Socialist Republic, Canada, Chile, China, Colombia, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Egypt, Greece, Guatemala, Honduras, Iceland, India, Iraq, Mexico, New Zealand, Norway, Pakistan, Poland, Sweden, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, Venezuela, Yemen, Yugoslavia.

Against: Afghanistan.

Abstaining: Brazil, Costa Rica, Ethiopia, Haiti, Indonesia, Iran, Israel, Liberia, Netherlands, Paraguay, Peru, Philippines, Thailand, United States of America.

Article 2, with the same drafting change as made in article 1, was adopted by a roll-call vote of 38 to none, with 12 abstentions. The voting was as follows:

In favour: Argentina, Australia, Belgium, Bolivia, Burma, Byelorussian Soviet Socialist Republic, Canada, Chile, China, Colombia, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, El Salvador, Greece, Guatemala, Iceland, India, Iran, Iraq, Liberia, Luxembourg, Mexico, New Zealand, Norway, Pakistan,

Poland, Saudi Arabia, Sweden, Syria, Thailand, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, Venezuela, Yugoslavia.

Against: None.

Abstaining: Afghanistan, Brazil, Ethiopia, Haiti, Indonesia, Israel, Netherlands, Paraguay, Peru, Philippines, Turkey, United States of America.

The Australian amendment (A/C.3/L.494) to article 3, paragraph 1, was put to the vote after the sponsor had accepted a drafting change suggested orally by the representative of Norway, to substitute the word "or" for "and" before the words "public policy". The words "inter alia" preceding the words "to such limitations" were put to the vote separately and rejected by 12 votes to 7, with 28 abstentions. The Australian amendment, with these words deleted, was adopted by 18 votes to one, with 31 abstentions.

Article 3, paragraph 2, with the same drafting change as made in articles 1 and 2, was adopted by 35 votes to none, with 15 abstentions.

Article 3 as a whole, as amended, was adopted by 31 votes to none, with 19 abstentions.

At its 667th meeting, the Third Committee adopted the text of the preamble and articles 1, 2 and 3 as a whole by a roll-call vote of 35 to 3, with 13 abstentions. The voting was as follows:

In favour: Argentina, Australia, Belgium, Bolivia, Burma, Byelorussian Soviet Socialist Republic, Canada, Chile, China, Colombia, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Egypt, Greece, Iceland, India, Iraq, Luxembourg, Mexico, New Zealand, Norway, Pakistan, Poland, Saudi Arabia, Sweden, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, Venezuela, Yemen, Yugoslavia.

Against: Afghanistan, Turkey, United States of America.

Abstaining: Brazil, Costa Rica, Ethiopia, Guatemala, Honduras, Indonesia, Iran, Israel, Liberia, Netherlands, Peru, Philippines, Thailand.

20. In view of the Committee's decision to refer the final articles to the Sixth Committee, no vote was taken on the draft resolution submitted by Cuba and the Dominican Republic (A/C.3/L.491) providing for the opening of the convention for signature and ratification at the end of the present session of the General Assembly; it was considered preferable that such a draft resolution should be presented in the plenary meeting when the text of the entire draft convention, as recommended by the Third and the Sixth Committees, could be annexed.

21. The Third Committee therefore recommends that the General Assembly approve the following preamble and substantive articles:

DRAFT CONVENTION ON THE NATIONALITY OF MARRIED WOMEN

The Contracting States,

Recognizing that conflicts in law and in practice with reference to nationality arise as a result of provisions concerning the loss or acquisition of nationality by women as a result of marriage, of its dissolution or of the change of nationality by the husband during marriage,

Recognizing that in article 15 of the Universal Declaration of Human Rights the General Assembly of the United Nations has proclaimed that "everyone has the right to a nationality" and that "no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality",

Desiring to co-operate with the United Nations in promoting universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to sex,

Hereby agree as hereinafter provided:

Article 1

Each Contracting State agrees that neither the celebration nor the dissolution of a marriage between one of its nationals and an alien, nor the change of nationality by the husband during marriage, shall automatically affect the nationality of the wife.

Article 2

Each Contracting State agrees that neither the voluntary acquisition of the nationality of another State nor the renunciation of its nationality by one of

its nationals shall prevent the retention of its nationality by the wife of such national.

Article 3

1. Each Contracting State agrees that the alien wife of one of its nationals may, at her request, acquire the nationality of her husband through specially privileged naturalization procedures; the grant of such nationality may be subject to such limitations as may be imposed in the interests of national security or public policy.

2. Each Contracting State agrees that this Convention shall not be construed as affecting any legislation or judicial practice by which the alien wife of one of its nationals may, at her request, acquire her husband's nationality as a matter of right.
