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Addendum to Comments by Governments on the revised Draft Convention on the Elimination of Future Statelessness and the revised Draft Convention on the Reduction of Future Statelessness, prepared by the International Law Commission at its sixth session

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(3 p.)

10. JAPAN

Letter from the Permanent Mission of Japan to the United Nations dated 18 March 1959

The Japanese Government realizes the necessity of an international treaty on the Elimination or Reduction of Future Statelessness. Although the present Nationality Law of Japan, promulgated in 1950, is based on the principle of jus sanguinis, it admits to some extent the application of the principle of jus soli, since it contains a provision which states that a child born in Japan shall acquire Japanese nationality at the time of its birth if both of its parents are not known or are stateless. In addition, under the present legislation of Japan, no person could be deprived of his Japanese nationality, however, the renunciation of Japanese nationality by a Japanese national is permitted upon his acquisition of another nationality. Accordingly, this Government considers that it has already taken most of the measures that are expected of the governments when either or both of the draft Conventions on the Elimination or Reduction of Future Statelessness prepared by the International Law Commission come into force.

These two draft Conventions provide for the elimination or reduction of future statelessness, based mainly upon the principle of jus soli with some consideration of the residence qualification; and both draft Conventions appear to adopt the principle of jus sanguinis in Article 4 only as an exception. Since the Nationality Law of Japan is based on the principle of jus sanguinis, the Japanese Government would prefer, as a matter of principle, a draft Convention based on the principle of jus sanguinis. However, as a Convention f this kind will necessarily be the result of compromises between the Governments whose national laws may be based on different principles, it is not reasonable that these Governments should adhere to their respective principles, especially when no substantial conflict exists between the proposed draft Convention and their national laws.

The Japanese Government regards the draft Conventions on the Elimination of Future Statelessness adopted by the International Law Commission (hereinafter referred to as the first draft) to be more acceptable to it, that the draft Convention on the Reduction of Future Statelessness also adopted by the Commission (hereafter referred to as the second draft), since the former does not contain provisions regarding the system of conditional acquisition of nationality. Following are the comments of this Government on the Articles of the draft Convention;

Article 1: This Government prefers the first draft to the second. It, however, hopes that an amendment will be made limiting the application of the Article to persons whose parents are both not known or are stateless at the time.

Article 4: The first draft is preferred to the second. In case Article 1 is amended as suggested above, it is desirable that this Article be amended to make it applicable irrespective of the place of birth.

Article 5 to Article 9: This Government prefers the first draft to the second. None of these Articles are in conflict with the present Nationality Law of Japan.

Article 11: Although this Government is not opposed in principle to the proposed establishment of an agency referred to in paragraph 1 of this Article, it does not agree with the suggestion to establish the tribunal as set forth in paragraph 2. Most of the disputes arising out of the application or interpretation of the international convention on the Elimination or Reduction of Future Statelessness would not be disputes between States, but would be between a State and the agency acting for those individuals who believe that their rights to a nationality have been impaired. The dispute of the latter type are of such nature that, generally speaking, they should be settled as domestic mattersby the Governments concerned, except when there is an apparent breach of treaty obligations. This Government therefore feels that such disputes should not be settled by an international tribunal empowered to give decisions which will be legally binding upon the parties; they may well be settled by an international investigation or mediation committee empowered to give recommendations to the parties.

Paragraph 3 of this Article provides for the right of any of the Parties to the Convention to request the General Assembly of the United Nations to establish the agency or the tribunal referred to in this Article if neither has been established within the designated time. This right accorded to the Parties may be construed as imposing an obligation on the part of the General Assembly to take up such request. Since, according to paragraph 1 of Article 12, the Parties to the Conventions will not be limited to the Member States of the United Nations, this Government wishes to point out the necessity of amending the present paragraph so as to limit its scope of application to those Parties which are Member States of the United Nations.