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Reduction of the number of cases of multiple nationality

Report¹

Committee on Legal Affairs and Human Rights

1. 1958 - 10th Session - First part



A. Draft Recommendation

The Assembly, Considering that in its Special Message of 20th May 1954, the Committee of Ministers stated that it intended to study the possibility of unifying or harmonising national legislations and that it would welcome proposals by the Assembly on the matter ([Doc. 238](#), paragraph 87);

Considering that, at least as between Member States, the number of cases of multiple nationality should be reduced to a minimum;

Having regard to the Convention on Certain Questions relating to the Conflict of Nationality Laws signed at The Hague on 12th April 1930, and to its Protocol of the same date relating to Military Obligations in certain cases of Double Nationality;

Considering that only a few of the Member States have ratified the said Convention and Protocol;

Considering that there are other methods of reducing the number of cases of multiple nationality besides those referred to in the said Convention;

After examining the work done on the problem of multiple nationality by the International Law Commission of the United Nations;

Recalling that the Committee of Ministers itself has favoured action being taken at the European level in relation to problems to which a satisfactory solution could not otherwise be found;

After examining the Report of its Legal Committee ([Doc. 805](#)), Recommends to the Committee of Ministers:

1. that a Committee of governmental experts be set up to prepare a draft European Convention for the reduction of the number of cases of multiple nationality, on the basis of the proposals contained in the Legal Committee's Report;
2. that the draft Convention thus prepared should be submitted to the Assembly for its opinion before final approval by the Committee of Ministers.

B. Explanatory Memorandum

1. Action taken by the Consultative Assembly

1. At its Session in May 1954, the Assembly had before it the question of the « possibility of concluding a European Convention on statelessness and multiple nationality» ([Doc. 236](#)) which it referred to the Committee on Legal and Administrative Questions for a report.

2. The Committee took as a basis for its examination a preliminary Report ([Doc. AS/JA \(6\) 33](#)) by its Rapporteur reviewing the progress made by the League of Nations in regard to the problems of statelessness and multiple nationality and the work being done on them at the moment by the United Nations.

3. As early as 25th October 1955, the Consultative Assembly adopted, on the proposal of the Committee on Legal and Administrative Questions, a recommendation on statelessness (Recommendation 87 (1955), inviting members of the Council of Europe:

3.1. to sign and ratify without delay the Convention relating to the Status of Stateless Persons adopted on 28th September 1954 by the United Nations Conference held in New York;

3.2. to agree as soon as possible, in conformity with Resolution 896 (IX) of the General Assembly of the United Nations, to the convening of the international conference of plenipotentiaries, with a view to the conclusion of a Convention for the reduction or elimination of statelessness in the future.

The Committee of Ministers' reply to this Recommendation will be found in paragraphs 79-84 of [Document 485](#) and paragraphs 102-111 of [Document 543](#), from which it may be seen that, by October 1956, the Convention relating to the Status of Stateless Persons had been ratified by Denmark and signed by the following member countries: Belgium, France, the Federal Republic of Germany, Italy, Luxembourg, the Netherlands, Norway, Sweden and the United Kingdom, while, as at that date, the Governments of nine member countries had stated their willingness to take part in an international conference of plenipotentiaries on the reduction of the number of cases of statelessness.

2. Progress achieved by the League of Nations

4. The Rapporteur of the Committee points out in his preliminary Report ([Doc. AS/JA \(6\) 33](#)) that the League of Nations was responsible for the drafting of two international instruments dealing with multiple nationality; the Convention on Certain Questions relating to the conflict of Nationality Laws (see Appendix I to [Doc. AS/JA \(6\) 7](#)) and the Protocol relating to Military Obligations in Certain Cases of Double Nationality (see Appendix III to same document). The Convention was signed on 12th April 1930 at The Hague by the representatives of 37 countries, and came into force on 1st July 1937. The Members of the Council of Europe that ratified it were: Belgium, the Netherlands, Norway, Sweden and the United Kingdom. France, Germany, Greece, Iceland, Ireland, Italy and Luxembourg signed the Convention but have never ratified it. The Protocol relating to Military Obligations was also signed on 12th April 1930 by 24 countries, and came into force on 25th May 1937. The member States of the Council of Europe that ratified it were: Belgium, the Netherlands, Sweden and the United Kingdom. Others which signed but have not yet ratified are Denmark, France, Germany, Greece, Ireland and Luxembourg.

5. All ratifications of these two instruments were made before 1939. Since that date no further ratifications have been deposited.

3. Action taken by United Nations

6. Since the war, attempts have been made by the International Law Commission of the United Nations to find a more satisfactory solution to the problem of multiple nationality than that provided by the Hague Convention. A report on the question was drawn up in 1954 (A/CN 4/83) but during its discussion by the International Law Commission various problems arose which proved so intractable that the Commission decided to defer discussion of the question for the time being.

4. New Proposals

7. Having carefully examined the question of dual nationality in all its aspects, your Committee considers the complete elimination of all cases of multiple nationality to be impracticable because each country's nationality laws are dictated by specific demographic, social or political considerations. For example, in certain

countries, such as the Federal Republic of Germany, domestic legislation is based on the *jus sanguinis*, in others, such as the United Kingdom, it is based on the *jus soli*, while in others again it is based on a combination of the two. Moreover, the operation of *jus sanguinis* and *jus soli* is not the only means whereby multiple nationality can be acquired. Professor Makarov, the expert on nationality laws who gave evidence before the Legal Committee, emphasised that in all countries the law relating to nationality introduced concepts whose meaning could only be determined by applying the rules of civil law. The acquisition of nationality could depend upon parentage, but parentage or affiliation was determined according to certain legal rules. It might be that nationality was affected by marriage, but in that case, too, there was a concept which took on form and substance in accordance with legal provisions. This often took place through the operation of rules regarding the conflict of laws in the country concerned, or possibly by the application of special rules on preliminary conditions of nationality law. M. Makarov gave the following case as an example: Supposing a Greek woman marry a Frenchman before a registrar in Paris, without, however, going through any ceremony according to the rites of the Greek Orthodox Church. French law provides that, on marriage to a French national, a foreign woman acquires French nationality. Under Greek law, a Greek woman loses her nationality on acquiring that of her husband. In this case, it might be thought that there could be no possibility of dual nationality, but the woman would nevertheless acquire in fact dual nationality since Greek law required a religious ceremony for the marriage of Greek nationals, even if the marriage took place outside Greece. Consequently, multiple nationality arising from situations of this type could not be abolished unless the rules concerning conflict of laws were unified, and this is impracticable for the moment.

8. Some decrease in the number of cases of multiple nationality could nevertheless be brought about. Your Committee therefore submits a draft Recommendation to the Consultative Assembly inviting the Committee of Ministers of the Council of Europe to draw up a Convention for the reduction of cases of multiple nationality which would merely form a supplement to the Hague Convention, but would take into account certain changes which have proved necessary since 1930.

9. The Committee unanimously agreed that a new Convention would be justified if it provided a more satisfactory solution at the European level. In this connection, the Committee would draw attention to the statement in paragraph 17 of the Committee of Ministers' Special Message transmitting the programme of work of the Council of Europe to the Consultative Assembly ([Doc. 238](#)): " It follows that [the Council of Europe] may, at the European level, study matters which are the concern of larger or more specialised international institutions if such study might result in useful intergovernmental action which would not otherwise be possible. An examination of the work already carried out or contemplated in the same field by other international organisations is a necessary preliminary. »

10. There were two divergent views in the Legal Committee concerning the practical proposals to be incorporated in the new Convention. The majority of Committee members considered that the new Convention should not attempt to eliminate dual nationality in the case of nationals of member countries of the Council of Europe, since its occurrence could not fail to encourage closer relations between Member States of the Council. They further considered the choice of nationality to be a fundamental Human Right. Thus, in the interests of the individual and the State, Committee members tried to confine themselves to proposals of a more or less optional nature, while ensuring that there would be no automatic loss of one nationality where a person applied for the nationality of another Member State of the Council. On the other hand, a minority of Committee members, including your Rapporteur, while admitting that dual nationality might in one sense make for integration, thought it advisable, in the very interests of the parties concerned, to eliminate cases of conflicting nationality which entail serious disadvantages, particularly as regards the personal status of those concerned. The minority also took the view that the choice of nationality is not merely an individual right, but may have serious effects upon international relations. The minority therefore suggested in the first place a provision worded as follows: " The High Contracting Parties undertake to make provision in their respective national legislations whereby the voluntary acquisition by any of their nationals, either through naturalisation or the exercise of a right of option, of the nationality of one of the other Contracting Parties shall involve the automatic loss by such nationals of their previous nationality or of the nationality for which they have not opted. " No such provision is contained in the 1930 Convention. This provision only deals with multiple nationality acquired by declaration of intention, in other words with naturalisation and option, i.e. cases in which nationality is acquired at the request of the person concerned. The minority is convinced that, in the cases covered by this Article, the automatic loss of the antecedent nationality is absolutely essential if an element of uncertainty is not to be introduced both into the personal status of the individual concerned, and into relations between Member States. Bearing in mind the principle, recognised in Article 1 of the present draft, that nationality is to be determined according to the domestic legislation of each Contracting Party, the minority of your Committee went no further than to propose a reciprocal undertaking, to be entered into by the Contracting Parties for the introduction of these provisions into their national legislations. For the reasons given above, the majority of Committee members were unable to endorse this proposal, on account of the

automatic loss of nationality involved. The word " automatic " was therefore deleted. Further, the majority preferred to insert the following clause at the end of the Article: " ...unless they have retained one of those nationalities at their own specific request. " This amendment is based on the legislation of a certain Member State, which enables its nationals to retain their nationality when they voluntarily acquire the nationality of another State.

11. The Committee unanimously decided to propose that the new - Convention contain a provision based on Article 5 of the Hague Convention, the purpose of which is to ensure that " effective " nationality shall prevail where there is a conflict of nationalities. Article 5 of the Hague Convention reads as follows: " Within a third State, a person having more than one nationality shall be treated as if he had only one. Without prejudice to the application of its law in matters of personal status and of any conventions in force, a third State shall², of the nationalities which any such person possesses, recognise exclusively in its territory either the nationality of the country in which he is habitually and principally resident, or the nationality of the country with which in the circumstances he appears to be in fact most closely connected. " While the majority wished to retain this provision in its optional form—i.e. in the above wording—and even to emphasise the optional element by substituting the words " may, if it wishes " for the word " shall ", the minority considered that, on a European plane, this permissive provision should be made mandatory for Member States. It therefore amended the French text of the provision under discussion _ " cet Etat pourra sur son territoire, reconnaître exclusivement, parmi les nationalités... " to read " cet Etat reconnaîtra exclusivement sur son territoire parmi les nationalités... " The Committee agreed, even so, that neither version had the merit of precision, as both leave it open to a third State to recognise either the nationality of the country of habitual residence, or the nationality of the country with which the person is in fact most closely connected. Moreover, the second alternative is vague, as it provides no kind of criterion for determining whether a person is more closely connected with one country than another. Your Committee does not, however, propose any further alteration to the text; the very fact that the Hague Conference thought it necessary to provide these two alternatives shows clearly enough the difficulties inherent in the question.

12. In the third place, the Committee unanimously agreed that the new Convention should provide that any person who has acquired the nationality of two or more of the member countries, and has lived in one of them for ten years or more, should have the right to renounce his other nationality or nationalities and permission to do so should not be withheld. This may be done by the following text, based on Article 6 of the Hague Convention: " Without prejudice to the liberty of a State to accord wider rights to renounce its nationality a person who has acquired ipso jure the nationality of more than one of the Member States of the Council of Europe, may renounce one or more of his nationalities with the authorisation of the State (s) whose nationality he desires to surrender. Authorisation to do so may not be withheld if the person has for the past ten years had his habitual and principal residence not in the territory of the State whose nationality he desires to renounce but in the territory of another Member State whose nationality he also possesses. "

13. Since a person possessed of two or more nationalities is liable to military service in the countries concerned, it would be desirable that Member States not parties to the Protocol on military obligations in certain cases of double nationality signed at The Hague on 12th April 1930, should, at least among themselves, subscribe to the principles laid down in Article 1 of that Protocol which reads as follows: " A person possessing two or more nationalities who habitually resides in one of the countries whose nationality he possesses, and who is in fact most closely connected with that country, shall be exempt from all military obligations in the other country or countries. This exemption may involve the loss of the nationality of the other country or countries. " The Committee nevertheless preferred to allow States the option of accepting a different solution, and therefore decided to preface the Article with the words: " Subject to special agreements between the States concerned..., "

14. Needless to say, this arrangement would abrogate as between contracting Council of Europe countries certain provisions of the Hague Convention of 1930 insofar as that Convention is in force between them. The other provisions, however, of the 1930 Convention, concerning matters not dealt with in the new European Convention, would remain binding on all the Contracting Parties.

15. It is in the light of the foregoing observations that your Committee submits the foregoing draft Recommendation, the limited scope of which is explained by the complexity of the problem and by two other important factors which had to be taken into account:

- a. One of our aims should be to prevent the inconvenience which is sometimes very serious of dual nationality;

2. In the French text " pourra ".

b. It would be undesirable however to prevent such inconvenience by "nationalising" the person concerned, i.e. by arbitrarily bestowing upon him the nationality of one of the two States and completely disregarding any interest the other may have in the question. Moreover, the experience of federations has shown that possession of the nationality of two or more of the component States has not generally given rise to conflict; it has more often been a means of strengthening the links between the Member States.

16. In the light of the foregoing considerations, the Committee has prepared the draft Convention appended hereto. Section I of this draft contains the provisions commented on above and, Section II, technical rules based on provisions common to all European Conventions. Moreover, the draft includes the minority proposals as well as the text adopted by the majority.

17. The draft Recommendation and the attached draft Convention were adopted on 7th December 1957 by the Committee by 8 votes to 2 with 1 abstention.

Appendix APPENDIX

Draft European Convention on the reduction of the number of cases of multiple nationality

The Governments signatory hereto, being Members of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its Members;

Considering that this aim can be achieved by the conclusion of agreements, or by decisions to take joint action, in the legal field;

Convinced that at least as between Member States, the number of cases of multiple nationality should be reduced to a minimum,

Have agreed as follows:

SECTION I

Article 1³

The High Contracting Parties undertake to make provision in their respective national legislations whereby the voluntary acquisition by any of their nationals, either through naturalisation or the exercise of a right of option, of the nationality of one of the other Contracting Parties shall involve the loss by such nationals of their previous nationality or of the nationality for which they have not opted, unless they have retained one of those nationalities at their own specific request.

Article 2⁴

Article 3

Without prejudice to the liberty of a State to accord wider rights to renounce its nationality, a person who has acquired ipso jure the nationality of more than one of the Member States of the Council of Europe, may renounce one or more of his nationalities with the authorisation of the State(s) whose nationality he desires to surrender.

Authorisation to do so may not be withheld if the person has for the past ten years had his habitual and principal residence not in the territory of the State whose nationality he desires to renounce but in the territory of another Member State whose nationality he also possesses.

Article 4

Subject to special agreements between the States concerned, a person possessing two or more nationalities who habitually resides in one of the States whose nationality he possesses, and who is in fact most closely connected with that State, shall be exempt from any military obligation in the other State or States.

This exemption may involve the loss of the nationality of the other State or States.

SECTION II

Article 5

The provisions of this Convention shall not prejudice any provisions more likely to limit the occurrence of multiple nationality and embodied in the municipal law of any High Contracting Party or in any other Convention, Treaty or Agreement which is already in force or may come into force between two or more of the Contracting Parties.

Article 6

Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention.

3. Article 1 (minority proposal).

4. Article 2 (minority proposal). Within a third State, a person having more than one nationality shall be treated as if he had only one. Without prejudice to the application of its law in matters of personal status and of any conventions in force, a third State shall, of the nationalities which any such person possesses, recognise exclusively in its territory either the nationality of the country in which he is habitually and principally resident, or the nationality of the country with which in the circumstances he appears to be in fact most closely connected.

A High Contracting Party which makes a reservation in respect of a particular provision of the Convention may not claim application of the said provision by another Contracting Party save in so far as it has itself accepted the provision.

Article 7

Any High Contracting Party may denounce this Convention having previously given six months' notice by notification addressed to the Secretary-General of the Council of Europe, who shall inform the other Contracting Parties.

Article 8

1. This Convention shall be open for signature by the Members of the Council of Europe. It shall be ratified. Instruments of ratification shall be deposited with the Secretary-General of the Council of Europe.
2. This Convention shall come into force on the date of deposit of the second instrument of ratification.
3. As regards any Signatory ratifying subsequently, the Convention shall come into force on the date of deposit of its instrument of ratification.
4. The Secretary-General of the Council of Europe shall notify all Members of the Council of Europe of the entry into force of the Convention, the names of the High Contracting Parties which have ratified it, any reservations made and the subsequent deposit of any instruments of ratification.