jury only for performing acts of hostility toward this country (U.S.A.) which he was not required by Japan to perform...One who wants that freedom can get it by renouncing his American citizenship. He cannot turn it into a fair-weather citizenship, retaining it for possible contingent benefits but meanwhile playing, the part of the traitor. An American citizen owes allegiance to the United States wherever he may reside.

Circumstances may compel one who has a dual nationality to do acts which otherwise would not be compatible with the obligations of American citizenship. An American with a dual nationality who is charged with playing the role of the traitor may defend by showing that force or coercion compelled such conduct...."[5] Criticising this irreconcilable conflict of duties demanded of the *sujets mixtes*, Chief Justice Coleridge of England has observed in the case of *Issacson* v. *Durant* (1886) that a man rightfully and legally in the allegiance of one sovereign could also be rightfully and legally treated as a traitor by another, cannot be the law[6].

In order to avert such conflicts the French law of November 5, 1928, exempted the nationals of France from the obligations of military service, if they had met the requirement of military service in the other States of which they are also nationals. Further, some bilateral treaties have been concluded for this purpose, for instance, the Treaty signed at Oslo, on November 1, 1930 between the United States of America and Norway provides in Article 1 as follows: "A person born in the territory of one party of parents who are nationals of the other party, and having the nationality of both parties under their laws, shall not, if he has his habitual residence, that is, the place of his general abode, in the territory of the State of his birth, be held liable for military service or any other act of allegiance during a temporary stay in the territory of the other party.

Provided, that, if such stay is protracted beyond the period of two years, it shall be presumed to be permanent, in

5. 190 F. 2d. 506. 343 U.S. 717. 96 L. ed. 1249. 72 Sup. Ct. 950.
   46, A.J.I.L., 1952, pp. 147-148.
   47, A.J.I.L., 1953, pp. 146-147.
6. 17 Q.B.D. 54. 54 L.T. 684. 2, T.L.R. 559.

the absence of sufficient evidence showing that return to the territory of the other party will take place within a short time."[7]

The Protocol signed at the Hague on April 12, 1930, regarding the Military Obligations in Certain Cases of Double Nationality was intended to solve the legal tangle. Article 1 of the Protocol provides that a person with dual nationality is liable for military service only in the country with which he is most closely connected. "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." Under Article 3 of the Protocol, "A person who has lost the nationality of a State under the law of that State and has acquired another nationality, shall be exempt from military obligations in the State of which he has lost the nationality."[8] In this connection it may be observed that in *Dos Reis Ex Rel Camara* v. *Nicolls* (1947), the United States Circuit Court of Appeals, First Circuit, declined to deprive of nationality a person of double nationality who much against his will was inducted into the army of his second nationality i.e., the Portuguese army which had brushed aside his contention that he was an American citizen and that he had no desire to serve in the Portuguese army. It may be noted that according to the law of Portugal, he was a Portuguese citizen also.[9]

Personal injury to and property claims by dual nationals

With respect to personal injury and property claims made against foreign countries by the claimants' government on behalf of dual nationals who were considered also as nationals of the respondent State, the governing theory of international law during the 19th century was based on the rule laid down in the case of *James Louis Drummond* decided in 1834. Drummond

7. Hackworth: Digest., Vol. III, pp. 408-410.
8. Hudson, M.O: International Legislation, Vol. V. p. 374.
   Hudson, M.O.: Cases and Other Materials on International Law, 3rd ed., 1951, pp. 199-200.
9. 68 F. Supp. 773. 161 F. 2d. 869.
   Annual Digest., 1947, Case No. 51, pp. 115-118.

was a dual national, a citizen of both France and Great Britain. His property was seized by the French Government in 1792. The Treaty of Paris of 1815 provided for the settlement of claims of British subjects against the French Government for seizures of British property in France. The final determination of claims of this type was made by the Privy Council of Great Britain, which denied Drummond's claim for the reason "that the property was seized in consequence of a French decree against emigrants, and not against British subjects. Drummond was technically a British subject, but in substance, a French subject, domiciled (at the time of seizure) in France, with all the marks and attributes of French character....The act of violence that was done towards him was done by the French Government in the exercise of its municipal authority over its own subjects."[10] This is said to be the first case in international law in which the doctrine of active, overriding or effective nationality was invoked. The essence of the doctrine is that where there is a dispute between two countries regarding the nationality of a claimant, who is a dual national, the nationality of country of habitual residence should prevail over his other nationality. In other words, if both the claimant and the respondent States claim the individual as their national, he should be considered, for purposes of the claim, to be a national of that country in which he had his habitual residence at the time when the claim arose.

In the *Canevaro case* (1912) between Italy and Peru, where both the countries claimed Canevaro as their national, the Permanent Court of Arbitration, applying the test of active and overriding nationality stated that although he possessed Italian nationality as well as Peruvian nationality, his activities as a Peruvian citizen would deny him the status of an Italian national.[11] Several of the mixed arbitral tribunals established under the Peace Treaties of 1919 applied the same test of active and overriding nationality in the cases involving dual nationals, e.g., *Hein* v. *Hildesheimer Bank* (1922) decided by the British-German Mixed Arbitral Tribunal, *Baron Frederic de Born* v. *Yugoslavian State* (1926) decided by the Yugoslav-Hungarian Mixed Arbitral

10. Parry: Nationality and Citizenship Laws., pp. 125-127.
11. Schwarzenberger: International Law Vol. I, pp. 202 and 364.
Dickinson, E.D.: A Selection of Cases and other Readings on the Law of Nations, 1929, pp. 216-217.

Tribunal and *Barthez de Montfort* v. *Treuhander Hauptverwaltung* (1926) decided by the Franco-German Mixed Arbitral Tribunal.

In the case of *Hein* v. *Hildesheimer Bank* (1922), the individual who was born in Germany became a British subject by naturalization. Although he possessed the nationalities of both Germany and Great Britain, the Mixed Arbitral Tribunal took the view that he had become a British national through his closer connection with Great Britain. It declared that the claimant, who had become a British subject by naturalisation before the outbreak of war (i.e. the First World War), was entitled as a British national to recover money under Article 296 of the Treaty of Versailles despite the fact that under German law he had retained his German nationality.[12] In *Baron Frederic de Born* v. *Yugoslavian State*, the Mixed Arbitral Tribunal had to adjudicate upon the nationality of the claimant possessing both the German and Hungarian nationalities. While by birth he continued to be a German, by naturalization he acquired the Hungarian nationality. The Tribunal held that "the claimant was of Hungarian nationality . . . . When at the date of the coming into force of a treaty of peace a person was entitled to claim one nationality in one country and another nationality in another country, and an international tribunal was called upon to decide whether the nationality actually claimed by a person should be recognised, it was the duty of the tribunal to examine in which of the two countries existed the elements essential in law and in fact for the purpose of creating an effective link of nationality and not merely a theoretical one . . . . It was the duty of a tribunal charged with international jurisdiction to solve conflicts of nationalities. For that purpose it ought to consider where the claimant was domiciled, where he conducted his business, and where he exercised his political rights. The nationality of the country determined by the application of the above test ought to prevail."[13] As regards the effective nationality of an individual in possession of double nationality, the Franco-German Mixed Arbitral Tribunal held in the case of *Barthez de Montfort* v. *Treuhander Hauptverwaltung* (1926) as follows: "That the principle of active nationality, i.e., the determination of nationality by a combination of elements of

12. Schwarzenberger: International Law, Vol. I, pp. 365-366.
Weis: Nationality and Statelessness in International Law, pp. 77-78.
13. Annual Digest., 1925-26, Case No. 205, pp. 277-278.

fact and law, must be followed by an international tribunal, and that the claimant was accordingly a French national and was entitled to judgment accordingly."[14]

In the more recent *Nottebohm case* (1955) between Liechtenstein and Gautemala, the International Court of Justice summarised the prevailing practice of international judicial tribunals in these words: "They(international arbitrators) have given their preference to the real and effective nationality, that which accorded with the facts, that based on stronger factual ties between the person concerned and one of the States whose nationality is involved. Different factors are taken into consideration, and their importance will vary from one case to the next: the habitual residence of the individual concerned is an important factor, but there are other factors such as the centre of his interests, his family ties, his participation in public life, attachment shown by him for a given country and inculcated in his children, etc."[15] Thus the International Court of Justice gave effect to the principle of "real and effective nationality", holding that in case of conflict a person should be deemed to be a national of that State with which he is most closely and genuinely connected as could be gathered from the circumstances. In order to obviate such difficulties the Constitutions of some countries contain express provisions in this regard. For instance, Article 52 of the Mexican Law of January 19, 1934, declares that "An individual who has two or more nationalities other than the nationality of Mexico shall be considered for all legal purposes in Mexico to have only one nationality which shall be that of the country where he has his principal habitual residence, and if he resides in neither of the countries of which he is a national, he shall be considered to have the nationality of the country with which according to the circumstances he appears to have the more initimate connection."[16] Similarly bilateral treaties are being concluded for the same purpose, for example, the Treaty concluded between the United States of America and Norway on November 1, 1930 embodies in Article 1 the principle that the liability of a dual national for

14. Annual Digest., 1925-26, Case No. 206, p. 279.
15. I. C. J. Reports, 1955, pp. 12-26.
International Law Reports, 1955, pp. 358-359.
16. Hudson: Cases and Other Materials on International Law, p. 198.

military service is to be determined on the basis of his active and overriding nationality. Article 1 provides in part as follows: "A person born in the territory of one party of parents who are nationals of the other party, and having the nationality of both parties under their laws, shall not, if he has his habitual residence, that is, the place of his general abode, in the territory of the State of his birth, be held liable for military service or any other act of allegiance during a temporary stay in the territory of the other party"[17] Article 12 of the Draft Convention on the Law of Nationality prepared in 1929 by the Harvard Law School, (Research in International Law,) states: "A person who has at birth the nationality of two or more States shall, upon his attaining the age of twenty-three years, retain the nationality only of that one of those States in the territory of which he then has his habitual residence; if at that time his habitual residence is in the territory of a State of which he is not a national, such person shall retain the nationality only of that one of those States of which he is a national within the territory of which he last had his habitual residence."[18] Further, in Article 5 of the Convention on Certain Questions Relating to the Conflict of Nationality Laws, signed at the Hague on April 12, 1930, the same principle has been incorporated. According to that article, a dual national within a third State shall be treated as if he has only one nationality. He shall be recognised as the national of the country in which he is habitually and principally resident, or as the national of the country with which in the circumstances he appears to be in fact most closely connected.[19]

Another doctrine was invoked in 1871 by the American-British Claims Commission in the claim of the *Executors of R.S.C.A. Alexander* v. *the United States*. Alexander was in possession of two nationalities, i.e., those of Britain and the United States of America. His executor claimed compensation for the occupation of and damage to his real property in Kentucky by the forces of the United States of America during the Civil War. J. S. Frazer, the Commissioner, rejected the claim on the ground that under the law of nations a State ought not espouse a claim on behalf of one of its nationals who was also a national of the respondent

17. Hudson: Cases and Other Materials on International Law, p. 199.
18. 23, A.J.I.L., Special Supplement, 1929, pp. 14 and 41.
19. Hudson: International Legislation, Vol. V, p. 359.
Hudson: Cases and Other Materials on Internatiodal Law, p. 198.

State. According to Mr. Frazer, the practice of nations in cases where an individual possessing two or more nationalities is regarded as its national by each of the States whose nationality he possesses "is believed to be for their sovereign to leave the person who has embarrassed himself by assuming a double allegience to the protection which he may find provided for him by the municipal laws of that other sovereign to whom he thus also owes allegiance. To treat his grievances against that other sovereign as subjects of international concern would be to claim a jurisdiction paramount to that of the other nation of which he is also a subject. Complications would inevitably result, for no government would recognize the right of another to interfere thus in behalf of one whom it regarded as a subject of its own. It has certainly not been the practice of the British Government to interfere in such cases . . ."[20] Thus, the rule that on behalf of a person having dual nationality, one of the States of which he is a national cannot make the other State of which he is a national a defendant before an international tribunal is regarded as a well-established rule of State practice.[21] This rule is called the doctrine of non-responsibility of States for claims of individuals with double nationality.

During the second half of the 19th century and the first half of the 20th century, although the rules of dominant or overriding nationality and of non-responsibility of States for dual national claims were applied interchangeably by international claims commissions, yet more and more weight was given to the latter rule. The following cases could be cited as instances in this regard: *Martin* (*U.S.*) v. *Mexico* (1868), *Lebret* (*France*) v. *United States* (1880), *Maninot* (*France*) v. *Venezuela* (1902), *Brignone* (*Italy*) v. *Venezuela* (1903), *Canevaro* (*Italy*) v. *Peru* (1912), and *Alexander Tellech* (*U.S.*) v. *Austria* (1925).[22].

Further, in the *Oldenbourg* (1929) and *Honey* (1931) cases decided by the British-Mexican Claims Commissions, the Commissioners stated that "the principle generally followed has been that a person having dual nationality cannot make one of

20. Moore: History and Digest of the International Arbitrations to which the United States has been a Party, Vol. III, 1898, pp. 2529-2531.
21. Research in International Law, Harvard Law School, 1929, p. 200.
23, A.J.I.L., Special Supplement, 1929, p. 260.
22. Research in International Law, Harvard Law School, 1929, p. 200.

the countries to which he owes allegiance a defendant before an international tribunal. A person cannot sue his own government in an international court nor can any other government claim on his behalf . . . It is an accepted rule of international law that such a person (i.e., a dual national) cannot make one of the countries to which he owes allegiance a defendant before an international tribunal."[23]

The Permanent Court of Arbitration in the *Canevaro case* decided in 1912, held that the claimant, being a national of both Peru and Italy, was not entitled to claim through the Italian Government against Peru. In this case though no special doctrine was recited, the denial was based mainly on the fact that the claimant Rafael Canevaro acted consistently as a Peruvian national, having been prominent in Peruvian internal politics.[24] The theory of non-responsibility of the respondent State, according to Borchard is based on the well-established principle that a person having dual nationality cannot make one of the countries to which he owes allegiance, a defendant before an international tribunal. It may be added that the Harvard Draft Convention on Responsibility of States has embodied this principle in Article 16(a), which reads as follows: "A State is not responsible if the person injured or the person on behalf of whom the claim is made was or is its own national"[25] Hyde observes, : "It may be acknowledged that a State should not interpose in behalf of a national as against a foreign State of which the same individual is to be regarded as a national by virtue of a principle in relation to the acquisition or retention of nationality which the law of nations respects, as in a situation where an arbitral tribunal might well deem the doctrine of dual nationality to be applicable." In support of this view, he cites the *R.S.C.A. Alexander Case* (1871) and also some other recent cases decided by international arbitral tribunals.[26] Referring to State practice in this regard Schwarzenberger observes that "States do not claim to exercise a right of diplomatic protection of nationals against States which regard such individuals as their own nationals. Yet, in a good many cases, the genuineness

23. 53, A.J.I.L., 1959, p. 41.
24. Scott, J.B.: The Hague Court Reports, 1916, p. 284.
25. 23, A.J.I.L., Special Supplement, 1929, p. 200.
Research in International Law, Harvard Law School, 1929, p. 200.
26. Hyde, C. C.: International Law Chiefly as Interpreted and Applied by the United States, Vol. II, 2nd ed., 1951, p. 898.

of the connection is a question of relativity and may become highly formal in the case of one, as compared with another, State. In such circumstances, to apply the rule of genuineness in the abstract, and without relation to the facts of the actual case, in order to exclude the right of diplomatic protection or the jurisdiction of international judicial institutions would result merely in a denial of effective justice."[27]

The International Court of Justice in its Advisory Opinion of April 11, 1949, refers to "the ordinary practice whereby a State does not exercise protection on behalf of its national against a State which regards him as its own national."[28] The same Court, however, in the more recent *Nottebohm Case* (1955) stated the problem in a different way. The Court said: "International arbitrators have decided in the same way numerous cases of dual nationality, where the question arose with regard to the exercise of protection. They have given their preference to the real and effective nationality, that which accorded with the facts, that based on stronger factual ties between the person concerned and one of the States whose nationality is involved. Different factors are taken into consideration, and their importance will vary from one case to the next: the habitual residence of the individual concerned is an important factor, but there are other factors such as the centre of his interests, his family ties, his participation in public life, attachment shown by him for a given country and inculcated in his children, etc."[29]. This decision of April 6, 1955 clearly shows the trend in modern international law.

On June 10, 1955, the Italian-United States Conciliation Commission, set up under the provisions of Article 83 of the Peace Treaty with Italy of February 10, 1947, considered the problem concerning dual nationals in the claim of *Florence Strunsky Merge* where the Commission unanimously rejected a claim on the ground that the claimant, a dual national of the United States and Italy, was dominantly a national of Italy because "the family (of the claimant) did not have its habitual residence in the United States and the interests and the permanent professional life of the head of the family were not established there.[30] In fact, Mrs. Merge

27. Schwarzenberger: International Law, Vol. I. p. 363.
28. Reparation for Injuries suffered in the Service of the United Nations, (Advisory Opionion), I.C.J. Reports, 1949, p. 186.
29. I.C.J. Reports, 1955, p. 22, 49, A.J.I.L., 1955, pp. 396-403.
30. 50, A.J.I.L., 1956, pp. 154-156.

had not lived in the United States since her marriage, she used an Italian passport in travelling to Japan from Italy in 1937 and she stayed in Japan from 1937 until 1946 with her husband, an official of the Italian Embassy in Tokyo and it does not appear that she was ever interned as a national of a country enemy to Japan." In the same decision, the Conciliation Commission laid down the following general rules to serve as guidance for the proceedings before the Commission: (a) United States nationality shall be prevalent in cases of children born in the United States of an Italian father who have habitually lived there; (b) United States nationality shall also be prevalent in cases involving Italians who, after having acquired United States nationality by naturalization and having thus lost Italian nationality, have reacquired their nationality of origin as a matter of law, and as a result of having sojourned in Italy for more than two years, without the intention of retransferring their residence permanently to Italy; (c) With respect to cases of dual nationality involving American women married to Italian nationals, United States nationality shall be prevalent in cases in which the family has had habitual residence in the United States and the interests and the personal professional life of the head of the family were established in the United States; (d) In cases of dissolution of marriage, if the family was established in Italy and the widow transfers her residence to the United States of America, whether or not the new residence is of an habitual nature must be evaluated, case by case, bearing in mind also the widow's conduct, especially with regard to the raising of her children, for the purpose of deciding which is the prevalent nationality." Thus it appears that in such cases the older doctrine of dominant or overriding nationality might again prevail in the future.[31]

It may be noted that in this connection Briggs observes that though "International Courts have sometimes taken jurisdiction in such cases by inferring from domicile or 'active nationality,' a preference on the part of the individual which indicated, except in a formal sense, a closer relationship with one of the two States.... It should be observed, however, that by taking jurisdiction in such dual nationality cases the Court does not—and, in fact,

31. U.S.A. ex rel. Florence Strunksy Merge v. Italian Republic; Rode, Zvonko, R.: Dual Nationals and the Doctrine of Dominant Nationality, 53, A.J.I.L., 1959, pp. 142-143.

cannot—deprive the individual of his status as a national of either State."[32]

Dual nationals and the third states

As against the third States, as each of the two States of the dual national appears as his State, it is quite likely that each of them can justifiably claim the right of protection over him in the territories of the third States. Conversely, a third State can treat an individual with two nationalities as a subject of either of the two States to which he owes allegiance. So long as a genuine link between a claimant State and an individual exists, the opposite party cannot contest the right of the claimant State to grant diplomatic protection to its citizen on the ground that the individual concerned also possesses the nationality of a third State. This arose in the case of the *Mackenzie Claim* (1925) between Germany and the United States of America before the Mixed Claims Commission. In that case there was a conflict between the two principles of *jus soli* and *jus sanguinis*. The claimant's father was born of British parents in the United States and according to the law of the United States, he was a citizen of that country by birth. Under the English law, on the other hand, he was a British national by parentage. The German Government argued that the claimant's father after attaining his majority had continually resided in England and Canada and that such a course of action amounted to an election by him of British nationality and to a renunciation and forfeiture of his United States nationality.[33] It may be noted that the Umpire admitted that in such cases the United States Department of State used its discretion in such a way as not to grant diplomatic protection to an American by birth so long as he resided in the country of the nationality of his parents. Yet, in his opinion, such an administrative practice could not deprive a United States citizen of his United States nationality. Relying on the *Mackenzie Award*, the Arbitrators in the *Salem Case* (1932) between Egypt and the United States of America, formulated the principle in very clear terms. In this case, Egypt contended that since Salem was also a national of Persia besides his being a national of the United States, the latter could

32. Briggs: The Law of Nations, p. 516.
33. U.S.-German Mixed Claims Commission, 1926, Decisions and Opinions of the Commission, p. 628.
20, A. J. I. L., 1926, pp. 595-596.

not sponsor his claim. Rejecting the argument of Egypt, the Tribunal declared: "The Egyptian Government cannot set forth against the United States the eventual continuation of the Persian nationality of George Salem; the rule of international law being that in a case of dual nationality a third Power is not entitled to contest the claim of one of the two Powers whose national is interested in the case by referring to the nationality of the other Power."[34]

It may be noted that the Convention on Certain Questions Relating to the Conflict of Nationality Laws signed at the Hague on April 12, 1930 deals with this aspect of the matter. Article 5 of the Convention provides that, "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."[35]

Likewise, under Article 52 of the Law of Mexico, 1934, "An individual who has two or more nationalities other than the nationality of Mexico shall be considered for all legal purposes in Mexico to have only one nationality which shall be that of the country where he has his principal habitual residence, and if he resides in neither of the countries of which he is a national he shall be considered to have the nationality of the country with which according to the circumstances he appears to have the more intimate connection."[36]

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34. 2, United Nations, Reports of International Arbitral Awards, pp. 1161 and 1188.
Schwarzenberger: International Law,, Vol. I, p. 367.
35. League of Nations Document C. 24. M 13. 1931, V.
Hudson: International Legislation, Vol. V, p. 350.
36. Hudson: Cases and Other Materials on International Law, p. 198.

CHAPTER III

PRACTICE OF STATES RELATING TO DUAL NATIONALS

United States of America

Normally the United States does not afford diplomatic protection to an American citizen against a country whose nationality he also possesses, although it may do so in exceptional circumstances. It recognises the exclusive right of protection of the other State if the *de cujus* i.e., the dual national, has his habitual residence there. According to the policy of the United States if the dual national retains his domicile in the other State after attaining his majority, that State has the superior claim for the right of protection. A proposal of the United States at the Hague Conference of 1930 that such residence should create a presumption of the election of nationality, was not accepted.[1] Briggs observes: "The experience of the United States in attempting to protect naturalized citizens who return to a country which also claims them as nationals has led to a self-imposed limitation upon its right to protect such citizens. In the face of a denial of its right to afford protection to such citizens against a State similarly claiming them as nationals, the United States at first presumed by statute that they had lost its nationality and, at present, stipulates the actual loss of its nationality. (See Nationality Act of 1940, Sec. 404...)"[2] Section 350 of the United States Immigration and Nationality Act of 1952 provides that a person who acquires at birth the nationality of the United States and of another State and who has voluntarily sought or claimed the benefits of the nationality of any foreign State, loses his United States nationality after three years of continuous residence in that foreign State unless he complies with certain conditions. As regards military obligations of dual nationals, the policy of the United States

1. Minutes of the First Committee, 1930, V, Annexure II, p. 295.
2. Briggs: The Law of Nations, p. 516.
   Moore: Digest., Vol. III, pp. 757-795.
   Hackworth: Digest., Vol. III, pp. 279-346.
   Hyde: International Law., Vol. II, pp. 1170-1179.
   Opinion of Attorney—General Wickersham in the case of *Nazara Gossin* (1910), 28 Op. Att. Gen. p. 504.

is similar to that embodied in Article 1 of the Protocol Relating to Military Obligations in Certain Cases of Double Nationality.[3]

As regards the decisions of the courts of the United States, one finds the following view-points. In *Exparte Gilroy*, the District Court for the Southern District of New York held that in the case of a person born with the nationalities of two States under their respective laws, the authorities of either of the two States have the competence to determine his nationality in accordance with its own laws.[4] *In Perkins, Secretary of Labour, et al.* v. *Elg*, the Supreme Court observed as follows: "It follows that persons may have a dual nationality." It added: "It has long been a recognised principle in this country that if a child born here is taken during minority to the country of his parent's origin, when his parents resume their former allegiance, he does not thereby lose his citizenship in the United States provided that on attaining majority he elects to retain that citizenship and to return to the United States to assume its duties."[5]

In the case of *Dos Reis Ex Rel. Camara* v. *Nicolls* (1947), the U.S. First Circuit Court of Appeals refused to permit deprivation of the United States nationality of an individual with dual nationality who had been compelled to serve in the army of the other State i.e., the State of second nationality.[6] The individual named Camara was born in the United States of Portuguese parents and was thus an American citizen by birth. According to the law of Portugal, he was also a Portuguese citizen. In this case the Portuguese military authorites turned down his plea that he was an American citizen and that he was not willing to serve in the Portuguese army. The U. S. Circuit Court of Appeals said that Section 401 (c) of the United States Nationality Act of 1940 implied that induction into the armed forces of the foreign State (i.e., Portugal) must be voluntary. Quoting the opinion of the Supreme Court of the United States in *Mackenzie* v. *Hare*, wherein the Supreme Court had declared that, "It may be conceded that a change of citizenship cannot be arbitrarily imposed, that is, imposed without the concurrence of the citizen,"[7] the Circuit

3. Hackworth: Digest., Vol. III, p. 364.
4. (1919) 257 Fed. pp. 110 and 124.
5. (1939) 307 U.S. pp. 325 and 329.
   Weis: Nationality and Statelessness in International Law, pp. 190-191.
6. 68 F. Supp. p. 733. 161 F. 2d. p. 869.
7. 239 U. S. p. 311. Annual Digest., 1947, Case No. 51, p. 117.

Court decided that since Camara had done everything to assert and preserve his American citizenship while in Portugal, that he had never forsworn his American allegiance and that he was inducted into the armed forces of Portugal, his second State, he did not lose his American nationality. The Circuit Court of Appeals in this case took into consideration the explanatory comment to Section 401(c) of the U.S. Nationality Act of 1940, which stated: "This provision is based upon the theory that an American national who, after reaching the age of majority, voluntarily enters, or continues to serve in, the army of a foreign State, thus offering his all in support of such State, should be deemed to have transferred his allegiance to it. The words 'serving in' would apply to the case of one who had entered the army of a foreign State before attaining the age of majority but who, after reaching such age, had continued to serve in it."

"It is to be noted that Sub-section (c) of the Draft Code was not limited to cases of dual nationality; and unless the words 'entering or serving in the armed forces of a foreign State' implied that the induction must be voluntary, then any American citizen who, during a visit abroad, might be grabbed and put into the army of the foreign State would automatically lose his American citizenship. This, of course, was never the intention of those who drafted the Code; it is further evidenced by a statement by the Cabinet Committee in its Letter of Submittal to the President: "None of the various provisions in the Code concerning loss of American nationality...is designed to be punitive or to interfere with freedom of action. They are merely intended to deprive persons of American nationality when such persons, by their own acts, or inaction, show that their real attachment is to the foreign country and not to the United States."[8]

The above decision of the Circuit Court of Appeals was closely followed in *In re Gogal*[9] decided by the District Court for the Western District of Pennsylvania on December 31, 1947. The Court held that a person born in the United States had not lost his citizenship on being forcibly inducted into the Czechoslovak army. In *Attorney General of United States* v. *Ricketts*,[10] decided

8. Annual Digest., 1947, Case No. 51, pp. 115-118.
9. 75 F. Supp. p. 268.
10. 165 F. 2d. p. 193.

by the Circuit Court of Appeals, Ninth Circuit, on December 30, 1947, the Court held that a person with dual nationality would not be deemed to have lost his American citizenship merely because he held public office in Canada during his minority. Since an infant was incapable of making a binding choice, the Court stated that his return to the United States for the purpose of taking up permanent residence there showed that he elected to exercise his American citizenship. In *Savorgnan* v. *United States*[11] a Wisconsin District Court held on September 10, 1947, that expatriation was a voluntary act, and that a woman who, on marrying an Italian consular officer, had filled in documents for the purpose of acquiring Italian nationality, without realizing that she thereby lost American citizenship, did not thereby expatriate herself. This decision was reversed by the Circuit Court of Appeals, Seventh Circuit, on December 14, 1948.[12] The Court took the view that the naturalization, being a voluntary act it was tantamount to expatriation. I*n Bauer* v. *Clark*,[13] decided by the Circuit Court of Appeals, Seventh Circuit, on February 15, 1947, it was held that a naturalized citizen who had been repatriated to Germany, got voluntarily inducted into the German army, and who took the oath of allegiance to the German State, forfeited his United States nationality.[14]

As regards the trend of the United States policy on claims of dual nationals, Mr. Zvonko R. Rode, Attorney of Foreign Claims Settlement Commission of the United States, observes as follows: "The doctrine of non-responsibility of States in claims of dual nationals, more frequently used in the first half of this century, might gradually fall into disuse. The practical result in this country (i.e., United States) might be that in the future the Government of the United States will afford protection to its citizens and espouse their personal injury or property damage claims against foreign governments, notwithstanding the fact that the claimants also appear to be citizens of the respondent country.

This trend of somewhat broadening protection to citizens residing in this country is not based on purely theoretical opinions

11. 73 F. Supp. p. 109.
12. 171 F. 2d. p. 155.
13. 161 F. 2d. p. 397.
14. Annual Digest., 1947, p. 118.

and views. At the present time, most of the claims of citizens of the United States are directed against countries behind the Iron Curtain; the Soviet Union, the satellite States and China. Many of the claimants are dual nationals because the nationality laws of the Communist countries are generally based on the principle of *jus sanguinis* and almost always interpreted by the governments of these countries in the most unfavourable way to the interests of claimants residing in the Free World. The principle of non-responsibility of States for claims of dual nationals was originally introduced in international law under the sound assumption that a dual national should not enjoy the protection of two countries; his original and his adopted country. If an individual was injured by the action of his original country, he generally was able to seek redress as a citizen of that country. Such a doctrine was justified in the 19th and in the beginning of the 20th century, when social conditons in most of the civilized countries were stabilized and denial of justice was an exception rather than the rule. The situation is quite different today. Communist governments do not even pretend to give protection to claimants who seek compensation for injuries inflicted on their persons or property by deliberate actions of persecution, socialization, confiscation, etc. To a minor degree, this situation is similar in countries which formerly were dominated by colonial Powers. Under these circumstances, the return to the theory of dominant nationality appears to be quite justified.

In the above cases the principle of non-responsibility of the respondent State for claims of dual nationals becomes meaningless because citizens of Western countries who are also citizens of a Communist country are left without any protection whatsoever, if the governments of the adopted countries do not espouse their claims. It is obvious that the theory of dominant nationality has nothing to do with the application to nationality questions under municipal law. Wherever a question of nationality arises within the domestic jurisdiction of a country, the statutes and general principles of law governing nationality will prevail and no discrimination of any kind will be sustained by dual nationals, who are also foreign nationals under foreign law. In the United States, the relevant statutes are the so-called Expatriation Laws of 1907, 1940 and 1952. They are the only sources under which a determi-

nation of loss of nationality can be made. As a result, in future the United States will probably afford protection to claimants whose claims are otherwise eligible under specific international agreements, or under general principles of international law, even though the claimant is a dual national and the respondent country is the country of his other nationality. However, the approval of such claim before an international tribunal might depend on and be influenced by the revived doctrine of dominant nationality, which has recently been considerably strengthened by the International Court of Justice in the *Nottebohm case* and by the unanimous decision of the United States-Italian Conciliation Commission in the *Claim of Florence Strunsky Merge*."[15]

United Kingdom

As regards the British State practice, it has always been held that in those cases where a British subject had another nationality, the British courts and authorities were entitled to treat him exclusively as a British subject and that while he was in the United Kingdom, he was subject to its laws, for instance, he was liable for military service. This point was stressed by the British Foreign Secretary in his despatch of March 13, 1858 to the British Ambassador Lord Cowley, in Paris.[16] Further, the British Government may not afford diplomatic protection to a British subject in or against a country of which he is also a national. This principle has found expression in the General Instructions to British Consular Officers.[17] Also the Law Officers of Great Britain in their Legal Opinions delivered at the request of the British Foreign Office, have consistently adopted this line of approach. As regards international claims, Rule VII of the General Instructions for the British Foreign Service stipulates as follows: "Where the claimant is a dual national, H.M. Government will not take up his claim as a British national if the respondent State is the State of his second nationality, but may do so if the respondent State has, in the circumstances which give rise to the injury, treated the claimant as a British national."[18] Further, Section

15. I.C.J. Reports, 1955, p. 22.
    49, A.J.I.L., 1955, p.396.
    50, A.J.I.L., 1956, p. 154.
16. Bases of Discussion drawn up for the Conference by the Preparatory Committee: Vol. I, Nationality, 1929, p. 23.
17. Feller, A. H. & Hudson, M.O.: A Collection of the Diplomatic and Consular Laws and Regulations, Vol. I, p. 202.
18. Sinclair: "Nationality of Claims; British Practice", 27, B.Y.I.I., 1950, pp. 125-144.

7(3) of the British Naturalization Act of 1870, provides as follows: "An alien to whom a certificate of naturalization is granted shall in the United Kingdom be entitled to all political and other rights, powers and privileges, and be subject to all obligations, to which a natural-born British subject is entitled or subject in the United Kingdom, with this qualification that he shall not, when within the limits of the foreign State of which he was a subject previously to obtaining his certificate of naturalization, be deemed to be a British subject unless he has ceased to be a subject of that State in pursuance of the laws thereof, or in pursuance of a treaty to that effect." Clive Parry in this connexion observes as follows: "The modern statute law of British nationality equally recognises plural nationality, as was admitted by Younger L. J. in the judgment quoted (i.e., *Kramer* v. *Attorney-General*). And the Naturalization Act, 1870, was largely designed to take account of, and so far as possible to exclude its occurrence."[19] The principle that each of the countries whose nationality is in question may consider the person as its own national has not been followed in all cases. However, it was applied by the English court in *Macdonald's case* in connection with the question whether a person having dual nationality born within the allegiance of the Crown may be held liable to the penalties for treason for being found in arms against his native country. In *Ex parte Freyberger* it was held that the *de cujus*, a natural-born British subject who was also a subject of an enemy State, could not in time of war make a declaration of alienage under Section 19 of the British Nationality and Status of Aliens Act, 1914, and could not thereby cease to be a British subject. His application for a writ of *habeas corpus* against his enlistment in the British Army was dismissed. Thus he was, for purposes of English Law relating to military service, regarded as a British subject.

The case of *Kramer* v. *Attorney-General*, decided by the House of Lords, is said to be the leading modern English authority in which plural nationality was directly at issue. There the *de cujus*, who was a British subject *jure soli* and a German national *jure sanguinis*, failed in his action for a declaration that his property in the United Kingdom was not subject to a charge either under the Treaty of Versailles (Art. 297) or the Treaty of Peace Order (Sec. 1).

19. Parry: Nationality and Citizenship Laws., p. 126.

As against the appellant's argument that "within the realm the applicant is not and cannot be considered or treated otherwise than as a British subject," it was held that "the appellant is in fact by German law a German national nonetheless because he is a British subject"; he fell, therefore, within the provision of Clause 1 (para. xvi) of the Treaty of Peace Order. Younger L.J. said of the parallel legislation in the United Kingdom that "such an enactment, dealing...with the property in this country of persons described merely as German nationals cannot without wide words of extended interpretation be construed as touching the property of a British subject. In this country, and for such a purpose, the two descriptions are mutually exclusive." This was, however, a dissentient statement and was immediately qualified by the words: "I have not, of course, been forgetful in this judgment, of Section 14 of the (British Act of 1914), and of the exceptional facility with which by making a declaration of alienage persons in the position of the appellant and others may cease to be British subjects. (But) before such declaration has been made...the status of such a person as the appellant in no way differs from that of any ordinary British subject."[20] It may be observed that their Lordships were aware of the existence of the effective nationality in the *de cujus*, as could be gatherd from the statement of Viscount Cave L. C. to the effect that he was "predominantly a German though with a scintilla of British nationality." Moreover, the court below too referred to *Re Chamberlain's Settlement* where a natural-born British subject naturalized in Germany during the war had been treated as a German national.[21]

English courts have frequently considered the question of an individual's association with a particular country, as shown by his conduct, as being of legal relevance. It was stated, for example, in *R. V. Friedmann* that a Russian who had lived in England since the age of five was an alien only in the technical sense and therefore an exclusion order against him was set aside.[22]

The recent case of *Joyce* v. *Director of Public Prosecutions*

20. (1922) 2 Ch. p. 878. The Opinon of the majority of the Court of Appeal was sustained by the House of Lords, (1923) A.C. p. 528.
Parry: Nationality and Citizenship Laws., p. 124.
21. (1921) 2 Ch. p. 533.
22. (1914) 49. L.J. p. 181. 10 C.A.R. p. 72.
Weis: Nationality and Statelessness in International Law, pp. 189-190.

involved primarily a question of municipal law whether an alien who had been resident within the realm could be held guilty of high treason in respect of the acts committed by him outside the realm. It raised, however, also questions of interest from the point of view of international law. In this connection mention may be made of the significance attached by their Lordships to Joyce's factual association with the United Kingdom, although he was not a British subject. It was stated by Lord Jowitt L. C.: "In the present case the appellant had long resided here and appears to have had many ties with this country....Here there was no suggestion that the appellant had surrendered his passport or taken any other overt step to withdraw from his allegiance...."[23]

Though the Act of 1870 was repealed by the British Nationality and Status of Aliens Act, 1914, the underlying principle still holds good. This could be evidenced from the following endorsement which the United Kingdom passports normally bear: "When in the country of their second nationality such persons (i.e., persons possessing a foreign nationality in addition to British nationality) cannot avail themselves of the protection of H. M. representatives against the authorities of the foreign country and are not exempt, by reason of possessing British nationality, from any obligation (such as military service) to which they may be liable under foreign law". As regards the phenomenon of plural nationality in the United Kingdom, Clive Parry says as follows: "With minor modifications the position established by the Act of 1870 remained the same until 1949. One such modification was, perhaps curiously, introduced by the courts rather than the legislature. For it was held or implied that, despite the clear words of the statutes, a British subject becoming naturalized in time of war in an enemy State did not thereby cease to be a British subject, and even that a declaration of alienage was ineffective to divest British nationality in time of war. As for changes by statute, though the Act of 1914 had confined the acquisition of nationality *jure sanguinis* to the first foreign-born generation, and threreby reduced the incidence of plural nationality, the introduction in 1922 of the liberty to secure the status of a subject to the second and remoter foreign-born generations, reversed

23. (1946) A.C. p. 347. (1946) All. E.R. p. 186. 40, A.J.I.L., 1946, p. 663. 9, Cambridge L. J., 1947, pp. 330-348.

the tendency. The modification of the earlier inept provisions as to the nationality of married women equally conduced to an increased incidence of plural nationality.

The judicial statements set out above may thus be characterised...as reflecting nothing more than the undoubted rule that a British national who is also a foreign national was before 1949—and still is—in exactly the same position from the domestic point of view as a person whose sole national status is British save in regard to his capacity to divest himself of British nationality. Under the former law a plural national could exceute a declaration of alienage if he had acquired his dual status at birth or during infancy, subject only to the limitation of his right so to do in time of war. Under the new law it is immaterial how or when he acquired his dual status—whether at birth, or during infancy, or (as was not ordinarily possible formerly) after majority. Though plural nationality is of no domestic significance except in so far as its possession enables the person concerned to divest himself of British nationality, it has considerable external significance in that it disentitles the United Kingdom to protect the person concerned against the State of his foreign nationality. As *Drummond's* case shows, this is a rule of some antiquity. It was,...confirmed by the action taken at the Hague Codification Conference of 1930, the Convention on Certain Questions Relating to the Conflict of Nationality Laws embodying both that rule and the principle of British domestic practice that a plural national may be treated by a State of which he is a national as being in no different position from any other of its nationals except in regard to diplomatic protection and to renunciation of nationality....The United Kingdom is a party to this instrument and does not in practice impose the obligation of military service upon any plural national before he reaches his majority."[24]

MEMBER COUNTRIES OF THE ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE

According to Burma, a dual national must have freedom to choose either of the nationalities, but in the view of India, this should be gathered from the surrounding circumstances such as his domicile or continued and habitual residence in one of the

24. Parry: Nationality and Citizenship Laws., pp. 126-128.

countries concerned. Indonesia takes into account the various circumstances including the attitude of the individual in order to determine his active nationality. In the view of Japan, the various tests must be applied but the principle of habitual residence must be used as the general test in such nationality questions. The U.A.R. takes stock of the various factors such as his domicile, holding of public office if any, the exercise of the right of franchise at the time of general election in the country, etc., and in her opinion only the State concerned should have the right to determine the national character of a dual national in its domain. In the view of the member countries of the Committee, the overriding nationality of an alien possessing dual nationality must be determined on the basis of his passport. Further, Iraq and the U.A.R. would like to consider also other relevant factors in this connexion. In the view of Burma, India, Iraq and Sudan, if a national of any of these countries acquires the active nationality of a foreign State, he loses his original nationality, but a Japanese national in the like situation will not be divested of his original nationality.

Ceylon, Indonesia and Iraq take the line that the right of diplomatic protection of such a person belongs to the country which issued him the passport. But in the view of Japan and the U.A.R., the principle of active or dominant nationality should determine such questions. If the deportation of such an alien becomes necessary, Burma, Ceylon, Indonesia, India, Iraq and Japan will deport him to the country which issued him the passport. If he holds no passport, according to Ceylon, India and Japan, the principle of active nationality shall be applied in this regard, but Indonesia and Iraq will issue him an alien's passport and deport him to a country of his choice. The U.A.R. in such a case wishes to send him to a country which considers him as its national, provided that this course of action does not turn out to be a sort of disguised extradition. India claims the right to deport or expel a dual national if necessary, but Japan does not favour such a course of action. Indonesia is of the view that deportation of a dual national may be resorted to only for political reasons, and that too only during national emergencies. The Constitution of the U.A.R. prohibits deportation of the nationals of the U.A.R. Such a prohibition applies with equal force even in the case of dual nationals. But during national emergencies, any

national can be placed under house arrest or prevented from residing in certain specified places as the government may deem fit. Indonesia and the U.A.R. may receive back on their territories their own nationals expelled from foreign States.

In Indonesia, Japan and the U.A.R., a dual national is treated just like any of their own nationals. When there is a conflict of nationality laws, under Art. 25 of the Civil Code of Egypt, the Egyptian nationality law will prevail. Within a third State, in the view of Indonesia, Japan and the U.A.R., a person having more than one nationality shall be treated as if he has only one nationality. Burma, Indonesia, Iraq, Japan and the U.A.R. maintain that it is all the more in the interests of the State concerned to treat a dual national as a person with only one nationality, but India takes the line that only under extraordinary circumstances it may be necessary for a State to adopt such an attitude. Also in the view of the U.A.R., such a course of action will help a State to guard against the pitfalls of dual nationality. The member countries of the Asian-African Legal Consultative Committee are of the view that a State may not prefer an international claim or afford diplomatic protection to one of its nationals against a State whose nationality such person also possesses. Dual nationals in Burma, India, Iraq and the U.A.R. are also liable for military service. According to Indonesia and the U.A.R., the fact of active nationality of a dual national is important to decide upon his liability for military service. In time of war, Indonesia claims the right to impose restrictions on the rights and obligations of persons possessing dual nationality.

According to Burma, Iraq and the U.A.R., a national owes allegiance to his State and as he is entitled to rights and privileges, he is liable for corresponding duties. In time of war, if the dual national joins the armed forces of a third State, which is at war with the two States with which he is connected by the link of nationality, he will be deemed to have committed treason against those States. The liability of a Japanese national for treason is determined by its courts of law which normally take into account the principle of active nationality of the dual national in this regard.

CHAPTER IV

THE VIEWS OF WRITERS

Eminent text-book writers have discussed the problem of multiple nationality that has been confronting mankind for several decades. Their researches were concentrated on finding out suitable principles for the solution of conflicts and thus to determine as to which of the several nationalities held by an individual should prevail. The memorable *Canevaro case*, in particular, has not escaped the critical review of the writers of repute, such as Zitelmann, Kohler and Wehberg.

Westlake, a leading English authority, takes the line that in case of clashes arising out of existence of dual nationality, the nationality acquired *jure soli* should prevail over that acquired *jure sanguinis*, as the principle of *jure soli* has been regarded as the older of the two in the history of nationality legislation of States. American writers like Borchard and Hyde have lent support to the principle of individual's right of election "involved in the application of the test of domicile" or habitual residence. The paramount importance given to habitual residence by the distinguished American experts has found expression in the Draft Convention on Nationality prepared by the Harvard Law Research in 1929.[1] Some French publicists like de Lapradelle and Politis have recommended the principle of what is known as the effective nationality or active nationality. This principle is also popularly known as the principle of dominant or overriding nationality. Further, in their view preference should be given to the nationality laws of the States concerned in such matters. But there are other French writers who have recommended other principles in this regard, for instance, Pillet prefers the older nationality, while Weiss is in sympathy with the nationality law most closely resembling that of the third state. Distinguished German text-book writers are also in favour of the principle of effective nationality for the solution of the questions involving plural nationality. Neumann, Niemeyer and Wolff could be cited as some of the proponents of this view.[2]

1. Articles 11, 12, 14 and 16.
   Weis: Nationality and Statelessness in International Law, P. 191.
2. Weis: Ibid., p. 192.

CHAPTER V

COMMENTS ON TREATIES AND CONVENTIONS ON NATIONALITY

During the 19th century, naturalization of the British subjects in the United States brought about serious differences between Great Britain and the United States of America. For instance in 1812, a time when Great Britain adhered to the rule that no natural-born British subject could lose his original nationality, the naturalization of British nationals by the United States brought about hostilities between the two countries. For a similar reason, frequent disputes arose in the nineteenth century also between the United States and Prussia.[1] In order to regulate conflicting claims to the allegiance of naturalised persons and to remove the other inconveniences resulting from dual nationality during the second half of the nineteenth century, the United States entered into numerous bilateral agreements, popularly known as the Bancroft Conventions, with mostly European States and South American States. The Bancroft Conventions of 1869 concluded between the United States and Great Britain provided for the full mutual recognition of past and future naturalizations in the two countries subject to a concession to persons belonging to the one and already naturalised in the other to change their minds and regain their original status within a period of two years, and to a more general rule that, if the law of either country were to permit its former nationals, naturalised in the other in either the past or the future, to regain their original status, that other would no longer claim them as nationals.[2] Broadly, these agreements were of two kinds: (a) they either provided which of the nationalities possessed by the dual national should be recognized as prevailing between the contracting States, or (b) they contained provisions regulating the determination of the nationality of the individual concerned, in which case, the nationality law of at least one of the contracting parties was to be suitably amended in order to avoid dual nationality. Further, since 1868 the United States tried to prevent the imposition of obligations of military service and other obligations of like character on persons having

1. Oppenheim: International Law, vol. I, p. 666-footnote.
2. Parry: Nationality and Citizenship Laws., p. 78.
   Hackworth: Digest., vol. II, p. 256.

double nationality by entering into several bilateral agreements with other countries. It may be noted that most of the agreements concluded by the United States with the European countries, (e.g., Austria, Hungary, Belgium, Bulgaria, Denmark, Finland, Germany, Great Britain, Norway, Portugal, Sweden, Switzerland, Brazil, Costa Rica, Haiti, Honduras, Nicaragua, Peru, Salvador and Uruguay) embodied the principle that the immigrants from the contracting parties were entitled to voluntarily expatriate themselves upon their naturalization in the United States of America.[3] Furthermore, these treaties provided for the right of a naturalized citizen of the United States to return to his country of origin without being subject to punishment for failure, prior to naturalization, to respond to calls for military service. However, in some treaties, military deserters were excluded from the benefits of such privilege. Thus individuals taking up permanent residence in the United States otherwise than in good faith generally were excluded from the purview of these treaties.[4]

The problem of the nationality of naturalized persons who return to the country of their origin, has been regulated between several American States by a multilateral Convention on the Status of Naturalized Citizens adopted by the Third International Conference of American States at Rio de Janeiro on August 13, 1906. Under Article 1 of this Convention, naturalised persons who take up residence in their native country without the intention of returning to the country in which they have been naturalised are to be considered as having resumed their original nationality and as having renounced the nationality acquired by naturalization. According to Article 2, the intention not to return will be presumed when the naturalised person has resided in his native country for a period of more than two years, which may, however, be rebutted by evidence to the contrary.[5]

The *Bustamante Code* too, contains provisions for the solution of conflicts arising from multiple nationality (Articles 9-11).[6]

3. Hackworth: Ibid., p. 377.
4. Hackworth: Ibid., Vol. III, pp. 377-378 and 404-414.
5. Treaties, Conventions, International Acts: Protocols and Agreements, between the United States of America and other Powers, p. 2882.
6. Flournoy and Hudson: A Collection of Nationality Laws of Various Countries, p. 654.
   Weis: Nationality and Statelessness in International Law, pp. 187-188.

According to this code the test of domicile and in its absence, the principles accepted by the law of the trial court must be applied for the attribution of active nationality to plural nationals within the third States. It may be noted that the Inter-American Juridical Committee followed this rule in its Report and Draft Convention in 1952. The adoption by the Conference on Private International Law, held at The Hague in 1928, of the principle that in the third States the nationality of that State in which the *de cujus* had his habitual residence should be considered as his effective nationality may also be mentioned in this connection. Further, the principle of effective nationality has been embodied also in the Statute of the International Court of Justice as the determining test for the nationality of judges of plural nationality. Article 3 para 2 of the Statute declares that, "A person who for the purposes of membership in the Court could be regarded as a national of more than one State, shall be deemed to be a national of the one in which he ordinarily exercises civil and political rights." A similar provision has been included in the Statute of the International Law Commission.[7]

THE HAGUE CODIFICATION CONFERENCE OF 1930 AND DUAL NATIONALITY

As stated above, the difficulties arising out of dual nationality have been causing inconvenience and embarrassment among the nations of the world. Such inconveniences and hardships resulting from double nationality became prominent in consequence of the territorial changes effected by the Peace Treaties of 1919. These changes which brought about the inevitable transfers of population, changes of nationality and the consequent sufferings of the people involved evoked interest of the nations of the world in the problems posed by dual nationality. In the view of Oppenheim, "this was probably one of the reasons why the Hague Codification Conference of 1930 reached agreement on certain aspects of the matter."[8] Thus the problem of dual nationality was taken up for consideration by the League of Nation's First Conference on the Progressive Codification of International Law, held at the

7. Article 2(3) of the Annex to Resolution 174(II) of the General Assembly of the United Nations, November 21, 1947.
   Weis: Nationality and statelessness in International Law, p, 188.
8. Oppenheim: International Law, Vol. I, p. 666.

Hague from March 13 to April 12, 1930. The First Committee of the Conference discussed at length the general question concerning the conflict of nationality laws. As the result of the work of that Committee, the Conference adopted one convention and three protocols which contain the rules agreed upon by the participants: (a) Convention Concerning Certain Questions relating to the Conflict of Nationality Laws;[9] (b) Protocol relating to Military Obligations in Certain Cases of Double Nationality;[10] (c) Protocol relating to a Certain Case of Statelessness;[11] and (d) Special Protocol concerning Statelessness.[12] It may be noted that the Convention on Certain Questions relating to the Conflict of Nationality Laws, referred to above, which was signed by representatives of 37 States, came into force on July 1, 1937. By July 31, 1946, the following States have ratified or acceded to the convention: Belgium, Brazil, United Kingdom (including all parts of the British Empire which were not separate Members of the League of Nations), Canada, Australia, India, China, Monaco, Netherlands, Norway, Poland, and Sweden. Burma and Pakistan acceded subsequently.[13] The Protocol relating to Military Obligations in Certain Cases of Double Nationality has been in force since May 25, 1937. By July 31, 1946 the following States have ratified or acceded to the protocol: Australia, Belgium, Brazil, Colombia, Cuba, India, Netherlands, Salvador, Sweden, Union of South Africa, United Kingdom and United States. Burma and Pakistan acceded subsequently.[14] The Protocol relating to a Certain Case of Statelessness has also been in force since July 1, 1937. It has been ratified or acceded to by the following States: Australia, Brazil, Chile, China, India, Netherlands, Poland, Salvador, Union of South Africa and United Kingdom. Burma and Pakistan acceded subsequently.[15] The

9. This Convention contains 31 articles. League of Nations Document, C. 24. M. 13. 1931. v. 179, League of Nations Treaty Series, p. 89. Hudson: International Legislation, Vol. V, pp. 359-374.

10. This Protocol contains 17 articles. L. N. Doc., C. 25. M. 14. 1931. V. 178, L.N.T.S., p. 227. Hudson: International Legislation, Vol. V, pp. 374-381.

11. This Protocol contains 15 articles. L. N. Doc., C. 26. M. 15. 1931. V. 179, L.N.T.S., p. 115. Hudson: International Legislation, vol. v, pp. 381-387.

12. This Protocol contains I5 articles. L. N. Doc., C. 27. M. 16. 1931. V, Hudson: International Legislation, Vol. V, pp. 387-394.

13. L. N. Docs., 1944. V. 2, and 1946. V. I. L. N. Official Journal, Spl. Suppt., 193, p. 63.

14. L. N. Docs., 1944, V. 2, p. 64 and 1946. V. I.

15. Jones, M. J.: British Nationality Law, rev. ed., 1956, p. 49. L. N. Official Journal, Spl. Suppt., No. 193, p. 62.

Special Protocol concerning Statelessness has not come into force as yet for want of requisite number of ratifications.[16]

The Preparatory Committee for the Hague Codification Conference invited the views of the various governments on the three following questions relating to dual nationality:

(1) Whether in cases of this kind each State has the right to apply its own law?

(2) Is either of the States whose nationality a person possesses entitled to exercise the right of diplomatic protection on his behalf against the other State? If no answer covering all cases can be given, can such protection be exercised as against a State of which the person concerned has been a national since birth, or against a State of which he is a national through naturalization, or in which he is domiciled, or on behalf of which he is or has been charged with political functions, or is the question governed by other considerations capable of being formulated?

(3) What principles decide which nationality is to prevail over the other when the question presents itself to a third State?

The replies of the various governments to the first question affirmed almost unanimously that a State had the right to apply its own law. This principle has been embodied in Article 3 of the Convention on Certain Questions relating to the Conflict of Nationality Laws, which was accepted by the First Committee by a vote of 40 to 1 with 6 abstentions. This article expressely declares that a dual national, i.e., a person having two or more nationalities, may be regarded as its national by each of the States whose nationality he possesses.

The Government of the United States, while recognising the principle, stated that "the United States does not recognise the existence of dual nationality in the cases of persons of alien origin who have obtained naturalisation in the United States, and referred to Vol. III of J. B. Moore's work, "A Digest of International Law" in this regard.

16. Weis: Nationality and Statelessness in International Law, p. 30. L. N. Offiical Journal, Spl. Suppt., No. 193, p. 61.

In reply to the second question, the Governments of the Union of South Africa, Germany, Australia, Austria, Bulgaria, Czechoslovakia, Egypt, Latvia, Poland, Siam and Sweden stated that no State should exercise its right of diplomatic protection on behalf of a national against another State of which that person was also a national. The Governments of Great Britain, India and New Zealand replied that in their view a State was entitled to regard its own nationality as the dominant or overriding nationality (a) on its own territory, and (b) in all questions which might arise as between that State and the individual concerned.[17] Thus they took the line that a State must not claim the right of diplomamatic protection on behalf of a national against another State of which that person was also a national. They cited the *Stevenson case* decided by the British - Venezuelan Claims Commission in support of their stand.[18] The United States while expressing agreement with the principle referred to, emphasized the importance of domicile of the individual as indicative of his choice and preference in this regard. It thought that the individual's election in favour of one State as against the other would constitute a guide to decide upon the merits of the clamaints for the right of diplomatic protection when he is abroad. Further, in its view, a multilateral convention, stipulating the circumstances in which a State could legitimately extend diplomatic protection to a dual national, was very necessary. Furthermore, in its view such a plurilateral convention would incidentally enable a third State to decide upon the dominant nationality of the dual citizen in case of necessity. Thus the United States took the view that the domicile of the individual concerned should be given due weight in this regard. The Governments of Belgium and France stressed in their replies the importance of the effective exercise by the individual concerned of one of the nationalities involved as the determining factor in cases of this nature. Article 4 of the Convention which was adopted by a vote of 29 to 5, with 13 abstentions, which embodies the above views of the participating States, declares that, "A State may not afford diplomatic protection to one of its nationals against a State whose nationality such person also possesses." It may be noted that Yugoslavia wished to add the following provision to Article 4

17. Bases of Discussion, Hague Conference for the Codification of International Law, 1929, V. 1, p. 28.
18. Ralston, J. H.: Venezuelan Arbitrations of 1903 (1904), pp. 438 and 451. Weis: Nationality and Statelessness in International Law, pp. 182-183.

of the Convention : "Similarly, a person possessing two or more nationalities may not plead that he is a national of one State, in order to bring a personal action through an international tribunal or commission in respect of another State of which he is also a national."[19] It may be noted that this view of Yugoslavia is similar to the dictum of the British-Mexican Claims Commission in the *Honey Claim* (1931). The Claims Commission in that case stated: "It is an accepted rule of international law that such a person (i.e., *sujet mixte*) cannot make one of the countries to which he owes allegiance a defendant before an international tribunal."[20] In this context Briggs emphasises as follows: "It should be observed, however, that by taking jurisdiction in such dual nationality cases the court does not-and, in fact, cannot-deprive the individual of his status as a national of either State."[21] During the ensuing discussions although several delegates were in agreement with the Yugoslav amendment in principle, they were not in favour of its inclusion in the convention itself for the simple reason that "it deals with a case that is so rare as to be of little interest to the majority of States."[22]

On the third question, i.e., the question concerning the dual national and a third State, the replies of governments showed a divergence of views. A number of governments wanted preferrence to be given to the nationality of the State in whose territory the individual was domiciled, or habitually resident; while others including the United Kingdom, Australia and the Union of South Africa, stated that the person concerned should be given the freedom of choice between the nationalities he possessed, or in the alternative, a combination of both the methods should be resorted to in this regard. The French Government advocated the test of effectiveness of nationality, while still others suggested some other criteria for the solution of the problem.

It may be noted that during the discussions in the First Committee, the Dutch Delegate pointed out the difference between public and private law on this point. In his view questions of

19. Acts of the Hague Conference for the Codification of International Law, Vol. II,-Minutes of the First Committee, p. 57.
20. Honey Claim (1931), Further Decisions and Opinions of the Anglo-Mexican Special Claims Commission, 1933, pp. 13-14.
21. Briggs: The Law of Nations, p. 516.
22. Minutes of the First Committee, p. 305.