nationality were often relevant to questions of private law. He stated that such aspects of personal status of human beings which belonged to the province of private law were frequently regulated in a different way from other subjects of international importance. He further urged that in giving preference to any particular nationality of *sujets mixtes* in the territory of the third States, the purpose for which the choice was made and the interests of the third State concerned were important. In short, all these considerations militated, in his view, against leaving the choice to the individual, and that the matter could, he felt, best be regulated within the framework of appropriate conventions on private law.[23]

Consequently, Article 5 of the Convention on Certain Questions relating to the Conflict of Nationality Laws which emerged from the discussions, provides for two alternative criteria: (a) the principle of habitual residence, and (b) that of effectiveness. This article provides that within a third State, a person of more than one nationality shall be treated as if he had only one nationality, and that a third State shall recognize exclusively either: (a) the nationality of the State in which he is habitually and principally resident, or (b) the nationality of the State with which in the circumstances he appears to be in fact most closely connected. Thus Article 5 of the Convention gives effect to what may be called the principle of effective nationality for the purposes of third States and lays down a useful test for it. It may be observed that this article is only declaratory of what may be called a rule of customary international law, as this doctrine of effective nationality has been adopted by international arbitral institutions in their awards involving dual nationals and third States. *The Canevaro case* (1912) decided by the Permanent Court of Arbitration at the Hague,[24] and the case of *Barthez de Montfort v. Treuhander Hauptverwaltung* (1926) decided by the Franco-German Mixed Arbitral Tribunal,[25] may be cited as instances in this regard. Moreover, in the opinions of some international arbitral tribunals, Permanent Court of International Justice, International Court of Justice, municipal courts of some States, and of some well-known publicists, the same overall tendency in favour of real and effective nationality is clearly

23. Minutes of the First Committee, pp. 60-62.
Weis: Nationality and Statelessness in International Law, pp. 181-184.
24. Scott: The Hague Court Reports 1916, p. 284.
25. Annual Digest., 1925-26, Case No. 206, p. 279.

revealed.[26] According to Article 6 of the Convention where a person without any voluntary act of his own happens to possess two nationalities, he may renounce one of them with the permission of the State whose nationality he wishes to surrender. But under this article, subject to the law of the State concerned, if the conditions laid down in the law of that State are satisfied, such authorisation shall not be refused if that person has his habitual and pricipal residence abroad. It may be noted that the United States Delegation tried at the meeting of the First Committee to eliminate from the last sentence of Article 6 the proviso, "if the conditions laid down in the law of the State whose nationality he desires to surrender are satisfied" but her efforts did not bear fruit. Article 7 of the Convention deals with the issue of expatriation permits. It contains *inter alia* the following provision: "In so far as the law of a State provides for the issue of an expatriation permit, such a permit shall not entail the loss of the nationality of the State which issues it, unless the person to whom it is issued possesses another nationality or unless and until he acquires another nationality." As regards the dual national, in particular this article states: "This provision shall not apply in the case of an individual who, at the time when he receives the expatriation permit, already possesses a nationality other than that of the State by which the permit is issued to him." Articles 8-11 deal with the nationality of married women. These include provisions for mitigating the hardships emanating from the adoption of the artificial and technical principle that their nationality follows that of their husbands. These provisions also enable them under certain conditions to retain their premarital nationality. Thus Article 8 provides: "If the national law of the wife causes her to lose her nationality on marriage with a foreigner, this consequence shall be conditional on her acquiring the nationality of the husband." Article 9 states: "If the national law of the wife causes her to lose her nationality upon a change in the nationality of her husband occurring during marriage, this consequence shall be conditional on her acquiring her husband's new nationality." Article 10 lays down: "Naturalisation of the husband during marriage shall not involve a change in the nationality of the wife except with her consent." Article 11 deals with resumption of the wife's original or previous nationality in the event of

26. Schwarzenberger: International Law, pp. 364-365.

dissolution of marriage. Such recovery of her former nationality is possible only on application and this will entail the loss of the nationality acquired by marriage. Thus Article 11 reads: "The wife who, under the law of her country, lost her nationality on marriage shall not recover it after the dissolution of the marriage except on her own application and in accordance with the law of that country. If she does recover it, she shall lose the nationality which she acquired by reason of the marriage."[27] Articles 12-16 deal with the nationality of childern. Article 13 gives expression to the priciple that naturalisation of parents shall confer upon such of their childern as are minors the nationality of the State by which the naturalisation is granted. Article 17 of the Convention deals with effects of adoption upon nationality. It provides that if, by adoption, a person loses his nationality, such loss shall be conditional upon the acquisition by him of the nationality of the person by whom he is adopted. Chapter VI of the Convention which includes Articles 18-31, contains general provisions of which Article 18 may be considered as the most significant which provides: "The High Contracting Parties agree to apply the principles and rules contained in the preceding articles in their relations with each other, as from the date of the entry into force of the present Convention.

The inclusion of the above-mentioned principles and rules in the Convention shall in no way be deemed to prejudice the question whether they do or do not already form part of international law.

It is understood that, in so far as any point is not covered by any of the provisions of the preceding articles, the existing principles and rules of international law shall remain in force."[28]

This provision makes it clear that States do, in practice, consider that municipal legislation relating to nationality is circumscribed by general principles of international law and that the convention is not conclusive as to the extent of such principles. As the parties to this convention desired that it should become a general international convention, they laid down in Article 22 that:

27. Hudson: International Legislation, Vol. V, p. 366.
28. Hudson: Ibid., pp. 366-373.

"The present Convention shall remain open until the 31st December, 1930, for signature on behalf of any Member of the League of Nations or of any non-Member State invited to the First Codification Conference or to which the Council of the League of Nations has communicated a copy of the Convention for this purpose." Further, Article 25 states: "A procès-verbal shall be drawn up by the Secretary-General of the League of Nations as soon as ratifications or accessions on behalf of ten Members of the League of Nations or non-Member States have been deposited." As this convention is considered as one of the important international agreements, under Article 30, it " shall be registered by the Secretary-General of the League of Nations as soon as it has entered into force." This convention has been drawn up in two languages, and under Article 31, "The French and English texts of the present Convention shall both be authoritative."[29]

The Protocol relating to Military Obligations in Certain Cases of Double Nationality signed on April 12, 1930 at the Hague Codification Conference is regarded as another important piece of international legislation on the subject of nationality. This protocol contains 17 articles, of which Articles 1-3 are the most important and the remaining articles deal with general matters. These three articles of the protocol reflect more or less the State practice of a considerable number of States concerning the liability of dual nationals for military service. Under Article 1 of the Protocol, if an individual of two or more nationalities possesses the effective nationality of one of the States, he shall be exempt from all military obligations in the other country or countries, subject to the possible loss of the nationality of the other country or countries. The Protocol also provides in Article 2 that if a person possessing two or more nationalities is entitled, under the law of any of the States whose nationality he possesses, to renounce its nationality on attaining his majority, he shall be exempt during his minority from military service in the State in question. The Protocol lays down in Article 3 that if under the law of a State a person has lost its nationality, and has acquired another nationality, he shall be exempt from military obligations in the State whose nationality he has lost. It may be noted that, by and large, Articles 4—17 of the Protocol relating to

29. Hudson: International Legislation, Vol. V, pp. 369-373.
Weis: Nationality and Statelessness in International Law, pp. 265-267.

Military Obligations in Certain Cases of Double Nationality, proceed along the lines of Articles 18-31 of Chapter VI (General and Final Provisions) of the main Convention, i. e., Convention on Certain Questions relating to the Conflict of Nationality Laws.[30]

The Protocol relating to a Certain Case of Statelessness is yet another important international agreement concerning the problems of nationality adopted at the Hague Conference of 1930. Article 1 of this Protocol is considered to be very important. It states that, "In a State whose nationality is not conferred by the mere fact of birth in its territory, a person born in its territory of a mother possessing the nationality of that State and of a father without nationality or of unknown nationality shall have the nationality of the said State." This article also reflects the practice that is being followed in several States. Articles 2-15 of this Protocol are also similar to those of the General and Final Provisions of Chapter VI of the Convention on Conflict of Nationality Laws, referred to above.[31]

The Special Protocol concerning Statelessness has also resulted from the work of the Conference for the Codification of International Law, held at the Hague, March 13-April 12, 1930. The subject-matter of this protocol had previously been dealt with by certain bipartite agreements, noteworthy among them being the Russo-German Agreement of January 29/February 10, 1894. The object of this protocol was to determine "certain relations of stateless persons to the State whose nationality they last possessed." Article 1 prescribes, "If a person, after entering a foreign country, loses his nationality without acquiring another nationality, the State whose nationality he last possessed is bound to admit him, at the request of the State in whose territory he is:

(i) if he is permanently indigent either as a result of an incurable disease or for any other reason; or

(ii) if he has been sentenced, in the State where he is, to not less than one month's imprisonment and has either served his sentence or obtained total or partial remission thereof.

In the first case, the State whose nationality such person last possessed may refuse to receive him, if it undertakes to meet the

30. L. N. Doc., C. 25. M. 14. 1931. V.
Hudson: International Legislation, Vol. V, pp. 374-381.
31. L. N. Doc., C. 26. M. 15. 1931. V.
Hudson: International Legislation, Vol. V, pp. 381-387.

cost of relief in the country where he is as from the thirtieth day from the date on which the request was made. In the second case, the cost of sending him back shall be borne by the country making the request." The remaining Articles 2-15 follow the provisions of Chapter VI (i.e., Articles 18-31) of the main Convention on Certain Questions relating to the Conflict of Nationality Laws. As observed elsewhere, this "Special Protocol" has been ratified only by nine States, and it has not yet entered into force.[32]

It must be admitted that the efforts of the Hague Codification Conference of 1930 to eliminate the causes of dual nationality were not very successful. Briggs considers that the Conference failed to agree upon measures to eliminate the causes of double nationality. The conflicting interests of countries of emigration and those of immigration, particularly with reference to the conservation of manpower for military service, were said to be the main reason for the disagreement. Efforts to confer upon a person with double nationality the right to choose one and renounce the other resulted only in the compromise which was embodied in Article 6 of the Convention on Conflict of Nationality Laws.[33] To sum up, it may be said that the provisions which were drawn up by the Committee on Nationality were embodied in one convention and three protocols. These convention and protocols were intended to be separate instruments. In addition eight recommendations were formulated, of which the following are of special significance:

"II - The Conference recommends States to examine whether it would be desirable that, in cases where a person loses his nationality without acquiring another nationality, the State whose nationality he last possessed should be bound to admit him to its territory, at the request of the country where he is, under conditions different from those set out in the Special Protocol relating to Statelessness, which has been adopted by the Conference."

32. L. N. Doc., C. 27. M. 16. 1931. V.
L. N. Official Journal, Spl. Supplt., No. 193, p. 61.
Hudson: International Legislation, Vol. V, pp. 387-394.
33. Briggs: The Law of Nations, p. 515.
Acts of the Conference, Bases of Discussion, I, 1929. V.I., pp. 22-35 and 80-87.
Minutes of the First Committee, 1930. V. 15., pp. 44-68, 102-114, 124-130, 140-146, 167, 210-213, 226 and 250.
Report of the First Committee, 1930. V. 8., pp. 4-5 and 8.

"III - The Conference is unanimously of the opinion that it is very desirable that States should, in the exercise of their power of regulating questions of nationality, make every effort to reduce so far as possible cases of dual nationality,

and that the League of Nations should consider what steps may be taken for arriving at an international settlement of the different conflicts which arise from the possession by an individual of two or more nationalities."

"IV - The Conference recommends that States should adopt legislation designed to facilitate, in the case of persons possessing two or more nationalities at birth, the renunciation of the nationality of the countries in which they are not resident, without subjecting such renunciation to unnecessary conditions."

"V - It is desirable that States should apply the principle that the acquisition of a foreign nationality through naturalisation involves the loss of the previous nationality.

It is also desirable that, pending the complete realisation of the above principle, States before conferring their nationality by naturalisation should endeavour to ascertain that the person concerned has fulfilled, or is in a position to fulfil, the conditions required by the law of his country for the loss of its nationality."

"VI - The Conference recommends to States the study of the question whether it would not be possible

1. to introduce into their law the principle of the equality of the sexes in matters of nationality, taking particularly into consideration the interests of the childern,

2. and especially to decide that in principle the nationality of the wife shall henceforth not be affected without her consent either by the mere fact of marriage or by any change in the nationality of her husband."

"VII - The Conference recommends that a woman who, in consequence of her marriage, has lost her previous nationality without acquiring that of her husband, should be able to obtain a passport from the State of which her husband is a national."[34]

34. 24, A.J.I.L., 1930, Supplement, pp. 182-183.

Appraisal of the Work of The Hague Codification Conference

The agenda of the Hague Codification Conference of 1930 was considered to be too ambitious in as much as it attempted within the short period of one month to codify three important branches of international law, including questions of nationality. The Conference aimed to achieve uniformity and certainty in these branches of international law. Although the Hague Codification Conference must undoubtedly be regarded as a landmark in any investigation into the problems of nationality, yet it must be admitted that the practical results achieved are not spectacular. Generally speaking, the number of rules adopted was small, and the number of those adopted with the two-thirds majority as required by the rules of procedure for adoption of the convention, was still smaller. Further, it must be stated that the convention and the protocols cover between them only a small sector of the subject of nationality, as they deal only with certain international aspects of the problems of nationality. In the opinion of Oppenheim, the attempts at codification in many cases revealed and emphasized the differences on matters where agreement had been hitherto supposed to exist. According to Sir Cecil Hurst, the Hague Codification Conference "was ushered in with high hopes and ended in dismal failure."[35]

Although the direct and immediate effect of these agreements may not be much, their indirect significance is regarded as considerable as they could be considered as reflecting the views of two-thirds, or at least of the majority of the States represented at the Conference. Moreover, it may be noted that the subsequent nationality laws of several States, including those of some States which did not accede to the Hague Convention and Protocols of 1930, have been influenced by the principles and rules adopted at the Conference. M.N. Politis in his closing speech as Chairman of the First Committee stated as follows: "In my opinion the most important thing we have done has been to open a fresh breach through which international law can make its way, slowly but surely, into the domain of nationality, a domain which until now has always been the exclu-

35. Oppenheim: International Law, Vol. I, p. 65.
"A Plea for the Codification of International Law on New Lines," Transactions of the Grotius Society, 1946, pp. 135-153.

sive preserve of the individual States."[36] In the opinion of Oppenheim, "These Conventions, although falling short of a comprehensive codification of international aspects of nationality, covered important questions and have subsequently been ratified by a number of States, including Great Britain."[37]

The preparatory work done in keeping with the instruction of the Council of the League of Nations, in the first place, by the Committee of Experts for the Progressive Codification of International Law and secondly, by the Preparatory Committee for the Codification Conference, throws considerable light on the subject of nationality. The replies of the governments to the various questions covering the principal topics of nationality, the bases of discussion drawn up by the Committee for the use of the Conference in the light of those replies, the proceedings of the First Committee, and the proceedings of the Plenary Session of the Conference relating to nationality are highly illuminating. The governments' replies, quite apart from the valuable information they contain on the legislation and jurisdiction of the various countries, are indicative of the practice of those States in matters of nationality which itself constitutes an invaluable source for the ascertainment of rules of international law governing nationality. Taken as a whole and read with a critical eye, the preparatory documents and the transactions of the conference will throw useful light on existing rules of international law relating to nationality. The *voeux* and recommendations included in the Final Act of the Conference, the Convention and Protocols—in so far as they are not merely declaratory of existing international law—may be taken as evidence of the the prevailing trends in international law in this matter.[38]

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36. Acts of the Hague Conference for the Codification of International Law, Vol. II—Minutes of the First Committee, p. 274.
37. Oppenheim: International Law, Vol. I, p. 62.
38. Weis: Nationality and Statelessness in International Law, p. 31.

CHAPTER VI

RECENT DEVELOPMENTS AND THEIR TRENDS

In order to find out the trends of development of international law relating to multiple nationality, an examination of the efforts relating to international legislation since the end of the Second World War is necessary. These efforts have been directed mainly under the aupices of the following regional inter-governmental organizations and of the United Nations *viz.*, the Council of Europe, the League of Arab States, the Inter-American Council of Jurists of the Organization of American States; and the United Nations Commission on the Status of Women and the International Law Commission of the United Nations. Broadly speaking, these organizations have devoted their attention to the problems of nationality and statelessness.

Council of Europe

In May 1954 the Consultative Assembly, the deliberative organ of the Council of Europe, placed on its agenda the question of the "possiblity of concluding a European Convention on Statelessness and Multiple Nationality." The matter was referred to the Committee on Legal and Administrative Questions for study and report.

The Rapporteur, Mr. Wahl of German Federal Republic submitted during the latter part of 1954 a preliminary report to the Committee. In December 1954, in the light of the observations made by the Rapporteur, the Committee adopted some resolutions on the problems of statelessness and multiple nationality. As regards statelessness, it instructed the Secretariat of the Council of Europe to keep the Committee informed of the work of the International Law Commission of the United Nations on the subject. By 1955, as only nine members of the Council of Europe had signed the United Nations Convention on the Status of Stateless Persons, 1954, and as none of its member countries had ratified the same, the Consultative Assembly recommended that all its member governments should take the necessary action thereon. Since the above convention covered only the existing cases of statelessness and the General Assembly of the United Nations had recommended that

a further conference should be held with a view to conclude another convention relating to future statelessness, the Consultative Assembly recommended that all members of the Council of Europe should cooperate with the United Nations in its efforts to conclude the proposed convention.[1]

As regards multiple nationality, the Committee on Legal and Administrative Questions stated that the Secretariat should, in collaboration with the competent authorities in member States, make a comparative study of cases of multiple nationality indicating which of these cases are, or would be, covered by the Hague Convention and Protocols of 1930; that it should be ascertained why the member States had not acceded to these agreements; and that in the light of that information the Rapporteur should report on the problem with a view to the possible preparation of one or more conventions in cooperation with the International Institute for the Unification of Private Law in Rome.

It may be added that in order to facilitate the work of the Council of Europe on these and similar topics, agreements have been concluded with the Rome Institute for the Unification of Private Law and the Hague Conference on Private International Law.[2]

League of Arab States

The member States of the Arab League have concluded two international agreements relating to the subject of nationality.

(*i*) *The Convention Concerning the Nationality of Arabs Resident in Countries of which they are not Nationals* (1952). This Convention was approved by the Council of the League of Arab States on September 23, 1952, during its Sixteenth Ordinary Session. It was drawn up in Cairo by the Governments of Jordan, Syria, Iraq, Saudi Arabia, Lebanon, Egypt and Yemen. During 1954, Egypt and Saudi Arabia deposited their instruments of ratification at the Secretariat-General of the League. Article 1 of the Covention provides as follows: "Every person, related by origin to one of the States of Arab League, who has not acquired any specific nationality, nor has elected the nationality of his country of origin

1. Weis: Nationality and Statelessness in International Law, pp. 252-253. Robertson, A. H.: The Council of Europe, 1956, pp. 177-179.
2. Robertson: Ibid., pp. 178-179.

within the periods prescribed by conventions or laws, shall be deemed to be a national of his country of origin.

This shall not prejudice his right to reside in the State in which he is being domiciled, in accordance with prevailing regulations, nor shall this prejudice the right to acquire the nationality of that State, in fulfilment of the required conditions, provided that where he acquires the nationality of the country of domicile, his nationality of the country of origin shall abate."

It may be observed that the latter part of Article 1 relating to dual nationality caused by naturalisation seeks to avoid the occurrence of dual nationality in the member countries. Upon his aquisition of another nationality, he is to lose his previous nationality i. e., the nationality of the country of origin.

The other two articles of the convention deal with ratification of the convention (Article II); and its entry into force (Article III.)[3]

(ii) *The Nationality Agreement* (1954). It was approved by the Council of the League of Arab States on April 5, 1954, during its Twenty-first Ordinary Session. Between 1954 and 1955 this agreement was signed by Jordan, Egypt and Iraq. By February 3, 1955 Jordan and Egypt had deposited their instruments of ratification at the Secretariat-General of the League.[4]

Article 2 deals with dual nationality of married women. It provides as follows: "An Arab woman acquires by marriage the nationality of her Arab husband and thereby her former nationality shall abate, unless she applies for the retention of her (original) nationality in the marriage contract, or in a later notice made within six months from the date of her marriage contract.

In the event of withdrawal of her new nationality by the Government of the State of (her) husband in accordance with prevailing laws, the wife shall regain her former nationality.

3. League of Arab States Treaty Series, pp. 33-34. Khalil, Muhammad: The Arab States and the Arab League : A Documentary Record, Vol. II, 1962, pp. 112-113.
4. Khalil : Ibid,, pp. 127-129. Article 1 defines the term 'Arab',

Where the husband is stateless, the original nationality of an Arab woman is not affected by her marriage to him."

This article aims at the prevention of the phenomena of dual nationality as well as statelessness. According to this article, the women automatically loses her original nationality upon marriage to an Arab husband belonging to another Arab country, as by marriage she acquires the nationality of her husband. However, she has the right to retain her original nationality provided that this has been specifically reserved in the marriage contract. Further, she has the right to apply for such a right within a period of six months from the date of her marriage contract. In either case she will be in possession of one nationality only. This article contains two principles, viz., (i) The nationality of the wife follows the nationality of the husband. The rational basis for this rule is the need to preserve the unity of the family by maintaining the unity of the nationality of the spouses. (ii) The woman has the right to retain her pre-marital nationality if she duly exercises her right in this regard. This principle is based on the view that marriage must not constitute a ground for automatic change of nationality. It may be added that certain international agreements and some recent municipal legislations have provided for the right of the woman to express her own choice of nationality upon her marriage to a foreigner. Therefore, marriage does not lead to the acquisition of dual nationality on the part of the woman.

The second part of Article 2, seeks to ensure that the woman reacquires her original nationality in the event of involuntary loss of her derivative nationality. Generally speaking, nationality may be lost by an act of the State or by an act of the individual himself. The first mode is called deprivation of nationality or denationalisation, and the second is known as renunciation. Broadly, the term 'deprivation of nationality' includes deprivation in pursuance of decisions of administrative authorities, or by operation of law on certain recognized grounds. According to the second half of Article 2, withdrawal of her new nationality can happen only in accordance with the law in force, and in such a case she will automatically reacquire her previous nationality. Further, by marrying a stateless individual, an Arab woman will not lose her pre-marital nationality. This is based on the rule that the nationality of the wife must remain unaffected by marriage. In other words, she will not *ipso facto* lose her pre-marital nationality upon marriage to a foreigner, even if he happens to be a stateless person.

Article 3 incorporates the principle of resumption of wife's previous nationality after dissolution of marriage only on her return to the country of origin to take up residence there and on her application therefor provided that it involves the automatic loss of the nationality acquired by marriage. The requirement of loss of the nationality acquired by marriage is intended to avoid the possibilities of the acquisition of dual nationality as a consequence of marriage.[5] It may be observed that Article 11 of the Convention Concerning Certain Questions relating to the Conflict of Nationality Laws, 1930 contains more or less similar provisions. It states: "The wife who, under the law of her country, lost her nationality on marriage shall not recover it after the dissolution of the marriage except on her own application and in accordance with the law of that country. If she does recover it, she shall lose the nationality which she acquired by reason of the marriage."[6]

Article 4 of the Nationality Agreement, 1954 of the Arab League deals with the nationality of children. It provides as follows: "Minors shall follow the nationality acquired by their father, provided, however, that those born before such new nationality is acquired may revert to their father's original nationality within one year from the completion of eighteen Gregorian years." According to the reservation made by Egypt, the age limit is to be 21 years instead of 18.[7] This article could be compared with Article 13 of the Hague Convention on Conflid of Nationality Laws, 1930 referred to above. The provision that the minor may revert to his father's original nationality, within one year after the completion of eighteen Gregorian years is intended to avoid the occurrence of the possibility of the status of a dual national in the minor. Thus, naturalisation of the father involves that of his children who are minors. Naturalisation of the father causes the children who are minors to lose their former nationality, if they can thereby acquire their father's new nationality. When

5. Khalil : Ibid., p. 128.
6. Hudson : International Legislation, Vol. V, p. 366.
7. Khalil : Op. cit., p. 128—footnote.

naturalization of the father does not extend to childern who are minors, the latter retain their former nationality. It may be noted that the Convention concluded between France and Switzerland on July 23, 1873 deals *inter alia* with the nationality of minors of French origin whose parents become naturalized Swiss citizens. It provides that such persons shall, in the course of their twenty-second year, have the choice between the French and Swiss nationalities and that , until a choice for Swiss nationality is made on their part, they shall be regarded as French citizens. Failure to make a choice according to the prescribed procedure within the specified period is to be regarded as a final choice in favour of French nationality. [8]

Article 5 of the Nationality Agreement, 1954 deals with the nationality of foundlings. It provides as follows: "A foundling acquires the nationality of the country in which he is born and, until the contrary is established, shall be deemed to have been born in the country where he was found.

A person born of an Arab mother in an Arab country, but whose paternity is not established in law, shall follow his mother's nationality. Where, however, it is proved in law that he is of an Arab father and has not yet completed eighteen Gregorian years, he shall take his father's nationality, whereupon his former nationality shall abate."

This article incorporates the same principles as those underlying Article 14 of the Hague Convention on Conflict of Nationality Laws, 1930. Both these articles give expression to a well-recognised principle of international law according to which a child whose parents are unknown is to be regarded as belonging to the country of its birth. Thus a parentless child, in the absence of evidence to the contrary, acquires the citizenship of the country where he has been found.

The second paragraph of Article 5 prescribes that an illegitimate child of an Arab mother born in any Arab country and whose paternity cannot be established, shall acquire the nationality of the mother. However, if it is subsequently proved that he is the child of an Arab father and that he is below eighteen years, he is

8. Bar-Yaacov, N.: Dual Nationality, 1961, p. 171.

permitted to take his father's nationality. Upon the acquisition of the father's nationality, his original nationality, i.e., that which he has at first acquired through the mother shall be deemed to have been lost.[9]

Article 6 of the Nationality Agreement of the League of Arab States requires a release from the tie of existing nationality of an Arab before he can be naturalised in another Arab State. It provides as follows: "A national of one Member State of the Arab League shall not, except with the approval of his Government, acquire by naturalisation the nationality of another Member State of the League; on his so acquiring the new nationality his former nationality shall abate."[10]

If the previous citizenship is not extinguished as a consequence of naturalization, instances of dual nationality normally will arise. In order to avoid such eventualities this article provides for automatic release of the individual from the tie of original nationality upon the acquisition of a foreign nationality. Thus, this article incorporates the principle that it is a sovereign right of a State to require its assent for the naturalization of its citizens abroad, and to continue to treat as its nationals all those individuals who have not obtained such assent. From the above principle it follows that a State may forbid its nationals from becoming naturalized citizens in a foreign State, except with its own permission. As soon as such permission has been obtained, the individual concerned loses his previous citizenship. This article rejects the theory that it is a sovereign right of a State to naturalise persons who have not obtained the permission of their home States for such naturalization. In short, this article excludes the possibility of acquisition of dual nationality through naturalisation by ensuring that the naturalised person shall not continue his ties with his country of origin. Such a loss of one nationality will automatically put an end to the status of dual nationality on the part of a naturalised individual who will otherwise have retained his original nationality in addition to the acquisition of a new one.

Article 7 deals with the right of option or election of the individual possessing more than one nationality. He is permitted to

9. Khalil: Op. cit., p. 128.
10. Khalil: Op. cit., p. 128.

state his preference for one of the nationalities concerned. It reads as follows: "An Arab born in any of the Arab League countries other than his own may, subject to the consent of the Governments of the two concerned countries, and during the first year from the date on which he completes eighteen Gregorian years, opt for the nationality of the country in which he was born and when he so opts,his former nationality shall abate."[11]

Egypt in its reservation states that the age for the exercise of the right of option shall be the age of twenty-one intead of eighteen.[12]

This article incorporates the principle that a plural national may, with the authorisation of the government concerned, opt for one of the nationalities. It provides for the avoidance of dual nationality arising at birth in any of the countries of the Arab League. It recognises the right of the individual to renounce one of the nationalities, but such renunciation is possible only with the authorisation of the State concerned. If the dual national continues to reside in the State of birth, he is permitted to opt for the nationality of that State provided that he exercises his right of election within one year after the completion of his eighteenth or twenty-first year as the case may be, and that he obtains from the other State the authorisation to renounce his former nationality. Upon the acquisition of the new nationality by option or election, his previous nationality is lost and thereby the status of dual nationality is abolished. Further, this article has incorporated the principle of effective nationality in the provision which lays down that out of the two nationalities he may choose the nationality of that State where he has established his permanent residence since his birth.

Unlike the previous article, Article 8 provides for the abolition of dual nationality in a general way. It reads as follows: "A person having the nationality of more than one of the Member States of the Arab League may opt for one or the other within two years from the date of the coming into force of this Agreement and where the two years elapse without such option taking place, he shall be deemed to have opted for the nationality most recently

11. League of Arab States Treaty Series :Agreements and Conventions concluded between Member States within the framework of the Arab League, pp, 91-94.
12. Khalil : Op. cit., Vol. II, p. 128—footnote.

acquired, provided that where there is more than one nationality acquired at one and the same time, he shall be deemed to have opted for the nationality of the country in which he ordinarily resided; whereupon all other nationalities shall abate."[13]

Under this article, any individual possessing more than one nationality of the member States of the Arab League has been granted the right of election in favour of one of the nationalities concerned. Such a right, however, must be exercised within a period of two years from the date of coming into force of this Nationality Agreement. If he fails to avail of the right of option, he shall be deemed to have exercised his preference for the nationality most recently acquired. In the latter case, if he happens to have acquired, at one and the same time, more than one nationality he shall be deemed to have chosen the nationality of that State in which he has set up his habitual or permanent residence. Upon the determination of his effective nationality, all the other nationalities shall be lost.

According to this article removal of the inconveniences resulting from multiple nationality can be achieved: (i) by granting to the individual concerned an opportunity of renouncing the other nationality or nationalities of which he is considered to be in possession; (ii) by granting not only the right of option to the individual but also by imposing on him the duty to opt under the conditions laid down by the law for one of the nationalities; and (iii) by providing that the failure to opt for only one of the nationalities on the part of the individual will result in the automatic renunciation of the other nationality or nationalities except the nationality of the State that he has last acquired and in which he has established his habitual residence.

Article 9 of the Nationality Agreement provides as follows: "Any decision taken by the Government of any Arab League State conferring its own nationality on a national of another Arab State or withdrawing its own nationality from him must be notified to the Government concerned within six months."[14]

As this convention is to be operative only among the homogeneous member States of the Arab League, unlike the other multi-

13. League of Arab States Treaty Series., pp. 92-93.
14. Ibid., p. 93.

lateral conventions on nationality it imposes a rather new kind of duty on the contracting parties. Thus this article lays down that each of the member States of the Arab League must keep the other State or States directly concerned informed of the cases of conferment or divestiture of its nationality. This provision too will prevent the occurrence of the phenomenon of dual nationality among the Arab nationals.

Articles 10 to 13 of the Nationality Agreement of the Arab League contain what are known as the non-substantive or final provisions relating to miscellaneous matters. Article 10 deals with ratification of the convention by the member States. The instrument of ratification must be deposited with the Secretariat-General of the Arab League. The Secretariat is expected to draw up a protocol of the deposit of the instruments of ratification by the contracting States and to notify the same to the other States who are parties to this convention. Article 11 relates to the convention's entry into force. Under this article, the Nationality Agreement "shall come into force two months from the date of the deposit by three States of their instruments of ratification and shall apply with regard to each of the other States two months from the date of the deposit of their respective instruments of ratification or accession thereto." Article 12 lays down the procedure for accession by the other member States of the Arab League who have not signed the agreement. Article 13 prescribes the mode of renunciation to be followed by a contracting party if it wishes to withdraw from the obligations of the convention. Such withdrawal becomes effective only after six months from the date of notice to that effect.[15]

To sum up, recognising the view that dual nationality is a constant source of friction between States, the Nationality Agreement drawn up under the auspices of the League of Arab States, seeks to eliminate or to reduce plural nationality. Since the problems arising from the phenomena of multiple nationality are due to the co-existence of the principles of *jus soli* and *jus sanguinis* in nationality and citizenship laws of the States in the world, this convention is intended to solve the conflicts likely to arise from such a situation at various levels. This agreement incor-

15. League of Arab States Treaty Series., pp. 93-94.
Khalil : Op. cit., Vol. II, pp. 127-129.

porates not only most of the well-recognised principles relating to nationality laws but also certain other new principles which are not normally found in the other multilateral conventions on the same subject.

THE INTER-AMERICAN COUNCIL OF JURISTS OF THE ORGANIZATION OF AMERICAN STATES

Within the framework of the Organization of American States, the Inter-American Juridical Committee prepared in 1952, in compliance with a Resolution adopted by the Inter-American Council of Jurists, a Report and a Draft Convention on the Nationality and Status of Stateless Persons.[16] Article 4 of the Convention deals with the solution of conflicts arising from multiple nationality. Following closely Articles 9 to 11 of the Convention of Havana of February 20, 1928 (commonly known as the Bustamante Code), Article 4 incorporates the test of domicile, and in its absence the principles accepted by the law of the trial court, as criteria for the attribution of effective nationality to plural nationals residing in third States.[17]

Article 5 of the Draft Convention on the Nationality and Status of Stateless Persons 1952, gives expression to the view that renunciation of the nationality of origin should be a necessary

16. The Inter-American Council of Jurists of the Organization of American States is regarded as the counterpart of the International Law Commission of the United Nations. The Charter of the Organization of the American States describes it as one of the three "organs" of the Council of the Organization, upon which all the 21 member States are represented. As set out in Article 67 of the Charter, it functions as an advisory body on juridical matters, and it seeks to promote the development and codification of public and private international law. Moreover, it has as its objective the investigation of the possibility of attaining uniformity in the municipal laws of the American States to the extent that it may appear desirable.
Report of the Executive Secretary, Third Meeting of the Inter-American Council of Jurists, Mexico, January 17-February 4, 1956, p. 1.
Within the framework of the Organization of American States, there is a smaller body of technical experts known as the Inter-American Juridical Committee. Formed in 1942, it has now become the Permanent Committee of the Council of Jurists. The Council of Jurists entrusts legal problems to the Committee for study and report. The recommendations of the Committee are subject to the decisions of the Council of Jurists, which decisions are in turn subject to the final approval of a conference or a meeting of consultation.
Fenwick, C. G.: Note on the Second Meeting of the Inter-American Council of Jurists, 47, A.J.I.L., 1953, pp. 292-296 and 698-701.

17. It may be observed that the Conference on Private International Law held at the Hague in 1928 adopted the same principle that within third States the nationality of the State in which the individual had his habitual residence should be considered as his effective nationality.
Weis: Nationality and Statelessness in International Law, p. 188.

requirement for naturalization. It may be added that the Convention on Nationality adopted at Montevideo in 1933, which is in force between Chile, Ecuador, Honduras, Mexico and Panama provides in Article 1 as follows: "Naturalization of an individual before the competent authorities of any of the signatory States carries with it the loss of the nationality of origin."[18] As regards the effective nationality of naturalized persons who return to their country of origin, the Convention on the Status of Naturalized Citizens signed at Rio de Janeiro in 1906, which has been in force between Argentina, Chile, Colombia, Costa Rica, Ecuador, Salvador, Honduras, Nicaragua, Panama and the United States of America provides in Article 1 that naturalized persons who take up residence in their native country without the intention of returning to the country in which they have been naturalized shall be deemed to have renounced the nationality acquired by naturalization. According to Article 2, if the naturalized person has resided in his country of origin for a period exceeding two years, the intention not to return to the adopted country is to be presumed. However, this presumption may be rebutted by evidence to the contrary.[19]

According to Article 11 of the Draft Convention 1952, the desire on the part of the individual to acquire a new nationality in addition to his original nationality must be unequivocal, and that tacit naturalizations are not to be recognised[20]. Article 15 gives expression to the view that nationality must not be imposed and that "the transfer of territories does not imply the acquisiton, either individually or collectively, of the annexing State's nationality."[21]

THE UNITED NATIONS COMMISSION ON THE STATUS OF WOMEN

The subject of nationality of married women has been under consideration of the United Nations Commission on the Status of Women since its first Session in 1947. Since that time, it has remained a standing item on the agenda of the Commission,

18. Hudson: International Legislation, Vol. VI, p. 593.
Weis : Nationality and Statelessness in International Law, p. 134.
19. Weis : Ibid., pp. 187-188.
20. Weis : Ibid., p. 113.
21. Weis : Ibid., p. 155.

and of the Economic and Social Council of the United Nations. Protection of women's rights in the political, civil, economic, social, and educational fields falls within the competence of this Commission. It makes recommendations on urgent problems requiring immediate action. Among the problems the Commission has discussed are: political rights of women, nationality of married women, their status in private and public law, equal pay for equal work, educational opportunities, and participation of women in the work of the United Nations.

At its 1950 Session, the Commission recommended the preparation of an international convention embodying the well-recognised principle of sex equality i.e., the principle that men and women must have equal rights in all respects. In the view of this Commission there should be no distinction whatsoever based on the sex of an individual in the matter of nationality both in legislation and in practice; and that neither marriage nor its dissolution should affect the nationality of either spouse. It drew up a draft convention on the nationality of married women. On the recommendation of the Commission, the Economic and Social Council adopted a resolution on July 23, 1953 requesting the Secretary-General of the United Nations to circulate to the member States for their comments, the text of the Draft Convention on the Nationality of Married Persons.[22]

Under Article 1 of the Draft Convention each contracting State agrees that it will make no distinction based on sex either in its legislation or in its practice in respect of nationality. According to Article 2 each contracting State agrees that neither the celebration nor the dissolution of a marriage between one of its nationals and an alien shall affect the nationality of the spouse who is its national. Under Article 3 each contracting State agrees that it will, whenever possible, grant to an alien spouse of one of its nationals the right to acquire its nationality at his or her request. Article 4 lays down that neither the voluntary acquisition of the nationality of another State nor the renunciation of its nationality by one of its nationals will affect the retention of its

22. Everyman's United Nations, 4th ed., 1953, pp. 241-242.

nationality by the spouse of such a national.[23]

The comments made by the governments on the Draft Convention convinced the Commission that it had gone too far in anticipating that a general agreement could be attained on the principle of equality of sexes in respect of nationality. As the term "persons" indicates, the intention was to cover both women and men, and to establish complete equality between them. This meant, first of all, that not only the women should have the right of acquiring the husbands's nationality, but also the husband could acquire the wife's nationality. Several governments expressed their opposition to the implementation of the principle because it was feared that it would have to give the same facilities for the acquisition of their respective nationalities to alien men marrying their nationals as are accorded to alien women marrying their nationals. The Commission, in the light of the comments of the governments, prepared a revised text of the draft convention entitled the "Draft Convention on the Nationality of Married Women." The purpose of the new draft, which served as the basis of the subsequently adopted convention, was to ensure that the nationality of the woman must be independent of the nationality of her husband.

During the discussions of the Draft Convention on the Nationality of Married Women by the Social, Humanitarian and Cultural Committee of the General Assembly (November 16-21, 1955) while some representatives expressed the view that the draft convention did not embody the principle of absolute equality of the

23. Annual Review of the United Nations Affairs, 1953, pp. 41-42. Yearbook of the United Nations, 1954, p. 249.
It may be noted that the *Montevideo Convention on the Nationality of Women*, signed on December 26, 1933 has been the first to proclaim in its Article 1 the principle of equality of sexes as regards nationality. Article 1 provides: "There shall be no distinction based on sex as regards nationality in their legislation or in their practice." Implementing this principle, the *Montevideo Convention on Nationality* of the same date has declared that marriage or its dissolution will not affect the nationality of the husband or wife, and that the naturalization or loss of nationality by the husband will not affect any member of his family. Article 5 reads as follows: "Naturalization confers nationality solely on the naturalized individual and the loss of nationality whatever shall be the form in which it takes place, affects only the person who has suffered the loss". According to Article 6, "Neither matrimony nor its dissolution affects the nationality of the husband or wife or of their children." Nationality of Married Women (Report submitted by the Secretary-General, New York, 1950, U.N. Docs., E/CN.6/126/REV. 1. E/CN.6/129/REV. 1 (29 Nov., 1950), p. 24.
Bar-Yaacov: Dual Nationality, p. 189-footnote.

sexes as regards nationality, some others stated that the draft convention gave predominance to the principle of equality of husband and wife at the expense of the more important principle of the unity of the family.[24]

The General Assembly of the United Nations adopted the Convention on the Nationality of Married Women on January 29, 1957.[25] The Convention contains three substantive provisions which provide as follows:

Article 1: "Each Contracting State agrees that neither the celebration nor the dissolution of a marriage between one of its nationals and an alien, nor the change of nationality by the husband during marriage, shall automatically affect the nationality of the wife."

Article 2: "Each Contracting State agrees that neither the voluntary acquisition of the nationality of another State nor the renunciation of its nationality by one of its nationals shall prevent the retention of its nationality by the wife of such national."

Article 3: "(1) Each Contracting State agrees that the alien wife of one of its nationals may, at her request, acquire the nationality of her husband through specially privileged naturalisation procedures; the grant of such nationality may be subject to such limitations as may be imposed in the interests of national security or public policy.

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

Article 4 of the Draft Convention deals with States eligible to sign and ratify. Article 5 deals with accession. Article 6 deals with the topic of entry into force. Article 7 deals with reservations. It may be noted that according to this article, at the time of signature, ratification or accession, any State may make reservations to any article other than Articles 1 and 2. Article 8 deals with denunciation of the Convention. Article 9 concerns

24. Bar-Yaacov : Dual Nationality, p. 191.
25. XI, International Organization, 1957, pp. 320-322.

with settlement of disputes under the Convention. It provides that any such dispute not settled by negotiation shall at the request of any one of the parties to the dispute be referred to the International Court of Justice. Article 10 deals with notification by the Secretary-General of the United Nations of action taken with respect to the Convention, while Article 11 provides for the deposit of the text of the Convention in the archives of the United Nations.[26]

THE INTERNATIONAL LAW COMMISSION OF THE UNITED NATIONS

In 1949, the Secretary-General of the United Nations drew the attention of the International Law Commission to the fact that the problem of dual nationality could not find a satisfactory solution, and that the Hague Codification Conference of 1930 touched "only the fringe of the problem." The International Law Commission at its first Session in 1949 included "nationality including statelessness" in the list of topics of international law provisionally selected for codification. During its third Session in 1951, the International Law Commission was notified of Resolution 319 B-III(XI), adopted by the Economic and Social Council of

26. XI, International Organization, 1957, pp. 320-322.
Yearbook of the United Nations, 1955, p. 192.
The Commission on the Status of Women expressed its satisfaction that the General Assembly had at its eleventh Session in January 1957, adopted and opened for signature the Convention on the Nationality of Married Women. On the Commission's recommendation, the Economic and Social Council urged the Members of the United Nations to sign and ratify or accede to this Convention. It further recommended that the Members of the Specialized Agencies and Parties to the Statute of the International Court of Justice also to become parties to this Convention.
Yearbook of the United Nations, 1957, p. 226.
The Convention on the Nationality of Married Women entered into force between the ratifying States on August 11, 1958.
Yearbook of the United Nations, 1958, p. 220.
This Convention is in force among the following 30 States: Albania, Bulgaria, Byelorussia, Canada, Ceylon, Chile, Nationalist China, Colombia, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Federation of Malaya, Guatemala, Hungary, India, Ireland, Israel, New Zealand, Norway, Pakistan, Poland, Portugal, Sweden, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom, Uruguay, and Yugoslavia.
Bar-Yaacov : Dual Nationality, p. 192–footnote.
At its 1958 and 1959 Sessions, the Members of the Commission on the Status of Women noted that there was general progress in the direction of equal nationality rights for men and women. Moreover, several Members observed that legislation in their countries relating to nationality of married women was already in agreement with the principles laid down in the Convention on the Nationality of Married Women.
Yearbooks of the United Nations, 1957, p. 226; 1958, p. 220; and 1959, p. 205.

the United Nations on August 11, 1950 in which the Commission had been requested to prepare one or more draft international conventions for the elimination of statelessness. Accordingly M. O. Hudson was appointed Special Rapporteur to initiate work on the subject of nationality including statelessness. Hudson submitted a "Report on Nationality including Statelessness" to the Commission at its fourth Session.[27] In his report, he deals with the subject of nationality in a general way including problems of nationality of married persons and statelessness. His report on "Nationality inGeneral" covers thefollowing topics: Action taken by the Hague Conference for the Codification of International Law; the Inter-American conventions and other international agreements relating to nationality; the concept of nationality in international law; the relationship between municipal law and international law in the field of nationality; the power of a State to confer its nationality and the duty of a State to confer its nationality; the power of a State to withhold or cancel its nationality and the duty of a State to withhold or cancel its nationality; and lastly, the problem of multiple nationality.

In addition to the survey of the subject of nationality, his report includes two working papers,. The first of them contains a Draft Convention on Nationality of Married Persons, which follows very closely the terms proposed by the United Nations Commission on the Status of Women and approved by the Economic and Social Council. The second working paper deals with the subject of statelessness; such as, past international action for the reduction of statelessness; statelessness "de facto" and "de jure"; causes of statelessness; analysis of the problem and the possibilities of its solution including the ways of achieving reduction of statelessness.[28] The International Law Commission took the view that a draft convention on elimination of statelessness and one or more draft conventions on the reduction of future statelessness should be prepared for consideration at its next session.[29]

As observed above, Hudson's general survey of the subject of nationality covers also the problem of multiple nationality. In

27. U.N. Doc., A/CN. 4/50. Yearbook of the International Law Commission, 1952, Vol. II. pp. 3-24.
28. U.N. Doc., A/CN.4/50, Yearbook of the International Law Commission, 1952, Vol. II, pp. 13-24.
29. 47, A.J.I.L., 1953, Supplement, p. 24.

his view conflicts of nationality laws may result in a person having no nationality at all (i.e., statelessness),or more than one nationality (i.e., double or multiple nationality). Following the traditional view, he states that multiple nationality may occur at birth, or subsequent to birth. Dual nationality arises subsequent to birth if a new nationality is conferred on a person by naturalization or in consequence of transfer of territory without his losing his former nationality. Since, according to the law of many States, the former nationality is not automatically withdrawn by voluntary naturalisation in another country, this is probably the most frequent cause of double nationality. As regards the difficulties occasioned to persons under the obligations of the conflicts of allegiance, he states as follows: "A person possessing more than one nationality may be considered liable for military service by any of the States whose nationality he possesses; he may be recalled by the State of his former nationality in time of war, although he has severed all links with that country, etc."

As regards the State practice concerning the elimination of multiple nationality, Hudson says as follows: "A number of bilateral treaties have been concluded in order to avoid double nationality or to define the duties of the individuals in relation to each of theStates whose nationality he possesses.

The Inter-American Convention signed at Rio de Janeiro on 13th August has laid down rules for the avoidance of double nationality of naturalized persons who return to the country of their original nationality. Persons shall be considered as having resumed their original nationality and as having renounced the nationality acquired by naturalization if they have taken up residence in their native country without the intention of returning to the country in which they were naturalized; the intention not to return shall be presumed after two years' residence in the native country.

The Peace Treaties concluded after the First World War contain provisions to the effect that the defeated States undertook to recognize any acquisition of a new nationality under the laws of the Allied and Associated Powers by their nationals and 'to regard such persons as having in consequence of the acquisition of such new nationality, in all respects severed their allegiance to

their country of origin.' (Cf., e.g., Article 278 of the Treaty of Versailles.)"

Confirming the widely held view that the Hague Codification Conference of 1930 had failed, after heated debates, to reach any comprehensive agreement regarding the means by which the problem of dual nationality could be solved, Hudson states as follows: "The Hague Codification Conference found itself unable to eliminate multiple nationality; it tried, however, to reduce the cases of multiple nationality and to mitigate some of its adverse consequences. In its Final Act the Conference appealed to States to reduce, as far as possible, cases of dual nationality, and to the League of Nations to consider steps for the settlement of conflicts which arise from double or multiple nationality."[28]

In accordance with the decision taken by the International Law Commission at its fourth Session, the new Special Rapporteur (Mr. Robert Córdova) presented a Report containing two draft conventions accompanied by commentaries : one on the elimination of future statelessness, and the other on the reduction of future statelessness. The Commission decided to discuss and to consider the adoption of both the draft conventions submitted by the Special Rapporteur. By adopting the titles *viz.*, "Draft Convention on the Elimination of Future Statelessness", and "Draft Convention on the Reduction of Future Statelessness", the Commission desired to draw attention to the fact that these draft conventions were not intended to have retroactive effect, and that they were not concerned with the problem of the elimination or reduction of existing statelessness.[29]

At its fifth Session in 1953, the International Law Commission recommended that the Draft Convention on the Elimination of Future Statelessness as well as the Draft Convention on the Reduction of Future Statelessness should be transmitted to governments for their comments.

Up to its sixth Session, the Commission has discussed the subjects of statelessness and the nationality of married women. As the solution of these problems is dependent on the adoption

28. U.N. Doc., A/CN./4/50, 21 Feb., 1952, pp. 11-12.
Yearbook of the International Law Commission, 1952, Vol. II, pp. 11-12.
29. 48, A.J.I.L., 1954, supplement, p. 46.

of uniform principles for acquisition of nationality, the Secretariat of the United Nations submitted for the consideration of the Commission *A Survey of the Problem of Multiple Nationality*. Chapter VI of the Survey contains two sets of alternative recommendations for the elimination of dual nationality arising at birth. Realizing the possibility that a majority of States may not be inclined to adopt exclusively the principles of either *jus soli* or *jus sanguinis* as the basis of their nationality laws, the Survey urges that at least an effort should be made in this regard. It recommends that if *jus sanguinis* is adopted, an individual born in a country of which he is not a national *jure sanguinis* and residing there for a specified period, must have the right to opt for the nationality of the State of birth upon attaining his majority. Such an option is to entail the loss of his former nationality.

According to the proposal a child, who normally follows his father's nationality, is to be permitted upon becoming of full age to choose the nationality of his mother, if he has resided for a specified period in the country concerned. If he was born in the country of which his mother was a national, he would acquire at birth the nationality of his mother, while at the same time he would have the right to opt for the nationality of his father soon after attaining his majority, provided that the necessary residence requirements therefor were complied with by him.

In order to avoid statelessness, the principle of *jus soli* is to be applied in the cases of foundlings, children of stateless persons, and individuals whose nationality cannot be ascertained. And *Jus soli* is to apply to children born beyond the second generation of persons born and continuously maintaining a habitual residence in a State of which they are not nationals.

The alternative method proposed seeks to avoid the acquisition of dual nationality at birth by adopting, subject to very few exceptions, the principle of *jus soli*. It is envisaged that a child born in a country of which his parents are not nationals may at birth acquire the nationality of the father by registration. Provision is also made for the renunciation, subject to residence requirement, of the nationality obtained *jure soli* in favour of the nationality of the parents, or the nationality of either of them.

The Universal Declaration of Human Rights approved by the General Assembly of the United Nations on December 10, 1948, provides in Article 15 as follows: "(1) Everyone has the right to a nationality." "(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality." Although the Declaration is not legally binding, the principle of the individual's "right to change his nationality," incorporated in paragraph (2) of Article 15 deserves to be noted. It must be admitted that this provision does not seek to abolish the right of States to refuse to grant release to an individual from its citizenship altogether. Under certain circumstances dictated by compelling reasons of its public policy or other form of vital interests, the State has the inherent right to turn down the request of an individual to be released from the tie of its nationality. However, it must not arbitrarily refuse its nationals the right to change their nationality. It may be observed that the *Survey of the Problem of Multiple Nationality* prepared by the Secretariat of the United Nations leans in favour of the unqualified right of expatriation of the individual. Chapter IV of the Survey, for instance, contains suggestions to the effect that naturalization should automatically entail the loss of the prior nationality. It is proposed that naturalization of the parents must automatically result in the naturalization also of their minor children living with them in the country of adoption. Further, it seeks to grant such children the right of option for their nationality of origin upon attaining the age of majority, provided that they have lived in the country of origin for a period of at least one year "before they reach that age." If they thus acquire the nationality of the country of origin, they must automatically lose the other nationality concerned i.e., the nationality which they have acquired derivatively.[30]

In his Report on *Multiple Nationality*, Mr. R. Córdova, the Special Rapporteur of the International Law Commission, deals mainly with the elimination of present and future multiple nationality. The report contains several bases of discussion relating to multiple nationality. As regards the abolition of present multiple nationality, **Basis** (2) provides as follows: "If by application of the nationality laws of the Parties, a person has

30. Bar-Yaacov: Dual Nationality, pp. 172-173.
U.N. Doc., A/CN.4/183, April 22, 1954. Yearbook of the International Law Commission, 1954, Vol. II, p. 49.

two or more nationalities, such person shall be deprived of all but the effective nationality that he possesses, as hereinafter defined, and his allegiance to all other States shall be deemed to have been severed." According to **Basis (3)**, the effective nationality of a *sujet mixte* must be determined by reference to his habitual residence in the territory of one of the States of which he is a national. If he resides in a State of which he is not a national, his "previous and habitual residence" in one of the States of which he is a national must determine his effective nationality. Further, in cases where the criteria of residence "do not apply", other factors "showing a closer link *de facto* to one of the States", such as, military service; exercise of civil and political rights or of political office; language; previous request for diplomatic protection from such State; and ownership of immovable property are to be taken into consideration in order to determine the overriding nationality of the *de cujus*. **Basis (4)** provides for the right of the individual to opt, on reaching the age of eighteen, for one of the nationalities of which he was deprived by the application of the rule contained in **Basis (2)**. If he exercises the option, he will be deprived of the nationality acquired by virtue of the above rules. If he fails to exercise the right of option, he shall be deemed to be in possession of the nationality of one of the States concerned in accordance with the principle of effective nationality.[31]

It may be observed that although the Special Rapporteur is inclined to the principle of effective nationality for purposes of determining the nationality of the dual national, at the same time he is in favour of granting the individual the right of option. Such a right which has the effect of abolishing the "effective nationality" itself in favour of another nationality, which the individual on attaining full age may prefer for "personal reasons" may bring about the possibility of evasion of obligations of military service and other important duties incidental to the possession of the citizenship of the State of his habitual residence. Thus, the grant of the right of option to a dual national under these circumstances may produce a result contrary to the one envisaged in the application of the principle of effective nationality.[32]

31. Bar-Yaacov: Dnal Nationality, pp. 89-90.
Yearbook of the International Law Commission, 1954, Vol. II, pp. 49-51.
32. Bar-Yaacov: Ibid., pp. 90-91.

As regards the question of the elimination of future plural nationality, the Special Rapporteur suggests in **Basis (1)** as follows: "The Parties shall abstain from conferring their nationality upon persons not born in their territory who would otherwise have multiple nationality." As regards the effect of naturalization, **Basis (4)** requires that "Naturalization shall result in the loss of the previous nationality, if any, of the person who is naturalized." According to **Basis 3 (2)**, "The change or acquisition of the nationality of a spouse or of a parent shall not entail the acquisition of nationality by the other spouse or by the children unless they lose their previous nationality or nationalities, if any." **Basis (6)** provides as follows: "On reaching the age of eighteen, a person shall have the right of option for one of the nationalities that he would have acquired had the present Convention not been applied, provided he loses the nationality acquired by its application." If he exercises the right of option the individual will lose the nationality acquired by virtue of the above rules.[33]

It may be observed that the proposals for the elimination of future plural nationality give expression to the principle of *jus soli*. However, it does not contain the automatic guarantee that the individual will be in possession of the nationality of the country with which he may have "a closer link *de facto*." In this regard BAR-YAACOV observes as follows: "The solution of the problem of dual nationality should be sought by establishing a clear notion of nationality involving one basic theoretical proposition, such as that contained in the principle of effective nationality. The next task would then be to see what technical rule for conferring nationality would best convey the notion, without confining its application only to a particular period of the life of the individual."[34]

33. Yearbook of the International Law Commission, 1954, Vol. II, pp. 46-47.
34. Bar-Yaacov : Op. cit., p. 91.
It may be noted that at its 252nd meeting, the International Law Commission held a general discussion on the subject of multiple nationality on which the Special Rapporteur (Mr. Roberto Cordova) had already submitted a Report (i.e., U.N. Doc., A/CN.4/83 referred to above), and the Secretariat a Memorandum (i.e., U.N. Doc., A/CN.4/84, referred to above). Different views were expressed on this problem and on the desirability of dealing with it. Several Members of the Commission took the view that the Commission should content itself with the work done by it so far on the subject of nationality. The Commission decided to defer any further consideration of the topic of multiple nationality and other questions relating to the subject of nationality.
49. A.J.I.L., 1955, Supplement, p. 16.

The Draft Convention on the Elimination of Future Statelessness and the Draft Convention on the Reduction of Future Statelessness

Essential Features

The preambles of both the Draft Conventions reaffirm the fact that the Universal Declaration of Human Rights, and the relevant resolutions of the Economic and Social Council of the United Nations have recognised the rule that every individual must have the "right to a nationality."

The Conventions have provided in Article 1 that a person who will otherwise be stateless shall acquire at birth the nationality of the State in whose territory he is born. According to this article a stateless person must be granted the citizenship of the State of birth on the basis of the principle of *jus soli*. Paragraphs (2) and (3) of Article 1 of the Draft Convention on the Reduction of Future Statelessness seek to prevent the occurrence of the problem of multiple nationality. Thus, paragraph (2) provides: "The national law of the Party may make preservation of such nationality dependent on the person being normally resident in its territory until the age of eighteen years and on the condition that on attaining that age he does not opt for and acquire another nationality." Paragraph (3) lays down: "If, in consequence of the operation of paragraph (2), a person on attainng the age of eighteen years would become stateless, he shall acquire the nationality of one of his parents, if such parent has the nationality of one of the Parties. Such Party may make the acquisition of its nationality dependent on the person having been normally resident in its territory. The nationality of the father shall prevail over that of the another." Under paragraph (3) he is permitted to acquire only one nationality.

Both these Draft Conventions provide in Article 2 that "a foundling, so long as his place of birth is unknown, shall be presumed to have been born in the territory of the Party in which he is found." Article 3 of the conventions lays down the rule that birth on a vessel (i.e., ship) shall be deemed as birth within the territory of the State whose flag the vessel flies; and similarly, birth on an aircraft shall be considered as birth within the territory of the State where the aircraft has been registered. The

provisions of Article 3 are very important for purposes of extending the right of diplomatic protection to the individual. 4 Article of the Conventions, which provides that "in certain cases the nationality the father shall prevail over that of the mother" is intended to avoid the possibility of the phenomenon of plural nationality. Article 5 of both the Draft Conventions provides for the prevention of the loss of nationality as well as the avoidance of possession of more than one nationality by a person. It provides as follows: "If the law of a Party entails loss of nationality as a consequence of any change in the personal status of a person such as marriage, termination of marriage, legitimation, recognition, or adoption, such loss shall be conditional upon acquisition of another nationality." Paragraph (2) of Article 7 of the Conventions prescribes, "A person who seeks naturalization in a foreign country or who obtains an expatriation permit for that purpose shall not lose his nationality unless he acquires the nationality of that foreign country."

As naturalization also gives rise to plural nationality, this article, in order to avoid the possibility of plural nationality, provides that he shall lose his previous nationality on acquiring the new nationality through naturalization. Further, paragraph (3) of Article 7 of the Draft Convention on the Reduction of Future Statelessness provides in part in these terms: "A naturalized person may lose his nationality on account of residence in his country of origin for the period specified by the law of the Party which granted the naturalization."

Paragraph (2) of Article 10 of both the Conventions seeks to avoid the occurrence of multiple nationality in cases of transfer of territory from one State to another State, or creation of a new State on the territory or territories previously belonging to another State or States. It provides that the State concerned "shall confer its nationality upon the inhabitants of such territory unless they retain their former nationality by option or otherwise or have or acquire another nationality." In other words, the new nationality will be conferred only if they do not possess any other nationality.

The remaining articles (i.e., Articles 11 to 18) are general and final provisions and they relate to signature, ratification and