Memorandum of the Government of Indonesia

The matter of determining who are the nationals of a State belongs—with certain limitations—to the exclusive competence of the State concerned. This principle and its logical consequence, on the basis of reciprocity, that each State has to recognise the validity of the nationality legislation of other States, lies at the root of the problem of dual or multiple nationality.

Multiple nationality can only be eliminated completely when there exists a universal—worldwide valid—regime assigning individuals to the various Nation-States. It is, however, neither realistic nor at the present state of international law even desirable that States should abandon the principle that nationality legislation belongs to their "domain reserve." The co-existence of different nationality laws brings with it the possibility of overlapping of these nationality legislations with regard to the same individuals. This overlapping or conflict of the various nationality legislations is possible with regard to every means of acquisition of nationality. The foregoing enables us to draw the conclusion that:

1. It is impossible at the present state of integration of the international society to eliminate completely multiple nationality.
2. Any attempt to study the problem should be based on the assumption that every means of acquiring nationality whether (a) by birth or (b) by acts or events subsequent to birth, are a potential source of the creation of multiple nationality.

Viewed in the light of what has been stated above, the reduction of dual or multiple nationality should begin at the level of *domestic* nationality legislation. At this stage it is primarily of a *preventive* nature. Nevertheless, this is a first and necessary step towards the reduction of multiple nationality. The second step is the conclusion of *treaties* between the countries concerned to solve problems of dual nationality. Here the area of competence both territorial and personal is enlarged comprising those of the contracting parties and consequently the measures agreed upon are bound to be more effective.

Very often, however, the question is complicated by political considerations as the question of nationality is often viewed in terms of State competence over people as a basis of power. Viewed in this light the question of dual nationality and its solution is in essence a political problem. Taking this factor into account one should consider such bilateral treaties not merely as a product of juridical deliberation and ingenuity but also as a result of compromise between the two conflicting interests at stake. The maximum result of reduction of multiple nationality in these cases by means of bilateral negotiations will only be obtained if both parties have the good-will to eliminate this source of friction between them.

The Indonesian Government has endeavoured to reduce dual nationality both by municipal legislation and through bilateral negotiations. The results of these efforts are embodied in the Nationality Act of 1958, and in the Treaty on Dual Nationality concluded between Indonesia and the People's Republic of China.

Part I: Indonesian Nationality Act of 1958 (Act No. 62, 1958, State Gazette No. 113, 1958) and Dual Nationality

In drawing up the Nationality Act of 1958, the legislator was clearly guided by the intention to reduce as much as possible the occurrence of dual nationality. It runs—together with the desire to prevent statelessness—like a red thread through the body of this Act. In fact no fewer than 9 out of 20 articles contained therein plus 2 other articles i.e., Sections I of the Transitionary and Final Provisions respectively, contain provisions designed to prevent or reduce directly or indirectly the incidence of dual nationality. Circumstances during the formative stages of the Act and the fact that the negotiations on dual nationality with the People's Republic of China resulted finally in the agreement which was approved by Parliament earlier in the same year (by Law No. 2, 1958, State Gazette No. 5, 1958, January 27, 1958) explain the pre-occupation of the legislator with the question of preventing dual nationality.

It should be noted that the Elucidation to the Act states this at one point in these words:

"Other questions

(b) This Act does not wish multiple nationality to exist, but this cannot be prevented unilaterally. To mitigate the anomalies caused by dual nationality this Act contains the provision that an Indonesian citizen resident within Indonesian territory is considered to have no other nationality. (See Final Provisions Section I)."

Except for the Final Provision, Section I mentioned in the passage from the Elucidation just quoted above, the attitude of the legislator towards dual nationality is also clearly shown in the oath of allegiance to be taken by a naturalised Indonesian national (See Art. 5 para. 5).

The main provisions in the Indonesian Nationality Act of 1958 concerned with the prevention or reduction of dual nationality may be summarised as follows:—

1. Loss of Indonesian nationality is provided for in the following cases:
   (a) acquisition of another nationality by a person's own will (Art. 17 para. (a)).
   (b) non-exercise of right or opportunity to renounce or give up another nationality when provided (Art. 17 para. (6)).
   (c) change in personal status: (1) recognition of a person under 18 by an alien (Art. 17 para. (c)); (2) adoption of a child under 5 years of age by an alien (Art. 17 para. (d)); (3) marriage of an Indonesian woman to an alien if within one year after marriage she states a preference for her husband's nationality (Art. 8 para. (1)).
   (d) possession of a foreign passport or a similar document (Art. 17 para. (j)).
2. Naturalisation is only possible when the applicant has no nationality, loses his nationality upon acquiring Indonesian nationality or when legal provisions of his country of origin provide for the renunciation of his original nationality upon acquisition of a foreign nationality (Art. 5 para. (2) (h)).

3. Acquisition of Indonesian nationality other than by naturalisation as e.g., in the cases mentioned below under (a) and (b) is only possible when the person has no other nationality, loses or will lose the original nationality upon acquiring Indonsian nationality:
   (a) *Acquisition of nationality through option:* by resident alien minors upon reaching the age of 18 years (Art 3 para. (1) and Art. 4 para. (1)); by a person who has lost Indonesian nationality through marriage to an alien upon dissolution of said marriage (Art. 11 paras. (1) and (2)).
   (b) *Change in personal status:* through marriage (Art. 7 para. (1)); change of nationality of husband (Art. 9 para. (11)).

The provisions of the Indonesian Nationality Act of 1958 cited above clearly show that the Indonesian legislator has sought to prevent as much as possible the occurrence of dual nationality. This attitude is seen at its clearest in Article 5 para. (2) (h) where either the non-possession of a foreign nationality or its loss or prospective loss upon acquiring Indonesian nationality is made a condition to qualify for the application for Indonesian nationality. It is in the nature of nationality legislation that a State cannot prevent another State from claiming her nationals as her own as this would constitute interference in matters recognised as belonging to the exclusive competence of each Nation State. It is logical therefore, that provisions designed to prevent or reduce the incidence of dual nationality at the level of municipal legislation must necessarily mean *refraining from conferring one's own nationality or provide for its loss in cases where it would result* in *creating dual nationality.*

Except for this general feature to be found in the provisions cited above, the Indonesian Nationality Act of 1958 contains in the very same provisions other features which merit some attention.

The application of the *jus sanguinis principle* in perpetuity by States in conferring nationality on persons irrespective of where and for how many generations they have resided abroad may form an important source of multiple nationality unless all other countries adopt this principle in their nationality legislation.

Applied absolutely it may confer on individuals a nationality of a country with which they otherwise may have no connection. In this connection ARTICLE 4 PARA. 1 contains an interesting and very useful idea to limit the application of the *jus sanguinis* principle by providing that second generation aliens *born* and *resident* in Indonesia may choose Indonesian nationality by a simplified procedure upon reaching 18 years of age. It is an attempt to restrict the application of the *jus sanguinis* principle in favour of the combined factors of place of birth (*jus soli*) and residence.

Automatic application of the *jus soli* principle to such persons by conferring upon them the nationality of the country of residence without the corresponding loss of the nationality *jure sanguinis* or cooperation of the country concerned leads to dual nationality.

The system of election provided for by this provision is therefore the best step to enable the individual concerned to acquire the nationality he feels most closely connected with, or to put it objectively, the nationality most in accord with the person's socio-cultural and political milieu without creating dual nationality.

As indicated in the last part of the paragraph under discussion, however, this provision will only be fully effective if the co-operation of the country of the original nationality is secured through the conclusion of an agreement for the settlement of dual nationality, or if the nationality legislation of which the person concerned is a national provides for the loss of nationality by renunciation.

ARTICLE 17 PARA. (b) concerning the loss of Indonesian nationality through the failure to exercise or use the right or opportunity to renounce or give up the other nationality when provided reflects the view of the legislator of this Act who considers such an opportunity or right to choose either nationality not only as a *right* to choose one nationality but also as a *duty* to do so. This attitude is consistent with the aim of the legislator to reduce as much as possible dual nationality. The right of option as a means of reducing dual nationality is indeed rendered useless if it is not exercised by the person concerned.

Attention should also be drawn to the fact that all the provisions concerning the acquisition of Indonesian nationality through the simplified procedure by alien minors having close connection with Indonesia through *close relationship with their Indonesian* natural mothers (in the case of the natural child recognised by its alien father), or habitual residence or both as provided by Articles 3 para. (1); 4 para. (1); and 16 para. (1), mention 18 years as the age at which this right becomes exercisable. This lower age requirement is one of the features distinguishing this means of acquiring Indonesian nationality from the more elaborate naturalisation procedure where the age required is 21 years (Art. 5 para. (2) (a)).

In concluding this survey of the provisions in the Indonesian Nationality Act relating to dual nationality the following final remarks may be made:—

There is no doubt that the legislator was guided by the principle that " . . . *every person should possess one nationality and one nationality only.*" This is indeed the basic principle underlying all these provisions.

In implementing this principle, however, the question "which nationality should prevail" often arises. The provisions cited in this Memorandum clearly show that the Indonesian legislator in solving this question was guided not only by the consideration to enable the person concerned to acquire the nationality with which he is most closely connected (the "effective nationality"), but also by the idea that no nationality shall be conferred upon a person without his consent, thereby upholding the principle of the individual's free choice in matters concerning nationality.

PART II: DUAL NATIONALITY OF INDONESIAN NATIONALS OF CHINESE DESCENT AND THE TREATY ON DUAL NATIONALITY BETWEEN THE REPUBLIC OF INDONESIA AND THE PEOPLE'S REPUBLIC OF CHINA

Introduction

The existence of Indonesian-Chinese dual nationality is the *raison d'être* of the Agreement of 1949 concerning the Assignment

of Citizens concluded between Indonesia and the Netherlands, which states in Article 5 that persons who immediately before the transfer of sovereignty are of full age and are Netherlands subjects of foreign origin non-Netherlanders (uitheemse Nederlandse onderdanen-niet Nederlanders) and who were born or resident in the Republic of the United States of Indonesia shall acquire Indonesian nationality unless they renounce the Indonesian nationality within 2 years. Article 8 of the same Agreement provides that minors shall follow the nationality of their parents. As the great majority of such persons did not renounce the Indonesian nationality, they acquired Indonesian nationality. This Agreement concluded between the Netherlands and Indonesia to prevent and eliminate dual nationality between the parties did not, however, affect the Chinese nationality of these persons acquired *jure sanguinis*.

The above provisions of the Assignment of Citizens Agreement have come into force by virtue of Article 144 of the Provisional Constitution of 1950, and Article 1 para. (*a*) of the Nationality Act of 1958 which stipulates that: "Indonesian nationals are:

(a) persons who by virtue of laws and/or agreements and/or regulations in force since 17 August 1945 have been Indonesian natonals."

This explanation is necessary because the Indonesian Nationality Act of 1958 is based on *jus sanguinis*, and apart from the provision cited above it does not contain any other provision which could account for the great number of persons possessing dual nationality, as the Chinese nationality legislation is also based on *jus sanguinis*.

Nationality *jure soli* is only provided by the Act of 1958 in certain cases to *prevent statelessness*, i.e., in the cases of a child born in Indonesia of unknown parents, a foundling found in Indonesia, a child of stateless parents or parents of unknown nationality, and a child not acquiring the nationality of either of its parents at the time of birth (Art. 1 paras. (f), (g), (h), and (i)).

THE TREATY ON DUAL NATIONALITY BETWEEN THE REPUBLIC OF INDONESIA AND THE PEOPLE'S REPUBLIC OF CHINA.

1. **Elimination of existing cases of dual nationality**

The elimination of existing cases of dual nationality, as

provided for in the agreement, is achieved by making an explicit choice between the two nationalities compulsory for the dual nationals (Art. 1).

The married woman is also under the duty to choose her nationality independently of her husband (Art. 1 para. (2)).

The duty to opt for either nationality must be exercised by persons who at the time of coming into force of the Treaty are of full age i.e., 18 years or are married (Art. II para. (2)).

The time-limit set for these persons to exercise this duty is two years (Art. II para. (1)).

Those who are under 18 years at the time of the coming into force of the Treaty must make the choice for either nationality within one year of coming of age (Art. VI para. (1)).

During minority he/she is considered only to have the nationality chosen by his/her parents or his/her father according to the provisions of this Treaty, or that of the mother in case he/she has no legal relationship with the father or when the father either has died before making his choice of nationalty, or if his nationality is unknown (Art. VI paras. (2) and (3)).

ARTICLE IV of the Treaty provides that the choice for one of the nationalities automatically entails the loss of the other nationality. Sanctions in cases of non-exercise of the right of option are provided for in Article V for those who have failed to do so according to Article II (Adults); and in Article VI paragraph (4) for those who at the time of the coming into force of the Treaty are still minors.

ARTICLE V stipulates that a person who has failed to opt for either nationality within the prescribed two year term will retain his/her father's nationality; or when he/she has no legal relationship with the father, or the nationality of the father is unknown, he/she will retain the nationality of the mother from the father's side.

ARTICLE VI PARA. (4) stipulates that in case of failure to exercise the right or duty to opt for either nationality within one year of reaching majority age the person concerned will retain the nationality possessed during minority.

2. Prevention of future cases of dual nationality

ARTICLE VII prevents dual nationality from re-occurring by providing that he who has acquired either Indonesian or Chinese nationality will lose the same if after either leaving Indonesia or China he sets up permanent residence outside Indonesia or China respectively, and re-acquires Chinese or Indonesian nationality respectively by his own free will.

BY ARTICLE VIII both parties prevent the creation of *new* cases of dual nationality by laying down that both will adhere to the *jus sanguinis principle* and confirming implicitly that the nationality of either party will not be conferred *jure soli* on persons of the other party born in their respective territories.

The Article contains no provision for persons of either party born in the territory of third parties.

ARTICLE IX provides for the acquisition of Indonesian or Chinese nationality through adoption of a minor under five years of age by an Indonesian or Chinese national respectively with the automatic loss of the other nationality.

[The Indonesian Nationality Act of 1958 provides for the acquisition of Indonesian nationality by an alien minor under five years of age in case of adoption by an Indonesian national (Art. 2), and for the loss of Indonesian nationality of a minor under five years in case of adoption by an alien (Art. 17 para.(d).]

ARTICLE X prevents the creation of dual nationality as a consequence of marriage of persons belonging to Indonesian and Chinese nationality respectively by providing that in such cases each person retains his/her original nationality. Nationals of either party can acquire the nationality of the other party by applying for the same to the competent authorities in the contracting parties. Acquisition of the nationality of the other spouse will entail the automatic loss of the person's original nationality. (The Indonesian Nationality Act of 1958 contains a concurrent provision in Article 7).

3. Other provisions

ARTICLE III contains the procedure to be followed in exercising the right of option. The declaration of renunciation

must be made before the authorities of *the other* party. The authorities meant by this Article within the territory of each State are the authorities to be entrusted with this task and the Embassies, Consulates in the other party's territory as well as other Special Offices to be set up for this purpose. The provisions of this Article are in principle also applicable to dual nationals residing abroad in third countries.

ARTICLES XII AND XIII provide that matters concerning implementation of the Treaty not regulated therein, and differences of opinion between the parties with regard to the interpretation and implementation of the Treaty are subject to further discussions and negotiations between the parties.

ARTICLE XIV PARA. (2) stipulates that the Treaty will be binding upon the parties for twenty years and will be considered to be still in force after that period unless one of the parties wishes to terminate the Agreement. The Treaty will then cease to be binding one year after the date of termination.

The explicit nature of the choice to be made by the persons concerned for either Indonesian or Chinese nationality, and the absolute equal position of the two nationalities as shown by the above cited provisions in the Treaty are the two distinct features characterising this settlement of the dual nationality problem between Indonesia and China.

There is no question in these provisions of one nationality being conferred automatically on the person concerned unless it is renounced, thereby giving predominance of one nationality over the other as e.g.,shown by Article 5 of the Assignment of Citizens Agreement concluded between the Netherlands and Indonesia in 1949. (See Laws concerning Nationality, U.N. Legislative Series, N.Y. 1954, p. 235). In the latter case the parties made the Indonesian nationality dominant as far as the former Netherlands subjects of foreign origin non-Netherlanders were concerned.

As opposed to the *passive* system to be found in Article 5 of the Netherlands-Indonesian Agreement mentioned above, the Indonesian–Chinese Treaty has adopted instead the *active* system. The explicit nature of the choice in this active system has the following advantages:—

(1) The contracting parties have a greater assurance that they will have as their nationals persons who indeed *want* to be nationals of the country.

(2) The express choice for one of the nationalities is preferable from the point of view of proof of nationality as it normally entails a certificate or written statement as evidence of the choice made.

(3) It is in full accord with the principle that the individual's choice should be respected in matters concerning nationality.

The Treaty can therefore be considered as a satisfactory solution as it practically solves all existing cases of dual nationality and avoids future dual nationality as well.

It should be noted, however, that the principles and provisions contained in the Treaty cannot be universally adopted in all bilateral settlements of dual nationality as it is based on the fact that the parties have nationality legislations both based on the *jus sanguinis* principle. The insistence on this is clearly shown in Articles V, VI para. (4), and VIII. A settlement of dual nationality between parties adhering to different principles e. g., *jus sanguinis* and *jus soli*, or a combination of both would have to adopt quite different solutions.

There are, however, a few principles in this Treaty which merit consideration as they are of a general nature:—

(1) The emphasis on the individual's free cheice (Art. VII).

(2) The equality between the sexes (Arts. I para. (2), and X).

(3) Compulsory nature of the right of option (Arts. I, V, and VI para. (4)).

(4) The majority age of 18 years (Art. II para. (2)).

ANNEX I

Provisions of the Nationality Act of 1958 (Act No. 62, 1958 State Gazette No. 113, 1958) relevant to the question of Dual Nationality.

Article 3

(1) A child born out of wedlock from an Indonesian mother but having the nationality of its alien father, or a child, born in wedlock and having the nationality of its alien father but by a judicial divorce decree given into the custody of its Indonesian mother, shall be permitted to apply to the Minister of Justice for Indonesian nationality, if upon the acquisition of Indonesian nationality, it will have no nationality or attaches a statement renouncing the other nationality in the manner legally provided for by its country of origin and/or in the manner provided for by an agreement on the settlement of dual nationality between the Republic of Indonesia and the country concerned.

Article 4

(1) An alien born and residing within the territory of the Republic of Indonesia, whose father—or mother, in case there is no legal family relationship with the father—was also born in the territory of the Republic of Indonesia and is a resident of the Republic of Indonesia, can apply to the Minister of Justice for the acquisition of Indonesian nationality, if, upon the acquisition of Indonesian nationality, he has no other nationality or if, at the time of application, he also submits a written statement renouncing any other nationality he may possess under the legal provisions operative in his country of origin, or under the drovisions of an agreement on the settlement of dual nationality entered into between the Republic of Indonesia and the country concerned.

Comment

Articles 3(1) and 4(1) provide for a simplified procedure to acquire Indonesian nationality i.e., by application to the Minister of Justice, for alien minors who either because of close relationship with their Indonesian mother or mothers or habitual residence may be considerd to be more closely connected with Indonesia than with the country of their alien parent or parents.

The expression the natural child "having the nationality of its alien father", as used in this provision refers to the child born out of wedlock *recognised* by the alien father. The unrecognised illegitimate child of an Indonesian mother acquires Indonesian nationality by virtue of Article 1 para. (d). The exercise of the simplified procedure, however, is qualified by a clause designed to prevent dual nationality. This procedure is to be distinguished from naturalisation.

Article 5

(2) To qualify for an application for naturalisation:

(h) the applicant must have no nationality, or have lost his nationality upon acquiring Indonesian nationality, or attach a statement renouncing his other nationality under the legal provisions of his country of origin or under the provisions of an agreement on the settlement of dual nationality concluded between the Republic of Indonesia and the country concerned.

comment

The provision contained in Para. (2) Clause (h) is designed to *prevent* the creation of *future* cases of dual nationality through naturalisation.

Article 5

(5) The decision of the Minister of Justice granting naturalisation, which becomes effective on the day when the applicant takes the oath or makes the promise of allegiance before the District Court or the Republic of Indonesia Representative Office in his town of residence, shall be retroactive to the day when the afore-mentioned decision is made.

The oath or promise of allegiance shall be as follows:—

"I swear (promise) that I renounce all allegiance to "any alien authority; that I recognise and accept "the supreme authority of the Republic of Indonesia, "and that I shall remain loyal to it; that I shall "uphold and seriously serve the Constitution and the "laws of the Republic of Indonesia; that I shall "readily bear this responsibility without any "qualification whatsoever."

Article 7

(1) An alien woman married to a national of the Republic of Indonesia, shall acquire Indonesian nationality if and when she makes a statement to that effect within one year after the conclusion of the marriage, unless she will be still in possession of another nationality at the time she acquires Indonesian nationality.

In the latter case she shall not be permitted to make the statement.

Article 8

(1) An Indonesian national of the female sex who is married to an alien, shall lose her Indonesian citizenship if and when she makes a statement to that effect within one year after the conclusion of her marriage, unless the loss of the Indonesian nationality will render her stateless.

Article 9

(1) Indonesian nationality acquired by a husband shall automatically apply to his wife, unless the wife is still in possession of another nationality upon the acquisition of Indonesian nationality.

(2) The loss of Indonesian nationality by a husband shall automatically apply to his wife, unless such loss renders her stateless.

Comment

Articles 7, 8 and 9 are concerned with the acquisition or loss of nationality through marriage, and the effects of acquisition or loss of Indonesian nationality by the husband on his wife. Though the principle of "unity of the family" is maintained in principle in these provisions, it is qualified by a provision designed to prevent the creation of dual nationality. Acquisition or loss of nationality through marriage, based on the "unity of the family" principle, no longer follows marriage or its dissolution automatically.

Article 11

(1) A person who because, or in consequence of marriage has lost his/her Indonesian nationality, shall recover that nationality if and when the person concerned makes a statement to that effect after the dissolution of the marriage. Such statement shall be

made to the District Court or the Republic of Indonesia Representative Office in the town where the person concerned resides, within one year after the dissolution of the marriage.

(2) The provision of Para. (1) shall not apply in case the person concerned is still in possession of another nationality after recovery of Indonesian nationality.

Comment

Article 11 provides for a simplified procedure *to regain* Indonesian nationality lost through marriage with an alien upon dissolution of the marriage. Here again we find a safeguard to prevent dual nationality in Paragraph (2).

Article 16

(1) A child that has lost its Indonesian nationality because of the loss of such nationality by its father or mother, shall recover Indonesian nationality upon attaining eighteen years of age, if and when it makes *a statement* to that effect. Such statement shall be made to the District Court or the Republic of Indonesia Representative Office in the town where it resides, within one year after its having attained eighteen years of age.

(2) The provision of Para. (1) shall not apply in case the child is still in possession of another nationality upon acquiring Indonesian nationality.

Comment

Article 16 provides for a simplified procedure to regain Indonesian nationality for the minor who has lost the same through the loss of Indonesian nationality by its father or mother with a provision to prevent dual nationality in Paragraph (2).

Article 17

Indonesian nationality shall be lost:

(a) upon the acquisition of another citizenship by a person's own will, on the understanding that in case the person concerned is in the territory of the Republic of Indonesia at the time of acquisition of the other nationality, his Indonesian nationality shall not be considered lost until the Minister of Justice, with the approval of the Council

of Ministers, so declares either by the Minister's own volition or at the request of the person concerned.

(b) in case the person concerned, when afforded the opportunity, does neither renounce nor give up another nationality.

(c) in case an unmarried person under 18 years of age is recognised as a child by an alien, unless the loss of Indonesian nationality renders the person stateless.

(d) in case a child is legally adopted by an alien before it has attained the age of five years and if the loss of Indonesian nationality shall not render it stateless.

(j) in case a person is in possession of a valid foreign passport, or document having the character of a passport, written out in his name.

Comment

Article 17 contains provisions designed to prevent the creation of dual nationality (Paras. (a), (c), and (d)) and reduce existing cases of dual nationality by providing for the loss of nationality in certain cases (Paras. (a), (b), and (j)).

Transitory Provisions

Section I

A woman who under Section 3 of the Military Authority Ordinance No. Prt/PM/09/1957 and Section 3 of the Central War Authority Ordinance No. Prt/Peperpu/014/1958 has been treated as an Indonesian national, shall become an Indonesian national unless she is in possession of another nationality.

Comment

This provision is intended to apply to women married to Indonesian nationals who between the time of transfer of sovereignty (December 27, 1949) and the coming into force of this Act (August 1, 1958) have been treated as Indonesian nationals.

Final Provisions

Section I

An Indonesian national who is in the territory of the Republic of Indonesia is considered to possess no other nationality.

Comment

Section I of the Final Provisions is not concerned with either preventing or reducing dual nationality but states the position of Indonesians also possessing another nationality when present in the territory of the Republic. It recognises dual nationality *as a fact* but states that for purposes of Indonesian law such persons will be considered as possessing only Indonesian nationality.

ANNEX II

Exchange of Notes between The Indonesian Prime Minister and The Foreign Minister of The People's Republic of China (Peking, dated June 3, 1955).

Pursuant to Articles XII and XIII the Prime Minister of the Republic of Indonesia and the Chinese Foreign Minister exchanged views on the implementation and aim of the Treaty resulting in the Exchange of Notes dated June 3, 1955 which form an integral part of the Treaty.

The most important part of the Notes is contained in No. 2 which in part states that:

> " . . . amongst those having both Indonesian and Chinese nationality there is a group which may be considered as having only one nationality and no dual nationality because in the opinion of the Indonesian Government their social and political position proves that they have implicitly given up their Chinese nationality. Persons belonging to this category are not obliged to choose a nationality according to the provisions of the Treaty as they possess only one nationality."

The passage quoted above introduces a new element in the settlement of the dual nationality problem namely the idea of "effective nationality."

What is meant by the term "the category of persons who by their social and political position have implicitly given up their Chinese nationality" has been made clear in Article 12 para. (1) of Government Regulation No. 20, 1959 implementing the Treaty which provides:

> " . . . persons who have once taken the oath of allegiance to Indonesia as a member of an official body, persons who have served in the armed forces, police, civil service including service in the autonomous government bodies, and veterans. Further, presons who have once represented Indonesia in the political, economic and cultural fields or participated in international sports events as a representative of Indonesia, without thereafter representing the People's

Republic of China and lastly peasants who according to the Minister of Internal Affairs, Department of Justice and Department of Agrarian Affairs on evidence of his way of life and social behaviour shows himself to be an Indonesian." "The above is not applicable to persons who have shown disloyalty to the Republic of Indonesia." (Art. 12 para. (2)).

While abandoning the "active system" and adopting in part *the implicit choice* of Indonsian nationality by a certain category of persons in pursuance of the Exchange of Notes between the Governments, the Government Regulation No. 20 does not, however, appear to have ignored completely the *individual's choice* because according to Article 18 persons belonging to the category who are considered to have implicitly chosen Indonesian nationality may state within one year of the date of the certificate stating his single Indonesian nationality that he wishes to become a Chinese national.

Supplementary Memorandum of the Government of Indonesia

Part I: Comments on the Draft Agreement on Multiple Nationality presented by the U.A.R. Delegation

Before commenting on the Draft Agreement presented by the U.A.R. Delegation, article by article, some general remarks will be made. As stated earlier at the Third Session of the Committee, in our opinion, a solution of the problem of dual or multiple nationality should be found (1) through the enactment of provisions in municipal legislation aimed at preventing or reducing multiple nationality, and (2) through the conclusion of bilateral agreements between the countries. The conclusion of conventions on multiple nationality may perhaps be possible between countries having very close political social and cultural ties. As these instances, however, are rather rare, a solution through the conclusion of a multilateral convention may safely be said to be generally not feasible.

The draft convention envisaged therefore should be a model convention embodying general principles for the guidance of member countries both for the prevention and reduction of multiple nationality either through municipal legislation, or the conclusion of agreements. For these reasons it would be advisable to divide the draft into two parts: (1) a draft containing rules and principles on nationality legislation, (2) a draft for the reduction and prevention of present and future multiple nationality.

The draft on multiple nationality should preferably be divided into two parts viz., Part I, on the elimination of present multiple nationality; and Part II, on the prevention of future multiple nationality.

In drawing up these drafts the "Convention concerning Certain Questions relating to the Conflict of Nationality Laws", concluded in the Hague in 1930; and the Report and Survey on Multiple Nationality contained in the Yearbook of the International Law Commission 1954, Vol. II, could provide useful guidance.

With regard to the draft convention on multiple nationality, it would be extremely useful to state in the draft the general

principles underlying the individual articles of the convention. This is necessary as the solution proposed will differ depending on whether one adopts the *jus sanguinis* or *jus soli* principle as the basis. To be generally useful, the draft convention might be drawn up on the basis of the combination of the two principles with the *jus sanguinis* as the main principle. Such a basis would also be most realistic as the conflict between these two principles is one of the main sources of multiple nationality.

For the other guiding principles we refer e.g., to those underlying the Indonesian Nationality Act, 1958 and the Treaty on Dual Nationality concluded in 1949 between the Republic of Indonesia and the People's Republic of China, referred to above.

Turning to the U.A.R. Draft Agreement,* we can subscribe in principle to Articles 1 and 2 relating to the nationality of wives subject to some drafting changes. Articles 3 and 4 are acceptable in principle subject to some drafting changes.

With regard to the *right of option*, we think that it should in general be made available in all instances of acquisition of nationality through a change of personal status (e.g., recognition of illegitimate child, adoption, marriage, and change of nationality of husband), or generally in cases where change of nationality takes place without taking into account the wishes of the individual concerned (e.g., changes of sovereignty over territory).

The following suggestions can further be made with regard to the right of option and its exercise:—

(1) The right of option should be substantiated through circumstances of fact (habitual residence or close relationship between the nationality for which the right of option is provided and the person concerned).

(2) The exercise of the right of option upon attaining majority should be made obligatory. Failure to do so might be taken as (implied) affirmation of the one nationality and rejection of the other nationality. The nationality to be attributed in cases of non-exercise of the right of option shall be left to the parties to the treaty.

*The Draft Agreement presented at the Fourth Session of the Committee.

(3) The age at which the right of option shall come into effect (majority age *for option*) should be reconciled with the age of military service.

The above suggestions are in our opinion necessary in order that the *right of option* may become an effective and equitable means of reducing multiple nationality and mitigating its unpleasant consequences.

With regard to the age for the exercise of the right of option we suggest 18 years, as this is generally the age of military service in most countries. (See Comment on Basis of Discussion No. 4, Part III, Report on Multiple Nationality. Doc. A/CN 4/83, Yearbook of the International Law Commission 1954, Vol. II, p. 51).

The reconciliation of the age for option and the age for military service is necessary to prevent obligations of multiple military service by the person concerned.

We have no comments on the final articles contained in Part III of the U.A.R. Draft, viz., General and Temporary Provisions.

In conclusion, we would suggest that the draft should not only contain provisions on the means of acquiring nationality covered by the present Draft Agreement, but should cover all possible cases of creation of multiple nationality (e.g., those caused by change of personal status and change of sovereignty over territory).

Part II: Comments on the General Note on Some Problems Arising Out of Dual or Multiple Nationality of Individuals prepared by the Secretariat

These comments will be mainly on Chapter II of the Note viz., The Position of Persons with Dual Nationality. The Note of the Secretariat has discussed chiefly two main problems arising out of dual nationality viz., (a) *his liability to military service*, and (b) *diplomatic protection of persons with dual nationality* including (c) the treatment of dual nationals in third States. In this connection the Note has mentioned the solutions of these problems as found in treaties and multilateral conventions especially the

solutions proposed in the Hague Protocol relating to Military Obligations in Certain Cases of Double Nationality (Articles 1, 2 and 3); and the Convention concerning Certain Questions relating to the Conflict of Nationality Laws.

In the opinion of the Indonesian Delegation, however, in addition to the above mentioned problems, dual nationality also gives rise to the following problems not mentioned in the Note of the Secretariat:—

(1) *The determination of the status of alien enemy in time of war*: With all its consequences under international law viz., his possible expulsion from the State's territory, internment, procedural standing before the local courts, and the liability of his property for seizure, the determination of his status becomes more complicated if the person concerned possesses besides the nationality of an enemy country another nationality as well. If the situation is complicated enough in cases where the second nationality is that of a neutral country, it may be the more so if besides the nationality of the enemy country the individual concerned possesses also the nationality of that country itself. (e.g., *Kawakita Case* (*Tomoya Kawakita v. United States, 1951*), 190 F. (2nd) 506).

(2) *Double nationality may also complicate the question of extradition:* A State may request for the extradition of its ntional (or less frequently a national of a third State), who is suspected of having committed or who has actually committed an extraditable crime. The State of asylum, however, might refuse to extradite the person claimed if besides the nationality of the requesting State he possesses also the nationality of the State of asylum. It is the practice of the majority of States to decline to extradite their own nationals. A complication may also arise if the person demanded is also a national of the country, where the crime for which extradition is demanded is held to be a non-extraditable crime. Another complication will arise when two States, which could legitimately claim a fugitive criminal as its own national, request for his extradition at the same time from the State of asylum. (See Report on Extradition, League of Nations Docs., 1926, Vol. 8, p. 2).

(3) *A person may further be subject to the exercise of jurisdiction by a State on the basis of his nationality:* A national may be subject to punishment by his home State for a crime committed abroad. (For *the active nationality principle* see e.g., Indonesian Penal Code, 1915, Article 5).

(4) *Double nationality may further complicate the determination of the status of the individual for purposes of private international law:* This especially applies to countries which follow the *nationality principle* in private international law, where the law that is to govern the acts of a person and the validity of such acts (the "personal status" of a person) is determined by the *national law of the person in question.*

Solution to this problem may be approached from various angles. In cases where one of the nationalities coincides with the *lex fori* or with the *domicile or habitual residence* of a person, the determination of the nationality law governing his personal status is often reached on the basis of these two factors. The latter case is, as far as the Indonesian law is concerned, covered by Section 1 of the Final Provisions of the Indonesian Nationality Act of 1958 which states that: "An Indonesian national who is in the territory of the Republic of Indonesia is considered to possess no other nationality."

When the matter comes up in third States, the matter is less simple, but there is a tendency to apply the test of "effective or overriding nationality" in determining the law governing personal status.
