

*Draft Agreement on Dual or Multiple Nationality
presented by the Delegation of the United Arab Republic
at the Fifth Session of the Committee*

INTRODUCTION

The subject of Dual Nationality was referred to the Committee by the Government of the Union of Burma. The Committee, at its second Session discussed this subject on the basis of a questionnaire prepared by the Secretariat, and a Draft Agreement for the elimination and reduction of dual nationality submitted by the U.A.R. Delegation. The Committee had, then, directed the Secretariat to prepare a report on the subject and to place it, along with the said draft, for consideration of the Committee at its third Session. The Committee, at its third Session had decided to request the Governments of the participating countries to communicate their views on the report prepared by the Secretariat, and the draft presented by the U.A.R. Delegation, to the Secretariat in written memoranda. The Governments of Burma, Ceylon, Indonesia, and Iraq have submitted written memoranda including their comments on the afore-said report and draft. At the fourth Session the U.A.R. Delegation submitted a new draft and the Committee has, then, decided to request the U.A.R. Delegation to prepare a revised draft on the subject in the light of the comments received from the Governments of the participating countries. In pursuance of the said decision, the U.A.R. Delegation has prepared the following Draft containing the principles regarding the elimination or reduction of dual nationality as well as the question of treatment of dual nationals.

Since the problems of dual or multiple nationality are rather rare in the participating countries, and since it is too difficult to have an agreement on the principles which may be proposed for solving these problems, the U.A.R. Delegation suggests that the Committee would adopt some draft articles to be considered as model rules, which may guide the participating countries either in enacting provisions in their municipal laws, or in concluding a multilateral convention or bilateral agreements.

GENERAL PROVISIONS

Article 1

It is for each State to determine under its own law who are its nationals. This law shall be recognised by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognised with regard to nationality.¹

Article 2

Any question as to whether a person possesses the nationality of a particular State shall be determined in accordance with the law of that State.²

Article 3

For the purpose of this Agreement, the age of majority shall be determined according to the law of the State whose nationality is to be acquired.³

NATIONALITY OF WIVES

Article 4

If a woman who is a national of one of the contracting States marries a national of another contracting State, or if a husband acquires a nationality other than that he had at the date of marriage, the wife's nationality shall not be affected.

Nevertheless if she, in both cases, acquires the nationality of her husband in accordance with its law, she loses *ipso facto* her former nationality.⁴

1. The text of this Article is in conformity with the existing rules of International Law and with Article 1 of the Hague Convention, 1930.
2. The text of this Article is in conformity with Article 2 of the above mentioned Convention.
3. Iraq is of the opinion that the majority age should be in accordance with the laws prevailing in the contracting States; while Indonesia is in favour of the view that the age of majority should be reconciled with the age of military service, and suggests that it should be the age of 18 years as it is so in most countries.
4. This Article is accepted by Iraq, Japan, Burma, Ceylon, and the U.A.R.

NATIONALITY OF MINORS

Article 5

A minor follows his father's nationality.⁵ If his father is unknown or stateless he follows his mother's nationality.⁶

Nevertheless, if a minor born to a national of one of the contracting States in another contracting State, is deemed in accordance with its own law to be its national, he has the right to opt for one of these two nationalities within one year from the date of attaining his majority age, on condition that the two States agree to this option.⁷ In this case he loses *ipso facto* the other nationality.

Article 6

In case of valid adoption, the adopted minor shall follow his adopter's nationality.⁸

OPTION

Article 7

Without prejudice to the liberty of a State to accord wider rights to renounce its nationality, a person possessing two nationalities acquired without any voluntary act on his part, may renounce one of them with the authorization of the State whose nationality he desires to surrender. The authorization may not be refused in the case of a person who has his habitual and principal residence abroad, if the conditions laid down in the law of the State whose nationality he desires to surrender are satisfied.

ACTIVE NATIONALITY

Article 8

A person having two or more nationalities may be regarded as a national by each of the States whose nationality he possesses. Other States may recognise the nationality of the State in which he is habitually and principally resident, or the nationality of the State with which he appears in fact to be most closely connected.

5. This Clause is generally accepted.

6. This Clause is suggested by Japan.

7. In the opinion of Japan and Iraq the approval of the two States is not required.

8. It seems from the comments of the Governments that this Article is generally accepted.

DIPLOMATIC PROTECTION

Article 9

A State may not afford diplomatic protection to one of its nationals against a State whose nationality such person also possesses.⁹

MILITARY SERVICE

Article 10

A person possessing two or more nationalities of the contracting States, who has his habitual and principal residence within the territory of one of these States with which he is in fact most closely connected, shall be exempt from the obligations of military service in the other State or States.¹⁰

Article 11

Without prejudice to the provisions of Article 10, if a person possesses the nationality of two or more States, and under the law of any one of such States has the right, on attaining his majority age, to renounce or decline the nationality of that State, he shall be exempt from military service in such State during his minority.¹¹

9. The text of this Article is in conformity with the text of Article 4 of the Hague Convention, 1930.

10. This text is in conformity with Article 1 of the Protocol Relating to Military Obligations in Certain Cases of Double Nationality attached to the Hague Convention, 1930.

11. The text of this Article is in conformity with the text of Article 2 of the Protocol Relating to Military Obligations in Certain Cases of Double Nationality attached to the Hague Convention, 1930.

**MEMORANDA
ON DUAL NATIONALITY
AND
COMMENTS
ON THE U.A.R. DRAFT CONVENTION
ON DUAL OR MULTIPLE NATIONALITY
SUBMITTED BY MEMBER GOVERNMENTS**

Memorandum of the Government of Burma

The practical importance of nationality lies in its being for many purposes the legally significant tie between the individual and the State: it is of great importance to an individual because of its effect upon his status under the municipal law and because of his international law rights which are derived primarily from those of the State of which he is a national. Conversely, the tie of nationality is recognised as a basis for jurisdiction over him and, under the present international law, the problems usually arise from the interpretation and application of complex nationality laws of different countries and the practice which relates to them.

The Burmese Government does not recognise dual nationality and is definite in her attitude towards the subject. Nevertheless, the subject was referred to the Committee by Burma because it was thought that since this attitude is not universal, the possibility of affording relief to the individual, whenever possible, should be explored.

The Governments of the participating countries were requested at the last session (3rd Session):—

- (1) to exchange law in actual document form among the member States,
- (2) to send the Secretariat their views in writing in regard to the Draft Articles proposed by the U.A.R. Delegation and any other suggestions they wish to make independently, and
- (3) to study the report of the Secretariat.

Re (1): If not the actual laws, at least the sections of the laws were referred to by the participating countries at the second Session held in Cairo and, in reply to the questionnaire, all the participating countries then gave generally information as to the laws prevailing in their countries (or territories). Though this request of the Committee may perhaps be a duplication of the work already done, the Burmese Delegation will make available "the law in document form" at the forthcoming session.

Re (2): Burma's views in regard to the Draft Articles proposed by the U.A.R. Delegation are as follows:—

(a) **Articles 2 and 3: (Nationality of Wives)**— Under corresponding Sections 10 and 11 of our Act, marriage plays no part in the election or renunciation of Union citizenship except that an alien wife of a Union citizen is qualified to be naturalised more expeditiously than other aliens. In the case of an alien wife married to a Union citizen the continued residential requirement to be qualified for naturalisation is 1 year; while, in the case of other persons, it is 5 years (*Vide* Sections 11(1) and 7(1) (B) of our Act). Nor does the recovery of nationality, under our Act, depends on the continuance or termination of marriage.

(b) **Article 4:** This Article conflicts with the provisions of our Act under which the approval of the government of the alien has not been laid down as one of the qualifying conditions for the grant of certificate of naturalisation (*Vide* Sections 7(1), 8 and 18 of our Act).

(c) **Articles 5, 6, 7 and 8:** Acceptable subject to time-rule and other pre-requisites under our Act. This may be kept open for discussion at the forthcoming session.

(d) **Article 9:** This Article conflicts with the recognised rule of international law according to which questions of nationality are solely within the domestic jurisdiction of a State.

(e) **Articles 10 to 13:** These Articles relate primarily to procedure and, as such, may be kept open for discussions at the forthcoming session.

*Re: Suggestions and (3):—*Burma is of opinion that the Draft Convention as submitted to the Committee by the U.A.R. Delegation appears to be more or less an agreement on "Naturalisation" rather than on "Multiple Nationality" as the Draft is termed.

Burma suggests that the Committee urges the participating countries to enter into an agreement providing to the effect:—

(1) that the law of each State on nationality shall be recognised by the other States in so far as it is consistent with international conventions and international custom and principles of law generally recognised by States with regard to nationality.

(2) that, if a person is a national of both States, neither of the States shall prefer a claim whatsoever, diplomatic or otherwise, (including military service) *against the other State* whether the person is resident within its territorial jurisdiction or in the jurisdiction of the other State, or of a third State.

*Re: Protection against the third State of a person possessing dual nationality:—*Whether resident in the said third State or not, the competent State to prefer a claim (including military service) shall be the State whose passport the person holds. In the absence of a passport, the State competent to prefer a claim shall be determined on the basis at whose embassy or consulate the person has been registered as a national, or as whose national the person has taken out the Foreigners Registration Certificate; the latter to be the basis only in the absence of the former.

(3) that the nationality of a person, whether resident in a third State or not, shall be determined by the said third State on the basis of the passport the person holds.

*Re: A person holding no passport:—*Whether resident in a third State or not, the said third State shall determine the person's nationality on the basis at which embassy or consulate the person has been registered as a national or, if it is the practice in the third State, on the basis as whose national the person has taken out the Foreigners Registration Certificate; the latter to be the basis only in the absence of the former.

A preference has been given to the passport under Paragraph 2 of (2) and under (3) because a passport is not merely a travel document, but is indicative of the nationality; since a passport attests the nationality of the holder.

The cases cited in the Secretariat's Note appear to give preference to 'Active Nationality' which, in other words, means 'Domicile.' If it is to be interpreted as such, the word 'Domicile', amongst others means: (1) Domicile by birth, (2) Domicile by choice, (3) Domicile by operation of law, and (4) Commercial Domicile. Under our Act while the first may appear to, the last three play no part in the naturalisation of an alien, nor in the recognition of nationality. Burma suggests that the phrase

'Active Nationality' be more specifically defined, if possible excluding the last three. Under our Act provisions have been made for determination of nationality regarding dual nationals (one of which is Burmese) whether resident in Burma or abroad (*Vide* Section 14A(1) and 14A(3)). Further, under Sections 18 and 19 of our Act, the Minister concerned is empowered to revoke the certificate of naturalisation under certain circumstances (including continued residence abroad). On such revocation the individual will be presumed to have resumed the nationality of the State of which he was a national at the time the certificate of naturalisation was granted to him (*Vide* Section 21 A). In actual practice great care will have to be taken in exercising this power as the other State may not automatically receive him as its national. No actual case has arisen in Burma, and if it does he would have to be given an opportunity to show cause.

Memorandum and Comments of the Government of Ceylon

1. The law relating to citizenship in Ceylon is contained in the Citizenship Act, No. 18 of 1948, as amended by Acts No. 40 of 1950 and No. 13 of 1955. The principal Act was enacted by the Government of Ceylon soon after Independence. It seeks to determine the composition of the citizens of the new State and was a consequence of the constitutional advancement of the country from a colony to sovereign status. The new pattern of citizenship legislation in Ceylon under this Act preserves no formal continuity with the previous legislation and only one provision in the old law appears to have been carried over to the new Act. Imperial or legal naturalisation in Ceylon before the new Act is permitted as an alternative qualification for the discretionary grant of citizenship by registration.

2. The nationality legislation contained in the Citizenship Act appears to be of a most involved and complex nature. The legislature of Ceylon had to deal with two matters. Firstly, to determine the composition of its citizens from among the numerous residents (some of whom had immigrated to Ceylon during the British regime) and to attribute Ceylon citizenship as from the date of operation of the Act to those of them having the proposed qualifications. Secondly, the Act sets out the requirements and qualifications for the acquisition and transmission of Ceylon citizenship after the appointed date. In these circumstances, the provisions of the Act have necessarily to be elaborate.

3. The scheme of citizenship under the Act appears to be a limited and restrictive one. There are only two categories of Ceylon citizens, namely—

- (a) citizens of Ceylon by descent; and
- (b) citizens of Ceylon by registration.

Apart from these two modes, Ceylon citizenship cannot be acquired by mere birth, naturalisation, incorporation of territory, adoption, etc.

CITIZENSHIP BY DESCENT

4. Part II of the Act deals with citizenship by descent. It

states that a person born in Ceylon after the commencement of the Act is a citizen by descent if his father was a citizen at the time of his birth. This qualification is extended to posthumous children and persons born out of wedlock but whose parents married subsequently and to individuals whose parents do not marry to enable descent to be traced through the mother.

5. In the case of a person born outside Ceylon after the commencement of the Act, it is necessary that his father should have been a citizen at the time of his birth and the birth should have been registered within a specified period either at the Office of the Minister in Ceylon or at the Office of Consular Officers of Ceylon in the country of birth. It is, however, enacted that a person acquiring citizenship by descent at his birth outside Ceylon of a father who is a citizen by registration would lose his citizenship at majority if he fails to transmit to the Minister a declaration of retention subject, however, to a limited right to recover it later.

6. In the case of persons born in Ceylon prior to the enactment it provides that such persons shall have the status of citizens by descent if born of fathers born in Ceylon or alternatively born of paternal grandfather or paternal great-grandfather born in Ceylon. In the case of a person born outside Ceylon prior to the enactment it is necessary that his father and paternal grandfather, or paternal grandfather and paternal great-grandfather should have been born in Ceylon. A foundling is deemed to have the status of a citizen of Ceylon by descent. As stated earlier, there is provision for the resumption of citizenship by descent where a person who has lost Ceylon citizenship would once again be a Ceylon citizen by descent.

CITIZENSHIP BY REGISTRATION

7. Part III of the Act deals with citizenship by registration. The main categories of persons eligible for citizenship by registration are the following:—

- (1) A person whose mother is or was a citizen of Ceylon by descent or would have been a citizen of Ceylon by descent if she had been alive on the appointed date and if married, resident in Ceylon throughout a period of seven years immediately preceding the application or if unmarried

resident in Ceylon for a period of ten years.

In this case the Act provides for registration as a matter of right.

- (2) A person born outside Ceylon whose father was a citizen of Ceylon by descent and who would himself have been a citizen of Ceylon but for non-registration.

An application of this nature could be disallowed on the grounds of public policy.

- (3) A person whose father whether before or after the Act ceased to be a citizen by descent because of acquisition of or a failure to renounce any other citizenship or failure to execute a declaration of retention.

As in (2) above the grant in this case too is discretionary.

- (4) The grant of citizenship by registration to a spouse widow or widower of a citizen of Ceylon is discretionary as the Minister is empowered to refuse any such application if it is not in the public interests to grant such application. To obtain registration in such a case the Act requires that the applicant should have been resident in Ceylon throughout the period of one year immediately preceding the application and the applicant should be and intend to continue to be ordinarily resident in Ceylon.

8. The provisions so far referred to, for the grant of Ceylon citizenship is extremely restrictive. Apart from the restrictive scheme of citizenship by descent, citizenship by registration so far referred to is capable of acquisition only by a resident spouse or by a person whose mother or father is, or would have been a citizen of Ceylon by descent. No extensive provision is made in the Act for a broad category of citizens by registration. In the case of persons falling outside the above categories, an annual quota of 25 persons are allowed to be registered as citizens of Ceylon. Even in respect of this quota of 25 the Act requires that they should be persons who are or intend to continue to be ordinarily resident in Ceylon and—

- (a) have rendered distinguished public service or are eminent in professional, commercial, industrial or agricultural life; or
- (b) have been granted in Ceylon Certificates of Naturalisation.

tion under the British Nationality and Status of Aliens Act 1914 of the U.K. or Letters Patent under the Naturalisation Ordinance and have not ceased to be British subjects.

9. A special piece of legislation entitled the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949, as amended by Acts No. 37 of 1950 and No. 45 of 1952, was enacted to resolve the status of the Indian and Pakistani residents in Ceylon. These persons are for the most part either labourers introduced by the British during the colonial regime to work on the plantations or descendants of such persons. This Act contains provisions enabling Indian and Pakistani residents settled for a shorter period than required for the acquisition of citizenship by descent to obtain citizenship by registration. The Act prescribes a time-limit for registration as citizens of Ceylon and the material date was 5th August 1951. Since this Act was essentially of a transitional nature it is unnecessary now to consider its provisions as a mode of acquiring Ceylon citizenship by registration. The status of a person registered under this Act is identical with that of citizenship by registration under the Citizenship Act.

PROVISIONS FOR AVOIDING OR REDUCING CASES OF DUAL OR MULTIPLE NATIONALITY

10. As stated earlier, there are only two extremely restrictive modes of becoming a citizen of Ceylon. Cases of dual or multiple citizenship arising out of the acquisition of citizenship by mere birth, adoption, naturalisation, annexation etc. cannot arise in respect of Ceylon since the acquisition of citizenship by such means is not recognised in this country. In regard to the two existing modes of becoming a citizen of Ceylon, comprehensive provisions have been enacted to avoid and reduce as much as possible the concurrent existence of more than one citizenship which may arise from other circumstances.

11. The main provisions designed to avoid dual or multiple citizenship are the following:—

The right to renounce Ceylon citizenship is freely granted. There is, however, one reasonable limitation to the exercise of this right. Section 18 of the Ceylon Citizen-

ship Act provides that a Ceylon citizen of full age and of sound mind can cease to be a citizen of Ceylon by making a declaration of renunciation of Ceylon citizenship in the prescribed manner. The renunciation becomes operative from the time of the registration of the declaration of renunciation. As an exception to the exercise of the right, the Section states that the Minister may withhold registration of any such declaration if it is made during the continuance of any war in which Ceylon is engaged and if by operation of any law enacted in consequence of that war, the declarant is deemed for the time being to be an enemy. It will be noted that as far as international law and practice are concerned, there is no uniformity regarding the renunciation of nationality, and the provisions in the Ceylon Act seem to go beyond existing international law.

12. Specific provisions exist in the Ceylon Citizenship Act to resolve cases of dual citizenship in the following circumstances:—

- (a) (i) Where a citizen of Ceylon is possessed of citizenship of another country, having acquired it before the coming into operation of the Ceylon Citizenship Act.
- (ii) Where a citizen of Ceylon is possessed of citizenship of another country at his birth by operation of law.
- (b) Where a citizen of Ceylon acquires voluntarily or otherwise citizenship of another country.
- (c) Where a citizen of another country seeks registration as a citizen of Ceylon.
- (d) For certain miscellaneous cases.

These provisions are considered below in some detail under the above mentioned heads.

13. *Where a citizen of Ceylon is possessed of citizenship of another country, having acquired it before the coming into operation of the Ceylon Citizenship Act:—*

Sub-section (1) of Section 19 of the Citizenship Act is worded as follows:—

"Where a person born before the appointed date (November 15, 1948) is a citizen of Ceylon by descent and is also on that date a citizen of any other country, that person shall —

- (a) on the thirty-first day of December, 1952, or
- (b) on the day on which he attains the age of twenty-two years, whichever day is in his case the later, cease to be a citizen of Ceylon, unless before that day he renounces citizenship of that other country in accordance with the law therein in force in that behalf and notifies such renunciation to a prescribed officer."

14. It will be noted that the date referred to in Clause (a) above has now lapsed and that in all cases other than those covered by Clause (b) above, dual or multiple nationality existing in a citizen of Ceylon by descent born before the 15th November, 1948,—the appointed date—has now been resolved either in favour of Ceylon citizenship or against it.

15. Clause (b) above applies to persons under twenty-two years of age on the appointed date. All such persons will be permitted to possess their Ceylon citizenship along with any other nationality until such person attains the age of twenty-two years. The group of persons, if any, falling within this category will progressively become smaller and smaller until 1970 when it will no longer be possible for anyone to avail himself of these provisions; i.e., after 1970 in the ordinary course it will not be possible for a citizen of Ceylon by descent born before the 15th November 1948 to possess the nationality of any other country along with Ceylon citizenship. It should, however, be mentioned that by Sub-section (4) of Section 19 the Minister is given a discretion to extend the limit of twenty-two years to a higher limit. This of course would be done in a rare case and for some very good reasons.

16. *Where a citizen of Ceylon is possessed of citizenship of another country at his birth by operation of law:—*

Sub-section (2) of Section 19 provides that —

"Where a person is a citizen of Ceylon by descent and that person by operation of law is at the time of his birth, or becomes thereafter, also a citizen of any other country, that person shall —

- (a) on the thirty-first day of December, 1952, or
- (b) on the day immediately succeeding the date of the expiration of a period of twelve months from the date on which he so becomes a citizen of that other country, or
- (c) on the day on which he attains the age of twenty-two years,

whichever day is in his case the latest, cease to be a citizen of Ceylon, unless before that day he renounces citizenship of that other country, in accordance with the the law therein in force in that behalf and notifies such renunciation to a prescribed officer."

17. Clause (a) above has now lapsed by the effluxion of time. If there were any cases falling under that Clause, the dual citizenship of such persons would have by now been resolved in favour of one citizenship.

18. Where Clause (b) above applies, it permits Ceylon citizenship to subsist along with any other citizenship for a limited period of twelve months from the date on which such person becomes a citizen of that other country. Accordingly in all cases, if any, where persons have so become citizens of other countries at any time anterior to the past one year from today, this Clause would have by now had the effect of resolving all such cases of dual citizenship, either in favour of Ceylon citizenship or against it.

19. One can visualise the continued application of Clause (b) above. Where such future cases, if any, are concerned, it will be seen that dual citizenship can subsist only for a limited period of one year.

20. Clause (c) above would apply in the case of minors. Where a citizen of Ceylon is a minor and he is by operation of law at the time of his birth or thereafter also a citizen of another country, such a person is allowed time till he reaches his twenty-second year to make his decision or to have it resolved in favour of Ceylon citizenship or against it. As stated earlier this limit of twenty-two years could be extended by the Minister at his discretion.

21. The provisions of Section 18 of the Ceylon Citizenship Act where a citizen of Ceylon is given the power to renounce Ceylon citizen-

ship have been referred to: Likewise under Section 19 a citizen of Ceylon by descent can cease to be a citizen of Ceylon due to the circumstances set out therein. Under Section 8, a person who was a citizen of Ceylon by descent and who has ceased to be a citizen of Ceylon in the above circumstances, can resume the status of a Ceylon citizen. The resumption is conditional *inter alia*, on such a person renouncing the citizenship of any other country of which he is a citizen. Under Sub-section (5) of Section 8, the Minister is however given a discretion to exempt a person from the requirement of renouncing any other citizenship before being declared a citizen of Ceylon. But Sub-section (6) of Section 19 states that even in such a case such a person shall within a period of three months from the date of resuming the status of a citizen of Ceylon, renounce such other citizenship, failing which he will automatically cease to be a citizen of Ceylon.

22. Where a citizen of Ceylon acquires voluntarily or otherwise citizenship of another country:—

The provisions of Sections 19(5) and 20(1) stated below are self-explanatory and the provisions of Section 19(2) set out below have already been explained.

- (i) SECTION 19 (5): A person who is a citizen of Ceylon by descent shall cease to be a citizen of Ceylon if he voluntarily becomes a citizen of any other country.
- (ii) SECTION 20(1): A person who is a citizen of Ceylon by registration shall cease to be a citizen of Ceylon if he voluntarily becomes a citizen of any other country.
- (iii) SECTION 19(2): Where a person is a citizen of Ceylon by descent and that person, by operation of law, is at the time of his birth or becomes thereafter, also a citizen of any other country, that person shall —
 - (a) on the thirty-first day of December, 1952, or
 - (b) on the day immediately succeeding the date of the expiration of a period of twelve months from the date on which he so becomes a citizen of that other country, or
 - (c) on the day on which he attains the age of twenty-two years,

whichever day is in his case the latest, cease to be a citizen of Ceylon, unless before that day he renounces citizenship of that other country, in accordance with the law therein in force in that behalf and notifies such renunciation to a prescribed officer.

- (iv) Section 20(2) is worded as follows:—“Where a person who is registered as a citizen of Ceylon thereafter becomes, by operation of law, also a citizen of any other country, that person shall —

- (a) on the day immediately succeeding the date of the expiration of a period of three months (or such longer period as the Minister may for good cause allow) from the date on which he so becomes a citizen of that other country, or

- (b) on the day on which he attains the age of twenty-two years,

whichever day is in his case the later, cease to be a citizen of Ceylon, unless before that day he renounces citizenship of that other country in accordance with the law therein in force in that behalf and notifies such renunciation to a prescribed officer.”

Here too the periods when Ceylon citizenship can subsist along with citizenship of another country is limited either for a period of three months (subject to extension by the Minister) or until the age of twenty-two years is reached.

23. Where a citizen of another country seeks registration as a citizen of Ceylon:—

Section 14(2) states:

“A person who is a citizen of any country other than Ceylon under any law in force in that country shall not be granted citizenship by registration unless he renounces citizenship of that country in accordance with that law.”

24. Under Sub-section (3) of Section 14 the Minister is however given a discretion to exempt any person from the above provisions. But Sub-section (3) of Section 20 however states that—

“Where any person—

- (a) who, having been exempted from the provisions of Sub-section (2) of Section 14, is registered under this Act as a citizen of Ceylon; or
 - (b) who is registered under the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949, as a citizen of Ceylon,
- continues after such registration to be a citizen of any other country, that person shall —

- (i) on the day immediately succeeding the date of the expiration of a period of three months (or such longer period as the Minister may for good cause allow) from the date of his registration as a citizen of Ceylon, or
- (ii) on the day on which he attains the age of twenty-two years,

whichever day is in his case the later, cease to be a citizen of Ceylon, unless before that day he renounces citizenship of that other country in accordance with the law therein in force in that behalf and notifies such renunciation to a prescribed officer."

It will be noted that as in the earlier instances referred to dual citizenship can exist in the above cases for very limited periods.

The position is the same in regard to Indian and Pakistani residents registered under the Indian and Pakistani Residents (Citizenship) Act.

25. The provisions of Section 19(2) have already been referred to in another connection. It is referred to here because its provisions could apply to a case of a person who is a citizen of Ceylon by descent as from the appointed date and happens on that day to be possessed of the citizenship of another country. Here too the renunciation of that other citizenship must be made within a limited period if such a person wishes to retain Ceylon citizenship.

26. *Miscellaneous Cases:*—

(i) Section 20A deals with cases of invalid or ineffective renunciation of foreign citizenship. It is worded as follows:—

"In any case where any person purports to renounce citizenship of any country for the purpose of acquiring, retaining or resuming, under any provision of this Act, the status of a citizen of Ceylon, and it is found at any time that the renunciation was not in accordance with or not effective under the law in force in that behalf in such other country, that person shall be deemed never to have acquired, retained or resumed, under that provision, the status of a citizen of Ceylon; and if the Minister makes a declaration to that effect in any such case, the declaration shall be final and shall not be contested in any court."

(ii) Section 22 makes provision for the Minister to make a declaration of loss of Ceylon citizenship in specified circumstances. These provisions along with items (iii) and (iv) below seem to indicate the concern of the Government of Ceylon to ensure that its citizens have a single citizenship and one loyalty and allegiance. The material portion of Section 22 is worded as follows:—

"Where the Minister is satisfied that a person who is a citizen of Ceylon by registration —

- (a) * * *
 - (b) * * *
 - (c) was registered as a citizen of Ceylon by means of fraud, false representation, or the concealment of material circumstances or by mistake; or
 - (d) * * *
 - (e) has since the date of his becoming a citizen of Ceylon by registration been for a period of not less than two years ordinarily resident in a foreign country of which he was a national or citizen at any time prior to that date and has not maintained a substantial connection with Ceylon; or
 - (f) has taken an oath or affirmation of, or made a declaration of, allegiance to a foreign country, or
 - (g) has so conducted himself that his continuance as a citizen of Ceylon is detrimental to the interests of Ceylon,
- the Minister may by Order declare that such a person shall cease to be such a citizen, and thereupon the person in

respect of whom the Order is made shall cease to be a citizen of Ceylon by registration."

Needless to say that such an Order would be only made after due inquiry as provided for in Sub-section (2) of Section 22. Sub-section (3) states that where such an Order is made, it is open to the Minister to make a similar Order in respect of all or any of the minor children of such person and also in respect of the spouse, widow, or widower of such person if they were registered under the Act.

(iii) Section 21 states that —

"A person who is a citizen by registration shall cease to be a citizen of Ceylon if that person resides outside Ceylon for five consecutive years or more, exclusive of any period during which that person —

- (a) is employed abroad as an officer in the service of the Government of Ceylon, or
- (b) is abroad as a representative of the Government of Ceylon, or
- (c) being the spouse or minor child of a citizen of Ceylon who is abroad in any of the capacities specified in paragraphs (a) and (b) of this Section, resides abroad with that citizen, or
- (d) resides abroad on a holiday or for reasons of health, or
- (e) is a student at an educational institution abroad, or
- (f) resides abroad with a spouse who is a citizen of Ceylon by descent, or
- (g) is abroad for any prescribed purpose."

(iv) Section 6 of the Indian and Pakistani Residents (Citizenship) Act provides that —

"It shall be a condition for allowing any application for registration under this Act:

- (1) * * *
- (2) * * *
- (i) * * *
- (ii) * * *
- (iii) * * *

(iv) that the applicant clearly understands that in the event of being registered as a citizen of Ceylon—

(a) the applicant will be deemed in law to have renounced all rights to the civil and political status, the applicant has had or would but for such registration in Ceylon have had, under any law in force in the territory of origin of the applicant or the applicant's parent, ancestor or husband as the case may be, and

(b) in all matters relating to or connected with status, personal rights and duties, and property the applicant will be subject to the laws of Ceylon."

27. An examination of the provisions of the legislation of Ceylon relating to citizenship indicates clearly the serious pre-occupation of the Government of Ceylon with the problem of dual or multiple citizenship. These provisions which are designed to eliminate dual citizenship seem adequate for the purpose. As far as citizens of Ceylon are concerned, the conflicts that can arise from the possession of more than one citizenship can occur in a most limited number of cases and for very limited periods. If those situations are examined, it seems very unlikely, from a practical point of view, that those cases will be productive of disputes. In the limited number of cases contemplated by the Act and within the period of grace—three months or one year or until the person attains the age of twenty-two years as the case may be—a citizen of Ceylon is allowed to possess any other citizenship apart from his Ceylon citizenship. This period of grace seems understandable. It is not unlikely that provisions such as those form part of the legislation of most countries. If these limited number of cases gives rise to disputes, it is desirable that they should be resolved on a set of agreed principles. It must be admitted that we have had no actual experience of any such problems and there is neither local legislation nor case-law to provide a solution.

28. The problems of dual citizenship arise mainly in respect of the following matters:—

- (a) Military service,
- (b) The exercise of protection by States,

- (c) The determination by a third State of the citizenship of a dual citizen.

29. *Military Service* :—

As far as Ceylon citizens possessing another nationality are concerned (that is, in the limited classes outlined above) it seems unlikely that the category of persons who are allowed a period of three months' grace to make up their minds will be pressed into military service. It could certainly arise in the case of persons who are allowed a period of one year or until their twenty-second year is reached. As a matter of fact we have no compulsory military service in our country. If conscription is introduced and a question of dual citizenship does arise we can at present see no better solution than that indicated in the provisions of the Hague Protocol relating to Military Obligations in Certain Cases of Double Nationality (1930). The relevant articles are Articles 1, 2 and 3 and are worded as follows :—

"1. A person possessing two or more nationalities who habitually resides in one of the countries whose nationality he possesses, and who is in fact most closely connected with that country, shall be exempt from all military obligations in the other country or countries.

This exemption may involve the loss of the nationality of the other country or countries.

"2. Without prejudice to the provisions of Article I of the present Protocol, if a person possesses the nationality of two or more States and, under the law of any one of such States, has the right, on attaining his majority, to renounce or decline the nationality of that State, he shall be exempt from military service in such State during his minority.

"3. A person who has lost the nationality of a State under the law of that State and has acquired another nationality, shall be exempt from military obligations in the State of which he has lost the nationality."

30. *The Exercise of Protection in respect of a dual citizen by a State of which such person is a citizen* :—

A situation of this kind could be best solved by the application of the principle that a State may not afford diplomatic protection

to one of its nationals against a State whose nationality such person also possesses.

Vide Article 4 of the Convention concerning Certain Questions relating to the Conflict of Nationality Laws, 1930.

Also, *The Executors of R.S.C.A. Alexander case*, Moore: International Arbitrations (1898), Vol. III, p. 2529; and Advisory Opinion on *Reparation for Injuries Suffered in the Service of the United Nations*, I.C.J. Reports 1949, p. 186.

31. *The determination by a third State of the citizenship of a dual citizen* :—

The prevailing tendency in law and practice is to adopt the test of real and effective nationality to solve such problems *Vide Nottebohm Case*, I.C.J. Reports 1955, p. 4.

Also, Article 5 of the Hague Convention concerning Certain Questions relating to the Conflict of Nationality Laws, 1930 which provides for the recognition of either the nationality of the country in which he is habitually and principally resident, or the nationality of the country with which in the circumstances he appears to be in fact most closely connected.

But it is not unlikely that in certain circumstances such as deportation our Government might prefer to resolve any disputes regarding nationality by a mere reference to the passport and might not be prepared to probe deeper to ascertain the real nationality of a person.

32. We have examined the Draft Agreement on Multiple Nationality presented by the U.A.R. Delegation and find that its provisions are not in consonance with our legislation. A comparison of our legislation with the salient provisions of the U.A.R. Draft is given below.

As agreement to those provisions would entail far-reaching alterations of our citizenship laws, and it is unlikely that our Government would consent to such changes considering the serious implications it would have on our country.

33. In our view the provisions contained in our legislation are adequate to prevent the occurrence of dual citizenship in the

general run of cases. In regard to the three limited types of cases detailed earlier, namely, military service, protection, and the determination of nationality by a third State, a solution has been indicated in accordance with principles generally accepted by nations. It is our view that if those provisions are embodied in a suitable draft, the bulk of the problems arising from dual nationality in so far as Ceylon is concerned would be solved. We are of course mindful of the fact that dual or multiple nationality could be a complicating factor in a variety of other situations such as taxation, extradition, the determination of the enemy character of a person during war etc. It is not possible to suggest an over-riding principle that would meet all such cases, but it ought not to be too difficult to find answers to those specific questions after examining each particular situation.

COMPARISON OF LEGISLATION OF CEYLON WITH THE U. A. R. DRAFT AGREEMENT*

Article 1: (Definitions)

The definition in Clause (d) could be improved by abstracting a definition from the *Nottebohm case*, e.g., "to which he is most closely and genuinely connected as could be gathered from the circumstances."

Article 2: (Nationality of Wives)

(1) If a female citizen of Ceylon marries a national of another contracting party, the marriage has no effect on her status in Ceylon unless she becomes a citizen of that other country voluntarily or by operation of law. In such a case the provisions of Sections 19(2), 19(5), 20(1) and 20(2) would apply.

(2) As the law in Ceylon stands, the foreign spouse cannot opt for Ceylon citizenship. It can only be granted in terms of the provisions of Section 11A and citizenship will be granted *inter alia* upon a renunciation of her previous nationality — Section 14(2).

Article 3:

A female citizen of Ceylon by descent is permitted in certain circumstances to resume her citizenship—Section 8. This Section provides that there should be a renunciation of her previous

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

nationality and that she should be and intend to continue to be ordinarily resident in Ceylon.

A female citizen of Ceylon by registration does not appear to be in the same favourable position. According to Section 14(1) a person who has ceased to be a citizen of Ceylon shall not be granted Ceylon citizenship by registration except in the very limited cases provided for in Section 11.

Article 4:

We have no provisions for naturalisation. Apart from citizenship by descent, the only other mode known of acquiring Ceylon citizenship is citizenship by registration.

It may be mentioned that generally citizenship by registration will not be granted unless there has been a valid renunciation of the previous nationality — Section 14(2).

Article 5: (Nationality of Minors)

In respect of minors born before the appointed date it would appear that citizenship by descent could be claimed independently and irrespective of the nationality of the father.

It is otherwise in the case of minors born after the appointed date. The following would be the cases when a person would be entitled to claim citizenship. In such cases —

- (1) A person born in Ceylon on or after the appointed date where at the time of his birth, his father was a citizen of Ceylon—Section 5(1).
- (2) A person born outside Ceylon on or after the appointed date if at the time of his birth his father was a citizen of Ceylon and if within one year from the date of birth, the birth has been registered—
 - (a) at the Office of a Consular Officer of Ceylon in the country of birth; or
 - (b) at the Office of the Minister in Ceylon—Section 5(2).

In the above cases the applicant would be a citizen by descent.

- (3) A person would be entitled to be registered as a citizen of Ceylon upon attaining full age in the following circumstances:—

- (i) The applicant is a person whose mother is or was a citizen of Ceylon by descent or would have been a citizen of Ceylon by descent if she had been alive on the appointed date, and who being married has been resident in Ceylon throughout a period of seven years immediately preceding the date of the application (or being unmarried has been resident in Ceylon throughout a period of ten years immediately preceding the date of the application) Section 11 (1) (b) (i).
- (ii) The applicant is a person whose father was a citizen of Ceylon by descent and who would have been a citizen of Ceylon under Sub-section (2) of Section 5 if his birth had been registered in accordance with the provisions of that Sub-section.
- (iii) The applicant is a person whose father having been a citizen of Ceylon by descent whether at or before the time of the birth of that person, ceased under Section 19 to be a citizen of Ceylon—Section 11 (1) (b) (iv).

In the above cases it is necessary that the applicant should be and intend to continue to be ordinarily resident in Ceylon.

In cases (ii) and (iii) above it is open to the Minister to disallow the application on grounds of public policy—Section 11 (2). Generally citizenship by registration will not be granted unless there has been a renunciation of the previous citizenship—Section 14 (2).

Theoretically it may be possible for a minor to become registered as a citizen of Ceylon under the provisions of Sections 11A and 12.

In regard to Ceylon citizenship by registration Section 13 provides that in all cases where an applicant for registration as a citizen of Ceylon has any minor child, he may also apply in the same application or by subsequent letter for the inclusion of said child's name in the certificate of registration. This shows that the automatic change of a minor's nationality upon the change of his father's nationality does not obtain in Ceylon. It is optional

for the father who is a Ceylon citizen by registration whether or not to effect such a change. If the father of a minor who is a citizen of Ceylon changes his Ceylon citizenship and takes over a new citizenship which is also automatically conferred on the minor it would appear that the minor is afforded the right to renounce citizenship of that other country before he attains the age of twenty-two years—Sections 19(2) and 20(2).

Article 6:

This privilege is not given to a minor under our law. The circumstances in which a person can become a citizen of Ceylon have been set out above. If the father or in certain circumstances the mother was a citizen of Ceylon, a child may claim Ceylon citizenship. If he also happens to be a citizen of another country by operation of law, a virtual right to opt within one year from his attaining majority is given in our law—Sections 19 and 20. A minor who opts necessarily abandons one nationality.

Article 7:

Our law makes no express provision for the acquisition of Ceylon citizenship by adoption.

Article 8:

Paragraph (1) is not in line with our law. Dual nationality is discouraged and reduced almost to a minimum in our law. In the limited cases where it could arise, there is specific provision to resolve such disputes. Wherever an option is granted the periods specified in our law are different—Sections 19 and 20.

Paragraph (2) is also not in line with our law. A citizen of Ceylon whether by descent or registration ceases to be a citizen of Ceylon if he voluntarily becomes a citizen of another country—Sections 19 (5) and 20(1). Where the acquisition takes place by operation of law the provisions of Sections 19(1), 19(2), and 20(2) already explained would apply.

Paragraph (3): The period during which a minor is allowed to exercise an option for a particular citizenship by way of renouncing or omitting to renounce one of the two citizenships under our law has been referred to earlier.

Sections 9 and 10 make provision for cases of persons born out of wedlock and those born posthumously.