ASIAN AFRICAN LEGAL CONSULTATIVE COMMITTEE

FIFTH SESSION

RANGOON

1962

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New Delhi, India.

ASIAN AFRICAN LEGAL CONSULTATIVE COMMITTEE

REPORT

of the

FIFTH SESSION

held at

RANGOON

January 17th to 30th, 1962.

The Secretariat of the Asian African Legal Consultative Committee,

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CONTENTS

INTRODUCTORY NOTE

Establishment and Functions of the Committee

The Asian Legal Consultative Committee, as it was originally called, was constituted by the governments of Burma, Ceylon, India, Indonesia, Iraq, Japan and Syria as from the 15th November 1956, to serve as an Advisory Body of Legal Experts, to deal with problems that may be referred to it, and to help in the exchange of views and information on matters of common concern between the participating countries. In response to a suggestion made by the Prime Minister of India, which was accepted by all the participating countries in the Asian Legal Consultative Committee, the Statutes of the Committee were amended with effect from the 19th April 1958, so as to include participation of countries in the African continent. Consequent upon this change in the Statutes, the name of the Committee was altered, and it was renamed as the Asian - African Legal Consultative Committee. Membership of the Committee is open to the countries in the Asian and African continents in accordance with the provisions of its Statutes.

The United Arab Republic upon its formation by the merger of Egypt and Syria became an original participating country in the Committee in the place of Syria. Sudan was admitted to the Committee with effect from the 1st October 1958, Pakistan from the 1st January 1959, Morocco from the 24th February 1961, and Thailand from the 6th December 1961.

The Committee is governed in respect of all matters by its Statutes and the Statutory Rules. Its functions as set out in Article 3 of the Statutes are:

(a) Examination of questions that are under consideration by the International Law Commission, and to arrange for the views of Committee to be placed before the said Commission; to consider the reports of the Commission and to make recommendations thereon to the governments of the participating countries;

(b) Consideration of legal problems that may be referred to the Committee by any of the participating

countries and to make such recommendations to governments as may be thought fit;

(c) Exchange of views and information on legal matters of common concern; and

(d) To communicate with the consent of the governments of the participating countries, the points of view of the Committee on international legal problems referred to it, to the United Nations, other institutions and international organisations.

The Committee normally meets once annually by rotation in the countries participating in the Committee. Its first Session was held in New Delhi, the second in Cairo, the third in Colombo, the fourth in Tokyo, and the fifth in Rangoon. The Committee maintains a permanent Secretariat in New Delhi for the conduct of its day-to-day work. A section of the Secretariat is charged with the collection of material and preparation of background papers for assisting the Committee in its deliberations during the sessions. The Committee acts in all matters through its Secretary who is advised by a body of Liaison Officers appointed by each of the participating countries. The Liaison Officers normally meet once a month or as often as necessary.

Office Bearers of the Committee and its Secretariat

The Committee during its First Session elected the Member for Burma, Hon'ble Chief Justice U MYINT THEIN, and the Member for Indonesia, Hon'ble Chief Justice DR. WIRJONO PRODJODIKORO respectively as President and Vice-President of the Committee for the year 1957-58. During the Second Session, the Committee elected the Member for the United Arab Republic, H.E. MR. ABDEL AZIZ MOHAMED, President of the Cour de Cassation, as President and the Member for Ceylon, Hon'ble Chief Justice MR. H. H. BASNAYAKE as Vice-President of the Committee for the year 1958-59. At its Third Session, the Member for Ceylon, Hon'ble Chief Justice MR. H. H. BASNAYAKE was elected as President and CHAUDHURI NAZIR AHMED KHAN, Attorney-General of Pakistan was elected as Vice-President of the Committee. At its Fourth Session, the Member for Japan, DR. KENZO TAKAYANAGI, President, Cabinet Commission on Constitutional Reforms, was

elected as President and Hon'ble DR. R. WIRJONO PRODJODIKORO, Chief Justice of the Republic of Indonesia, as Vice-President of the Committee. At its Fifth Session, the Member for India, Hon'ble MR. M. C. SETALVAD, Attorney-General of India, was elected as President and Hon'ble MR. A. T. M. MUSTAFA, Minister for Law of the Government of East Pakistan, was elected as Vice-President of the Committee.

The Committee at its First Session decided to locate its Permanent Secretariat at New Delhi (India). The Committee also decided during its First, Second and Fourth Sessions that MR. B. SEN, Hon. Legal Adviser to the Ministry of External Affairs, Government of India, should perform the functions of the Secretary of the Committee.

Co-operation with other Organizations

The Committee maintains close contacts with and receives published documents from the United Nations, the Specialised Agencies, the International Law Commission and the Arab League. The Committee is empowered under the Statutory Rules to admit to its sessions Observers from international and regional intergovernmental organisations. The International Law Commission was represented at the Committee's Fourth and Fifth Sessions respectively by DR. F. V. GARCIA AMADOR and DR. RADHABINOD PAL, Members of the Commission. The Secretary-General of the United Nations was represented at the Committee's Fifth Session by MR. OSCAR SCHACHTER of the U. N. Secretariat. The Arab League also sent representatives at the Committee's Second and Fifth Sessions. The Committee also sends Observers to the U.N. Conferences on legal matters and to the sessions of the International Law Commission.

Work done by the Committee

The governments of the participating countries in the Committee originally referred ten problems for the consideration of the Committee. These were:

(i) Functions, Privileges and Immunities of Diplomatic Envoys or Agents including questions regarding enactment of legislation to provide Diplomatic Immunities. (Referred by India and Japan).

(ii) Principles for extradition of offenders taking refuge in the territory of another State including questions relating to desirability of conclusion of extradition treaties and simplification of the procedure for extradition. (Referred by Burma and India).

(iii) Law relating to the Regime of the High Seas including questions relating to the Rights to Sea-bed and Subsoil in the Open Sea. (Referred by Japan).

(iv) Status of Aliens including questions of Responsibility of States regarding Treatment of Foreign Nationals. (Referred by Japan).

(v) Restrictions on Immunity of States in respect of Commercial Transactions entered into by or on behalf of States and by State Trading Corporations. (Referred by India).

(vi) Law of the Territorial Sea. (Referred by Ceylon).

(vii) Questions relating to Dual Citizenship. (Referred by Burma).

(viii) Ionospheric Sovereignty. (Referred by India).

(ix) Questions relating to Reciprocal Enforcement of Foreign Judgments in Matrimonial Matters. (Referred by Ceylon).

(x) Questions relating to Free Legal Aid. (Referred by Ceylon).

During the First Session held in New Delhi, the Committee discussed and drew up reports for submission to the governments of the participating countries on three of subjects, viz., Diplomatic Immunities, Principles of Extradition and Immunity of States. The subjects were, however, carried forward for further consideration at the next session.

During the Second Session held in Cairo, the Committee had before it five main subjects for consideration, viz., Diplomatic Immunities, Principles of Extradition, Immunity of States in respect of Commercial Transactions, Dual Nationality and Status of Aliens. It also discussed briefly the questions relating to Free Legal Aid and Reciprocal Enforcement of Foreign Judgments in

Matrimonial Matters. The Committee also generally considered the Reports of the 9th and 10th Sessions of the International Law Commission.

The Committee finalised its Reports on Diplomatic Immunites and on Immunity of States in respect of Commercial Transactions. These Reports were submitted to the governments of the participating countries. Final conclusions were not reached on the other subjects which were discussed at this session.

The Committee at its Third Session held in Colombo considered the comments of the governments on its Reports on Functions, Privileges and Immunities of Diplomatic Envoys, and Immunity of States in respect of Commercial Transactions, which the Committee had finalised during its Second Session in Cairo. The Committee affirmed the view it had taken in its Report with regard to restrictions of Immunity of States in respect of Commercial Transactions. It, however, made certain changes in its Report on Diplomatic Immunities in the light of the comments received from the governments of the participating countries. This Report was later placed before the U.N. Conference of Plenipotentiaries on Diplomatic Relations.

The Committee gave detailed consideration to the subjects of Status of Aliens and Extradition on which it was able to draw up provisionally the principles governing the subjects in the form of Draft Articles. The Committee discussed the subject of Status of Aliens, which had been referred to it by the Government of Japan, on the basis of a memorandum, presented to it by the Committee's Secretariat and information supplied by the governments of the participating countries regarding their laws and State practice with regard to entry, treatment and deportation of foreigners. The discussions on Extradition were based on the draft of a Multilateral Convention presented by the Government of the United Arab Republic and a memorandum submitted by the Committee's Secretariat. The Provisional Recommendations of the Committee on these two subjects were submitted to the governments of the participating countries for their comments.

The Committee also generally considered questions relating to Dual Nationality and the recommendations of the International

Law Commission on Arbitral Procedure. The Committee decided to take up at its next session the question of Legality of Nuclear Tests and the legal aspects of certain economic matters namely, Conflict of Laws in respect of International Sales, and Relief against Double Taxation.

The Fourth Session of the Committee was held in Tokyo from 15th to 28th February 1961. The Committee at its Fourth Session held in Tokyo discussed in detail the subjects of Extradition and Status of Aliens on the basis of the Draft Articles as provisionally drawn up by the Committee at its Third Session. The Committee revised the existing drafts on the subjects in the light of the comments made by the Delegations present at the session and adopted its Final Reports for submission to the governments of the participating countries.

The subject relating to Diplomatic Protection of Citizens Abroad and State Responsibility for Maltreatment of Aliens was also generally considered by the Committee. It took note of the statement made at this session by MR. F. V. GARCIA AMADOR, Special Rapporteur of the International Law Commission on State Responsibility and decided to take up the subject for discussion at its next session.

The Committee also gave special attention to the question of Legality of Nuclear Tests. It considered the subject on the basis of the Report prepared by the Secretariat, and the Delegates of the participating countries of the Committee made statements on the question of Legality of Nuclear Tests indicating the scope of the subject under consideration of this Committee and the basic principles on which further material needed to be collected. After a general discussion on the subject, the Committee unanimously decided that the consideration of this subject was a matter of utmost urgency and should, therefore, be placed as the first item on the agenda of the Fifth Session.

The Committee also considered the Report of the Secretariat on the work done by the International Law Commission at its Twelfth Session and took note of the statement made by the Observer on behalf of the International Law Commission.

The Committee considered the subjects relating to Free Legal Aid and Recognition of Foreign Decrees in Matrimonial Matters

and decided to publish the Reports of the Rapporteur on both these subjects to be presented to the governments of the participating countries.

The Committee also generally discussed other subjects on the agenda, viz., Arbitral Procedure, Conflict of Laws with regard to International Sales and Purchases, Laws relating to Avoidance of Double Taxation and Dual Nationality. The Committee decided to include all these subjects in the agenda of its Fifth Session.

Fifth Session of the Committee

The Fifth Session of the Committee was held in Rangoon from 17th to 30th January 1962.

The Committee at this session discussed in detail the subjects of Dual Nationality and Legality of Nuclear Tests. The subject of Dual Nationality was considered on the basis of a Draft Agreement presented by the Delegation of the United Arab Republic. The Committee drew up a set of Draft Articles embodying the principles relating to elimination or reduction of dual or multiple nationality. It was decided that the Draft Articles should be submitted to the governments of the participating countries for comments and that the subject should be placed before the next session of the Committee for fuller consideration in the light of the comments received from the governments.

The Committee discusssed the subject of Legality of Nuclear Tests on the basis of material on the scientific and legal aspects of nuclear tests collected by the Secretariat of the Committee. The Committee heard the viewpoint and expressions of opinion on the various topics on this subject from the Delegations of Burma, Ceylon, India, Indonesia, Japan, Pakistan, Thailand and the United Arab Republic. The governments of Japan and the United Arab Republic also submitted written memoranda on the subject. On the basis of these discussions, the Secretary of the Committee prepared and presented a Draft Report on the subject for consideration of the Committee. After a general discussion, the Committee decided that the Secretariat should submit the Draft Report on Legality of Nuclear Tests to the governments of the participating countries for their comments and that the subject should be placed before the next session of the Committee as a priority item on the agenda.

The Committee also considered the subject of Arbitral Procedure and the Report of the Secretariat on the work done by the International Law Commission at its Thirteenth Session. The subject of Arbitral Procedure was discussed on the basis of a report prepared by the Secretariat. The Committee decided that a report should be drawn up incorporating the views expressed by the various Delegations. The Committee took note of the work done by the International Law Commission at its Thirteenth Session and expressed its appreciation of the very valuable services rendered by the distinguished Member for the United Arab Republic in representing the Committee as an Observer at that Session. The Committee generally discussed the subject of Consular Intercourse and Immunities and decided to request the governments of the participating countries to transmit their comments on the Draft Articles, prepared by the Commission, to the Secretariat of the Committee. It was further decided that the Secretariat should prepare a report on the basis of these comments which should be considered as a priority item at the next session of the Committee.

The Committee at this session also considered certain proposals regarding revision of the Statutes of this Committee. A sub-committee consisting of one representative from each Delegation went into the matter in some detail and the recommendations of this sub-committee were accepted by the Committee. It was recommended that Articles 1, 3(a) and 3(c) should be amended and that a new Article, 2(a), should be introduced to provide for Associate Membership of the Committee under certain conditions. It was also recommended that certain consequential changes would be necessary in the Statutory Rules of the Committee. The Committee's Statutes can, however, be altered only by a decision of the participating countries and the proposed amendments, therefore, await the formal concurrence of the governments of the participating countries.

The subjects which the Committee has been able to finalise so far relate to Diplomatic Immunities, Immunity of States with respect to Trading Activities of States, Extradition, Status of Aliens, Dual Nationality, Legal Aid, Reciprocal Enforcement of Judgments in Matrimonial Matters and Arbitral Procedure. The Committee has also made considerable progress on the question of Legality of Nuclear Tests, Diplomatic Protection of Nationals and

State Responsibility, Double Taxation and Law relating to International Sales and Purchases. The Committee has now before it for consideration the question of Consular Immunities and Privileges, Law of the Sea, Reciprocal Enforcement of Judgments and Law relating to Industry and Commerce. It is also undertaking a publication of the Constitutions of the Asian and African countries as also a digest of important decisions of the municipal courts of these countries with regard to international legal questions. Recently some more topics have been suggested for consideration of this Committee and these include the United Nations Charter from the point of view of the Asian and African countries and the Rights of the Refugees.

Delegates of the Participating Countries and Observers at the Fifth Session

BURMA

Member and Leader of the Delegation	:	Hon. U MYINT THEIN, Chief Justice of the Union of Burma.
Alternate Member	:	Hon. U AUNG THA GYAW, Judge, Supreme Court of the Union of Burma.
Adviser	:	U SOE TIN, Secretary to the Government of Burma, Ministry of Foreign Affairs.
Adviser	:	U KYAW THAUNG, Assistant Attorney-General.
Adviser	:	U NYUNT TIN, Legal Adviser, Corporation of Rangoon.
Adviser	:	U MYINT SOE, Lecturer, Faculty of Law, University of Rangoon.

CEYLON

Member and Leader of the Delegation	:	HON. MR. JUSTICE H. N. G. FERNANDO, Judge, Supreme Court of Ceylon.
Alternate Member	:	HON. MR. JUSTICE G. P. A. SILVA, Judge, Supreme Court of Ceylon.
Adviser	:	MR. R. S. WANASUNDERA, Crown Counsel.

INDIA

Member and Leader of the Delegation	:	HON. MR. M. C. SETALVAD, Attorney-General of India.
Alternate Member	:	MR. B. N. LOKUR, Secretary to the Government of India, Ministry of Law.
Adviser	:	DR. K. KRISHNA RAO, Director, Legal and Treaty Division, Ministry of External Affairs.
Adviser/Secretary	:	MR. S. SHAHABUDDIN, Second Secretary, Indian Embassy, Rangoon.

INDONESIA

Member and Leader of the Delegation	:	MR. CH. ANWAR SANI. Minister-Counsellor, Indonesian Embassy, New Delhi.
Adviser	:	MR. AKOSAH, Second Secretary, Indonesian Embassy, Rangoon.

JAPAN

Member and Leader of the Delegation	:	DR. KENZO TAKAYANAGI, President of the Cabinet Commission on Constitutional Reform.
Alternate Member	:	DR. KUMAO NISHIMURA, Member of Atomic Energy Commission, Government of Japan.
Adviser	:	MR. HISAJI HATTORI, Minister, Japanese Embassy, New Delhi.

Adviser/Secretary : MR. MISAO YAMASAKI,
Third Secretary,
Japanese Embassy,
Rangoon.

PAKISTAN

Member and Leader of the Delegation : HON. MR. A. T. M. MUSTAFA,
Minister of Law,
Government of East Pakistan.

Adviser : MR. G. RABBANI,
Third Secretary,
Embassy of Pakistan,
Rangoon.

THAILAND

Member and Leader of the Delegation : DR. SOMPONG SUCHARITKUL,
Treaty and Legal Department,
Ministry of Foreign Affairs.

Alternate Member : DR. SOMMAI VISUDDHIDHAM,
Treaty and Legal Department,
Ministry of Foreign Affairs.

UNITED ARAB REPUBLIC

Member and Leader of the Delegation : HON. MR. HAFEZ SABEK,
Chief Justice of the U.A.R.

Alternate Member : DR. EZZ EL-DIN ABDULLA,
Dean, Faculty of Law,
Einshams University.

Adviser : DR. GABR GAD ABDEL RAHMAN,
Professor, Faculty of Law,
Cairo University.

Adviser : DR. MOHAMED HAFEZ GHANEM,
Professor, Faculty of Law,
Einshams University.

* * *

Secretary to the Committee : MR. B. SEN,
Senior Advocate of the Supreme Court of India,
& Hony. Legal Adviser to the Ministry of External Affairs,
Government of India.

* * *

OBSERVERS

Ghana : MR. E. ABDALLAH,
Acting High Commissioner of Ghana in Ceylon.

Laos : MR. T. LYFOUNG,
Director of the Judicial Department.
MR. KHAMPOON,
President of the Court of Appeal.

Philippines : DR. ADEUDATO J. AGBAYANI,
Charge d'Affaires ad interim,
Embassy of the Philippines,
Rangoon.

International Law Commission : DR. RADHABINOD PAL,
Member,
International Law Commission.

United Nations : MR. OSCAR SCHACHTER,
Director of the General Legal Division of the Office of Legal Affairs,
U.N. Secretariat,
and Personal Representative of the Secretary-General.

League of Arab States : DR. CLOVIS MAKSOUD,
Personal Representative of the Secretary-General.

* * *

CONFERENCE SECRETARIAT

Head of Organisation of the Fifth Session	:	U Soe Tin, Secretary of the Government of Burma, Ministry of Foreign Affairs.
Conference Officer	:	U Kyaw, Officer on Special Duty, Ministry of Foreign Affairs, Burma.
Assistant Conference Officer (Reception)	:	U Lu Maw, Third Secretary, Ministry of Foreign Affairs, Burma.
Assistant Conference Officer (Documents)	:	U Pe Thein Tin, Third Secretary, Ministry of Foreign Affairs, Burma.
Assistant Conference Officer (Transport)	:	U Aung Than, Assistant Chief of Division, Ministry of Foreign Affairs, Burma.
Assistant Conference Officer (General)	:	U Zaw Wynn, Third Secretary, Ministry of Foreign Affairs, Burma.

LIAISON OFFICERS OF THE PARTICIPATING COUNTRIES IN THE COMMITTEE*

Burma	:	U Ba Maung, First Secretary, Embassy of Burma, New Delhi.
Ceylon	:	Mr. N. Balasubramaniam, First Secretary, Ceylon High Commission, New Delhi.
India	:	Mr. B. C. Mishra, Deputy Secretary (UN), Ministry of External Affairs, Governmment of India, New Delhi.
Indonesia	:	Mr. Ch. Anwar Sani, Minister Counsellor, Embassy of Indonesia, New Delhi.
Iraq	:	Mr. Saeed K. Hindawi, First Secretary, Embassy of Iraq, New Delhi.
Japan	:	Mr. Hisaji Hattori, Minister, Embassy of Japan, New Delhi.
Pakistan	:	Mr. M. Rahman, Deputy High Commissioner, Pakistan High Commission, New Delhi.

* As on 1st January 1963.

Thailand	:	Mr. S. Bamrungphong, First Secretary, Embassy of Thailand, New Delhi.
United Arab Republic	:	Mr Mahmoud El-Erian, First Secretary, Embassy of the U.A.R., New Delhi.

AGENDA OF THE FIFTH SESSION

I. Administrative and Organisational Matters

1. Adoption of the Agenda.
2. Election of the President and Vice-President of the Session.
3. Admission of new members in the Committee.
4. Admission of Observers to the Session.
5. Consideration of the Secretary's Report.
6. Further consideration of the Draft Articles on Immunities and Privileges of the Committee.
7. Consideration of the Committee's Programme of Work for 1962-63.
8. Consideration of the question of printing and publication of the proceedings of the Fifth Session of the Committee and other publications.
9. Revision of Statutes and Statutory Rules.
10. Consideration of the question of the Committee's staff structure for the term 1962-64.
11. Report on the U.N. Conference of Plenipotentiaries on Diplomatic Relations held in Vienna in March-April, 1961.
12. Co-operation with other Organisations.
13. Report of H.E. Mr. Hafez Sabek on co-operation with the International Law Commission.
14. Date and place of the Sixth Session.

II. Matters Arising out of the Work done by the International Law Commission under Article 3(a) of the Statutes

1. Consideration of the Report of the Thirteenth Session of the International Law Commission.

2. Arbitral Procedure: Consideration of the subject on the basis of the Comments received from the Governments of the Participating Countries on the questionnaire prepared by the Secretariat and the Provisional Report of the Committee together with the working paper prepared by the Secretariat.

III. MATTERS REFERRED TO THE COMMITTEE BY THE GOVERNMENTS OF THE PARTICIPATING COUNTRIES UNDER ARTICLE 3(b) OF THE STATUTES

1. Status of Aliens (Referred by the Government of Japan)—Consideration of the questions of Diplomatic Protection of Aliens by their Home States, and Responsibility of States arising out of Maltreatment of Aliens.
2. Dual Nationality (Referred by the Government of Burma)—Consideration of the Comments received from the Governments of the Participating Countries on the working paper prepared on the subject and the revised Draft Convention prepared by the U.A.R. Delegation.

V. MATTERS OF COMMON CONCERN TAKEN UP BY THE COMMITTEE UNDER ARTICLE 3(c) OF THE STATUTES

1. Legality of Nuclear Tests (Adopted by the Committee at the suggestion of the Government of India).

DUAL NATIONALITY

INTRODUCTORY NOTE

The subject of Dual Nationality was referred to the Committee by the Government of the Union of Burma under the provisions of Article 3 (b) of the Statutes of the Committee. The Governments of Burma, Japan and the United Arab Republic submitted memoranda on the subject and the United Arab Republic also presented a Draft Agreement for consideration of the Committee.

During the First Session held in New Delhi, the Delegations of Burma, Indonesia and Japan made brief statements on the problem of dual nationality but the Committee decided to postpone further consideration of the subject as the Delegations of India, Ceylon, Iraq and Syria had reserved their position on this subject.

During the Second Session held in Cairo, the views of the Delegations were ascertained on the basis of a questionnaire prepared by the Secretariat. The main topics which were discussed during the Second Session were: (1) the acquisition of dual nationality; (2) the position of a resident citizen who is simultaneously a citizen of another State and the rights of such a citizen; (3) the position of a non-resident citizen possessing dual nationality; and (4) the position of an alien possessing dual nationality. The Delegations were of the opinion that it would be desirable to reduce the number of cases of persons possessing dual nationality by means of enacting suitable national legislation or concluding international conventions. It was, however, felt that unless there was uniformity in nationality laws and unanimity on the fundamental principles of nationality, it would be very difficult to achieve the desired objective by means of a multilateral convention. The Committee decided that the Secretariat should prepare a report on the subject on the basis of the discussions held during the session and that this report together with the draft agreement submitted by the United Arab Republic should be taken up for consideration during the Third Session.

At the Third Session held in Colombo, the Committee had a general discussion on the subject and the unanimous view of the Delegations was that some preparatory work should be done by the governments of the participating countries on the basis of the report of the Secretariat before the Committee could finally make its recommendations on the subject. The Committee therefore decided

to request the governments of the participating countries to study the report of the Secretariat and the Draft Agreement submitted by the Delegation of the United Arab Republic and to communicate their views to the Secretariat in the form of memoranda indicating the particular problems which have arisen in this regard and suggesting specific points which they desire the Committee to take up for particular study and consideration.

At the Fourth Session held in Tokyo, the Committee gave further consideration to the subject and decided to request the Delegation of the United Arab Republic to prepare a revised draft of the Convention in the light of the comments received from the governments of the participating countries for consideration at the Fifth Session of the Committee. The Committee also directed its Secretariat to request the governments which have not given their comments to do so as early as possible and thereafter to forward the comments to the Delegation of the United Arab Republic.

At the Fifth Session held in Rangoon in January 1962, the subject was fully considered by the Committee on the basis of a draft of an Agreement submitted by the Delegation of the United Arab Republic. The Committee also had before it written memoranda on the subject submitted by the Governments of Burma, Ceylon, Indonesia, Iraq and Japan. After a detailed discussion on the various aspects of the subject, the Committee drew up a set of Draft Articles embodying the principles relating to elimination or reduction of dual or multiple nationality. It was decided that the Draft Articles should be submitted to the governments of the participating countries for comments and that the subject should be placed before the next session of the Committee for fuller consideration in the light of the comments received from the governments.

DRAFT ARTICLES EMBODYING THE PRINCIPLES RELATING TO ELIMINATION OR REDUCTION OF DUAL OR MULTIPLE NATIONALITY*

(Adopted by the Committee at its Fifth Session)

*As regards Dual Nationality, the Delegation of Pakistan stated that the Government of Pakistan recognises no second nationality in a citizen except that in the United Kingdom a citizen of Pakistan has all the rights of a citizen of the United Kingdom including the right to vote. The Delegate of Pakistan reserved his position on all the Draft Articles.

GENERAL PROVISIONS

Article 1

It is for each State to determine under its own law who are its nationals. This law itself 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.

Note: The Delegate of Thailand stated that with the exception of the principle of compulsory recognition he accepted the other principles incorporated in this Article.

Article 2

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

Article 3

Alternative (A)

For the purpose of these Model Articles the age of majority of a person shall be determined according to the law of the State the nationality of which is to be acquired, retained, or renounced.

Alternative (B)

The age of majority shall be determined according to the laws of the State, the nationality of which is relevant for the matter under consideration, provided that for the purposes of Article 5 and of Article 7, the majority age (in the event of any conflict of State laws) shall be the majority age under the law of the State which prescribes a higher age.

Note: The Delegates of Burma, Thailand and the United Arab Republic accepted Alternative (A) of Article 3. The Delegates of Ceylon and India accepted Alternative (B) of Article 3. The Delegate of Thailand saw no objection to Alternative ((B). The Delegates of Japan and Indonesia reserved their position on this Article.

NATIONALITY OF MARRIED WOMEN

Article 4

(1) If a woman who is a national of one State marries a national of another State, or if a husband acquires a nationality other than that he had on the date of marriage, the nationality of the wife shall not be affected.

(2) Nevertheless if she, in either of such cases voluntarily acquires the nationality of her husband, she loses *ipso facto* the other nationality.

Note: The Delegate of Thailand whilst accepting Clause (1) of this Article wished it to be understood that this principle would also apply in the case of a husband acquiring an additional nationality. The Delegate of India wished that the words "unless she has already renounced her original nationality" to be added at the end of Clause (2) of this Article.

NATIONALITY OF CHILDREN

Article 5

(1) A minor follows ordinarily his father's nationality. If the minor is born out of wedlock, or if the nationality of his father is unknown or if his father has no nationality, he follows his mother's nationality.

(2) Nevertheless, if a minor born to a national of one State in another State is deemed in accordance with the laws of each of the two States to be its national, he should opt for one of these two nationalities within one year from the date of attaining his majority age in accordance with the provisions of Article 7.

Note: The Delegates of Ceylon and India accepted only the first sentence of Clause (1) of this Article. The Delegate of Ceylon could not accept the second sentence of Clause (1) of this Article in view of the inclusion in it of reference to the case of a minor whose father is stateless. The Delegate of India preferred the omission of the second sentence but expressed the view that the principle of nationality of the State of birth instead of the principle of mother's nationality should be adopted. The Delegates of Burma and Thailand accepted the provisions of Clause (2) of this Article. The Delegates of Ceylon, India and the United Arab Republic were in agreement that Clause (2) of this Article was not necessary. The Delegate of Indonesia reserved his position on Clause (2) of this Article. The Delegate of Japan reserved his position on the whole of Article 5 of the draft.

ADOPTION

Article 6

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

Note: The Delegates of Burma, Indonesia and the United Arab Republic accepted this Article. The Delegates of Indonesia and the United Arab Republic took the view that the minor should have an option after he attains majority to choose between his original nationality and the nationality of his adopter. The Delegate of Thailand stated that the words "be entitled to" should be inserted between the word "shall" and the word "follow". This Article was not accepted by the Delegates of Ceylon, India and Japan.

OPTION

Article 7

A person who knows that he possesses two nationalities, acquired without any voluntary act on his part, should renounce one of them in accordance with the law of the State whose nationality he desires to renounce, within twelve months of his knowing that fact or within twelve months of attaining his majority age, whichever time is the later.

Note: The Delegates of Burma, Ceylon, India, Thailand and the United Arab Republic accepted this Article. The Delegate of Indonesia reserved, his position on this Article although he expressed the view that the option available to the individual must be of obligatory character and that States should by means of agreement provide for dealing with cases where the indvidual does not exercise the option. The Delegate of Japan was not in favour of imposing any obligation on an individual to exercise the option.

ACTIVE NATIONALITY

Article 8

A person having more than one nationality, shall be treated as having only one nationality, in a third State. A third State should, however, recognise exclusively, the nationality of the State in which he is habitually and principally resident or the nationality of the State with which in the circumstances he appears to be in fact most closely connected.

Article 9

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 all military obligations in the other State or States.

Article 10

Without prejudice to the provisions of Article 9, 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.

Note: Except the Delegate of Indonesia the other Delegates accepted this Article.

BACKGROUND PAPER ON DUAL NATIONALITY

(Prepared by the Secretariat of the Committee)

General Note On Some Problems Arising Out of Dual or Multiple Nationality of Individuals

CHAPTER I

INTRODUCTION

How dual nationality arises

Dual or multiple nationality is encountered among citizens of almost all countries as the unavoidable consequence of the conflicting nationality and citizenship laws of various countries. Generally speaking, the phenomenon of plural nationality or citizenship arises from the concurrent application of the principles of *jus soli* and *jus sanguinis* at birth or from the concurrent operation of different nationality and citizenship laws, and the absence of uniformity in such laws concerning more particularly, naturalization and expatriation. Schwarzenberger observes: "If a genuine connection between a sovereign State and an individual exists, a State may claim a natural-born individual as its national. The practice of States recognises the systems of both *jus soli* and *jus sanguinis*, as well as combinations of them, as giving expression to such a genuine connection. In a highly integrated international society the systems of *jus soli* and *jus sanguinis* easily overlap and produce the phenomenon of dual nationality. If nationality may be acquired not only by birth, but also by naturalization, this leads to additional possibilities of dual nationality. Dual or multiple nationality can be avoided as little as any other conflict of municipal laws. It is the inevitable consequence of the wide discretion granted by international law to sovereign States to determine the criteria of a genuine connection between themselves and the inhabitants of their territories." [1] As far as an individual is concerned, he may happen to be in possession of more than one nationality knowingly or unknowingly and with or without his intention.

Birth and dual nationality

Broadly speaking, plural nationality may be occasioned by every mode of acquisition of nationality, for instance, *jure soli*,

1. Schwarzenberger, G. : International Law, Vol. I, 3rd ed., 1958, pp. 362–363.
   Moore, J. B. : A Digest of International Law, Vol. III, 1906, pp. 518–519.

by the birth in the United Kingdom of an alien father whose State adopts the *jure sanguinis* and attaches its nationality to the children of its nationals born within the territory of other States.[2] A child, by reason of his parents being at the time of his birth in a foreign State, is born a national of the two countries- a national of the country of his birth *jure soli*, and a national of his parents' country *jure sanguinis*. Thus, every child born in the United Kingdom of German parents acquires both British and German nationalities, for such a child is British according to British, and German according to German municipal nationality laws. Dual nationality may also be produced by the case of an infant whose parents emigrate and acquire by naturalization the nationality of the new State i.e., State of immigration.

During the 19th and 20th centuries numerous immigrants from European and other countries became citizens of the United States of America by naturalization while their countries of origin were reluctant to release such immigrants automatically from their duties of allegiance based on their bond of nationality. Hence, such individuals were considered as citizens of both the States until they could obtain release from their ties of original nationality. Under the principle of *jus sanguinis* even the children of such immigrants were regarded by the States of emigration as the nationals of their parents' home States despite the fact that they had been born in the United States. The unwillingness on the part of the governments of those countries to give up their claims of allegiance and to treat such *de cujus* i.e., the immigrants and their children as foreign nationals, was due to the fact that the male descendents were badly needed for military service.

In the *Canevaro Case* (1912) between Italy and Peru, both parties claimed *Rafael Canevaro* as their national. Canevaro was born in Peru of an Italian father. The Permanent Court of Arbitration held that he was of Peruvian nationality *jure soli*, and also of Italian nationality *jure sanguinis*. However, applying the test of active nationality the Court adjudged him as a Peruvian national.

Legitimation and dual nationality

Legitimation of illegitimate children can bring about the same effect. For instance, the illegitimate child of a German

2. McNair, Sir A. D. : The Legal Effects of War, 3rd ed., 1948, pp. 24-26.

father born in the United Kingdom of an English mother becomes a subject of the United Kingdom according to the laws of both the States; but if after the birth of the child the father marries the mother and takes up permanent residence in the United Kingdom, the child thereby becomes a legitimate child according to German law, and it acquires German nationality without losing its British nationality.[3]

Marriage and dual nationality

The status of dual nationality has often been occurring also as a result of marriages. A very frequent instance in the history of various states is the case of a woman who after marrying a foreign national is permitted to retain her original nationality according to the law of the State of which she is a national, and who is also permitted to acquire her husband's nationality according to the law of the State of which her husband is a national. Thus, as a result of the marriage of an alien woman to a citizen of the United States, or of an American woman to a foreigner, under the laws of the two countries involved, such women may acquire a new nationality without losing their former citizenship. A woman British subject not already a Southern Rhodesian citizen who has been married to such a citizen has, an unmistakable right to become a citizen of Southern Rhodesia subject only to taking the oath of allegiance. Owing to the almost exact identity of the citizenship laws of the United Kingdom and New Zealand, as between these two countries the possibility of overlap of citizenship is said to be very great. For instance, a woman citizen of the one country marrying a citizen of the other has normally the indefeasible right to acquire the citizenship of the other without forfeiting her original citizenship.[4]

Naturalization and dual nationality

Moreover, not infrequently naturalization, in the narrower sense of the term, gives rise to the problem of plural nationality. Nationals of a State, for instance, may apply for and receive naturalization in a foreign State, while retaining their original nationality at the same time.

3. Oppenheim, L. : International Law, Vol. I, 8th ed., p. 665.
4. Moore : Digest., Vol. III, pp. 518-551.
   Parry, C. ; Nationality and Citizenship Laws of the Commonwealth and of the Republic of Ireland, 1957, pp. 103-110,

In the case of *George S. Hein v. Hildesheimer Bank* decided by the British-German Mixed Arbitral Tribunal in 1922, the problems of naturalization and dual nationality came up for consideration. In this case, the claimant Hein was born in Germany. Though by naturalization he became a British subject, he continued to be a German national at the same time under the German law.[5] Again, in the case of the *United States* (*William Mackenzie*) *v. Germany* decided by the United States-German Mixed Claims Commission in 1925, a similar problem was at issue. The claimant's father was born of British parents in the United States. Under the United States law, he was a United States citizen by birth and at the same time in accordance with the English law, he was considered a British subject by parentage.[6] *Grigotiou v. Bulgarian State* decided by the Greco-Bulgarian Mixed Arbitral Tribunal in 1923 is yet another case dealing with dual nationality and naturalization. In this case the claimant, a Greek born subject became a naturalized Bulgarian in 1917 and so Bulgaria claimed him as a Bulgarian subject. But according to the Greek Law of December 31, 1913, he continued to be a Greek citizen even after his naturalization in Bulgaria.[7]

Persons possessing dual nationality, bear in the language of diplomatists, the name *sujets mixtes*, i.e., they are known as mixed subjects. As the two States concerned may in fact claim the dual national as a national of each country, he becomes the object of conflicting claims of allegiance, and such a situation gives rise not infrequently to problems of conflict of nationality laws. The fact that a person possesses, under two municipal legal systems more than one nationality, raises the question as to which nationality is to be ascribed to such a person, and as to what law is to be applied to him. The freedom of the State to decide upon its nationality laws, and the scarcity of positive rules of international law in the matter of nationality, have been largely responsible for such conflicts of nationality laws.[8]

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5. Schwarzenberger : International Law, Vol. I, pp. 365-366. Annual Digest., 1919-22, p. 216.
6. Schwarzenberger : International Law, Vol. I, p. 366. Annual Digest., 1925-26, pp. 273-294.
7. Annual Digest., 1923-24, pp. 243-248.
8. Weis, P. : Nationality and Statelessness in International Law, 1956, p. 172.

CHAPTER II

POSITION OF PERSONS WITH DUAL NATIONALITY

Possession of dual or multiple nationality by a person often gives rise to problems not only in the countries of which he is a national but also in third States. The main controversies which appeared to have arisen in the past were those concerning the questions of dual national's liability to military service in the States which claimed him as its national, and the right of States to extend diplomatic protection to such persons. These problems will be discussed in detail in this note.

Dual national's liability to military service

In time of war, serious conflicts of duties, based on the conflicting claims of allegiance may arise in the case of persons possessing dual or multiple nationality.[1] It may be stated that each State claiming the individual as its national is, under international law, competent to do this although it cannot claim him as against the other State since each of them can justifiably maintain that he is its citizen. During the middle of the 19th century, the United States tried to prevent the imposition of obligations of military service and other obligations of similar character on persons having dual nationality by entering into bilateral agreements with the countries concerned. Most of the agreements concluded with the European and the Latin-American countries included the principle that immigrants from the contracting parties were entitled voluntarily to expatriate themselves upon their naturalization in the United States of America. Further, these treaties provided for the right of a naturalized citizen of the United States to return to his country of origin without being subjected to punishment for failure, prior to naturalization, to respond to calls for military service.[2] Although a State cannot enforce its laws within the territory of another State, it is enabled however, by virtue of the allegiance which a national owes to his State, to prosecute its nationals while they are abroad and to execute judgments against them upon their property within the State, or upon them personally when they return, or the State may prosecute

1. McNair : The Legal Effects of War, p. 26.
2. Hackworth, G. H.: Digest of International Law, Vol. III, pp. 377-417.

its nationals after they return for the acts done abroad. While the exercise of such jurisdiction is perhaps the exception rather than the rule in countries whose legal systems have been based on the English Common Law, an examination of the legislation adopted in various countries reveals that practically all States exercise some penal jurisdiction on the basis of nationality.[3] In the event of armed conflict between the two States, a very serious difficulty may arise for the mixed subject as he could be deemed to have committed high treason against one of the States involved.

Thus one who has a dual nationality may be subject to claims from both the countries, claims which at times may be competing or conflicting. Orfield has succinctly stated the legal nature of such claims in the following terms: "A person with dual nationality may be subjected to taxes by both States of which he is a national. He is not entitled to protection by one of the two States of which he is national while in the territorial jurisidiction of the other. Either State not at war with the other may insist on military service when the person is present within its territory. In time of war if he supports neither belligerent, both may be aggrieved. If he supports one belligerent, the other may be aggrieved. One State may be suspicious of his loyalty to it and subject him to the disabilities of an enemy alien, including sequestration of his property, while the other holds his conduct treasonable."[4]

In the case of *Tomoya Kawakita v. United States* (1951), the United States Court of Appeals, 9th Circuit, convicted of treason and sentenced to death an American national of Japanese parentage. The accused was considered to be in possession of both American and Japanese nationalities. The treasonable activities consisted in committing many brutalities on American and Allied prisoners of war employed in a nickel mining establishment in Japan during the Second World War in order to increase the output of ore. It was apparent from the judgment that the nature of the treasonable

3. 29, American Journal of International Law, 1935, Supplement, Part II, pp. 519-539.
Briggs, H.W. : The Law of Nations, 2nd ed., 1952, p. 523.
4. Orfield, L.B. and Re, E.D.: Cases and Materials on International Law 1955, pp. 336-337.
Orfield, L.B. : The Legal Effects of Dual Nationality, Vol. 17, George Washington Law Review, pp. 427-429.

activity was a decisive factor in the situation. It was mainly for that reason that the Supreme Court affirmed the conviction in 1952. In this case the difficult nature of the obligations of American citizenship for one who possessed dual citizenship was vividly described by Mr. Justice Douglas in the course of delivering the opinion of the Supreme Court. He said: "For one who has a dual status, the obligations of American citizenship may at times be difficult to discharge. An American who has a dual nationality may find himself in a foreign country when it wages war on us. The very fact that he must make a livelihood there may indirectly help the enemy nation. In these days of total war manpower becomes critical and everyone who can be placed in a productive position increases the strength of the enemy to wage war. Of course, a person caught in that predicament can resolve the conflict of duty by openly electing one nationality or the other and becoming either an alien enemy of the country where he resides or a national of it alone. Yet, so far as the existing law of this country is concerned, he need not make that choice but can continue his dual citizenship. It has been stated in an administrative ruling of the State Department that a person with a dual citizenship who lives abroad in the other country claiming him as a national owes an allegiance to it which is paramount to the allegiance he owes the United States. That is a far cry from a ruling that a citizen in that position owes no allegiance to the United States. Of course, an American citizen who is also a Japanese national living in Japan has obligations to Japan necessitated by his residence there. There might conceivably be cases where the mere nonperformance of the acts complained of would be a breach of Japanese law. He may have employment which requires him to perform certain acts. The compulsion may come from the fact that he is drafted for the job or that his conduct is demanded by the laws of Japan. He may be coerced by his employer or supervisor or by the force of circumstances to do things which he has no desire or heart to do....Such acts—if done voluntarily and willfully—might be treasonable. But if done under the compulsion of the job or the law or some other influence, those acts would not rise to the gravity of that offense...'but (if he) so acted only because performance of the duties of his employment required him to do so or because of other coercion or compulsion.' In short, petitioner was held accountable by the

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

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

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

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

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

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

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

Personal injury to and property claims by dual nationals

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dual nationals and the third states

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

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

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

It may be noted that the Convention on Certain Questions Relating to the Conflict of Nationality Laws signed at the Hague on April 12, 1930 deals with this aspect of the matter. Article 5 of the Convention provides that, "Within a third State, a person having more than one nationality shall be treated as if he had only one. Without prejudice to the application of its law in matters of personal status and of any conventions in force, a third State shall, of the nationalities which any such person possesses, recognise exclusively in its territory either the nationality of the country in which he is habitually and principally resident, or the nationality of the country with which in the circumstances he appears to be in fact most closely connected."[35]

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

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

CHAPTER III

PRACTICE OF STATES RELATING TO DUAL NATIONALS

United States of America

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

United Kingdom

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MEMBER COUNTRIES OF THE ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE

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

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

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

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

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

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

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

CHAPTER IV

THE VIEWS OF WRITERS

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

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

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

CHAPTER V

COMMENTS ON TREATIES AND CONVENTIONS ON NATIONALITY

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

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

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

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

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

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

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

THE HAGUE CODIFICATION CONFERENCE OF 1930 AND DUAL NATIONALITY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Appraisal of the Work of The Hague Codification Conference

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

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

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

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

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

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

CHAPTER VI

RECENT DEVELOPMENTS AND THEIR TRENDS

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

Council of Europe

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

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

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

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

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

League of Arab States

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE UNITED NATIONS COMMISSION ON THE STATUS OF WOMEN

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE INTERNATIONAL LAW COMMISSION OF THE UNITED NATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Essential Features

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

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

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

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

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

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

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

accession, reservation, entry into force, denunciation, registration, etc.[35]

Present Statelessness

During the fifth Session, the International Law Commission requested the Special Rapporteur (Mr. R. Córdova), to study the problem of present statelessness, and to prepare a report on the subject for the consideration of the Commission at its sixth Session.

The relevant Report entitled "Third Report on the Elimination or Reduction of Statelessness" (U.N. Doc., A/CN.4/81), contains four draft multilateral conventions, namely, a Protocol for the Elimination of Present Statelessness attached to the Draft Convention on the Elimination of Future Statelessness; a Protocol for the Reduction of Present Statelessness attached to the Draft Convention on the Reduction of Future Statelessness; an Alternative Convention on the Elimination of Present Statelessness and an Alternative Convention on the Reduction of Present Statelessness. In formulating its porposals relating to present statelessness, the Commission considered that present statelessness could only be reduced if stateless persons acquired a nationality which should normally be that of the country of residence[36] As the acquisition of nationality is in all countries governed by certain statutory provisions, the Commission was of the opinion that for the purpose of improving the condition of statelessness, it would be desirable that the stateless person should be granted the special status of "protected person" in his country of residence during the period preceding the acquisition of a nationality. Stateless persons

35. It may be observed that the most common observation made by governments was that some of the provisions of the Draft Conventions conflicted with their laws. The Commission took the view that if the governments adopted the principle of the elimination, or at least the reduction, of statelessness in the future, they should think of introducing the necessary amendments in their municipal laws. Further, several governments in their comments stated that they were in favour of only the Draft Convention on the Reduction of Future Statelessness, some States were not in favour of either convention, and some other States stated that they had no objection to the principles underlying both the conventions. The International Law Commission took the view that it should, in the light of the comments, submit both the draft conventions to the General Assembly of the United Nations, which could consider the question whether preference should be given to the Draft Convention on the Elimination of Future Statelessness, or to the Draft Convention on the Reduction of Future Statelessness.
49, A.J.IL., 1955, Supplement, pp. 3-4.

36. 49, A.J.I.L., 1955, Supplement, p. 13.

possessing this status would be permitted to enjoy all civil rights except political rights on par with the nationals, and would also be entitled to the right of diplomatic protection of the government of the country of residence. The protecting State, for its part, would have the right to impose on such "protected persons" the same obligations as it normally would impose on its nationals. Further, the Special Rapporteur proposed that *de facto* stateless persons should be assimilated to *de jure* stateless persons as regards the right to the status of "protected persons" and the right to naturalization, provided that they renounced the ineffective nationality they possessed. This proposal was not accepted by the Commission. In view of the immense difficulties of a non-legal character besetting the problem of present statelessness, the Commission considered that the proposals adopted, though worded in the form of articles, should merely be regarded as suggestions of the Commission which the governments might take into account if they wished to seek a solution for the problem of present statelessness. The "suggestions" adopted by the Commission contain seven articles. According to Article VI "A person to whom the status of 'protected person' is granted by a State shall not lose the benefit of the said status unless:

(a) He acquires the nationality of that or of another State;

(b) Another State Party hereto grants him the status of 'protected person' in conformity with Article I;

(c) He resides abroad for five years without the authorisation of the protecting State."

Under Paragraph (1) of Article I, "A State in whose territory a stateless person is resident shall, on his application, grant him the legal status of 'protected person'."[37]

37. 49, A.J.I.L., 1955, Supplement, pp. 15-16.

DRAFTS OF AGREEMENT ON DUAL OR MULTIPLE NATIONALITY PRESENTED BY THE DELEGATION OF THE UNITED ARAB REPUBLIC AT THE SECOND, FOURTH AND FIFTH SESSIONS OF THE COMMITTEE

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

CHAPTER I

DEFINITIONS

Article 1

(a) This Agreement shall be called the Asian-African Agreement on Multiple Nationality.

(b) Majority age is 21 years (Gregorian Calendar).

(c) Marriage is the true marriage in accordance with the matrimonial laws.

(d) "Active Nationality" is the nationality actually exercised by the person and which circumstances show that he prefers.

CHAPTER II

NATIONALITY OF WIVES

Article 2

If a woman who is a national of one of the contracting parties marries a national of another contracting party, this marriage shall have no effect on the nationality of the two. Nevertheless, each of them may opt for the nationality of the other. If he or she acquires such nationality, he or she loses his or her original nationality on the date of marriage by the force of law. The application for the new nationality should be filed to the competent authorities in the country concerned.

Article 3

At the termination of marriage each of the spouses has the right to recover his or her nationality before marriage. He or she files an application to this effect on condition that he or she should live in the country of origin. In this case he or she loses his or her nationality acquired after marriage by the force of law.

CHAPTER III

CHANGE OF NATIONALITY THROUGH NATURALISATION

Article 4

The application by a national of any of the contracting countries for naturalisation as a national of any of the other countries should not be accepted except with the approval of his government. He loses his previous nationality on his acquisition of the new nationality.

CHAPTER IV

NATIONALITY OF MINORS

Article 5

A minor follows his father's nationality. Nevertheless, he has the right within one year from attaining the majority age to restore original nationality if his father acquired another nationality after his birth.

Article 6

Any person born to a national of any of the contracting States in another State has the right to opt for the nationality of this State within one year from the date of his attaining the majority age on condition that the two countries should agree to this option. In case of acquiring this nationality he should lose his former nationality.

Article 7

In case of true adoption in accordance with the two laws of the adopting and adopted persons, the minor shall follow the nationality of the person who adopted him.

CHAPTER V

TIME RULES

Article 8

Any one having more than one nationality of the contracting parties shall opt for one of them within two years from the date of the acceptance of this Agreement. If the two years passed without his taking the option, he should be considered to have opted for the more recent nationality.

If he acquired more than one nationality at the same time, he would be considered to have chosen his father's nationality on *jus sanguinis*. If the father was unknown or was of unknown nationality, then he should be considered to have the nationality which circumstances show that he prefers to any other.

When this Treaty comes into force, the minor may within the year following the attainment of his majority age opt for nationality. But before this, he shall be considered to have opted the nationality chosen by his father. If the son is illegitimate or if his father's nationality is unknown or if his father dies before his taking the option, he should be considered as having chosen the nationality chosen by his mother. This nationality shall also be approved, if he did not opt within the year referred to.

CHAPTER VI

GENERAL AND FINAL PROVISIONS

Article 9

Every decision taken by the government of any of the contracting parties conferring its nationality to a national of any of these countries should be communicated within six months to the government concerned. The person should be considered to have lost the first nationality from the moment he acquired the new nationality.

Article 10

This Agreement shall be ratified as soon as possible by the contracting countries in accordance with their constitutional

systems. The ratification instruments shall be deposited with . . . which shall draw up a procès-verbal concerning the ratification instruments of each country and communicate it to the other contracting parties.

This Agreement shall come into force two months after the depositing of the ratification instruments of three countries and shall apply to each of the other countries two months after depositing its ratification instruments or its adhesion.

Article 11

Other African and Asian countries which have not signed this Agreement may adhere to it upon a notification from them to . . ., which shall inform the other signatory countries of such adhesion.

Article 12

Every country which is bound by the provisions of this Agreement may withdraw from it one year after its notification of withdrawal to . . ., which shall send this notification to the other countries bound by the Agreement.

Article 13

Any difference over the interpretation or implementation of this Agreement shall be settled by negotiations between the countries concerned.

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

I NATIONALITY OF WIVES

Article 1

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, the wife may notify the competent authorities of the State whose nationality her husband holds, of her wish to acquire that nationality—and if a period of one year passes from the date of notification, without any objection from the above-mentioned authorities, the wife shall acquire her husband's nationality and shall *ipso facto* lose the nationality she had at the date of marriage.

Article 2

At the termination of marriage, the wife who had acquired her husband's nationality according to the preceding Article, may recover the nationality she had at the time of marriage or at the time when her husband acquired another nationality as the case may be, if she notifies the competent authorities of the State whose nationality she wishes to recover, of that wish and the said authorities do not object within a year of the date of notification provided she had taken permanent residence in that state since the termination of marriage, unless these authorities exempt her from that condition.

II NATIONALITY OF MINORS

Article 3

A minor follows his father's nationality. Nevertheless, if after the minor's birth, his father acquires another nationality, the

minor may recover the nationality his father had at the time of birth if, within one year of attaining the age of majority, he notifies the competent authorities of the State, whose nationality he wishes to recover, of that wish. In this case he shall *ipso facto* lose the other nationality.

Article 4

Every person born to a national of one of the contracting States in another State and had his permanent residence in it, has the right to notify the competent authorities of both States of his wish to acquire the nationality of the State of birth, within one year of the date of his attaining the age of majority. If the authorities of either of the States do not object within one year of the date of notification, he shall acquire the nationality of the State in which he was born and shall *ipso facto* lose his original nationality.

Article 5

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

Article 6

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.

III GENERAL AND TEMPORARY PROVISIONS

Article 7

Every person holding, at the date of enforcement of this Agreement, more than one nationality, shall have the right to choose one of them within two years of that date. If this period elapses without choosing, he shall be considered to have chosen his most recent nationality. If those nationalities were acquired at the same time, he shall be considered to have chosen the nationality of the State in which he has his habitual place of residence. He shall *ipso facto* lose the other nationality.

Article 8

If a national of any of the contracting States acquires the nationality of another contracting State, the State whose nationality is acquired should notify the other of this acquirement within six months.

Article 9

All differences concerning the interpretation of this Agreement shall be settled through diplomatic channels.

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]

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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 territroy, 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 Naturalisa-

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 Citizenship 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 concerend, 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 porsons 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 Conflct 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 difinition 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.

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.

Comments of the Government of Iraq

Stressing on the importance of the subject the Iraqi Special Committee which studied the Report of the Secretariat and the Draft Convention presented by the U.A.R. Delegation on Dual Nationality have indicated their preference to resort to bilateral agreements rather than multilateral conventions in solving the matters concerning this vital question.

THE COMMITTEE MADE THE FOLLOWING OBSERVATIONS ON THE DRAFT AGREEMENT* PRESENTED BY THE U.A.R. DELEGATION:—

Article 1:

(i) To delete Clause (a) as the title is un-necessarily stated in the text of the Agreement.

(ii) Age of majority in Iraq is 18 years according to the prevailing laws, therefore the provisions of Clause (b) could not be accepted. It is suggested that the majority age may be left to be determined in accordance with the laws prevailing in the contracting countries.

(iii) Clause (c) may be changed to read as:

(c) Marriage is the true marriage in accordance with the matrimonial laws where the marriage has been concluded (*lex loci celebrationis*).

Article 2:

May be phrased to read as:

"If a woman who is a national of one of the contracting parties married a national of another countracting party, this marriage shall have no effect on the nationality of the either of the two.

Nevertheless, the wife may opt for the nationality of her husband.

If she acquired such nationality she loses her original nationality on the date of acquiring the new nationality. The application for the new nationality should be filed with the competent authorities in the country concerned."

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

Article 3:

Pronouns referring to the husband to be omitted from the first two sentences. Last sentence to be replaced by the following:

"In case of recovering her nationality before marriage she loses her nationality acquired after marriage."

Article 4:

To be deleted.

Article 5:

To remain as it is.

Article 6:

To delete part of the first sentence concerning the approval of the government of the person who opt for the nationality which reads as:

"on condition that the two countries should agree to this option."

Article 7:

The Iraqi Delegation reserves the right to Article 7 as its application is not in conformance with the Iraqi Laws.

Article 8:

The following paragraph may be added:

"If his mother's nationality is unknown or if his mother had died before taking the option, or his mother is unknown, he should be considered as having the nationality of his birth."

Article 9:

To remain as it is.

Article 10:

To be amended on the basis that it represents bilateral agreements and reads as follows:

"This Agreement shall be ratified as soon as possible by the contracting parties in accordance with their constitutional systems. The instruments of ratification shall be exchanged and this Agreement shall come into force from the date of exchange of the instruments of ratification."

Article 11:

To be deleted.

Article 12:

To be amended on the basis that it represents bilateral agreements and reads as follows:

"The Agreement shall remain in force until one of the contracting parties gives the other one year notice of its intention to suspend its operation."

Article 13:

To remain as it is.

Comments of the Government of Japan

A. General Comments

The Japanese Government understands that this Agreement* is intended to prevent the occurrence of, or to reduce the cases of, multiple nationality in future. If this is the aim of the present Agreement, it is advisable to re-arrange the structure of this Draft with this aim in mind.

B. Comments on Individual Articles

Article 1:

Paragraph (d) should be deleted since the term is not used in any other provision in the present Agreement.

Article 2:

The option for a nationality provided for in the second sentence of this Article ought to be made subject to the nationality law of the country of which nationality has been opted for.

Article 3:

The recovery of the nationality ought to be subject to the nationality law of the country concerned.

Article 4:

The approval of the government of the country to which he belongs should not be made a condition for the acceptance of an application for naturalisation by another country.

Article 5:

There is a need for some provision as to a minor whose father is unknown or stateless. In such cases a minor should follow his mother's nationality.

Also, even when a minor's father (or mother) acquires another nationality after his birth, the application should be made by the minor (directly or through his legal representative) for the nationality of his father (or mother), instead of the nationality automatically given to the minor.

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

Article 6:

In acquiring the nationality of the country of birth, the approval of the country to which the person formerly belongs should not be made a condition.

Article 7:

The phrase "in accordance with the two laws of the adopting and adopted persons" may well be deleted.

Also, instead of automatically following the nationality of the persons who adopted him, a minor should apply, directly or through his legal representative, for the new nationality of the persons who adopted him.

Article 8:

First paragraph

It is preferable not to limit the period for making the option.

Third paragraph

It is desirable to redraft the second and third sentences so that it may be clearly understood that a father (or mother) may opt for a nationality on behalf of his (or her) son and that the father (or mother) does so as the minor's legal representative.

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*Memorandum of the Government of the United Arab Republic**

The U.A.R. Delegation had presented to the Committee during its Second Session held at Cairo, a Memorandum on Multiple Nationality and a Draft Agreement on the subject.

The Delegation explained, in that Memorandum, the disadvantages of multiple nationality and the impossibility of its elimination owing to the social, economic and political contradictions in the interests of the different States, and the differences in the principles of conflict of laws and public policy.

The Draft Agreement attached to the above-mentioned Memorandum included some rules aiming to eliminate multiple nationality and its complications.

The Delegation, considering the different points of view expressed at the Committee's Third Session held at Colombo as well as the Comments expressed by the Iraqi Government on the said Draft, submits for consideration another Draft. The Delegation is of the opinion that the conclusion of bilateral or multilateral agreements or treaties should be left to the discretion of each of the member States, and the complications which may arise regarding the treatment of persons holding more than one nationality, the determination of their rights and obligtions towards each of the States whose nationality they hold, as the right to diplomatic protection and the military service obligations and so forth, should be settled through diplomatic channels or by special agreements.

Finally, the Delegation wishes to point out that the complications arising from multiple nationality are rare and scarcely exist in the United Arab Republic.

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* Presented by the Delegation of the United Arab Republic at the Fourth Session of the Committee.

OTHER DECISIONS OF THE COMMITTEE

LEGALITY OF NUCLEAR TESTS

At its Third Session held in Colombo in January, 1960 the Committee decided to take up for consideration the question of Legality of Nuclear Tests, a subject which had been suggested by the Government of India under Article 3(c) of the Statutes of the Committee as being a matter of common concern to all the participating countries in the Committee. The Committee decided to take up this subject especially in view of the fact that this matter had not been considered by any other body from the legal point of view nor had it been adequately dealt with by any of the authorities on international law. The Committee also took note of the fact that nuclear tests had been carried out in various parts of the Asian-African continents or in areas adjacent thereto, and as such the problem was of great concern to the Asian-African countries. The Committee directed its Secretariat to collect background material and information on the subject including scientific data as may be available and to place the same before the Committee at its Fourth Session.

At the Fourth Session held in Tokyo in February, 1961 the Committee considered the subject on the basis of a report prepared by the Secretariat. The Delegates of the United Arab Republic, India, Ceylon, Indonesia, Iraq, Japan, Burma and Pakistan stated their points of view on the question of legality of nuclear tests, indicating at the same time the scope of the subject and the basic principles on which further material had to be collected. The Committee also heard statements from the Observer for Ghana and Mr. F. V. Garcia Amador, Member of the International Law Commission, in his personal capacity as a recognised expert. Indicating the scope of the subject which the Committee had to consider, the Member for India pointed out that the Committee was not concerned with the controversial and debatable question of the legality of the use of nuclear weapons in time of war, but was concerned with the question of legality of nuclear tests in time of peace. The question for consideration in his view was: Are nuclear tests conducted by a country within its territory or elsewhere, which are likely to cause harm to inhabitants of other countries, permissible according to international law? The Committee, in his view, was concerned with considering whether

any known or accepted principles of international law could be applied to the situation arising out of these tests. If the existing principles were inapplicable or inadequate, the Committee would have to consider whether international law, which had in the past met new situations by evolving new principles, could not in the present case similarly attempt to counter the grave threat to which States were exposed by these tests by formulating a suitable doctrine with new principles to meet the new situation. The representatives of other participating countries concurred in this approach to the problem and the Committee decided that it would confine itself to an examination of the problem of legality of nuclear tests in time of peace. The Committee further decided that the Secretariat of the Committee should continue its study of this subject and prepare a report for the consideration of the Committee at its Fifth Session.

At the Fifth Session held in Rangoon in January, 1962 the subject was fully discussed by the Committee on the basis of the materials on the scientific and legal aspects of nuclear tests collected by the Secretariat of the Committee. The Governments of Japan and the United Arab Republic submitted written Memoranda on the subject. The Committee heard the view point and expressions of opinion on the various topics on this subject from the Delegations of Burma, Ceylon, India, Indonesia, Japan, Pakistan, Thailand and the United Arab Repubic. The Committee also heard statements from the Observers for Ghana, Laos and the Philippines, and the representative of the League of Arab States. Dr. Radhabinod Pal, President of the International Law Commission, in his personal capacity as an expert and Dr. Oscar Schachter in his personal capacity also made a few remarks.

The Committee considered the question on the basis of the scientific information on the effects of such tests contained in the Reports of the United Nations Scientific Committee on the "Effects of Atomic Radiation", the Reports of the British Medical Research Council on the "Hazards to Man of Nuclear and Allied Radiations" and the Reports of Japanese Scientists on the "Effects and Influences of Nuclear Bomb Test Explosions." Indicating the scope of the discussion, the President of the Committee, Mr. M. C. Setalvad, again pointed out that the Committee was

not concerned with the question of the use of nuclear weapons in time of war, but only with the question of the legality of nuclear tests in time of peace. The President drew the attention of the Committee to the topics for discussion prepared by the Secretariat and the Committee discussed the subject on the basis of the following questions:—

I. (a) Is a State responsible or ought to be so for direct damages caused to the inhabitants of the area where the tests are carried out due to deaths of human beings and destruction of their property resulting from explosions of atomic devices under the law of tort or principles analogous thereto?

(b) If such damage is caused to a foreign national resident or sojourning in its territory or to one who may be accidentally passing through the danger area, would the State which is carrying out the tests be liable to pay reparation to the injured alien's home State under the principles of State Responsibility in international Law?

(c) If such damage is caused to a foreign national whilst resident or sojourning in a neighbouring State, would the State carrying out the test be held liable to pay reparation to the injured person's home State under principles analogous to that of State Responsibility in international law?

II. (a) Can it be said that a State which carries out atomic tests in its own territory is endangering the safety and well-being of its neighbouring States and their inhabitants due to possibilities of radioactive fall-out; and if so, whether the use by a State of its own territory for such purposes is not contrary to the principles of international law?

(b) Can it be said that the use by a State of its own territory for the purpose of carrying out nuclear tests by explosion of atomic devices amounts to an abuse of its rights in respect of use of its State territory?

III. (a) If it is established that explosion of nuclear devices results in pollution of the air with radioactive substance and that such contaminated air is injurious to the health of the peoples of the world, would the State carrying out the tests be said to be

responsible for an international tort in accordance with the principles laid down in the *Trail Smelter Arbitration case* ?

(b) In an action based on commission of an international tort, would it be necessary for the claimant State to prove actual damage, or is the general scientific and medical evidence on the effects of nuclear explosions sufficient to maintain the action?

(c) Even if the harmful effect resulting from contamination of the air can be confined within the territories of the particular State, can it be said that the State has violated the human rights of the citizens and aliens living in its territory, and if so, whether the State is responsible for the harm caused to the aliens under the principles of international law relating to State Responsibility?

IV. Is the use of atomic weapons in a war illegal, and if so, can the tests carried out for the purpose of manufacture and perfection of such weapons be said to be illegal by itself without proof of any damage? Can the question of stoppage of such tests be said to be a matter of international concern?

V. Would the payment of damages by a State for injuries suffered due to nuclear tests be regarded as sufficient or should an injunction for stoppage of such tests be necessary?

VI. Does the interference with the freedom of the air or the sea navigation resulting from declaration of danger zones over the areas where the tests may be carried out amount to violation of the principles of international law?

VII. Is the destruction of living resources of the sea which result from nuclear tests on islands or areas of the high seas to be regarded as violative of the principles of international law?

VIII. Is it lawful for an administering authority to use territories, which it holds on trust from the United Nations, for purposes of holding nuclear tests?

The Delegates expressed their views on the above questions and on the basis of these discussions, the Secretary of the Committee prepared and presented a Draft Report on the subject for the consideration of the Committee. After a general discussion, the Committee decided that the Secretariat should submit the Draft

Report on Legality of Nuclear Tests to the Governments of the participating countries for their comments and that the subject should be placed before the next session of the Committee as a priority item on the agenda.

ARBITRAL PROCEDURE

At its Second Session held in Cairo in October, 1958 the Committee decided to take up for consideration the subject of Arbitral Procedure as a matter arising out of the work done by the International Law Commission. The International Law Commission at its Tenth Session had finalised its recommendations on the subject and had drawn up Model Rules on Arbitral Procedure. The Committee directed its Secretariat to prepare a questionnaire on the subject to serve as a basis for discussion at the next session of the Committee.

At the Third Session held in Colombo in January 1960, the Committee generally discussed the subject on the basis of the questionnaire prepared by the Secretariat. The Delegates of India and Indonesia expressed the view that the Model Rules prepared by the International Law Commission went far beyond the established concepts of arbitration and approached that of a process of Court. The Delegates of Burma, Iraq and Pakistan reserved their position on this subject. The Delegates of Ceylon, India, Indonesia and the United Arab Republic were of the opinion that the consent of the parties underlies the formation of an arbitral agreement as also its enforcement and were generally opposed to the acceptance of the concept of judicial arbitration as formulated by the International Law Commission. If there was any disagreement, for instance, regarding the existence of a dispute or its arbitrability, these Delegates took the view that such a dispute should be settled by the consent of parties and not by empowering any tribunal like the International Court of Justice or the Permanent Court of Arbitration to decide the question. The Delegate of Japan, however, took a different view. He was in favour of the omission only of the Permanent Court of Arbitration from the tribunals before which the question of arbitrability could be taken up. The Delegates of India and Ceylon were of the view that such a dispute should not be referred to the arbitral tribunal even if it had already been constituted, but the Delegates of Japan and the United Arab Republic were of the view that it should be referred to the arbitral tribunal if it had already been constituted. With regard to the constitution of the arbitral tribunal, the Delegates of Ceylon and the United Arab Republic were of the

opinion that an arbitral tribunal could be constituted not merely at the request of one of the parties but after the parties agreed that an arbitrable dispute had arisen. The Delegates of Ceylon, India, Indonesia and the United Arab Republic appeared to be of the view that in the absence of agreement, the International Court of Justice should not be brought in to make appointments of arbitrators. The Delegate of Japan saw no objection to the appointment of an arbitrator by the President of the International Court of Justice in the absence of agreement between the parties. With regard to the question of the immutability of the tribunal, the Delegates of the United Arab Republic and Japan were of the opinion that a party may replace an arbitrator appointed by it until the tribunal has begun its proceedings, but the arbitrator should not be replaced during the proceedings before the tribunal except by mutual agreement. The Delegate of Ceylon, however, put forward the view that either party to an agreement should have the right to change the arbitrator appointed by it at any stage of the proceedings. The Delegates of India and the United Arab Republic were of the opinion that arbitrators may be changed on account of a disqualification at the instance of any party at any stage of the proceedings, but not by any decision of the International Court of Justice. With regard to the *compromis*, the Delegates of Ceylon, India and the United Arab Republic were agreed that the parties having recourse to arbitration should conclude a *compromis* which would include such provisions as are deemed desirable by the parties. The Delegate of the United Arab Republic was further of the view that if the parties failed to reach agreement on the contents of the *compromis* or failed to conclude a *compromis*, the arbitral tribunal should draw up the *compromis* after it was constituted. The Delegates of Ceylon and India, however, adhered to their earlier view that if the parties failed to agree, such a dispute should not be referred for decision even to the arbitral tribunal. All the three Delegates were of the view that such a dispute should not be referred to the International Court of Justice. With regard to the powers of the tribunal, the Delegate of the United Arab Republic was of the opinion that the arbitral tribunal was the judge of its own competence and possessed the widest powers to interpret the *compromis*. The views of the Delegate of Ceylon were similar with the exception that he was of the view that the arbitral

tribunal was not free to decide on counter-claims or additional or incidental claims arising out of the subject-matter. The Delegate of India answered these questions in the negative and was opposed to the arbitral tribunal deciding a case *ex parte*. With regard to the award, the Delegate of the United Arab Republic was of the view that the time to give the award could be extended not only by the agreement of the parties, but also by the court when it deemed such extension necessary to reach a just decision. The Delegates of Ceylon and India thought that the time could not be extended except by agreement of the parties. On the question of the interpretation of the award, the Delegates of Ceylon, India and the United Arab Republic were agreed that a dispute should not be referred to the International Court of Justice without the agreement of the parties. On the question of the annulment of the award by the International Court of Justice, the Delegate of the United Arab Republic was prepared to recognise the legal right of the parties to ask for such annulment on important grounds, but the Delegates of Ceylon and India were averse to referring such a matter to the International Court of Justice. All the three Delegates were agreed that such a dispute should not be referred to the International Court of Justice except by consent of the parties. With regard to the revision of the award, the Delegate of the United Arab Republic thought that the parties should have the right to ask for the revision of the award in the case of discovery of new material facts, while the Delegates of Ceylon and India thought that this could be done only with the agreement of the parties. All the three Delegates were agreed that an application, if it could be made, for such a revision should be made to the arbitral tribunal, but not to the International Court of Justice except by consent of the parties. The Delegates of Burma, Iraq, Japan and Pakistan reserved their position on these matters. A Preliminary Report on the subject was drawn up by a Sub-Committee, but as all the Delegates had not as yet expressed their views, the Committee decided that the subject should be taken up for further consideration at its next session.

The Committee generally discussed the subject at its Fourth Session held in Tokyo in February 1961. Since all the Delegations had not as yet furnished their answers to the questionnaire prepared by the Secretariat, the Committee postponed consideration

of the subject until its Fifth Session and directed the Secretariat to prepare a general report on the subject summarising the views of the Delegations expressed at the Colombo Session or communicated later in their answers to the questionnaire.

At the Fifth Session held in Rangoon in January, 1962 the subject was fully considered by the Committee on the basis of a report prepared by the Secretariat. The Delegate of Pakistan made a general statement on the subject and gave the answers to the questionnaire prepared by the Secretariat. The Delegate of Pakistan was of the opinion that the Model Rules on Arbitral Procedure, prepared by the International Law Commission, constituted a remarkable technical work of drafting and were an important contribution to the cause of peaceful settlement of international disputes. In his opinion, the Model Rules would be of great value to governments in the drafting of arbitral agreements. He stated that he did not agree with the objections which had been raised against the Model Rules on the ground that they did not respect the sovereignty of States. The rules were intended to be binding on the States which had agreed to submit a dispute to arbitration and, in his view, the sovereignty of States may have to be limited to the extent of the new development of procedures for the binding settlement of international disputes. He emphasised the importance of peaceful settlement of international disputes through the machinery of the International Court of Justice and through the measures of international arbitration, and stated that his Government supported the Commission's Draft and hoped that States might find it possible to use the Model Rules as a guide. In his opinion, the concept of voluntary arbitration had not led to very useful results nor had it solved the vital conflicts that break the relationship between nations. He thought, therefore, that in the interests of international understanding and peace, some sort of procedure should be devised to avoid the possibility of frustration of arbitral agreements. In his view, the principle of non-frustration, as formulated by the Commission, had great merits. He stated that his Government were in favour of considering the recommendations of International Law Commission as a useful guide and said that, broadly speaking, his Delegation was generally in support of the Model Rules on Arbitral Procedure as recommended by the International Law Commission. After

a general discussion on the subject, it was found that there was divergence of views among the Delegations of the participating countries, some accepting the principle of judicial arbitration as recommended by the International Law Commission, whilst others were in favour of the traditional procedure of arbitration and were of the view that the Draft Code prepared by the Commission went far beyond the scope of arbitral procedure and contained substantive provisions contrary to the notion of arbitration as conceived in existing international law. In view of this position, it was felt that no useful purpose would be served by the Committee attempting to draw up some model rules of its own on this subject and there was general agreement with the suggestion of the Delegation of Japan that the subject might be removed from the agenda of future sessions. The Committee finally decided that a report should be drawn up incorporating the views expressed by the various Delegations and that the matter should be removed from the agenda of the future sessions of the Committee.

REPORT OF THE INTERNATIONAL LAW COMMISSION

THIRTEENTH SESSION

During its Thirteenth Session, held in Geneva from 1st May to 7th July 1961, the International Law Commission had considered the subject of Consular Intercourse and Immunities and had adopted Draft Articles on this subject. A report on the work done by the International Law Commission, prepared by the Secretariat of the Committee, was placed before the Committee at its Rangoon Session in accordance with Article 3(a) of its Statutes. The Committee was represented at the Thirteenth Session of the Commission by an Observer, H. E. Mr. Hafez Sabek, Member for the United Arab Republic. H.E. Mr. Hafez Sabek's Report on the work done by the Commission at this Session was placed before the Committee and the Delegates expressed their appreciation of the very valuable services rendered by the distinguished Member for the U.A.R. in representing this Committee at the Thirteenth Session of the Commission. After a general discussion on the subject of Consular Intercourse and Immunities, the Committee decided to request the Governments of the participating countries to transmit their comments on the Draft Articles, prepared by the Commission, to the Secretariat of the Committee as soon as possible. It was further decided that the Secretariat should prepare a report on the basis of these comments which should be considered as a priority item at the next session of the Committee. The Committee took note of the decision of the United Nations to convene a conference of Plenipotentiaries on this subject and decided to be represented at this conference by an Observer.
