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Nationality Including Statelessness - Survey of the Problem of Multiple Nationality, by the Secretariat

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lists. Thus the person concerned will never be considered as a deserter by the State whose nationality he no longer possesses; he will therefore always be exempt of prosecution and conviction by these States on grounds of desertion.

Basis 6

Identical with Basis 7 of Part I.

PART IV. BASES OF DISCUSSION CONCERNING THE REDUCTION OF PRESENT MULTIPLE NATIONALITY

Basis 1

If, by application of the nationality laws of the Parties, a person has 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.

Basis 2

To determine the effective nationality account will be taken of the following circumstances, either jointly or separately:

(a) Residence in the territory of one of the States of which the individual concerned is a national, for a period of not less than fifteen years;

(b) Knowledge of the language of the State of residence;

(c) Ownership of immovable property in the State of residence.

Comment

It will be noted that Basis 2, in requiring the simultaneous fulfilment of some of the requirements enumerated in Basis 3 of Part III, make the application of the principle expressed in Basis 1, which is identical with Basis 2 of Part III, much more difficult. Basis 2 will therefore facilitate reduction of multiple nationality but would not be conducive to its total elimination.

Basis 3

1. On reaching the age of eighteen every person shall have the right to opt for one of the nationalities of which he was deprived by application of the rules contained in Basis 1. In such case he will be deprived of the nationality which he acquired by virtue of these rules. His decision is final.

2. If the person fails to opt for one of the nationalities concerned within a period of one year after reaching the age of eighteen, his nationality will continue to be his effective nationality as determined in accordance with the rules contained in Bases 1 and 2.

Basis 4

The State for whose nationality a person has opted in pursuance of the provisions of Basis 3, will communicate this fact to the other State or States concerned, which will take action to implement the severance of allegiance following from the exercise of this option.

Basis 5

Identical with Basis 7 of Part I.

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Survey of the problem of multiple nationality prepared by the Secretariat

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Introduction

1. ORIGIN OF THIS STUDY AND ITS LIMITS [1]

1. During its first session in 1949, the International Law Commission had before it a memorandum [2] submitted by the Secretary-General which contained *inter alia* the following remarks concerning the problem of dual or multiple nationality:

> "76 ... While the Convention [adopted by the Hague Codification Conference 1930] embodied agreement on such questions as the general principles governing conferment of nationality and the diplomatic protection of persons of dual nationality, no agreement proved possible on important questions of substance such as the removal of the principal causes of double nationality... No serious attempt was made to investigate the possibility of a single criterion for acquisition of nationality by birth. While the Convention recognized the right of persons of dual nationality to renounce one of them, it made such renunciation conditional upon the authorization of the State whose nationality was being surrendered... Of the protocols adopted by the Convention—they all referred to matters of detail—two have entered into force.
>
> "77. It may thus be said that while revealing the potentialities of the international regulation of the subject, the work of the Hague Codification Conference on the question of nationality touched only the fringes of the problem. In an era of economic nationalism and isolation, when freedom of movement across the frontiers tends to become nominal, the urgency of an international regulation of conflicts of nationality laws and statelessness is less apparent... Moreover in an international system in which the fundamental rights and freedoms of the individual are bound to gain increasingly effective recognition, the law of nationality is likely to become once more the subject of remedial codification..." [3]

2. The Commission discussed the problem of nationality in some detail and decided to select "nationality, including statelessness" as a topic for codification without, however, including it in the list of topics to which it gave priority.[4]

3. During its second session the Secretary-General drew the Commission's attention to resolution 304 D (XI) adopted by the Economic and Social Council on 17 July 1950 in pursuance of a report by the Commission on the Status of Women at its fourth session. The latter Commission had suggested that the Economic and Social Council take appropriate measures to ensure the drafting of a Convention on nationality of married women embodying the following principles:

> "(i) There shall be no distinction based on sex as regards nationality, in legislation or in practice.
>
> "(ii) Neither marriage nor its dissolution shall affect the nationality of either spouse. Nothing in such a convention shall preclude the parties to it from making provisions for the voluntary naturalization of aliens married to their nationals." [5]

Consideration was to be given to "the problem of the transmission of nationality to children from either the father or the mother on a basis of equality".[5]

4. When discussing the problem of transmission of nationality to a child under the doctrine of *jus sanguinis,* most members of the Commission on the Status of Women felt that it would be inadvisable to include that principle in a convention on the nationality of married women and the Commission decided to limit itself to requesting the Economic and Social Council to "instruct the appropriate bodies of the United Nations to give consideration to the problem of the transmission of nationality to children from either the father or the mother on the basis of equality." [6]

5. Acting on the aforesaid resolution of the Commission on the Status of Women, the Economic and Social Council on 17 July 1950 adopted resolution 304 D (XI) on the nationality of married women, which proposed that the International Law Commission should

> "undertake as soon as possible the drafting of a Convention to embody the principles recommended by the Commission on the Status of Women."

The International Law Commission deemed it appropriate to

> "entertain the proposal of the Economic and Social Council in connexion with its contemplated work on the subject of 'Nationality including Statelessness' ".[7]

6. Again, at its 13th session in August 1951 the Economic and Social Council expressed the hope

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[1] In this study, each of the terms "dual nationality", "double nationality", "plural nationality" and "multiple nationality" may be understood as comprehending any of the others if the context so requires.

[2] *Survey of international law in relation to the work of codification of the International Law Commission* (A/CN.4/Rev.1) (United Nations publication, Sales No.: 1948. V.1 (1)).

[3] *Ibid.*, paras. 76-77.

[4] Report of the International Law Commission covering its first session, *Official Records of the General Assembly, Fourth Session, Supplement No. 10* (A/925), paras. 16 and 20. Also in *Yearbook of the International Law Commission, 1949,* p. 281.

[5] Document E/1712, para. 37.

[6] *Ibid.*, para. 34.

[7] Report of the International Law Commission covering its second session, *Official Records of the General Assembly, Fifth Session, Supplement No. 12* (A/1316), paras. 19 and 20. Also in *Yearbook of the International Law Commission, 1950,* vol. II, p. 367.

(resolution 385 F (XIII) on "Nationality of married women") that

> "the International Law Commission will endeavour to complete the drafting of this convention as soon as practicable."

7. Also in 1951 the International Law Commission was apprised of a resolution adopted by the Economic and Social Council (319 B III (XI)) requesting it to prepare

> "at the earliest possible date the necessary draft international convention or conventions for the elimination of statelessness";

and it decided to initiate work on "Nationality, including Statelessness" and to appoint Mr. Manley O. Hudson Special Rapporteur on this subject.[8]

8. The Special Rapporteur submitted a "Report on Nationality including Statelessness" [9] to the Commission at its fourth session. The following documents prepared by the Secretariat were also available to the Commission: "The problem of Statelessness" (A/CN.4/56); "Nationality of Married Women" (E/CN.6/126/Rev.1 and E/CN.6/129/Rev.1); "A study of Statelessness" (E/1112 and Add.1).

9. As regards the nationality of married women, the Special Rapporteur's report contained a working paper together with a draft Convention on Nationality of Married Persons [10] which followed closely the terms proposed by the Commission on the Status of Women. He suggested that the International Law Commission should comply with the request to draft a convention embodying these terms. He added:

> "It would seem to be unnecessary for the International Law Commission to express any views concerning these principles, or to analyse the consequences of their application, e.g., on the transmission of nationality *jure sanguinis* to children".[11]

10. The Commission, however, came to the conclusion [12]

> "that the question of married women could not but be considered in the context, and as an integral part, of the whole subject of nationality including statelessness. Furthermore, it did not see fit to confine itself to the drafting of a text of a convention to embody principles which it had not itself studied and approved."

11. The problem of statelessness was dealt with in Annex III of the Special Rapporteur's report (A/CN.4/50), while Annex I of this document on "Nationality in general" contains in paragraph 5 a brief survey of the problem of multiple nationality. The survey lists some of the causes of double or multiple nationality, mentions the difficulties it may create for the States and the persons concerned, analyses the provisions dealing with the problem contained in certain bilateral and multilateral treaties, and recalls that the Hague Codification Conference was unable to eliminate multiple nationality. The survey referred to also reproduced the principles applicable in cases of multiple nationality which were embodied in the 1930 Hague Convention on Certain Questions relating to the Conflict of Nationality Laws.

12. When Mr. Manley O. Hudson asked to be relieved of his functions as Special Rapporteur on the topic of "Nationality, including statelessness", the Commission elected Mr. Roberto Córdova to succeed him.[13]

13. In his report submitted to the Commission at its fifth session, Mr. Córdova made it clear that the Commission had not expected him to study the subject of nationality in general,[14] and that his report would cover only the question of statelessness.

14. At the Commission's request (A/CN.4/SR.225, para. 75), the Special Rapporteur, in the course of the Commission's fifth session presented a second report on the "Elimination or Reduction of Statelessness".[15]

15. During its fifth session the International Law Commission also invited its Special Rapporteur

> "to study the other aspects of the topic of nationality and to make in this respect such proposals to the Commission as he might deem appropriate." [16]

16. Acquisition of nationality by birth or by other means, multiple nationality, loss of nationality through deprivation or otherwise, and statelessness are some of the principal aspects of the problem as a whole. The present study will deal only with double or multiple nationality, but in so doing it will have to take into account methods of acquisition of nationality which constitute one of the main causes of double nationality. On the other hand, the problem of nationality of married persons will not be studied in detail, because the draft convention adopted by the Commission on the Status of Women is still under consideration by Governments.[17]

2. Political and juridical aspects of nationality

17. The problem of nationality arises from the division of the world into sovereign States. No State exists if one of the following elements is lacking: a territory, a people living there and owing allegiance to the entity called the State, a government capable of

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[8] Report of the International Law Commission covering the work of its third session, *Official Records of the General Assembly, Sixth Session, Supplement No. 9* (A/1858), para. 85. Also in *Yearbook of the International Law Commission, 1951*, vol. II, p. 140.

[9] *Yearbook of the International Law Commission, 1952*, vol. II, document A/CN.4/50.

[10] *Ibid.*, Annex II.

[11] *Ibid.*, para. 6.

[12] Report of the International Law Commission covering the work of its fourth session, *Official Records of the General Assembly, Seventh Session, Supplement No. 9* (A/2163), para. 30. Also in *Yearbook of the International Law Commission, 1952*, vol. II, p. 67.

[13] *Ibid.*, paras. 33-34; *ibid.*, p. 68.

[14] *Yearbook of the International Law Commission, 1953*, vol. II, document A/CN.4/64, para. 2 and *Yearbook of the International Law Commission, 1952*, vol. I, p. 252, paras. 17 and 18.

[15] *Yearbook of the International Law Commission, 1953*, vol. II, document A/CN.4/75.

[16] Report of the International Law Commission covering the work of its fifth session, *Official Records of the General Assembly, Eighth Session, Supplement No. 9* (A/2456), para. 166. Also in *Yearbook of the International Law Commission, 1953*, vol. II.

[17] See para. 3 above.

enforcing law and order on the territory over which it exercises juridiction. On this point there seems to be unanimity among the authors dealing with international law. Thus, Mr. Georges Scelle [18] considers that the State is composed of three elements, namely, "the community of the State, the territory of the State and the machinery of government". The "community of the State" is

> "a community of communities, an aggregate of families, associations or societies, occupational, religious and cultural groups and administrative units into which the national community is territorially sub-divided." [19]

This conglomeration of individuals and groups will constitute a State only if

> "... the sense of what they have in common is sufficiently developed to give a certain homogeneity and a certain economic and physical cohesion to the whole but the 'community' factor essential for the cohesion and dynamism of the State is psychological homogeneity, the 'collective soul' of the nation." [19]

Inside the territorial limits of a given State there may be living side by side several different nationalities or ethnic groups, but whatever the constitutional or administrative structure of a State, international law, according to Professor Scelle, knows only "those who govern described as 'representatives', and 'nationals' (national subjects who are protected)".[19]

18. Applied to the individual the word "nationality" has, according to Professor Scelle, a special juridical implication. It means

> "the link between subjects of law whether individuals or groups (juristic persons, in the classic legal sense) and a State's legal system from which they derive their status."

19. For Oppenheim

> "A State proper—in contradistinction to colonies and Dominions—is in existence when a people is settled in a country under its own sovereign Government. The conditions which must obtain for the existence of a State are therefore four: There must, first, be a *people*... There must, secondly, be a *country* in which the people has settled down... There must, thirdly, be a *Government*—that is one or more persons who are the representatives of the people... There must, fourthly and lastly, be a *sovereign* Government... an authority which is independent of any other earthly authority." [20]
>
> "State territory is that definite portion of the surface of the globe which is subjected to the sovereignty of the State." [21]

As for the individuals concerned,

> "nationality is the link between them and the Law of Nations. It is through the medium of their nationality that individuals can normally enjoy benefits from the existence of the Law of Nations. This is a fact which has consequences over the whole area of International Law."[22]

"Nationality of an individual is his quality of being a subject of a certain State, and therefore its citizen";[23] and from this principle flow certain rights for the citizen and for the State of which he is a subject.

20. For Makarov,[24] " nationality " has existed as long as there have been States, because "during all periods of the history of mankind, States, whatever may have been their form, had a personal substratum: people belonging to the State [Staatsvolk] have always been a sociological prerequisite of existence of the State itself, and this prerequisite had to be also juridically defined".

21. It is obvious, therefore, that nationality has not only a juridical but also a political connotation. Since States could not exist without people who live on their territories, they will want to exercise jurisdiction over such people. They will, in the first place, determine authoritatively who are and who are not their nationals. Nationals of a State have certain rights and duties which flow from this status and which do not belong to aliens, and these rights and duties are the object of legislation, either of constitutional or ordinary law. This has been particularly so since the end of the eighteenth and the beginning of the nineteenth centuries, when the division of the population into various classes or groups, each invested with certain rights and the object of certain definite duties, began to disappear, largely as a consequence of the industrial revolution and the social upheaval and reconstruction brought in its wake. It is from this period onwards that nationality, as the condition for the exercise of certain rights and of the obligation to fulfil certains duties towards the national community, gained considerably in importance. France was the first nations, or one of the first, to legislate in detail on this matter. Indeed, as a consequence of the Revolution, French citizens acquired the right of participating in the legislative power through their elected representatives, and it became, therefore, imperative to determine by law the persons who, in their capacity as French nationals, were entitled to exercise political rights. The French example has had a profound influence on other nations, and this world-wide evolution made it necessary to determine those persons upon whom the fulfilment of certain duties, such as military service, was incumbent. In France the decrees of 24 February and 24 August 1793 introduced a "réquisition permanente" of all Frenchmen, and the law of 19 Fructidor An VI introduced regular conscription of French citizens.[25] Economic freedom, on the other hand, led to a greater mobility of populations, to currents of immigration and emigration which could not leave Governments indifferent to their economic, demographic and political consequences. Finally, during that same period, the idea of the "Nation", of the "Nation State", gained ever greater political significance; so much so that the world today is divided into a number of more or less homogeneous "Nation States". Because

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[18] *Manuel de droit international public* (Paris, Domat-Montchrestien, 1948), pp. 81 ff.

[19] *Ibid.*, p. 82 ff.

[20] *International Law*, vol. 1, Seventh Edition by H. Lauterpacht (London, Longmans, Green and Co., 1948), pp. 114-115.

[21] *Ibid.*, p. 407.

[22] *Ibid.*, p. 583.

[23] *Ibid.*, pp. 585-586.

[24] A. N. Makarov, *Allgemeine Lehren des Staatsangehörigkeitsrechts* (Stuttgart, W. Kohlhammer, 1947), p. 17.

[25] For a more detailed analysis of these developments see Makarov, *op. cit.*, pp. 17 ff.

of this evolution, the possession of a "nationality" increased in importance for each individual.

22. In view of the considerations outlined above, it seems hardly surprising that most States have promulgated detailed legislation determining who are their nationals. Article 1 of the French Code de la nationalité, for instance, declares:

> "The law shall determine which persons at birth possess French nationality as their nationality of origin. French nationality is acquired, or is lost, after birth through the operation of law or pursuant to a decision made by the constituted authorities in accordance with the procedure prescribed by law."

The Code then contains a number of provisions dealing with the acquisition of French nationality by birth, by law, by naturalization, and by reintegration, as well as provisions concerning deprivation and/or loss of French nationality. Provisions relating to the same subjects are to be found in most nationality laws.

23. From the juridical point of view, nationality may be considered as the legal relationship between the State and the individual, and also as part of the individual's status from which flow certains rights and duties. In the French tradition, nationality is considered the link which unites an individual to a certain State,[26] and this link has been considered by a number of authors as the result of a bilateral contract between each individual citizen and the State to which he owes allegiance. It may be appropriate to recall that Roman law distinguished between three kinds of status, the *status libertatis,* the *status civitatis* and the *status familiae.* The *status civitatis* was the legal situation of free Roman citizens; similarly, modern legal theory considers nationality as an element of the personal status of the individual.[27]

24. Nationality, therefore, has a political and a juridical content; but, as may be inferred from the preceding brief summary, the political content is paramount, the legal content being a consequence of, and subject to, the political nature of this problem. Whether nationality be considered as a contractual relationship between the State and the individual or as an element of the individual's status, the rules governing it will be determined mainly by political considerations and necessities, such as the need to attract or discourage immigration, the ethnical composition of the population, the economic situation of the territory concerned, and many others. According to these and similar considerations, each State will fashion its own nationality laws as far as they concern acquisition, loss and deprivation of nationality. The other aspect, that concerning nationality as an element of the personal status of the individual concerned and his rights as a citizen flowing therefrom, will again depend on political considerations. Given this predominantly political content of the concept of nationality, there are no, or very few, general principles of international law applying to the matter. Legislation on this subject remains, for the most part, within the domestic jurisdiction of each State.

3. The exclusive competence of States to determine who are their nationals as a source of conflicts

25. The right of States to view nationality as being essentially within their domestic jurisdiction may be considered to be a principle of international law, and it will be discussed in Section 4 hereafter. Thus, in his opening speech to the First Committee of the Conference for the Codification of International Law,[28] the Chairman, Mr. Politis, stated *inter alia:*

> "The delicacy of our task lies in the fact that nationality from whatever standpoint it be viewed, is, by nature, essentially a political problem. It is a matter that comes within the exclusive jurisdiction of each State, since, under International Law, States are at liberty to settle nationality questions in the manner they consider most consonant with their own security and development."

On a previous occasion, Mr. Rundstein, the Rapporteur of the Sub-Committee of the Committee of Experts for the progressive codification of international law [29] had declared:

> "There can be no doubt that nationality questions must be regarded as problems which are exclusively subject to the internal legislation of individual States. It is indeed the sphere in which the principles of sovereignty find their most definite application... There is no rule of international law, whether customary or written, which might be regarded as constituting any restriction of, or exception to, the jurisdiction referred to above."

26. Finally, the Rapporteur of the Conference's First Committee, Mr. J. Gustavo Guerrero,[30] made it clear that the Committee "asserted the general principle that each State has exclusive competence to determine under its laws who are its nationals, and that these laws should be recognized by other States".[31]

27. These principles were embodied in article I of the Convention on Certain Questions relating to the Conflicts of Nationality laws [32] in the following terms:

> "It is for each State to determine under its own laws who are its nationals. This law shall be recognized by other States..."

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[26] See, for instance, among many others, J. P. Niboyet, *Traité de droit international privé français* (Paris, Recueil Sirey, 1943), Tome I, p. 77: "La nationalité est le lien politique entre un individu et un Etat."

[27] See for instance, Louis Lucas, *Les conflits de nationalités, Recueil des cours de l'Académie de droit international,* 1938, II, p. 5: "*La nationalité, c'est le lien juridique qui unit l'individu à l'Etat... C'est donc considéré par rapport à la personne physique... un élément de son statut: l'élément qui révèle que telle personne est rattachée à telle souveraineté.*"

[28] *Acts of the Conference for the Codification of International Law,* vol. II: Minutes of the First Committee, Publications of the League of Nations, *V. Legal, 1930.V.15.,* p. 13.

[29] *Committee of Experts for the Progressive Codification of International Law,* Report to the Council of the League of Nations, Publications of the League of Nations, *V. Legal, 1927.V.1.,* p. 9.

[30] *Acts of the Conference for the Codification of International Law,* vol. II; Minutes of the First Committee, Publications of the League of Nations. *V. Legal, 1930.V.15.,* Annex. V, at p. 306.

[31] The limitations on this principle will be discussed at a later stage.

[32] *Acts of the Conference for the Codification of International Law,* vol. I: Plenary Meetings, Publications of the League of Nations, *V. Legal, 1930.V.14,* Annex 5, p. 81.

28. The Harvard Research in International Law, in its comments on the draft convention which it had prepared with "the object of placing before the representatives of the various governments at the First Conference on Codification of International Law the collective views of a group of Americans specially interested in the development of International Law",[33] remarked:

> "The development of International Law has not been such as to prescribe for states the conditions on which they may confer their nationality upon natural persons. In general each state has the power to confer its nationality, and whether or not it has done so in a given case, depends on its own national law." [34]

29. These principles were expressed as follows in article 2 of the draft convention prepared by the Harvard Research in International Law:

> "Except as otherwise provided in this convention, each state may determine by its law who are its nationals, subject to the provisions of any special treaty to which the state may be a party; but under international law the power of a state to confer its nationality is not unlimited." [34]

30. Undoubtedly, the discretionary or almost discretionary power of States to legislate in the field of nationality without taking into account legislation on the same subject existing in other States is a source of conflicts of law with sometimes unpleasant consequences for the individual concerned. Nationality at birth may be acquired either by application of the *jus soli* or the *jus sanguinis* principles or by applying a combination of both. A child born in Great Britain of French parents acquires British and French nationality, French law being based on *jus sanguinis* and British law on *jus soli*. Marriage may also be a source of double nationality if the wife automatically acquires the husband's nationality while retaining her original citizenship by virtue of the law of her country of origin. Legitimation of children born out of wedlock may lead to the same result and so may adoption. But differences in legislation are not the only sources of double nationality. It may also occur, for instance, in cases where identical provisions in the laws of two States attribute legal effects as to nationality to certain manifestations of the will of the person concerned. An example is the *Carlier case* of 1881.[34a] In conformity with the identical provisions of articles 9 and 10 of the French and Belgian civil codes at that time in force, Carlier, a French and Belgian citizen, had opted in Belgium for Belgian nationality. The exercise of this right did not entail loss of French nationality since, according to the former article 10 of the French civil code, "Tout enfant né d'un Français en pays étranger est Français."

31. Mr. Marc Ancel [35] summarized the problem in the following passage from a report presented to the Congrès international de droit comparé at The Hague in 1937:

> "This state of affairs [the ever more frequent occurrence of multiple nationality and statelessness] is attributable to many different political, geographical, demographic and legal factors one or more of which may predominate in any given case. The conflict actually arises from the fact that nationality... is usually treated by the legislator only in its purely national aspects, and often even from a purely particularist standpoint. In municipal law cases of statelessness have been multiplied without hesitation; similarly, in the legislation of certain countries, not only has no attempt been made to prevent cases of multiple nationality arising but in some instances double nationality has even been openly recognized and made an explicit rule of their positive law... In our view, at least two types of multiple nationality should be distinguished: the first, the most common and almost the only type, is double nationality permitted or recognized from the strictly national standpoint."

The second type suggested by Mr. Ancel is double nationality regulated by means of a multilateral convention and in conformity with the interest of "the general community of the peoples." [36]

4. Limits of the exclusive competence of States

32. The desirability of imposing limitations upon the discretionary powers of States to legislate in the field of nationality has been generally admitted, and efforts have been made to define such limitations as are recognized by international law. The results have been of little practical effect, although they are indicative of the fact that States acknowledge that a solution of the problems resulting from conflicting nationality laws would be beneficial to the international community as a whole.

33. A detailed survey of the problem of the limitations on the discretionary legislative power of States with regard to nationality is to be found in Makarov's monograph.[37] Use has been made of the data contained in that work in the ensuing paragraphs of the present survey.

(a) *The principle*

34. Nationality belonged, and still appears to belong, to the "domaine réservé". Limitations upon the discretionary power of States to legislate on the matter were defined in 1923 by the Permanent Court of International Justice in its Advisory Opinion on the Tunis and Morocco Nationality Decrees.[38] The Court declared:

> "The question whether a certain matter is or is not solely within the jurisdiction of a State is an essentially relative question: it depends upon the development of international relations. Thus in the present state of international law, questions of nationality are, in the opinion of the Court, in principle within this reserved domain." [38a]

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[33] Harvard Law School, *Research in International Law:* Special Supplement to *American Journal of International Law*, vol. 23 (1929), p. 9.

[34] *Ibid.*, p. 24.

[34a] See also below, p. 83.

[35] "*Les conflits de nationalités*", printed in *Journal du Droit International* [Clunet], vol. 64 (1937), pp. 19 ff.

[36] *Ibid.*, p. 22.

[37] *Op. cit.*, pp. 58-150.

[38] *P.C.I.J.*, Series B, No. 4.

[38a] *Ibid.*, p. 24.

(b) *Limitations imposed by international law on the principle of absolute competence*

(i) *Prohibition of legislation on nationality of subjects of other States*

35. It follows from the above principle that States must respect the competence of all other States to regulate by their laws the nationality of their own subjects. Niboyet, for instance, formulated the rule as follows:

> "The rule that each State shall determine for and by itself who are its own nationals may be regarded as part of the law of nations. It follows reciprocally as a necessary corollary that no State may presume to decide who are the nationals of other States." [39]

Makarov claims that the rule has not always been respected.[40] Thus, the United States Immigration Act of 1924 contained in Section 12 the following principle: [41]

> "For the purposes this Act nationality shall be determined by country of birth, treating as separate countries the colonies, dependencies, or self-governing dominions, for which separate enumeration was made in the United States census of 1890".

Again, during World War I the British Nationality and Status of Aliens Act 1918, Sec. 7A(3) declared that if a certificate of naturalization is revoked

> "the former holder thereof shall be regarded as an alien and as a subject of the State to which he belonged at the time the certificate was granted."

Similar provisions are also to be found in the French Law of 7 April 1915 (*loi autorisant le gouvernement à rapporter les décrets de naturalisation obtenus d'anciens sujets des puissances en guerre avec la France, complétée par la loi du 18 juin 1917*).[42] Obviously, however, such laws promulgated for purely political reasons, or with a view to achieving certain administrative aims would only fictitiously confer their nationality of origin on the persons concerned, who, in fact, would become stateless.

(ii) *Prohibition of the* "abus de droit"

36. A certain number of authors have introduced the theory of the *abus de droit* in this content. States, while having discretionary competence to legislate in this field, must not abuse it. Thus, Niboyet [43] declares that international law might intervene in certain exceptional circumstances when a State abuses its rights. Such an abuse of sovereign rights would be committed by a State imposing its nationality on everyone residing on its territory. Makarov [44] quotes a message delivered on 9 November 1920 by the Swiss Government to the Swiss Parliament, on the occasion of the debate on revision of Article 44 of the Federal Constitution, in which it is stated that the competence of States to legislate on matters concerning nationality is limited only by the principle of good faith.

The Harvard Research in International Law, in its Comment on article 2 of the proposed draft convention quotes examples of what should be considered as an *abus de droit*, although the comment itself does not use that expression. Thus, the Comment declares that no State has the right to naturalize persons "who have never been within its territory";[45] nor has a State authority to confer its nationality on "all persons in the world holding a particular religious faith or belonging to a particular race".[45]

In practice, the principle was invoked by the Agent of the United States with regard to a provision of the Mexican Constitution of 1857 according to which aliens owning property in Mexico, or having children of Mexican nationality, became Mexicans unless they declared that they wished to maintain their former citizenship. The Agent stated, *inter alia:*

> "It is proper to suggest the doubt whether Mexico could find warrant in the law of nations for legislation which should have the effect of naturalizing without their consent the citizens of other States." [46]

(iii) *Right to expatriate and to change nationality*

37. The right to expatriation and to change nationality has long been recognized as an inherent right of the human person at least by certain countries, including the United States. Makarov [47] cites an opinion of July 1859 of the Attorney-General of the United States declaring "natural reason and justice... writers of known wisdom, and... the practice of civilized nations" were "opposed to the doctrine of perpetual allegiance". Among many further instances of the acceptance of this principle, it may be noted that Article 15 of the Universal Declaration of Human Rights, proclaimed on 10 December 1948 by the General Assembly of the United Nations, declares that "No one... shall be denied the right to change his nationality".

(iv) *Limitations on deprivation of nationality*

38. Deprivation of nationality by unilateral action of the State has been considered as a violation of an accepted principle of international law, since such deprivations, especially if applied on a large scale, will or may entail mass emigrations and, consequently, they may not only impose undue hardship on human beings, but also inundate foreign States with aliens. However, the principle is not respected by most modern legislation and it cannot be considered as an accepted tenet of international law.

(v) *Limitations in connexion with changes of sovereignty*

39. The opinion is widely held that, in case of change of sovereignty over a territory by annexation, or its voluntary cession by one State to another, the annexing State is obliged to grant its nationality to the inhabitants of the territory concerned who were citizens of the ceding State, at least if they have, at the time of annexation, their permanent residence in the ceded territory. In most instances these questions are settled by treaty between the States concerned, which also frequently grant a right of option to the inhabitants.

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[39] *Op. cit.*, vol. I, p. 83.
[40] *Op. cit.*, pp. 61 ff.
[41] Quoted by Makarov, *op. cit.*, p. 65.
[42] The British, French, and other laws are quoted by Makarov, *op. cit.*, pp. 66-67.
[43] *Op. cit.*, p. 59.
[44] *Op. cit.*, p. 72.
[45] *Op. cit.*, p. 26.
[46] For this and other examples see Makarov, *op. cit.*, pp. 76-77.
[47] *Op. cit.*, p. 78.

(c) *Limitations resulting from multilateral or bilateral conventions*

40. It is obvious that States may limit their discretionary power to legislate on nationality by internationally binding conventions either multilateral or bilateral. The general problem of the limits imposed upon the discretionary power of States to legislate on nationality was discussed at the Conference for the Codification of International Law held at The Hague in 1930.

(i) *The Hague Conference*

41. In the report which the Sub-Committee submitted to the Committee of Experts for the Progressive Codification of International Law,[48] the Rapporteur, Mr. Rundstein, formulated the principles involved as follows:

> "There can be no doubt that nationality questions must be regarded as problems which are exclusively subject to the internal legislation of individual States... There is no rule of international law, whether customary or written, which might be regarded as constituting any restriction of, or exception to, the jurisdiction referred to above... But, while maintaining the thesis that questions of nationality belong, *in principle*, to the exclusive jurisdiction of individual States, it is admitted that this thesis is neither inflexible nor self-evident. Questions of nationality are often regulated by international conventions, which proves that the supposed exclusivity of jurisdiction may be abrogated at the will of individual States."

The Rapporteur then explained that the political interests of the various States were too divergent to justify the assertion that an *opinio necessitatis* existed which would create or impose rules for settling all conflicts arising from the diversity of laws, or justify the attempt to unify national laws and create a single world law. Nevertheless, questionnaire No. 1 [49] submitted to Governments for their comments, after recalling the principle of exclusive legislative competence of States as regards nationality, contained questions as to whether there existed, in the opinion of the Governments, restrictions on these principles; as to whether the right of States to legislate in this field was subject to no restrictions; and as to whether a State was under an obligation to recognize the effects of the legislation promulgated by other States on this matter. Replies from Governments generally emphasized the exclusive competence of States to legislate with regard to their own nationals, but some Governments agreed that this competence was subject to certain limits. Thus, the Belgian Government,[50] after stating that, in law, there was no limit on the right of the State to legislate in the matter of nationality, added:

> "In practice, account should be taken of certain principles called by some '*jus gentium*' and by others '*comitas gentium*'. These principles are as follows: All persons must possess a *nationality*... They must possess *only one nationality*... They must be able to *change their nationality freely*, perpetual allegiance being contrary to human freedom."

While Bulgaria [51] declared that

> "The right of every State to legislate in this matter is limited only by the necessities of common courtesy and justice",

Finland [52] expressed the opinion that restrictions resulted from "general principles of law". The British Government [53] emphasized that "the right of the State to use its discretion in legislating with regard to nationality may be restricted by duties which it owes to other States"; and the Government of the United States declared [54] that it had

> "proceeded upon the theory... that there are certain grounds... upon which a State may properly clothe individuals with its nationality... The scope of municipal laws governing nationality must be regarded as limited by consideration of the rights and obligations of individuals and of other States."

These and other replies were taken into consideration in the formulation of the Basis of discussion No. 1 and in the Observations relating thereto. The Preparatory Committee summarized the prevailing opinion of Governments concerning such limitations as follows: [55]

> "Some Governments consider that international law to-day imposes certain limitations upon the exercise of its rights in this matter by the particular State; others confine themselves to stating that such limitations are desirable; others, again, say nothing on the point. It does not seem possible at present to formulate limitations fully and precisely."

In the final text adopted by the Conference, which became article I of the Convention on Certain Questions relating to the Conflict of Nationality Laws, it is stated that the law of each individual State on nationality

> "shall be recognized by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality." [56]

(ii) *Bilateral and multilateral conventions*

42. It will suffice in the present context to recall that numerous conventions regulating questions of nationality have been concluded. Some, such as the famous "Bancroft treaties", deal with the avoidance of double nationality in cases of naturalization and resumption; others with the military obligations of persons having double nationality, such as the treaty between France and Paraguay of August 1927; others, again, with the nationality of persons permanently residing in

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[48] *Committee of Experts for the Progressive Codification of International Law*, Report to the Council of the League of Nations, Publications of the League of Nations, *V. Legal, 1927.V.1.*, p. 9.

[49] *Conference for the Codification of International Law, Bases of Discussion*, vol. I: Nationality, Publications of the League of Nations, *V. Legal, 1929.V.1.*, p. 13.

[50] *Ibid.*, p. 14.

[51] *Ibid.*, p. 14.

[52] *Ibid.*, p. 16.

[53] *Ibid.*, p. 17.

[54] *Ibid.*, p. 16.

[55] *Ibid.*, p. 20.

[56] *Acts of the Conference for the Codification of International Law*, vol. I: Plenary Meetings, Publications of the League of Nations, *V. Legal. 1930.V.14.*, Annex 5, p. 81.

ceded territories, such as the Treaty of Versailles. Others purport to settle questions of nationality in general, for example the Convention of Rio de Janeiro of August 1906, the Codigo Bustamente of 1926, and the Conventions adopted during The Hague Codification Conference of 1930. These and other relevant agreements will be analysed with regard to the problem of multiple nationality in Chapter III of this study.

(d) *Summary of limitations on the discretionary power of States to legislate on nationality*

43. Makarov [57] concluded that there existed only two limitations upon the discretionary power of States to legislate on nationality: the prohibition against naturalizing persons against their will, and the duty of annexing States to grant their nationality to the inhabitants of the annexed territory. It would seem, however, that certain other rules may be considered as having been accepted by a considerable number of States. They refer to the right of expatriation and to the corresponding right to change one's nationality, to the duty of States to recognize the validity of nationality laws promulgated by other countries, and to certain rules regarding conflicts, as stated in The Hague Conventions. These undoubtedly appear to limit the rights of the States which accepted them to legislate in a manner which would be contrary to their provisions or would tend to render their enforcement impossible. Finally, there may be mentioned the rules applying to children born to persons enjoying diplomatic immunity in the country where the birth occurs, to children born to *consuls de carrière,* and to foundlings, as well as the rules applying in cases of legitimation, recognition, adoption and marriage, all of which constitute limitations upon the discretionary power of States to legislate in the field of nationality. These, as well as the rules resulting from the Protocol relating to Military Obligations in Certain Cases of Double Nationality, [58] and from the Protocol relating to a Certain Case of Statelessness, [59] will be more closely examined, in so far as they have a bearing on the problem of double nationality, in Chapter III of this study.

5. Arrangement of this study

44. The foregoing exposé has endeavoured to point out certain important aspects of the nationality problem as a whole. The essentially political nature of the problem has been underlined, as well as the fact flowing therefrom that nationality laws are shaped in accordance with the political and economic interests of the States concerned, their social structures and the aims they pursue; while it has been found that considerations relating to general principles play a comparatively minor role in the relevant provisions of municipal laws.

45. It has also been shown that the international community, before and after the wars of 1914-1918 and 1939-1945, took certain steps to check the consequences arising from the legal anarchy in this field; and particular reference has been made to the results achieved by the Conference for the Codification of International Law held at The Hague in 1930 under the auspices of the League of Nations, and by the proceedings of the International Law Commission of the United Nations.

46. These introductory sections referred to the present state of the question of nationality in general, without taking specially into account the problem of multiple nationality. It is the main purpose of the present study to elucidate this problem, to outline the solutions so far applied to it as well as to conflicts of law arising from it, and to make suggestions tending towards further progress in this field and towards the progressive codification of generally acknowledged rules regarding it.

47. The present survey is divided into five chapters. Chapter I contains an analysis of some national laws in Europe, the Americas and Asia, from the standpoint of the question of double nationality. On the basis of this analysis the principal causes of double nationality are defined; and these causes, the conflicts of law arising therefrom, and the solutions applied thereto on a national basis are studied in Chapter II. Chapter III briefly surveys international attemps to solve the conflicts of laws arising from the existence of multiple nationality and efforts directed to the elimination of multiple nationality by means of conventions. Proposals towards these ends made by private organizations are also mentioned. Chapter IV contains suggestions for the elimination of future cases of multiple nationality and for the reduction of present cases. A final chapter, Chapter V, endeavours to provide a synthesis of the problem of multiple nationality at the present time and of its possible solutions.

CHAPTER I

Survey of some national laws with regard to multiple nationality

47 *bis.* This Chapter contains a summary of some important nationality laws. They have been selected because they indicate legislative trends prevailing in this field and also because they show that dual nationality is the unavoidable consequence of lack of international co-ordination by municipal legal systems. This is not to say, however, that other national laws are of lesser importance than those summarized here. Whether *jus soli* or *jus sanguinis* predominates, or whether — as in most countries — these methods of attributing nationality at birth are jointly applied, dual nationality will arise from conflicting nationality rules applicable to the same person. It is, therefore, sufficient for the purpose of this survey to show by some examples that this is indeed the case, and to indicate through their analysis how, in given circumstances, dual nationality is the product of provisions drafted with a view to meeting needs of a political, demographic or economic nature and without particular regard to this specific problem.

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[57] *Op. cit.*

[58] *Acts of the Conference for the Codification of International Law*, vol. I: Plenary Meetings, Publications of the League of Nations, *V. Legal. 1930.V.14*, Annex 6, pp. 95 ff.

[59] *Ibid.*, Annex 7, pp. 105 ff.

I. In Europe

A. Laws based principally on jus sanguinis

1. *The French Code de la nationalité (Ordonnance du 19 octobre 1945)*

48. The French system will be considered first because France was, as a consequence of the Revolution of 1789, among the first countries to replace customary rules by legislative enactments. The French example has, moreover, exercised a profound influence on the legislative practice of other countries in this sphere.

49. Until the comparatively recent period mentioned above, the *jus soli* principle seems to have prevailed in France. Naturalization was governed in part by the provisions of two ordinances, the first of which was enacted in 1302, the second in 1498; and in part by the terms of a "declaration" promulgated in 1720.[60]

50. A new system was introduced by the Constitution of 3 September 1791, which distinguished between nationality, on the one hand, and the status of "active citizen" (citoyen actif) on the other hand. To be an "active citizen", and thereby entitled to exercise political rights, possession of French nationality was a necessary although not a sufficient qualification.

51. Thouret, the Rapporteur of the draft Constitution of 1791, has given the following explanation for the introduction of the relevant provisions in this instrument.[61]

> "The following articles on the status of citizens were required to complete your work; every society must determine the attributes by which it can recognize its members. Since, moreover, you have decreed that an active citizen must be *French or become French,* it is necessary to decide what is meant by being, by becoming and by ceasing to be French."

52. At a later stage, provisions relating to nationality were incorporated in the Civil Code, because, *inter alia,* it had been decided that aliens should have the same "civil rights" as those granted to French citizens by the State to which the alien concerned belonged. This rule has been maintained, and article 11 of the present Civil Code states it as follows:

> "Art. 11. An alien shall enjoy in France the same civil rights as are or shall be granted to French citizens by the treaties of the country to which the alien belongs."

To carry the rule into effect, it became necessary to determine who were French citizens and who were aliens.

53. The Code Napoléon replaced the *jus soli* principle by *jus sanguinis* in the stipulation that children born to Frenchmen resident in France or abroad are French, and that children born to aliens residing in France have the right to opt for their father's nationality. The Code Napoléon also regulates the loss of French nationality by reason of naturalization in a foreign country or acceptance of political or military appointments from foreign Governments; and, finally it governs the re-acquisition of French nationality.

54. The French example has, as stated, exercised considerable influence on the legislative practices of other countries, such as Spain and Portugal, whose laws have, in their turn, influenced Latin American constitutions and codes.

55. Provisions on nationality remained as part of the French Civil Code until the law of 10 August 1927, abrogated by the Ordinance of 19 October 1945, known as the Code de la nationalité française, which codifies all provisions concerning French nationality. The Code is subdivided into titles of which title II concerning acquisition of French nationality by birth and title III concerning acquisition for other reasons are of special interest in the context of multiple nationality and will be analysed below.

56. The French system, although based on the principle of *jus sanguinis,* applies *jus soli* in certain cases, and it may therefore be regarded as a mixed system with *jus sanguinis* predominating. Whether it is preferable to give predominance to one or the other of these principles is not a juridical but a purely political question. It is, in fact, a matter of political expediency, irrelevant to the present investigation.

(a) *Attribution of French nationality at birth by reason of consanguinity*

57. Article 17 (1) of the Code de la nationalité stipulates: "Est Français: 1° L'enfant légitime né d'un père français." This means not only that children born in France to a French father acquire French nationality, but also that the rule of consanguinity applies to children born abroad to a French parent. Similar rules adopted by numerous countries are the first and most frequent cause of double nationality arising from *jus sanguinis* legislation applied to persons born in countries where *jus soli* pertains. Even if the father, after the birth of his French children, were to lose his French nationality, the descendants born before that change in the father's status would, in principle, remain French, and their children, although they may never see France, would retain that nationality. Here, therefore, is a second and not infrequent cause of double nationality.

58. Also French by consanguinity (article 18) are the legitimate child of a mother who is French and a father who is stateless or whose nationality is unknown, and (art. 19) the legitimate child of a French mother and an alien father. Such persons may, however, *if born outside France,* repudiate the French nationality during the six months before they attain the age of majority. Therefore, if born in France, such persons would retain French nationality even if that of the father were also transmitted *jure sanguinis.*

59. As for illegitimate children, they are French "lorsque celui des parents à l'égard duquel la filiation a été d'abord établi est Français" (article 17); "lorsque celui des parents à l'égard duquel la filiation a été

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[60] Quoted by Makarov, *op. cit.,* p. 107, footnote 172. See, however, on this point Niboyet, *op. cit.,* p. 152, who maintains that *jus sanguinis* may have played some part long before the Revolution of 1789.

[61] See Makarov, *op. cit.,* p. 107 and footnote 176.

établie en second lieu, est Français, si l'autre parent n'a pas de nationalité" (article 18); and "lorsque celui de ses parents à l'égard duquel la filiation a été établi en second lieu, est Français, si l'autre parent est de nationalité étrangère" (article 19). Such children also may, if born outside France, repudiate French nationality in the six months before they attain the age of majority.

60. The following are, therefore, definitely French by consanguinity:

(*a*) The legitimate child of a French father;

(*b*) The legitimate child born to a French mother and to a father who is stateless or whose nationality is unknown;

(*c*) The legitimate child of a French mother and an alien father, if born in France;

(*d*) A child born out of wedlock, if the parent with regard to whom consanguinity was first established is French;

(*e*) A child born out of wedlock in France, first, when the parent with regard to whom consanguinity was established in the second place is French, if the other parent has no nationality, or, secondly when the parent with regard to whom consanguinity was established in the second place is French, if the other parent is an alien.

61. The following are French, and, provided they were not born in France, may repudiate their French nationality:

(*a*) Legitimate children of a French mother and an alien father;

(*b*) An illegitimate child, if the parent with regard to whom consanguinity has been established in the second place is French and the other of foreign nationality;

(*c*) An illegitimate minor who is French by reason of his mother's nationality, and who has been subsequently legitimated by the marriage of the parents, if the father is an alien (article 20).

62. Cases of double nationality which may arise from these various provisions may be summarized as follows:

(a) *Under article 17*

(i) The legitimate child of a French father born in countries applying the *jus soli* principle will have his father's French nationality and that of the country of his birth;

(ii) Similarly, the illegitimate child of a French citizen born in a country applying *jus soli,* provided consanguinity was first established with regard to that parent.

(b) *Under article 18*

(i) The legitimate child of a French mother, the father being stateless or of unknown nationality at the time of the child's birth, if the child is born in a country applying *jus soli;*

(ii) The same applies to an illegitimate child, if affiliation is established with regard to a French parent, while the parent with regard to whom consanguinity was first established is of unknown nationality or stateless, and the child is born in a country applying *jus soli.*

French nationality in these cases will be definitive, and double nationality will result unless France or the foreign country concerned releases the person from its allegiance. French laws offer, however, certain possibilities of remedial action which will be discussed later.

(c) *Under article 19*

Children to whom the provisions of this article apply (legitimate or born out of wedlock, one of the parents being French, the other having another nationality) will have double nationality unless they repudiate their French nationality in the manner prescribed by law before reaching majority. But this right belongs only to children not born in France, those born in France to a French mother and a foreign father remaining French without the right of repudiation.

(d) *Under article 20*

The same applies to a legitimated child whose father is a foreigner and whose mother is French, always provided the child was born outside French territory.

(b) *Attribution of French nationality by virtue of* jus soli

The following are French according to *jus soli:*

63. (*a*) A child born in France whose parents are unknown (article 21);

(*b*) A foundling found in France, unless and until it is established that he was born elsewhere (article 22);

(*c*) If born in France, a legitimate child of a (foreign) father, himself born in France (article 23);

(*d*) If born in France, a legitimate child whose mother was also born in France: but in this case the person concerned may repudiate French nationality during the six months prior to attaining his majority (article 24);

(*e*) The rule under (*d*) also applies to an illegitimate child if the parent with regard to whom affiliation was established in the second place was also born in France.

64. Double nationality may occur in the cases discussed in paragraph 63:

Under article 23

(i) If the father of a legitimate child, although himself born in France, possesses the nationality of a foreign country transmissible *jure sanguinis;*

(ii) If the parent of an illegitimate child with regard to whom affiliation was established in the first place, although born in France, possesses another nationality transmissible *jure sanguinis.*

(c) *Acquisition of French nationality by reason of affiliation*

65. Article 34 stipulates that an illegitimate child legitimated during his minority will acquire French nationality provided the father is French. Two conditions must be fulfilled for the application of this provision:

(i) The child must be a minor according to French law at the time of legitimation;

(ii) The child must be an alien at the time of legitimation.

Although, in view of other provisions of the Code which it is not necessary to analyse in the present context, the hypothesis of article 34 can hardly arise in practice, it may be noted that if the child were born in a *jus soli* country, he would acquire a second nationality through legitimation by his French father.

66. Article 35 establishes another case of acquisition of French nationality, that of "legitimation by adoption" (*légitimation adoptive*), which according to article 368 of the Civil Code applies to children adopted while under five years of age, if they were abandoned by their natural parents, or if their natural parents were unknown or dead. Double nationality may occur if a child who becomes French by adoption was born in a *jus soli* country.

67. Other forms of adoption do not lead to the acquisition of French nationality by the adopted person, unless he claims French nationality and has his residence in France at the time of the request (article 55). Double nationality may occur if the adopted person was born in a *jus soli* country and remained a national thereof after obtaining French citizenship.

(d) *Acquisition of French nationality by marriage*

68. A foreign woman who marries a Frenchman becomes French, unless she refuses French nationality before celebration of the marriage (article 38). Double nationality may arise if the woman, while retaining her original nationality, omits to make the declaration of renunciation of French nationality prior to the celebration, as prescribed by article 38.

(e) *Acquisition of French nationality by reason of birth and residence in France*

69. An individual born in France to foreign parents will become French, if he has continuously resided on French territory since his sixteenth year and is still resident there at the age of majority (article 44). He may, however, repudiate French nationality six months before reaching majority (article 45). It is clear that double nationality may result if such an individual's parents were nationals of a *jus sanguinis* country. In order to prevent statelessness, repudiation of the French nationality is permitted only if the individual concerned can prove he has by affiliation an alien nationality and has, if so prescribed in his country of origin, satisfied his military obligations there (article 47).

70. An individual born in France to parents who are aliens becomes French if he voluntarily enters into French military service in Tunisia or Morocco, conditions of residence being the same as those described in paragraph 69. Double nationality may occur if the parents' foreign nationality is transmitted *jure sanguinis*.

71. In addition an individual becomes French if he has in Tunisia or Morocco passed before a recruiting board without expressly objecting against this procedure by pleading his foreign nationality. Conditions of residence are similar to those stated above. Double nationality may occur under the conditions mentioned in paragraph 70.

(f) *Acquisition of French nationality by declaration (déclaration de nationalité)*

72. A minor born in France to foreign parents may claim French nationality by a declaration made before the competent authorities (article 52), provided that, at the time the declaration is made, he has had his residence in France for a continuous period of at least five years. Double nationality may occur if the foreign nationality of the parents is transmissible to their children *jure sanguinis*. This provision may also be invoked by children born in France to foreign diplomats or *consuls de carrière* (article 51).

73. It has already been noted that an adopted foreign child can also claim French nationality (see paragraph 67 above).

(g) *Acquisition of French nationality by virtue of decisions taken by public authorities*

(i) *Naturalization (articles 60-71)*

74. Foreigners fulfilling certain conditions of residence and "assimilation" prescribed by the Code may, if they request it, become naturalized French citizens. Since the law does not require these persons to relinquish their former nationality before or after obtaining French nationality, cases of double nationality may occur.

(ii) *Reinstatement (articles 72-77)*

75. All Frenchmen who have lost their French nationality can obtain reinstatement. Certain exceptions irrelevant to the present enquiry are established by article 75 of the Code.

(h) *Remedies against dual or multiple nationality provided by French law*

76. The Code provides a number of remedies against double nationality. These refer to the following cases:

(i) *Loss of French nationality by acquisition of a foreign citizenship*

77. Article 87 stipulates that Frenchmen who voluntarily acquire a foreign nationality lose their French citizenship. Frenchmen of military age form exceptions to this rule, and in their case double nationality may occur.

(ii) *Repudiation*

78. Frenchmen who exercise the right of repudiation (articles 19, 24, 25), which has been mentioned above (paragraphs 59-61), lose their nationality.

(iii) *Legitimation*

79. An illegitimate child who has acquired French nationality through acquisition of this status by his mother, loses it if he is legitimated by virtue of a subsequent marriage of his mother with an alien (article 93).

(iv) *Marriage*

80. A French woman marrying an alien may renounce her nationality, provided she acquires by her marriage the nationality of her husband (article 94). Also, a foreign woman marrying a Frenchman may

refuse French nationality provided she retains her nationality of origin (article 38).

(v) *Long residence abroad*

81. Frenchmen who have their habitual residence abroad, and whose ancestors have lived outside French territory for more than fifty years, may be considered as having lost their French nationality, unless their ancestors have preserved "la possession d'état de Français" (article 95). The meaning of this expression is not quite clear. Niboyet [62] is of the opinion that this is a question of fact which refers not to the "nomen" nor to the "tractatus", but to the "fama", and that it is one which the court has to decide in each individual instance.

(vi) *Effective foreign nationality*

82. A Frenchman who in fact behaves and acts like a citizen of a foreign country, the nationality of which he possesses, may lose his French nationality by executive decree if the Government so decides. The decree may be made applicable to his wife and children if they also have a foreign nationality (article 96).

(vii) *Service with a foreign Government*

83. The same remedy may be applied in the case of a Frenchman who accepts employment in a foreign Government service, or serves in a foreign army, and does not relinquish his employment or service within six months of being ordered to do so by the French Government (article 97).

(viii) *Release upon request*

84. A French citizen, even a minor, if he is also a foreign national, may, upon his request, be released by the French Government from his French nationality (article 91).

(ix) *International conventions*

85. Article 2 of the Code declares that "Provisions relating to nationality contained in international treaties or agreements which have been duly ratified and published are to be applied, even if contrary to the provisions of domestic French legislation".

86. In this context the Franco-Belgian Convention of 12 September 1928 may be mentioned. The Convention provided for the release from their military obligations in France of persons having French and Belgian nationality, provided they had served in the Belgian Army. A subsequent law of 30 August 1929 declared that French citizens released under the provisions of that Convention from their military obligations in France should lose their French nationality.

[62] *Op. cit.*, p. 435.

(i) *Synopsis I of French system and cases of double nationality resulting therefrom*

A. Cause of double nationality	B. Remedies provided by Code
(a) *Article 17(1) and (2)* (i) Legitimate child of French father born in *jus soli* country; (ii) Illegitimate child of French parent with regard to whom affiliation was established in the first place, if such child was born in *jus soli* country.	(a) *Article 91* May be released by the French Government upon his request; (b) *Article 96* May be released by initiative of the French Government if his behaviour indicates that he considers himself to be a citizen of the country of his second nationality; (c) *Article 97* May be released by initiative of the French Government if he refuses to relinquish employment with a foreign service or service in foreign army; (d) *Article 95* Loses French nationality if habitually resident abroad, provided his ancestors lived outside France for more than fifty years and if he and his ancestors have lost for more than three generations "la possession d'état de français".
(b) *Article 18(1) and (2)* (i) Legitimate child of French mother and of father who is stateless or of unknown nationality, if child was born in *jus soli* country; (ii) Illegitimate child of French parent with regard to whom affiliation was established in the second place, if the other parent is stateless or of unknown nationality and if the child was born in *jus soli* country.	Remedies as indicated before under articles 91, 96, 97 and 95. Idem.
(c) *Article 19(1) and (2)* (i) Legitimate child of French mother and alien father, if father's nationality is transmissible *jure sanguinis*, or if such child is born in *jus soli* country;	(i) Possibility of repudiation of French nationality by the person concerned if born outside France (art. 19) or (ii) as indicated under articles 91, 96, 97 and 95;

A. CAUSES OF DOUBLE NATIONALITY (*continued*)	B. REMEDIES PROVIDED BY CODE (*continued*)
(ii) Illegitimate child of French parent with regard to whom affiliation was established in the second place, if first parent is an alien whose nationality is transmissible *jure sanguinis*, or if the child was born in a *jus soli* country.	(ii) Idem.
(d) *Article 23*	
(i) Legitimate child born in France to (alien) father who was himself born in France and whose nationality is transmitted *jure sanguinis;*	(i) Articles 91, 96, 97;
(ii) Illegitimate child born in France of (alien) parent himself born in France with regard to whom affiliation was established in the first place, if foreign nationality is transmitted to child *jure sanguinis.*	(ii) Idem.
(e) *Article 24*	
(i) Legitimate child born in France to (alien) mother who was herself born in France, if nationality of mother is transmitted *jure sanguinis;*	Articles 91, 96, 97 or by exercise of right of repudiation.
(ii) An illegitimate child born in France to (alien) parent with regard to whom affiliation was established in the second place, if foreign nationality is transmitted *jure sanguinis.*	Idem.
(f) *Article 34*	
(i) An illegitimate child legitimated while still a minor by a French father, if born in *jus soli* country of which he retains nationality despite legitimation.	As indicated under Articles 91, 96, 97.
(g) *Article 35*	
(i) A child acquiring French nationality by virtue of "adoptive legitimation" if he also has another nationality.	Idem.
(h) *Article 55*	
(i) A child adopted by French citizen obtains French nationality on his request if he also has a foreign nationality.	Idem.
(i) *Article 64*	
(i) A foreigner naturalized pursuant to his adoption by a French citizen if he retains his original nationality.	Idem.
(j) *Article 37*	(i) *Article 38*
(i) A foreign woman marrying a French citizen acquires French nationality. Double nationality arises if she retains her nationality of origin while acquiring French nationality.	If she retains her nationality of origin she may decline French nationality. (ii) She might lose French nationality by application of articles 91, 96, 97 if these cases should arise.
(k) *Article 44*	(i) *Article 45*
(i) A person born in France to foreign parents, it he reaches the age of majority after having his habitual residence in France for at least five years prior to that date, will acquire French nationality. Double nationality will occur if the nationality of parents is also transmitted *jure sanguinis.*	He may decline French nationality during a period of six months prior to his majority, if he proves that he has a foreign nationality *jure sanguinis* (article 31).
(l) *Article 48*	
(i) A person born in France to foreign parents acquires French nationality if he voluntarily serves in the French Army in Tunisia or Morocco, provided he had his habitual residence in France at the time of his voluntary engagement as well as five years prior to that date. Double nationality will occur if the parents' nationality is transmitted *jure sanguinis.*	(i) Articles 91, 96, 97 summarized above.
(m) *Article 49*	(i) *Article 49*
(i) A person born in France to foreign parents who has appeared before a recruitment board in Tunisia or Morocco without pleading his foreign nationality will become French under the conditions of residence stated in the immediately preceding section (article 48, above).	Dual nationality will be avoided by pleading foreign nationality; (ii) Articles 91, 96, 97 as summarized above.

A. Causes of double nationality (*continued*)	B. Remedies provided by Code (*continued*)
(n) *Articles 52 and 53*	
(i) A minor born in France to foreign parents may claim French nationality either personally, if he is 18 or through his legal guardians, if he is less than 18 years. Conditions of residence as stated under article 8 above. Double nationality may occur if the nationality of parents is transmitted *jure sanguinis*.	(i) Articles 91, 96, 97.
(o) *Articles 60-71*	
(i) Naturalization may be a source of double nationality, since the Code does not require release from the nationality of origin prior to or after naturalization.	(i) Exceptionally Article 91. (ii) Articles 96, 97.
(p) *Articles 72-77*	
(i) Reinstatement may be a cause of double nationality should the individual concerned retain the nationality acquired after the loss of the original French one.	(i) Exceptionally Article 91. (ii) Articles 96, 97.

(j) *Synopsis II of French system with regard to application of* (*a*) jus sanguinis, (*b*) jus soli, (*c*) *mixed* jus sanguinis *and* jus soli.

Jus sanguinis

1. *Article 17(1) and (2)*
   (i) Legitimate child born to French parent;
   (ii) Illegitimate child, if parent with regard to whom affiliation was established in the first place is French.
2. *Article 18(1) and (2)*
   (i) Legitimate child of French mother, father stateless or nationality unknown;
   (ii) Illegitimate child, if parent with regard to whom nationality was established in the second place is French, and if the other parent's nationality is unknown or if he or she is stateless.
3. *Article 19(1) and (2)*
   (i) Legitimate child of French mother and alien father;
   (ii) Illegitimate child, if the parent with regard to whom affiliation was established in the second place is French, the other being a foreigner.
4. *Article 34*
   Legitimated child of French father.
5. *Article 84*
   (i) Legitimate minor child of naturalized parents;
   (ii) Illegitimate child of naturalized parents.
6. *Article 84*
   5 above also applies to children of persons who have re-acquired French nationality by reinstatement.

Jus soli

1. *Article 21*
   Child born in France of unknown parents.
2. *Article 22*
   Foundling found in French territory.
3. *Article 44*
   Person born in France to foreign parents when attaining majority.
4. *Article 48*
   Person born in France to foreign parents who is voluntarily serving in French Army in Tunisia or Morocco.
5. *Article 49*
   Person born in France to foreign parents it he appears before recruitment board in Tunisia or Morocco without pleading that he is a foreigner.
6. *Article 52*
   A minor born in France to foreign parents may claim French nationality.

Jus sanguinis and jus soli

1. *Article 23(1) and (2)*
   (i) Legitimate child born in France to alien father himself born in France;
   (ii) Illegitimate child born in France, if parent (alien) with regard to whom affiliation was established in the first place was also born in France.
4. *Article 24(1) and (2)*
   (i) Legitimate child born in France to foreign mother herself born in France;
   (ii) Illegitimate child born in France, if foreign parent with regard to whom affiliation was established in the second place was himself born in France.

(k) *Concluding remarks*

87. As may be seen from the preceding summary, the French system, as codified in the law of 19 October 1945, appears to be a considered attempt by the legislature to reconcile political necessities with justice and fairness towards the individuals concerned.

88. France, as a country with a comparatively low birth-rate surrounded by neighbours whose populations increase rapidly, has an obvious interest in maintaining the link between the mother country and the emigrant even over a lengthy period of time. She will also wish to assimilate rapidly aliens who may settle, even for a comparatively short period, on French territory. *Jus sanguinis,* as the predominant feature of the French law, allows the achievement of such ends. *Jus soli* enters into the picture for the most part only in the interests of the individual concerned. Such is undoubtedly the case when the law attributes French nationality to the foundling found in France and to children of unknown parents. There may be criticism of the provisions which attribute the mother's nationality to the child of a foreign father and a French mother. Avoidable cases of double nationality may thus arise. The same consequences may follow when a child born in France to foreign parents becomes French on reaching majority unless he declines French nationality. It must be stated, however, that this provision favours the descendants of stateless persons, who otherwise might have had no country in which to settle: and it may be added that the conditions to be fulfilled in these cases, as to birth in the country and prolonged residence, are such that these persons may justifiably be considered as having become French by assimilation. The same considerations apply to the provisions enabling minors born in France of foreign parents to claim French nationality if they so wish. In this case, however, it is the act of the alien child or of his legal guardians which will result in the child acquiring French citizenship. The provision operates, therefore, to the alien's advantage. The provisions concerning acquisition of French nationality through military service in Morocco or Tunisia also leave it to the alien to decide whether or not he wishes to become a French national; and it may be asserted that these various stipulations of the law are beneficial to the alien concerned as well as being in the interest of the country.

89. Double nationality can, in general, be eliminated under the Code, provided the French administration agrees. Such agreement is not required in those cases where the law enables the individual concerned to renounce French nationality by a manifestation of his will. Normally, requests to be released will be granted if it is felt that the ties of the individual concerned with France are no longer such as to justify retention of French nationality. Such is undoubtedly the case when a Frenchman becomes naturalized abroad or accepts service with an alien government despite being ordered to relinquish such service.

90. French law undoubtedly creates many situations from which double nationality may arise. But it is evident that double nationality cannot be eliminated by the unilateral action of a single State. Concerted measures in this field by the community of States will be necessary to achieve this desideratum.

91. In addition to he French legislation, it may be useful to study certain other continental European nationality laws. In view of the detailed analysis of the French one, which may be considered as a prototype of nationality laws, with *jus sanguinis* as the predominating principle, it may, however, suffice to show that similar laws prevail generally in Europe, and to indicate what legislative precautions, if any, have been taken with a view to preventing the occurrence of cases of double nationality.

2. *The German law on nationality*

(a) *Introductory remarks*

92. The principal enactment on nationality in force in Germany is the law of 22 July 1913. It has undergone a number of amendments, particularly during the period from 1933 to 1945. After 1945 certain provisions introduced by the National-Socialist Government were abolished; and those concerning the acquisition and loss of German nationality through marriage were amended as a consequence of article 3 of the Constitution of the Federal Republic of Germany [63] which establishes the principle that "men and women have equal rights".[64] It would appear, therefore, that German women no longer lose German nationality by marriage to an alien, and that foreign women no longer acquire German citizenship *ipso facto* by marriage to a German national, as was the case under the original Act of 22 July 1913.

93. The period of National-Socialist domination has, however, left, even after the defeat of the Third Reich, certain unsolved problems which might be briefly mentioned, because the measures referred to have a bearing on the present investigation.

94. In 1938 Germany annexed the Republic of Austria,[65] and, generally speaking, former Austrian citizens became German nationals. Further annexations of territory took place before and after the beginning of the war of 1939-1945. Numerous inhabitants of the territories concerned, who were "ethnically" Germans, according to the views of the former German Government, were collectively naturalized; others were naturalized subject to repeal by the German authorities; others became "Protégés of the German Reich" (Schutzangehoerige); others again were citizens of the "Protectorate" (Czechoslovakia). Certain States agreed to an exchange of populations with Germany, the exchanged citizens obtaining German nationality and vice versa. Service in the German Army or in assimilated organizations also involved the acquisition of German nationality, under certain conditions, even without the consent of the persons concerned. One of the problems to be solved in this connexion is that of the validity, under the present German law, of German nationality conferred in violation of general

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[63] Basic Law for the Federal Republic of Germany of 23 May 1949, printed in *Yearbook on Human Rights for 1949*, pp. 79 ff.

[64] *Ibid.*, p. 79.

[65] The German law on Nationality of 22 July 1913 became applicable in the territory of the Austrian Republic on 1 July 1939 by virtue of an executive decree of 30 June 1939 (second decree concerning German nationality in Austria), quoted by Makarov, *op cit.*, p. 51, footnote 122.

principles of international law (e.g. German citizenship imposed on inhabitants of territories under *occupatio bellica*). After Germany's defeat, the annexed territories resumed their separate identity and their inhabitants will normally have regained their former citizenship. But the question may be asked whether, from the point of view of German law, they will automatically lose their German nationality, particularly those to whom the liberated country refused the right to return.[66] These and other related questions stemming from the period of National-Socialist domination in Germany and in Europe may have to be settled in the future peace treaties with Germany or by other international instruments. In the meantime they may give rise to double or multiple nationality or to statelessness and create serious problems for the individuals concerned.[67] The present study is, however, more concerned with the general structure of the German legislation on nationality than with the particular aspects resulting from the upheaval brought about in this and many other spheres by the accession to power of National-Socialism and by the war of 1939-1945.

It is the German fundamental law on nationality of 22 July 1913 which will be analysed below.

(b) *How German citizenship is obtained*

95. Article 3 of the law indicates in general how German citizenship is obtained: It states that citizenship in a "federal state" may be obtained by birth (art. 4), by legitimation (art. 5), by marriage (art. 6),[68] by assumption in the case of a German (arts. 7, 14 and 16),[69] and by naturalization in the case of a foreigner (arts. 8 and 16).

96. To these grounds of acquisition of German citizenship, Part IV of the law (articles 33 and 34) adds the following:

> "*Article 33* Direct Reichs-citizenship is granted:
>
> "1. To a foreigner who has taken up his residence in a protectorate (Schutz-Gebiet) or to a national of such a protectorate;
>
> "2. To a former German who has not taken up his residence in Germany. The same applies to the descendants of a former German or to his adoptive child.
>
> "*Article 34* Direct Reichs-citizenship may on application be granted to a foreigner who is employed in the Reichs-service and has his official residence abroad provided he receives a salary from the Reichstreasury; it *may* also be granted to him if he does not receive such a salary."

(i) *German citizenship obtained* jure sanguinis

97. German citizenship is acquired *jure sanguinis*

(1) *By virtue of article 4 which stipulates:*

(*a*) That the legitimate child of a German is German by birth;

(*b*) That the illegitimate child of a German woman has his mother's citizenship.

(2) *By virtue of article 5 which declares:*

(*a*) That legitimation by a German, if valid according to German law, bestows the father's citizenship on the child.

(3) *By virtue of article 16* (2) *which extends naturalization or reintegration* (*assumption*) *to*

(*a*) The wife (irrelevant in the context);

(*b*) Those children whose legal representation rests by reason of parental tutelage in the person who has assumed citizenship or become naturalized.

(ii) *German citizenship obtained* jure soli

98. The German law applies *jus soli* by attributing German nationality to a child found on German territory (article 4 (2)).

(iii) *German nationality obtained by naturalization*

(a) *Naturalization of former citizens*

99. Former German citizens may regain their German nationality provided the Minister of the Interior agrees (Decree 5 February 1934):

1. By virtue of article 9 (1), if they request it. This applies also to their children and grandchildren, and to adopted children of a citizen of the State, unless the applicant is a citizen of a foreign State;
2. By virtue of article 10, which grants a right of naturalization to the widow or divorced wife of a foreigner, provided she was a German citizen at the time of marriage;
3. By virtue of article 11, which grants a right of naturalization upon their application to former Germans who have lost their German nationality by expatriation during minority, provided the individuals concerned have taken up residence in Germany. This provision may be considered as a protection against statelessness for such persons;
4. By virtue of article 13, which enables the Government to naturalize a former German citizen who has not taken up residence in Germany;
5. By virtue of article 13, which enables the Government to naturalize the descendant of a former German or an adoptive child of a former German;
6. By virtue of article 14, which grants German citizenship in case of appointment to a position in "the direct or indirect service of the State or in the service of religious societies recognized by one of the federal states".[70]

[66] In this connexion it may be recalled that Article 16 (1) of the Basic Law for the Federal Republic of Germany stipulates:

"No one may be deprived of his German citizenship. A person may be deprived of citizenship only on the basis of a law and against his will, only if he is not thereby rendered stateless" (*Yearbook on Human Rights for 1949*, p. 81).

[67] The section on German nationality of the present study is based on *Deutsches Staatsangehoerigkeitsrecht* by Franz Massfeller, edition of 1953. This book contains a useful summary of German legislation and regulations on nationality.

[68] It has already been stated in paragraph 92 above that the provisions of article 6 no longer appear to be applicable.

[69] This provision has become obsolete, an executive decree of 5 February 1934 having abolished citizenship in federal states in favour of direct Reichs-citizenship alone. Massfeller, *op. cit.*, p. 39.

[70] The provisions quoted above may be compared with those of the French Code dealing with "reinstatement" of former citizens (articles 72-77). In French law a "reinstated" citizen is considered as having never lost his nationality

(b) *Naturalization of foreigners (general rules)*

100. Foreigners may obtain German citizenship by naturalization:

1. By virtue of article 8 which enables the German Government to naturalize a foreign applicant under certain conditions including residence;
2. By virtue of article 9 (2), which enables the German Government to naturalize foreigners born in Germany, provided they have maintained a continuous residence there up to the end of their twenty-first year.[71]

(c) *Naturalization of foreigners (special cases)*

101. Foreigners may obtain German citizenship by entering the service of the German Government or by serving in the German Army:

1. By virtue of article 12, a foreigner who has served for one year at least in the German Army or Navy may be naturalized under conditions set out in the law;
2. By virtue of article 14, an appointment to a position in the direct or indirect service of the State (land) or of subordinate collectivities counts as naturalization, unless a reservation to the contrary is made in the letter of appointment;[72]
3. By virtue of article 15, appointment to the Reichs-service of a foreigner if he resides in Germany, or, if the residence is abroad, provided he draws a salary paid by the Reichs-treasury, counts as naturalization. If no such salary is received, naturalization *may* be granted.

(c) *Provisions from which dual or multiple nationality may arise*

102. The German law contains a number of provisions which might lead to the occurrence of double nationality. These may be summarized as follows:

(i) *As a consequence of* jus sanguinis

1. By virtue of article 4, which bestows German citizenship on the legitimate child of a German father or on the illegitimate child of a German mother. Such children if born outside Germany in a *jus soli* country, would have double nationality;
2. By virtue of article 5, which grants German citizenship to the legitimated child of a German father. Such child, if born abroad in a *jus soli* country, would have double nationality.

(ii) *As a consequence of naturalization*

1. If the children, grandchildren or adoptive children of a former German citizen who re-acquires German citizenship by virtue of article 9 (1) retain their foreign nationality, double nationality will arise;
2. The widow of a foreigner who, by virtue of article 10, is re-instated in her German nationality of origin will have double nationality if she also retains her foreign citizenship;
3. A former German who retains his foreign nationality and acquires, by virtue of article 11, German citizenship after having taken up residence in Germany will have double nationality;
4. The same applies to former Germans, their descendants and/or adoptive children, naturalized upon their request, by virtue of Article 13.
5. Naturalization as a consequence of appointment to a position in the direct or indirect service of the State, municipalities etc. (articles 14-16 and 34), will produce double nationality if the appointees retain their former citizenship;
6. Double nationality will also occur by virtue of article 25, which enables the German Government to authorize a German national to retain his German citizenship, although he has neither his domicile nor his residence in Germany, and has acquired a foreign citizenship.

(d) *Provisions which may or will prevent dual or multiple nationality from occurring*

103. Provisions preventing the occurrence of double nationality are found in those sections of the law of 22 July 1913 which deal with loss of German nationality. These provisions are summarized below.

(i) *Loss of German nationality by virtue of the will of the person concerned*

104. Certain provisions of the German law make the loss of German nationality subject to the will of the person concerned. These are as follows:

1. The wife of a German can be released from German nationality upon the request of her husband and with her consent (article 18);
2. With regard to children, release may be obtained if the parents request release for themselves (article 19) or, in the case of orphans, if the competent tribunal concurs (article 19).

Release will not, however, be granted to a German still subject to military obligations (article 22). It cannot be refused on other grounds in times of peace (article 22, paragraph 2). It can be repealed if the person concerned maintains his habitual residence in Germany for more than a year after release had been granted.

(ii) *Loss by operation of law*

105. 1. Naturalization of a German in a foreign country will normally entail loss of German citi-

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i.e., he acquires immediately the right to exercise in full all political and civil rights attaching to French citizenship by birth. Naturalized French citizens, on the other hand, are subject to certain legal disabilities for a limited period.

[71] This condition is different from the cases dealt with by articles 44, 45 and 31 of the French Code discussed above (para. 69), inasmuch as the alien concerned is considered to be French unless he expressly declines this nationality, the right to do so depending on whether he possesses a foreign nationality by affiliation. The French law, therefore, prevents the occurrence of statelessness in these cases by the application of the *jus soli* principle. The German law leaves the initiative entirely to the individual concerned who may become stateless by failure to apply for German citizenship during the period prescribed by the law.

[72] It should, however, be noted that the Law on German civil servants of 26 January 1937, quoted by Massfeller (*op. cit.*, p. 43) makes appointment to a position in the civil service in principle conditional upon possession of the German nationality.

zenship (article 25), provided the individual concerned has neither his domicile nor his habitual residence in Germany, and if he has not been authorized in writing to retain German citizenship;

2. A German of military age domiciled outside Germany will lose German citizenship after completing his thirty-first year, if by that time he has not obtained a decision of the authorities concerning his military status; if a deserter, he loses citizenship within two years after the publication of the decision declaring him such;
3. A decision of the competent authority may deprive a German of his nationality if, in time of war, he refuses to obey an official request to return to Germany or if, without the permission of his Government, he accepts service with a foreign State and refuses to resign his appointment when requested to do so by the competent authority (articles 27-28).

(iii) *International treaties*

106. Germany has concluded a number of bilateral treaties with the object of preventing the occurrence of double nationality. Some of these will be discussed later in greater detail. It may be mentioned, however, that article 36 of the law of 22 July 1913 expressly maintains the validity of certain conventions concluded by individual federal states with foreign States prior to the entering into force of the afore-mentioned law. The provision refers to the so-called "Bancroft treaties", which dealt with the loss of German or United States citizenship, as the case might be, by nationals of one of the contracting States naturalized in the other. Such individuals, if they returned to their country of origin and remained there for more than two years, lost their acquired citizenship and regained their nationality of origin.[73]

(e) *Concluding remarks*

107. Saving clauses against the occurrence of double nationality are, as has been seen, less elaborate in German than in French law. They consist mainly of provisions for the automatic loss of German citizenship by a German naturalized abroad, provided he has not obtained authority to retain his German nationality. Like the French Code de la Nationalité, the German law is based on the *jus sanguinis* principle, with the *jus soli* operating in certain circumstances. While according to German law, a foreigner appointed to an official position in the service of the German State counts as a naturalized citizen, or must be naturalized upon his request, such a provision does not exist in French law. French law does, however, authorize without residence conditions the naturalization of aliens who have served in the French armies during the war or rendered "exceptional services" to France (article 64). Such foreigners may be freed from the legal disability preventing the appointment of naturalized Frenchmen to public office for five years following the date of the naturalization decree (articles 82-83).

[73] The Bancroft treaties concluded with Germany have been abrogated by article 289 of the Treaty of Versailles.

3. *The Swedish Citizenship Act of 22 June 1950*

(a) *Introductory remarks*

108. A further example of European legislation following the *jus sanguinis* principle which it may be useful to review briefly is the Swedish Citizenship Act of 22 June 1950, which contains a number of provisions designed to prevent double nationality.[74]

(b) *How Swedish citizenship is obtained*

(i) *Acquisition* jure sanguinis

109. The Swedish Act, like the two laws previously examined, but with certain exceptions, applies the *jus sanguinis* principle.

1. A child whose father is a Swedish citizen is Swedish, so is the child of a Swedish mother and a stateless father; and also the child born out of wedlock of a Swedish mother (article 1 (1-3));
2. Legitimation through subsequent marriage of a Swedish citizen with an alien woman confers Swedish citizenship upon their child born out of wedlock prior to the marriage.

(ii) *Acquisition* jure soli

110. The *jus soli* principle is applied by Swedish law in circumstances which have already been studied when the relevant provisions of the French Code were analysed:

1. A foundling found in Sweden is deemed to be a Swedish citizen unless and until the contrary is proved (article 1 (3));
2. An alien born in Sweden and domiciled there uninterruptedly until completion of his twenty-first year becomes Swedish if he applies for Swedish citizenship not later than his twenty-third birthday.[75] For a stateless alien, or for one who loses his other citizenship by becoming a Swedish national, such a declaration can be made upon attaining eighteen years.

(iii) *Acquisition through resumption*

111. Resumption of Swedish nationality is governed by article 4, which stipulates that a Swedish born person domiciled in Sweden until completion of his eighteenth year, who thereafter loses his citizenship, may subsequently re-acquire it upon request after two years of residence in Sweden.

(iv) *Acquisition through naturalization*

112. 1. Naturalization may be granted to an alien over eighteen years old after seven years of residence, provided various other conditions are fulfilled (article 6);
2. The unmarried children of a naturalized Swede may be granted Swedish citizenship

[74] It should be noted that the laws of the two other Scandinavian States, Denmark and Norway, contain similar provisions.

[75] Under the corresponding provision of the French Code (article 44) French citizenship is automatically acquired on majority unless expressly declined. The conditions of residence (five years prior to completion of the twenty-first year) are less severe than the Swedish ones.

by a decision of the King in Council, provided they are under eighteen years of age (article 6).

(v) *Acquisition by marriage*

113. It may be noted that the Swedish Act of 1950 does not contain any specific provision regarding loss of Swedish nationality by a Swedish woman marrying an alien, whether or not she thereby acquires her husband's citizenship; nor does the law say anything about acquisition of Swedish nationality by an alien woman becoming the spouse of a Swedish citizen. It may, however, be inferred from article 18 of the Act (transitional provisions) that while under the law in force before 22 June 1950 the Swedish woman followed the condition of her husband, i.e., she lost her Swedish nationality by marriage to an alien or if her Swedish husband lost his nationality, this is no longer the case. A Swedish woman's nationality is, therefore, not affected by her marriage to an alien or by her Swedish husband's change of status during the marriage; and an alien woman marrying a Swede will be able to acquire Swedish citizenship only through naturalization in accordance with the provisions briefly summarized above.

(c) *Cases of dual or multiple nationality under Swedish law*

114. Swedish law takes great care to prevent the occurrence of double nationality. Indeed, it would appear that this problem may arise in a few cases only, e.g., when a Swedish woman marries an alien whose nationality she obtains by virtue of her marriage. But even in that case Swedish nationality, as will be seen, is lost by prolonged residence of the Swedish citizen abroad. Double nationality might also occur when the illegitimate child of a Swedish citizen and an alien woman obtains the Swedish nationality of the father by the subsequent marriage of his parents, if, as is the case under French law for instance, the child would have the mother's nationality and be able to retain it. Double nationality might also be the consequence of the provision of article 3 whereby an alien born in Sweden and domiciled there until his twenty-first year may acquire Swedish nationality upon his request.

(d) *Provisions preventing dual or multiple nationality*

115. Provisions of this kind appear to be among the guiding principles applied by the Swedish legislator in drafting the Act of 22 June 1950. They may be summarized as follows:

1. A legitimate child born in Sweden to an alien father and a Swedish mother acquires only Swedish nationality, if he does not obtain his father's citizenship by birth or if the father is a stateless person;
2. By virtue of article 6, it may be made a condition of the acquisition of Swedish citizenship that the applicant for naturalization shall submit proof that an expatriation consent has been granted by the applicant's government.
3. By virtue of article 7, Swedish citizenship is lost by naturalization in a foreign country, by acceptance of appointment to a public office in a foreign country carrying with it acquisition of the citizenship concerned, or by naturalization of the parents if the child also acquires the foreign nationality;
4. By virtue of article 8 a Swedish citizen born abroad who has not been domiciled in Sweden before his twentieth year will lose Swedish citizenship unless he is specifically authorized to retain it;
5. Finally, a Swedish national who desires to become a citizen of a foreign State may, in accordance with the provisions of article 9, be released from his Swedish nationality.

4. *The Nationality Law of the USSR of 1938*

116. The Soviet Citizenship law of 1938 as reproduced by *Izvestia* of 24 August 1938, No. 198, consists of eight articles indicating who is a Soviet citizen, how Soviet citizenship is acquired, and how it may be lost. It establishes, in accordance with article 1, a single "Union citizenship" for the citizens of the USSR, i.e., all citizens of a Republic belonging to the Union are also citizens of the USSR.

(a) *Citizenship by origin*

117. All persons who on 7 November 1917 were citizens of the "former Russian Empire" and who have not lost Soviet citizenship are citizens by origin (art. 2 (a)). It appears evident, although the law does not say so *expressis verbis,* that the same will apply to the descendants of such persons. This may be inferred from article 2 (b) which recognizes as Soviet citizens those who have acquired Soviet citizenship in a manner established by law.

118. Marriage does not affect Soviet citizenship, so that a Soviet woman marrying an alien and thereby acquiring the husband's nationality would have double nationality.

(b) *Naturalization*

1. *Naturalization of aliens in the USSR*

119. Foreigners will be naturalized, upon their request, either by the Presidium of the Supreme Council of the USSR or by the Presidium of the Supreme Council of the Union Republic in which they reside (article 3). Foreign minor children under fourteen years of age will become naturalized if both parents acquire citizenship of the USSR by naturalization. Children between the ages of fourteen and eighteen must give their consent. Persons over eighteen must themselves apply for naturalization (article 6).

2. *Loss of Soviet citizenship upon request of the citizen concerned*

120. Article 4 stipulates that Soviet citizens may be de-naturalized with the permission of the Supreme Council of the USSR. This provision would seem to indicate that Soviet citizens may obtain an expatriation permit.

(c) *Jus soli*

121. Soviet law appears not to apply the *jus soli* principle, even in cases where other nationality laws,

such as the French or German ones, have recourse to it in the interests of the person concerned. This appears to result from article 8, by virtue of which persons residing on Soviet territory who, under the provisions of the law, are not Soviet citizens and who cannot prove foreign citizenship, are considered to be stateless. Thus, a child born to stateless parents residing in the USSR would appear to follow his parents' status in this respect.

B. LEGISLATION BASED PRINCIPALLY ON JUS SOLI

1. *The British Nationality Act, 1948*

(a) *General remarks*

122. As has been seen in the preceding sections of this study, *jus sanguinis* is predominant in Europe. The most noteworthy exception is the British system based on the *jus soli* principle. However, J. Mervyn Jones [76] has expressed the opinion that this question may not be free from doubt. He wrote:

> "Allegiance is a different legal idea from nationality, and some erroneous thinking has resulted from a tendency to confuse the two ideas. .....Much original research remains to be done into the history of allegiance, particularly with a view to tracing the two strands of *jus soli* and *jus sanguinis* in our law; but I believe I have shown here that the tendency, which I have mentioned above, to assume that the *jus soli* is the true common law rule, requires far more serious and critical examination than it has hitherto received."

123. For the purpose of the present inquiry, however, it will not be necessary to go more deeply into the matter for, compared with the European continental systems so far examined, the British system may well be classified as among those which, predominantly, apply the *jus soli* principle.

(b) *How British nationality is obtained*

124. The British Nationality Act, 1948, distinguishes between "British Nationality" and "citizenship of the United Kingdom and Colonies". British nationality is obtained:

(*a*) By virtue of citizenship;

(*b*) By continuance of certain citizens of Eire as British subjects.

125. Citizenship of the United Kingdom and Colonies is obtained:

(*a*) By birth;
(*b*) By descent;
(*c*) By registration;
(*d*) By naturalization;
(*e*) By incorporation of territory.

126. British nationality belongs, in accordance with section 1 of the Act, to every person who is a citizen of the United Kingdom and Colonies or a citizen of Canada, Australia, New Zealand, the Union of South Africa, India, Pakistan, Southern Rhodesia and Ceylon. According to this section, therefore, citizens of the above-mentioned countries possess at the same time the nationality of their country of origin and British nationality. Although the countries concerned have a legal personality distinct from that of the United Kingdom and its immediate dependencies, they belong to the British Commonwealth of Nations. For the purpose of the present enquiry, their nationals' status as "Commonwealth citizens" and nationals of their country of origin will not be considered as conferring upon them a "double nationality."

127. Citizens of the Republic of Ireland may retain British nationality (section 2) if they give notice in writing to the Secretary of State claiming to remain a British subject on any of the grounds enumerated in section 2 of part 1 of the Act. If such a person also retained the nationality of the Republic of Ireland a case of double nationality would occur. It should be noted in this connexion that the Ireland Act, 1949, declares in section 2 that the Republic of Ireland is not a foreign country.[77] The fact that the Republic of Ireland is not part of His Majesty's dominions is declared in section 3 not to affect the operation of, *inter alia*, "the British Nationality Act, 1948 (and in particular, and without prejudice to the generality of the preceding words, sections two, three and six thereof)".[77a] Section 5 of the Ireland Act makes provisions as to the operation of the British Nationality Act, 1948, and, in particular, determines in sub-section 1 (b) (i-iii) the persons who shall be deemed to have ceased to be British subjects on the coming into force of the British Nationality Act, 1948.[77b] On the other hand, section 23(1) of the Irish Nationality and Citizenship Act No.13 of 1935 enacts that whenever a convention made between the Republic of Ireland and the Government of any other country provides for the enjoyment in such country by citizens of the Republic of the rights and privileges of citizens of such other country similar rights will be granted in every such case to citizens of such other countries.[77c]

(i) *Application of the* jus soli *principle*

128. That British law predominantly applies the *jus soli* principle may be inferred from section 4 of the Act, by virtue of which "every person born within the United Kingdom and colonies after the commencement of this Act" is a citizen of the United Kingdom by birth. Exceptions to this general principle are stated in section 4 (a) and (b), and they apply to envoys of foreign sovereign Powers accredited to His Majesty and to children of enemy aliens born in a place then under occupation by the enemy.

129. A mixture of *jus soli* and *jus sanguinis* exists in the case of British citizens by descent,[78] in so far

[76] J. Mervyn Jones, *British Nationality Law and Practice* (Oxford, Clarendon Press, 1947), Preface, pp. ix and x.

[77] *Halsbury's Statutes of England*, second edition, vol. 28, Continuation Volume, 1948-49 (London, Butterworth & Co., 1951), p. 446.

[77a] *Ibid.*, p. 447.

[77b] *Ibid.*, pp. 168-169.

[77c] United Nations Legislatives Series, *Laws Concerning Nationality* (New York, 1954), pp. 256-257.

[78] Under section 23, a person born out of wedlock and legitimated by the subsequent marriage of the parents will, for the purposes of determining his possession of British nationality, be treated as if he had been born legitimate. For a posthumous child it is the nationality of the father at the time of death that is taken into account in determining whether the child is a British national or not.

as they are not born in the United Kingdom, its Colonies, or the countries mentioned in paragraph 125 above. Section 5 of the Act provides that if the father of such a person is a citizen of the United Kingdom by descent only (i.e., if the father himself was not born in one of the countries conferring British nationality by birth) such a person shall not be a citizen of the United Kingdom. The same section, however, stipulates a number of exceptions to this rule, such as birth in certain territories (protectorates, mandates etc.), registration of the birth at a United Kingdom consulate within one year of its occurrence, the father being in the service of His Majesty's Government in the United Kingdom, or the person concerned being born in one of the countries enumerated in paragraph 125 above and not becoming a citizen thereof by birth.

130. Citizens of the countries mentioned in paragraph 125 above and citizens of Ireland may also, upon application, be registered as citizens of the United Kingdom under the conditions prescribed by section 6 of the Act. Minor children of citizens born abroad or in any colony, protectorate or United Kingdom trust territory may also be registered as citizens of the United Kingdom and Colonies (sections 7 and 8).

(ii) *Naturalization*

131. Naturalization as a British citizen is obtained, on application by the alien concerned, under the conditions set forth in section 10 of the Act. Neither section 10 nor the Second Schedule to the Act requires that the alien concerned must prove loss of his former citizenship either before or after naturalization.

(iii) *Marriage*

132. The British Nationality Act contains in section 14 a provision relating to the nationality of married women. British women who, before the coming into force of the Act, ceased on their marriage to be British subjects, shall be deemed to have been British subjects until immediately before the commencement of the Act. In order to retain their nationality they must now make a "declaration of retention of British nationality". The Act contains in Section 6 (1) provisions relating to the acquisition of British citizenship by an alien woman through her marriage to a British subject. Such alien women, on making application therefore to the Secretary of State and on taking an oath of allegiance, are entitled to be registered as citizens of the United Kingdom and Colonies, provided they have not renounced, or have not been deprived of, citizenship of the United Kingdom and Colonies under the relevant provisions of the Act.

(c) *Provisions which may or will prevent dual or mutiple nationality from occurring*

133. Under section 19 of the Act, any citizen of the United Kingdom and Colonies who is also a citizen of one of the countries enumerated in paragraph 125 above, or of Eire, or a national of a foreign country, may make a declaration of renunciation of citizenship of the United Kingdom and Colonies, in which case he will lose that citizenship. In this instance the avoidance of double nationality depends on the declared will of the person concerned. On the other hand, the Secretary of State, may by Order under section 20, deprive a naturalized citizen of his citizenship if such person has been ordinarily resident abroad for a continuous period of seven years, unless such person has been in the service of the British Government, or of an international organization of which the Government "of any part of his Majesty's dominions" was a member, or unless he registers annually at a United Kingdom consulate his intention to retain his citizenship. This provision leaves it to the appreciation of the competent authorities whether a naturalized citizen who manifestly has no intention of maintaining his ties with his adoptive country is to be deprived of his British nationality; and it may be assumed that the authority will be exercised in a case where such a naturalized subject has become by naturalization or otherwise the citizen of another country. Reasonable precautions against abuse of this authority are taken in section 20 subsections 5-7 of the Act, as well as in section 21.

21. The Secretary of State must be "satisfied that it is not conducive to the public good that that person should continue to be a citizen of the United Kingdom and Colonies"; the Secretary of State must give to such a person notice in writing informing him of the grounds on which it is proposed to make an order depriving him of his British nationality; and in certain cases the person may apply for an enquiry and the question may then be referred to a committee of inquiry the chairman of which must be a person possessing judicial experience.

(d) *Provisions which may lead to dual or multiple nationality*

134. Like the other laws examined in the course of this study, the British Nationality Act, 1948, provides no water-tight guarantee against the occurrence of double nationality. The main circumstances in which it may arise are summarized below.

(*a*) Under section 4 of the Act, persons born in the United Kingdom are, generally speaking, citizens of the country. Double nationality will therefore occur:

(1) If a child is born in Great Britain to an alien (e.g., a French citizen) whose nationality law follows the *jus sanguinis* principle;

(2) Under section 5 a person whose father is a citizen of the United Kingdom and Colonies has British nationality. Double nationality will therefore occur if such person is born in a non-British country applying the *jus soli* principle. His children will, however, lose British citizenship, unless they are born in certain territories or countries specified in subsection 5 (1) (a) or the birth has been registered at a United Kingdom consulate (section 5 (1) (b)). Under such circumstances British citizenship appears to be indefinitely transmissible.

(3) British women who retain their nationality by virtue of a declaration of retention when marrying an alien whose nationality they acquire will have double nationality.

(4) The same applies to an alien woman who, while retaining her nationality of origin, is, by virtue of her marriage to a British citizen, registered as a citizen of the United Kingdom and Colonies under section 6 (2) of the Act.

(5) A person born out of wedlock and legitimated by the subsequent marriage of his parents, if born in a non-British country whose nationality he acquires by birth, will have double nationality if he also becomes a British citizen by virtue of section 23 of the Act.

(6) British citizens by naturalization will have double nationality if they do not lose their original citizenship upon becoming British subjects. The same will apply to a British citizen naturalized in a foreign country.

II. The Americas

135. Having thus summarily analysed some of the European nationality laws, it may be useful to consider a few examples from legislation in force in the American hemisphere, and in the first place the United States Immigration and Nationality Act of 1952.[78a]

1. *United States Public Law 414 of 27 June 1952*

(a) *General remarks*

136. The United States law on the subject of nationality, like that of many other States, shows clearly that nationality legislation is very much a matter of political expediency.

137. Until recently a country of massive immigration, the United States has consistently and predominantly applied the *jus soli* principle. It has facilitated immigration and the subsequent naturalization of aliens; but, gradually, with the increase of the native population, it has restricted these facilities and has tried to limit them, as far as possible, to individuals considered desirable with regard to the aims pursued by United States authorities in relation to the general composition of the country's population. Double nationality has always been frowned upon by United States policy-makers, and a number of legislative measures have been taken to prevent its occurrence, especially as regards naturalized aliens, and also in respect of children born in the United States of foreign parents.

138. This inquiry is not concerned with the evolution of United States legislative policy with regard to nationality in general: it deals only with the problem of multiple nationality and with the state of the question under legislation in force at the present time. The following paragraphs contain, therefore, a summary analysis of the relevant provisions of United States Public Law 414 of 27 June 1952.

(b) *How United States citizenship is obtained*

(i) *Acquisition* jure soli

139. Section 301 (a) enumerates those persons who acquire United States citizenship by birth:

1. A person born in the United States, and subject to the jurisdiction thereof (this would appear to include all persons born in territories subject to the jurisdiction of the United States, with the exception of those whose parents have the benefit of diplomatic immunities and privileges);
2. A person born in the United States to a member of certain aboriginal tribes;
3. A person born outside the United States and its outlying possessions of parents both of whom are citizens of the United States and one of whom had a residence in the United States or one of its outlying possessions prior to the birth of such person.
4. A person born outside the United States and its outlying possessions of parents one of whom is a citizen of the United States and has been physically present in the United States or one of its outlying possessions for a continuous period of one year prior to the birth of such person, and the other of whom is a national but not a citizen of the United States;[79]
5. A person born in an outlying possession of the United States of parents one of whom is a citizen of the United States and has been physically present in the United States or one of its outlying possessions for a continuous period of one year at any time prior to the birth of such person;
6. A person of unknown parentage found in the United States while under the age of 5 years, until shown, prior to his attaining the age of 21 years, not to have been born in the United States;
7. A person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totalling not less than 10 years, at least five of which were after attaining the age of fourteen years.[80]

(ii) *Acquisition* jure sanguinis

140. *Jus sanguinis* therefore, applies in the cases mentioned in paragraph 139, sub-paragraphs 3-7 above, i.e., to persons born outside the United States and its outlying possessions to parents one or both of whom are citizens of the United States. Such persons might therefore have double nationality.

141. The law contains in sections 302-307 provisions relating to:

(*a*) Persons born in Puerto Rico on or after 11 April 1899;

(*b*) Persons born in the Canal Zone or Republic of Panama on or after 26 February 1904;

(*c*) Persons born in Alaska on or after 30 March 1867;

(*d*) Persons born in Hawai;

(*e*) Persons living in and born in the Virgin Islands;

[78a] Public Law 414—82d Congress, 2d Session: 66 Stat. 163.

[79] Section 101 (a) (22) (Definitions) declares that the term "National of the United States" refers to (*a*) citizens or (*b*) a person, who, though not a citizen of the United States, owes permanent allegiance to the United States. According to the Harvard Research (*op. cit.*, page 23) the " 'tie of allegiance' is a term in general use to denote the sum of the obligations of a natural person to the state to which he belongs".

[80] Section 191 (a) (29) defines "Outlying possessions of the United States" as meaning "American Samoa and Swains Island". According to the same provision, American citizens by birth under Section 301 (7) may lose their nationality under conditions which will be discussed later.

(*f*) Persons living in and born in Guam.

It appears unnecessary to reproduce these provisions here in greater detail.

142. According to section 309 (a), the provisions of sub-sections (3), (4), (5) and (7) of section 301 (a) quoted in paragraph 139 above " apply as of the date of birth to a child born out of wedlock on or after the effective date of this Act, if the paternity of such child is established while such child is under the age of twenty-one years by legitimation"; and, according to section 309 (c), "a person born, on or after the effective date of this Act, outside the United States and out of wedlock shall be held to have acquired at birth the nationality status of his mother, if the mother had the nationality of the United States at the time of such person's birth, and if the mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year". In the case of such illegitimate children, therefore, *jus sanguinis* applies provided the conditions as stated are fulfilled.

(iii) *Acquisition by naturalization*

143. Acquisition of United States nationality by naturalization is dealt with in section 310-348 of the Act.

144. It may be noted that, in accordance with section 311, persons otherwise fulfilling the conditions for naturalization cannot be denied the right to become naturalized citizens because of race or sex or because such persons are married. The conditions required by the law for naturalization of an alien as a United States citizen refer to the following points:

(*a*) The petitioner must fulfil certain conditions as to understanding the English language, and the history, principles and form of government of the United States;

(*b*) The petitioner must not be opposed to government or law and must not favour totalitarian forms of government;

(*c*) The petitioner must not be a deserter from the armed forces of the United States;

(*d*) The petitioner must conform to requirements laid down by the law concerning residence, good moral character, attachment to the principles of the Constitution, and favourable disposition to the United States.

145. Naturalization of persons whose spouses are citizens of the United States is facilitated inasmuch as the period of continuous residence in the United States prior to naturalization is reduced.

146. Children may acquire United States citizenship automatically if certain conditions are fulfilled:

(*a*) A child born outside the United States to parents one of whom was a United States citizen and has never ceased to be so, will be automatically naturalized if the alien parent is naturalized, provided such naturalization takes place while the child is under the age of sixteen and provided the child begins residing permanently within the United States while under the age of sixteen (section 320). This provision does not apply to adopted children;

(*b*) Children born outside the United States of alien parents will automatically acquire citizenship

(i) If both parents are naturalized;

(ii) If the surviving parent is naturalized;

(iii) In case of legal separation, if the parent having legal custody is naturalized and, if the child is born out of wedlock, provided the mother is naturalized and the parenthood has not been established by legitimation;

(iv) If such child is legally and permanently residing in the United States and is under sixteen years of age.

147. Section 324 of the Act facilitates the re-acquisition of United States citizenship by persons who have lost it through marriage to an alien prior to 22 September 1922; section 325 refers to the naturalization of nationals who are not citizens of the United States, i.e., of persons owing permanent allegiance to the United States;[81] section 327 facilitates the naturalization of former citizens who have lost United States nationality by entering the armed forces of foreign countries during World War II; section 328 refers to naturalization through service in the armed forces of the United States; section 329 refers to naturalization through active duty service in the armed forces during World War I or II; section 330 refers to "constructive residence through service on certain United States vessels", and, finally, section 331 refers to the naturalization of enemy aliens under specified conditions and procedures.

(c) *Provisions aiming at the prevention of dual or multiple nationality*

148. There can hardly be any doubt that American law and practice are unfavourably disposed towards the retention of one or more alien nationalities by persons who are also citizens of the United States. The political and legal doctrine held by the United States in this respect was expounded in great detail in a communication from the United States Government, dated 16 March 1929, in reply to the schedule of points submitted by the Preparatory Committee of the Conference for the Codification of International Law held at The Hague in 1930 under the auspices of the League of Nations.[82] This communication, after stating,[83] that "the United States does not recognize the existence of dual nationality in the cases of persons of alien origin obtained naturalization as citizens of the United States" quoted *inter alia* an Instruction [84] of 8 July 1859, from Secretary of State Cass to Mr. Wright, United States Minister to Prussia, which stated:

> "The moment a foreigner becomes naturalized his allegiance to his native country is severed forever. He experiences a new political birth."

The same communication also affirmed the hostility of the United States to the doctrine of perpetual allegiance and recognized the right to expatriation as applying also to persons who were citizens of the United States by birth.[85]

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[81] Under section 101 (a) (21) "national" means a person owing permanent allegiance to a State and under section 101 (a) (31) "permanent" refers to a relationship of a continuing or lasting nature, which may, however, be dissolved at the instance of the United States or of the individual concerned.

[82] *Conference for the Codification of International Law, Bases of Discussion*, vol. I: Nationality, Publications of the League of Nations, *V. Legal, 1929.V.1*, pp. 145-162.

[83] *Ibid.*, p. 147.

[84] *Ibid.*, p. 150.

[85] *Ibid.*, p. 151.

149. This attitude appears to have been persistently maintained, and the law under consideration contains numerous provisions aiming at the prevention of dual nationality. Section 350 refers expressly to "Dual Nationals; Divestiture of Nationality". It stipulates that a person who acquired at birth the nationality of the United States and of a foreign State, and who has voluntarily sought or claimed benefits deriving from the nationality of any foreign State, shall lose his United States nationality if, at any time after attaining the age of twenty-two years, he has a continuous residence for three years in the foreign State of which he is a national. Loss of United States nationality can be avoided by the individual concerned under conditions specified in section 350.

150. Other provisions of the Act for the avoidance of dual nationality may be summarized as follows (section 349):

(*a*) A person who is a national of the United States by birth or naturalization will lose United States nationality by obtaining naturalization upon his application in a foreign State. Children of United States citizens naturalized abroad, however, will not lose their citizenship if they establish a permanent residence in the United States prior to attaining the age of twenty-five;

(*b*) A person taking an oath of allegiance to, or making an affirmation or another formal declaration of allegiance to, a foreign State;

(*c*) A person who, unless specifically authorized, enters or serves in the armed forces of a foreign State;

(*d*) A person who accepts an office, post or employment under the Government of a foreign State;

(*e*) A person who votes in a political election in a foreign State or participates in an election or plebiscite to determine the sovereignty over foreign territory;

(*f*) A person who makes a formal renunciation of United States nationality either abroad before an authorized representative of the United States Government or in the United States.

151. The following provisions apply only to the loss of United States nationality by naturalized citizens: under section 352 a naturalized citizen will lose his United States nationality if he resides for a continuous period of three years in the State of which he had formerly been a national or for five years in any other State or States. The Act provides certain exceptions to these provisions.

152. Attention should also be drawn to section 357 which recognizes that the law cannot supersede treaties or conventions to which the United States is a party. It states that no woman

> " who was a national of the United States shall be deemed to have lost her nationality solely by reason of her marriage to an alien on or after September 22, 1922, or to an alien racially ineligible to citizenship on or after March 3, 1931, or, in the case of a woman who was a United States citizen at birth, through residence abroad following such marriage, notwithstanding the provisions of any existing treaty or convention".

(d) *Provisions which may lead to dual or multiple nationality*

153. It may be inferred from the preceding analysis that, under the Act referred to, dual nationality can arise from comparatively few of its provisions. It is not surprising that this should be so in view of the United States policy on this matter. It is also evident, however, that the United States legislature cannot prevent foreign States from attributing *jure sanguinis* their citizenship to children of their nationals born in the United States or from refusing to recognize by their own laws naturalization in the United States of their own citizens. As has been indicated above (paragraph 149), section 350 of the Act attempts to forestall consequences which may be undesirable from the point of view of the United States and which result from the unavoidable existence of cases of double nationality, by stipulating that such persons should cease to be United States citizens if they voluntarily sought or claimed benefits deriving from the second nationality concerned and resided in that State for a certain period.

154. Besides the case of children born to aliens residing in the United States at the time of birth whose nationality is transmitted to their descendants *jure sanguinis,* dual nationality may arise under the provisions of the Act in respect of following categories:

(1) A woman who was a United States citizen at birth and who acquires, by marriage to an alien, her husband's nationality whether she continues to resides in the United States or follows her spouse to his country (section 357);

(2) Children born to United States citizens outside the United States of parents who were both citizens of the United States, should such children also acquire by birth the nationality of the State where they were born (section 301 (a) (3));

(3) Children born outside the United States to parents one of whom possesses United States citizenship and, if such children acquire also the nationality of their State of birth (section 301 (a) (4));

(4) A person of unknown parentage found in the United States while under the age of five, if it is shown after he attains the age of twenty-one that he was not born in the United States but in a country the nationality of which he has retained;

(5) Persons born outside the geographical limits of the United States to parents one of whom is an alien and the other a United States citizen who had been present in the United States during the period prescribed in section 301 (a) (7), if such a person also retains the nationality of the country where he was born;

(6) An illegitimate child born to a United States citizen in a foreign country, and retaining its nationality, if the paternity of such child is established by legitimation while the child is under twenty-one years of age (section 309 (a));

(7) A child born out of wedlock in a foreign country of which he is a national by birth, if he retains the nationality status of his American mother (section 309 (c));

(8) Persons naturalized in the United States whose

nationality of origin is not lost by naturalization in a foreign country;

(9) Children of United States citizens naturalized abroad who acquire the foreign citizenship of their parents through naturalization, do not lose their United States citizenship while under the age of twenty-one unless they fail to enter the United States and to establish a permanent residence there before the age of twenty-five (section 349 (a) (1)).

2. *Mexico: Nationality and Naturalization Act of 5 January 1934 as amended by Decrees of 18 September 1939, 30 December 1940 and 28 December 1949*

(a) *General remarks*

155. Mexico belongs to the group of States applying predominantly the *jus soli* principle. Among the pertinent texts, the law of 5 January 1934 contains a number of provisions aiming at the prevention of dual or multiple nationality. It is evident, however, that Mexican legislation cannot supersede the effects of laws applied by other States to persons whom they consider to be their nationals, although at the same time they may be Mexicans according to Mexican law. A brief analysis of Mexican legislation on nationality will be given in the following paragraphs.

(b) *How Mexican nationality is obtained*

(i) *Nationality obtained at birth*

156. While applying predominantly the *jus soli* principle, certain provisions of the law of Mexico, as of most other States, admit *jus sanguinis* in certain instances where this may be considered to be in the interests of the person concerned. Thus by virtue of *jus soli* in accordance with article I, "Persons born within the territorial limits of the Republic, irrespective of the nationality of their parents" are Mexican by birth, as are persons "born on board Mexican war or merchant vessels or aircraft". In this latter instance the text of the law does not specify whether it applies irrespective of the fact that the merchant vessel or aircraft is, at the moment of birth, in foreign territorial waters, flying over foreign territory, or stationed in a foreign port or airport. It may, therefore be presumed that the law applies irrespective of the location of the vessel or aircraft at the time of the birth.

157. *Jus sanguinis* applies, in accordance with article 1(II), to "persons born in foreign countries of Mexican parents; of a Mexican father and alien mother; of a Mexican mother and unknown father".

158. According to article 55 an infant "found in Mexican territory is presumed to have been born in Mexico; this presumption is rebuttable".

159. Mexican law also attributes Mexican nationality to children born in Mexico to consuls de carrière and to other foreign officials while on mission in Mexico who do not enjoy diplomatic immunity. Such children may, however, renounce their Mexican nationality upon attaining majority, provided they have also retained their parents' nationality (article 54).

(ii) *Marriage*

160. A foreign woman who marries a Mexican citizen may obtain Mexican nationality (article 2 (II), provided she applies for it and submits with her request, in accordance with article 17, a declaration expressly disclaiming her original nationality and "all subjection, obedience and allegiance to any foreign government, more particularly to the government of which [she] has hitherto been a subject". She must also expressly renounce the right to possess or use any title of nobility conferred on her by any foreign government (article 18).

161. However, a Mexican woman marrying an alien does not lose her nationality by reason only of her marriage (article 4).

(iii) *Naturalization*

162. An alien fulfilling certain residence and other conditions may obtain a certificate of naturalization from the Ministry of Foreign Affairs. Such alien must submit with his petition the declaration mentioned in paragraph 160 above by which he expressly renounces his former nationality.

Acquisition of Mexican nationality by an alien entitles his wife to be naturalized, provided she has her domicile in Mexico and applies for naturalization in the manner described above.

(c) *Provisions intended to prevent dual or multiple nationality*

163. As stated above, Mexican law contains a number of provisions which will prevent dual nationality from occurring in so far as this depends on the will of the Mexican legislator.

(i) *Provisions applying to Mexicans by birth as well as to Mexicans by naturalization*

164. In accordance with the provisions of article 3, Mexicans who voluntarily acquire a foreign nationality lose their Mexican citizenship. In certain circumstances, e.g., if the foreign nationality was acquired by operation of law by residence in a foreign country, as a prerequisite to obtaining work etc., the Minister of Foreign Affairs has discretionary power to decide whether such acquisition was " voluntary " or not.

165. Mexican nationality is lost, furthermore, by citizens accepting or employing titles of nobility implying allegiance to a foreign State.

(ii) *Provisions applying to naturalized citizens only*

166. Naturalized Mexicans lose their citizenship if they reside continuously for five years in their country of origin and if they represent themselves "as an alien in any public instrument" or obtain and use a foreign passport. They may, however, regain their Mexican citizenship by a simplified procedure. Loss of citizenship affects only the person who has been deprived of it.

(iii) *Renunciation of Mexican nationality*

167. Article 53 enables a Mexican citizen by birth who also possesses by birth the nationality of a foreign State to renounce his Mexican nationality by a formal declaration addressed to the Ministry of Foreign Affairs, provided the person concerned has attained the age of

majority, is regarded as a national by another State, and is domiciled abroad.

(d) *Provisions from which dual or multiple nationality may arise*

168. Despite the precautions taken by the Mexican legislature against the occurrence of dual nationality, this may exist either because Mexican law cannot prevent it or as a consequence of certain of its provisions. These cases may be summarized as follows:

169. (*a*) A Mexican citizen by birth who also acquires by birth a foreign nationality and does not, or is not in a position to, renounce his non-Mexican citizenship, will have dual nationality;

(*b*) Children of Mexican parents, or of a Mexican father and an alien mother, or of a Mexican mother and an unknown father, if born in foreign countries which grant their nationality *jure soli,* may have dual nationality, unless they renounce their Mexican nationality in accordance with article 53 of the law;

(*c*) Children of consuls de carrière or of foreign officials on mission in Mexico who do not renounce their Mexican citizenship upon attaining majority in accordance with article 55, will, if they have acquired by birth the nationality of their parents, retain the dual nationality, which they possess until reaching that age;

(*d*) A Mexican woman who marries an alien and thereby acquires her husband's nationality will have double nationality unless she renounces her Mexican nationality in accordance with article 53 of the law.

3. *Nationality provisions in the Constitution of Uruguay*

(a) *General remarks*

170. Like other Latin American legislative provisions concerning nationality, those of Uruguay are incorporated in the Constitution of the Republic which distinguishes between natural citizenship and legal citizenship. Natural citizenship is an inalienable right which appears to be indefinitely transmissible by descent, provided the incumbents take up residence in Uruguay and register in the Civil Register. The so-called legal citizenship, but not natural citizenship, can be acquired by foreigners through naturalization.

(b) *How Uruguayan nationality is obtained*

(i) *Birth*

171. Uruguayan law applies predominantly the *jus soli* principle, since, in accordance with article 74, "All men and women born at any place within the territory of the Republic are 'natural' citizens". The *jus sanguinis* principle comes into play when children are born to Uruguayan parents in a foreign country, since, according to the same provision (article 74) "Children of Uruguayan fathers or mothers are also 'natural' citizens, wherever they may have been born" provided they reside in the country and register with the appropriate authorities.

(ii) *Naturalization*

172. Unlike other laws, which consider naturalization as a favour to be bestowed or withheld at the discretion of the Government concerned, article 75 of the Uruguayan Constitution grants a legal right to naturalization to aliens fulfilling certain conditions of residence, of good conduct, of property and so on. The Uruguayan law appears not to attach any other condition to the exercise of this right, nor does it seem to require the naturalized citizen to renounce his former nationality upon becoming a Uruguayan citizen. A foreign woman will acquire Uruguayan legal citizenship, not by her marriage to a Uruguayan national, but through naturalization in Uruguay after three years of habitual residence in the Republic. So will an alien man marrying a woman possessing Uruguayan citizenship (this may be inferred from article 75 A of the Constitution).

(c) *Loss of citizenship*

173. Only legal citizenship is lost by naturalization in a foreign country, whereas nationality, which belongs only to 'natural' citizens, is not lost even by naturalization in another country, it being sufficient for the purpose of regaining the rights of citizenship to take up residence in the Republic and register in the Civil Register (article 81 of the Constitution).

(d) *Occurrence of dual or multiple nationality*

174. As may be seen from the foregoing summary, the Uruguayan legislature does not appear to object to dual nationality. Indeed no provisions aiming at preventing it are contained in the relevant legal texts, with the exception of the second paragraph of article 81, by virtue of which "legal citizenship is lost by any other form of subsequent naturalization". This would appear to apply to Uruguayan citizens by naturalization only, since 'natural' citizens, even if naturalized abroad, regain citizenship by taking up residence in the Republic.

4. *Brazilian nationality* [86]

(a) *General remarks*

175. Like the other American laws summarized above, the Brazilian law of 18 September 1949 is based predominantly on the *jus soli* principle. It is concerned with the acquisition, loss and recovery of Brazilian nationality. Dual nationality is not frowned upon by the Brazilian legislature and provisions aiming at its prevention are to be found mainly under article 22 which enumerates grounds for the loss of Brazilian nationality.

(b) *How Brazilian nationality is obtained*

(i) *Birth*

176. Brazil applies the *jus soli* principle. This is evident from article 1 of the law which declares that all persons "born in Brazil, except to alien parents resident in Brazil in the service of their country" are Brazilian citizens. However even such persons may, if one of the parents is a Brazilian national, opt for Brazilian nationality, as provided in article 129 (II) of the Federal Constitution of 1946.

[86] *Diario Officiel* of the United States of Brazil No. 2176 of 19 September 1949: *Act No. 818, of 18 September 1949, to govern the acquisition, loss and recovery of nationality and the loss of political rights.*

177. A right to opt for Brazilian nationality is also granted by article 1 (II) of the law of 1949 to persons born abroad of Brazilian parents, provided they come to reside in Brazil and opt for Brazilian nationality within four years of attaining majority.

(ii) *Naturalization*

178. Naturalization may be granted by decree of the President of the Republic to foreigners who have had their residence in the country for a minimum period of five years and who fulfil certain other conditions, such as good conduct, knowledge of the Portuguese language, and so on (article 7). Naturalization does not lead to acquisition of Brazilian nationality by the spouse or children of the naturalized person (article 20). It would appear, therefore, that separate proceedings must be initiated for the naturalization of such persons.

(c) *Loss of Brazilian nationality*

179. A Brazilian citizen loses his nationality by voluntary naturalization in a foreign country, by accepting from a foreign government any commission, employment or pension without permission of the President of the Republic, and, in the case of naturalized citizens, if the naturalization is cancelled by judicial sentence on account of activities against the national interest (article 22). Brazilian nationality may, however, be recovered by those who lose it by becoming naturalized in a foreign country, provided the former Brazilian national did not acquire a foreign citizenship for the purpose of evading obligations to which he would be liable as a Brazilian. He must also renounce any commission, employment or pension he may have obtained from a foreign government.

(d) *Dual or multiple nationality under Brazilian law*

180. It would appear from the legislation analysed above that Brazilian law provides no particular safeguards against cases of dual nationality which may occur in many instances, e.g., in the cases of children born to alien parents residing in Brazil; children born to Brazilian parents in a country the nationality of which they have acquired, by being born there, provided they take up residence in Brazil; alien children born in Brazil to parents resident there in the service of their Government, if such children exercise the right to opt for Brazilian citizenship granted to them by article 2 of the law; naturalized Brazilian citizens who have not renounced their nationality or origin; Brazilian women acquiring the foreign nationality of their husbands by marriage and not by naturalization; and so on.

181. The main preventive measure against dual nationality contained in the law is article 22 which stipulates the loss of Brazilian nationality by voluntary acquisition of an alien citizenship. Even this provision may lose its effect if the former Brazilian national, while retaining his foreign citizenship, recovers Brazilian nationality under the terms of article 36, analysed above.

III. In Asia

182. It will be appropriate in the context of this survey to study briefly some of the nationality laws at present in force in Asia. Some Asian States, such as China and Thailand, base their nationality legislation on principles which obtain also in other regions of the world. In both of these States *jus sanguinis* predominates and certain provisions of the laws are intended to prevent dual nationality. These provisions deal extensively with the effect of marriage on the nationality of the spouse and they contain detailed rules concerning naturalization, loss and resumption of nationality. Others are States such as India and Burma, which became fully independent after the Second World War. The problem of citizenship, therefore, had to be solved by their legislatures. Both have been influenced by legislation enacted by the former administering Power, but whereas the Indian Constitution of January 1950 contains provisions referring to acquisition and loss of Indian nationality, the Burma Independence Act of 1947 indicates only who ceases to be a British subject and who may after the date of enactment become a Burmese citizen.

1. *Thai Nationality Act of 31 January 1952 (B.E. 2495) as amended by Nationality Act No. 2 of 24 January 1953 (B.E. 2496)*

(a) *General remarks*

183. The nationality law of Thailand is based on the *jus sanguinis* principle. Like several of the laws summarized in the preceding sections of this Chapter, it contains provisions relating to the acquisition of Thai nationality by birth, marriage, naturalization and resumption. Other provisions refer to the loss of Thai nationality, and others again are concerned with the prevention of dual citizenship. They do not differ substantially from enactments in other countries and may, therefore, be analysed very briefly in the following paragraphs.

(b) *How Thai nationality is obtained*

(i) *Birth*

184. The *jus sanguinis* principle governs the acquisition of Thai nationality at birth. Indeed, section 7 of the law as amended attributes citizenship to "persons born of Thai fathers, whether born in the Kingdom or outside"; to persons born abroad of a Thai mother, if the father is stateless or unknown; and to persons born in the Kingdom to a Thai mother. However, children born in the Kingdom to a Thai mother but to an alien father lose their Thai nationality if "identity-cards are delivered to them in accordance with the Alien Registration Act " (section 16 bis). Such children may also lose their Thai nationality by living for a continuous period of over ten years after reaching majority in the father's country, provided they possess the father's nationality or have committed acts considered contrary to Thai interests (section 16).

(ii) *Marriage*

185. Alien women marrying Thai citizens acquire Thai nationality (section 8), and Thai women lose their nationality if, by becoming the spouse of an alien, they obtain the husband's nationality and have declared their intention to the Marriage Registrar of renouncing their Thai citizenship.

(iii) *Naturalization*

186. Aliens who have had their domicile in Thailand for a minimum of ten years may be naturalized, provided they fulfil the various conditions laid down by section 9

of the law. Children of naturalized citizens of Thailand may themselves become Thai citizens if they were of age when the father was naturalized. Thai nationality may be granted to them even although they have not been domiciled in Thailand for the period of 10 years specified in section 9 (section 10).

(c) *Loss of Thai nationality*

187. As has already been stated above (paragraph 185) a Thai woman, marrying an alien whose citizenship she thereby acquires, may lose her nationality by renouncing it (section 13). Persons born in Thailand to an alien father, who wish to acquire the father's nationality, may renounce their Thai citizenship, provided they submit an application to this effect between the ages of twenty and twenty-one (section 14). Furthermore, in accordance with section 15, persons having dual nationality may renounce their Thai citizenship if so authorized after application to the competent Minister, and persons born in Thailand to an alien father may also, as stated in paragraph 184 above, be deprived of that nationality under the conditions laid down by law.

188. Naturalization may be revoked, *inter alia* if there is evidence to show that the naturalized person still keeps his former nationality (section 18 (2)), or if the individual concerned has lived abroad for not less than seven years without maintaining a domicile in Thailand (section 18 (5)) or if he has maintained citizenship of a country at war with Thailand (section 18 (6)). A Thai loses his nationality by becoming naturalized in another country. Revocation may be extended to the wife and children of the individual concerned.

(d) *Resumption of Thai nationality*

189. Resumption of Thai nationality is a right (section 20)

1. If the applicant is a Thai woman whose marriage to an alien has been dissolved;
2. If the applicant was Thai by birth and lost his nationality during minority provided his application is made within two years of the date when he reached the age of majority.

(e) *Cases of dual or multiple nationality under Thai law*

190. Except in the case of loss of Thai nationality by a Thai citizen as a result of naturalization abroad, which automatically prevents such a person from possessing dual nationality (section 17), the law makes the loss of Thai nationality dependent on a manifestation of the will of the person concerned or on an act of the Thai Government. Thai law, therefore, offers no guarantee against the occurrence of dual nationality which might, consequently, exist with regard to the following categories:

(*a*) A person born to a Thai father outside the Kingdom in a country whose nationality is acquired *jure soli* (section 7 (1));

(*b*) A person born outside the Kingdom to a Thai mother and an unknown father (section 7 (2)), provided such person also acquires the nationality of the country of birth;

(*c*) A person born in the Kingdom to a Thai mother, if such person also acquires the father's nationality and is not registered as an alien in accordance with section 16 *bis;*

(*d*) An alien woman marrying a Thai, if she retains her nationality of origin (section 8);

(*e*) A naturalized foreigner who retains his nationality of origin, unless, as stated in section 18 (2), his naturalization is revoked for this reason;

(*f*) A Thai woman who has resumed her Thai nationality after the dissolution of her marriage to an alien, if she retains citizenship of her former husband's country (section 20 (1));

(*g*) A child born to a Thai woman outside the Kingdom in a country whose nationality is obtained *jure soli;*

(*h*) A person having dual nationality by birth who does not avail himself of his right to renounce Thai nationality, or does not obtain permission to do so;

(*i*) A Thai who, while still a minor, loses his nationality as a result of the naturalization of his father, if he is authorized by the Minister to resume his nationality of origin in accordance with section 20 without renouncing his acquired one.

191. Since, according to section 20, resumption of Thai nationality depends on a discretionary decision of the competent Minister, it may be assumed that permission will in general be refused if the persons applying therefore do not, at the same time, renounce or lose their acquired nationality.

2. *The Constitution of India (26 January 1950)*

(a) *General remarks*

192. Provisions concerning Indian nationality are embodied in the Constitution, which also contains special regulations concerning persons migrating to India from Pakistan and vice versa. These provisions, which refer to a peculiar and, presumably, transitory situation resulting from the separation of the subcontinent into two independent countries, will not be analysed here. It may, indeed, be presumed that once the populations concerned have been settled in the territory where they wish to reside permanently, new laws will be enacted and agreements concluded by the Governments concerned, with a view to settling outstanding problems regarding their respective citizens' nationality.

193. In contrast with Thai law, Indian law applies the *jus soli* principle.

(b) *How Indian nationality is acquired*

(i) *Birth*

194. Persons who were born on Indian territory are Indian citizens by birth, provided they have their domicile in the country (article 5a). Also Indian by birth are descendants of Indian parents or grandparents, who, while resident outside India, have been registered as Indian citizens with the appropriate Indian authorities abroad (article 8). Furthermore, persons either of whose parents were born in India or persons who were resident in India for at least five years prior to the entering into force of the Constitution are Indian citizens by birth, provided they have their domicile in India (article 5 (b) and (c)).

(ii) *Marriage, naturalization etc.*

195. The Indian Constitution contains no provisions concerning the acquisition of Indian citizenship by marriage or naturalization.

(c) *Loss of Indian nationality*

196. Only article 9 refers to this question. It stipulates that Indians who have *voluntarily* [87] acquired the citizenship of a foreign State lose their Indian nationality.

(d) *Cases of dual or multiple nationality under the Indian Constitution*

197. It is obvious that the provisions incorporated in the Constitution leave open numerous possibilities for the occurrence of dual nationality. Thus, any person born in India is Indian although he may also possess a second nationality *jure sanguinis*. A descendant of Indian parents or grandparents, born outside India but registered as an Indian citizen, will have dual nationality if he also possesses the nationality of his country of birth. This may be an important matter, since many Indians living outside India (for instance, in South Africa) may in this way acquire dual nationality, that of their country of birth and that of India.

198. In view of article 11 of the Constitution, which empowers Parliament "to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship", it would be premature, in the absence of more specific enactments, to draw far-reaching conclusions from the Constitution which clearly is merely the framework for future legislation on this important matter.

3. *Burma Independence Act, 1947*

(a) *General remarks*

199. This Act delimits those categories of persons who, with the separation of Burma from the British Commonwealth of Nations, cease to be British subjects, and it indicates those who may become Burmese citizens. It does not provide for such matters as naturalization, marriage, nationality of aliens (non-British and non-Burmese) born in Burma, loss of Burmese nationality, or problems of a similar nature. It would appear, therefore, that this Act constitutes the framework in which the Burmese legislature will insert more detailed provisions concerning this important problem.

(b) *Who is and who ceases to be a Burmese citizen under the provisions of the Act*

200. Section 2 (1) of the Act stipulates that the persons specified in the First Schedule, being British subjects, shall "on the appointed day cease to be British subjects". According to the First Schedule, such persons are:

(i) Persons born in Burma or any person whose father or grandfather was born there;

(ii) Women who were aliens at birth and became British subjects by reason only of their marriage to the persons mentioned under subparagraph (i);

(iii) Persons born on a ship registered as Burmese.

(c) *Exceptions to these rules*

(i) *Exceptions under the Act*

201. The Act establishes certain exceptions to the principle summarized in paragraph 200 above. These are:

(*a*) A woman married to a British subject before the appointed day will retain British citizenship, unless her husband ceases to be a British subject;

(*b*) Persons resident immediately before the appointed day in one of the British territories listed in section 2 (2) may, by a declaration within a specified period, elect to remain British subjects, and in that case they will be deemed never to have become Burmese citizens;

(*c*) A person who ceases on the appointed day to be a British subject, but was not resident in one of the British territories referred to in section 2 (2) of the Act, and who "neither becomes nor becomes qualified to become" a citizen of Burma, shall, however, have the right of election stipulated in section 2 (2) as described in sub-paragraph (b) above.

(*d*) The right to elect Burmese or British citizenship granted to persons described in sub-paragraph (c) above will also belong to such persons residing in "any part of his Majesty's dominions not mentioned in section 2 (2)".

(ii) *Exceptions under the Schedule*

202. The Schedule as well as the Act provides exceptions to the principle that any person born in Burma or whose father or paternal grandfather was born in Burma and any alien woman who has become a British subject by reason only of her marriage cease to be British subjects on the appointed day. These exceptions are:

(*a*) Any person born outside Burma in British territories specified in section 2 (1) of the Schedule, provided his father or grandfather was at some time before the appointed day a British subject;

(*b*) Any person who has become, or whose father or grandfather had become, a British subject by naturalization or by annexation of a territory outside Burma.

(d) *Provisions of the Act and of the Schedule from which dual or multiple nationality might result*

203. It appears from the foregoing analysis that the Act and Schedule make provision only for Burmese who are also or were at some time before the Act came into force British citizens. No conclusion, therefore, can be drawn from these texts as to the probable form which future Burmese nationality legislation will take or as to the solution which the Burmese legislature is likely to adopt with regard to the particular problem of dual citizenship.

4. *The Chinese law of nationality of 5 February 1929*

(a) *General remarks*

204. Chinese legislation has followed the *jus sanguinis* principle, and the provisions of the relevant law are comparable to the nationality laws of European countries. Chinese law refers to the acquisition of nationality by birth, marriage or naturalization, to the loss of Chinese citizenship; and to the manner in which it may be resumed. For the purpose of the present enquiry, therefore, it may be sufficient to analyse this law very briefly.

(b) *How Chinese nationality is obtained*

(i) *Birth*

205. Since Chinese law applies the *jus sanguinis*

[87] Emphasis added.

principle, Chinese nationality is obtained by birth in the following cases (article 1):

(*a*) By a child whose father in a Chinese national;

(*b*) By a *posthumous* child of a Chinese father;

(*c*) By a child whose mother is Chinese, if the father is unknown or stateless;

(*d*) By a legitimated child of a Chinese national;

(*e*) By a child recognized by his Chinese mother, if the father is unknown or refuses to recognize the child.

(ii) *Marriage*

206. Marriage to a Chinese national bestows on an alien women her husband's citizenship only if she does not retain her original citizenship.

(iii) *Naturalization*

207. Stateless persons and aliens in general may obtain Chinese citizenship by naturalization, provided they fulfil the various conditions laid down in the relevant provisions of the law, one of which is an uninterrupted domicile in China for at least five years, prior to the acquisition of Chinese citizenship. Naturalization will be facilitated in certain special cases enumerated in the law, for example, in the cases of aliens marrying a Chinese woman; aliens born in China; and the wife and minor children of a naturalized citizen. In this latter instance, however, naturalization will be granted only if the "law of the native country of his wife and children is not in conflict with such naturalization".

(c) *Loss of Chinese nationality*

208. Loss of Chinese nationality is incurred in the following cases:

(*a*) A Chinese woman married to an alien may be allowed to renounce her Chinese citizenship;

(*b*) An illegitimate child recognized by an alien father;

(*c*) An illegitimate child not recognized by his father, or whose father is of unknown nationality, if his alien mother has recognized the child;

(*d*) A Chinese who becomes naturalized in a foreign country may be authorized to renounce his Chinese citizenship.

(d) *Resumption of Chinese nationality*

209. Chinese law enables a number of categories of former Chinese citizens who have lost their nationality to recover it under certain conditions. The following are the categories of persons concerned:

(*a*) A Chinese woman who had renounced her nationality because of her marriage to an alien, after the dissolution of the marriage;

(*b*) A Chinese citizen who had renounced his nationality because of his naturalization by a foreign State, provided he takes up residence in China and is of good moral character. This does not apply to former Chinese citizens by naturalization.

(e) *Provisions from which dual or multiple nationality may arise*

210. It will be inferred from the preceding analysis that Chinese law takes certain precautions against the occurrence of dual nationality. Nevertheless this condition will exist in the following cases:

(*a*) A child born outside China to a Chinese national, if the child also acquires the nationality of the country of birth;

(*b*) A child born posthumously to a Chinese father in a country the nationality of which is acquired by birth;

(*c*) A child born to a Chinese woman and an unknown or stateless father outside China, provided the nationality of the country of birth is also acquired;

(*d*) An illegitimate child born outside China to a Chinese father who recognizes the child, provided the child also has the nationality of his country of birth;

(*e*) An illegitimate child recognized only by his Chinese mother, or one whose father is unknown, if the child is born outside China in a country the nationality of which is acquired by birth;

(*f*) An alien who becomes the adopted son of a Chinese national and who retains his original citizenship;

(*g*) A naturalized alien retaining his nationality of origin;

(*h*) A Chinese woman who has renounced her nationality by reason of her marriage with an alien, if she recovers Chinese nationality after the dissolution of the marriage without losing her former husband's citizenship;

(*i*) A Chinese citizen who, after renouncing Chinese nationality by reason of his naturalization in a foreign State, recovers it without losing his acquired citizenship.

IV. Concluding remarks to Chapter I

211. It may be inferred from the preceding analysis of various nationality laws that, whatever the provisions are, whether they are based on *jus sanguinis* or *jus soli* or a mixture of both, and whether or not the legislator has taken particular precautions, the existence of dual nationality is unavoidable under the present circumstances. As long as Governments maintain the principle stated in The Hague Convention of 1930 that "It is for each State to determine under its own laws who are its nationals", dual or multiple nationality is bound to arise. As for married women, dual nationality is a consequence of modern trends towards the legal equality of the sexes. Nor is it to be expected or even to be hoped that in the near future Governments will be eager to abandon the principle that legislation on nationality belongs to the *domaine réservé*. Present conditions would seem to indicate that States will wish to increase rather than relax their hold on their citizens. But even if all States were to adopt identical laws on nationality—it suffices to mention here the famous *Carlier case* [88]—dual nationality would not necessarily be elimited.

212. Dual nationality, is therefore, in the main, the consequence of conflicts of laws. To solve such conflicts, certain rules have been devised and adopted, either nationally or internationally: to analyse these rules and to indicate which solutions they envisage is the object of the following Chapter.

[88] See below, para. 214 and footnote.

Chapter II

Conflicts of laws and their solution on a national basis

I. The main causes of positive conflicts of laws

(1) *Indirect causes*

213. One of the main indirect causes of double nationality is the generally accepted principle of practically absolute State sovereignty in this field. If each State is entitled to determine under its own laws who are its nationals, subject only to the tenuous limitations imposed by international law discussed in the introduction to this study, then, indeed, Governments are free for various reasons to claim as their nationals persons who are also citizens of other countries. Among many others, Professor Pierre Louis-Lucas [89] is of opinion that there are two main indirect causes of multiple nationality: firstly, that there does not exist a uniform world régime apportioning individuals among various sovereign States; and, in the second place, that none of the various régimes is confined to an exclusive and distinct domain of application. If, indeed, citizenship could be obtained only as a result of the application of a unified system adopted by all States, cases of dual nationality could hardly occur. Nor would they be likely to arise if each of the many conflicting systems were limited in its application to a reserved domain, so to speak, each individual being a citizen only of the State with the strongest claim to his allegiance. Since this is not the case, and since the numerous systems under which citizenship is attributed are competitive, indirect causes of dual or even multiple nationality must inevitably exist.

(2) *Direct causes*

214. According to Professor Louis-Lucas,[90] there are three main direct causes of dual or multiple nationality:

(*a*) The primary and most important one is the "difference in inspiration" of domestic laws on nationality, some of which are based on *jus sanguinis,* others on *jus soli.* Thus a child born to parents from a *jus sanguinis* country in a State which applies *jus soli* will necessarily have dual nationality at birth, e.g., a child born to French parents in the United States.

(*b*) But conflicts are also possible between countries whose legislation is based on the same principles, for instance, if their laws admit a combination of *jus sanguinis* and *jus soli.* Examples of conflicts of this nature can be inferred from the laws analysed in Chapter I above. Thus, a child born in France to a British father and a French mother will have dual nationality.

(*c*) Finally, conflicts may also occur where legislation and regulations are identical. The *Carlier case* of 1881 is an example of this kind. At that time both French and Belgian law stipulated that a child acquires by birth his father's nationality. But they also provided that, if the father were an alien, the child, if a resident of the country of birth, could claim citizenship there. Carlier, born in Belgium to French parents, was French in accordance with the provisions of the French Civil Code. However, being born in Belgium he was allowed to opt for the Belgian nationality according to Belgian law, without losing his French citizenship by doing so. Had he been born in France to Belgian parents he might have opted for French citizenship without losing Belgian nationality. The conflict [91] was due neither to a difference in the two sets of legislation nor to conflicting rules of application, but to the rigour with which both countries applied these identical rules.

215. Oppenheim outlines the main causes of positive conflicts of nationality as follows: [92]

> "As the Law of Nations has at present no generally binding rules concerning acquisition and loss of nationality beyond this, that nationality is lost and acquired through subjugation and cession, and as the Municipal Laws of the different States differ in many points concerning this matter, the necessary consequence is that an individual may possess more than one nationality as easily as none at all... Double nationality may be produced by every mode of acquiring nationality. Even birth can invest a child with double nationality... Double nationality can likewise be the result of marriage... Legitimation of illegitimate children can produce the same effect... Naturalization in the narrower sense of the term is frequently a cause of double nationality."

216. Makarov [93] explains that, since the discretionary power of States in the field of nationality is extremely wide, overlapping competence of several States concerning the same individual will in many instances exist, and sovereign States will be able to stipulate conflicting rules regarding acquisition and loss of nationality. As a consequence, the same individual may fulfil the conditions required by different States for possession of their respective citizenships. These are, according to Makarov, the main causes of the frequent occurrence of dual or multiple nationality. This divergence of legislative rules is, however, not the only cause of this phenomenon. Even where States pass identical legislation, conflicts may arise, especially if the law attributes to the manifestation of the will of the individual concerned certain legal consequences with respect to his nationality. Such a manifestation will produce legal effects only on the territory of the State where it occurred. As far as concerns the other State (with identical legislation) it will be irrelevant.

217. Marc Ancel [94] and Niboyet,[95] as well as other authors, explain in a similar manner the causes of dual nationality. Although, therefore, agreement on this point appears to be widespread, such is not the case with respect to the solution of conflicts of this nature

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[89] *Op. cit.*, pp. 6-7.
[90] *Ibid.*, pp. 7-10.

[91] Carlier was listed as French and registered as such by the French military authorities. He was, therefore, considered a deserter in France, where he failed to comply with his military obligations. The conflict was later resolved by the so-called "Convention Carlier" of 30 July 1891, which stipulated that individuals possessing French and Belgian nationality were to be considered as having complied with their military obligations in both countries by serving in the Army of one of them.
[92] *Op. cit.*, pp. 606-607.
[93] *Op. cit.*, pp. 278 ff.
[94] *Op. cit.*, pp. 19 ff.
[95] *Op. cit.*, pp. 522 ff.

on a national basis. In the following section the solutions applied by various States or suggested by different authors will be briefly described.

II. Solutions of positive conflicts on a national basis

1. *When the person concerned is a national of the country exercising jurisdiction*

218. The general principle is that the *lex fori* prevails where questions have to be solved regarding the nationality of an individual claiming or possessing dual citizenship, when one of the nationalities claimed is that of the country concerned. As will be seen later, this principle was recognized in the course of the preparatory stages of The Hague Codification Conference of 1930. The first part of Point II of the Questionnaire entitled "Case of a person possessing two nationalities" is formulated as follows:

> "The question may arise before the authorities and courts of a State which attributes its nationality to the person concerned. The first sentence of Article 5 of the preliminary draft drawn up in 1926 in the course of the discussions of the Committee of Experts for the Codification of International Law recognises the right of each State to apply exclusively its own law." [96]

The consensus of opinion of the Governments consulted was unanimously in favour of adopting this principle. The Danish Government, however, added that modifications of this principle might nevertheless be useful or necessary. As finally adopted by The Hague Conference the principle was embodied in articles 2-4 of the Convention on Certain Questions relating to the Conflict of Nationality Laws.

219. The validity of these principles is recognized by the jurisprudence of many States,[97] and also by a majority of authors. A Venezuelan-American Mixed Claims Commission formulated the principle as follows:

> "If this question of citizenship were brought before a court of Venezuela, it could not be decided otherwise than according to the Venezuelan Constitution, because only this law would have authority in that case to decide whether the above mentioned women ought to be regarded or not as citizens of Venezuela, and for the same reason, if it were raised before a court of the United States, it should have to be decided in accordance with the law of 1855".[98]

220. It is obvious that, in practice, this principle may have serious consequences for the individuals concerned. Thus, a child born in France to an alien father and a French mother will be French, and, if the father's nationality also is acquired *jure sanguinis*, the individual concerned may be called upon to serve in the armies of both countries.[99]

221. A further consequence of the principle is that connected questions have also to be solved by the *lex fori*. For instance, according to article 19 of the French Code de la nationalité, a child of an alien father and a French mother is French. He may, however, if born outside France, renounce his French nationality during the six months preceding his attaining the age of majority. If he wishes to exercise his right, the question is raised of the age at which he reaches majority, and it will be judged in France according to French law and not in accordance with the law of his father's country whose nationality he also possesses by descent.

222. It appears hardly possible to describe the principle outlined above as a "solution" of the conflict. While it underlines the rights of States and their sovereignty in this field, it does nothing to solve the problem of dual nationality as such but rather "organizes" [100] this legal situation in a manner which does not curtail the rights of the Governments involved.

223. It is, therefore, hardly surprising that criticism of the principle has been voiced from time to time and that even judicial authorities have not always conformed to it. Makarov cites a number of examples of such judicial decisions.[101] Thus, the Swiss Federal Court, in a judgement dated 9 November 1934 concerning the guardianship of a person possessing dual nationality, stated that the rule according to which a person having nationality must be treated in each of the countries concerned as if he were its national, is to be applied only within certain limits. In cases involving guardianship of a person who claims or possesses dual nationality and is domiciled in one of the countries concerned, the fact of the domicile has to be taken into account, unless there exist specific rules dealing with this point in the other State, because guardianship is best regulated in the country where the person concerned usually lives. The same author also mentions a judgement of the Court of Appeal of Santiago of 17 July 1907 which declared that legislation on nationality must be interpreted even by the Court of the *lex fori* in accordance with general rules of international law, and that in the case under consideration Spanish nationality was to be preferred to Chilean.[101a] In a judgement of 15 May/12 September 1908 the Chilean Supreme Court decided that Chilean legislative provisions on nationality were of an optional nature and that, consequently, a person having dual nationality might rightfully make a choice between them, even if one of the nationalities in question was that of Chile, and that such choice was legally binding on Chilean courts of law. On the strength of this principle it as recognized that the person concerned, who possessed British and Chilean nationality, was entitled to opt for the former.[101a]

224. The Hague Convention on Certain Questions relating to the Conflict of Nationality Laws also stipulates in article 4 that diplomatic protection shall not be afforded by a State to one of its nationals "against

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[96] *Conference for the Codification of International Law, Bases of Discussion*, vol. I: Nationality, Publications of the League of Nations, *V. Legal, 1929.V.1.*, p. 22.

[97] Makarov, *op. cit.*, p. 282, footnote 16, cites a great number of them.

[98] Quoted by Makarov, *op. cit.*, p. 283, footnote 17.

[99] However, a number of conventions concluded between different States try to solve this particular aspect of the question, as will be seen later.

[100] See Marc Ancel, *op. cit.*, p. 23: "Domestic laws, as we have seen, organize the conflict sometimes. More often they are satisfied with not preventing it." The meaning of this passage is not entirely clear.

[101] *Op. cit.*, pp. 285 ff.

[101a] *Ibid.*, p. 286.

a State whose nationality such person also possesses". This again is a principle very widely recognized by Governments and may be considered to be a rule of international law. J. Mervyn Jones [102] describes as follows the practice of the British Government in this respect:

> "Where an applicant is of dual nationality there was formerly a practice that a passport should not be issued by a British Consul in the country of his second allegiance, but this practice is now obsolete. If the applicant is in the United Kingdom, a passport will not be refused on the ground of the applicant's dual nationality... If a British passport is issued to a dual national it does not generally bear a special endorsement, but the applicant is warned that if, by the laws of any foreign state, he is deemed to be a subject or citizen of that state, he will not be protected within that state."

225. While the replies of Governments to the request for information were not unanimously in favour of this principle, the rule as adopted by the Conference for the Codification of International Law appears to reflect clearly the view of the majority, namely, that diplomatic protection shall not be given by one State to an individual against a country of which he also is a national. The following rules seem, therefore, to be widely applied with regard to persons having dual nationality:

(*a*) That in cases involving the nationality status of a person claiming or possessing dual nationality, the *lex fori* will prevail, provided the person concerned is a national of the country exercising jurisdiction;

(*b*) That no State may afford diplomatic protection to one of its nationals against a State whose nationality such person also possesses.

2. *When the person concerned is an alien*

226. The question is of a more complex nature when the person claiming or possessing dual nationality is not a national of the country exercising jurisdiction. The courts of these States may have to decide which of several nationalities they will recognize. Numerous and often divergent solutions are applied by various legislative systems, contained in treaties concluded between States or suggested by various learned authors.

(a) *Solutions based on general considerations*

(i) *Application of the law of domicile or residence*

227. Certain authors are of opinion that if an alien claiming or possessing the nationality of several States habitually resides in a country of which he is not a citizen, the law of his domicile should be substituted for the national law normally applicable. Thus, Niboyet [103] wrote:

> "It might of course be maintained that this conflict can be resolved by holding that the two foreign nationalities, no political interest being involved, cancel out and that no account can be taken of them because they would have to be applied simultaneously. In such a case the national law on personal status would be set aside, the law of domicile being substituted for it."

228. This solution, which would undoubtedly facilitate the task of the courts in the country of the *forum* and avoid the often delicate problem of applying the principles of a foreign legal system, may entail consequences for the persons involved too serious to be entirely acceptable.[104]

(ii) *Option of nationality by the alien concerned*

229. Another solution proposed by a number of authors would leave it to the individual concerned to opt for one of the nationalities he possesses and, provided he proves that he does in fact possess this citizenship, his decision would be considered as binding for the authorities of the State exercising jurisdiction if he is not a national thereof. This solution was suggested by Great Britain at The Hague Codification Conference. In its reply to Point II No. 3, reproduced by the Preparatory Committee, the British Government stated:

> "An individual of double nationality is, while in the territory of a third State, entitled, so far as he himself is concerned, to regard himself as of either nationality." [105]

South Africa [106] expressed itself similarly; and so did Australia, New Zealand and India. But Belgium,[107] for instance, was not inclined to adopt this solution. The Belgian Government felt that it would encourage duplicity and fraud; that the person concerned might run the risk of losing one of his nationalities; and that "a choice made as before a third State does not bind the two countries of which the person concerned is a national. No solution of the question of double nationality can therefore be found in this method." [107]

230. The main objection which may be raised against this solution is that to leave such option to the person concerned may lead to contradictory choices based entirely on reasons of expediency. By residing consecutively in several States of which he was not a national, he might, whenever expedient, choose, among his various nationalities the one most likely to be conducive to a satisfactory solution so far as he himself was concerned, of the matter at that moment under consideration. Far from introducing stability into his nationality status, this solution would perpetuate and impliedly approve a situation of uncertainty as to the nationality of such individuals.

(iii) *Application of the law nearest to that resulting from application of the* lex fori

230 *bis*. It has been further suggested that the authorities of the State seized of the problem should select from among the nationality laws which might be applicable to the person concerned the one which most

[102] *Op. cit.*, 290-291.
[103] *Op. cit.*, pp. 535-536.
[104] For instance, a person may come of age in his own country at twenty-one, but in the country of the *forum* he might come of age at eighteen. He might then be allowed to dispose of his property under the *lex fori* by acts which might be considered null and void by the courts of the country of which he is a citizen.
[105] *Conference for the Codification of International Law, Bases of Discussion*, vol. I: Nationality, Publications of the League of Nations, *V. Legal, 1929.V.1.*, p. 33.
[106] *Ibid.*, p. 30.
[107] *Ibid.*, p. 31.

closely approximates to that which would result from the application of the *lex fori*. It will not always be possible to find among the nationality laws applicable to the individual concerned one which will closely or even remotely approximate to the law of the third State concerned, and this objection alone is enough to lead to the rejection of this solution.

(iv) *Application of the law of the State to which the alien concerned is attached both by nationality and by domicile or residence*

230 *ter*. Other authors favour the application to the person having dual nationality of the nationality law of the State of which he is a citizen and where he has his domicile or, failing that, his residence. This solution would appear to be practicable in all instances where the individual concerned has in fact his domicile or residence in one of the States of which he is a national. In other cases it could not be applied. Moreover, the definition of "domicile" and "residence" varies, so that, even when the principle is applicable, the decision of the court might differ according to the country where it is located. Therefore, it would appear that domicile or residence in one of the States of which the individual concerned is a national can be only a subsidiary element of appreciation in determining which of his several nationality laws should be applied.

(v) *The date of acquisition of the nationalities claimed*

231. It has also been proposed to base the answer to the question of which nationality law to apply to an individual possessing several citizenships on the date of acquisition of these nationalities. Some favour the nationality at birth, contending that the individual concerned has an inalienable right to possess it; others express preference for the nationality acquired later, by naturalization, for instance, because the person concerned has by his expatriation shown his detachment from the nationality of origin. But this solution could not be applied in all those cases where two or more nationalities are acquired by birth, and the argument in its favour would not necessarily apply if, for example, a second nationality had been acquired by the mere fact of marriage or, in the case of an infant, by virtue of the naturalization of his parents.

(vi) *The effective nationality*

232. The effective nationality (*nationalité active*) was recommended by several delegations to The Hague Codification Conference as the solution least open to objection, although not applicable in all instances. The Court of the State seized of the matter would take into consideration not only the domicile but all other circumstances which would indicate the individual's real attachment, such as the holding of public office, compliance with military obligations, the language spoken, constant submission to the laws of one of the countries concerned in the accomplishment of juridical acts, and so on. The question would therefore, become one of fact rather than of legal theory, and would lead in most cases to an equitable and uniform solution.

233. Makarov [108] quotes the *Canevaro* case [108a] in which the Permanent Court of Arbitration, in an Award dated 3 May 1912, applied this principle. The Tribunal stated *inter alia* that, by virtue of article 34 of the Peruvian Constitution, Canevaro was a Peruvian national by birth, since he was born in that country; that he was also Italian, in accordance with article 4 of the Italian Civil Code, since his father was of that nationality; but that Canevaro had on various occasions acted as a Peruvian national, for instance, by being a candidate for election to the Senate, and more particularly by obtaining permission from the Government and Congress of Peru to exercise the functions of Consul General of the Netherlands. On these grounds, the Tribunal came to the conclusion that the Peruvian Government was entitled to consider Canevaro as a Peruvian national and to deny that he was an Italian claimant ["et de lui dénier la qualité de réclamant italien"]

234. More recently, an Award of the Franco-German Mixed Arbitral Tribunal, dated 10 July 1926,[109] declared that it could not adopt the system of the *lex fori* applied by national courts, but had to follow the general principles of private international law: and the principle of the effective nationality was considered by the Tribunal as an adequate basis for the solution of the conflict of law under consideration.

235. The principle was also adopted, as will be seen in the next Chapter, by The Hague Codification Conference, although with certain limitations.

(vii) *Cumulative effect of all nationalities claimed or possessed*

236. Some authors such as Louis-Lucas,[110] mention the possibility of the court applying without discrimination the nationality laws of all countries of which the individual concerned is a national. This suggestion is based on the assumption that the foreign judge has no competence to make his own choice among them. "He must respect them all, sanction all rights, all obligations, which are proved to arise from a nationality which in fact belongs to the individual concerned", Louis-Lucas stated, but he added that this solution is not the real answer to the problem, since it would give rise to too many practical difficulties.

(b) *Solutions of special cases by convention or otherwise*

237. The solutions so far mentioned are all based on the assumption that the third State concerned is not limited by treaty in its choice among the various nationalities claimed or possessed by an individual in accordance with generally recognized principles of law. In many instances, however, States do not have this freedom of choice because of the existence of international agreements concluded with the country or countries of which the individual concerned is a national. If, for example such a person is the national of a State which has obtained by treaty or otherwise certain rights of settlement in favour of its citizens, such rights cannot be denied on the ground that the person is also a national of another State which has not concluded any convention relating thereto. The Anglo-

[108] *Op. cit.*, p. 296, footnote 56.

[108a] The Award is printed in Scott, *The Hague Court Reports* (First Series), pp. 285 ff.

[109] Also quoted by Makarov, *op. cit.*, p. 297, footnote 57.

[110] *Op. cit.*, p. 24.

German Mixed Arbitral Tribunal, formed after World War I, in a decision of 26 April/10 May 1922, granted to a person possessing British and German nationality the right to bring a claim under article 296 of the Treaty of Versailles. The Tribunal stated:

> "The creditor had become a British national and... he has acquired the right to claim under art. 296... it is immaterial whether he has or has not lost his German nationality." [111]

A similar decision was reached on 29 October 1924 by the Franco-German Mixed Arbitral Tribunal which attributed French nationality to a person possessing both French and Turkish citizenship.[112]

238. Niboyet [113] distinguished between cases where French political interests are involved and others where, for instance, two foreign States are bound by a treaty concerning the nationality of their respective subjects. If no political interests of France are involved, the question might be solved in different ways, depending on the particular facts, so that one nationality might be recognized as appropriate to the individual concerned in one set of circumstances, his second nationality prevailing in another. If France is bound by treaty to one of the countries of which the person is a national, and there exists no such treaty with the other, the law of the former must prevail. In the case of two foreign States being under treaty obligations regarding the nationality of their respective subjects, the French authorities must recognize the nationality resulting from the agreement between the two foreign States.

3. *Concluding remarks*

239. As may be inferred from the preceding sections, no general solution of conflicts of laws has so far been evolved, with the exception of the tentative and limited proposals adopted by The Hague Conference for the Codification of International Law of 1930 which will be discussed in the next chapter. This is the logical consequence of the principle that legislation on nationality falls mainly within the *domaine réservé* of States. A distinction might, however, be made between those cases where the person concerned is also a national of the country exercising jurisdiction and those where he is an alien. It would appear that a general rule applicable to this second hypothesis, such as the principle of the effective nationality, would be acceptable to a majority of countries, and that its adoption might now be suggested.[114] Although such a rule would not do away with dual nationality as such, it would facilitate equitable and uniform decisions in a great number of cases not settled by bilateral or multilateral treaties, and this in itself might be beneficial both to the States and to the individuals concerned.

[111] Quoted by Makarov, *op. cit.*, p. 299, footnote 61.
[112] *Ibid.*, footnote 62.
[113] *Op. cit.*, pp. 531 ff.
[114] See also para. 232 above and para. 362 below.

Chapter III

Attempts to solve conflicts of laws on an international basis

1. *Some examples of bilateral conventions*

(a) *Conventions settling one or more specific questions*

240. When new States are formed by the secession of part of the territory of an existing one, the relevant treaty sometimes contains provisions concerning the nationality of the inhabitants of the seceding territory. One example of this is that of Burma which has been discussed above (paragraphs 199-203). Sometimes such provisions are made retroactive, as in the case of the American War of Independence. The United States Supreme Court, in a judgement dated 23 February 1808, assumed that the peace treaty of 1783 between the United States and Great Britain did not create but recognized the independence of the former, and, consequently, the Supreme Court granted retroactive force to the nationality laws of New Jersey, although these laws had been promulgated prior to the recognition of independence.[115]

241. Argentina and Spain settled the nationality questions concerning their respective citizens by a convention of 21 September 1863, article 7 of which stipulates that the High Contracting Parties, in order to determine the nationality of their respective citizens, shall observe in each country the relevant provisions of the Constitution and laws of that country.[116] This treaty, by recognizing the *lex fori* principle constitutes a restriction on the unlimited application of *jus sanguinis*.

242. A similar agreement is contained in the exchange of notes between El Salvador and Spain of 15 June 1866,[117] which contains the following stipulation:

> "His Excellency the President of El Salvador has directed me to declare in his name... that he agrees that to determine the nationality of the children of Spaniards born in the territory of the Republic of El Salvador, and of the children of Salvadoreans born in Spain and her dominions, the provisions contained in their respective Constitutions and laws at present in force shall be observed".

243. Certain treaties give preference to one of the several nationalities possessed by the individuals concerned, without depriving them of any of these nationalities. Thus France and Argentina concluded a convention dated 26 January 1927 which stipulated with regard to individuals having dual French and Argentine nationality that such

> " persons born on the territory of the Argentine Republic have discharged in France the obligations of military service in peace times that they would incur under the French law so long as they should

[115] *Mollvaine* v. *Coxés Lessec*, 4 Cranch 209; cited by Makarov, *op. cit.*, p. 178, footnote 7.
[116] *Ibid.*, p. 134 and footnote 308.
[117] See *A Collection of Nationality Laws of Various Countries as contained in Constitutions, Statutes and Treaties*, edited by R. W. Flournoy and M. O. Hudson (New York, Oxford University Press, 1929), p. 659.

have discharged the obligations placed upon them by the Argentine military law".[118]

244. Similar arrangements were agreed upon by France and Peru (16 March 1927) and by France and Paraguay (30 August 1927).[118a] All these treaties contain a provision which states:

> " The provision in this convention does not in any way alter the juridical status of the persons mentioned in the foregoing articles with regard to nationality."[119]

245. The same aim of avoiding dual military obligations was pursued by the so-called " Carlier Convention " concluded between France and Belgium on 30 July 1891, and replaced by the Franco-Belgian Convention of 12 September 1928. The latter stipulates that persons of French and Belgian nationality shall not be included in recruiting lists before reaching the full age of twenty-two.

246. Other conventions aim at regulating the question of dual nationality in general without, however, amending the respective nationality laws of the countries concerned. Two such conventions, namely those between Argentina and Spain and between El Salvador and Spain, have been mentioned above (paragraphs 241-242).

247. Other treaties deal with certain questions resulting from the naturalization by one of the contracting parties of the citizens of the other. An example of an agreement of this kind is the Franco-Swiss Convention, signed at Paris on 23 July 1879, which settled the nationality of children whose parents have become Swiss by naturalization. Such persons " shall have the choice in the course of their twenty-second year between the two nationalities, Swiss and French. They shall be regarded as Frenchmen until they have decided for the Swiss nationality."[120]

(b) *The Bancroft treaties*

248. The most famous of the treaties which deal with the consequences of naturalization without, however, materially modifying the laws of the countries concerned, are the so-called " Bancroft treaties " concluded in 1868 between the United States on the one hand, and the North German Union and a number of other German States on the other hand. Although they have been abrogated as far as Germany is concerned by virtue of article 289 of the Treaty of Versailles, which abolishes all bilateral treaties between Germany and each of the Allied and Associated Powers, it may be worthwhile to summarize them here. The treaty with the North German Union stipulated *inter alia:*

> " Article I. Citizens of the North German Confederation, who become naturalized citizens of the United States of America and shall have resided uninterruptedly within the United States for fives years, shall be held by the North German Confederation to be American citizens and shall be treated as such."[121]

A similar provision applied to American citizens naturalized in the North German Confederation. On the other hand, article IV contained provisions relating to such naturalized citizens returning for a certain period to their country of origin. It declared:

> " If a German naturalized in America renews his residence in North Germany, without the intent to return to America, he shall be held to have renounced his naturalization in the United States."

The same stipulation applied *mutatis mutandis* to American citizens naturalized in North Germany and returning to the United States.

249. The treaty does not supply any answer as to the questions whether such naturalized citizens have, by their naturalization, lost their original nationality, or whether they automatically re-acquire their former citizenship if they lose the second one in accordance with article IV quoted above.[121a] No doubt this question had to be solved by each of the contracting States by the application of its own legislation, each State being free to determine who were and who were not its nationals.

250. Similar agreements were concluded between the United States and Bavaria, Hesse and Wurtemberg.

251. The Bancroft treaties have served as a basis for conventions concluded between the United States and other countries. A treaty signed at Brussels on 16 November 1868 between the United States and Belgium differs from the above in so far as it contains in article IV a provision which will avoid dual nationality in the case of persons of Belgian or United States nationality who lose their acquired citizenship through return to their home country. The provision reads in part, as follows:

> " Citizens of the United States naturalized in Belgium shall be considered by Belgium as citizens of the United States when they shall have recovered their character as citizens of the United States according to the laws of the United States."[122]

252. It will be inferred from this stipulation, which, *mutatis mutandis,* applied to Belgians, that citizens of the contracting parties lose their nationality of origin by naturalization in the other State, since they must recover it under their respective laws before they can again be considered by the other State as nationals of their country of origin. Dual nationality will thus have been avoided.

253. In a treaty concluded on 26 May 1869 between the United States, on the one hand, and Norway and Sweden, on the other, it was stipulated that a citizen of one of the contracting parties naturalized by the other must make an application to be restored to his former nationality if he wishes to recover it, after he has once more established residence in his country of origin, the Government of which may " receive him again as a citizen on such conditions as the said government may think proper".[123] A Protocol to this convention adds that a Swede or a Norwegian

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[118] *Ibid.*, p. 704.
[118a] *Ibid.*, p. 704, footnote 2.
[119] *Ibid.*, p. 705.
[120] *Ibid.*, p. 674.
[121] *Ibid.*, pp. 660-661.

[121a] See, however, para. 99 above, which summarizes the provisions of the law of 1913 with regard to the re-acquisition of German nationality by former German citizens.
[122] Flournoy and Hudson, *op. cit.*, p. 667.
[123] *Ibid.*, p. 668.

naturalized in the United States who renews his residence in Sweden or Norway without the intention of returning to America " shall be held by the Government of the United States to have renounced his American citizenship ". While dual nationality seems, therefore, to be avoided by this treaty, statelessness can be the consequence of the application of its article III, combined with the relevant provision of the Protocol.

(c) *Treaties regulating nationality in general*

254. While the Bancroft treaties and other similar instruments aim mainly at avoiding dual nationality, others again have the purpose of settling nationality questions in general between the contracting parties. An example of treaties of this kind is the Convention signed at Managua between Italy and Nicaragua on 20 September 1917.[124] Article I of this treaty stipulates that Italians residing in Nicaragua and Nicaraguans residing in Italy shall retain their respective citizenships and transmit them in accordance with the laws of their respective countries. This article, therefore, recognizes *jus sanguinis* as a guiding principle without changing the laws of the two countries. Other provisions however modify the respective laws of the contracting parties. Thus, the child born in Nicaragua of an Italian father who was not himself born in that country has the right to opt for the nationality of his country of birth within a year of his coming of age. The same applies *mutatis mutandis* to children born in Italy to Nicaraguan fathers. This right of option, which potentially avoids dual nationality, did not exist in the Italian nationality law of 1912 which was then in force. The Nicaraguan law admitted the option, but without the time-limit. Article IV deals with the naturalization of citizens of the contracting parties. Such citizens, after residing for two consecutive years within their country of origin, may be restored to their original citizenship. However, the Governments may invalidate this reinstatement during the six months following the completion of the two years' residence, Statelessness may arise from this provision. Other treaties, quoted by Makarov,[125] specifically aim at avoiding dual nationality. Thus the Treaty of Commerce signed between Germany and Honduras on 12 December 1887 stipulates that children of emigrants may maintain their nationality acquired *jure sanguinis*, provided they have complied with their military obligations in the country of origin of their parents within one year after coming of age. Otherwise this nationality is lost, but the citizenship obtained *jure soli* is retained. The descendants of such persons, however, acquire *ipso facto* the nationality of the country of birth. The Franco-Belgian Convention signed at Paris on 12 September 1928 [126] aims at the prevention of dual nationality of Belgian women marrying French citizens or French women marrying Belgian citizens. In principle this convention stipulates the application of the respective national laws, with the proviso, however, that a French woman acquires by marriage celebrated in Belgium the status of a Belgian citizen, unless she declares within six months from the date of marriage her desire to retain French nationality. Dual nationality of such French citizens is avoided by this provision.

(d) *Peace treaties containing nationality provisions, in particular those of Versailles, St. Germain etc.*

255. Modern democratic tendencies have influenced the thinking of law and treaty-makers and have inclined them to take into account the will of the people concerned when changes of nationality occur as a consequence of modifications of the boundaries of States. Most treaties dealing with these matters contain provisions granting a right of option to the inhabitants of these territories. Thus, the Treaty of Frankfurt of 10 May 1871 between France and Germany granted to Alsatian citizens wishing to retain their French citizenship a right of option to this effect. In more recent times, the treaties concluded after World War I contained provisions concerning nationality as well as military service. Thus, article 278 of the Treaty of Versailles [127] obliged Germany to recognize the foreign nationality acquired by German citizens under the laws of the Allied and Associated Powers 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". This provision, therefore, aimed at eliminating the dual nationality of former Germans by obliging Germany to renounce all claims to the allegiance of such persons.

256. Article 4 of the Treaty concluded at Versailles with the new State of Poland obliged that country to recognize as Polish citizens persons of German, Austrian, Hungarian or Russian nationality who were born on the territory of the newly created Polish State, but such persons had an option to renounce Polish citizenship within two years after the coming into force of the treaty.

257. The Treaty of St. Germain, signed on 10 September 1919,[128] contained similar provisions. According to article 64, Austria admitted as Austrian nationals all persons who, at the date of the coming into force of the treaty, possessed rights of citizenship within Austrian territory and who were not nationals of any other State, as well as (article 65) all individuals born on Austrian territory who were not born nationals of another State. Article 230 imposed on Austria the same obligation as was assumed by Germany in virtue of article 278 of the Treaty of Versailles, namely to recognize any new nationality acquired by her nationals under the laws of the Allied and Associated Powers and to liberate such persons from their allegiance to their country of origin.

258. Article 4 of the Treaty concluded at St. Germain with the Serb-Croat-Slovene State [129] bestowed rights of citizenship in the newly created Serb-Croat-Slovene State to persons of Austrian Hungarian or Bulgarian nationality who were born in the territory of that State to parents habitually resident or possessing rights of citizenship there. The right of option granted to Polish citizens by virtue of article 4 of the Treaty concluded at Versailles with Poland (see paragraph 256 above), was also accorded to such persons by the new Serb-Croat-Slovene State. Furthermore all persons born in that territory who had no other nationality became *ipso facto* citizens (article 6).

[124] *Ibid.*, pp. 686-688.
[125] *Op. cit.*, p. 140.
[126] Flournoy and Hudson, *op. cit.*, p. 706-7.
[127] *Ibid.*, p. 646.
[128] *Ibid.*, p. 647.
[129] *Ibid.*

259. Arrangements identical to those summarized above were included in the Treaty with Czechoslovakia signed on 10 September 1919 at St. Germain.[130] On the other hand, articles 51 and 52 of the Treaty of Neuilly of 27 November 1919 [131] contained no provision for option, and obliged Bulgaria to recognize as its nationals persons who were habitually resident in that country at the time of the coming into force of the treaty or who were born in Bulgaria, provided they were not nationals of another State.

260. Articles 4 and 6 of the Treaty of Paris concluded on 9 December 1919 with Rumania [132] are identical to articles 4 and 6 of the treaties concluded with Czechoslovakia and the Serb-Croat-Slovene State (see paragraphs 258-259). The Treaty of Trianon, signed on 4 June 1920 with Hungary,[133] on the other hand declared that all persons possessing Hungarian citizenship at the date of its coming into force, as well as persons born in that territory, provided they were not nationals of another country, would *ipso facto* be considered as Hungarians. Hungary also recognized naturalization of her nationals under the laws of the Allied and Associated Powers (article 213).

261. The treaties concluded after the First World War between the Allies and their opponents, as well as with the successor States of the latter, attempted, as may be seen from the preceding paragraphs, to avoid cases of dual nationality arising as an aftermath of the political upheaval created by that world-wide conflict. Two main categories of provisions were included for that purpose:

1. A clause obliging the former enemy States and/or their successors to recognize as their nationals persons born on their territories or having rights of citizenship there, provided they were not nationals of another State; and
2. Provisions obliging the former enemies to recognize naturalization obtained by their citizens in accordance with the laws of the Allied and Associated Powers. Such individuals were considered as having, in consequence, severed their allegiance to their country of origin. This latter provision had the effect, in the case of Germany, of prohibiting the application to such naturalized citizens of the Allied and Associated Powers of article 25 of the so-called "Delbruck Law", which enabled German nationals to acquire a foreign citizenship by naturalization without thereby losing German nationality.

(e) *Conventions aiming at the elimination of multiple nationality concluded pursuant to the Treaty of Versailles*

262. While these various treaties laid down principles aiming to prevent the acquisition of dual nationality as a consequence of territorial upheavals following World War I, many extremely complicated problems had still to be settled between the German Reich and its neighbours. Attempts to arrive at acceptable solutions were made in a number of conventions, which cannot be analysed in detail in the framework of the present study. All of them aimed at avoiding multiple nationality. Attention is drawn to the following:[134]

1. The German Belgian Convention of 11 September 1922, relating to a right of option for German citizenship by persons who obtained Belgian nationality by virtue of article 36 of the Treaty of Versailles;
2. An agreement of 10 April 1922, concluded between Denmark and Germany concerning the application of articles 112 and 113 of the Treaty of Versailles, which accorded a right of option for Danish or German nationality, to persons born in the territories which became Danish by virtue of a plebiscite organized in execution of the relevant provisions of the Treaty of Versailles;
3. The Convention concluded between Germany and the State of Danzig concerning the application of articles 105-106 of the Treaty of Versailles, by virtue of which German citizens residing in the territory of that State lost German citizenship but could, within two years after the coming into force of the treaty, opt for German nationality;
4. The Treaty concluded on 8 May 1924/10 February 1925 between Germany and Lithuania, concerning the application of articles 8-10 of the Memel Convention of 8 May 1924, which stipulated *inter alia* that persons over 18 years of age, domiciled in the territories concerned since January 1920 acquired Lithuanian citizenship, unless they opted for German nationality within eighteen months after the ratification of the said convention;
5. The Convention between Germany and Poland of 30 August 1924 on nationality and option. Article 91 (3) accorded a right of option for German citizenship to persons over eighteen years of age domiciled in the territories ceded to Poland; and article 91 (4) bestowed the same right on Poles domiciled in Germany;
6. A similar agreement between Germany and Poland, dated 15 May 1922, concerning Upper Silesia;
7. The Treaty on nationality concluded on 29 June 1920 between Germany and Czechoslovakia. This treaty provided for the execution of article 3 of a Treaty on minorities, signed on 10 September 1919 between the Principal Allied and Associated Powers and Czechoslovakia, which recognized as nationals of the latter, German, Austrian and Hungarian citizens domiciled in the territory of that State on the date of the coming into force of the treaty. These persons, provided they were over eighteen years of age, had the right to opt for the nationality of their former home-countries. Article 4 of the treaty on minorities granted the same rights to German, Austrian and Hungarian citizens born on that territory of parents who had been domiciled or who had a right of settlement (Heimatrecht) there, even if no longer domiciled on the said territories or if they had lost their right of settlement on the day of the coming into force of the treaty. Such persons could renounce Czechoslovak citizen-

[130] *Ibid.*, p. 648.
[131] *Ibid.*, pp. 648-649.
[132] *Ibid.*, p. 649.
[133] *Ibid.*, pp. 649-650.

[134] Reproduced by Franz Massfeller, *op. cit.* Part. II.

ship within two years of the coming into force of the treaty.

263. All the conventions, treaties and agreements listed in paragraph 262 above aimed at avoiding cases of double or multiple nationality arising from the territorial changes following World War I. The method employed consisted in attributing to the populations involved the nationality of the successor State by operation of law and at the same time bestowing a right of option in favour of the original nationality on certain categories of these persons. From these provisions, combined with those of the various peace treaties, it may be concluded that cases of double nationality were eliminated because :

1. The inhabitants of the successor State acquired either *jure soli* or *jure sanguinis* the nationality of that State and lost their former one;
2. Those who exercised the right of option granted to them lost the nationality of the successor State and recovered their original one;
3. Naturalization by one of the Allied and Associated Powers led to the loss by the individual concerned of his former nationality.

Nevertheless, many litigious cases arose. They were submitted to and decided by Mixed Arbitral Tribunals set up after the war.

2. *Multilateral Conventions*

(a) *Latin American Conventions*

264. Efforts to cope with problems of dual nationality have been made on various occasions and, apart from The Hague Codification Conference of 1930, the results of which will be discussed later, Latin American countries have concluded a number of conventions which will now be summarily analysed. One of the first to deserve mention is the Convention signed at Rio de Janeiro on 13 August 1906.[135] Its provisions are based on the principles of the Bancroft treaties. Thus, article I establishes a presumption to the effect that a person naturalized by one of the contracting parties who had taken up residence again in his native country for more than two years (article II) will thereby have expressed the intention of resuming his original citizenship and renouncing that acquired by naturalization. The conferment of dual nationality by one of the contracting States on naturalized citizens of the other was thereby eliminated.

265. A further important step was taken by Latin American countries in the Convention signed at Havana on 20 February 1928, the so-called " Bustamente Code."[136] After declaring in article 9 (Title I, Chapter I, Nationality and Naturalization) that

> " Each contracting party shall apply its own law for the determination of the nationality of origin of any individual... and of its acquisition, loss and recuperation thereafter, either within or without its territory, whenever one of the nationalities in controversy is that of the said State ",

the Code establishes certain rules of conflict to be applied by the contracting parties. In the case of individuals possessing by origin several of the nationalities of the contracting parties, if the question is raised in a State which is not interested in it, the

> " law of that of the nationalities in issue in which the person concerned has his domicile shall be applied " (article 10).

In the absence of such a domicile, the *lex fori* will govern (article 11). In questions concerning " individual acquisition of a new nationality " (article 12) and in cases of loss or resumption of nationality (articles 14-15), the laws of the nationality concerned will apply.

266. The Code, therefore, rather than attempting to eliminate dual nationality, lays down rules concerning the law which is to be applied by the contracting States in each of the situations envisaged.

267. Two further agreements concerning nationality questions were elaborated by the Seventh International Conference of American States, namely, the Convention on Nationality [137] and the Convention on the Nationality of Women.[138] Articles 1 and 5 of the former determine the effects of naturalization, which " carries with it the loss of the nationality of origin " (article 1) and " confers nationality solely on the naturalized individual ". Article 6 stipulates that neither marriage nor its dissolution " affects the nationality of the husband or wife or of their children ".

268. The Convention on the Nationality of Women contains only one substantive provision which determines that in the contracting States

> " There will be no distinction based on sex as regards nationality in their legislation or in their practice ".

(b) *The Hague Conventions of 12 April 1930*

269. The most important attempt to agree on principles governing nationality was undoubtedly the Conference for the Codification of International Law held at The Hague in 1930 under the auspices of the League of Nations. In a resolution adopted by the Assembly of the League on 22 September 1924,[139] the Council was requested to convene a Committee of Experts with a view to preparing, *inter alia,*

> " a provisional list of the subjects of international law the regulation of which by international agreement would seem to be most desirable and realisable at the present moment ".

Nationality was first among the subjects adopted for this purpose by the Committee of Experts. It kept this place in the report submitted to the Council by the Foreign Minister of Poland, M. Zaleski, in June 1927. There can, therefore, hardly be any doubt that international codification of the law of nationality appeared to be " desirable and realisable " to the Governments concerned. But, in practice, the draft elaborated by Mr. Rundstein, Rap-

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[135] Flournoy and Hudson, *op. cit.*, p. 645.

[136] Reproduced in Harvard Research, *op. cit.*, pp. 114-115.

[137] *American Journal of International Law,* Supplement, vol. 28 (1934), pp. 63-64.

[138] *Ibid.*, pp. 61-62.

[139] *Committee of Experts for the Progressive Codification of International Law,* Report to the Council of the League of Nations, Publications of the League of Nations, *V. Legal, 1927.V.1.*, p. 8.

porteur of the Sub-Committee on Nationality avoided any definite answer to controversial questions of principle, and so in fact did the Conference itself.

270. In the Report submitted by Mr. Rundstein and approved by M. de Magalhaes,[140] the problem of dual nationality was mentioned in several connexions:

(*a*) It was stated that " international law has in practice established for the solution of two categories of conflict of nationality law rules which are almost universally recognised and adopted";[140a] and these rules were described in the Report as follows:

> " A. In cases in which a conflict of nationality arises out of divergencies in laws based respectively on the principles of *jus soli* and of *jus sanguinis,* the law which must be applied, to the exclusion of the other, must depend upon the domicile or mere place of residence of the person whose nationality is in dispute between the two States. That is to say, if a territorial authority claims that its *jus soli* must prevail over the *jus sanguinis* of the other State, the latter cannot claim recognition of its jurisdiction within the territorial limits of the State which applies the criterion of birth."[140b]

Several exceptions, however, to this general rule were stated:

(i) " Such jurisdiction is excluded in matters of personal status and in matters of real property."[140c]

(ii) "It is generally recognised that, in cases of double nationality, the diplomatic protection of the State of which a person is a national in virtue of *jus soli* may not be exercised on behalf of that person on the territory of another State which claims him as its national in virtue of *jus sanguinis;* and, *vice versa,* the diplomatic protection of the country of origin (*ex jure sanguinis*) may not be exercised on the territory of the country of birth of any person whose nationality is there governed by the principle of *jus soli*;"[140d]

(iii) The principle of exterritoriality, by virtue of which it would be " necessary to provide that the territorial law of nationality shall not apply to children born in a territory where their fathers enjoy privileges and immunities arising out of ex-territoriality, or where they exercise public duties on behalf of a foreign government";[140e]

(iv) " Even if the father does not enjoy diplomatic immunities and privileges, it would be fair to apply the principle of ex-territoriality to the children of consuls who are members of a regular consular service, of consular officials and, generally speaking, to the children of all foreign officials who do not possess diplomatic status, if they have taken up their temporary residence in a country enforcing *jus soli* in order to carry out an official mission recognised and permitted by the government of that country."[140f]

271. A second category of problems to which Mr. Rundstein felt that solutions capable of reducing or even eliminating conflicts of nationality might be found, concerned the questions of the acquisition, change, loss and resumption of nationality. Thus, in the case of foundlings and children born to parents of unknown nationality, *jus soli* should apply unless proof justifying the application of *jus sanguinis* could be found. In all other cases of acquisition of nationality *modo originario,* Mr. Rundstein declared that no general principles had so far been evolved by international law, but he suggested that if dual nationality resulted from the concurrent application of *jus sanguinis* and *jus soli,* an option should be allowed for the *jus soli* nationality, excluding its operation where it was contrary to the law of the country of origin, or, alternatively, a rule allowing repudiation of a nationality acquired by birth in a *jus soli* country should be permitted. Mr. Rundstein was, however, not very hopeful that these principles could find universal application, and he suggested a rule for the solution of conflicts arising from subsisting divergencies of national laws. This rule was to the effect that, in a third State called upon to decide upon the validity of one of two nationalities,

> " The principle of alternative nationality might be adopted, making the decision dependent upon one only of the two factors determining nationality, namely, that of domicile in one of the two countries, or — in the case of a person who is domiciled in neither of the two countries of which he is a national — the last domicile."[140g]

272. As for dual nationality resulting from naturalization, if the State of origin did not release the individual from his allegiance, the Rapporteur thought that the following principles might be universally adopted to avoid its occurrence:

1. Naturalization to be granted only upon proof that the applicant has been released from his original allegiance;
2. Such proof is not required if the country of origin adheres to the principle of perpetual allegiance, or if the applicant proves that refusal to grant release from such allegiance as based on unreasonable grounds; and
3. Renunciation by the naturalizing State of the right to extend diplomatic protection to the naturalized citizen as against the State of which he was formerly a national, if release was refused on the grounds staded in (2) above.

273. As for resumption of nationality by persons who have lost their original citizenship by reason of acquiring another, the Rapporteur thought that no rules concerning such resumption would be universally acceptable with regard to minors or persons who have renounced a foreing nationality which they obtained by naturalization.

274. In the case of a child who acquired his father's nationality by legitimation, Mr. Rundstein proposed that such acquisition should be permissible only where

> " the law of the State to which the child belonged

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[140] *Ibid.*, pp. 9-21. Mr. Rundstein later submitted a Supplementary Note, *ibid.*, pp 22-24. M. Schucking submitted Observations regarding this Report, *ibid.*, p. 25, to which Mr. Rundstein replied, *ibid.*, p. 26.

[140a] *Ibid.*, p. 10

[140b] *Ibid.*

[140c] *Ibid.*

[140d] *Ibid.*

[140e] *Ibid.*, p. 11.

[140f] *Ibid.*, p. 12.

[140g] *Ibid.*, p. 14.

before regards legitimation by a foreigner as a special ground of loss of nationality".[140h]

This rule was also to be applied *mutatis mutandis* in cases of recognition of illegitimate children.

275. The propositions summarized above were incorporated in the preliminary draft convention, as amended as a result of discussion by the Committee of Experts and submitted by Mr. Rundstein on 26 January 1926.

276. In its first report [141] submitted to the Council, the Preparatory Committee for the Codification Conference, which had met in Geneva at the beginning of 1929, examined the replies made by Governments to the request for information which had been addressed to them, and drew up Bases of discussion for the use of the proposed conference. The Preparatory Committee considered these Bases not as proposals, but as the result of its study of the Government replies and of its endeavour to harmonize the views therein expressed. The Bases were accompanied by Observations of the Committee, containing the Committee's explanations regarding them.

277. The Bases of discussion and the pertinent replies of governments are, as far as dual nationality is concerned, presented in " Point II. Case of a person possessing two nationalities ", and they comprise Bases of discussion Nos. 3-5. Right of option in case of double nationality forms the subject of Basis of discussion No. 15; the effect of legitimation is the subject of Bases Nos. 20 and 20 *bis*, the effect of adoption that of Basis No. 21; naturalization that of Bases Nos. 6 and 6 *bis;* and the effects of naturalization upon the nationality of minors that of Bases Nos. 7-9.

278. The request for information addressed to Governments distinguished three cases regarding persons possessing double nationality, the first of which referred to the right of each State to apply exclusively its own law if the individual concerned possessed the nationality of that State. There was no substantial disagreement on this principle and Basis of discussion No. 3 was drafted as follows :

> " A person having two nationalities may be considered as its national by each of the two States whose nationality he possesses."[142]

279. The second question submitted to Governments concerned the right of diplomatic protection exercisable on behalf of a person having dual nationality, and in particular whether such protection may be exercised

> " as against a State of which the person concerned has been a national since his birth, or as 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, finally, is the admissibility or inadmissibility of the exercise of diplomatic protection as between the two States governed by other considerations capable of being formulater?"[142a]

280. The replies received were not in absolute agreement with one another :

(*a*) Some excluded any exercise of diplomatic protection in the case in question. For instance, the German Government stated that " the right of diplomatic protection cannot in any case be exercised on behalf of a person with double nationality by one of the States concerned as against the other";[142b]

(*b*) Other replies excluded diplomatic protection only where it would be exercised against the State in which the person concerned is habitually resident;

(*c*) Others, such as Belgium, would have given the exclusive right of protection to that of the two States where the individual concerned had his residence. The reply of the Belgian Government stated :

> " the person in question can only *actively exercise* the nationality of the country in which he actually and habitually resides. By settling in one of the two countries he has, to a certain extent, spontaneously *manifested* his preference for that country, and hence that country alone should extend its protection to him";[142c]

(*d*) Other States admitted the right of protection under all circumstances. Thus, Denmark was of opinion that

> " the exercise of such protection would in many cases be equitable... In short, it is doubtful whether a State should be required in advance to relinquish the right to intervene, if necessary, on behalf of one of its subjects."[142d]

281. As a result, Basis of discussion No. 4 was formulated as follows :

> " A State may not afford diplomatic protection to one of its nationals against a State whose nationality such person also possesses. Alternative : Add to the above text the words : 'If he is habitually resident in the latter State.' " [142e]

282. The third request for information addressed to Governments concerned the case where the question of dual nationality is raised in a third State. The following hypotheses were considered :

(*a*) Whether preference should be given to the nationality which corresponds with the domicile of the person concerned; or

(*b*) To the nationality which corresponds with the person's habitual residence; or

(*c*) To the nationality last acquired; or

(*d*) Whether account should be taken of the person's own choice; or

(*e*) Whether preference should be given to the one most closely resembling the law of the third State itself; or

(*f*) Whether some other element of the case should determine which nationality is to prevail.[142f]

283. Most of these points have already been discussed in some detail in Chapter II of the present study.

[140h] *Ibid.*, p. 18.
[141] *Conference for the Codification of International Law, Bases of Discussion,* vol. I: Nationality, Publications of the League of Nations, *V. Legal, 1929.V.1.*, pp. 5-6.
[142] *Ibid.*, p. 25.
[142a] *Ibid.*
[142b] *Ibid.*
[142c] *Ibid.*, p. 26.
[142d] *Ibid.*
[142e] *Ibid.*, p. 30.
[142f] *Ibid.*

It will, therefore, suffice here to note that the Observations of the Preparatory Committee [143] expressed the view that the replies on this point were somewhat divergent, but that these divergences seemed capable of reconciliation

" if it is agreed that there would be advantages in possessing on the point in question a fixed rule which would henceforth be generally acepted ".

284. The Observations also made reference to the necessity of distinguishing between the case where the application of the law of nationality is necessary to determine an individual's personal status and where it is a question of one of the other consequences of nationality. In the former hypothesis it was deemed necessary to have an objective criterion independent of arbitrary choice. Several of these were listed:

1. The criterion of habitual residence in one of the two States concerned in preference to that of domicile;
2. Failing habitual residence, the State with which the person was in fact more intimately connected.
3. For purposes other than personal status, the person's own choice might be the determining factor.

285. Consequently, Basis of discussion No. 5 was framed as follows:

" Within a third State: (*a*) as regards the application of a person's national law to determine questions of his personal status, preference is to be given to the nationality of the State in which the person concerned is habitually resident or, in the absence of such habitual residence, to the nationality which appears from the circumstances of the case to be the person's effective nationality: (*b*) for all other purposes, the person concerned is entitled to choose which nationality is to prevail; such choise, once made, is final."[143a]

286. The next point considered by the Preparatory Committee in connexion with dual nationality was the effect of naturalization on the nationality of origin of the individual concerned. In order to avoid the occurrence of double nationality in such cases, it appeared necessary to the Committee to agree that, by naturalization in a foreign State, the former nationality or nationalities of the naturalized person should automatically disappear.

287. However, then, as now, there was not complete unanimity on this point. The request for information addressed to the Governments on the occasion of The Hague Conference propounded the following hypothetical questions in this respect (Point III. Loss of Nationality by Naturalization Abroad and the Expatriation Permit):[143b]

1. (*a*) Does loss of nationality result directly from naturalization in the foreign country; or (*b*) is it the authorization to renounce the former nationality which causes that nationality to be lost, and, if so, how and at what date?
2. Is there an exact correspondence between the loss of the former nationality and the acquisition of the new one by naturalization, especially as regards the date?
3. If such correspondence does not exist, is it desirable to establish it by international convention?

288. The replies received from Governments indicated the existence of great diversity among the various legal systems. Thus, the United States held [144] that, according to statutory provisions then in force, loss of original nationality resulted directly and unconditionally from naturalization in a foreign country. France [145] shared this point of view, subject, however, to restrictions concerning the fulfilment of military obligations by the individual concerned. Hungary [145] declared that its nationality could only be lost " by release from allegiance, by decision of the proper authority, by absence, by legitimation and by marriage ".

289. In its Observations on this point, the Preparatory Committee declared *inter alia*:

" An important advance would be made if States agreed to recognise that, in principle, the voluntary acquisition of foreign nationality should involve the loss of the former nationality."[146]

In the case of persons not satisfying the requirements prescribed by law for loss of a State's nationality as a consequence of acquiring a foreign one, the system of expatriation permits was still held to be useful.

290. Basis of discussion No. 6 formulated the point as follows:

" In principle, a person who on his own application acquires a foreign nationality thereby loses his former nationality. The legislation of a State may nevertheless make the loss of its nationality conditional upon the fulfilment of particular legal requirements regarding the legal capacity of the person naturalized, his place of residence, or his obligation of service towards the State; in the case of persons not satisfying these requirements, the State's legislation may make the loss of its nationality conditional upon the grant of an authorization."[146]

291. In case the above Bases of discussion were not adopted, the Committee proposed tentatively Basis No. 6 *bis*, according to which

" a release from allegiance (expatriation permit) does not entail loss of nationality until a foreign nationality is acquired."[146]

292. The effect of the naturalization of the parents upon the nationality of their minor children is relevant for the purpose of the present study only so far as concerns rules regulating the avoidance of dual nationality of such children through acquisition of a new citizenship by their parents. The Observations[147] of the Preparatory Committee made it clear that it is generally recognized that naturalization of the parents involves that of unmarried minors living with their parents. Certain legal systems, however, recognize this principle only with certain exceptions. Consequently, Basis of discussion No. 7 was formulated as follows:

" Naturalization of parents involves that of their children who are minors and not married, but this shall not affect any exceptions to this rule at present contained in the law of each State."

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[143] *Ibid.*, p. 35.
[143a] *Ibid.*, p. 36.
[144] *Ibid.*, p. 38.
[145] *Ibid.*, p. 39.
[146] *Ibid.*, p. 44.
[147] *Ibid.*, p. 50.

293. The question was also raised whether minors should lose their nationality of origin as a result of the naturalization of their parents. Certain legal systems make the loss of nationality conditional upon the *voluntary* acquisition of a new one. The Committee felt that children should lose their former nationality by naturalization only if, in that case, the parents also lost theirs. Consequently, Basis of discussion No. 8 stated the principle involved as follows:

" Naturalization of the parents causes children who are minors and not married to lose their former nationality if the children thereby acquire their parents' new nationality and the parents themselves lose their former nationality in consequence of the naturalization.

" A State may exclude the application of the proceding provision in the case of children of its nationals who become naturalized abroad if such children continue to reside in the State."[147]

294. To prevent children of parents naturalized abroad from becoming stateless, Basis of discussion No. 9 added:

" When naturalization of the parents does not extend to children who are minors, the latter retain their former nationality."[147]

295. The application of *jus soli* to children of foreign officials on official mission in countries applying that principle was dealt with under Point V. Some countries wished to limit the rule that *jus soli* should not apply to such children, at least not automatically, to those born to persons enjoying diplomatic privileges and immunities. Others wanted to extend it to the children of all foreign officials, provided they were exercising official functions on behalf of a foreign Government. Some, finally, were in favour of granting such children the right to opt for the nationality of their country of birth.

296. Basis of discussion No. 10 [148] was, therefore, formulated as follows:

" Rules of law which make nationality depend upon the place of birth do not apply automatically to children born to persons enjoying diplomatic immunities in the country where the birth occurs. The child will, however, be entitled to claim to come within the provisions of the law of the country to the extent and under the conditions prescribed by that law.

" The same principle shall apply: (1) to the children of consuls by profession; (2) to the children of other persons of foreign nationality exercising official functions in the name of a foreign government."

297. The case of children born to parents merely passing through foreign territories showed the great divergences existing among the various legal systems. *Jus sanguinis* countries considered that no problem was involved for them; certain *jus soli* countries granted their nationality to such children if other factors (e.g., residence during a certain time) accompany birth on that territory; others, while making the acquisition of nationality conditional only upon birth on their territory, tended to avoid dual nationality by granting a possibility of option to the individual concerned. The point was not, therefore, retained for discussion.

[148] *Ibid.*, p. 56.

298. Point X dealt with the right of option in case of double nationality. The replies to the request for information showed a substantial divergence of views: [148a]

(*a*) Certain countries thought that the solution of the problem of dual nationality consisted in granting to the person concerned an opportunity of renouncing one nationality;

(*b*) Others considered that the right to renounce should apply only to the nationality acquired *jure soli;*

(*c*) Others pointed to the dangers which might arise from the granting of such right of option to the person concerned;

(*d*) Others thought that, if double nationality were regarded as a serious inconvenience, not only should the right of option be recognized, but the person concerned should have the duty to opt under the conditions laid down by law;

(*e*) Others, finally, doubted the possibility of settling the question by a general provision.

299. Consequently, Basis of discussion No. 15 was formulated as follows:

" Without prejudice to the liberty of a State to accord wider rights to renounce its nationality, a person of double nationality may, with the authorisation of the Government concerned, renounce one of his two nationalities. The authorisation may not be refused if the person has his habitual residence abroad and satisfies the conditions necessary to cause loss of his former nationality to result from his being naturalized abroad."[148b]

300. Point XIV deals with the effect of legitimation upon nationality. An illegitimate child may have acquired a nationality at birth and may obtain, through legitimation, the nationality of the parent concerned. In that event he would have dual nationality, unless he lose his original one.

301. The replies received from Governments showed a measure of agreement to exist with regard to the proposition that legitimation should confer the father's nationality upon the child. There was less agreement as to the effect of recognition. Basis of discussion No. 20, therefore, took account only of legitimation, and it was formulated as follows:

" Legitimation by the father of an illegitimate child who is a minor and does not already possess the father's nationality gives the child the father's nationality and causes it to lose a nationality which it would previously have acquired by descent from its mother." [148c]

302. Adoption, a less serious and less frequent problem, was dealt with in Basis of discussion No. 21, which stated:

" In countries of which the legal system admits loss of nationality as the result of adoption, this result shall be conditional upon the adopted child acquiring the nationality of the adoptive parent." [148d]

This negative formulation had been proposed because Governments hesitated to bind themselves as regards the

[148a] *Ibid.*, pp. 80 ff.
[148b] *Ibid.*, p. 87.
[148c] *Ibid.*, p. 111.
[148d] *Ibid.*, p. 116.

acquisition of nationality as a consequence of adoption. It may, however, be inferred that it was the opinion of the Preparatory Committee that the original nationality should be lost if a person obtained by adoption the nationality of the adoptive parent.

303. The Bases of discussion submitted to The Hague Codification Conference as summarized above did no more than outline a system tending towards the elimination of dual nationality, or, at least tending to diminish its effects. In Basis of discussion No. 3 the principle is maintained that each State determines who are its nationals and that, consequently, a person having two or more citizenships may be considered as its national by each of the States concerned. But the proposals subsequently endeavour to limit the effects of such dual nationality by determining that one of the States of which the individual concerned is a national may not afford diplomatic protection to such a person against the other (Basis of discussion No. 4), and by indicating which of the two nationalities should be given preference within a third State, if the problem arises there (Basis of discussion No. 5). Finally, such persons should have, in accordance with Basis of discussion No. 15, the right, under certain conditions, to renounce one of his nationalities; and *jus soli* should not apply automatically to children or foreign agents (Basis of discussion No. 10). Much more far-reaching are the proposals concerning the effects of voluntary acquisition of a foreign nationality, which also recommend the loss of the nationality of origin in such cases (Basis of discussion No. 6) for minor children naturalized with their parents who obtain their parents' new nationality. Legitimation and adoption were treated in a similar manner (Bases Nos. 20, 20 *bis* and 21).

304. Other proposals concerned the effects of marriage and of the dissolution of marriage upon the nationality of the wife. Others, again, dealt with the avoidance of statelessness. They are omitted here for the reasons stated in the introductory part of this survey.

305. Despite the fact that they were not far-reaching and that they in no way attempted to eradicate double nationality in the very frequent cases where more than one citizenship is obtained by birth, these proposals were discussed very extensively and in great detail at the meetings of the First Committee.[149] During the discussion two States, Finland and Sweden, made proposals designed to reduce the cases of multi-nationality [150] acquired at birth. These proposal were combined in the following amendment:

> " If a person possessing, from birth, the nationality of two or more States, has been habitually resident in one of them up to an age to be determined by the law of the other State but not exceeding 23 years, he shall lose the nationality of the latter. That State, however, may grant him the right to retain its nationality, if he has, beyond all doubt, manifested his attachment to the State in question.
>
> " The provision of the preceding paragraph does not apply to a married woman, if her husband is not liable to lose his nationality under the terms of this provision. "

306. The amendment was not adopted. The principal agreement reached bears the title: " Convention on Certain Questions relating to the Conflict of Nationality Laws." [151] The Convention is divided into six chapters, the first of which lays down certain guiding principles. Thus, article 3 determines that, with regard to multiple nationality,

> " a person having two or more nationalities may be regarded as its national by each of the States whose nationality he possesses ".

307. Article 4 reproduces the proposals of the Preparatory Committee with regard to diplomatic protection, and article 5, with slight amendments, re-states those concerning the nationality which is to prevail if the question is raised in a third State. Article 6, also with slight drafting changes, re-formulates those concerning the right to renounce one of the nationalities involved which is to be granted to a person possessing two nationalities acquired without any voluntary act on his part.

308. Chapter II deals with expatriation permits, chapter III with the nationality of married women, and chapter IV with the nationality of children. Article 12 reproduces in substance the provisions proposed by the Preparatory Committee with regard to children born to officials while on a mission abroad. Article 13 re-states the rules concerning the effects of naturalization of the parents on the nationality of minor children. Article 16 deals with the effects of legitimation, and article 17 (chapter IV) with those of adoption, in the manner suggested by the proposals of the Preparatory Committee.

309. One of the additional protocols adopted, the Protocol relating to Military Obligations in Certain Cases of Double Nationality,[152] aims at averting consequences prejudicial to the individual possessing dual nationality with regard to his military obligations under the laws of the States concerned. The convention lays down that:

(*a*) Persons of dual nationality residing in one of the countries concerned with which they are in fact most closely connected, shall be exempt from military obligations in the other country or countries (article 1);

(*b*) If, under the law of one of these States, such persons have the right to renounce that nationality, they shall be exempt there from military service during their minority (article 2);

(*c*) If a person has lost the nationality of one State and has acquired that of another one he shall be exempt from military obligations in the former (article 3).

310. The Conference also made certain recommendations with regard to the problem of multiple nationality,[153] including the following:

> " III
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> " The Conference is unanimously of the opinion... that States should, in the exercise of their power of

[149] *Acts of the Conference for the Codification of International Law*, vol. II: Minutes of the First Committee, Publications of the League of Nations, *V. Legal, 1930.V.15.*

[150] *Ibid.*, pp. 284, 294.

[151] *Acts of the Conference for the Codification of International Law*, vol. I: Plenary Meetings, Publications of the League of Nations, *V. Legal, 1930.V.14.*, pp. 81 ff.

[152] *Ibid.*, pp. 95 ff.

[153] *Ibid.*, pp. 163-165.

regulating questions of nationality, make every effort to reduce so far as possible cases of dual nationality...

" 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."

311. The Hague Conventions, perhaps because of their limited scope, have exercised a certain influence on nationality legislation in many countries. They have done no more than outline a basic legal theory in the matter, and one may say that the general principles they lay down confirm rather than limit the discretionary power of States to legislate in the field of nationality and, thereby, to determine who are and who are not their nationals and how citizenship is obtained, lost and recovered in each of them.

3. *Proposals of non-governmental organizations and/or institutions to eliminate multiple nationality*

312. The problem of dual nationality had for a long time, even before The Hague Codification Conference, occupied the minds of distinguished scholars and it has been studied by private organizations interested in the development of international law. Resolutions aiming at a solution of the problems resulting from multiple nationality have been published by conferences of such private organizations. To complete this survey, some of the more important results of these conferences and studies are summarized below.

(a) *Outlines of an international code by David Dudley Field* [154]

312 *bis*. As early as 1876 David Dudley Field published the outlines of an international code which contained detailed rules concerning nationality, some of which also referred to the problem of dual citizenship. The draft gives preference to the *jus sanguinis* principle. It suggests that a legitimate child, wherever born, shall be a member of the nation of which its father at the time of its birth was a national (article 250). It also lays down that " no person is a member of two nations at the same time ", and that a second nationality may only be attributed by another nation to a person with his consent (article 248). The *jus soli* principle applies to a legitimate child born in the territory of a State where his father was born who does not have the nationality of that State (article 251). An illegitimate child acquires his mother's nationality; but, if he is recognized by the father, the latter's nationality prevails (articles 252-254). Naturalization and the right to expatriation are admitted (article 266), and the former involves loss of the original nationality (articles 268-272).

(b) *Resolutions of the Institute of International Law, Venice, 1896* [155]

313. The suggestions made to Governments in the resolutions adopted in 1896 by the Institute of International Law follow closely those summarized in paragraph 312 *bis* above. They also would apply *jus sanguinis* to legitimate children who would acquire the father's nationality. So, too, would illegitimate children recognized by the father during their minority, but, if the mother were the first to recognize them, they would acquire her nationality and would retain it even if subsequently recognized by the father. Nationality *jure soli* would be attributed in the second generation to children born to an alien father himself born in the territory concerned, subject, however, to certain conditions of residence. Naturalization of the father would imply that of minor children, who would, however, retain the right to opt for their former nationality within one year of reaching the age of majority. Naturalization could be granted only if the applicant had ben released from his original allegiance or if, at least, he had advised his country of origin of his intention and, as the case might be, complied with his military obligations.

(c) *Report of the Committee on Nationality and Naturalization, adopted by the International Law Association, Stockholm, 9 September 1924* [156]

314. Contrary to the proposals summarized above, the International Law Association gave preference to the *jus soli* principle. It also devised two sets of rules — a model statute to be incorporated into municipal law, and certain contractual provisions to be recommended for insertion in an international convention, the latter being rules of conflict.

315. All municipal laws should, according to these proposals, attribute their nationality *jure soli,* unless the father, being a national of another State, has, within a specified period, registered the child as the national of the State to which he belongs, the child having the right to opt for the *jus soli* citizenship within one year after attaining the age of twenty-one. Legitimation should not affect the nationality of the legitimated person, unless such person was stateless before legitimation. Naturalization was to be conferred upon request of the applicant only, and it entailed that of his minor children.

316. The rules of conflict to be inserted into an international convention would prescribe that a person having dual nationality who resided on the territory of one of the States concerned would be treated as the

[154] Reproduced by Harvard Research, *op. cit.*, pp. 115-117.

[155] Reproduced *ibid.*, p. 118.

[156] Reproduced *ibid.*, pp. 119-121.

national of that State only; and, if he resided within the territory of a third State, the principle of effective nationality was to apply to such a person.

(d) *Draft rules prepared by the Kokusaiho Gakkwai in conjunction with the Japanese Branch of the International Law Association* [157]

317. This organization suggested in article 1 of its draft that, as a general principle, every person should possess one and only one nationality. To implement this principle, it prescribed that residence alone, however permanent, should not be considered as a ground for attribution of the nationality of the State concerned (article 3). Consequently, *jus sanguinis* would apply to legitimate children, who would acquire at birth the father's nationality; and the same would apply in the case of legitimated children who, before legitimation, would have the mother's citizenship (article 4). However, nationality obtained *jure soli* was to be recognized by all States, the person concerned having the right to opt for the father's or mother's nationality within a fixed period after attaining majority, provided he had established residence in the State concerned (article 5). Freedom to change nationality was recognized (article 2), subject to conditions which might be imposed by the State of which the individual concerned was a national before his naturalization. Naturalization of the husband was to be extended automatically to the wife, unless she declared her intention to retain her former nationality, and to the minor children (who would acquire the citizenship of the mother, if she alone were naturalized). Such naturalized children had the right to opt for their nationality of origin within a fixed period after attaining majority (article 7).

(e) *Resolutions adopted by the Institute of International Law, Stockholm, 1928* [158]

318. These resolutions added, *inter alia,* to those adopted by the Institute in Cambridge (1895) and Venice (1896) a general principle prohibiting the enactment of rules entailing dual nationality, provided other States applied identical provisions. Naturalization was to be granted only upon application of the individual concerned. It could, however, be imposed after a certain period of residence in the State concerned, the person in question retaining the right to opt for his nationality of origin.

(f) *Proposals by the Harvard Law School, Research in International Law* [159]

319. On 1 April 1929 the Harvard Research in International Law published a draft convention on The Law of Nationality. The reasons for this work and its purpose are stated in the " Introductory Comment " [160] which includes the following passage :

> " Nationality has no positive, immutable meaning. On the contrary its meaning and impact have changed with the changing character of States... It may acquire a new meaning in the future as the result of further changes in the character of human society and developments in international organization. Nationality always connotes, however, membership of some kind in the society of a state or nation . . . The accompanying draft convention is based upon the assumption that States, while retaining their power to shape their own nationality laws to fit their peculiar situations and needs, will be willing to make certain changes and concessions with a view to removing some of the existing conflicts and to preventing, so far as possible, cases of double nationality and of no nationality. Therefore, the draft, while in some of its provisions it declares what is believed to be existing international law, is not limited to a statement of existing law and attempts to formulate certain provisions which, if adopted, would make new law." [160]

320. With regard to dual nationality, the suggestions contained in the draft are of a limited nature. In article 3, *jus soli* as well as *jus sanguinis* are recognized as a juridical means of conferring nationality at birth upon a person; all other means are, however, excluded. *Jus sanguinis* and *jus soli* were held by the Comment to be legitimate grounds for the acquisition of nationality at birth. It follows therefrom that the existence of dual nationality at birth is admitted by the authors of the draft convention, and the corresponding rule is expressed as follows in article 10 :

> " A person may have the nationality at birth of two or more states, of one or more states *jure soli* and of one or more states *jure sanguinis.*" [160a]

321. The reasons for the adoption of this principle are stated in the Comment to article 3 :

> " Though the convention has been drafted with a view to abolishing dual nationality where practicable, it must be realized that the complete elimination of dual nationality at birth would require the adoption of a uniform rule and the consequent elimination of either *jus soli* or *jus sanguinis.* In view of the historical antecedents of the two bases and the fact that each is now embedded in the laws and constitutions of many states, the elimination of either seems impracticable at the present time." [161]

The Comment further sates that seventeen nationality laws are based solely on *jus sanguinis,* two equally upon *jus soli* and *jus sanguinis,* twenty-five principally upon *jus sanguinis* but partly upon *jus soli,* and twenty-six principally upon *jus soli* and partly upon *jus sanguinis.* " Therefore ", the Comment adds,

> " it is apparent that international law has not adopted either system to the exclusion of the other. Nor does there seem to be in the existing international law any provision for preferring one to the other as the basis of nationality." [162]

This statement would appear to apply also to the present-day situation.

322. In the Comment to article 10, the text of which is reproduced in paragraph 320 above, it is suggested that if it were possible to adopt a single rule for the attribution of nationality at birth, the one proposed by Vattel might be acceptable, namely, that

[157] Reproduced *ibid.,* pp. 123-124.
[158] Reproduced *ibid.,* pp. 125-126.
[159] *Ibid.,* pp. 22-79.
[160] *Ibid.,* pp. 21-22.
[160a] *Ibid.,* p. 38.
[161] *Ibid.,* p. 28.
[162] *Ibid.,* p. 29.

" by the law of nature alone, children follow the condition of their fathers... But I suppose that the father has not entirely quitted his country in order to settle elsewhere. If he has fixed his abode in a foreign country, he is become a member of another society, at least as a perpetual inhabitant and his children will be members of it also ".[163]

323. The principle suggested by Vattel has been embodied in article 4 of the draft convention.[164] the purpose of which is to limit the application of *jus sanguinis* to a certain period of time. The article declares, indeed, that nationality at birth (*jure sanguinis*) may not be conferred

" upon a person born in the territory of another state, beyond the second generation of persons born and continuously maintaining an habitual residence therein, if such person has the nationality of such other state ".

324. The rule thus proposed did not state the existing international law but suggested

" a change in the existing law which will reconcile the interests of the states whose nationals have emigrated and the interests of the states to which they have immigrated."[165]

325. Article 5 [166] admits without limitation, except for children born to aliens who enjoy diplomatic immunity, the principle of *jus soli*; and article 6 [167] suggests that States should provide a procedure whereby a child born to an alien official not having diplomatic immunity may be divested during minority of the nationality acquired by birth in an alien country through the application of appropriate procedures promulgated by the State of birth.

326. Article 8 [168] proposes that illegitimate children should follow the mother's nationality (*jure sanguinis*), but, if subsequently legitimated by an alien father during minority, they should obtain the father's citizenship unless they reside, at the time of legitimation, in the territory of the State of which the mother only is a national.

327. The purpose of article 11 [169] of the draft is to avoid the consequences of dual nationality with regard to the military obligations of the individual concerned in both States of which he is a national. Such a person

" shall not be subject to the obligation of military or other national service in one of these states while he has his habitual residence in the territory of another of these states ".

It may be asked whether this provision provides an effective guarantee against the evil it aims to avoid. Such persons may, for instance, be obliged to give up habitual residence in one of the States concerned and take up residence in a third State while they are still subject to military obligations. They might then be compelled, despite that rule, to comply with their military duties in both States of which they are nationals.

328. Article 12,[170] however, would, in most cases, avoid the consequences stated above by introducing the principle of effective nationality. According to this provision dual nationality obtained at birth would subsist only up to the age of twenty-three. A that time the individual concerned would retain only the nationality of the State where he then had his habitual residence, and, if at such time he resided in a country of which he was not a national, he would retain citizenship only of that one of those States of which he was a national where he last had his habitual residence. The article does not with deal the case of an individual with two or more nationalities but with no " habitual " residence in one of the States concerned.

329. Article 13 [171] determines that naturalization by a foreign State shall entail loss of the nationality of origin; and article 14 [172] prescribes that " a state may not naturalize an alien who has his habitual residence within the territory of another state ". Minors may be naturalized as a consequence of the naturalization of the parents (article 15) : an alien of full age, however, may not be naturalized without his consent.[173] Article 16 [174] confers upon the State of origin the right to re-impose its nationality upon a former citizen naturalized by a foreign country, provided the individual concerned has established a permanent residence in his country of origin. The nationality acquired by naturalization would thereupon be lost.

330. Other provisions of the Harvard Research draft deal with fraudulently procured certificates of naturalization (article 17), annexations of territories and their consequences with regard to the nationality of the inhabitants (article 18), the retention of their nationality of origin by women marrying an alien (article 19), and the right of re-entry into the territory of the State of which an individual is or was a national (article 20). Article 21 authorizes the conclusion of special agreements by States parties to the convention, and article 22 contains an arbitration clause.

331. The system recommended by the Harvard Research draft, if adopted, would doubtless have the effect of reducing the number of cases of dual nationality. While admitting dual nationality at birth, it

(a) *Limits to the second generation the transmissibility of nationality jure sanguinis* to persons born outside their home country whose family has continuously maintained residence abroad;

(b) *Excludes from jus soli* children of foreign officials having diplomatic immunity, and suggests for children of other foreign agents that a procedure be provided by which they may be divested of the nationality obtained *jure soli;*

(c) *Avoids dual nationality in the case of legitimated children* by conferring upon them the nationality of the mother or of the father only, as the case may be;

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[163] Vattel, *Law of Nations* (Chitty's edition), p. 102 : Harvard Research, *op. cit.*, pp. 38-39.
[164] *Ibid.*, p. 30.
[165] *Ibid.*, p. 31.
[166] *Ibid.*, p. 32.
[167] *Ibid.*, p. 33.
[168] *Ibid.*, p. 35.
[169] *Ibid.*, p. 40.
[170] *Ibid.*, p. 41.
[171] *Ibid.*, pp. 44-45.
[172] *Ibid.*, p. 51.
[173] *Ibid.*, p. 53.
[174] *Ibid.*, p. 55.

(d) *Reduces existing cases* by introducing the principle of effective nationality by virtue of which one of the two nationalities possessed would be extinguished upon the individual concerned attaining the age of twenty-three;

(e) *Eliminates dual nationality* in case of naturalization, and in the case of resumption of the original nationality by a citizen who had been naturalized abroad and has taken up, after naturalization, his permanent residence in the country of origin.

Chapter IV

Discussion of procedures which would eliminate dual and multiple nationality

1. *Elimination of future cases*

(a) *General remarks*

332. The problem of multiple nationality and the disadvantages it entails from the point of view of States as well as from that of the individuals concerned has occupied the minds of scholars, statesmen and legislators for a considerable time. Numerous proposals to eliminate dual nationality or to limit its effects, some of which have been reviewed in the course of this survey, have been elaborated and discussed in legal literature, in meetings of private organizations and at international conferences. Some progress has been made in this field, especially as a result of The Hague Codification Conference and the Conventions, Protocols and Recommendations it adopted. However, the question is far from being solved, and, presumably, it will not be settled as long as nationality is considered to be a problem properly belonging to the *domaine réservé* of sovereign States. In studying appropriate solutions, it is hardly possible to refer to generally accepted principles of international or even municipal law,[175] with the exception, perhaps, of the Universal Declaration of Human Rights which proclaims in article 15, " as a common standard of achievement " to be attained, that

" (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." [176]

333. These principles do no more than state in general terms the proposition that possession of a nationality and the faculty to change it are human rights. They leave open the question of dual nationality, although they imply that the exercise of the right to *change* nationality must be conducive to renunciation by the individual concerned of the nationality he wishes to give up. Clearly, however, it is technically possible to devise rules which would, if generally adopted, lead to the elimination of future cases of dual nationality. Such rules must comprise common principles of legislation referring to such matters as acquisition of nationality at birth, naturalization, nationality of married persons, legitimation and adoption.

334. A number of authors have made suggestions concerning the elimination of dual nationality by the adoption of common principles. Thus Professor Pierre Louis-Lucas [177] would give preference, in connexion with the acquisition of nationality at birth, to the *jus sanguinis* principle because " the legal nationality must find its ultimate origin in the sociological nationality ". Normally preference should be given to the father's nationality; and only if this cannot be ascertained should that of the mother prevail. These rules would also apply to legitimated, illegitimate and adoptive children. *Jus soli* would intervene only in two ways : as a secondary principle; when its application appears preferable to that of *jus sanguinis,* for instance, in the case of a person born in a foreign country where his family has been established for two generations; and as a subsidiary criterion, when it is impossible to ascertain the nationality *jure sanguinis.* A change of nationality would be admitted in Professor Louis-Lucas' system by way of naturalization, resumption of nationality or marriage, but in each of these hypotheses the other nationality would automatically be lost.

335. Mr. Marc Ancel,[178] on the other hand, did not believe that dual nationality would be entirely eliminated, and he suggested instead that certain rules of conflict might be adopted and applied by States in such a situation. He agrees with the majority of authors that, if the case is raised in one of the countries concerned, the law of that State must necessarily prevail, unless Governments are willing to limit their exclusive competence by permitting their nationals to claim effectively, even on their territory, the possession of a second nationality. He proposes to define the notion of the " State concerned " by ruling that this conception would apply only if the individual possesses the nationality of that State by virtue of a law enacted prior to the conflict. It would also apply to matters within the jurisdictional competence of the tribunals of that State, which implies that international judicial organs would retain their competence to decide the conflict objectively, if it were raised before them, in the same way as a judge of a third country. In order to reduce the number of conflicts as far as practicable, a wide right of option or of renunciation would be granted to the individuals concerned. In a third country, the author would prefer, for cases of nationality obtained at birth, that the effective nationality should prevail; and, in the case of acquisition of a second nationality by a manifestation of the will of the individual, that this latter citizenship should alone be taken into consideration by the body before which the matter is raised.

336. In a recently published study on the problem of dual nationality and its solution in a particular country (Switzerland),[179] the author, while stating that dual nationality is, at present, an undeniable fact, suggests certain rules of conflict to be applied to such

[175] One can hardly say that either "*jus sanguinis*" or "*jus soli*" is a "general principle" accepted by international law. They are, at most, convenient rules of thumb for the attribution of nationality at birth in accordance with the policies adopted by States in this field.

[176] It is appropriate to recall, however, that the Declaration is not juridically binding upon States.

[177] *Op. cit.*, p. 62.

[178] *Op. cit.*, pp. 37-40.

[179] Frédéric-Henri Hool. *Les effets de la double nationalité en droit suisse* (Neuchâtel, Griffon, 1949), pp. 9-16.

situations. He gives preference to the principle of effective nationality, because it is susceptible of universal application. He therefore recommends that, if the individual concerned is domiciled in one of the countries of which he is a national, the law of that State should prevail until such time as the individual establishes a domicile in the second State of which he is a national. If he is domiciled in a third State, the effective nationality should prevail and should be determined by taking into account a number of factors, such as the language spoken, the country where military service was performed, the passport carried, and so on. If the person concerned had several *domiciles,* or none at all, the *habitual residence* should be taken into account.

(b) *Discussion of rules aiming at the elimination of dual and multiple nationality*

337. The foregoing review has clearly shown that, because of the diversity of municipal laws, dual nationality is not likely to be eliminated in the near future by agreement among a majority of States. Such agreement would, indeed, suppose the adoption of a convention or conventions embodying common principles in a field where States, for seemingly valid reasons, wish to uphold the principle of national sovereignty. The purpose, therefore, of discussing in the following sections rules which would achieve the elimination and/or reduction of multiple nationality is to outline the *technical* possibility of achieving this aim by the adoption of common rules and procedures in this field by the international community of States. Either *jus sanguinis* or *jus soli,* if universally applied, would, in fact, eliminate multiple nationality. There is, however, little likelihood that a majority of States would be inclined to adopt exclusively either one or the other of these rules as the basis of their nationality laws; but it seems not entirely improbable that they might agree to universal application of the principle of effective nationality which, while admitting dual nationality until the individual concerned has reached the age of majority, would eliminate it thereafter. In the following sections solutions based on these rules will be briefly discussed.

(i) *Acquisition of nationality at birth, or by legitimation or recognition*

338. The main cause of the problem is, of course, the diversity of rules resulting in the acquisition of more than one nationality at birth by individuals fulfilling the conditions prescribed for such acquisition by several municipal laws. Thus, according to article 19 of the French Code de la Nationalité, a child born in France to a French mother and an alien father is French, even if the child also acquires the father's nationality; a child born in Great Britain to foreign parents whose nationality he obtains at birth *jure sanguinis* will also be a citizen of the United Kingdom, in accordance with the provisions of section 4 of the British Nationality Act, 1948. In this latter example, two conflicting rules, *jus sanguinis* and *jus soli,* are at the root of this anomalous situation.

339. As repeatedly stressed in this survey, neither conventional nor customary international law provides a remedy. Thus, in accordance with article I of The Hague Convention, each State determines under its own laws who are its nationals, other States being under an obligation to recognize the relevant enactments.

340. It follows that the elimination of dual nationality could be achieved, by the adoption of a common rule for the attribution of nationality at birth, whether based on *jus sanguinis* or *jus soli.* Nevertheless, whatever the rule adopted, its rigid enforcement might lead to undue hardship or anomalies, and some exceptions should therefore also be universally recognized.

341. Thus, if *jus sanguinis* were selected as the guiding principle, the following restrictions on its application might, for instance, be accepted:

(*a*) If the person concerned has been born in a country of which he is not a national *jure sanguinis* and has been a resident of that country for a certain period, he should have the right to opt for the nationality of his country of birth, after the age of twenty-one;

(*b*) The exercise of this option would entail the loss of the nationality acquired *jure sanguinis;*

(*c*) Normally the child would follow his father's nationality with the right to opt for that of the mother upon attaining the age of majority, provided certain conditions of residence in the country concerned were fulfilled. If born in the country of which his mother is a national, however, he would acquire the mother's citizenship with the right to opt for that of the father upon attaining the age of majority, provided he has been living in the country concerned for a certain period prior to that date;

(*d*) Foundlings, children of stateless persons, and persons whose nationality cannot be ascertained, would acquire the nationality of the country of birth, in order to avoid statelessness;

(*e*) Nationality should not be transmitted *jure sanguinis* beyond the second generation.

342. An international convention dealing with the question of dual nationality on this basis might state in its first article the guiding principle, namely, that nationality at birth is acquired *jure sanguinis.* Dealing with legitimate children, it would declare that a child acquires his father's nationality. In order to take into account the principles embodied in the draft convention on Nationality of Married Women regarding the transmission of nationality to children from either the father or the mother, on the basis of equality,[180] a provision might be added to the effect that the child would obtain at birth the nationality of the mother, provided the parents have at that time their habitual residence in the country of which the mother is a citizen.

343. Similar rules would obtain *mutatis mutandis* in the case of a child born out of wedlock. Such persons would at birth acquire the mother's nationality. However, if subsequently recognized by the father, or legitimated by the marriage of the parents, they might retroactively acquire the father's nationality, unless at the relevant period the parents have their habitual residence in the country of which the mother is a national.

344. A right of option might be granted to persons in the situation described above. By exercising it when reaching the age of twenty-one, they would renounce

[180] See para. 4 above, and document E/1712, para. 34.

the nationality acquired *jure sanguinis* in favour of citizenship of the country of birth. This right could be exercised only if the individual concerned had his habitual residence in the country of birth for at least one year prior to attaining the age of majority.

345. These provisions might be completed by stipulating that renunciation of the nationality acquired *jure sanguinis* would entail automatic acquisition of the *jus soli* citizenship, and that if this right were not exercised the *jus sanguinis* nationality would be retained, unless changed by way of naturalization in some other country. It might also be useful to add that, according to the above principles, nationality will not be transmitted *jure sanguinis* beyond the second generation of persons born and continuously maintaining an habitual residence in a State of which they are not nationals. Such persons would have the nationality of their country of birth.

346. Finally, the usual rules concerning the nationality of foundlings might be incorporated in such a convention. The rules applying to a legitimate child could be made applicable to a foundling subsequently recognized or legitimated by the parents.

347. The principles shortly summarized above would, if adopted by a sufficient number of States, eliminate both double nationality caused by acquisition at birth of more than one citizenship and statelessness, since every person would acquire at birth one, and only one, nationality. In this way account would be taken of the views expressed, for instance, by the Belgian Government in its reply to Questionnaire No. 1 submitted to Governments prior to the convening of The Hague Conference of 1930.[181]

348. In some cases anomalies and hardships might be avoided by granting to the person concerned, under certain well defined conditions, the right to renounce a nationality obtained *jure sanguinis* and to acquire that of the country of birth. Normally, indeed, a person raised and educated in the country of his birth will have stronger ties with that country than with the one of which his parents are nationals. An opportunity would thus be given to such persons to express by a manifestation of their will the preference they may wish to give to one of the two nationalities which they possess either by tradition or by birth.

349. Complete realization of the desiderata expressed by the Commission on the Status of Women with regard to " the transmission of nationality to children from either the father or the mother on the basis of equality ", would encounter major difficulties.[182] Normally, if only for practical reasons, a child will follow the nationality of the father. To grant the right to choose the nationality of the mother, as well as the right to opt for the nationality of the country of birth, would bestow on such persons three potential citizenships, and by doing so, further increase the uncertainty of their nationality status until they reach the age of majority.[183] An undesirable element of nationalistic competition might thus be introduced into the family. Nothing would prevent States on the other hand, from granting naturalization facilities to an individual whose mother has continuously maintained citizenship of the country concerned from the time of the child's birth until the date of the application for naturalization. It seemed, however, normal to bestow the nationality of the mother on a child born to her in her own country, even if the father possessed a different citizenship.

350. It might be argued that, by the method proposed here, an element of uncertainty would be introduced into the status of a person born in a country other than that of which his parents are nationals. But this uncertainty ceases to exist at the age of majority, that is to say, when the individual concerned begins to exercise his full political and civil rights in his capacity as a member of a national community. Prior to that period he will not normally have to make far-reaching decisions involving his allegiance to one of the countries concerned; and should he be compelled to do so, he is most likely to retain, when the time to opt comes, the citizenship of the country towards which allegiance was thus expressed. It may be added that uncertainty as to nationality status is much greater under present conditions, where dual nationality can be retained throughout a person's life and may even be transmitted to his descendants. The solution here suggested would not allow such a situation to arise. Finally, it may be recalled that a number of Governments at the occasion of the examination of Point X of the Bases of discussion drawn up for The Hague Codification Conference, felt that to grant to the individuals concerned a right to opt would be a proper means of solving the problem of dual nationality.[184] Thus, the Union of South Africa stated :

> " Under the Union Act No. 18 of 1926, the exercise by a person of an option of adopting one nationality is achieved by declaring alienage, the effect of which is to divest himself of his British nationality." [185]

Belgium [186] cited article 18 (I), paragraph 2, of the law of 15 May 1922 which enables a person who acquired a foreign nationality by operation of law to make a declaration renouncing Belgian citizenship. The Belgian Government added :

> " If this system were extended and could be applied to the case of all persons possessing double nationality, the difficulties now experienced would disappear."

The Danish Government [187] was of opinion that

> " when a person possesses special qualifications, for example birth in conjunction with sojourn, entitling him to nationality in the country of birth, he should be given the option of renouncing that right in due course if he possesses the nationality of another State ".

351. While other examples could be drawn from the same source, it will be sufficient to recall that a number of recent nationality laws recognize a right of option in cases of dual nationality. The above-quoted

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[181] See para. 41 above.

[182] See para. 4 above, and document E/1712, para. 34.

[183] But nothing would prevent states from extending the right to opt (described in para. 348), to include the mother's nationality, if this were considered a desirable solution.

[184] See para. 289, sub-para. (*a*) above.

[185] *Conference for the Codification of International Law, Bases of Discussion*, vol. I: Nationality, Publications of the League of Nations, *V. Legal, 1929.V.1.*, p. 80.

[186] *Ibid.*, p. 82.

[187] *Ibid.*

provisions of the Code de la Nationalité française [188] might be mentioned in this connexion, as well as section 19 of the British Nationality Act, 1948, which enables persons of dual nationality to make a declaration of renunciation registrable by the Secretary of State, whereupon " that person shall cease to be a citizen of the United Kingdom and Colonies ". It may also be recalled that section 350 of Public Law 414 of the United States deprives of United States citizenship a person who acquired at birth both the nationality of the United States and that of a foreign State if such a person has "voluntarily sought or claimed benefits of the nationality of any foreign state ".

352. The same result, namely, the elimination of dual nationality, may also be achieved by universal adoption of rules based on the *jus soli* instead of the *jus sanguinis*. Its rigid implementation, also, should be limited by certain qualifications and conditions. In particular, the parents of a child born while they are resident in a foreign country should have the right to register the child as a national of their own State, but this right should not extend beyond the second generation. The child himself should be allowed (but again, not beyond the second generation) to renounce the citizenship obtained at birth *jure soli* in favour of that of one of the parents, or that of the parents bestowed on him by registration, and thus to re-acquire that of the country of birth. Similar provisions would apply, *mutatis mutandis*, in cases of recognition or legitimation.

353. A convention based on the universal application of *jus soli* might, therefore, declare that nationality is acquired at birth by virtue of that principle. It would give to parents who were not nationals of the country where the birth occurred the right to register the child as a national of the father's State within a short period after the birth. This right of registration would not be granted if the child was born in the country of which the mother is a citizen. A child registered as a national of the country of his parents or parent as the case might be, would have the right to opt for his country of birth after the age of twenty-one, provided he had habitually resided in the country for which he intends to opt for at least one year before his twenty-first birthday. He would lose the nationality derived from his parents or parent as from the day the option is validly exercised and produces the legal effects attaching thereto. If no registration has taken place, a right to opt for the nationality of one of the parents might be granted, provided the individual concerned had habitually resided for a certain period in the State where the option is being exercised.

(ii) *Marriage*

354. For reasons mentioned in the introduction the question of the nationality of married women will not be treated in detail. It may be sufficient to state that an international convention might rule that marriage does not confer the nationality of the spouse, and that the persons concerned retain their nationality of origin. It might be added that if a married woman wishes to acquire her husband's nationality she will have to apply for naturalization, which might be granted under less rigidly severe conditions than usual with respect, say, to the duration of continuous residence. For the sake of equality one might also envisage that the same provisions with regard to naturalization in the wife's State would apply to the husband.

(iii) *Naturalization*

355. It is a widely recognized principle that every person has the right to change his nationality and, consequently, that States have the right to bestow citizenship on aliens by naturalization. To avoid dual nationality, it will suffice to state in a convention that naturalization entails loss of the nationality of origin, the naturalizing State being under an obligation to inform the State of origin of the naturalized citizen when the naturalization has become effective. Naturalization of the parents should entail that of their minor children living with them in their adopted country, the children having a right to opt for their nationality of origin upon reaching majority, provided they have lived in the country concerned for at least one year before they reach that age. The exercise of this right should automatically lead to the loss of the nationality acquired through the naturalization of the parents. Although it would be contrary to the ideal rule that no one should be deprived of his nationality against his will, provision might be made to ensure the loss of the nationality acquired by naturalization, if the individual concerned settles in his country of origin, with no intention of returning to his adopted country, provided he thereby re-acquires his original citizenship. A slightly amended version of the Harvard Research draft might be a useful basis for the relevant provisions of an international convention.

356. Naturalization, if granted to a person upon his request, is, in the majority of cases, a deliberate choice between two different countries, and an individual can hardly express in stronger and clearer terms a preference for one of them. That in why naturalization in a foreign State should entail loss of the previous nationality under all circumstances. Agreement on this point appears to be fairly widespread, and it should not, therefore, be impossible to incorporate the relevant provisions in an international convention aiming at the elimination of dual nationality.

357. It has been argued, particularly by the United States and by the Latin American Republics, that if a naturalized citizen settles again in his country of origin, without intending to take up residence within a certain period in the State of which he is a citizen by naturalization, he thereby manifests his will to re-acquire his nationality of origin. Consequently, the citizenship obtained by naturalization should be lost. This theory has found practical expression in the Bancroft treaties, and it is incorporated in section 352 of United States Public Law 414. Its application was also recommended by the Harvard Research draft. The theory may be opposed on the ground that nationality is a vital element of a person's status and that he should not be deprived of it by the unilateral action of the State. Provided a naturalized citizen complies with all obligations imposed on citizens of the country concerned, when living abroad, it could be argued that there is no real justification for depriving him of his acquired nationality, even if he returns to his country of origin. It might be contended that, to be justified, such deprivation ought to be pre-

[188] See, for instance, para. 61 above.

ceded by a judicial or quasi-judicial procedure to ascertain the relevant facts, and that deprivation, if justified, should not be capable of being effected through the more or less arbitrary incidence of time limits, or through administrative action which is not subject to judicial control. Attention may be drawn in this connexion to section 20 of the British Nationality Act, 1948, which deals with " deprivation of citizenship " and enables the person concerned to apply, before the relevant order becomes effective, for an inquiry to be carried out by a committee of inquiry whose Chairman must be a person " possessing judicial experience " (section 20 (7)). The French Code de la Nationalité also prescribes that an executive decree depriving an individual of French nationality acquired by naturalization, for instance, on the ground of a conviction for acts directed against the internal or external security of the State (article 98 (1)), becomes effective only with the concurrence of the Conseil d'Etat, the individual concerned being informed and authorized to present his side of the case if he deems fit (articles 121 and 122).

358. Naturalization provisions of an international convention might, therefore, stipulate that naturalization should entail the loss of the prior nationality. Minors naturalized with their parents might be granted a right to opt in favour of their nationality of origin. Loss of nationality acquired by naturalization, through residence in the country of origin or in any other country, should be admitted only as a consequence of specified acts or omissions ascertained by a judicial or quasi-judicial procedure. It would not appear justifiable to impose on the State of origin the obligation to grant its nationality to the individual concerned. Cases of statelessness may thus occur, but in view of their presumably limited number, they would not normally affect the well-being of the international community.

(iv) *Adoption*

359. Children, if adopted when still under age, should acquire the nationality of the adoptive parents or parent concerned, provided the adoption is valid according to the law of the country of which the child is a national at the time of adoption, and meets the legal requirements of the State of which the adopting parent or parents are nationals. Such children would thereby lose their nationality of origin. This provision is in keeping with the principle that adoption should lead to the assimilation of the adopted person as a member of the adopting family.

360. The provisions outlined in the preceding paragraphs would, whether *jus sanguinis* or *jus soli* is selected as the guiding principle for the acquisition of nationality by birth, prevent the future occurrence of dual or multiple nationality of the citizens of the contracting States. It might be objected that their incorporation into municipal legislation would introduce a lack of certainty as to the nationality status of the persons who would obtain the right to opt for one of several nationalities when they reach a certain age; but this uncertainty exists in an even greater degree under present conditions where persons may legally possess two or more nationalities. The only difference between such a person and persons who have not acquired two or more nationalities at birth would be that the former would have, during a limited and short period of time, the right to opt for one of the nationalities they would in any event have acquired under the conflicting systems of law at present prevailing.

(c) *Agreement on common principles of interpretation and compulsory arbitration of litigious cases*

361. Incorporation of the rules outlined in the present chapter into municipal legal systems would no doubt diminish conflicts of laws; but the rules of application and interpretation of the respective laws might differ in municipal systems, and these differences might lead to conflicts. A number of definitions clarifying the meaning of the various provisions might, therefore, be agreed upon. Such definitions, in interpretative rules, might, for instance, delimit the meaning of the following terms, *inter alia* : " nationality ", " national ", " naturalization ", " age of majority ", " legitimation ", " recognition ", " competent authorities ", " habitual residence ", and indeed, any other terms of art used in the instrument.

1. *Reduction of present cases of dual or multiple nationality*

(a) *General remarks*

362. It is possible to envisage procedures by which the number of dual nationality cases would be gradually reduced. Such procedures would

1. Grant a right to the person concerned voluntarily to renounce one of his nationalities in favour of the other;
2. Introduce common criteria for the determination of effective nationality; and
3. Recognize the principle of extinctive prescription.

(b) *The right of option*

363. Individuals possessing dual nationality are subject to the sometimes conflicting rules of two States, with the corresponding rights and duties. Normally they will have been brought up in one of the States concerned, and they will have stronger ties with that State than with the other. Nevertheless, they may, for reasons of their own, prefer the nationality of the other State of which they are nationals. They may, therefore, wish to renounce one of these nationalities, and the right to do so might be granted to them.

364. The relevant articles of an international convention should provide that States shall grant to those of their nationals who also possess the nationality of another State the right to opt in favour of the other nationality within five years after the coming into force of the convention. It would appear necessary to establish a time-limit for the exercise of the right to opt, in order to dispel within a reasonable period any uncertainty as to the nationality status of the individuals concerned. It may be recalled that article 6 of the Convention on Certain Questions relating to the Conflict of Nationality Laws accorded to a person possessing two nationalities " acquired without any voluntary act on his part " the right to renounce one of them " with the authorization of the State whose nationality he desires to surrender ". Such a serious limitation on the right to opt seems unnecessary if it is desirer to reduce the number of cases

of dual nationality, and it might prevent the individuals concerned from taking the appropriate action. Attention may be drawn in this respect to article 12 of the Harvard Research draft, which provided that the person concerned, on reaching the age of twenty-three, should automatically lose the nationality of the State in which he did not habitually reside, and that, if he resided outside the territory of the States of which he was a national, he should retain the nationality only of the State of which he was a national *and* where he had his last habitual residence. The article was based on the assumption that the occurrence of dual nationality was inevitable, and its object was to afford a means by which dual nationality might be ended. It might be objected that this provision leaves no scope for the exercise of a free choice by the individual concerned, a freedom which would be granted by the provisions discussed above. Should such a person, however, fail to exercise the right to opt within the period specified, it would then appear reasonable to deprive him of one of the nationalities he possesses, and to establish a legal presumption to the effect that he wishes to retain only his effective nationality.

(c) *The effective nationality*

365. Among the numerous criteria proposed as a suitable rule of conflict in cases of plural nationality, many authors found that of the effective nationality to be the most suitable. It was also recognized as a rule of international law in article 5 of the Convention on Certain Questions relating to the Conflict of Nationality Laws adopted at The Hague in 1930, which defined it as follows :

> " a third State shall, of the nationalities which any such person possesses, recognize 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." [189]

366. The conclusion that an individual is more closely connected with one State than with another might be determined by taking into consideration facts other than the habitual residence, such as the language spoken by the individual concerned, the exercise of political voting rights, the acceptance and/or effective exercise of official functions, and so on. A rule of this kind adopted by the contracting States would facilitate the determination of the nationality which should prevail, with the consequent loss of the other or others. Should the individual concerned fail to opt in accordance with the right granted to him, the principle of effective nationality would apply.

(d) *Extinctive prescription*

367. The rule outlined in paragraphs 365 and 366 above would apply extinctive prescription to existing cases of multiple nationality. Combined with the right to opt, it would not appear to impose excessive hardship on persons who now possess dual or multiple nationality.

368. The provisions outlined above omit reference to such subsidiary questions as birth on a merchant vessel, birth while the parents were merely passing through the territory of a foreign State, liability for criminal acts committed before the individual lost the nationality of the State where the crime was committed, problems of military service and others. For the purpose of this study it would not appear necessary to investigate these matters.

369. Whether agreement can be reached on an international convention or conventions embodying the principles discussed in this Chapter depends on the willingness of States to limit their sovereign right to legislate in the field of nationality, and on whether they consider dual nationality as a serious enough evil to justify such limitations. Some progress towards the elimination of this legal anomaly might, however, be realizable even at the present time. It would appear that no serious objection could be raised against granting to an individual who possesses several nationalities a right to opt for one of the nationalities concerned at the time when he reaches the age of reason, or against stipulating that the effective nationality should prevail if the right of option is not exercised within a reasonable period. It might also be feasible to adopt common rules of conflict in this field, and to agree to submit to the International Court of Justice those cases which could not be solved to the satisfaction of the States concerned by the application of these rules.

Chapter V

Conclusions

1. *Summary*

370. In the introduction, the foregoing survey endeavoured to show the origin and its magnitude of the problem of plural nationality, and to indicate remedial action which might be taken by agreement between States to remove this cause of friction from the international scene. The political and juridical aspects of nationality were briefly summarized; and the exclusive competence of Governments to determine who are their nationals appeared as one of the principal sources of conflicts. However, even at the present stage of development of international law, this competence is not unlimited. States cannot effectively legislate concerning the nationality of the subjects of other States, such action being *ultra vires*; they must not attribute their nationality to a child born to persons temporarily resident on their territory while on diplomatic mission; and they are obliged to grant it to the inhabitants of territories which come under their sovereignty through conquest or any other means of affecting boundary modifications. Deprivation of nationality is not considered with favour by international lawyers, and some efforts have been made to take account of the wishes of individuals regarding their nationality status. Thus, the right to expatriate and to change nationality has been recognized by article 15 of the Universal Declaration of Human Rights, which also stresses the right of every person to a nationality. Efforts to solve the problem of dual nationality through bilateral or multilateral conventions were also briefly reviewed in the Introduction to this survey.

[189] *Acts of the Conference for the Codification of International Law*, vol. I, Plenary Meetings, Publications of the League of Nations, *V. Legal, 1930.V.14.*, Annex 5, at p. 81.

371. By the analysis of various municipal nationality laws, an attempt was made in Chapter I to indicate how, by the indiscriminate application of the *jus soli* or *jus sanguinis* principle or a combination of both, dual nationality is bound to occur as consequence of the lack of international co-ordination in this field. Examples were drawn from Europe, the Americas and Asia. They show that the legal techniques for determining nationality are based on similar premises, implemented by each State without regard to the legislation of other countries in this field. All municipal laws attribute nationality at birth either on the basis of *jus soli* or of *jus sanguinis*. A majority admit predominantly one of these rules, applying the other in certain circumstances. Most laws recognize, at least implicitly, the fact of dual nationality, but consider the individuals concerned as if they had only one citizenship, a rule that has also been incorporated in article 3 of The Hague Convention which stipulates that

> " a person having two or more nationalities may be regarded as its national by each of the States whose nationality such person also possesses ".

In article 4 of the same Convention a further consequence of this principle is noted, namely, that

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

372. Dual nationality is thus a legal situation regulated to some extent not only by municipal legislation but also by international law; but the national laws here surveyed indicate that States are conscious of the anomalous situation of persons having more than one nationality. Certain laws seek a remedy by divesting the individual concerned of his original nationality if he has voluntarily sought or claimed benefits derived from possession of the nationality of a foreign State (see, e.g., section 350 of Public Law 414 of the United States). Others, such as the British Nationality Act, 1948, permit a " declaration of renunciation " by virtue of which citizenship may be lost. Others, like the French Code de la Nationalité, grant a right to repudiate citizenship in circumstances defined by law. Others, like the Swedish Citizenship Act of 1950, try to prevent the occurrence of dual nationality by appropriate provisions, so far as it can be done without international legislative co-ordination. The situations envisaged by these laws, and the solutions adopted, vary with the objectives of the respective national policies with regard to a vast number of considerations, such as immigration and emigration, economics, social questions, ethnological composition of populations, and so on. The net result is that, under present circumstances dual nationality through the acquisition of several nationalities at birth cannot be avoided. It is, therefore, recognized and to some extent controlled by the majority of municipal systems of law.

373. According to modern tendencies, marriage should not by itself entail loss of the nationality of origin or be a reason for automatically acquiring the husband's citizenship. A number of recent nationality laws have implemented this principle, at least with regard to loss by a spouse of the nationality of origin. A Britsh woman marrying an alien may retain her nationality by making an appropriate declaration. A French woman who marries a foreigner will remain a French citizen unless she makes a declaration, before celebration of the marriage, renouncing French citizenship. A new cause of dual nationality has thus been introduced, for, while the right of women to retain their nationality of origin tends to be more and more generally recognized, States will normally continue to attribute the nationality of the husband to an alien woman who marries one of their subjects. Although there may be no objection to a woman married to a foreigner retaining her nationality of origin; it might be possible to reach an agreement to the effect that such persons should be able to acquire the husband's citizenship only by way of naturalization, with the consequent loss of the nationality of origin. Perhaps the conditions imposed for naturalization might be less severe in such cases than they are in general.

374. The right of expatriation is now recognized by most States, although with certain restrictions in respect of individuals subject to military obligations; and in most municipal laws loss of the nationality of origin is the consequence of naturalization by a foreign State upon request of the individual concerned. A frequent cause of dual nationality is thus eliminated. However, in view of the circumstance that naturalization of the parents normally entails that of their minor children, a number of municipal laws grant to such persons facilities for the resumption of their nationality of origin. Dual nationality may occur in this way as it may in the case of a woman by the same procedure re-acquiring her former nationality when her marriage is dissolved.

375. The present lack of international co-ordination of municipal legislation in the field of nationality occasions numerous conflicts of law. Their direct and indirect causes, and the solutions applied, have been studied in Chapter II. If the person concerned is also a national of the country exercising jurisdiction, the solution internationally recognized is that incorporated in article 4 of The Hague Convention, quoted in paragraph 371 above, that is to say, the application of the *lex fori*. But this solution has not been accepted entirely without challenge, and several instances have been noted (see paragraph 223 above) where courts have decided against its application in particular circumstances.

376. No such generally recognized answer to the problem exists where the question is raised in a third State. Among the numerous solutions suggested, preference is frequently given to the principle of effective nationality which has also been embodied in article 5 of The Hague Convention, although in a somewhat attenuated form. Its text is reproduced in paragraph 365 above. Certain authors recommend, on the contrary, that the individual involved should be authorized in such cases to make a choice among his various nationalities, while others would apply cumulatively the laws of all the States concerned, and others again the applicable nationality law which approximates most closely to that which would result from the application of the *lex fori*.

377. Since methods for the solution of conflicts envisaged by municipal legislation offer no clear-cut answer to the problems raised by the existence of dual nationality, States, private organizations and learned authors have endeavoured to pave the way for international agreement on the subject. These attempts are studied in Chapter III. The solutions proposed range from settling specific aspects, such as the nationality of the inhabitants of territories ceded as a consequence of war, to general settlements of nationality questions

among two or more States. The Treaties of Versailles, St. Germain, Neuilly and Trianon, as well as the agreements concluded by Germany with her neighbours, have been summarized in relation to the provisions referring to the nationality of the inhabitants of territories which changed hands after World War I. Other agreements dealing with the problem of military service by dual nationals were also mentioned. This problem was specifically discussed during The Hague Codification Conference of 1930. A Protocol relating to Military Obligations in Certain Cases of Double Nationality [190] was signed which embodied three important principles, namely, that a person possessing more than one nationality and residing in one of the States concerned should be exempt from all military obligations in the other country or countries (article 1); that if such persons had the right to renounce the nationality of one of the States concerned, they should be exempt from military service in such State during minority, that is to say, until they reach the age when renunciation can be validly effected (article 2); that such persons, if they have lost the nationality of a State under the law of that State and acquired another nationality, shall be exempt from military obligations in the former State (article 3). Some bilateral treaties mentioned in the present study consider on the other hand, that military duties discharged in peace-time in one of the countries concerned exempt the dual national from military obligations in the other. Such is the solution adopted in the agreements concluded between France and a number of South-American Republics.

378. With regard to the effects of naturalization and resumption of the nationality of origin, particular attention was drawn to the so-called Bancroft treaties; and a number of other agreements attempting to settle nationality questions in general were also analysed. Among multilateral agreements, the Bustamente Code, which contains rules of conflict, and other Latin American treaties dealing with dual nationality were briefly mentioned, and The Hague Conventions, Protocols and Recommendations were studied in greater detail. Finally, solutions suggested by private organizations, in particular the Harvard Research draft articles, were also analysed.

379. These surveys made it clear that none of the solutions adopted so far offers a satisfactory answer to the problem of dual nationality as a whole. In Chapter IV, therefore, a general solution was outlined and discussed. Although it is evident that a satisfactory answer can be found only by agreement among the great majority of States, theoretically and technically there exists no great difficulty in drafting rules which would achieve the result of eliminating dual nationality. It would suffice if a common principle were accepted for the attribution of nationality at birth (either *jus soli* or *jus sanguinis*), limited in its application by well defined exceptions in order to avoid unnecessary hardships and anomalous situations, and if corresponding rules were applied *mutatis mutandis* to legitimation, recognition and adoption. Loss of nationality in case of naturalization or resumption of the nationality of origin on the request of the person concerned should be made a generally prevailing principle. It might also be stipulated that married women should retain their nationality of origin, while facilities for acquiring that of the husband might be granted to them, such acquisition entailing loss of the nationality of origin.

2. *Possibility and desirability of eliminating dual or multiple nationality*

380. This survey has demonstrated that dual nationality is the inevitable outcome of the diversity of municipal legislation and that it would be vain to hope for the elimination of this legal anomaly without generally accepted international agreement. But it has also been shown that such elimination, at least as far as it can be achieved without major encroachments on national sovereignty, is considered to be desirable by a number of States. The Hague Conventions, on the other hand, appear to indicate that the area of international agreement in the field of dual nationality is still comparatively insignificant. It relates to the following points :

1. A person having more than one nationality may be regarded as its national by each of the States concerned;
2. A State may not afford diplomatic protection to one of its nationals against another State whose nationality such person also possesses;
3. Within a third State, the effective nationality should prevail when nationality laws conflict, and the person concerned should be treated as if he had only one nationality;
4. A right to renounce one of the nationalities may be granted to a person possessing plural nationality. The exercise of this right cannot be refused in case the person concerned, resident abroad, fulfils the conditions laid down for renunciation in the law of the State whose nationality he desires to surrender;
5. Expatriation permits should not entail loss of the nationality concerned without prior acquisition of another;
6. A child born to diplomatic agents on official duty in *jus soli* countries should not automatically acquire the nationality of such countries. A child born to *consuls de carrière* or other foreign officials on official mission should be permitted to relinquish the nationality of the State where he was born if he acquired dual nationality at birth.

381. The provisions contained in the Protocol relating to Military Obligations in Certain Cases of Double Nationality refer, as indicated in paragraph 376 above, only to this particular aspect of the problem. The Conference added to these agreements Recommendations to the effect that States should make every effort to reduce cases of dual nationality [191] and should take steps towards the conclusion of an international settlement of conflicts arising from dual nationality. The Conference also recommended that facilities should be granted to persons possessing several nationalities to renounce those of the countries in which they are not resident, and that naturalization upon request of the person concerned should entail the loss of the nationality of origin.

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[190] *Ibid.*, Annex 6, at pp. 95 ff.

[191] See *ibid.*, pp. 163-165.

382. No significant progress has been made since The Hague Conference towards a complete settlement of the problem. Whether this can be achieved is not a juridical but a political question. That it is still considered to be desirable has been shown by this study. This was again underlined recently by the Special Rapporteur of the International Law Commission, Mr. Robert Córdova, in paragraph 9 of his "Report on the Elimination or Reduction of Statelessness" (A/CN.4/64).

383. His view is shared by many authors. Thus, Frédéric-Henri Hool [192] wrote that, from the point of view of "international order", it is desirable that each person should possess a nationality, but only one, and that dual nationality is an anomaly and the source of numerous conflicts and difficulties. Oppenheim [193] stated:

> "The position of such 'mixed subjects' is awkward on account of the fact that two different States claim them as subjects, and therefore claim their allegiance. In case a serious dispute arises between these two States which leads to war, an irreconcilable conflict of duties is created for these unfortunate individuals."

384. Pierre Louis-Lucas [194] formulated certain rules the adoption of which would, in his view, eliminate conflicts of nationalities. They are based on the principle that the individual should always have a nationality but never more than one.

385. A slightly different view is, however, expressed in the Comment to article 10 of the Harvard Research draft convention on nationality, which reads as follows:

> "The existence of dual nationality at birth in cases of children born in one country of parents who are nationals of another, may, indeed, notwithstanding obvious disadvantages, be regarded as having some advantages. Persons born in countries of which their parents are not nationals are in a peculiar position and there may be some advantages in a system under which they may, within certain limitations, be able to choose between the nationality of the country of birth and that of the parents.[195]"

386. In concluding this study, a few remarks concerning the magnitude of the problem, and the possible effect of its solution by international agreement on national sovereignty, may be appropriate.

387. Dual nationality affects a comparatively small number of persons, mainly the children of individuals who have emigrated under the pressure of political, economic or social situations beyond their control, or simply because they find it convenient to do so. It is reasonable to assume that such situations will not cease to arise in the foreseeable future, and that dual nationality will, therefore, continue to exist. It may also be surmised that the persons concerned will gradually lose touch with their countries of origin, and that the ties of allegiance maintained by their descendants with those countries will, at best, be tenuous. It may therefore be asked whether States can in fact uphold these ties by enforcing legislation designed for that purpose, and by attempting to obtain by compulsion an allegiance which the individual concerned is unwilling to give. After all, as the Introductory Comment to the Law of Nationality published by the Harvard Research remarked:

> "Nationality has no positive, immutable meaning. On the contrary its meaning and import have changed with the changing character of states... It may acquire a new meaning in the future as the result of further changes in the character of human society and developments in international organization." [196]

388. The effect on the sovereignty of States of an international agreement designed to eliminate dual nationality would not appear to be such as to constitute a decisive argument against adoption of common principles of law, or, at least, of rules of conflict, such as the principle of effective nationality, and the scope within which States would remain free to determine under their own laws who are their nationals. One may, therefore, hope that efforts will continue to be made to achieve this end, and that, with the natural growth of the international community, the greater unification of the world by constant technical progress and better understanding among people, the problem will gradually find a juridical solution in the not too distant future.

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[192] *Op. cit.*, p. 2.
[193] *Op cit.*, p. 608.
[194] *Op. cit.*, p. 61.
[195] *Op. cit.*, pp. 39-40.
[196] *Ibid.*, p. 21.