AMBIGUOUS ALLEGIANCE: MULTIPLE NATIONALITY IN ASIA

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Introduction: Conflict and Balance

> It is for each State to determine under its own law who are its nationals. This law shall be recognized by other States in so far as it is consistent with international convention, international custom, and the principles of law generally recognized with regard to nationality.
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> 1930 Hague Convention Concerning Certain Questions Relating to the Conflict of Nationality Law

Thus begins the 1930 Hague Convention, the most important multilateral approach to multiple nationality[1] — with an explicit recognition of the tension and conflict of interests lying beneath and creative of the very problem being addressed. The antithesis between municipal autonomy in legislation and the limited duty of recognition by other states is at once apparent.[2] The clear national interest in defining who shall be duty-bound as citizens of a sovereign state must be weighed against the desire of the international community to avoid embarrassments in the intercourse among these states due to instances of dual nationality. As phrased by Weis, nationality problems are not only the result of, but are aggravated by the "antinomy inherent in the concept of nationality: presupposing, as it does, the co-existence of states, it is in itself a concept of international law, but its determination falls, in principle, within the domestic jurisdiction of each state."[3]

Dual nationality problems involve, not only the clash and reconciliation of municipal and international law, but the accommodation of both the demands of states and the demands of individuals as well.

McDougal stresses that the "long-term policy most compatible with an international law of human dignity would be one that seeks the utmost voluntarism in affiliation, participation, and movement, with an easy assumption by states of a competence to protect such individuals as they

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1 Persons afflicted or blessed, as the case may be, with multiple nationality go by many names: dual, double or plural nationals or even *sujets mixtes.* In some federations, like the United States, Switzerland and Australia, there is a form of dual citizenship composed of Federal and State or Cantonal citizenships; however, this type of dual citizenship does not fall within the scope of this work.

2 Brownlie, *The Relations of Nationality in Public International Law,* 39 BRIT. Y.B. INT'L. L. 284, 299 (1963).

3 P. WEIS, NATIONALITY AND STATELESSNESS IN INTERNATIONAL LAW 192 (1956).

seek their protection."[4] On the other hand, he concedes that, given the present structure of the world arena, states share common interests which may, on occasion, require limitation of this preferred policy of the utmost individual voluntarism. "Despite contemporary technological developments, people remain an important base of power for each of the different territorially organized communities of the world. Both the security, in the minimum sense of freedom from external violence and coercion, and the quality of society, in terms of greater production and wider sharing of all values, that a community can achieve are intimately dependent upon the numbers and characteristics of its members, including their capabilities, skills and loyalties."[5] Ultimately, the task is to attain a balance that will best promote in the long run, the largest net aggregate achievement of human rights.[6]

Perhaps the problem will appear more pressing on an extremely personal level. Consider the simple case of an Indian couple residing in Singapore: the husband is on a long-term assignment for the Asian Development Bank, the wife teaches law at the National University; and while in Singapore, they are blessed with a child, little Gita. When the family moves to the Philippines, what passport will little Gita use? That of Singapore which may confer citizenship *jure solis* or that of India of which she is a national *jure sanguinis?* The situation could be more complex. A child born of a Chinese father and a Turkish mother on board a British vessel in a port of the United States could conceivably claim quadruple nationality![7] Countless complications with respect to military service, taxation, jurisdiction and so on could come of such multiple nationality.

Responding to the push and pull of forces and interests, states have attempted to resolve issues of multiple nationality with varying degrees of success. As one author put it, "while statelessness has to some extent been ameliorated by the 1961 United Nations Conference on the Elimination or Reduction of Future Statelessness, the problem of double nationality still awaits a collective solution."[8] The 1930 Hague Convention was ratified by thirteen states: Belgium, Brazil, Great Britain and Northern Ireland, Canada, Australia, India, China, Monaco, the Netherlands, Norway, Poland, Sweden and Pakistan. An earlier effort had been made in the Inter-American Convention on the Status of Naturalized Citizens concluded in Rio de Janeiro in 1906. Europeans, for their part, have a 1963 Convention on Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality. And in the east bloc, the Soviet Union concluded a series of bilateral treaties with other socialist countries regulating the citizenship of persons having double nationality.

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[4] M. MCDOUGAL, H. LASSWELL & LUNG-CHU CHEN, HUMAN RIGHTS AND WORLD PUBLIC ORDER 864 (1980) [hereinafter cited as MCDOUGAL].

[5] *Id.*

[6] *Id.*

[7] L. TUNG, CHINA AND SOME PHASES OF INTERNATIONAL LAW 98 (1940).

[8] L. LEE, CHINA AND INTERNATIONAL AGREEMENTS 100 (1969).

Asia, however, lags behind. Except for a handful of bilateral treaties dealing primarily with overseas Chinese, there has been little discussion, much less action, on the topic of multiple nationality in the region. Yet the potential for conflict in Asia remains great, what with Indochinese refugees accumulating on Thai and Philippine soil — population movements similar to those in the wake of world wars which gave rise to innumerable cases of dual nationality. Moreover, the Chinese are on the move again, this time fleeing the impending reversion of Hongkong to Chinese territory.

While Brownlie warns against excessive concentration on problems of multiple nationality as emphasizing the "perspective of the abnormal,"[9] the contending interests involved demand attention: National interests versus state security, mandatory citizenship versus optional nationality, protection versus burdens. These must be balanced, if only to fill the interstices in the law that have caused great personal confusion to affected individuals, not to mention easily conceivable conflict among sovereign states.

Concepts: Blood and Birthplace

Citizenship is a political status denoting membership in a political society, implying the duty of allegiance on the part of the member and a duty of protection on the part of society.[10] A citizen is one who owes allegiance to the state and who has the right to reciprocal protection.[11] Although "citizenship" and "nationality" are not exactly equivalent terms (in fact, the peculiar status of Filipinos during the American regime is often used to illustrate the shades of difference between the two concepts[12]), they may be used interchangeably as is done here.

The traditional linkage of the individual with territorial communities for purposes both of obtaining external protection against other communities and of securing richer participation in the value processes of his chosen community and the world community has been through the concept of nationality.[13]

In periods of liberalism, and in time of peace, most states have a tendency to allow foreigners to be integrated in the economic and social, if not political, life of their countries of residence. Then, on the surface, nationality appears to lose much of its importance. In eras of managed economies and high-pitched nationalism, the significance of nationality becomes more apparent.[14] As a matter of fact, nationality is of the greatest importance at any time. In the absence of treaties which may give a state

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[9] Brownlie, *supra* note 2, at 285.

[10] E. Q. FERNANDO, PHILIPPINE CONSTITUTIONAL LAW 57 (1984).

[11] Luria v. United States, 231 U.S. 9 (1913).

[12] Under American rule, Filipinos were deemed to be nationals of the United States but citizens of the Philippines. FERNANDO, *supra* note 10, at 57; *see also* 3 HACKWORTH, DIGEST OF INTERNATIONAL LAW 40-42 (1942).

[31] McDOUGAL, *supra* note 4, at 861.

[14] G. SCHWARZENBERGER, INTERNATIONAL LAW 354 (1957).

a *locus standi* which it would otherwise lack, nationality is the test on which depends whether, on the international level, a state may grant diplomatic protection to an individual or take his case before an international judicial institution.[15]

Generally, modern public law recognizes three modes for the acquisition of nationality: (1) blood relationship or descent under the principle of *jus sanguinis;* (2) place of birth by *jus soli;* and (3) naturalization in various forms.

Of the first two modes, *Jus sanguinis* is said to be more primitive, being based on the family unit prior to the formation of states and the rise of the great religions.[16] According to another account, the concept of nationality as a bond historically arose out of the feudal concept of liegeance. With the passing of feudalism, the intimate connection between the individual and the soil upon which he lived gave rise to the general rule that nationality is acquired by birth within a state's territory (*jus soli*) even though born of the nationals of another country.[17] In turn, the inconvenience that children of natives born abroad would be aliens to the country of their parents' nationality was overcome by reviving the Graeco-Roman doctrine of *jus sanguinis.*[18] The spirit of fierce nationalism and fraternity of the French Revolution that swept through Europe and trickled into Asia buttressed the regrowth of *jus sanguinis.*[19] In 1935, Sandifer found that forty-eight states conferred citizenship by *jus sanguinis* while twenty-nine followed *jus soli.*[20] More recently, the trend seems to have shifted back towards *jus soli*: a study by the International Union for Child Welfare showed that thirty-five states out of forty-nine relied principally on *jus soli.*[21]

"Naturalization" in its broadest sense is any process by which an alien acquires a new citizenship including marriage, legitimation, option, acquisition of domicile, recognition by affiliation and adoption.[22] Even the appointment as teacher at a university might confer nationality under some laws.[23] In its narrower usage, Weis defines "naturalization" as the "grant of nationality to an alien by a formal act, on the application of the *de cujus.*"[24]

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15 *Id.* at 355.
16 Scott, *Nationality: Jus Sanguinis or Jus Soli,* 24 AM. J. INT'L. L. 58, 59 (1930).
17 Griffin, *The Right to a Single Nationality,* 40 TEMP. L. Q. 57, 58 (1966).
18 *Id.*
19 Scott, *supra* note 16.
20 W. BISHOP, INTERNATIONAL LAW CASES AND MATERIALS 506 (1971); Brownlie, *supra* note 2 ,at 301.
21 Brownlie, *supra* note 2, at 301.
22 *Id.* at 306.
23 *Id.*
24 WEIS, *supra* note 3, at 101.

Dual Nationality: The Species of Bipatrides[25]

Simply put, dual nationality occurs because sovereign nations use different methods to confer nationality.[26] Each nation forms its own rules as to the manner in which its citizenship may be acquired and in which it may be terminated.[27] Inevitably, in our highly integrated international society, the different systems overlap and produce the phenomenon of dual nationality.

Thus, as long as international law grants wide discretion to sovereign states to determine the criteria of a genuine connection between themselves and individuals everywhere, multiple nationality will be unavoidable.[28]

In Oppenheim's oft-quoted formulation, "an individual may possess double nationality knowingly or unknowingly, and with or without intention. And double nationality may be produced by every mode of acquiring nationality.[29] Therefore, it is possible to classify the species of dual nationals loosely along the various modes of acquiring citizenship. Most writers, including Salonga,[30] Schussnig,[31] Wolff,[32] Oppenheim,[33] Russel,[34] and Ginsburgs,[35] mention at least three main categories: dual nationality arising (1) from the concurrent application of *jus soli* and *jus sanguinis* at birth; or (2) from a refusal of certain states to accept a full application of the doctrine of expatriation;[36] or (3) from marriage. Examples of these sort of situations are fairly common and easy to construct; more interesting at this point are the less ordinary cases of multiple nationality.

In the same manner that children of naturalized parents acquire derivative citizenship, such children may also come to possess derivative dual nationality if the state of origin refuses to recognize either expatriation or derivative acquisition.[37] The denaturalization of parents may also give rise to plural nationality where the stripping of the parents' citizenship does not automatically extend to the minor children, while at the same time, the minors acquire by derivation their parents' resultant nationality, if any.[38]

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[25] The term "bipartrides is not found in most dictionaries, but Ginsburgs uses it to mean "dual nationals."

[26] Note, *Dual Nationality, Dominant Nationality and Federal Diversity Jurisdiction*, 38 WASH. & LEE L. REV. 77 (1981).

[27] Note, *Some Problems of Dual Nationality*, 28 ST. JOHN'S L. REV. 63 (1953).

[28] SCHWARZENBERGER, *supra* note 14, at 362-63.

[29] 1 OPPENHEIM, INTERNATIONAL LAW: A TREATISE 665 (H. Lauterpacht 7th ed. 1955).

[30] J. SALONGA, PRIVATE INTERNATIONAL LAW 136 (1979).

[31] K. SCHUSSNIG, INTERNATIONAL LAW 218 (1959).

[32] M. WOLFF, PRIVATE INTERNATIONAL LAW 128-29 (1950).

[33] OPPENHEIM, *supra* note 29.

[34] Recent Developments, *Jurisdiction: Ability of Dual Nationals to Invoke Diversity Jurisdiction*, 21 HARV. INT'L. L.J. 769, 773 (1980) [hereinafter cited as *Jurisdiction*].

[35] G. GINSBURGS, SOVIET CITIZENSHIP LAW 188 (1968).

[36] *See, e.g.*, Go A. Leng v. Republic, G.R. No. 19836, June 21, 1965; Oh Hek How v. Republic, G.R. No. 27429, August 27, 1969.

[37] *See* GINSBURGS, *supra* note 35, at 190; *Jurisdiction*, *supra* note 34, at 773.

[38] *See* GINSBURGS, *supra* note 35, at 190.

In some jurisdictions, the civil acts of adoption and legitimation affect the political status of the subject children. A child of foreign nationality adopted in virtue of an adoption order made in the United Kingdom thereby acquires U.K. citizenship because the male adopter possesses it, yet nevertheless retains his foreign nationality.[39] USSR law explicitly declares that children possessing Soviet citizenship retain it in the event they are adopted by foreigners; but with respect to foreign children adopted by Soviet parents, the consensus of legal opinion is that adoption *per se* operates to impart Soviet citizenship.[40] If the child was originally the citizen of a country such as France or the Philippines,[41] which like the USSR insists that its citizenship remains unaffected, the end product of Soviet adoption will once more be double citizenship.[42] Oppenheim illustrates dual nationality by legitimation in the following manner:

> "the illegitimate child of a German born in England of an English mother is a British subject according to British and German law; but if after the birth of the child the father marries the mother and remains a resident in England, he thereby legitimates the child according to German law, and such child acquires thereby German nationality without losing its British nationality."[43]

Acquisition of citizenship by marriage also accounts for some rare cases of multiple nationality. Usually, conflicts of nationality laws occur with respect to the citizenship of the wife. It has been pointed out quite often that in seeking sexual equality in the 1973 Philippine Constitution, we risk increasing instances of dual nationality. In Brazil, equality came down a different road. If, for example, a male citizen of the USSR marries a Brazilian woman who acquires and owns immovables in Brazil, it is the husband who acquires a new citizenship without losing his original one.[44]

Another especially peculiar situation arises in cases like this: A German woman marries a British subject; in normal circumstances she would thereby lose her German and may acquire British nationality by registration. Suppose, however, that the marriage is considered VOID by German law and VALID by English law, e.g. because it was concluded within the precincts of the British Embassy in Switzerland. Then the wife does not lose her German citizenship though she acquires British nationality.[45]

Dual nationality may also be produced by a formal and voluntary act. Under the notorious German *Lex Delbrück*, a German subject acquir-

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39 C. PARRY, NATIONALITY AND CITIZENSHIP LAWS OF THE COMMONWEALTH AND OF THE REPUBLIC OF IRELAND 130 (1957).
40 GINSBURGS, *supra* not 35, at 192.
41 1 TOLENTINO, CIVIL CODE OF THE PHILIPPINES 708 (1983).
42 GINSBURGS, *supra* note 35, at 192.
43 OPPENHEIM, *supra* note 29, at 665.
44 GINSBURGS, *supra* note 35, at 191.
45 WOLFF, *supra* note 32, at 128.

ing a foreign nationality could retain his German nationality if he obtained permission of the German authority to remain a German subject.[46]

Finally, multiple nationality might occur as a result of state policy that extends citizenship to a foreign national without the latter having to renounce his former citizenship, as in the case of Israel.[47]

With these descriptions of the types of laws that gave rise to multiple nationality in Europe and elsewhere. It should be possible to examine the pertinent nationality laws and identify analogous provisions which would theoretically, at least, provide the occasion for multiple nationality in Asia. The importance of such an endeavor, however, must first be placed in relief by shaping in some detail the problems attendant to dual nationality.

A *caveat* must be appended to this section on the occurrence of dual nationality. Though no state can positively determine the conditions on which a person becomes a national of a foreign state, it does not follow that the rules established by that state as to its nationals are always to be recognized abroad.

At the very outset, we noted that the 1930 Hague Convention allows non-recognition so far as the rules are inconsistent with "international convention, international custom" or "principles of law generally recognized with regard to nationality." Hence, nationality cannot be foisted upon an unwilling individual; compulsory naturalization is illegal under international law.[48] For instance, if Germany were to declare that all persons of German race are from now on German nationals, irrespective of whether they have Swiss, Burmese, Brazilian or Ugandan nationality, no state would be prepared to accept this and recognize that its nationals had thus acquired a second German nationality.[49]

Problems: Out of the Blind Collision of Disparate Legal Orders

The species of bipatrides is bound to grow in number in an environment of international turmoil and instability coupled with increased mobility for even the most ordinary people. And as more and more people move across state boundaries, across oceans and continents (in less time than it takes to change clothes), many are unwittingly caught in the middle of opposing legal systems — each telling the other to clear out of town before sundown or else. In the opening paragraphs, the conflicts leading to and engendered by the occurrence of multiple nationality were sketched in broad outlines. At this point, it might be useful to translate these general problems into specific difficulties for states and individuals in order to underline the urgency of resolving dilemmas of dual nationality.

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[46] *Id.* at 129.

[47] *A Critique on Dual Nationality as a State Policy in the Philippines*, 55 PHIL. L. J. 488, 494 (1980) [hereinafter cited as *Critique*].

[48] W. LEVI, LAW AND POLITICS IN THE INTERNATIONAL SOCIETY 151 (1976).

[49] WOLFF, *supra* note 32, at 129.

The idea that one person is too small for two nationalities seems almost self-evident. Even the St. Thomas More Study Groups discourages its members from joining the Society of Law Students and vice versa because of unstated but presumably obvious problems of "dual allegiance."[50] In actual terms, the dual national's sovereign must deal with problems in areas such as taxation, military service, national security and as in a recent celebrated case, international responsibility for harmful conduct to aliens.[51]

When a large segment of the population of one state, where communism is considered subversive, also owes allegiance by virtue of double nationality to a communist power which avowedly aims to export revolution, the problem of dual nationality cannot be made plainer.

A team criticizing Philippine policy on dual nationality also identified the exercise of the right of suffrage and the right to invest in nationalized industries as possible problems for states with *sujets mixtes*.[52] Essentially, the difficulty in these areas seems to be in reconciling on the one hand the fact that dual nationals are entitled to the protection and privileges of the nationalistic provisions of the law with the fear on the other hand that a dual national's love-of-country may be dangerously divided between two or more countries. States also face delicate choices when it comes to the admission, expulsion, or extradition of dual nationals. For example, while as a general rule a state is bound towards other states to admit its own nationals to its territory, a state whose national also possesses other nationalities is not duty bound to admit him unless the pertinent request comes from a non-national state. Conversely, if a state is not bound to recognize the diplomatic protection of the other national state accorded to one of its nationals having double nationality, neither can it shirk its responsibility under international law towards such a national.[53] To complicate matters, states concerned cannot simply address these problems internally because ticklish questions of foreign relations always lie just within the periphery of the main problem. Incidents resulting from a dual national's contribution to the welfare and security of one of the states of his nationality as well as other claims of personal jurisdiction over him by the states of his nationalities have frequently been the cause of diplomatic dissensions or international discord.[54]

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[50] The St. Thomas More Study Groups (STM) and the Society of Law Students (SLS) are student organizations which have traditionally been engaged in a sort of friendly rivalry at the College of Law of the University of the Philippines.

[51] Note, *Dual Nationality, Dominant Nationality and Federal Diversity Jurisdiction, supra* note 26, at 78; *see, e.g.*, for taxation, Cook v. Tait, 265 U.S. 47, 53-56 (1924); for military service, Kawakita v. United States, 343 U.S. 717, 720-34 (1952); for national security, Hirabayashi v. United States, 320 U.S. 81, 97-99 (1943); for international responsibility, Sadat v. Mertes, 615 F2d 1176, 1183-88 (7th Cir. 1980).

[52] *Critique, supra* note 47, at 507-08.

[53] H. VAN PANHUYS, THE ROLE OF NATIONALITY IN INTERNATIONAL LAW 55-56 (1959).

[54] Griffiin, *supra* note 17, at 59.

In *Sadat v. Mertes,*[55] the fear of affronting foreign countries was one factor in deciding whether or not a U.S. federal district court had jurisdiction over a simple claim for damages arising out of an automobile accident, which, and here is the catch, was brought by a dual national: a naturalized U.S. citizen, Egyptian by birth, with a permanent residence in Beirut, Lebanon.[56]

In these cases, a state is virtually in a no-win situation. If it intervenes in behalf of a dual national seeking shelter therein from the duties imposed by some other state, the intervening state is, some may say needlessly, embroiled in an international conflict. Even if the potential sanctuary refuses to intervene, the mere fact that the dual national invoked its protection to demand special treatment whether he receives it or not, is potentially embarrassing nonetheless.[57] The U.S., for example, cannot ignore the distress calls of any of its nationals, single or dual, without tarnishing the sheriff's star of its white-hat-cowboy image.

For the individual himself, dual nationality might bring more harrowing experiences. The problems begin with a weird sense of dislocation. It is not uncommon to hear of cases of infants brought home, being claimed by the country of birth decades later on the basis of *jus soli.* In *Jalbuena v. Dulles,*[58] one party who had been born in the U.S. to a Filipino father and 14 months later brought to the Philippines where he stayed for 30 years, discovered his U.S. citizenship during a trip to the U.S. How can it be anything but awkward for a middle-aged man to suddenly find himself a citizen of a country which he does not remember, for which he has no feeling and to which he has no real connection beyond the accident of birth?

Then there are the minor inconveniences suffered by dual nationals. For example, there must be special provisions in immigration laws to determine the nationality of those who have more than one for purposes of issuing visas.[59]

In the American Journal of International Law, Rode mentioned cases where passports properly issued by the dual nationals' first state were seized to prevent departure from their second state of nationality.[60] Certainly such a situation may be more than a minor travel problem at the airport.

McDougal describes how the problems of a multiple national multiply:

> "A multiple national may in fact be exposed to deprivation inimical to human rights throughout all the different value processes. He may be

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[55] 615 F2d 1176 (7th Circuit, 1980).
[56] *Jurisdiction, supra* note 34, at 770.
[57] *Expatriating the Dual National,* 68 YALE L.J. 1167 (1950).
[58] 254 F2d 379 (3d Cir. 1958).
[59] *See, e.g.,* Com. Act No. 613 (1940), sec. 14.
[60] Rode, *Dual Nationality and the Doctrine of Dominant Nationality,* 53 AM. J. INT'L. L. 139 (1959).

> subjected to the civil and criminal jurisdiction, which follows a national wherever he goes, of two or more states; he may be subject to the laws relating to treason, enemy status, military service and security clearance of more than one state. More than one state may have jurisdiction to tax him, to expropriate his property, to impose restrictions on his trading activities, and to restrict disposition of his property. More than one state may discriminate against him; he may be discriminated against on different grounds in different communities. He may be subjected to physical and psychological insecurity in more than one state. More than one state may seek to impose restrictions on his practice of certain professions. More than one state may assert jurisdiction with respect to his family life, including marriage, and children's upbringing, education, and welfare. Finally, more than one state may seek to restrict his religious affiliation and activities."[61]

Ironically, in dealing with these many deprivations a multiple national, whom one might think would have multiple protectors, may be left without any protection at all. If in a personal injury suit or property claim a dual national simply seeks redress in the municipal courts of the state of injury, he would be treated as would any person with a single nationality; however, if he plays off one of his nationalities against the other, he may never get a hearing on the merits of his claim.

Article 4 of the 1930 Hague Convention declares that "a State may not give diplomatic protection to one of its nationals against a state whose nationality that person possesses." In other words, an individual traditionally cannot invoke the protection of one of his states against the other. Incidentally, this is yet another source of embarrassment for states which are held impotent in the face of the plight of its own citizens and which have as a result been groping for techniques that will allow them to get around this doctrine.

The most dramatic difficulty for men caught between two legal orders relates to military service where divided loyalty can be totally unacceptable, even unforgivable. In times of peace, a dual national may be required to perform incompatible but compulsory military service in two states. Singapore, for example, requires all 18-year-old male citizens to render full-time military service for two whole years and again for a minimum of 40 days every year thereafter. Meanwhile, the Philippine National Service Law, Presidential Decree 1706, calls for some kind of training administered by the military for all citizens from the fourth grade up to the college level. Again, as noted by Rode, there have been incidents of dual nationals being drafted or prosecuted for draft evasion during visits to their countries of origin.[62]

In case of war, the conflict of duties becomes irreconcilable. As Bar-Yaacov puts it, "The legal status of an individual who happens to possess

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[61] MCDOUGAL, *supra* note 4, at 941-42.
[62] Rode, *supra* note 60.

the nationalities of two belligerent states carries with it serious disadvantages. If both states require of such individual the fulfillment of the duties of allegiance, he is likely to commit the criminal offense of treason with regard to one of them."[63] He "may be compelled to fight against one of the belligerents; or may voluntarily adopt the cause of one country and commit acts which are treasonable as regards the other country; or he may assist one of the parties without committing acts amounting to treason against the other party."[64] It has been proposed that, with war as we know it today, earning a living in an enemy nation might very well be deemed giving "aid and comfort" to the enemy sufficient to form the basis for a charge of treason.[65] *Kawakita v. U.S.*[66] gives a vivid example of a dual national's precarious position. Tomoya Kawakita was both a Japanese and American citizen who found himself in Japan at the outbreak of the Second World War. Upon his return to the U.S., what might have been honorable service in the Japanese Imperial Army was deemed a record of brutalities which formed the basis for a conviction for treason. The U.S. Supreme Court, in effect, issued this warning worth remembering: A dual national cannot turn his status into one of "...fair-weather citizenship, retaining it for possible contingent benefits but meanwhile playing the part of the traitor."[67]

Focus: The Asian Farrago of Nationality Laws

The modern world is divided into states of still increasing numbers, and all of these states, large and small, exercise with vengeance the exclusive power to determine who their nationals are. There are probably as many definitions of "citizenship" as there are sovereign states. References to Sandifer's pioneering comparative study really only succeed in demonstrating, it seems, the nearly endless variety of nationality laws. One need not only look at the vague categories into which the states studied in 1935 were divided: those using *jus soli,* not solely but with only limited *jus sanguinis;* those where *jus sanguinis* is used; those which use *jus sanguinis* chiefly; and those where the principle of *jus sanguinis* is important.[68] Apparently, the desire to account for every aberration or for nationality formulas which are in fact unique, made classification almost meaningless.

Asia, as a separate region, is no less confusing. Peopled by Malays, Chinese, Indians; historically tied to the Dutch, Spanish, Portuguese, Americans; steeped in Hinduism, Buddhism, Taoism, Shintoism, Islam, Christianity — Asia has what can only be called "citizenship law chopsuey."

63 McDougal, *supra* note 4, at 942 n. 420.
64 *Id.*
65 Note, *Some Problems of Dual Nationality, supra* note 27, at 72.
66 343 U.S. 717 (1952).
67 *Id.* at 736.
68 BISHOP, *supra* note 20, at 506.

It might be interesting to delve into the sociological basis and historical background behind the choice and construction of the nationality provisions of each particular country. For example, Bishop wonders whether *jus soli* is preferred in immigrant destinations, more than in emigrant origins; or whether the application of *jus sanguinis* is related to strong nationalism or to difficulties in attaining national unity or perhaps to struggles against neighbors.[69] An examination of the correlation between colonial experiences and nationality laws might also be added to some future menu of study topics; but these questions will not be tackled in detail here. What follows is simply a short survey of current citizenship laws intended to whet the palate for the ensuing discussion of dual nationality in Asia.

With respect to the PHILIPPINES, it should be sufficient to state that the principle of *jus sanguinis* prevails.[70] There is no need here to belabor the points raised in *Roa v. Collector*,[71] *Chua v. Secretary of Labor*,[72] *Torres v. Tan Chin*,[73] and *Tan Chong v. Secretary of Labor*.[74] *Jus soli* is firmly in the past.[75] It should be noted, however, that Philippine law differs from that of many other jurisdictions where citizenship is conferred by descent in that Philippine nationality may be acquired from either parent,[76] and not in the usual pattern wherein citizenship is transmitted principally along the paternal line and only secondarily in specified cases, through the maternal. In effect, it is possible for the Philippine *jus sanguinis* rule to conflict with the *jus sanguinis* provisions elsewhere such that children of mixed marriages would acquire the citizenship of their fathers along with the nationality of their Filipino mothers. In another interesting relatively recent development, Filipino women, internationally-prized wives, have gotten as tenacious a grip on their citizenship as that of Filipino men on theirs: marriage to an alien no longer automatically deprives women of their Filipino nationality unless by act or omission they renounce the same.[77] As pointed out earlier, this measure of progress for Filipino women comes with the possible complication of plural citizenship since there are still states that continue to adhere to the rule that a wife acquires her husband's nationality. On the other hand, under the law, regardless of sex, Filipinos may lose their citizenship by expatriation, either voluntarily through express renunciation or involuntarily through statutory deprivation as a consequence of incompatible acts, notably, naturalization in a foreign country and subs-

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[69] *Id.*
[70] *See* CONST. art. III.
[71] 23 Phil. 315 (1912).
[72] 68 Phil. 649 (1939).
[73] 69 Phil. 518 (1940).
[74] 79 Phil. 249 (1947).
[75] In the series of decisions just enumerated, the principle of *jus soli* was by turns erroneously applied, repudiated, revived, then finally laid to rest after 35 years of confusion.
[76] CONST. art. III, sec. 1, par. (2).
[77] CONST. art. III, sec. 2.

cribing to an oath of allegiance to a foreign constitution.[78] While an expatriation clause is now recognized as an effective tool in the reduction of dual nationality and is pretty much a standard provision in modern nationality laws, such was not always the case and it was the subject of much debate as late as the 1950's in the United States.[79] Finally, as a further safeguard, naturalized citizens may be denaturalized on grounds that they returned and established permanent residence in their native countries.[80]

INDONESIA also follows the principle of *jus sanguinis*, but this is complemented by provisions for the application of *jus soli* in specific cases. A person born within the territory of the Indonesian state to unknown parents or to parents of unknown nationality, or who has not been legally recognized by his father or mother shall be an Indonesian citizen.[81] Similar exceptions based on *jus soli* are found in many jurisdictions where acquisition of citizenship by blood is the general rule. At first glance, they seem to be benign provisions which present little occasion for conflict with the *jus sanguinis* statutes of other states. Upon closer examination, however, they are not harmless as they seem. Under Philippine law, for instance, citizenship is transmitted by descent regardless of legitimacy or legal recognition; therefore, illegitimate offspring not legally acknowledged by their Filipino fathers could claim Philippine nationality as well as Indonesian citizenship if they happened to be born on Indonesian soil. *Jus soli* also governs a person born within Indonesian territory unless there is a declaration that he is a citizen of another state.[82] Presumably, there are rules to determine what constitutes a proper declaration: and consequently, absent a perfect declaration, dual nationality would perforce be the result. In this Muslim state, men are allowed several wives and married women take the citizenship of their husband. Indonesian nationality law also differs significantly from Philippine law in that Indonesian citizenship extends to adopted children who have not attained the age of twenty-one and have never married.[83]

As in the Philippines, citizenship in MALAYSIA cannot be determined without reference to pivotal dates in the country's political history. Different sets of rules govern those born before Merdeka, those born after Merdeka but before Malaysian Day, and those born after the Constitution was amended yet again after Singapore bolted from the Federation in 1965. Aside from this similarity however, the substance of the nationality laws of the Philippines and its closest neighbor, Malaysia, are nearly poles apart. Generally, persons born in Malaysia acquire citizenship by operation of law through the principle of *jus soli*. After September 1967, however,

[78] Com. Act No. 63 (1936), sec. 1.
[79] *See Expatriating the Dual National, supra* note 57.
[80] Com. Act No. 473 (1939), sec. 18(b).
[81] UNITED NATONS, LAWS CONCERNING NATIONALITY 230-34, U.N. Doc. ST/LEG/SER. B/4 (1954).
[82] *Id.*
[83] *Id.*

such persons become citizens only if one of their parents is either a citizen or permanent resident and if they were not born citizens of any other country.[84] The latter proviso gains importance as we examine these laws with the objective of reducing dual nationality. Malaysia also applies a limited form of *jus sanguinis*: persons born outside Malaysia acquire citizenship of their father was a citizen of the Federation at the time of their birth and was either (1) born in Malaysia, or (2) was in service under the Federation or State Government.[85] One commentator found it "difficult to appreciate the rationale underlying the restrictions imposed upon the qualifications of the father of a person born outside the Federation."[86] What he failed to see was the intention of the law to confine the automatic acquisition of citizenship by descent to a single generation. The purpose is to prevent the creation of chains of second, third or fourth generation "overseas Malaysians" who had never set foot on Malaysian soil, never contributed to the well-being of the Malaysian state and no longer had any real connection to their grandparents' homeland. A number of countries compromise between *jus sanguinis* and *jus soli* in this manner.[87]

Any married woman whose husband is a Malaysian citizen is entitled to be registered as a citizen under certain conditions.[88] The important thing to take note of here is that the change of nationality does not take place *ipso facto*. Although commentators do not link this mechanism of registration with the reduction of cases of multiple nationality, it could easily be brought into service for that purpose. Contrast this with another article[89] of the Malaysian Constitution which provides that if the Federal Government is satisfied that any citizen has acquired the citizenship of another country, the Government may by order deprive such person of his citizenship.[90] By making the forfeiture of Malaysian nationality dependent on a government finding and order, not automatic, the law opens a loophole for the entrance of dual nationality.

Just across the Malacca and Johore straits lies the mini-state of SINGAPORE. While it was still a part of the Malayan Federation, its ethnic Chinese chafed under citizenship laws which disenfranchised them as "aliens." Lee Kuan Yew led the move to liberalize the law in favor of Chinese who made up 76% of the island's population. Today under Part X of the Constitution of the Republic of Singapore, citizenship is conferred

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84 T. SUFFIAN, THE CONSTITUTION OF MALAYSIA 81 (1978).

85 *Id.*

86 *Id.*

87 *Cf.* Scott, *supra* note 16 (The technique is described to support the proposition that *jus sanguinis* is not susceptible of limitless application and therefore inferior to *jus soli*.).

88 SUFFIAN, *supra* note 84, at 82.

89 MAL. CONST. art. 24.

90 SUFFIAN, *supra* note 84, at 84.

91 SINGAPORE MINISTRY OF COMMUNICATION AND INFORMATION, SINGAPORE 1985 43 (1985); DRYSDALE, SINGAPORE: STRUGGLE FOR SUCCESS 166, 197 (1984).

by birth, descent, registration and naturalization.[91] Of these, birth in Singapore is the principal mode,[92] because descent and registration must be followed by an Oath of Renunciation, Allegiance and Loyalty within twelve months after attaining the age of twenty-one, otherwise Singaporean citizenship is automatically lost.[93] While in most cases such an oath would result in the loss of any other nationality that the Singapore citizen might have, there is, of course, no guarantee that this act of expatriation will be recognized or allowed since that matter is entirely within the competence of the second state. In Singapore itself, for example, renouncement of Singapore nationality is allowed only after a certain age or after marriage, and the government may refuse the renouncement in time of war, or if the citizen has not discharged his obligation under the Enlistment Act.[94] Considering that it is precisely with respect to military service that dual nationality becomes a serious handicap, the last two qualifications to the right of renunciation are especially significant. Also worth noting is the fact that specific acts, including voting in a foreign election or using a foreign passport, are made grounds for the deprivation of Singapore citizenship.[95] Moreover, when a person has renounced or has been deprived of his citizenship, the Government may also divest his minor children of their citizenship.[96]

The citizenship laws of THAILAND have undergone a series of changes over the years with mixed results when viewed in terms of the occurrence of multiple nationality. The most substantial modification brought the principle of *jus soli* into operation alongside that of *jus sanguinis*. Whereas under the Nationality Act of 31 January 1952 persons born in Thailand had to have either a Thai father or mother in order to acquire Thai nationality;[97] under the law currently in force one need only be "a person born in the Thai Kingdom" and nothing more to become a Thai national.[98] Meanwhile, persons born outside the Kingdom of Thai fathers continue to acquire Thai ciizenship.[99] By increasing the modes by which Thai nationality might be acquired, Thailand also increased the possibility that its nationals might in fact be dual nationals. Not only does the Thai *jus sanguinis* provision conflict with the *jus soli* provisions of Singapore, Indonesia, India and Malaysia, but the application by Thailand of the *jus soli* principle as

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92 Provided that a person born in Singapore would not be a citizen if:
(a) his father possessed diplomatic immunity at the time of his birth;
(b) his father was an enemy alien and the birth occurred in a place then under the occupation of the enemy; or
(c) both his parents were not Singapore citizens.
In case of (c), however, the status of citizen may be confierred by the Government if it is just and fair.

93 Woon, *The Legal System of Singapore in* K. REDDEN, 9 MODERN LEGAL SYSTEMS CYCLOPEDIA 701 (1985).

94 *Id.*

95 *Id.* at 702.

96 SINGAPORE CONST. part X, art. 130.

97 UNITED NATIONS, *supra* note 81, at 455.

98 Thailand Nationality Act B. E. 2508 (1965), sec. 7(3).

99 *Id.* sec. 7(1).

well now collides with the adherence to *jus sanguinis* in the Philippines, Indonesia, China, and Japan.

In contrast to the liberalization of the law on the acquisition of citizenship by birth, Thai law has become appreciably stricter with respect to citizenship derived through marriage. Again under the 1952 Nationality Act, an alien woman who married a Thai thereby acquired Thai nationality.[100] Under the present law, the same alien woman must, if she desires to acquire Thai nationality, file an application with the competent official who may grant or refuse the same in his discretion.[101] The effect is to provide a path through which unwanted multiple nationality can conceivably be avoided.

BURMA, which has turned its back on most international intercourse, has taken the most restrictive stance on citizenship. A person born in Burma, both of whose parents are citizens, is also a natural-born citizen.[102] In other words, it seems both the blood test and the place of birth test must concur, with the former requiring pure Burmese parentage. There appears to be a little more leeway with respect to indigenous Burmese. A person both of whose parents belong or belonged to any of the indigenous races of Burma is a natural-born citizen. The same is true of a person born in Burma, at least one of whose grandparents belongs or belonged to the indigenous races.[103] In fact, any deviation from the strict rule may be more apparent than real. Members of indigenous tribes may not get many opportunities to travel abroad or inter-marry with foreigners. Burma has long been self-sufficient in such areas as food and energy; and it has maintained a closed-door policy which might also explain its views on nationality.

Although Southeast Asia already provides fertile ground for discussion, no work on "Asia" would be complete without consideration of the region's giants and powers — India, Japan and China.

The provisions of the Constitution of INDIA are concerned primarily with granting "original" citizenship, that is, citizenship at the commencement of the Constitution.[104] What had been a single British colony was now divided into India and Pakistan. Citizenship laws had to be lax enough to accommodate the migrations from one side to the other as the population of the subcontinent opted for either Pakistani or Indian citizenship.[105] India responded with a Citizenship Act incorporating both *jus soli* and *jus sanguinis* separately with an added requirement of registration in the latter case. Section 3 of the Act states that every person born in India on or after January 26, 1950, shall be a citizen of India, with two minor

100 UNITED NATIONS, *supra* note 81, at 456.
101 Thailand Nationality Act B. E. 2508 (1965), sec. 9.
102 M. MAUNG, BURMA'S CONSTITUTION 92 (1961).
103 *Id.*
104 UNITED NATIONS, *supra* note 81, at 229.
105 B. SHARMA, THE REPUBLIC OF INDIA 165 (1966); *see also* DURGA DAS BASU, INTRODUCTION TO THE CONSTITUTION OF INDIA 65-69 (1976).

exceptions. Meanwhile, according to Section 4, a person born outside India on or after January 26, 1950, shall be a citizen of India by descent if his father is a citizen of India at the time of his birth; provided his birth is regsitered at an India consulate within one year, or with the permission of the Central Government, after the expiry of the said period of one year; or his father is at the time of his birth in service under a government of India.[106] Most relevant here is a provision allowing a person, on the basis of reciprocity, to register as a citizen of India if he is a citizen of a country which is a member of the Commonwealth. Moreover, the same Citizenship Act, while peremptorily terminating the Indian citizenship of anyone who acquires a foreign citizenship; merely allows one who is, presumably, born with two nationalities to make a declaration renouncing his Indian citizenship.[107] No deadline is set, no duty is imposed. In these peculiar cases, multiple nationality is seemingly welcomed with open arms.

The nationality law of JAPAN has been somewhat criticized for following the principle of *jus sanguinis* through the father too strictly.[108] Yet the same policy also merits approbation in the sense that this restrictive approach creates less opportunity for multiple nationality. Prior to 1950, Japanese citizenship could also be acquired by the creation of family relationships such as marriage, acknowledgment or adoption. Hence, women acquired nationality when they became wives of Japanese; foreign men, when they married Japanese women and became members of their wives' families or when they were adopted as sons.[109] It should be quite clear now that such a set of nationality rules left ample froom for the occurrence of dual nationality. Perhaps for this reason, the Nationality Law of 4 May 1950[110] did away with automatic changes of nationality resulting from changes in status and instead made marriage and adoption grounds for naturalization under less stringent conditions.[111]

The evolution of Japanese law on voluntary renunciation of citizenship illustrates the growing recognition given to the concept of expatriation. The freedom to renounce Japanese citizenship was not included in the old Nationality Law[112] until it was introduced by amendments in 1916 and 1924.[113] With these revisions dual nationals could keep one nationality and renounce the other, but this required initiative on the part of the individuals concerned, something rarely exercised. In 1947, therefore, expatriation was simplified by making it almost automatic. Thus, the present

106 SHARMA, *supra* note 105, at 168.
107 *Id.*
108 Resulting in statelessness for the offspring of American fathers and Japanese mothers born in Japan. *See* Kim and Fox, *Legal Status of Amerasian Children in Japan: A Study in the Conflict of Nationality Laws,* 16 SAN DIEGO L. REV. 35 (1978).
109 C. YANAGA, JAPANESE PEOPLE AND POLITICS 350 (1956).
110 Japan Act No. 147 (1950).
111 *See* UNITED NATIONS, *supra* note 81, at 271-73.
112 Japan Act No. 66 (1899).
113 4 ENCYCLOPEDIA OF JAPAN, *Japanese Nationality* 32 (1983).

Nationality Law provides that Japanese born in the United States, Canada, Mexico, Argentina, Brazil, Chile and Peru are regarded as nationals of those countries only, unless they indicate their desire to retain Japanese nationality. However, those born in countries other than the seven enumerated must still go through the formal procedure of expatriation to renounce Japanese nationality.[114]

CHINA. Mother to millions, threat to millions of others. The sheer size of its population calls for extended discussion of its nationality laws. Yet there is another dimension especially relevant to the issue of dual nationality — Overseas Chinese. Claimed as citizens by both China and the country of domicile or birth, the Hua Ch'iao or Huaquiao present actual problems of multiple nationality in the Asian setting.

As early as 6 A.D. transient Chinese communities could be found in Java and Sumatra. By the 13th century, permanent settlements were springing up in Southeast Asia. Through perseverance, ingenuity and hard work, these overseas Chinese prospered in the midst of general poverty and misery — prompting King Vajiradvudh of Thailand to call them the "Jews of the Orient.' Meanwhile, these traders and settlers clung tenaciously to their identity as Chinese, refusing to be assimilated and often constituting themselves into a sort of state within a state in the eyes of the native people.[115]

Naturally, the presence of these Chinese who retained their allegiance to the Middle Kingdom spawned crisis after crisis for the host countries over the centuries up to the modern times. Halfway around the globe, at least one case reached the U.S. Supreme Court which then ruled that a certain Wong Kim Ark carried both American and Chinese nationality.[116] The fear of a subversive fifth column, which was discussed as a possibility in an earlier section, became a sinister reality. Widespread suspicion of Chinese involvement in an abortive Communist coup in Jakarta in 1965 led to the dramatic deterioration in Sino-Indonesian relations which ultimately resulted in the abrogation of the Sino-Indonesian Dual Nationality Treaty of 1955.[117]

As also anticipated earlier, the dual nationality of overseas Chinese became the root not only of domestic discord but international conflict as well. One issue during the boundary conflict between China and India was the former's insistence that Chinese in India who did not hold Chinese passports were nonetheless entitled to the right of repatriation as Chinese nationals.[118] One author speculated that the Sino-Vietnamese war in 1979

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114 YANAGA, *supra* note 109, at 351.

115 LEE, *supra* note 8, at 101.

116 United States v. Wong Kim Ark, 169 U.S. 649 (1898).

117 J. COHEN & HUNGDAH CHIU, PEOPLE'S CHINA AND INTERNATIONAL LAW 768 (1974) [hereinafter cited as COHEN].

118 J. HSIUNG, LAW AND POLICY IN CHINA'S FOREIGN RELATIONS: A STUDY OF ATTITUDE AND PRACTICE 133 (1972).

was triggered in part by Vietnamese discrimination against ethnic Chinese. According to the People's Republic of China (PRC), Hanoi was wrongfully forcing overseas Chinese with dual nationality to retain only Vietnamese citizenship.[119] No doubt there are countless other examples of the actual problems encountered by other states and *sujets mixtes* alike because of Chinese nationality law.

The earliest available translation of this troublesome Chinese law appeared in the American Journal of International Law in 1910.[120] The first Article provided:

> "The following are Chinese, whatever the locality may be in which they are born:
>
> 1. A child born of a father who at the time of its birth is Chinese.
> 2. A child born after the death of the father, if the father at the time of death was Chinese.
> 3. A child born of a Chinese mother, the father being unknown or without a determinate nationality.

Clearly a case of *jus sanguinis*. It is true that considering the number of states that rely on birthplace to determine citizenship, the Chinese rule just quoted could have led to cases of multiple nationality; but the same could be said of any other set of nationality provisions, including Philippine law for that matter. There is nothing really extraordinary in preferring the blood tie as the determinant of citizenship.

The more significant section related to loss of nationality rather than acquisition. Article XI read:

> "Any Chinese subject intending to acquire an alien nationality *must first obtain permission* of discharge." (Italics supplied)

Further on, the law laid down the bureaucratic procedure for obtaining such permission. Overseas Chinese had to file a petition addressed to the Legation through the consulate; and the Legation would forward the petition to the Minister of Interior for final decision.[121] And to belabor the point, the section ends with this reminder that "all persons who have not filed a petition or discharge or whose petition is not granted remains (sic) Chinese for all purposes."[122] In practice, the necessary permission seems to have been rarely granted,[123] if at all sought.

In short, the dual nationality of overseas Chinese arose from two major sources: the application of *jus sanguinis* in China as opposed to *jus soli* elsewhere; and China's nonrecognition of voluntary expatriation.

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119 L. SURYADINATA, CHINA AND THE ASEAN STATES: THE ETHNIC CHINESE DIMENSION 52 (1985).

120 Law on the Acquisition and Loss of Chinese Nationality (1909), *reprinted in* SURYADINATA, *supra* note 119, at 142 app. 1.

121 *Id.* art. XVIII.

122 *Id.*

123 Coppel, *The Position of the Chinese in the Philippines, Malaysia* and *Indonesia*, in PHILIPPINE-CHINESE PROFILE: ESSAYS AND STUDIES 69, 76 (McCarthy ed. 1974).

Generation after generation of Chinese children, wherever born, were considered Chinese nationals, and though they swore allegiance to another sovereign and expressly renounced Chinese citizenship, without proper permission, they retained Chinese nationality along with any newly-acquired status. In one concrete case decided by the Philippine Supreme Court, for example, it was precisely this failure to obtain leave from the Chinese Ministry of Interior which led to the consideration of the issue of dual nationality.[124]

Why did the Chinese maintain such a policy? Their attitude was summed up in the edict of the Ching court in 1709, "Once a Chinese — always a Chinese."[125]

Mitchison describes the following sentiment among the Hua Ch'iao: "For a Chinese of any education, the idea of stopping being Chinese, or of his descendants doing so, is rather worse than for a Frenchman to stop being French . . . He knows that when the West was lived in by a handful of cavemen, China was an ordered empired. Like a Frenchman, he believes not only in the past superiority of his country but also in its present superiority."[126] This comparison gains added significance when we remember that French ultranationalism was in 1930 blamed for the world-wide revival of the notion of citizenship by descent.[127]

In 1929, the Koumintang enacted a nationality law essentially the same as the one it replaced. Chinese overseas were declared China's nationals. This time, however, the reasons were more practical. The Kuomintang's rise to power had been partly financed by Hua Ch'iao and Dr. Sun Yat Sen was himself an overseas Chinese.[128] After the Communist takeover in 1949, the new government of the People's Republic of China simply did not issue any new laws governing nationality and it was widely presumed that the previous law was still operative. According to Cohen, "for the first years after attaining nationwide power — during the period when they were hopeful of inspiring successful revolutions in a number of neighboring countries"— the Chinese wished to encouraged Chinese nationalism among the overseas Chinese.[129] By 1954, however, the PRC had decided to cease overt attempts to undermine the neutralist, anti-colonial governments of the new Asian states and instead seek their support. Accordingly, a new policy began to emerge aimed at allaying the anxieties of China's neighbors over the overseas Chinese issue.[130] One author wrote that China had "dropped the centuries-old claim that all persons born of a Chinese father anywhere in the world and their

124 Oh Hek How v. Republic, G.R. No. 27429, August 27, 1969.
125 LEE, *supra* note 8, at 101.
126 *Id.*
127 *See supra* text accompanying note 19.
128 SURYADINATA, *supra* note 119, at 24.
129 COHEN, *supra* note 117, at 750.
130 *Id.*

descendants over endless generations were Chinese citizens."[131] That is not accurate. At the historic Bandung conference, Premier Zhou Enlai merely stated that the PRC was willing to settle the nationality of the ethnic Chinese with countries having friendly or diplomatic relations with PRC. Once a communiqué or dual nationality treaty was signed, the ethnic Chinese who had voluntarily adopted local citizenship ceased to be Chinese nationals.[132] In other words, bilateral talks were necessary before any claim would be dropped on a country-to-country basis. Chinese nationality remained the same, but subject to treaty stipulations.

The first dual nationality treaty was signed by China and Indonesia in 1955 and was meant to be a model for similar treaties. Several other nations followed suit. Comment on the effectiveness of this bilateral approach to dual nationality will be reserved for a later section; but one thing is certain: the Sino-Indonesian "model" itself turned into a political disaster. Ratification was delayed for five years; and as mentioned earlier, abrogation followed soon after a Communist coup attempt.[133] Nevertheless, the provisions of the treaty with Indonesia are still considered the most comprehensive.[134]

Most texts end their descriptions of Chinese nationality law at this point, when in fact, China recently took a giant step towards clarifying the status of its nationals. In 1980, the Fifth National People's Congress adopted the first PRC nationality law.[135] In a departure from the previous Imperial and Koumintang Laws, it was based on principles of both *jus sanguinis* and *jus soli*.[136]

Realizing that ASEAN countries have always been sensitive to the ethnic Chinese issue, and have been especially so after the Sino-Vietnamese conflict, China promulgated a law[137] that meets the problem head-on. Article 3 categorically declares that:

> "The People's Republic of China does not recognize dual nationality for any Chinese national."

To implement this sweeping pronouncement, the law further provides:

> Article 5. Any person born abroad whose parents are Chinese nationals or one of whose parents is a Chinese national has Chinese nationality. But a person whose parents are Chinese nationals and have settled abroad or one of whose parents is a Chinese national and has settled abroad and who has acquired nationality on birth does not have Chinese nationality.

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131 LEE, *supra* note 8, at 102.
132 SURYADINATA, *supra* note 119, at 49; *see also* Coppel, *supra* note 123, at 77-78.
133 LEE, *supra* note 8, at 103-04; *see supra* text accompanying note 117.
134 LEE, *supra* note 8, at 104.
135 SURYADINATA, *supra* note 119, at 84.
136 *Id.*
137 Nationality Law of the People's Republic of China (1980), *reprinted in* SURYADINATA, *supra* note 119, at 158 app. 3.

and

> Article 9. Any Chinese national who has settled abroad and who has been naturalized there or has acquired foreign nationality of his own free will *automatically* loses Chinese nationality. (Italics supplied)

China has evidently come a long way from being a xenophobic giant. But just as it seemed to bring its nationality laws into harmony with those of the rest of international community, a new "nationality riddle" has cropped up in connection with the reversion of Hong Kong to Chinese sovereignty scheduled for 1997. Under the PRC Nationality law, all Hong Kong Chinese are Chinese nationals and dual nationality is forbidden but China has agreed to permit them to use British travel documents other than in China. Thus, the British proposed recently to create a new status for the Hong Kong-born, that of British National (Overseas).[138] The exact nature of this type of British nationality, and the treatment it will receive from third states are all imponderables at the moment. Yet these are questions that must be dealt with soon.

Approaches: The Search for Solutions

Hong Kong is not the only remaining problem area. On the contrary, even with the new PRC nationality law, an integrative review of the laws surveyed above will reveal specific instances in which dual nationality still rears its ugly head, some of which were mentioned earlier. It is possible, for example, that children born in Thailand of Japanese nationality will carry both Thai and Japanese citizenship. Malaysians who are naturalized anywhere else retain their original citizenship unless the Malaysian government issues an order depriving them of the same. Filipino women who marry Indonesians gain Indonesian nationality without necessarily losing their Philippine citizenship. Indian law permits British subjects to register as Indian nationals while keeping their British nationality. Filipino minors adopted by Indonesians could have at some time two nationalities. And, although this study is limited to Asia, we cannot completely ignore the United States. Personal experience will tell us that perhaps the most common example of dual nationality in the Philippines is the Filipino/American. There can be no doubt now that multiple nationality is a problem that must be addressed.

Yet somehow there seems to be little understanding of how to deal with the issue of dual nationality in the region. So little, in fact, that some attempts to reduce the number of dual nationals have been quite crude, even heavy-handed. Burma, for example, simply passed a law requiring dual nations to effectively renounce their foreign nationality within a given period.

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[138] Lau, *The Nationality Riddle*, FAR E. ECON. REV., Oct. 31, 1985, at 18.

At the time, this was arbitrary and impractical because the ethnic Chinese could not possibly all go to Beijing to do so — even if it were permitted by the Beijing regime.[139] At about the same time, South Vietnam sought to force its overseas Chinese to give up their Chinese nationality through a series of harsh measures. First, Chinese were deprived of the right to correspond with the homeland. The South Vietnamese government refused to accept mail for the PRC. Then, Chinese schools were required to have South Vietnamese principals. Chinese were forbidden from running eleven categories of industry and commerce. Finally, Chinese identity cards were all declared invalid, in effect making the Chinese illegal aliens.[140] Obviously, these moves had little international effect; thus necessitating more sophisticated methods of dealing with dual nationality.

As a matter of fact, there are at least three different approaches to multiple nationality: (1) unilateral legislative amendments dropping claims; (2) multilateral compromises; and (3) universal rules. These approaches aim to eliminate or at least drastically reduce the cases of multiple nationality. The same three approaches might be used to ameliorate specific difficulties arising from multiple nationality, such as problems with military service.

Of course, there are other remedies available.[141] For example, cases might be brought before judicial tribunals. If dual nationality is presented as a Conflict of Laws problem, the issue will be decided upon the basis of the traditional rule that a person is usually considered by the forum as exclusively its own national, his additional foreign nationality being disregarded,[142] or upon some such other conflict rule. In public international law, a tribunal might resolve a dual nationality issue by applying the doctrine of "effective nationality" best illustrated in the *Nottebohm* case.[143] The problem with the judicial method is that it can only deal with dual

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[139] MAUNG, *supra* note 102, at 94.

[140] COHEN, *supra* note 117, at 772.

[141] One possible solution might be Lauterpacht's "functional conception," i.e., whenever the personal interests of individuals are at stake, international law should be applied humanely — leading to the extension of diplomatic protection on one hand and, on the other hand, to a restriction of reprisals and similar measures. If emphasis is exclusively placed on the *rights* of individuals (as distinct from his State), the logical result would be that in cases of plural nationality the right solution would be that most favorable to the interests of the *de cujus*. As regards duties based on nationality, however, this approach, if consistently applied, would have as a result that these duties may not be imposed by *either* country. VAN PANHUYS, *supra* note 53, at 236. The proposal seems to be aimed at removing the ill effects of dual nationality without eliminating dual nationality, therefore preserving any good effects. Unfortunately, the fate of the dual national is left too much at the mercy of changing interpretations and shifting policies. Moreover, it ignores state problems and interests. Plural nationality would become a sought-after haven for those who wish to enjoy all the rights without the responsibilities of citizenship — a situation which most states would find intolerable — eventually leading back to the three approaches in the main discussion.

[142] 1 E. RABEL, THE CONFLICT OF LAWS 129 (2d ed. 1958).

[143] Nottebohm Case (Liechtenstein v. Guatemala), 1955 I.C.J. 4.

nationality on a case to case basis — a decision can be rendered only when a case is brought and the ruling is binding only on the parties. Sometimes the dual nationality of only one person is resolved. Besides, this alternative only treats symptoms as they surface and does not go to the very root of the problem, that is, the conflict of nationality laws. Finally, judicial methods do not prevent future cases of dual nationality from cropping up. For these reasons, subsequent discussion will concentrate only on the three preventive courses of action mentioned.

First, unilateral legislative adjustment. Wasn't this what Burma and South Vietnam were trying to do? Not exactly. These two countries did indeed unilaterally pass laws aimed at eradicating multiple nationality. However, they erroneously meant to accomplish this by divesting their nationals of their *other* nationality, i.e., Chinese. Both Burma and South Vietnam, or any other state for that matter, lack the power to do this effectively. When one state, acting alone, wishes to remedy a situation readily giving rise to dual nationality, it can only do so by *dropping its own claim*. As Wolff put it, "a state can prevent dual nationality only by prescribing loss of nationality for any subject acquiring or possessing nationality of a foreign state."[144] The best example of this is the recognition of automatic expatriation in the 1980 PRC Nationality Law. In one fell swoop, China eliminated the dual nationality that had so bedeviled Burma and South Vietnam. Of course, there are political considerations that made this approach available to China and not its neighbors. A state must weigh its desire to reduce dual nationality against its need for human resources or its inclination to have citizens rather than aliens within its borders.

Second, compromises among countries — either by convention or treaty. This approach to plural nationality is definitely the most realistic and useful. It is often easier to enact laws than to get countries to ratify treaties; but more can be accomplished by nations cooperating than by nations working alone. On the other hand, a universal set of nationality rules might be more efficient; but international agreements are more flexible and can accommodate more contending interests.

It is this flexibility which made it possible for the party-states to hammer out the provisions of the Hague Convention of 1930. Weis's account of the proceedings at the Hague Conference illustrates how the final form of this approach to dual nationality takes shape.[145] Witness also McDougal's assessment that "though the desire for the minimization of 'dual' nationality was unanimously expressed in the Final Act of the Conference, solutions to the question of multiple nationality, as finally adopted, were limited in scope."[146]

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144 WOLFF, *supra* note 32, at 128 n. 4.
145 WEIS, *supra* note 3, at 184.
146 MCDOUGAL, *supra* note 4, at 944.

Out of all the competing versions of treaties and conventions, there seem to be two major lines of thought on how multiple nationality might be resolved. The first school premises elimination of multiple nationality on the basis of a free choice of citizenship by the persons concerned regardless of where such persons happened to have their domicile or residence. The nationality treaties of the Soviet block described by Sipkov[147] and Ginsburgs[148] have the right of option as the basic rule. Opposite this, Flournoy proposed that rather than permit choice, international conventions should adopt a uniform rule of election based on facts, such as domicile or habitual residence.[149] When the Hague Convention was being drafted, a proposal that a person having multiple nationality at birth be afforded a right of option failed to gain support.[150] Instead, Article 5 provides for two alternative criteria: that of habitual residence and that of effectiveness.[151]

According to Chinese criticism of the 1930 Hague Convention, "the solution adopted by the bourgeois countries disregards the principle of national self-determination and is unilaterally compulsory in nature."[152] Nevertheless, the model rules adopted by the Asian-African Legal Consultative Committee in Cairo in 1964 are generally patterned after the provisions of the Hague Convention.[153]

In reality, most treaties and conventions concerning multiple nationality find some middle ground between the two schools of thought and any Asian approach to dual nationality would do well to do the same. A straightforward example of this combination of "choice" and "facts" can be found in the now inoperative Sino-Indonesian Treaty. Primarily Article I gives the dual national a right to choose, thus:

> The High Contracting Parties agree that all persons who hold simultaneously the nationality of the People's Republic of China and the nationality of the Republic of Indonesia *shall choose,* in accordance with their own will, between the nationality of the People's Republic of China and the nationality of the Republic of Indonesia. All married women who hold the above-mentioned two nationalities shall also choose, in accordance with their own will, between the two nationalities. (Emphasis supplied)

But in case a dual national fails to choose within the two-year period prescribed, Article V provides that he shall be considered as having chosen the nationality of his father, or if this is not possible, that of his mother. In other words, the parent's nationality is the secondary basis which, in

147 Note, *Settlement of Dual Nationality in European Communist Countries,* 56 AM. J. INT'L. L. 1010 (1962).

147 GINSBURGS, *supra* note 35.

149 Barone, *Dual Nationality with Particular Reference to the Legal Status of the Italo-American,* 23 FORDHAM L. REV. 243, 285 (1954).

150 McDOUGAL, *supra* note 4, at 944.

151 WEIS, *supra* note 3, at 184.

152 COHEN, *supra* note 117, at 770.

153 *See* 8 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 82 (1967).

the absence of a choice expressed by the *sujets mixte,* operates automatically to resolve dual nationality — unlike in other treaties where domicile or habitual residence is the determinant.

In the introductory section of this paper, we pointed out the contending interests that must be balanced in the evolution of approaches to dual nationality. In this context, the structure of the Sino-Indonesian Treaty has its merits. By seeking to reduce multiple nationality, there is discernible movement towards international harmony while reflecting equality between sovereign and independent countries; and by making individual choice the primary rule there is palpable respect for human dignity. What seems to be sacrified is national interest in determining who may be citizens; but even this may be more apparent than real, depending on how many dual nationals actually avail of the right of option. There is a strong possibility that the ignorance of the right of option will make the automatic determination clause more important, in which case, national interests may be protected.

Third, universal nationality rules. This is the ideal, the panacea for all problems of plural nationality. It is also the most unlikely approach because it is the most unwieldy. It is only included here because so many authorities have seriously considered it. In this approach, dual nationality will cease to exist if "all the states agree to adopt a uniform rule for nationality at birth, and a rule as to the effect of naturalization, thus doing away with the cause of the problem in conflicting legislation."[154]

Although the most important consideration is the universal acceptance of a uniform rule and not its quality or merits,[155] much effort has been spent trumpeting the advantages of this or that potential universal rule. Scott promotes *jus soli* because it is "natural", "objective", "relentless and without a remnant of consent on part of the person born" and "universal"; whereas *jus sanguinis* is "primitive."[156] Hyde, for his part, seems to favor some rule based on habitual residence.[157]

Again, the conflict of interest discussed in the introduction colors this theoretical approach, making a potentially promising solution unacceptable. In the words of a Dutch delegation to the Hague Conference quoted by McDougal: "It would be easier to obtain unanimity for a rule which admitted situations in which an individual had no nationality or two nationalities and regulate the resulting conflicts, than to establish a formula which would result in restricting to some extent the State's power of legislation."[158]

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[154] Barone, *supra* note 147, at 283.
[155] *Id.* at 284.
[156] Scott, *supra* note 16, at 59.
[157] C. HYDE, INTERNATIONAL LAW 1140 (2d rev. ed. 1947).
[158] MCDOUGAL, *supra* note 4, at 943.

Conclusion: The Political Considerations

More than half a century has passed since the nations of the world were moved enough to gather at The Hague and confront the problems of multiple nationality. Since then, independent states have proliferated especially in Asia, and plural nationality continues to be a problem, perhaps just as much as in 1930. This despite the fact that developing solutions for this particular question does not necessitate the breaking of new ground that was required, say, in drafting the Law of the Sea. Viable approaches have been around for some time now. Why then has it been so difficult to eliminate dual nationality?

From the point of view of the individual, dual nationality may not all be that unpleasant. It enables one to conveniently shift the emphasis on his allegiance to suit his purposes. In the Philippines, a young man dreaming of becoming a neurosurgeon wants to be a Filipino citizen so that he can go through medical school at the University of the Philippines without paying the prohibitive alien's fee. At the same time, he covets the American citizenship that will allow him to land a residency position at one of the training hospitals in the U.S. It is no wonder that dual nationals are the envy of medical students. In some instances, according to Barone, the dual national has ties with both states, and he often finds it necessary to leave the state in which he has habitual residence to visit the other state of which he is also a national in order to attend to family matters or to carry on an intercountry business. He may be loath to sever relations, particularly the tie of allegiance, with either country, and in the absence of the onerous facets of dual nationality, he is content to main the status quo.[159] But the fact of the matter is that there *are* onerous facets and ill-effects — some of which the dual national will not feel until it is too late. Earlier, the problems faced by dual nationals were described and it should be clear that the disadvantages outweigh the dubious advantages.

It is understandable that an individual might not be fully aware of the consequences of dual nationality; but for states, all of which have their own crops of legal scholars, ignorance is no excuse. Yet, Weis describes a disturbing trend. He writes that "from a point of view of legal policy, it is, however, doubtful whether plural nationality is at present considered to be undesirable," and he cites enactments apt to lead to double nationality in countries ranging from the U.K. to Czechoslovakia and from Israel to Syria.[160] He does not, however, attempt to explain the phenomenon, whereas McDougal does. McDougal contends that the "policy most preferred when expectations of large-scale violence are low, favors human rights and encourages freedom in the circulation of people and easy changes in group

[159] Barone, *supra* note 147, at 282.
[160] WEIS, *supra* note 3, at 194-95.

membership, much the same as it encourages freedom of movement in capital, goods, services, and ideas."[161]

In McDougal's view, multiple nationality, inasmuch as it affords greater exercise of voluntarism, is an aspect of human rights. This is disputable. It has been argued that the text of the Universal Declaration of Human Rights of the United Nations contemplates that person should have only one nationality.[162] Otherwise put, dual nationals have a right to a single nationality.

The leading authorities cannot seem agree. Upon the premise that nationality is an instrument for securing rights of the individual in the national and international spheres, Lauterpacht advances the suggestion that it should increasingly be made possible for purposes of convenience in matters of business or otherwise, to acquire a foreign nationality without necessarily giving up the original one.[163] Van Panhuys, who ranks with Weis among the foremost scholars in this particular field, counters that "as the result would be to considerably augment the number of *sujets mixtes*, the present author ventures to doubt whether it should be followed."[164]

Even when dual nationality is recognized as undesirable, there is no guarantee that solutions will be sought. In 1954, the International Law Commission decided to defer consideration of the topic partly due to the lack of a sense of urgency.[165] Admittedly, dealing with dual nationality is not as imperative as working on nuclear disarmament. It does not have the high media-profile of international terrorism. But multiple nationality does have thousands of people caught in mazes around the world, and at least two armed conflicts in Asia might have been touched off by it. One thing is certain, multiple nationality will not go away if we ignore it.

Another political reality that has made governments reluctant to undertake effective measures of solution is racial prejudice. The Sino-Indonesian Treaty, for example, was not ratified immediately because segments of the indigenous Indonesian population were concerned that it made it easier for Chinese to become Indonesian nationals.[166] According to one author, reform of citizenship law in the Philippines was hampered by a baseless fear of a Chinese stranglehold on the economy.[167]

Other obstacles might be politico-economic in character. China waited until 1980 to pass an expatriation statute partly because it needed the foreign exchange held by overseas Chinese.[168]

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161 MCDOUGAL, *supra* note 4, at 863.
162 Griffin, *supra* note 17, at 58.
163 VAN PANHUYS, *supra* note 53, at 236.
164 *Id.*
165 MCDOUGAL, *supra* note 4, at 947.
166 COHEN, *supra* note 117, at 761.
167 Tsai, *Citizenship Issue and the National Economy,* in PHILIPPINE-CHINESE PROFILE: ESSAYS AND STUDIES 129 (McCarthy ed. 1974).
168 SURYADINATA, *supra* note 119, at 73.

Political considerations are believed to have been responsible for what has been called the failure of The Hague conference. Yet there is hope in Hyde's pronouncement, to wit:

> "In any conflict between the political interests of particular states and the demands of international justice, the family of nations must ever side with the latter and point unerringly to the ultimate victor. Its interests permit no purely political considerations permanently to outweigh the influence of reason. . . ."[169]

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169 HYDE, *supra* note 157, at 1132.