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Nationality and International Law in Chinese Perspective

Hungdah Chiu

School of Law University of Maryland
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# NATIONALITY AND INTERNATIONAL LAW IN CHINESE PERSPECTIVE

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NATIONALITY AND INTERNATIONAL LAW IN CHINESE PERSPECTIVE

HUNGDAH CHIU

Part One CONSTITUTIONAL AND INTERNATIONAL DEVELOPMENTS RELEVANT TO THE LAW OF NATIONALITY

Modern constitutionalism was unknown in traditional China. It was not until the late nineteenth century that modern constitutional concepts were introduced into China. In the early twentieth century the then Imperial Chinese Government began to consider the establishment of constitutional rule. On 1 September 1906, the Government issued an edict giving notice of its intention to do so. In 1909 the ‘Principles of the Constitution’ and a ‘Nine Year Programme (1908-1917) for the Preparation of the Constitution’ were promulgated.1 However, it was not until after the outbreak of the Wuchang uprising on 10 October 1911, which led to the downfall of the imperial Government in the following year, that the latter promulgated the so-called ‘Nineteen Articles [on Constitutional Law] on 2 November 1911’.2 The culmination of the shift in government came on 1 January 1912, when the Republic of China was inaugurated. The Imperial Government did not abdicate until 12 February 1912.

Both the 1909 ‘Principles of the Constitution’ and the 1911 ‘Nineteen Articles [on Constitutional Law]’ were silent on the issue of nationality.

2. Ibid., pp. 359-360.
So were the Provisional Constitution of the Republic of China of 11 March 1912 and the Constitution of the Republic of China of 1 May 1914 which followed. On 10 October 1923, the Government promulgated a new constitution and for the first time it specifically provided in Article 4 that 'a person possessing the nationality of the Republic of China in accordance with law shall be a national of the Republic of China.' That constitution was short-lived. After the Nationalist Party came to power in 1928 it promulgated the 'Constitution of the Republic of China During the Period of [Political] Tutelage' on 1 June 1931. Article 2 paragraph 2 of this Constitution provided: 'A person who possesses the nationality of the Republic of China in accordance with law is a national of the Republic of China.' This constitution for the 'period of political tutelage' was replaced by a new Constitution of the Republic of China, promulgated on 1 January 1947, which in Article 3 provided: 'Persons possessing the nationality of the Republic of China shall be citizens of the Republic of China.' It is this constitution which is still in force today in Taiwan. Despite the fact that there were many Chinese living outside China before the mid-nineteenth century, the nationality of those Chinese was of no concern to the imperial Chinese Government. This was because in traditional China no Chinese, except those entrusted with official assignments, were supposed to go abroad. For instance, in 1727, an imperial order was issued to urge all Chinese living abroad to return within a specified period with a warning that those who declined to do so might forfeit their right to return. In 1728, another imperial order was issued banning those who went abroad from returning to China. After the forced opening up of China by Great Britain through the Opium War (1839-1842) and the 1842 Treaty of Nanking, the imperial Government began to change its policy. The 1860 Sino-British Treaty of Peking allowed Chinese to go abroad freely for the first time. Article 5 of that Treaty provided:

'... His Imperial Majesty the Emperor of China will, by Decree, command the high authorities of every province to proclaim throughout their jurisdictions, that Chinese choosing to take service in the British colonies, or other parts beyond

4. Ibid., pp. 404-405.
5. Ibid., p. 448.
8. Ibid.
10. Signed on 24 October 1860, 123 CTS p. 71.
the sea, are at perfect liberty to enter into engagements with British subjects for
that purpose, and to ship themselves and their families on board any British
vessel at any of the open ports of China..."\textsuperscript{11}

Similar provisions were included in Article 9 of the Sino-French
Convention Supplementary to the Treaty of Peace of Tientsin, signed at
Peking on 25 October 1860.\textsuperscript{12} These treaties, however, did not deal with
the nationality of Chinese who went abroad.

The first Chinese treaty dealing with the nationality issue was
concluded with the United States. Article 6 of the 1868 Sino-American
Treaty of Peace, Amity, and Commerce provided:

"Citizens of the United States visiting or residing in China shall enjoy the same
privileges, immunities or exemptions in respect to travel or residence as may
there be enjoyed by the citizens or subjects of the most favored nation, and,
reciprocally, Chinese subjects visiting or residing in the United States, shall enjoy
the same privileges, immunities and exemptions in respect to travel or residence
as may there be enjoyed by the citizens or subjects of the most favored nation.
But nothing herein contained shall be held to confer naturalization upon citizens
of the United States in China, nor upon the subjects of China in the United
States."\textsuperscript{13} [Emphasis added].

Another Sino-American treaty which addressed the nationality issue
was the 1894 Sino-American Convention on Immigration. Article 4 of
this Convention provided:

"In pursuance of Article III of the Immigration Treaty between the United
States and China, signed at Peking on the 17th day of November, 1880 (the
15th day of the tenth month of Kwanghsu, sixth year), it is hereby understood
and agreed that Chinese laborers or Chinese of any other class, either
permanently or temporarily residing in the United States, shall have for the
protection of their persons and property all rights that are given by the laws of
the United States to citizens of the most favored nation, excepting the right to
become naturalized citizens. And the Government of the United States reaffirms
its obligation, as stated in said Article III, to exert all its power to secure
protection to the persons and property of all Chinese subjects in the United
States."\textsuperscript{14} [Emphasis added].

\textsuperscript{11} Ibid., p. 73.
\textsuperscript{12} Ibid., pp. 79, 83.
\textsuperscript{13} Charles I. Bevans, \textit{Treaties and other International Agreements of the United States, 1776-1935}, vol. 6, pp. 680, 683.
\textsuperscript{14} Ibid., pp. 691, 693.
In 1907, the Dutch colonial Government in the Dutch East Indies (now Indonesia) was reportedly in the course of preparing a nationality law based on the *jus soli* principle. The result of the application of this proposed law would make all Chinese born there Dutch subjects. This attempt was strongly opposed by the Chinese in the Dutch East Indies and they urged the imperial Chinese Government to intervene on their behalf. One of the difficulties for China in negotiating the settlement of this dispute was the lack of a Chinese nationality law to serve as a basis for negotiation. Under such circumstances, the Chinese Government realized that 'the immediate promulgation of a nationality law was a necessity in that it would forestall the oft-repeated argument that 'China has not a proper nationality code wherewith to justify her claim to the allegiance of her subjects abroad.'

Another reason which prompted the Chinese Government to enact a nationality law was the fact that some Chinese in China had acquired foreign nationality in order to avoid Chinese judicial jurisdiction over them, as China was unable to exercise jurisdiction over foreigners under the regime of unequal treaties. This situation was expressed by one scholar as follows:

'For many decades the authorities of the European colonies near China and especially the Portuguese authorities at Macao have, partly for political and partly for pecuniary reasons, granted naturalization certificates to Chinese who have not been out of China and who simply have to allege that they were born in one of those colonies. Having secured this naturalization they continue to reside in China without disclosing their change of allegiance. They enjoy all civil and political rights as native subjects of China, and in some cases they even hold official positions of honor and trust. It is only when they are involved in law suits, which generally arise through their own fault, or when they desire to enjoy such privileges as are secured to foreigners by treaties, that they declare their foreign citizenship. What is worse, the moment their declaration is made,

15. CH'IU, op. cit. n. 7, p. 101.
17. TS'AI CHUTUNG, 'The Chinese Nationality Law 1909', 4 AJIL (1910) pp. 404, 407. See also CH'IU, op. cit. n. 7, pp. 101-102, and L. TUNG, China and Some Phases of International Law, (London and New York: Oxford University Press, 1940) p. 86. It is reported that in the years preceding 1909 the Chinese Government had repeatedly urged the Dutch Government to be allowed to establish consulates in the then Dutch Indies. These requests were reportedly rejected, *inter alia*, with the contention that China did not even have a nationality law under which it could substantiate its claim to diplomatic protection of its subjects. See Ko SWAN SIK, *De meervoudige nationaliteit* [Plural Nationality] (Leiden: Sijthoff, 1957) p. 122.
they – thanks to the institution of consular jurisdiction in China – are out of reach of the Chinese court in respect both to what they have done before and to what they may hereafter do. The last fifty years are full of instances of cases abruptly dismissed, or transferred to the consular courts, simply because a consul declared that the defendants were naturalized subjects of his country. Respecting the control of these men, China has experienced great difficulty, but in spite of her efforts has failed to effect an understanding with foreign governments.\textsuperscript{18}

In 1909, the Chinese Nationality Act was promulgated.\textsuperscript{19} On 8 May 1911, in the Notes annexed to the Consular Convention relative to the Netherlands' Colonies, the nationality issue between China and the Netherlands was basically resolved.\textsuperscript{20} The Chinese in the Dutch Indies, who were regarded as Dutch subjects under Dutch law, reserved the right to revert to their Chinese nationality when they returned to China or went to a third country.\textsuperscript{21}

\textsuperscript{18} Tsai, loc. cit. n. 17, pp. 405-406.


\textsuperscript{20} The text of the Consular Convention can be found in \textit{De Martens, Nouveau Recueil Général}, 3rd series, vol. 8, p. 288 and 213 CTS pp. 306-312. The annexed notes exchanged on the same date decreed that if questions arise about the meaning of the terms 'Chinese subject' and 'Dutch subject' for the purpose of application of the Convention in the Dutch Indies, these questions were to be solved in accordance with Dutch Indies law. This meant that with regard to matters falling within the scope of consular jurisdiction and in respect of Dutch-Chinese dual nationals, so far as these matters occur in the Netherlands Indies, Dutch nationality would prevail over Chinese nationality. This might be considered a solution of the dual nationality conflict, but only in a limited sense, i.e., in terms of territory and subject-matter. It could be concluded that the 'conflict' remained alive outside these limits, with each State being entitled to claim jurisdiction on the basis of its own nationality. The 'solution' might also refer to the fact that the above agreement contained the implicit Dutch recognition of the presence, in the person in question, of Chinese nationality besides Dutch nationality.

\textsuperscript{21} See third note from the Netherlands to China where it is stated: 'I should make it clear that any persons of Chinese origin, who have been naturalized as Dutch, and who wish to have their Chinese nationality restored upon returning to China may do so at their discretion . . . The arrangement is not inconsistent with the principle of equality [of laws and regulations of the two countries] mentioned above [by the Chinese Government]. If the above stated persons, except for those excluded by China, want to reside in other countries, they have the discretion to retain or renounce their Dutch nationality.' Translated from \textit{Wang Tiya (compiler), Chung-wei Chiu Yueh-Chang Hui-pien} [Collection of old treaties and agreements between China and foreign countries], vol. 2 (Peking: Joint Publishing [San-lien] Co., distributed by Hsin-hua Book Co., 1959, reprinted in 1982) pp. 715, 719-720. See also Ch'iu'tu, op. cit. n. 7, pp. 102-103. 213 CTS pp. 306-312, and \textit{De Martens, Nouveau Recueil Général}, 3rd series, vol. 8, p. 288 et seq. do not include this note. It should be noted, however, that there is reference to a 'mutual arrangement' between the Dutch minister and the Chinese Government, which has never been published as such in Dutch
(Part Two) THE IMPACT OF OTHER FACTORS ON THE
CONTENTS OF THE LAW ON NATIONALITY

Part Three THE LAW ON NATIONALITY IN HISTORICAL
PERSPECTIVE

Before the enactment of a nationality law in 1909, there was only
customary law to govern the nationality of the Chinese, i.e., the child of
a Chinese subject acquired his father's nationality.22 The state of the law
was not clear on other aspects of nationality law, such as the conditions
for losing Chinese nationality or for the acquisition of Chinese
nationality by aliens. In early 1908, an official of the State [Grand]
Council (Chun-chi ch'u) suggested that the Empress Dowager enact a
nationality law.23 A similar suggestion was also made by the Chinese
Minister to the Netherlands, in view of the Dutch attempt to impose
Dutch nationality on Chinese in the Dutch East Indies.24 The Empress
accepted the suggestion and the first draft was prepared by the Ministry
of Foreign Affairs and the Special Commission for the Codification of
Laws. The draft was then revised by the Constitutional Investigation
Board and finally submitted to the State Council for approval. On 28
March 1909, the Nationality Act containing 24 articles25 and the Rules
for the Implementation of the Nationality Act containing 10 articles,

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sources, but has been referred to and described in a circular letter No. 2029 from the
Netherlands Indies Government Secretary to the heads of regional government, published in
the Netherlands Indies Official Journal [Javasche Courant] of 1 September 1911 (and in
Annex 7489 to the Statutory Instruments [Bijlade op het Staatsblad]). According to this
arrangement Dutch subjects (expressly 'including those of Chinese origin', who as a rule
would additionally possess Chinese nationality) who wished to stay in China would be
recognized (by the Chinese Government) as Dutch subjects provided they had duly
registered as such with the Dutch consulate. This again was a sort of 'solution' of the dual
nationality conflict by establishing the precedence of one of the nationalities (though subject
to registration). See KO SWAN SIK, op. cit. n. 17, pp. 222-223.

22. See C. SAINSON and G. CHUZEL, 'La nationalité dans le nouveau droit chinois,' 37

23. See Memorial from the State Council dated 20th Day of the Second Lunar Month of
the Thirty-fourth Year of the Kuan-hsu Reign [26 March 1908], CH'ING Archive No. 1056 at
the Institute of Modern History, Academia Sinica, Taipei.

24. See Communication from the Minister to the Netherlands to the Ministry of Civil
Affairs dated the Fifth Day of the Eleventh Month of the Thirty-fourth Year of the
Kuan-hsu Reign [28 November 1908], CH'ING Archive No. 1056 at the Institute of Modern
History, Academia Sinica, Taipei.

25. See supra, n. 19.
were promulgated.26 The Ministry of Civil Affairs also promulgated Rules for the Filing of Applications for a Certificate of Nationality.27

The Act adopted the principle of *jus sanguinis* for a child’s nationality (Art. 1). Only when the nationality of both parents was unascertainable did the principle of *jus soli* apply (Art. 2). A foreigner could be naturalized in China only if the law of his own country would treat him as having lost his original nationality upon naturalization (Art. 3 para. 5). This condition could be waived for a foreigner who had rendered distinguished service to China (Art. 4). A Chinese who intended to acquire a foreign nationality first had to obtain permission to be released from his Chinese nationality (Art. 11). The permission would be granted only if, at the time of filing his petition, the petitioner was not involved in any pending civil or criminal cases, subject to military service, in arrears with any state or communal taxes, or the holder of any governmental position or vested with official rank (Art. 12). However, a Chinese woman who married a foreigner was deemed to have lost her Chinese nationality; but if by the law of her husband’s country she did not acquire the nationality of that country through marriage, she retained her Chinese nationality (Art. 13). A Chinese woman who lost her Chinese nationality through marriage might apply for recovery of her Chinese nationality upon divorce or becoming a widow (Art. 19). Under the 1909 Act, many overseas Chinese would maintain their Chinese nationality even if they became naturalized abroad or acquired foreign nationality through *jus soli* or other principles of foreign nationality law. In other words, many overseas Chinese would become dual nationals.

After the establishment of the Republic of China on 1 January 1912, the Nationality Act was re-enacted on 18 November of the same year, with modifications to reflect the Republican form of government.28 The substance of the Act was essentially the same as the 1909 Act. It was further amended in 1914 and promulgated on 30 December of that year.29 After the Nationalist Party came to power in 1928, it undertook a more thorough revision of the Nationality Act, and this was promulgated on 5 February 1929.30 Two major amendments of the old Act were as follows:

(1) The new Act eliminated all discrimination against women. For instance, under the 1909 and 1912 (as amended in 1914) Nationality Acts, during the lifetime of her husband a married woman could not

27. Chinese text in ibid., p. 71.
28. Chinese text in ibid., pp. 72-80. For Rules for the Implementation of the Nationality Act, promulgated on 3 November 1913, see ibid., pp. 80-82.
apply by herself either for naturalization or to be released from her Chinese nationality. This was deleted from the new Act. Moreover, a foreign woman who married a Chinese acquired Chinese nationality only where her own country would revoke her original nationality (Art. 2 para. 1). Under the previous Acts, such a woman automatically acquired Chinese nationality. The reform was intended to respect the free choice of a foreign woman who married a Chinese. For similar reasons, a Chinese woman who married a foreigner would not automatically forfeit her Chinese nationality unless she applied to the Ministry of the Interior to do so (Art. 10 para. 1). Furthermore, the domicile requirement imposed by Article 17 paragraph 1, of the 1912 Nationality Act (as amended in 1914) on a person seeking to recover his or her Chinese nationality because of dissolution of the marriage to a foreigner, was removed from the new Act (Art. 15). This allowed a divorced or widowed Chinese woman to recover her Chinese nationality.

(2) Since statelessness is an undesirable situation in international law, the new Act attempted to avoid its arising. Under the 1912 Act (as revised in 1914), a person born to a Chinese mother and an unknown or stateless father could acquire Chinese nationality only if born in China (Art. 1 para. 3). The new Act eliminated that requirement of being born in China (Art. 1 para. 3). In other words, a person born abroad to a Chinese mother would automatically acquire Chinese nationality.

The 1929 Nationality Act was in force in China between 1929 and late 1949 while the Nationalist Government of the Republic of China was in control of the Chinese State. Upon its removal to Taiwan in late 1949, this Act has applied only to Taiwan, to certain other small islands under the Nationalist Government’s control, and to some overseas Chinese who still pay allegiance to the Republic of China.

There are several factors which influenced the content of the Chinese Nationality Act of 1929. The first is the people’s traditional pride in their culture and lifestyle, and their reluctance to renounce their Chinese nationality. Even though many overseas Chinese have acquired foreign nationality through the jus soli principle or naturalization, many of them

31. Arts. 7 and 15 of the 1909 Act, Art. 5 of the 1912 Act and 1914 Revised Act.
32. See Report on the Review of the Draft Nationality Act by the Legal System Committee and Foreign Affairs Committee of the Legislative Yuan, Li-fa-yuan kung-pao [Gazette of the Legislative Yuan], No. 2 (February 1929) pp. 88, 93.
33. Art. 5 para. 1 of the 1909 Act and Art. 2, para. 1, of the 1912 Act and 1914 Revised Act.
35. Ibid., p. 98.
36. Ibid., p. 102.
37. Ibid., pp. 89-90.
still want to retain their Chinese nationality in order to maintain their emotional and cultural ties with China. Thus the Chinese Nationality Act, which allows the possibility of dual nationality, reflects the wishes of most overseas Chinese.

Another concern of the Chinese legislature in enacting the Nationality Act was to preserve China's right to exercise diplomatic protection over overseas Chinese. China's right of protection will not cease to exist until an overseas Chinese person voluntarily renounces his or her Chinese nationality.

Chinese nationality law permits a Chinese to renounce his or her Chinese nationality upon the approval of the Ministry of the Interior. Such approval is routinely granted except in nine situations specified by law.38 The reason for adopting this rule was to prevent Chinese nationals from acquiring foreign nationality in order to avoid Chinese jurisdiction under the extraterritorial regime imposed by Western Powers on China before 1945.39

On the other hand, there are some overseas Chinese who have lost their Chinese nationality through renunciation in order to acquire a foreign nationality in accordance with the requirements of the law of the place where they reside, and who, at some later date, wish to recover their Chinese nationality. In order to meet their needs, the nationality law enables them to recover their Chinese nationality.40 So long as they are of good character, and possess sufficient property or skills and abilities by which they can make an independent living, their Chinese nationality can be recovered at any time.41 There is no residence or domicile requirement in such a case.

The principle of equality between men and women has been one of the major principles espoused by the Chinese Nationalist Party, and when the Nationality Act was enacted in 1929 under the Nationalist Government, almost all the discriminatory provisions against women in previous nationality laws were removed. The Act adopted the principle

38. See infra, n. 86 and accompanying text.
39. Cf., the following statement made by Fu P'ing-ch'ang, Chairman of the Foreign Affairs Committee of the Legislative Yuan, in presenting the revised draft of the Nationality Act in 1929: 'There are foreign concessions in China such as in Shanghai and other cities where some Chinese acquired foreign nationality in order to enjoy the privileges of foreigners and to avoid the obligations of Chinese citizens; therefore, [the Nationality Act] should prevent Chinese from acquiring foreign nationality at will.' Hsieh Chen-Min, Chung-hua Min-huo li-fa-shih [History of Legislation in the Republic of China], (Shanghai: Cheng-chung Book Co., 1937, reprinted in 1948) p. 601.
40. Cf., Fu's statement in ibid.
41. Art. 16 of the 1929 Nationality Act.
that a woman should have independent nationality, regardless of her marital status.\[42\]

Finally, Chinese nationality law and practice emphasizes the principle of respecting free personal choice in acquiring or losing one's nationality. Generally speaking, Chinese nationality will not be imposed on an alien without his or her freely expressed consent. Similarly, the Chinese State will not deprive a Chinese of his or her Chinese nationality unless the person chooses to renounce it.

Part Four THE LEGAL SOURCES OF CHINESE NATIONALITY LAW

The main legal sources presently governing the question of nationality in the Republic of China on Taiwan are the Nationality Act\[43\] and the Rules for the Implementation of the Nationality Act, both promulgated on 5 February 1929.\[44\] The authority in charge of administering the law is the Ministry of the Interior, which has promulgated four sets of regulations governing the administration of this Act, namely:

1. Regulation on Certificates of Nationality of the Republic of China, promulgated on 6 October 1956, with Article 4 amended on 5 October 1978;\[45\]
2. Regulation on the Issuance of Certificates Concerning the Approval of Nationality by the Ministry of the Interior, promulgated on 30 March 1929 and amended on 25 October 1946;\[46\]
3. Regulation Governing the Review and Approval of the Removal of Disqualifications Affecting Naturalized Persons, promulgated on 24 February 1930;\[47\]
4. Provisional Measures Dealing with the Acquisition or Recovery of Nationality by Nationals of Countries Without Diplomatic Relations [with the

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\[42\] Cf., Fu's statement: 'Whether a woman should have an independent nationality is a difficult question now. After the United States law initiated the [rule] of giving independent nationality to a woman, France also followed this rule to a certain extent and the 1924 Swiss Code also provides for an independent nationality for a woman. Our draft confirms that a woman should have an independent nationality . . .' HSEH CHEN-MIN, op. cit. n. 39, p. 601. See also Li-fa-yuan kung-pao [Gazette of the Legislative Yuan] No. 2 (February 1929) p. 91.

\[43\] See supra, n. 30.


\[46\] Ibid., pp. 1033-1034.

\[47\] Ibid., pp. 1035-1036.
Republic of China] During the Period of Suppression of the Communist Rebellion, promulgated by the Ministry of the Interior on 1 November 1950.48

Since treaties or international agreements are also sources of law in the Republic of China,49 when seeking the legal sources of nationality law one must also include those international conventions on nationality to which the Republic of China is a party. In 1934, China ratified the Convention on Certain Questions relating to the Conflict of Nationality Laws, adopted at The Hague on 12 April 1930,50 the Protocol relating to a Certain Case of Statelessness and the Special Protocol concerning Statelessness, both signed on the same date.51 However, China made a reservation to Article 4 of the Convention which provides that 'a state may not afford diplomatic protection to one of its nationals against a state whose nationality such person also possesses.52 The reason for rejecting this article is that it would prevent China from exercising diplomatic protection in respect of its overseas nationals, many of whom are also nationals of the countries where they reside.53 In 1958, the Republic of China ratified the Convention on the Nationality of Married Women, done at New York on 20 February 1957.54

There appears to be no conflict between Chinese nationality laws and regulations and the international agreements mentioned above. However, even if there was a conflict, under Chinese judicial practice, a treaty

48. Ibid., p. 1037.
50. 179 LNTS pp. 89-113.
52. 179 LNTS p. 111.
prevails over inconsistent domestic laws and regulations.55 Up to now, no such case of conflict appears to have arisen in any judicial or administrative case.

Besides laws, regulations, and international conventions, it should be noted that on 10 December 1948 the Republic of China voted in favour of the adoption of the Universal Declaration of Human Rights by the United Nations General Assembly.56 Article 15 of the Declaration provides:

'(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.'57

Part Five

THE DETERMINATION OF THE INITIAL CATEGORY OF NATIONALS UPON THE INTRODUCTION OF A MODERN NATIONALITY LAW

During the Ch'ing Dynasty (1644-1911), the eighteen provinces (later to become nineteen with the addition of Taiwan) were called China proper and were under the direct control of the Imperial Government. Mongolia and Tibet were autonomous regions with their own laws and legal systems. A similar situation existed in Manchuria. At the time of promulgating the Nationality Act in 1909, it was not clear whether the Act was applicable to Mongolia and Tibet. After the establishment of the Republic of China, all the Republic's laws were supposed to apply to all of China, including Manchuria, Mongolia and Tibet. However, in practice this was not the case, since in 1924 Mongolia became the first satellite country established by the Soviet Union and was no longer under Chinese control. Tibet enjoyed a de facto independent status, though it nominally maintained some relations with the Republican Government until 1949 when it expelled that Government's representatives from Lhasa. Manchuria was administered as part of China until 1931 when it was occupied by Japan.

According to Article 1 of the 'Constitution of the Republic of China During the Period of [Political] Tutelage,' promulgated on 1 June 1931, 'the territory of the Republic of China includes all provinces, Mongolia

55. See supra, n. 49.
57. Ibid., p. 138.
and Tibet.\textsuperscript{58} Thus, the Nationality Act of 1929 is supposed to apply equally to Mongolia and Tibet, though it is questionable whether this was the case in fact.

Part Six

MAIN PRINCIPLES OF ACQUISITION AND LOSS
OF NATIONALITY BY VIRTUE OF BIRTH OR
CHANGES IN FAMILY STATUS

6.1 Acquisition of nationality

The Republic of China follows the \textit{jus sanguinis} principle as the principal basis on which to confer Chinese nationality by birth. According to Article 1 of the 1929 Nationality Act, the following persons shall have Chinese nationality wherever they are born:

(1) any person whose father was, at the time of that person's birth, a Chinese national;
(2) any person born after the death of his (or her) father who was, at the time of his death, a Chinese national;
(3) any person whose father is unknown or stateless, but whose mother is a Chinese national.

However, if a person is born in Chinese territory to parents who are either unknown or stateless, then the \textit{jus soli} principle is applied. That person will acquire Chinese nationality (Art. 1 para. 4). Whether the term 'territory' includes Chinese vessels or aircraft is not clear. So far no actual case has arisen where a person has been born on a Chinese vessel or aircraft to unknown or stateless parents.

One may acquire Chinese nationality through marriage. The 1929 Act provides that an alien who is the wife of a Chinese national acquires Chinese nationality, except in cases where she retains her nationality under the law of her own country (Art. 2 para. 1). The purpose of this provision is to give a woman freedom to choose her nationality upon marriage to a Chinese and also to avoid dual nationality or statelessness arising through marriage.\textsuperscript{59} If a foreign woman marries a Chinese and still retains her nationality under her own national law, then she must renounce her original nationality in order to acquire Chinese nationality.

\textsuperscript{58} CHEN HOU-FU, op. cit. n. 1, p. 448.
\textsuperscript{59} Cf., TUNG, op. cit. n. 17, at p. 92.
under Article 2 paragraph 1. A foreign woman acquiring Chinese nationality under this provision would not lose it simply because the marriage was later dissolved or even if her marriage were declared void on grounds of bigamy. Between June 1928 and June 1935, there were 101 female aliens who acquired Chinese nationality through marriage to Chinese. In Taiwan, between 1972 and 1981, there were 637 female aliens who acquired Chinese nationality under Article 2 paragraph 1, of the 1929 Nationality Act.

A female alien who acquires Chinese nationality through marriage to a Chinese is subject to the same disqualifications as are imposed upon naturalized persons and such disqualifications can only be removed in the same way as prescribed in Article 9 of the Act.

Under the 1929 Act a male alien cannot acquire Chinese nationality through marriage to a Chinese woman. He can, of course, become naturalized in accordance with Articles 3 and 4.

Legitimization is another mode of acquiring Chinese nationality. Article 2 paragraphs 2 and 3 of the 1929 Act provides that the following persons are entitled to do so:

1) any person whose father is a Chinese national and who has been legitimized by him; or
2) any person whose father is unknown or has not legitimizied him (or her) but whose mother is a Chinese national and has legitimizied him (or her).

Finally, Article 2 paragraph 4, of the Nationality Act provides that a person may acquire Chinese nationality if he is adopted by a Chinese national. His (or her) Chinese nationality will not be lost even after the termination of the adoptive relationship.

Because of the hostile relations between the Republic of China and the Soviet bloc countries after the Chinese Communists gained control over the mainland, the Executive Yuan issued a decree on 1 November 1950, to suspend the acceptance of applications for Chinese nationality.

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62. T'ung, op. cit. n. 19, p. 18.


under Article 2 paragraphs 1 (wife of a Chinese), 4 (adopted son of a Chinese) or 5 (naturalization) of the Nationality Act from nationals of the Soviet Union or its satellite countries.\textsuperscript{65}

6.2 Loss of nationality

Since the 1929 Nationality Act adopted the principle of \textit{jus sanguinis}, no one will be denied Chinese nationality by virtue of being born abroad. A person's Chinese nationality may, however, be lost through a change in family relations. Article 10 of the 1929 Act provides:

'A Chinese national who falls within one of the cases specified in the following sub-paragaphs loses the nationality of the Republic of China:
(1) any person who is the wife of an alien and who has, upon her own application, obtained permission from the Ministry of the Interior to renounce her nationality;
(2) any person whose father is an alien and who has been legitimised by him;
(3) any person whose father is unknown or has not legitimised him (or her) but whose mother is an alien and has legitimised him (or her).

The provisions of sub-paragraphs (2) and (3) of the preceding paragraph shall apply only to persons who, according to the law of China, are still minors, or to a woman who is not the wife of a Chinese national.'

Adoption by an alien will not result in the loss of Chinese nationality, though the adopted person may renounce his (or her) Chinese nationality in accordance with Articles 11 to 13 of the 1929 Act.\textsuperscript{66}

Part Seven VOLUNTARY ACQUISITION OF NATIONALITY BY WAY OF NATURALIZATION OR RELATED METHODS

7.1 Naturalization requirements

According to Article 3 of the 1929 Nationality Act, an alien or stateless person can become naturalized with the permission of the Ministry of the Interior, if he (or she) has fulfilled the following conditions:

\begin{footnotesize}
\begin{itemize}
\item[\textsuperscript{65}] See supra, n. 47 and accompanying text. The decree is also reprinted in YEH CHIEN-CHAO, Ts'ai-hsin shih-yang chung-yang fa-hui hui-pien (Latest practical collection of laws and decrees of the Central Government), vol. 1 (Taipei: Yen-min Publishing Co., 1973) p. 377.
\item[\textsuperscript{66}] See infra, nn. 85 and 86 and accompanying text.
\end{itemize}
\end{footnotesize}
(1) He or she has been a domiciled in China for more than five years without interruption. In one case, where an alien had lived on a Chinese vessel for many years, the Judicial Yuan treated the Chinese steamship as his residence which might be deemed to be his domicile if he had no other. 67

(2) He or she is over twenty years of age and has legal capacity as defined by Chinese law and the law of his (or her) own country. In the case of a stateless person, his (or her) age and legal capacity shall be decided in accordance with Chinese law.

(3) He (or she) is of good character.

(4) He (or she) possesses sufficient property or skills and abilities to enable him (or her) to make an independent living.

The 1929 Act does not explicitly require the naturalized person to renounce his (or her) original nationality. However, according to a Judicial Yuan Interpretation, where the national law of an applicant does not provide for the automatic loss of nationality upon acquiring a foreign nationality, then the Ministry of the Interior should not approve the naturalization until the applicant is released from his/her original nationality under that applicant's national law. 68

The conditions for a naturalization provided in Article 3 are relaxed to a certain extent for an applicant who has either Chinese parents or a Chinese wife, or was born in China or has rendered distinguished service to China. Thus, an alien may be naturalized even if he/she has not been domiciled in China for five years without interruption, provided he/she fulfills one of the following conditions:

(1) His (or her) father was once a Chinese national or his wife was once a Chinese national or he (or she) was born in China. Under any one of these circumstances, if he (or she) has resided in China for more than three years without interruption and is still domiciled in China at the time of application, then he or she is eligible for naturalization.

(2) He (or she) was born in China and either his (or her) father or mother was also born in China; in this case there is no residence requirement for naturalization.

(3) He (or she) once resided in China for more than ten years and at the time of application is domiciled in China. 69

On application for naturalization by an alien who is domiciled in China and one of whose parents is Chinese, the requirements of

69. Art. 4 of the Nationality Act.
residence, age and ability to make an independent living are waived.\textsuperscript{70}

According to Article 6 of the Nationality Act, if an alien has rendered distinguished service to China, all naturalization requirements, laid down in Article 3 shall be waived. However, the grant of permission for naturalization by the Ministry of the Interior is subject to the approval of the National Government.

Under Article 8, a naturalized person's wife, and his children\textsuperscript{71} who have not attained majority under the law of their own country, also acquire the nationality of the Republic of China as a result of that person's naturalization, except where the law of his wife's or children's own country provides otherwise.

7.2 Naturalization procedure

The procedure for applying for naturalization is set out in the 1929 Rules for the Implementation of the Nationality Act.\textsuperscript{72} The procedure is summarized as follows:

(1) Submission of an application to become a national of the Republic of China.\textsuperscript{73} The form of the application is prescribed by the Ministry of the Interior. The applicant must provide the following information in the application form: name, sex, age, place of birth (giving both town and country), domicile/residence, duration of domicile/residence, occupation, property (personal and real), moral character, skill, family members of the applicant to be included in the naturalization (including age of each family member), and other relevant information.\textsuperscript{74}

(2) Submission of a declaration of intention to become a national of the Republic of China and to abide by all laws and decrees of the Republic of China.\textsuperscript{75}

(3) Submission of a document of guarantee signed by two persons at

\textsuperscript{70} Art. 5 of the Nationality Act.

\textsuperscript{71} The Chinese text only refers to 'son/s' [tsu], but this must be due to an oversight in drafting the Act. In an English translation provided by the Chinese delegation to the United Nations for publication in the United Nations Legislative Series on \textit{Laws concerning Nationality}, all occurrences of the Chinese word 'tsu' [literally 'son/s'] in Arts. 8, 9 and 16 were translated into 'children'. Ibid., pp. 95, 97. In 1978, three female children of a naturalized person acquired Chinese nationality in conjunction with that person's naturalization under Art. 8. See 1982 \textit{Statistical Abstract}, supra, n. 63, p. 61.

\textsuperscript{72} Supra, n. 44.

\textsuperscript{73} Art. 3 para. 1 of Rules. Ibid.


\textsuperscript{75} Ibid., p. 64.
the applicant's place of domicile/residence that he/she will abide by all laws and decrees of the Republic of China and that there is no fraud or concealment in the application.\textsuperscript{76}

(4) All three documents described above should be submitted to the local authority for transmission to the Ministry of the Interior. On satisfying itself that all documents submitted are in order, the Ministry approves the naturalization and issues a certificate to the applicant and publishes a notice in the Gazette of the National Government\textsuperscript{77} (after 1948: the Gazette of the Presidential Office).

(5) The Ministry of the Interior, after approving the naturalization application of the applicant, must instruct the applicant to publish notice of this in two newspapers.\textsuperscript{78}

Between June 1928 and June 1935, there were 4,902 aliens and their family members (1,832 applicants and 3,070 family members of applicants) naturalized in China. Of them, more than 4,000 were White Russians and more than 500 were Koreans (then under Japanese occupation). About 300 applicants emigrated from Great Britain, the United States, Japan, Germany, France, Italy, India, Switzerland, Denmark, Poland, and Afghanistan, while others were stateless persons.\textsuperscript{79}

In Taiwan, between 1972 and 1981, there were 79 aliens naturalized as nationals of the Republic of China.\textsuperscript{80}

7.3 Denaturalization

The 1929 Nationality Act contains no provision for denaturalization. However, the 1929 Rules for the Implementation of the Nationality Act provide for cancellation of naturalization in Article 8:

'If, after the grant of . . . the nationality of the Republic of China, it is found that [the grant of Chinese nationality] is inconsistent with the Nationality Act and the permission [for granting Chinese nationality] was approved by the Ministry of the Interior, the certification [granting Chinese nationality] shall be cancelled. If the case was filed with the Ministry of the Interior, the original record should be cancelled and this fact should be published in the Gazette of the National Government [after 1948: Gazette of the Presidential Office].'\textsuperscript{81}

\textsuperscript{76} Ibid., p. 65.
\textsuperscript{77} Art. 3 para. 2, of the Rules, in: TAO and WANG, supra, n. 44, pp. 846-847.
\textsuperscript{78} Art. 6 of the Rules, ibid., p. 846.
\textsuperscript{79} TUNG, op. cit. n. 19, pp. 18-19.
\textsuperscript{80} 1982 Statistical Abstract, supra, n. 63, p. 61. No information is available from 1935 to 1971.
\textsuperscript{81} TAO and WANG, supra, n. 44, p. 847.
Between June 1928 and June 1935, there were only two cases dealing with denaturalization. It is not clear whether any such cases have occurred in Taiwan since 1950.

Part Eight  LOSS OF NATIONALITY

The Nationality Act of 1929 provides in Article 10 three ways of losing Chinese nationality, i.e., by marriage, by legitimization and by voluntary renunciation (expatriation). Moreover, Article 8 of the Rules for the Implementation of the Nationality Act provides that the cancellation of naturalization or recovery of nationality certificates may also cause the loss of Chinese nationality if the grant of the certificate was inconsistent with the Nationality Act.

The 1929 Nationality Act does not recognize the automatic loss of Chinese nationality upon naturalization in a foreign country. Article 11 of the Act provides: 'A person who wishes, upon his (or her) own free will, to acquire the nationality of a foreign country may, with the permission of the Ministry of the Interior, renounce the nationality of the Republic of China provided that he (or she) has attained the age of twenty full years or more and has legal capacity under the law of China.' One problem in applying this article is whether the guardian of a minor can apply for permission to renounce Chinese nationality on his or her behalf. The Ministry of Justice (now Legal Affairs) has taken the position that the guardian cannot do so.

The permission to renounce Chinese nationality is routinely granted except in the following situations provided in Article 12 of the Nationality Act:

(1) Any person who, having attained the age for military service, is not exempt from such service and has not yet performed it.

(2) Any person who is performing military service.

82. T'ung, op. cit. n. 19, p. 19.
83. See supra, sub-Part 6.2.
84. Tao and Wang, supra, n. 44, p. 847. This principle of not recognizing the automatic loss of Chinese nationality was recently confirmed in Public Prosecutor v. Liu Ch'in-fu and Su Mei-ch'un, Kaohsiung District Court of Taiwan, Criminal Judgment [1987] Shu No. 387 (14 May 1987). Liu Ch'in-fu, who became naturalized in Indonesia where a (Moslem) man is allowed to have four wives and entered Taiwan on an Indonesian passport, was prosecuted for bigamy for his second marriage with Su Mei-Ch'un while still maintaining his first marriage with Chen Ch'u-t'ang. The court held that since Liu had not renounced his Chinese nationality, he was still a Chinese national and therefore still subject to the Chinese law punishing bigamy.
(3) Any person who holds a Chinese civil or military office.

Moreover, in order to prevent a person from escaping justice by seeking naturalization abroad, a Chinese will not lose his or her nationality under the following situations, as provided in Article 13 of the Act:
(1) Any person who is a suspect or the accused in a criminal case.
(2) Any person who has been sentenced for a criminal offence, and whose sentence has not been completely executed.
(3) Any person who is a defendant in a civil case.
(4) Any person against whom compulsory enforcement measures have been ordered but not completely carried out.
(5) Any person who has been declared bankrupt and has not been discharged.
(6) Any person who has delayed in the payment of duties or taxes, or who has suffered a penalty because of delay in the payment of duties or taxes, such penalty not having been completely executed.

A Chinese who has lost his or her Chinese nationality may recover his or her Chinese nationality by fulfilling certain conditions provided in the 1929 Nationality Act. These situations are analyzed below:
(1) A Chinese woman who married an alien and renounced her Chinese nationality in accordance with Article 10 paragraph 1 subparagraph 1, of the Nationality Act, ‘may, after the annulment of her matrimonial relationship, recover the nationality of the Republic of China with the permission of the Ministry of the Interior’ (Art. 15).

(2) A Chinese who has lost his or her Chinese nationality in accordance with Article 11 of the Act, can recover his or her Chinese nationality by permission of the Ministry of the Interior on application provided that he or she is domiciled in China, is aged above twenty and has legal capacity according to Chinese law, is of good moral character and possesses substantial property or sufficient skills to support himself or herself (Art. 16).

It should be noted that a naturalized Chinese who later renounces his or her Chinese nationality, or his wife and children who have acquired

86. See also supra, n. 39 and accompanying text.
87. It is reported that the Ministry of the Interior is considering the two following major revisions to Articles 15 and 16 of the Nationality Act: (1) The requirement for the dissolution of a woman’s matrimonial relationship as a precondition for recovering Chinese nationality under Article 15 is to be removed; (2) The domicile requirement for a Chinese who has lost his/her Chinese nationality in accordance with Article 11, to be able to recover his/her Chinese nationality is to be removed. See Shih-chieh jih-pao [World Journal], 16 April 1985, p. 2.
Chinese nationality because of his naturalization and who have subsequently lost it, cannot recover Chinese nationality under Articles 15 and 16.88 Moreover, because of hostile relations between the Republic of China and the Soviet bloc countries after the Chinese Communists gained control over the mainland, the Executive Yuan issued a decree on 1 November 1950, suspending the acceptance of applications to recover Chinese nationality in accordance with Articles 15 and 16 of the Nationality Act from nationals of the Soviet Union or its satellite countries.89

Between June 1928 and April 1935, the Ministry of the Interior granted permission to 157 Chinese nationals to renounce their Chinese nationality upon naturalization abroad.90 Most of them acquired Japanese nationality. The remaining ones acquired Portuguese, Mexican, British, and other nationalities.91 In Taiwan, between 1972 and 1981, in accordance with Article 10 paragraph 1 of the Nationality Act, the Ministry of the Interior granted permission to 2,317 Chinese women to renounce their Chinese nationality by reason of marriage to aliens.92 In accordance with Article 11 of the Nationality Act, the Ministry of the Interior granted permission to 17,325 Chinese (9,668 male and 7,657 female) to renounce their Chinese nationality by reason of naturalization abroad.93

Under modern Chinese law, certain rights can only be enjoyed by Chinese nationals, including dual nationals.94 This raises the question of what rights a Chinese enjoys after losing his or her Chinese nationality. Article 14 of the Nationality Act provides that persons who have lost their Chinese nationality must surrender those rights that only Chinese nationals can enjoy. Moreover, any such rights enjoyed by those persons before the loss of Chinese nationality must be transferred to a Chinese national (or nationals) within one year after the loss of Chinese

88. See Arts. 8, 16 and 17. See also Tung, op. cit. n. 17, p. 94.
89. See supra, n. 48.
90. Tung, op. cit. n. 19, p. 20.
91. Ibid.
93. Ibid. There were also 1,500 children (767 male and 733 female) who lost their Chinese nationality because of their parents' naturalization abroad. No separate permission to give up Chinese nationality is required for children who are dependents of the one seeking to renounce Chinese nationality. Permission to renounce Chinese nationality granted to parents will cover their children. Cf. Ta-li Yuan [Supreme Court's name before 1927] 15 [1926] Tung No. 1991 Interpretation. Complete compilation, supra n. 60, p. 26. It is reported that the Ministry of the Interior is considering adding a provision to this effect in its proposal to revise the Nationality Act. Shih-chieh jih-pao [World Journal], 16 April 1985, p. 2.
94. See infra, Part 9, at pp. 51-52.
nationality. Otherwise, such rights shall become the property of the national treasury.\textsuperscript{95} Furthermore, a Chinese official who loses Chinese nationality shall be removed from office by his or her superior.\textsuperscript{96}

Part Nine STATUTORY RIGHTS OF NATIONALS

Many countries impose restrictions on the civil and political rights of a naturalized person. The Republic of China also follows this practice. Article 9 of the 1929 Nationality Act provides:

'A person who has acquired the nationality of the Republic of China in accordance with the provisions of Article 2 and a naturalized person's wife and children who have acquired the nationality of the Republic of China in conjunction with that person's naturalization shall not hold public offices as enumerated in the following subparagraphs:
(1) Counsellor of the National Government, President of [one of the] Yuan, Minister of a Ministry, and President of a Commission;
(2) member of the Legislative Yuan and member of the Control Yuan;
(3) Ambassador and Minister Plenipotentiary;
(4) general officer in the Navy, Army or Air forces;
(5) counsellor of a provincial or district government;
(6) mayor of a Special Municipality;
(7) functionary of a self-governing community of any class.

The restrictions specified in the preceding paragraph may be removed by the National Government at the request of the Ministry of the Interior, with respect to a person naturalized in accordance with the provisions of Article 6,\textsuperscript{97} after five full years from the date of his (or her) acquisition of nationality, and with respect to other persons after ten full years from the date of their acquisition of nationality.\textsuperscript{98}

To implement the above provisions, the Ministry of the Interior promulgated the Regulations Governing the Review and Approval of the Removal of the Disqualifications Applied to Naturalized Persons on 24

\textsuperscript{95} It is reported that the Ministry of the Interior is considering extending the period from one year to five years and excluding the application of this article to natural-born Chinese in its proposal to revise the Nationality Act. Shih-chieh jih pao [World Journal], 16 April 1985, p. 2.
\textsuperscript{96} Art. 10 of the Rules for the Implementation of the Nationality Act. TAO and WANG, supra, n. 44, p. 847.
\textsuperscript{97} See supra, sub-Part 7.1.
\textsuperscript{98} Law Concerning Nationality, pp. 95-96. The Act is more liberal than the 1909 and 1912 nationality laws, which required a ten-year restriction (Art. 8) for a naturalized person under the first condition (an alien naturalized for rendering exceptional service to China) and twenty years under the second (ordinary naturalization case) (Art. 11).
February 1930. According to Article 2 of the Regulations, a naturalized person must satisfy the following conditions in order to remove the disqualification provided in Article 9 of the Nationality Act:

(1) be domiciled in China after naturalization and still resident in China;
(2) be aged above twenty and have legal capacity according to Chinese law;
(3) be of good moral character;
(4) have the ability to speak and write Chinese;
(5) show no evidence of disloyal remarks and behavior towards [the Republic of China]; and
(6) have substantial property or possess sufficient skills to support him/herself.

If the Ministry of the Interior is satisfied with the application to remove disqualifications, it should request the National Government, through the Executive Yuan, to remove the disqualifications of the naturalized person. The name of a naturalized person who has been released from disqualification should be published in the Gazette of the National Government (after 1948: the Gazette of the Presidential Office).

According to Article 18 of the Nationality Act, a person who recovers his or her Chinese nationality is subject to the same disqualifications as a naturalized Chinese (i.e., those contained in Art. 9 para. 1 of the Act) for three years from the date of the recovery of his or her Chinese nationality. Under the previous nationality laws, such disqualifications could be removed only by permission of the proper authorities. There is no such provision in the 1929 Nationality Act and presumably such disqualification will automatically lapse at the end of the three-year period.

Once the disqualifications provided in the Nationality Act have been lifted, the Chinese legal system treats a naturalized Chinese as possessing the same legal status as a natural-born Chinese. The law does not

99. See supra, n. 47.
100. Cf., Arts. 13 to 15 of the Chinese Civil Code, in TAO and WANG, supra, n. 44, p. 97.
101. The Regulations were promulgated during the period of 'political tutelage' (1931-1947), so the regulation referred to 'Tang-kuo' (Party and State). However, as the Republic of China entered into a constitutional period after 1947, so the term Tang-kuo should be construed to mean the 'Republic of China'.
103. Art. 7 of the Regulations, ibid., pp. 1035-1036, and Art. 9 para. 2, of the Nationality Act.
105. Art. 23 of the 1909 Nationality Law, Art. 20 of the 1912 Nationality Law and Art. 20 of the 1914 Nationality Law.
differentiate between natural-born citizens and naturalized citizens. For instance, a naturalized male national is subject to military service, as is a natural-born national under Article 20 of the Constitution^{105} and Article 1 of the 1933 Military Service Act, as amended in 1974.^{107} For overseas Chinese, if they come to Taiwan for study, business, or other legitimate reasons, their duty to perform military service may be deferred for one year or longer under the Measures Governing Military Service for Returning Overseas Chinese During the Period of Suppressing the Rebellion, promulgated in 1956 and amended in 1971.^{108,109}

Under Article 4 of the 1954 Extradition Act, as amended in 1980, a request to extradite a Chinese national to a foreign country should be refused, unless his or her Chinese nationality was acquired after the request for extradition was made.^{110} Therefore, only aliens in the Republic of China may be extradited in accordance with the Act.

Generally speaking aliens are not permitted to own land and other immovable and industrial property unless reciprocal treatment and other requirements are met. For instance, Article 18 of the Land Law (Promulgated on 30 June 1930, entered into force on 1 March 1936, and amended on 29 April 1946) provides:

'The only foreign nationals who may acquire or create rights over land in the Republic of China are those who are nationals of countries which have concluded a treaty of equality and reciprocity with the Republic of China, and which, according to their municipal laws, permit Chinese nationals to enjoy the same rights in their respective countries'.^{111}

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105. Art. 20 provides: 'The people shall have the duty to perform military service in accordance with law.' Republic of China, A Reference Book, supra, n. 6, p. 425.

107. Art. 1 provides: 'A male person of the Republic of China has the duty to perform military service in accordance with law.' TAO and WANG, supra, n. 44, p. 1038.


109. A foreign national in the Republic of China is not subject to military service. However, under Art. 3 para. 2 of the 1937 Air Raid Defence Act, as amended in 1948, a foreign national or stateless person domiciled, resident or possessing property in the Republic of China is obliged to participate in air raid defence activities. YEH, supra, n. 65, vol. 2, p. 1965.

110. TAO and WANG, supra, n. 44, p. 816.

111. MEI CHUNG-HSIH and LO YUAN-HSIANG, eds., Liu-fa chieh-shih p'an-li hui-pien [Collection of interpretations and precedents of six laws], vol. 2 (Shanghai: Ch'ang-min Book House, 1947) p. 2B-5. Art. 18 was again amended on 24 July 1975. The new provision reads: 'The acquisition or creation of rights over land in the Republic of China by foreign nationals is limited to nationals of those foreign countries which permit a national of the Republic of China to enjoy the same rights there in accordance with a treaty or municipal law.' TAO and WANG, supra, n. 44, p. 1092.
Certain industries, such as mining, can be owned only by Chinese.112 There are also other restrictions on aliens' rights or activities in the Republic of China.113 Finally, nationality plays a role in determining the applicable law in conflict of law cases.114

Part Ten NATIONALITY AND STATE OR GOVERNMENT SUCCESSION

On 3 August 1894, Japan declared war on China. China was defeated by Japan and on 17 April 1895 the Peace Treaty of Shimonoseki was signed.115 According to Article 2 of the Treaty, Taiwan and the Pescadores (Islands) were ceded to Japan. The Chinese in the ceded territory were given the right to leave under Article 5 of the Treaty which provided as follows:

The inhabitants of the territories ceded to Japan who wish to take up their residence outside the ceded districts shall be at liberty to sell their real property and retire. For this purpose a period of two years from the date of the exchange of the instruments of ratification of the present Act shall be granted. At the expiration of that period those of the inhabitants who shall not have left such territories shall, at the option of Japan, be deemed to be Japanese subjects.116

On 9 December 1941, the Republic of China declared war on Japan and also declared all treaties, conventions, agreements, and contracts regarding relations between China and Japan null and void.117 This cancellation of all Sino-Japanese treaties was later confirmed in Article 4 of the Treaty of Peace between the Republic of China and Japan, signed on 28 April 1952.118 On 26 November 1943, the Cairo Declaration issued

114. See infra, Part 11, pp. 56-58.
116. Ibid., p. 363. Arts. 2 and 5 are also reproduced in HUNGDAH CHIU, China and the Taiwan Issue (New York: Praeger, 1979) p. 214.
by the United States, the Republic of China, and the United Kingdom stated that 'all the territories Japan has stolen from the Chinese such as Manchuria, Formosa, and the Pescadores, shall be restored to the Republic of China'. 119 This Declaration was incorporated in the Potsdam Proclamation issued on 26 July 1945, which set the conditions for Japan's surrender. 120 Japan accepted this Proclamation in its Instrument of Surrender signed on 2 September 1945. 121 On 25 October 1945 the Republic of China took over Taiwan and the Pescadores from Japan.

On 12 January 1946, the Chinese National Government issued a decree on the resumption of Chinese nationality by the Taiwanese people, as follows:

'The people of Taiwan are people of our country. They lost their nationality because the island was invaded by an enemy. Now that the land has been recovered, the people who originally had the nationality of our country shall, effective on 25 December 1945, resume the nationality of our country. This is announced by this general decree in addition to individual orders.' 122

Since the Chinese in Taiwan had lost their Chinese nationality because of the Japanese occupation, the situation was different from the recovery of Chinese nationality after voluntary renunciation as provided in Article 18 of the Nationality Act. 123 Therefore, the disqualifications prescribed in that Article were not applicable to Taiwanese. 124 In other words, after recovering their Chinese nationality their civil and political rights were the same as other Chinese on the mainland.

119. The declaration was released on 1 December 1943. Text in Department of State Bulletin, vol. 9, No. 232 (4 December 1943) p. 393, and reprinted in Chu, op. cit. n. 117, p. 204.
120. Chu, ibid., pp. 208-209.
121. Ibid., pp. 209-210. Art. 10 of the Sino-Japanese Peace Treaty, 28 April 1952, confirmed the restoration of Chinese nationality for Taiwanese by stating that 'nationals of the Republic of China shall be deemed to include all the inhabitants and former inhabitants of Taiwan (Formosa) and Penghu (the Pescadores) and their descendants who are of Chinese nationality in accordance with the laws and regulations which have been or may hereafter be enforced by the Republic of China in Taiwan (Formosa) and Penghu (the Pescadores) . . .'
122. Chu, op. cit. n. 117, p. 213.
123. See supra, n. 105, and accompanying text. See Chu, op. cit. n. 117, p. 246. Some Japanese scholars argued that Taiwanese would lose their Japanese nationality only after the entry into force of the Peace Treaty. See Yoshio Tameike, 'Nationality of Formosans and Koreans', 2 JAIL (1958), pp. 55-65. This view is contrary to the fact that between 1945 and 1952 Taiwanese were in fact under Chinese jurisdiction in every respect.
On 22 June 1946, the Republic of China issued a decree on Measures Concerning the Nationality of Overseas Taiwanese.\textsuperscript{125} The essence of the Measures is as follows:

(1) An overseas Taiwanese may register with a Chinese embassy or consulates (or representative) to recover his or her Chinese nationality. In making registration, he or she shall present two overseas Chinese to prove that he is truly a native of Taiwan. The embassy, consulate or representative concerned shall issue a certificate of registration to the registering overseas Taiwanese. This certificate shall have the effect of a certificate of nationality (Arts. 2 and 3).

(2) An overseas Taiwanese who is unwilling to recover his or her Chinese nationality may submit an announcement of the decision to the Chinese embassy, consulate or representative in the country where he or she resides by 31 December 1946 (Arts. 3 and 4).

(3) The legal status and treatment of an overseas Taiwanese who has recovered Chinese nationality shall be exactly the same as that of an overseas Chinese (Art. 5).

A different problem in the handling of nationality problems after the restoration of Taiwan to the Republic of China are nationality issues arising from mixed marriages or cohabitation between Taiwanese and Japanese. On 28 February 1948, the Executive Yuan issued a Decree on Measures Dealing with the Nationality of Japanese and Taiwanese Chui Husbands\textsuperscript{126} and Children,\textsuperscript{127} which prescribed the following rules to deal with the situation:

(1) If a Japanese had become a Chui husband of a Taiwanese woman, he should apply for Chinese nationality by analogous application of Article 2 paragraph 1 (wife of a Chinese) of the Nationality Act. His children would be considered Chinese according to Article 1 paragraph 1 of the Act (born of a Chinese father). However, if he did not want to become Chinese he should be repatriated to Japan immediately and his children would follow the nationality of the mother (Art. 1).

(2) If a Japanese woman had become the concubine of a Taiwanese man or if they had lived together for a long time and intended to do so permanently, and if the Taiwanese man was either a widower or bachelor, then they should get married and the Japanese woman should apply for Chinese nationality in accordance with Article 2 paragraph 1 of the Nationality Act (wife of a Chinese). Their children should apply for

\textsuperscript{125} CHIU, op. cit. n. 117, pp. 213-214.

\textsuperscript{126} A Chui husband is a male who takes the place of a son, lives in his wife's home and assumes the last name of the wife. The children will also assume the last name of the wife.

\textsuperscript{127} YEH, supra, n. 65, vol. 1, p. 377. The Measures were abrogated on 29 April 1981.
Chinese nationality in accordance with Article 2 paragraph 2 (legitimization of children by a Chinese father) of the same Act (Art. 2).

(3) If a Taiwanese man had become a Chui husband of a Japanese woman and wished to acquire Japanese nationality, he should be repatriated to Japan. There would be no need for him to apply to give up his Chinese nationality in accordance with Article 10 of the Nationality Act. However, if the Taiwanese man did not want to acquire Japanese nationality and the Japanese woman wished to acquire Chinese nationality, both could be exempted from repatriation to Japan. The Japanese woman could only have applied for naturalization after the conclusion of Sino-Japanese Peace Treaty.\(^{128}\) Their children would follow the nationality of the mother (Art. 3).

(4) If a Taiwanese woman had become the concubine of a Japanese man or if they had lived together for many years, she could still retain her Chinese nationality. However, if she wished to acquire Japanese nationality, then she should be repatriated to Japan. There would be no need for her to apply for loss of Chinese nationality in accordance with Article 10 of the Nationality Act (Art. 4).

(5) In the case of dissolution of a mixed Taiwanese-Japanese marriage by divorce, the nationality of the children of such a marriage who were under seven years of age depended on the nationality of the guardian (Art. 5).

Between 1931 and 1945 Japan also occupied a large part of Chinese territory and even set up the puppet state of 'Manchukuo' in north-eastern China and a puppet government in Nanking. Since the Chinese Government never recognized the legality of this occupation all those Chinese in the occupied territories, including 'Manchukuo', still retained their Chinese nationality. The only problem was that the puppet government in Nanking still applied the 1929 Nationality Act in the area under its administration and had granted naturalization to a number of Japanese and Koreans (then under Japanese jurisdiction). In October 1946, the Ministry of the Interior issued decrees\(^{129}\) to deal with the situation as follows:

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128. If the Japanese woman did not file a naturalization application after the entry into force of the Sino-Japanese Peace Treaty on 5 August 1952, she would still be considered as having Japanese nationality even if she stayed illegally in Taiwan and registered as a Chinese in the household records in order to avoid repatriation to Japan. See Administrative Court Judgment 53 [1964] Pan No. 245 Decision (5 December 1964), Chung-hua Min-kuo tsai-p'a lei-pien [Classified compilation of the judicial decisions of the Republic of China], Hsin-cheng fu [Administrative law], vol. 9 (Taipei: Taiwan Book Co., 1976) pp. 776-779. The Court held that naturalization must be a voluntary act on the part of an alien and cannot be imposed on an alien.

129. Liu, op. cit. n. 74, p. 43.
(1) Naturalizations of Japanese or Koreans which had taken place in the Japanese-occupied territories would be deemed void unless approved by the Ministry of the Interior.

(2) A Japanese or Korean woman who had become the wife of a Chinese should apply for Chinese nationality in accordance with the Chinese Nationality Act.

(3) The naturalization provisions in the Nationality Act were temporarily suspended for Japanese.\(^{130}\)

(4) A Korean not suspected of war crimes or engaging in other illegal activities could still apply for naturalization in accordance with the Nationality Act.

Part Eleven

STATE PRACTICE WITH REGARD TO THE NATIONALITY OF OTHER STATES

11.1 Chinese conflict of law rules and the nationality issue

Where a conflict of laws arises, in many situations, such as domestic relations, the court or administrative agency applies the law of the party’s own country. If the party concerned has several nationalities, the question arises which country’s law should be considered as the party’s own. Article 5 of the 1930 Convention on the Conflict of Nationality Laws provides:

‘Within a third state, a person having more than one nationality shall be treated as if they had only one. Without prejudice to the application of its law in matters of personal status and of any conventions in force, a third state shall, of the nationalities which any such person possesses, 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’.\(^{131}\)

The Republic of China is a party to this Convention,\(^{132}\) so this article should govern the question of deciding the law applicable to a person with several nationalities. Article 26 of the 1953 Law Governing the


\(^{131}\) 179 LNTS p. 101.

\(^{132}\) See supra, n. 50.
Application of Laws to Civil Matters Involving Foreign Elements generally follows the principle contained in Article 5 of the Convention. According to Article 26, if the party concerned is a national of the Republic of China in accordance with the nationality law of the Republic of China, then Chinese law shall apply. If he or she has several (other) nationalities, then the one most recently acquired shall be considered as his or her nationality. This is because in recent years many scholars have favored respecting the free choice of an individual to decide his or her nationality. Thus, the Chinese legislature adopted this principle in Article 26. If the party's several nationalities were acquired simultaneously, then the law of the country with which that party has the closest relationship shall apply.

In the case of a stateless person, Article 27 of the 1953 Law provides that the lex domicilii shall apply. When his or her domicile is unknown, then the law of the place of his or her residence shall apply. If he or she has several domiciles and one of them is in the Republic of China, then Chinese law shall apply. Otherwise, the law of the place of his or her domicile with which he or she has the closest relationship shall apply. The above rule will apply mutatis mutandis to the case of a stateless person having several residences, but no domicile. If his or her residence is unknown, then the law of the place where he or she resides shall apply.

One problem closely connected with the law applicable to a stateless person is the law applicable to a person from an unrecognized State. Should such a person be considered stateless? Between 1921 and 1924, when the Republic of China terminated its recognition of the defunct Russian Empire and refrained from recognizing the Soviet State, Chinese courts were confronted with this problem. According to Interpretation 10 [1921] T'ung No. 1589 rendered by the Ta-li Yuan (the name of the Supreme Court at that time):

"[S]ince the old State of Russia was no longer in existence and the new State has not yet been recognized by our country, the laws enacted [by the latter] can thus hardly be considered as having the validity of law [in our country]. Any litigation relating to Russians, except those domiciled or resident in China or other countries [outside Russia], should be dealt with in accordance with Article 26."

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134. Cf., Art. 1 of the 1930 Hague Convention, which provides: 'It is for each State to determine under its own law who are its nationals . . . .'
136. See supra, n. 133, p. 568.
2 paragraph 2 of the [1918] Act Governing the Application of Laws\textsuperscript{137} [i.e., the provisions referable to a stateless person]. Those courts which originally would have applied Russian laws according to the Act Governing the Application of Laws should take into account the old [Russian] and new [Soviet] laws and decrees of the relevant [Russian] jurisdictions and include them as legal reasoning.\textsuperscript{138}

In interpretation 13 [1924] Shang No. 1522, the Ta-li Yuan further stated that, except for matters of personal status and domestic relations, where both the old and new Russian laws and decrees can be taken into account as legal reasoning in deciding cases, other matters concerning Russians should be dealt with as if they were stateless persons in accordance with Article 2 paragraph 2, of the Act Governing the Application of Laws.\textsuperscript{139}

11.2 Nationality disputes with other countries

On 22 April 1955, the People's Republic of China (PRC) and Indonesia concluded a dual nationality treaty\textsuperscript{140} which obliged the Chinese dual nationals to choose between Chinese (PRC) nationality and Indonesian nationality by repudiating either of the two nationalities, in total disregard of the fact that many of these people carried ROC passports and professed to ROC Chinese nationality. Under the treaty those Chinese who refused to choose were deemed to have repudiated Indonesian nationality. Those who had not expressly chosen Indonesian nationality and yet were reluctant to adhere to PRC jurisdiction, were treated by Indonesia as (de facto) stateless persons. The Republic of China strongly protested this action on the part of the Indonesian

\textsuperscript{137} For the text of this Act, which was later substituted by the aforementioned Act of 1953, see Mei and Lo, op. cit. n. 111, vol. 1, pp. 1-89 to 1-93. Art. 2 para. 2 of the Act provided: 'When the party concerned is stateless, the law of the domicile shall apply. If the person's domicile is unknown, the law of the residence shall apply.'

\textsuperscript{138} Mei and Lo, op. cit. n. 111, p. 1-89. According to Ta-li Yuan 2 [1913] Shang No. 64 Decision, 'a civil case should be decided according to law. If there is no explicit provision of law applicable, the case shall be decided according to custom. If there is no applicable custom, the case shall be decided according to legal reasoning.' Mei and Lo, op. cit. n. 111, vol. 2, p. 2-2.

\textsuperscript{139} Mei and Lo, op. cit. n. 111, vol. 1, pp. 1-90.

Government and in 1958 sent ships to evacuate more than 5,000 overseas Chinese to Taiwan.\footnote{141}

On 7 December 1955, the Republic of Vietnam promulgated a nationality law prescribing that the following persons were deemed to have Vietnamese nationality:

1. *Minh-Huong* persons (descendants of Chinese immigrants to Vietnam since the 17th century with a Chinese father and Vietnamese mother), regardless of whether they had alien status or whether they were resident in Vietnam (Art. 11 para. 4);
2. Any person with a Vietnamese mother and Chinese father (Art. 12 para. 3);
3. Illegitimate children of a Chinese father and Vietnamese mother (Art. 13 para. 4);
4. descendants of *Minh-Huong* persons born after the promulgation of the Nationality Law (Art. 15);
5. Any person born in Vietnam of Chinese parents one of whom was born in Vietnam (Art. 16).\footnote{142}

On 21 August 1956, Article 16 was amended to include any person born in Vietnam of Chinese parents, regardless of whether one of the parents was born in Vietnam.\footnote{143} The 1955 Law and its 1956 Amendments in fact operated to impose Vietnamese nationality on Chinese residents there. Therefore, the Republic of China intervened diplomatically on behalf of those Chinese. On 27 September 1956, the Chinese chargé d'affaires in Vietnam presented a three-point proposal for the settlement of the dispute to the Vietnamese Government, involving: (1) the principle of a free choice of nationality by Chinese in Vietnam; (2) the non-retroactive application of the new Vietnamese nationality law; (3) non-discrimination after naturalization against those Chinese who decided to choose Vietnamese nationality.\footnote{144}

The Vietnamese Government, however, considered the enactment of


\footnote{144} Hsiang Sheh-Chia, 'The Story of Sino-Vietnamese Negotiations on the Question of the Nationality of Overseas Chinese', Chin-pien jih-pao [Phnom Penh Daily News], 19 March 1957. Art. 72 of the Nationality Law prohibits a naturalized national from exercising voting rights for three years, and they cannot serve as public officials within five years.
the new nationality law and its application to residents in Vietnam as its internal affairs. Thus, it did not respond positively to the Chinese request.\textsuperscript{145} Later, Vietnam allowed the Chinese Government to evacuate more than five hundred Chinese who decided not to choose Vietnamese nationality, for settlement in Taiwan.\textsuperscript{146}

Throughout these two episodes, the position taken by the Republic of China was to insist on the principle of free choice with respect to the nationality of overseas Chinese. In 1963 Mr. KAO HSIN, then Chairman of the Republic of China's Overseas Chinese Affairs Commission, explained the policy of the Chinese Government in this respect as follows:

"The Government has never encouraged the overseas Chinese to become the nationals of foreign countries. However, if the overseas Chinese, in order to adapt themselves to the circumstances, voluntarily acquire the nationality of the countries they reside in, the Government will let them have their free choice, and has never interfered with their option."\textsuperscript{147}

Part Twelve  DUAL NATIONALITY PROBLEMS

As discussed earlier, Chinese nationality law adopted the principle of \textit{jus sanguinis} as the primary criterion in determining a person's nationality.\textsuperscript{148} It also adhered to the principle that a positive act is required to renounce one's Chinese nationality.\textsuperscript{149} Under such circumstances, it is only natural that many overseas Chinese may have dual nationality. The status of a dual national Chinese in the Republic of China is the same as that of a Chinese with single Chinese nationality. The only restriction is that he or she cannot hold public office as this is prohibited by Article 10 of the Rules for the Implementation of the Nationality Act.\textsuperscript{150} However, he or she can still hold an elected post.\textsuperscript{151}

\textsuperscript{145} Yu-chou jih pao [Asia Daily News], 17 October 1956.
\textsuperscript{146} See supra, n. 46.
\textsuperscript{147} Cited from COHEN and CHIU, op. cit. n. 140, vol. 1, p. 774 citing TAO-TAI HSIA, 'Settlement of dual Nationality between Communist China and Other Countries,' 11 Osvespol Rechu (1965) p. 38.
\textsuperscript{148} See supra, sub-Part 6.1.
\textsuperscript{149} See Art. 11 of the 1929 Nationality Act.
\textsuperscript{150} See supra, n. 96 and accompanying text.
\textsuperscript{151} See Tung Shang-ho v. Chi Cheng, Civil Judgment of the Taiwan High Court, [1980] Hsian No. 4 (26 January 1981), and Jen Ping v. Chi Cheng, Civil Judgment of the Taiwan High Court, [1980] Hsian No. 10 (26 January 1981). In both cases, the Taiwan High Court held that Art. 10 of the Rules for the Implementation of the Nationality Act, supra, n. 96 and accompanying text, does not deprive a dual national Chinese citizen of the right to hold
Moreover, overseas Chinese with dual nationality can be periodically selected to serve in the Legislative Yuan and the Control Yuan since 1972. This point deserves clarification.

After its removal to Taiwan, the election to representative bodies at national level — the National Assembly, the Legislative Yuan and the Control Yuan — was suspended on the grounds of national emergency. In 1972, the National Assembly adopted the following 'Temporary Provision' attached to the Constitution:

'During the period of national mobilization for the suppression of the Communist rebellion, the President may, in accordance with the following stipulations, initiate and promulgate for implementation regulations providing for elections to strengthen elective offices at the Central Government level without being subject to the restrictions prescribed in Article 26, Article 64 or Article 91 of the Constitution.'

(1) In free areas, additional members or representatives may be elected to all elective offices at the Central Government level by elections to be held at an established time. The President may initiate regulations for the selection of members of the Legislative Yuan and the Control Yuan who were to have been elected from among Chinese nationals residing overseas but whose election could not be carried out because of the current situation...

In accordance with the above authorization, in the same year the President enacted the 'Statute for Election of Additional National Level Elective Officials in the Free Areas During the Period of Mobilization for Suppressing the Communist Rebellion.' Under this Statute, fifteen seats were allocated to the Legislative Yuan and five to the Control Yuan for overseas Chinese to be selected by a Committee appointed by the President. On 11 June 1980, the Statute was amended and the overseas Chinese seats were expanded to twenty-seven for the Legislative Yuan and ten for the Control Yuan. Any overseas Chinese who has not renounced his or her Chinese nationality, even though he or she may

an elected post. Therefore, Chi Cheng, a Chinese who married an American and also acquired American nationality but did not renounce her Chinese nationality, was eligible to be elected to the Legislative Yuan.

152. These articles prescribe the number of seats to be allocated to each province and Overseas Chinese.
also have a foreign nationality, is eligible to be selected to serve in the Legislative or Control Yuan.155

The only international convention concerning dual nationality to which the Republic of China is a party is the 1930 Hague Convention on the Conflict of Nationality Laws,156 which was discussed earlier. However, one should note that certain provisions in other treaties to which the Republic of China is a party also have some impact on the status of Chinese dual nationals. For instance, Article 38 paragraph 1, of the 1961 Vienna Convention on Diplomatic Relations157 provides that 'a diplomatic agent who is a national of or permanent resident in that State shall enjoy only immunity from jurisdiction, and inviolability, in respect of official acts performed in the exercise of his functions.' Therefore, a Chinese dual national who served in a foreign diplomatic service accredited to the Republic of China can only enjoy privileges and immunities in connection with the performance of official duties.158 Similarly, the 1980 Agreement on Privileges, Exemptions and Immunities between the American Institute in Taiwan and the Coordination Council for North American Affairs,159 in Article 5 paragraph (g), excludes taxation exempt status for 'persons who are nationals or permanent

155. Cf., supra, n. 151. Under the U.S. Immigration and Nationality Act of 1952, as amended in 1965, 66 Stat. 166, as amended, 8 USCA §1101 et seq., a US national 'shall lose his nationality by ... accepting, serving in, or performing the duties of any office, post, or employment under the government of a foreign state or a political subdivision thereof, for which office, post, or employment an oath, affirmation, or declaration of allegiance is required ... ' (Sec. 349 [§1481]). However, the US Supreme Court in Vance v. Terrazas, 444 US 252 (3 March 1980) held that the US Government must prove a person's intent to surrender US citizenship and not just the voluntary commission of an expatriating act provided in the Immigration and Nationality Act. This view makes it almost impossible for a US national to lose nationality except by his or her own voluntary renunciation. In view of this, those Chinese having US nationality will not lose their US nationality by serving in the Legislative or Control Yuans of the Republic of China. However, the US State Department's Board of Appellate Review decided on 1 May 1986, that Rabbi Martin Meir David Kahane's election to the Israeli Knesset (national legislature) and taking a seat there is 'persuasive evidence of an intent to relinquish United States citizenship', and 'the declaration of allegiance he made to Israel also provides substantial evidence of an intent to abandon citizenship.' Department of State, Board of Appellate Review, In the matter of: Martin Meir David Kahane, 1 May 1986, p. 14. This decision was overturned in the case of Kahane v. Schultz (US District Court, Eastern District, New York, 21 February 1987), 653 F. Supp. 1486 (EDNY 1987). Appeal filed by the State Department is now pending.

156. See supra, n. 50.

157. 500 UNTS p. 95 et seq. The Republic of China deposited its instrument of ratification on 19 December 1969. See Multilateral Treaties ... , supra, n. 54, p. 69 n. 1.

158. Cf., the 1930 Hague Convention on the Conflict of Nationality Laws which provides in Art. 3 that 'a person having two or more nationalities may be regarded as its national by each of the states whose nationality he possesses.' 170 LNTS p. 101.

159. 1 Chinese Yearbook of International Law and Affairs (1981) p. 239.
residents of the jurisdiction in which the receiving counterpart organization is located . . . ' Therefore, a Chinese dual national serving in the American Institute in Taiwan is not entitled to taxation exempt status under the Agreement.

CONCLUSIONS

While the Imperial Chinese Government adopted a policy of isolation, prohibiting Chinese to emigrate abroad, and banning foreigners from settling in China, there was no need to enact a nationality law. This situation changed in the mid-nineteenth century when China was compelled to open its doors. China legalized emigration abroad and also allowed foreigners to reside in certain parts of China. This prompted the Chinese Government to enact a nationality law early this century.

The Chinese nationality law adopts the principle of *jus sanguinis* as the basic criterion for determining Chinese nationality. This policy is understandable as the Chinese have always been proud of their culture and history and are an ethnically coherent group. Only in order to avoid statelessness is the principle of *jus soli* applicable.

With respect to the naturalization problem, the basic principle adhered to by China is the free choice of the party concerned. Under the 1929 Nationality Act of China, nationality cannot be imposed on an alien without his or her free will. Similarly, the Chinese Government takes the position that a foreign country should not impose its nationality on overseas Chinese against their will.

The principle of free choice of the party concerned is also applicable to the loss of Chinese nationality. Unless the party concerned takes positive action, that person can retain his or her Chinese nationality even if he or she has acquired another nationality. Theoretically, permission from the Chinese Government to renounce Chinese nationality is required, but this is routinely granted except in the case of someone who attempts to change his or her nationality to escape Chinese jurisdiction. So far, there appears to have been no serious dispute between the Chinese Government and any Chinese national intending to renounce his or her Chinese nationality.

In conclusion, it appears reasonable to state that the Chinese nationality law and practice are consistent with Article 15 of the 1948 Universal Declaration of Human Rights which proclaims that 'Everyone
has the right to a nationality' and 'No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.'\(^{160}\)
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