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## The 1980 Nationality Law of the People's Republic of China

At the time the Communists took over the mainland, the citizenship of China was regulated by the prescriptions of the revised Law of Nationality of 5 February 1929.<sup>1</sup> The successor regime did not enact any comprehensive legislation on the subject until the Third Session of the Fifth National People's Congress finally adopted a new statute on 10 September 1980.<sup>2</sup> Citizenship questions requiring official attention arose during the intervening years on both the domestic and international scene and were handled on an *ad hoc* administrative and diplomatic basis. Such practice managed to shed a ray of light on the PRC's policy in this area, but the record was too sparse and so the picture always remained fragmentary.

The actual status of the 1929 law on the mainland after the establishment of the PRC was not very clear either. Some outside analysts, citing local data, interpreted the evidence to mean that "the whole body of laws enacted by the Nationalist regime was abolished in its entirety by the Chinese Communists,"<sup>3</sup> thereby also abrogating the 1929 Nationality Law. Moreover, in at least one case, a foreign diplomatic source reported being explicitly told by PRC officials that the 1929 statute had ceased to apply.<sup>4</sup> Other Sinologists, however, have maintained that Art. 17 of the 1949 Common Program of the Chinese People's Political Consultative Conference only specified that "all laws, decrees, and judicial systems of the Kuomintang reactionary government that oppress the people shall be abolished."

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1. Text in Flournoy and Hudson (eds.), *A Collection of Nationality Laws of Various Countries as Contained in Constitutions, Statutes and Treaties* 175-178 (1929); *Laws Concerning Nationality*, United Nations Legislative Series ST/LEG/Ser. B/4 94-97 (1954).

2. Text in *Beijing Review*, No. 40, at 17-18 (1980).

3. Tao-tai Hsia, "Settlement of Dual Nationality between Communist China and Other Countries," *Osteuropa-Recht* No. 1 at 28, n. 3 (1965). See, also, the Instructions of CCPCC relating to abolishing the complete six laws of the Kuomintang and establishing judicial principles for the liberated areas (February 1949) in Cohen, *The Criminal Process in the People's Republic of China 1949-1963, An Introduction* 298 (1968).

4. Information conveyed to the chargé d'affaires of The Netherlands in Peking in 1951; cited by Tomson, *Das Staatsangehörigkeitsrecht der ostasiatischen Staaten, China—Japan—Korea—Mongolei* 84 (1971).

If the 1929 Nationality Law were not considered by the PRC authorities to oppress the people, they point out, or, following the promulgation of the 1954 Constitution, to run counter to the latter's provisions, then it could have retained its validity despite the change in political system.<sup>5</sup> At any rate, even those among the China watchers who initially proceeded on the assumption that the 1929 law was technically no longer in effect on the mainland after the inauguration of the PRC have been moved to observe that the new government's treatment of various citizenship issues recalled many of the principles enunciated in the 1929 statute,<sup>6</sup> though care was taken not to mention any connection. On balance, it is probably safe to conclude that the 1929 law was never formally in force on the territory of the PRC, but that meanwhile a number of its provisions were still tacitly applied by the PRC authorities on assorted occasions. Note, too, that the 1980 statute says nothing about repealing or replacing prior legislation in the field of citizenship, thus compounding the impression that until now the cupboard here had in fact been bare.

The present essay offers a preliminary assessment of the salient innovations featured in the 1980 law, drawing appropriate comparisons with the contents of the 1929 version and whatever rules pertaining to the institution of citizenship marked the PRC's domestic and international repertory during the 1949-1980 interval.

#### GENERAL PRINCIPLES

According to its Art. 1, the 1980 act "is applicable to the acquisition, renunciation and restoration of the nationality of the People's Republic of China." The next item explains that "the People's Republic of China is a unified multinational country" and that "persons belonging to any of the nationalities of China have Chinese nationality." The latter clause may be read in two different ways: (1) that no distinction is made between any of the ethnic components of China's population in terms of entitlement to the citizenship of the PRC and all of them have an equal right to that status; or (2) that where the insignia of national origin serves as grounds for attribution of Chinese nationality to the individual concerned, membership in any of China's nationalities will achieve that same result.

Interestingly enough, the 1980 statute makes no attempt to define who is currently recognized as a national of the PRC, except to confirm (Art. 17) that "the nationality status of persons who have acquired or lost Chinese nationality before the promulgation of this

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5. *Id.* at 81-82.

6. For example, Hecker, "Das Recht der Staatsangehörigkeit in China," *Das Standesamt* 303 (1959).

law remains valid." This statement is not quite correct, since the current repudiation of the concept of dual nationality (to be discussed in detail below) might retroactively affect the position of an individual whose ownership of Chinese nationality dates from a time when simultaneous possession of two citizenships, one of them Chinese, was not viewed as improper. Be that as it may, the central message is that the latest law recognizes the status of those who, on 10 September 1980, either retained Chinese citizenship that they had acquired pursuant to the rules then in force or had forfeited it in conformity with the relevant rules. The difficulty in this case, of course, is that in order to ascertain who did and who did not qualify as a Chinese national at this stage, one would first have to go back and determine who had obtained Chinese citizenship under the old policies and who had eventually relinquished it or been deprived of it in conformity with past practice.

The job is made harder by two additional factors. Uncertainty about what rules governed the acquisition and loss of PRC nationality between 1949 and 1980 complicates the task of determining who received the PRC's citizenship and who was divested of it during this period. Furthermore, the official attitude toward some of these phenomena changed after 1949, and if the most recent procedures were projected backward, a different situation would emerge. For example, the 1929 Law of Nationality based "natural possession of Chinese nationality" primarily on descent from a father who himself counted as a Chinese national at the time of the child's birth. By contrast, the Chinese Communist regime, committed to the doctrine of equality of the sexes, has essentially held that Chinese nationality can be transmitted to the progeny through either the mother or the father who possesses Chinese nationality at the time the child is born. If that norm were applied to the events occurring before 1 October 1949, the revised *modus operandi* would lead to a sizable increase in the number of people considered Chinese nationals by birth as against the statistics produced by reliance on the original criteria sanctioned by the 1929 regulations.

#### DUAL NATIONALITY

Potentially the most important new element introduced by the 1980 statute involves the clause affirming that "the People's Republic of China does not recognize dual nationality for any Chinese national" (Art. 3). One cannot tell from the wording alone what the exact legal impact of this provision will ultimately turn out to be and will have to await further elucidation of what specifically the legislators had in mind in espousing this formula. So far, official commen-

tary on "this key point" of the draft bill has been limited to a statement to the effect that:

This is a policy consistently and explicitly proclaimed by our government. A number of former Chinese nationals residing abroad who have acquired foreign nationality hope to retain their Chinese nationality. This sentiment of theirs is understandable. But in the long-term interests of the overseas Chinese—for the sake of their work and their daily life—and to facilitate the handling of related matters between China and other countries concerned, we believe that it is better to stipulate the non-recognition of dual nationality. If some of the above-mentioned Chinese decide in future to return and settle down in China and wish to restore their Chinese nationality, that would raise no difficulties, as the draft Nationality Law provides for the restoration of Chinese nationality.<sup>7</sup>

The record prompts several observations. First, the available evidence would tend to indicate that the "non-recognition" rule is aimed mainly at incidents of dual nationality where that status is caused by positive action on the part of the *de cuius*. For instance, a person already in possession of valid Chinese citizenship and dwelling abroad may voluntarily decide to acquire foreign citizenship and takes affirmative steps towards that end. For the people who fall into this category, the consequences of the current "non-recognition" approach are spelled out in Art. 9, which mandates that "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." Denying such a person the opportunity to hold two citizenships at once does not sound unreasonable. Second, the diction of both the pronouncement and the statute suggests that the bar against dual nationality is designed to work retrospectively and that even Chinese nationals residing abroad who may have acquired a foreign nationality in addition to their Chinese nationality at some earlier date when such practice was not expressly proscribed by law, incurred forthwith the loss of their Chinese nationality.

Third, the prescribed remedy which entails summarily stripping these "semi-expatriates" of their Chinese nationality may seem drastic, but in fact only bespeaks common sense. Indeed, the home authorities are not left with any viable alternative if they are truly averse to the idea of dual nationality being deliberately contracted by some of their citizens. Where the individual in question is appar-

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7. Peng Zhen, "Report on the Work of N.P.C. Standing Committee," 2 September 1980, *Beijing Review* No. 39 at 32 (29 September 1980).

ently determined to add a foreign nationality to his Chinese one while residing abroad, the Chinese government is physically powerless to prevent him (her) from doing so and, by the same token, bare refusal on its part to recognize the foreign citizenship in no way diminishes the latter's validity. Dual nationality in these circumstances is a foregone conclusion, doctrinal opposition notwithstanding, and the solution that then recommends itself is to counter in the area where control can effectively be asserted, namely, through official certification of title to Chinese nationality. Refusal by the competent local agencies to acknowledge a particular person's continued right to the nationality of the PRC represents the most realistic method of taking care of this vexing problem. As a matter of fact, the very harshness of the response may serve a special purpose in: (1) persuading a few individuals inclined to acquire a second citizenship to abandon such plans; and (2) inducing others deprived of Chinese nationality on grounds that they had acquired a foreign nationality to reconsider their move (which was initially predicated on the notion of keeping both nationalities), and seek reinstatement in their former Chinese nationality.

#### *Non-Recognition*

Fourth, the preceding analysis applies just to contingencies featuring Chinese nationals residing abroad who of their own volition manage to acquire a foreign nationality while still in possession of a valid Chinese nationality. One has reason to assume, however, that the concept of "non-recognition" of dual nationality relates equally to a situation where an individual vested with Chinese nationality and residing in China succeeds in also obtaining a foreign citizenship. Such incidents reportedly have occurred. For example, according to a Chinese spokesman, "in the past years, we discovered some Chinese citizens who were residing in China had obtained foreign passports without renouncing their Chinese nationality, and they asked for the same treatment as foreigners, thus causing confusion in our nationality work." Unfortunately, the source says nothing about how the issue was handled and only indicates that, as regards future cases, practice now requires that "anyone who applies for foreign nationality must gain approval of his request to renounce his or her Chinese nationality," adding that this stipulation will "help prevent dual citizenship."<sup>8</sup>

That last observation is, of course, correct. However, the real difficulty arises not in situations where dual citizenship has effectively been nipped in the bud by the expedient of letting the individual seeking a second citizenship first shed the one he already has; it

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8. Gong Qiuxiang, "On the Nationality Law," *Beijing Review* No. 45 at 25 (1980).

arises in instances where this person either omits to petition for formal release from his old Chinese nationality before acquiring another citizenship or has requested permission to do so, has had his or her application turned down, but nevertheless has gone ahead and obtained a foreign citizenship. Ostensibly, the authorities would here follow a procedure similar to the treatment currently accorded to cases involving persons requesting naturalization in China (Art. 8) and aliens who were once of Chinese nationality and petition for return to that status (Art. 13). In these instances the 1980 statute enjoins that "no person whose application for naturalization in China has been approved is permitted to retain foreign nationality" and that "those whose applications for restoration of Chinese nationality are approved shall not retain foreign nationality." Operating on the principle of analogy, one would think that a Chinese national in China, even if he did somehow stage the feat of acquiring a second—foreign—nationality despite official policy to the contrary, would promptly be put on notice that he could not "retain foreign nationality."

What the rule of "non-recognition" of dual nationality means in these circumstances is not clear from the letter of the law. The competent agencies can, of course, require that the persons concerned take steps formally to relinquish their foreign citizenship. In that event, the final results must depend on getting the other state to agree to the proposed divestiture and, if the consent were not forthcoming, the regime would either have to accommodate itself to the *fait accompli* or, *in extremis*, solve the dilemma by cancelling the Chinese nationality of those people who failed to gain release from their simultaneous foreign citizenship. Or, more likely, invoking the formula simply lets the authorities maintain that no legal significance attaches to the claim of a second nationality and that on these occasions the net effect of the "non-recognition" norm is that Chinese nationality alone is assigned a legal value.

It is true that on the international circuit such unilateral refusal to take into account the operation of another nationality, properly acquired under the terms of the corresponding country's laws, does not annul the latter's juridical stake. In a practical sense, however, the tactic leaves the opposite party at a distinct disadvantage because of the difficulty of enforcing the right where the competition exercises undisputed physical control over the object of these conflicting interests. Here the tables are fully reversed: in dealing with the Chinese national abroad who is endowed with dual nationality the PRC government must concede that the other nation has the upper hand and must either stay content with pressing a theoretical title or, as it has done, retire from the fray by taking its citizenship back; now the other nation is reduced to the position where it faces

the choice of acquiescing in the fact that the PRC is in charge or withdrawing from the game completely by pronouncing its own citizenship to have lapsed.

Fifth, in the present context the above-quoted assertion by the PRC spokesman that non-recognition of dual nationality "is a policy consistently and explicitly proclaimed by our government" rates as a bit of poetic license. The past record attests to numerous professions of aversion to the phenomenon of dual nationality, but the advertised sentiment was not backed up by effective solutions to the problem. Overseas Chinese were still routinely classified as Chinese nationals even if locally naturalized<sup>9</sup> and, despite rhetorical assurances that "socialist countries . . . do not allow the continuation of dual personality and . . . take into consideration the free will of the person possessing dual nationality. . .,"<sup>10</sup> the private initiative to acquire a foreign nationality was not then treated as an expression of preference and no legal consequences were associated with the individual's deliberate move to incur dual nationality. Presumably, the party concerned could always avail himself of the mechanism of formal renunciation of Chinese nationality in order to extricate himself from the attendant complications, but that approach, based on personal discretion, is not credible evidence of an affirmative commitment by officialdom to curb the incidence of dual nationality.

#### *International Agreements*

Even special dispensation in such cases by means of international agreements is a rarity in the history of the PRC's diplomatic affairs. One episode that comes to mind relates to the option treaty between the PRC and Indonesia. In that connection, the note from Chou En-lai to Prime Minister Sastroamidjojo of 3 June 1955<sup>11</sup> conceded that a certain category of people among those eligible to opt were now exempt from doing so and would forthwith be counted as citizens of Indonesia because "their social and political status testifies that they have already implicitly renounced the nationality of the PRC". Subsequently, this group was further enlarged by the addition of citizens of Indonesia of Chinese origin "who are proved by certificates issued by the Indonesian Election Committee or other evidence to have taken part in elections of the All-Indonesia Peo-

9. To that effect, Sachse, "Staatsangehörigkeitsrecht der Volksrepublik China," *Das Standesamt* 307-308 (1969), quoting a statement of the Consulate-General of West Germany in Hongkong of 17 January 1969.

10. Liu Chai-chi, "On the Question of Dual Nationality," *Fa-hsueh* No. 3, at 20-24 (1957), excerpted in Cohen and Hungdah Chiu, *People's China and International Law: A Documentary Study* Vol. 1 at 770-771 (1974).

11. *Survey of China Mainland Press*, No. 1070, at 20-21 (16 June 1955), reproduced in Cohen and Hungdah Chiu, *supra* n. 10 at 760-761.

ple's Congress or local people's congresses. . ."<sup>12</sup> In other words, a recorded affinity for Indonesia was in this particular instance viewed as tantamount to an implied act of relinquishment of Chinese nationality plus a species of tacit naturalization as a national of Indonesia in which the signatory states presently concurred. However, this seems to have been an isolated experience and, prior to the adoption of the 1980 statute, an individual could not escape dual nationality by the mere expedient of counting on the loss of his Chinese nationality as a routine accompaniment to his acquisition of a foreign nationality, so that the *modus operandi* sanctioned by the latest law on that score is a major departure from precedent rather than an incarnation of previous policy.

Finally, the afore-listed specimens of dual nationality exorcised by the 1980 law represent the "mild strain" in the sense that they are conjured up by the individual's own choices—e.g., in reference to naturalization or restoration. Far more troublesome is the breed of dual nationality engendered by a person's encounter with the rather common conflicts-in-law phenomenon where jurisdictional overlap exposes a single individual to the stamp of two or more competing legal systems, each of which insists on defining his (or her) legal position without taking the rest into account. Since in these circumstances the party is not responsible for creating the predicament, a summary refusal to acknowledge the existence of one or more of the nationalities that the individual happened to incur involuntarily may be perceived as unduly punitive.

Yet, the current legislation does not shy away from resort to radical therapy in tackling one of the more difficult situations of this sort, namely, dual nationality produced by the objective circumstances of birth. Thus, Art. 5 stipulates that "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 foreign nationality on birth does not have Chinese nationality." At a minimum, the rule will have the effect of eliminating a prime source of future incidence of dual nationality, and as a mass prophylactic device the significance of this measure can here hardly be overestimated.

Note, too, that the simplest and most comprehensive format was adopted for these purposes: whether in this setting the child is assigned the foreign nationality by virtue of the principle of *jus soli* (when one parent has Chinese nationality or both have it) or *jus sanguinis* (when only one parent is a Chinese national) or a combi-

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12. Arrangement for the implementation of the Treaty concerning the question of dual nationality, signed in Djakarta, 15 December 1960; text in *Peking Review* No. 52 at 9-12 (27 December 1960); Ambekar and Divekar (eds.), *Documents on China's Relations with South and South-East Asia (1949-1962)* 270-274 (1964).



nation of the two (again, when only one parent is a Chinese national) does not matter; the progeny just never "inherits" Chinese nationality. If the procedure is destined for retroactive application, the consequences are bound to be equally dramatic in that a vast reservoir of individuals with dual nationality would instantly be emptied and the entire lot reduced to possession of a single citizenship. A further item of interest on this account is the evident willingness of the PRC authorities to switch from nearly exclusive past reliance on blood kinship as grounds for acquisition of Chinese nationality by devolution to a position where other criteria are also allowed to assume a role in that connection.

In the arrangement entered into with Nepal on 20 September 1956, it is worth recalling the contracting parties concerned themselves solely with certain individuals residing in China's Tibet region who qualified as nationals of both states because they were children of parents, one of whom was a national of the PRC and the other a national of Nepal, and each automatically transmitted his or her nationality to the offspring.<sup>13</sup> The 1955 treaty on dual nationality between the PRC and Indonesia featured a like approach in determining that the final nationality of persons who were eligible to opt and failed to do so would depend on the nationality of the father or, if the nationality of the father were unknown or no legal relationship with the father were maintained, then the mother's nationality would be conclusive: in either event, preference was accorded to blood ties as a proper index to nationality affiliation. Similarly, in order to prevent prospective inception of dual nationality bequeathed at birth, the signatories agreed that henceforth all children born in Indonesia would *ipso jure* acquire the nationality of the PRC if both their parents or only their fathers held the nationality of the PRC; conversely, all children born in the PRC acquired at birth the nationality of Indonesia if both their parents or only their fathers held the nationality of Indonesia.<sup>14</sup>

The 1980 act neither anticipates every possible contingency nor provides for relief in additional situations where dual nationality can be caused by other factors—e.g., marriage or adoption. One can therefore expect a residue of dual nationality cases to persist and fresh ones to arise. If not domestically treated, these items will presumably require special diplomatic attention, with resort to the machinery of international option perhaps offering an apt solution. The

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13. Exchange of notes appended to the Agreement on friendship and economic cooperation of 20 September 1956; text in *International Affairs* (Moscow), No. 11 at 165-168 (1956); Ambekar and Divekar (eds.), supra n. 12 at 328-334.

14. Text in *Current Background* No. 326 at 1-4 (27 April 1955); Cohen and Hungdah Chiu, supra n. 10 at 754-759; Ambekar and Divekar, (eds.), supra n. 12 at 231-236.

usual format here calls for a stock-taking that lets the person involved voice a preference in picking from among the nationalities to which he (or she) is entitled. From the outset, Chinese sources have likewise often pronounced themselves in favor of reliance on this technique for purposes of disentangling rival citizenship claims, but in this instance rhetoric does not quite match actual performance. As mentioned, the PRC concluded agreements of this type with Indonesia and Nepal. On the other hand, bilateral option schemes with Singapore, Burma, Cambodia, or any countries in South-East Asia where substantial quantities of Chinese reside never materialized, despite repeated PRC statements of willingness to engage in inter-state negotiations to arrive at a suitable settlement.<sup>15</sup>

To compound the discrepancy further, in 1960 Peking reportedly rejected out of hand a Soviet proposal that the two governments sign an agreement concerning citizenship and the legal protection of citizens of both countries.<sup>16</sup> At the time, according to the Soviet census of 1959, the population of the USSR included a cluster of 25,781 Chinese,<sup>17</sup> all of them apparently vested with full Soviet citizenship. More difficult to establish is the size of the community located in China whose nationality status might prove the subject of controversy between the USSR and the PRC. Soviet accounts put the number of Russians living in China at 100,000 in 1954, and estimate that an additional component of 300-400,000 people of Kazakh and Uighur origin who had left Russia or the USSR on different occasions currently reside in China's Sinkiang province.<sup>18</sup> A large proportion of both ethnic groups (i.e., Russian and non-Russian), charging maltreatment by the Chinese authorities solely because of their "Russian (Soviet) connection," fled to the Soviet Union in the

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15. For data, see Cohen and Hungdah Chiu, *supra* n. 10 at 769-770 and Tao-tai Hsia, *supra* n. 3 at 30-31.

16. *Vneshnyaya politika i mezhdunarodnye otnosheniya Kitaiskoi Narodnoi Respubliki 1949-1963* (Moscow) Vol. 1 at 232 (1974).

17. *Itogi Vsesoyuznoi perepisi naseleniya 1959 goda, SSSR (svodnyi tom)* (Moscow) 186 (1962).

There is a good likelihood that the official picture may be incomplete in that the statistics probably represent a headcount of the "full-blooded" members of the local Chinese community, with the children born of mixed households featuring a Chinese and a non-Chinese spouse tending to be assigned the more "native" identity in line with the regime's preferences in these matters. Such classification notwithstanding, the offspring of one Chinese and one non-Chinese parent would continue to be regarded as Chinese nationals by the Chinese side and thus Soviet and Chinese estimates of how many individuals vested with Chinese nationality are to be found in the USSR can be expected to differ by a large margin.

18. See the author's "Problema grazhdanstva v poslevoennykh kitaisko-sovet-skikh otnosheniyakh," *Khronika zashchity prav v SS* No. 26 at 66-72 (April-June, 1977); "Citizenship Questions in Postwar Sino-Soviet Relations," *A Chronicle of Human Rights in the USSR* No. 26 at 67-75, (April-June 1977).

1960s and some 100-150,000 of them settled there and eventually were issued Soviet citizenship.<sup>19</sup> In a technical sense, however, the legal status of these people has not yet been formally resolved to the satisfaction of either the USSR or the PRC and the subject retains ample potential for inciting conflict between the interested parties.

India fared no better in this respect. In 1959, Peking and New Delhi engaged in a bitter dispute over the citizenship identity of assorted groups of people living in Tibet whom the Indian government counted as its own citizens. As a compromise gesture, the mainland regime expressed a readiness to entertain applications for denaturalization from this lot but, of course, any requests received could also be turned down and the concession thus promised less than what the Indians wanted, namely, blanket Chinese acquiescence in the primacy of these persons' entitlement to Indian nationality. The controversy ground to a stalemate when the PRC spurned the idea of a general waiver of its claim and clung to the view that either a mutually acceptable arrangement would have to be worked out for an orderly determination of who wished to belong to whom or, until that was done, these individuals would have to avail themselves of the regular *modus operandi* sanctioned by Chinese laws for purposes of relinquishing Chinese nationality, if they so desired.<sup>20</sup>

A truly benevolent attitude in regard to granting release from Chinese nationality would doubtless represent a viable enough alternative to organized option in these circumstances, although the process would still involve a greater element of discretion than the option route and feature fewer safeguards of deference to the individual's stake in the matter. At any rate, the point that needs to be made here is that that option does not figure as a routine measure in the PRC's diplomatic repertory; so, unless the pattern changes markedly, one ought not to assume that when cases of dual nationality occur in the future despite the antidotes prescribed by the 1980 statute, the PRC will be quick to crank up the machinery of interna-

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19. E.g., Kryazhev, "Izvrashchenie maoistami leninskoi natsionalnoi politiki," *Izvestiya Sibirskogo Otdeleniya Akademii Nauk SSSR*, seriya obshchestvennykh nauk No. 1, vyp. 1 at 104 (1976); Borisov and Koloskov, "Politika Sovetskogo Soyuz v otnoshenii KNR—sotsialisticheskii internatsionalizm v deistvii (sovetsko-kitaiskie otnosheniya v 1948-1967gg.)," in *Leninskaya politika SSSR v otnoshenii Kitaya* (Moscow) 208-210 (1968); Borisov and Koloskov, *Sovetsko-Kitaisie otnosheniya 1945-1970, kratkii ocherk* (Moscow) 274-77 (1971); *Vneshnyaya politika*, supra n. 16, Vol. 1 at 239-240; Yurkov, *Pekin: Novaya politika?* (Moscow) 60 (1972); Kapitsa, *Levee zdravogo smysla (O vneshnei politike gruppy Mao)* (Moscow) 70-71 (1968); id., *KNR: dva desyatiletia—dve politiki* (Moscow) 195-197 (1969).

Also, *New York Times* at 8 (21 February 1967); *Asian Recorder* at 5459 (1963); *Facts on File* at 324 (12-18 September 1963).

20. For texts of the relevant Indian and Chinese notes, see Cohen and Hungdah Chiu, supra n. 10 at 776-784.

tional option in order to settle the problem. Another thing to remember is that even should new opportunities to use option devices arise, the legal setting will now be quite different: inasmuch as before 1980 Chinese law provided no cure for any kind of dual nationality, a wider circle of individuals was likely to be eligible at that stage for option projects entered into by the PRC than would be the case today when the sample would be substantially reduced because domestic legislation is henceforth scheduled to dispose of several species of dual nationality on its own terms.

Finally, if precedent can be trusted, chances are that the PRC authorities will continue strenuously to resist any attempts by other states to deal with such situations by unilateral means calling for *ad hoc* conversion of the members of the local Chinese community to their citizenship or withdrawal of that citizenship and consequent treatment of these people as an alien minority.<sup>21</sup> For example, the measures instituted by the Ngo Dinh Diem regime in South Vietnam in 1957 aimed at forcing the Chinese population there to accept South Vietnamese citizenship were roundly condemned by the PRC as a wanton violation of the legitimate rights and interests of the Overseas Chinese and a serious transgression of the principles of international law.<sup>22</sup> More recently, the PRC hierarchy has been locked in an acrimonious argument with the successor Communist regime in South Vietnam over the latter's handling of the ethnic Chinese element residing on its territory who are now being denied certification as Vietnamese citizens and are pressured to find ways to leave Vietnam. For that matter, considering the political climate of USSR-PRC relations from which sprouted their particular conflict over citizenship questions, it would come as no surprise if the Chinese leadership were to take the position that the Chinese contingent in the Soviet Union came by its Soviet citizenship in a less than voluntary manner. The claim would then serve Peking as plausible grounds for refusing to recognize the validity of this mode of naturalization and abstaining from cancelling the Chinese nationality of the people involved on the pretext that they had never freely sought to acquire Soviet citizenship and so ought not to be punished with the corresponding loss of their Chinese nationality status. In fact, given some aspects of Soviet citizenship policy, the charge would not be altogether unfounded. Nor is the fairly unsubtle Soviet bid to sweep the issue under the rug by simply dropping the category of "Chinese" from the published reports of the result of the 1970 na-

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21. Cf., Gong Qiuxiang, *supra* n. 8 at 255: ". . . in deference to the wishes of those overseas Chinese who are unwilling to acquire foreign nationality, we object to their being forced to change their nationality."

22. "Ngo Dinh Diem's Persecution of Overseas Chinese," *People's China* No. 12 at 40 (1957), in Cohen and Hungdah Chiu, *supra* n. 10 at 772-773.

tional census likely to end the controversy; on the contrary, the ploy is only apt to strengthen the Chinese contention that the record warrants a closer look to determine what other *léger-de-main* may have hitherto been perpetrated on that account.

#### ACQUISITION OF PRC NATIONALITY

##### 1. *Birth*

According to Art. 4, "any person born in China whose parents are Chinese nationals or one of whose parents is a Chinese national has Chinese nationality." Here, the combination of the concept of *jus sanguinis* and *jus soli* is clear: birth in China plus Chinese parentage (double or single) stamps the child as a PRC national at the moment of birth. Comparison with the corresponding provision of the 1929 Law of Nationality (Art. 1) brings out several significant differences.

First, as already indicated, the preceding statute attributed "natural possession" of Chinese nationality virtually on the basis of *jus sanguinis* alone, disregarding in this context the place of birth. Second, the earlier version relied essentially on the father to transmit the nationality to the offspring: hence, a Chinese national by origin was a person whose father at the time of his or her birth was a Chinese national or one who was born after the death of his or her father and whose father was a Chinese national at the time of his death. The mother who qualified as a Chinese national played an ancillary role in the operation since she was allowed to determine the Chinese nationality of her child only when its father was unknown or had no nationality. By contrast, the 1980 act guarantees the parents equal rights in this case and a child born on Chinese soil into a mixed household is now ascribed PRC nationality at birth as long as either the father or the mother is a national of the PRC.

The mainland authorities followed the same practice even before the adoption of the 1980 regulations and on a number of past occasions let it be known that a child of a marriage between a Chinese and a foreigner acquired Chinese citizenship whenever at least one parent was Chinese.<sup>23</sup> One disadvantage of the new routine which mixes *jus sanguinis* and an attenuated form of *jus soli* (a flaw that characterized its purely *jus sanguinis* predecessor too) is that it offers no safeguards against the inception of statelessness at birth caused by conflicts-in-law incidents where a child is born on PRC soil of parents who are citizens of a state subscribing to the doctrine

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23. Information furnished to the chargé d'affaires of the Netherlands in Peking in November 1955, cited in Tomson, *supra* n. 4 at 84; conclusions of the Consulate-General of West Germany in Hongkong, memorialized in 1969, cited in Sachse, *supra* n. 10 at 307-308.

of *jus soli*: mere birth on the territory of the PRC will not serve to confer local nationality on the child, and the law of the state to which the parents belong provides no relief here. But in comparison with the former position, today the chances of sparing the child a stateless lot are doubled since the mother's PRC nationality can be inherited as well. To date, contacts between the PRC and other countries at this level have been extremely limited and so the issue may be largely academic in any event, since we are told that "in China there are very few people who are stateless or of uncertain nationality."<sup>24</sup> Yet, as traffic increases, the situation may change.

Paradoxically, a second drawback for the latest policy in this sector lies in the fact that, like its antecedent, the mechanism also makes it easy to incur dual nationality. What is more, the risk of getting stuck with that condition is twice as great at this stage, given that both parents presently have the capacity to bestow PRC nationality on the offspring: prior to 1949, for example, a child born in China to a Chinese-foreigner couple who acquires the foreign partner's nationality on grounds of blood relation was faced with the prospect of being additionally assigned Chinese nationality solely in the case where the father was a Chinese national.

Chinese analysts recognize that the problem exists, although all they have said on the subject so far boils down to the observation that an individual who finds himself in that predicament and wishes effectively to keep title to the foreign nationality must, in view of the proposition that "Chinese citizens are not allowed to hold dual nationality[,] . . . gain approval of his [or her] request to renounce his or her Chinese nationality."<sup>25</sup> Even so, failure to act would not in this instance automatically spell annulment of the person's foreign nationality: the latter might prove unenforceable as a consequence of such omission, but a latent legal claim would persist. By the same token, should the authorities refuse in these circumstances to sanction release from PRC citizenship, the decision would lack the legal power to cancel the individual's stake in the foreign citizenship, the dual nationality status would remain unsettled, and the only result might still be that that competent PRC authorities would simply deny the second nationality any substantive validity on the home scene.

The paramountcy of the concept of *jus sanguinis* in establishing the indicia for "natural possession" of Chinese nationality before and after 1949 does not, of course, mean that *jus soli* retained little more than symbolic value in this context. Where for sundry reasons the norm of *jus sanguinis* could not apply, the principle of *jus soli*

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24. Gong Qiuxiang, *supra* n. 8 at 25.

25. *Id.*

continued to serve as a logical substitute. The 1929 regulations already stipulated that any person born in China whose parents were unknown or had no nationality forthwith received Chinese nationality. The analogous provision in the 1980 statute (Art. 6) reads: "Any person born in China whose parents are stateless or of uncertain nationality but have settled in China has Chinese nationality." The differences between the two formulas are worth noting.

First, the earlier version addressed itself to the position of both locally born foundlings and children of stateless parents. The 1980 act contains no reference to foundlings—a puzzling lapse, since the citizenship legislation of most states has the foresight to deal with that contingency. In practical terms, however, the omission may still be relatively innocuous in that administrative treatment is apt to furnish a suitable solution. If the pre-revolutionary past and the general record can be relied upon to set an example, the PRC is likely to operate on the common premise that a foundling discovered within the state's borders can be expected to have some local connection and ought therefore to be entitled to the host country's nationality. Even so, no information is available on whether the presumption is final or rebuttable in light of later evidence showing that the conclusion about a supposed native affiliation had been in error. (In this respect the 1929 statute is equally remiss.)

Second, both pieces of legislation mandate the automatic acquisition of Chinese nationality by children born on Chinese soil of parents with no nationality (1929) or who are "stateless or of uncertain nationality" (1980). Oddly enough, the 1929 enactment, despite the heavy stress on *jus sanguinis*, is more generous here than its 1980 counterpart, where, after all, *jus soli* does feature in the basic equation, in how much of a remedial role it lets *jus soli* play in this special situation. Indeed, under the terms of the 1929 statute, the plain fact of birth on Chinese soil of stateless parents is adequate to vest the child with Chinese nationality. By contrast, the current law further requires that the parents be settled in China, and not just be physically present within its boundaries, which, technically speaking, would work to exclude the transient element from the operation of the rule. The older norm is thus more liberal in prescribing an instant cure for statelessness on these occasions; on balance, though, the newer format makes better sense in coupling acquisition of Chinese nationality by the offspring with evidence that the parents have some local roots; otherwise Chinese nationality could be picked up by an infant literally en route. The parents themselves, it should be added, are not affected and, unless they take affirmative steps to obtain Chinese citizenship for themselves, the family unit will henceforth simply not share the same nationality. In the case of the children, the official policy of summarily granting them PRC na-

tionality was purportedly motivated by the regime's desire "to do away with such phenomenon [statelessness or uncertain nationality] and to enable these persons to enjoy the same rights and fulfil the same obligations as Chinese citizens."<sup>26</sup> To the extent that, according to PRC accounts, there are now very few people in China who are stateless or of uncertain nationality, the decision to assign PRC nationality to their children will soon have the effect of drying up that particular source of this condition.

Insofar as the 1929 law applied *jus sanguinis* as the primary yardstick for determining original possession of Chinese nationality, the text drew no distinction as regards the place of birth: the child of a Chinese father (or a Chinese mother in certain circumstances) received Chinese nationality by dint of kinship, irrespective of whether birth occurred in China or abroad. Since the 1980 edition claims to combine *jus sanguinis* and *jus soli*, a more differentiated approach to the problem had to be adopted. Consequently, Art. 5 is set aside to deal with the extra question of children of a Chinese parent or Chinese parents who are born "overseas." Precedent is observed in such cases by postulating that "any person born abroad whose parents are Chinese nationals or one of whose parents is a Chinese national has Chinese nationality." A positive aspect of this procedure, it might be noted, is that the progeny can never incur statelessness through mere accident of geography.

However, the next clause introduces a major innovation in China's citizenship policy by instructing that "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 foreign nationality on birth does not have Chinese nationality." The reform was reportedly prompted by a perceived need to give concrete expression to the PRC's oft-avowed commitment to the principle of non-recognition of dual nationality<sup>27</sup> and demonstrate the PRC's willingness to pursue that objective even by unilateral means, where feasible.

In sum, only a mix of expatriation and acquisition of foreign nationality at birth has the power to prevent the "inheritance" of PRC nationality. Neither factor alone can do the trick. Prolonged expatriation in circumstances where the child of a Chinese emigrant or emigrants born abroad does not enter the world vested with a for-

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26. *Id.* An interesting vignette by Butterfield, "Reporter's Notebook: Chinese Mud House Gets TV," *New York Times* at A7 (7 May 1980), recounts the experiences of David Rosenberg, born in China of a father who was a refugee from Poland in 1939 and a mother who migrated from the Soviet Union. A Chinese citizen, he continues to reside in the PRC. At one time, there was a sizable group of European Jewish immigrants in Gulja (Yining) in Sinkiang, where Mr. Rosenberg was born; others of his generation have had a similar history.

27. Gong Qiuxiang, *supra* n. 8 at 24.



eign citizenship is no bar to the child acquiring at the outset the nationality of the PRC. The relevant passage in the 1955 treaty on dual nationality between the PRC and Indonesia is squarely on point: thus, Art. 8 confirmed, *inter alia*, that all children born in Indonesia acquired, upon their birth, the nationality of the PRC if both their parents or only their fathers held the nationality of the PRC. The formula, as mentioned earlier, departs from standard PRC practice in singling out the father and omitting the mother as a legal "donor" of Chinese nationality to the offspring and, on that score, likewise differs from the corresponding section of the 1980 statute. However, the central message matches the one enunciated in Art. 5 of the 1980 act, as can be appreciated by glancing at the history behind the wording.

Similarly, the acquisition of a foreign nationality at birth by a child born outside China of Chinese parents (Chinese parent) where the latter do (does) not maintain a regular domicile "overseas" still means that the child will routinely receive Chinese nationality, as well. In this case, the argument can be made that, where the child acquires the foreign nationality by reason of *jus soli*, the random element of territorial contact at the critical moment, perhaps quite brief, will exert a disproportionate influence in determining the infant's citizenship. Refusing to allow one's own citizenship to be eased out of the picture by the intrusion of an essentially transient phenomenon is not an immoderate response. If, however, in an analogous situation the child incurs the foreign nationality because one of the parents happens to be a foreigner, the precipitant ingredient cannot be treated as ephemeral, and yet the 1980 statute sanctions no qualification, except where the kinship tie that manages to bequeath a foreign citizenship to the progeny is further fortified by the Chinese partner's move to establish a domicile abroad. Otherwise, the Chinese nationality is thrust upon the child at birth and domestic legislation offers no shortcut for gaining subsequent release from PRC citizenship—individual option, for example, upon reaching majority—leaving formal denaturalization the sole antidote to a congenital strain of dual nationality.

Quite obviously, then, Peking's revised policy in this area does not represent a general waiver of the PRC's right to consider the "overseas" Chinese as its nationals, even when that classification results in the incidence of dual nationality. Rather, the prior presumption is still valid that the offspring of Chinese nationals born abroad are entitled to PRC nationality, that at the very least the mainland regime's script calls for concurrent jurisdiction over the bulk of the Chinese "overseas" community and that only by virtue of special dispensation is Peking prepared to forego its claim to a specific category of individuals for the sake of avoiding egregious

confrontation over an assortment of souls whose connection to China was badly weakened by the twin additives of expatriation and full legal membership in a foreign constituency.

The 1980 statute provides no clues as to what might happen if, after the PRC abstained from assigning its nationality to such persons in light of these considerations, the people concerned would at some later stage find themselves stripped of their foreign citizenship and reduced to statelessness. The recent experience of the Chinese minority in Vietnam may hold an answer. When members of the local Chinese colony streamed out of the country to escape persecution by the Vietnamese Communist authorities, a sizable contingent found refuge in the PRC. Most, one suspects, qualified for dual nationality, and by fleeing to the PRC simply revived their latent Chinese nationality. On the other hand, a few among them had tried hard to integrate into the Vietnamese society and had let their association with China wither. Nevertheless, people from the second lot were also allowed to enter the PRC, settle there, and return to the fold. Whether the mainland regime was motivated in this instance by humanitarian benevolence, a sense of ethnic solidarity, or a quasi-legal concept of permanent (albeit occasionally dormant) racial nationality, the net result was that a group of "overseas" Chinese who, technically speaking, figured as stateless persons were rescued from that position through "repatriation" to the mother country and ensuing "relapse" into Chinese nationality.

## 2. Adoption

The 1929 regulations (Art. 2(4)) featured the rule that an adopted son of a Chinese national acquired the nationality of the Chinese Republic. No age limit was mentioned and the formulation reflected the custom of adopting male heirs (even adults) to perpetuate the family line (which also explains why no reference was made to an adopted daughter). Curiously enough, the 1980 version says nothing about what effect, if any, the act of adoption has on the nationality of the *de cuius*. Once before, though, the PRC government had officially gone on record as acquiescing in the proposition that adoption affected the nationality of a minor. Attention is drawn to the fact that, in Art. 9 of the 1955 treaty on dual nationality between the PRC and Indonesia, the contracting parties took care to spell out that:

Any child holding the nationality of the People's Republic of China, if legally adopted by a citizen of the Republic of Indonesia before attaining five years of age, acquires the nationality of the Republic of Indonesia and automatically loses the nationality of the People's Republic of China; any

child holding the nationality of the Republic of Indonesia, if legally adopted by a citizen of the People's Republic of China before attaining five years of age, acquires the nationality of the People's Republic of China and automatically loses the nationality of the Republic of Indonesia.

If one can rely on the force of precedent, the PRC's practice in this matter should continue to adhere to the same general principle, notwithstanding the current law's silence on that score. More uncertain is the question of whether the age ceiling imposed by the Sino-Indonesian pact for these purposes—5 years old—will also serve as the domestic standard since it strikes one as excessively low. Odds are that minors are eligible for adoption and the criterion for the accompanying nationality switch would be fixed accordingly. The picture is equally unclear in two other respects. Since the Sino-Indonesian treaty codified the signatories' consensus on the issues dealt with therein, it was able to synchronize the gain of one state's nationality and the loss of the other's in the wake of adoption. Such symmetry cannot be achieved by unilateral means.

Thus, even if the PRC should stick by the basic formula of the 1955 agreement, the following enigmas remain. First, does an alien child adopted by a person with PRC nationality resident in China receive PRC nationality without further ado or only if it loses its prior nationality in the process? In the former case, dual nationality supervenes (unless, of course, the child was originally stateless). The probable answer is that PRC nationality is granted unconditionally in these circumstances. Second, what if an alien child is adopted by a person with PRC nationality "overseas"? Provided the adoptive parent does not maintain a permanent foreign residence, the child will in all likelihood also acquire PRC nationality irrespective of how it fares in terms of its previous nationality, and again dual nationality can ensue. Third, if the adoptive parent has settled abroad, the tendency would be for the child not to be assigned PRC nationality, with the added possibility that if the child would then end up stateless due to the operation of foreign law, PRC nationality might be forthcoming to bail it out. Fourth, there is good reason to believe that a child vested with PRC nationality retains that identity after being adopted by a foreign citizen though that too may lead to dual nationality. The conclusion is prompted by various indications of the regime's commitment to the policy that PRC nationality cannot be lost automatically,<sup>28</sup> an impression reenforced by the language of the 1980 statute (especially Art. 14), which recognizes loss of PRC nationality only by medium of renunciation in compliance

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28. Conclusions of the Consulate-General of West Germany in Hongkong (1969), in *Sachse*, *supra* n. 10 at 307-308.

with the formalities of application, with the unique exception of Chinese nationals who settle abroad and are naturalized locally or acquire foreign nationality of their own free will and now forfeit their PRC nationality by bare legislative fiat.

### 3. *Legitimation*

The 1929 Law of Nationality (Art. 2) referred, *inter alia*, to the acquisition of Chinese nationality by an alien whose father is a Chinese national and who is recognized by him as his child and an alien whose father is unknown or whose father has not recognized him (or her) as his child, but whose mother is a Chinese national and has recognized him (or her) as such. The chargé d'affaires of The Netherlands in the PRC reported in November 1955 of being officially informed that "the child of a Chinese parent born out of wedlock acquires Chinese citizenship through legitimation from marriage."<sup>29</sup> However, just as it ignores adoption, the 1980 statute also fails to indicate the effect of legitimation. One suspects that current policy sanctions the acquisition of PRC nationality in conjunction with legitimation despite the textual ellipsis, and the administrative routine would probably follow the same set of scenarios as in the corresponding cases of adoption.

The foregoing analysis is based on the semantic record of the 1980 act, namely, its authors' reliance on this occasion on the idea of parents (presumably including natural parents) instead of the notion of family, husband and wife, or spouses. What the style suggests is that where the male parent's condition as a PRC national is instrumental in conveying PRC nationality to the offspring, no distinction is drawn between a man who is legally married to the child's mother and one who is duly certified as the child's biological father, regardless of his legal position vis-à-vis the child's mother. If this interpretation is correct, then paternity can, in indirect fashion, have an effect similar to formal legitimation as concerns the nationality status of the progeny.

The 1980 legislation does not discuss the possible linkage between paternity and nationality either, but Art. 5 of the 1950 Marriage Law confirms the existence of the institution of paternity in the PRC's legal system in explaining the maintenance consequences that arise "where the paternity of a child born out of wedlock is legally established by the mother of the child or by other witnesses or by other material evidence. . ." The pattern of attribution of PRC nationality upon notice of paternity should coincide with the chart tracing the operations of adoption and legitimation in this sector.

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29. Quoted in Tomson, *supra* n. 4 at 84.

#### 4. *Naturalization*

The 1929 Act contained definite and elaborate instructions on what conditions had to be fulfilled by any foreigner to be deemed fit for admission to Chinese nationality and then pinpointed assorted exemptions that could be made in particular situations. By contrast, its current counterpart names two routine grounds for naturalization (close relatives of Chinese nationals or having settled in China) and guarantees practically total administrative freedom by letting the competent organs decide on an *ad hoc* basis what "other legitimate reasons" might exist to warrant approval of a request for naturalization.

Next, with very few exceptions, the 1929 measure treated domicile or residence as a prerequisite for naturalization; whereas in the new edition, this is no longer true. Further, where the previous law had referred to domicile or residence, the legislators had taken the trouble to indicate a desired span; by contrast, the 1980 regulations mention candidates for PRC nationality who "have settled in China," neglecting to affix any duration to that concept. Finally, in identifying kinship as a relevant factor, the 1929 act limited that designation to father, mother or wife; under the 1980 law this connection is certainly broader.

For example, Art. 6, as previously noted, assigns PRC nationality to any person born in China whose parents are stateless or of uncertain nationality but have settled in China and Art. 7 recognizes the right of stateless persons to "apply for Chinese nationality provided they meet the necessary requirements."<sup>30</sup> If under these circumstances the stateless parent(s) should seek to obtain PRC nationality for himself (herself), he (she) would be able to cite the child so vested with Chinese nationality as the "close relative" in question and thereby facilitate his (her) acquisition of Chinese nationality. Or, to give a second illustration, marriage by a foreigner to a Chinese national does not automatically entail acquisition of Chinese citizenship; but to the extent that "those marrying Chinese will naturally become 'close relatives of the Chinese,' they are qualified to apply for Chinese citizenship."<sup>31</sup> Today, unlike the past, the gravitational pull on such occasions can be exercised by both the Chinese husband<sup>32</sup> and the Chinese wife.

The effects of a man's acquisition of Chinese nationality by naturalization on the citizenship status of the other members of his nu-

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30. Gong Qiuxiang, *supra* n. 8 at 25.

31. *Id.* at 24.

32. The oddity is only apparent. Today, both husband and wife can only exercise the "power of attraction," whereas under the terms of the 1929 law the wife alone had that capacity since the husband had the superior ability to "convert outright."

clear family are dealt with in detail in the older statute. Thus, according to Art. 8, a naturalized person's wife and his children who have not attained majority under the law of their own country were slated to acquire, in conjunction with that person's naturalization, the nationality of the Republic of China save where the law of his wife's or children's own country provided to the contrary. The formula followed the traditional approach which expected a wife and children to share the citizenship status of the *pater familias* and generally favored their compulsory conversion in order to maintain family unity. The relegation of the wife and children to a passive role in these matters is now considered objectionable in some circles. In other respects, though, the rule—as enunciated in this case—had certain redeeming qualities.

First, the unilateral extension of Chinese citizenship to the wife and children in this sort of situation was made expressly contingent on their prior release from the citizenship they then held. Instant immersion into dual nationality was thereby avoided. That condition could still occur, of course, if the wife and children who were not summarily vested with Chinese citizenship at the time the husband and father acquired it by naturalization because the law of their native country did not sanction an automatic switch, afterwards formally applied for and received Chinese nationality in the prescribed manner and either were not required in the latter circumstances to relinquish their original nationality or failed to do so. However, at this point the resulting “double jeopardy” would be due to a conscious decision by the interested parties rather than to governmental fiat. Second, this procedure effectively shielded the people concerned from involuntarily incurring statelessness: if the state whose nationality the wife and children currently had expected them to accompany the husband and father in his bid for a new nationality and stripped them of their nationality on this account, Chinese nationality was waiting in the wings to rescue them forthwith from that fate. The only conceivable criticism here could come from rabid champions of free choice who might even prefer the experience of statelessness to deliverance at the cost of denial of the “right of self-determination.”

Once again, the 1980 statute is mute on the subject. Nevertheless, the earlier record indicates that the regime's policy is to treat the adult members of the family as discrete entities for such purposes. A mainland spokesman, commenting on the substance of the 1955 treaty on dual nationality between the PRC and Indonesia, singled out among the “many notable features” of that agreement “the principle of choice of nationality at one's own free will for men and

women alike."<sup>33</sup> The relevant provisions of the 1956 and 1962 compacts with Nepal were much less specific in this regard, but seemed to make the same point in referring to "all persons" who met the respective criteria of eligibility to opt with no distinction whatever between men and women.

In light of the above, the PRC's practice should look as follows: (1) if a foreign couple wish to acquire the nationality of the PRC via naturalization, each has to file an appropriate application on his (her) own behalf; (2) either one of them can also do it alone; (3) admission of either spouse to PRC nationality through naturalization does not affect the existing nationality of the other; (4) where one spouse has become a naturalized citizen of the PRC, the job is henceforth made easier for the other who can invoke the "close relative of a Chinese national" clause as grounds for entitlement to PRC nationality. The revised picture has both positive and negative features too. On the plus side, the equality of husband and wife is fully recognized in this context, with its corollary that, as before, one partner's acquisition of PRC nationality cannot serve peremptorily to plunge the other into a condition of dual nationality. On the minus side, if the wife happens to possess the nationality of a state that adheres to the old-fashioned doctrine that a wife ought to tag along with the husband and consequently deprives the wife of its nationality when the husband converts to another citizenship, she will here end up stateless because today she has no automatic claim to Chinese nationality. Still, the prospect of any attendant hardship is considerably reduced by the proximity of transfer into PRC nationality based on an official request in which the husband already vested with PRC nationality is identified as the "close relative."

The next question is what befalls minor children when their parents seek to obtain PRC nationality by naturalization. Legislative silence on the topic means that one must largely extrapolate from the practical record to find the probable answers. The 1980 statute's lone contribution is the stipulation in Art. 14 that the acquisition of Chinese nationality "shall go through the formalities of application," to which is added the explanation that "applications for those under the age of 18 may be filed by the minors' parents or other legal representatives." The two option schemes between the PRC and Nepal convey the same message. In the 1956 agreement, the signatories endorsed the right of all persons who had attained the age of 18, resided in China and descended from parents who had the citizenship of the PRC and Nepal respectively, to "choose, in accordance with their own will, for themselves and their children who

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33. Wang Chi-yuan, "Nationality of Overseas Chinese," *People's China* No. 12 at 8-9 (1965), cited in Cohen and Hungdah Chiu, *supra* n. 10 at 259.

are under 18, the nationality of the People's Republic of China." Pursuant to the relevant section in the 1962 exchange of notes, for those members of the local population entitled to opt who were minors according to the law of the country where they resided, the corresponding declarations would be made by their parents or legal guardians.

The script prompts several observations. First, the mechanics of the operation are fairly clear in calling for the submission of a separate official application for naturalization in the name of the minor child, either by its parents or legal guardians. The whole affair may be essentially *pro forma* but, technically speaking, without such a request the minor child will not enter PRC nationality together with its parent(s). Second, while no difficulty arises when both parents apply for PRC nationality for themselves and jointly file similar papers on behalf of their minor children, the affair becomes rather more complicated where only one parent desires to convert to PRC nationality and the other elects to remain a foreigner. The available data shed no light on how this problem would be handled. It is quite likely that in these circumstances, if both parents nonetheless signify their consent in the appropriate written application that the child-nominee should follow in the footsteps of the parent who has asked for PRC nationality, the authorities will give their approval. On the other hand, odds are that in the event that a consensus is not forthcoming and one parent then attempts unilaterally to alter the child's citizenship against the other's wishes, the competent institutions will demur. An exception might, one supposes, be made in a case involving a solitary parent—the other being dead or unknown. In a post-divorce situation, the decision is apt to hinge on whether or not the parent who does not have custody of the child maintains a regular relationship with, and continues to discharge sundry parental duties toward, the offspring. If yes, the "absentee" parent's acquiescence in the move could still be mandatory; if all contacts have ceased, the right of the single remaining parent to change the child's nationality to that of the PRC might be sustained.

Third, going on the initial premise that a minor child's acquisition of PRC nationality by naturalization cannot result from automatically sharing the parents' newly-won status, failure to make the necessary application could easily produce statelessness. Most states figure that minor children will accompany their parents and consider that the original nationality of the minor children lapses when their parents acquire different citizenship. *Vis-à-vis* the PRC, that kind of expectation on the part of a foreign state may lead to statelessness because, unless the parents take proper precautions to obtain PRC nationality for the children, the latter cannot simply ride into PRC nationality on the parents' coat tails.



Fourth, in their 1955 treaty on dual nationality, the PRC and Indonesia included an interesting clause by which the minor children of prospective optants who themselves had both nationalities would be assigned the nationality of their parents or parent according to a designated formula until they came of age, whereupon they had one year in which to select between the two nationalities on their own. The 1980 statute features no provision that would enable a person who had acquired PRC nationality by naturalization during his (her) minority at his (her) parents' behest to relinquish it in summary style upon achieving majority on grounds of a different preference. Standard denaturalization procedures are always available, of course, to consummate such divestiture, except that there is no guarantee that the bid will succeed since formal release from PRC nationality cannot be accomplished by the individual alone and meantime the responsible apparatus is by no means obliged to defer to the person's choice.

The general rule, according to Art. 8 of the 1980 act, is that "any person who applies for naturalization in China acquires Chinese nationality upon approval of his or her application." To that is added the important reservation, referred to earlier, establishing that "no person whose application for naturalization in China has been approved is permitted to retain foreign nationality." Now, the preceding analysis of the latest rules pertaining to the modalities of acquisition of PRC nationality through naturalization shows that dual nationality can in fact supervene in that context in respect to both adults and minor children—not randomly induced by a conflicts-in-law occurrence, but by the affirmative actions of the parties concerned in getting themselves naturalized in the PRC without first "resigning" from their old citizenship.

Suffice it to note here that the statement that the mainland regime will not permit people who have acquired PRC nationality by naturalization "to retain foreign nationality" is not the last word on the subject. If the individual in question received PRC nationality at his (her) request while residing abroad (which is possible under the terms of the 1980 legislation), the injunction may be unenforceable in any event, at least from the perspective of effectively negating the validity of the foreign citizenship and asserting the primacy of the PRC's nationality. If the interested party resides within the confines of the PRC, the authorities are better equipped to implement the prohibition "to retain foreign nationality" by refusing to attach any practical significance to the foreign nationality and affording the competing PRC nationality a local monopoly: the problem is then taken care of at the *de facto* level, although the juridical knot remains since mere unwillingness to acknowledge a foreign citizenship is powerless to nullify it in a legal sense.

A quick footnote will round out the picture: the 1929 statute postulated that any person possessing the nationality of the Republic of China which was not original or natural and a naturalized person's wife and children who acquired Chinese nationality in conjunction with his naturalization could not hold a wide assortment of public offices (these restrictions could be lifted after a long probation); the 1980 version never even alludes to the topic.

In closing this chapter, one should take a moment to point out that the Chinese have a past history of impressive generosity in their treatment of foreigners. Aliens and stateless persons had entered China in large numbers at different times. They often stayed for extended periods. No pressure was exerted on them to acquire Chinese nationality; they were allowed to keep their own citizenship or stateless status as they pleased and the authorities ostensibly never gave any thought to evicting these "guests." When the opportunity presented itself, the administration proved quite cooperative in issuing exit visas to them. In 1956, for instance, arrangements were made to let the balance of the small Russian Jewish community in the PRC leave the country.<sup>34</sup> The same year, the mainland regime began permitting emigration by members of the "White Russian" colony in China and, since then, more than 20,000 of them have passed through Hong Kong on their way to resettlement in South America, the United States, Australia, Switzerland, New Zealand, and other places. According to reports, emigration procedures have recently been relaxed and a further 2,000 are expected to take advantage of the thaw to join the exodus.<sup>35</sup>

Relations with the Soviet Union, once most amicable, showed signs of severe strain in the early 60s. In 1962 the government offices in Sinkiang virtually stopped accepting requests for exit permits to the USSR from local Soviet residents wishing to return home. That spring, Soviet sources claim, a wave of refugees crossed the frontier, seeking asylum in the USSR, and, by Moscow's estimates, between 22 April and early June 1962, some 67,000 souls illegally escaped from Sinkiang province into neighboring Soviet territory. Unable to cope with the mass efflux, the PRC Ministry of Foreign Affairs now approached its Soviet counterpart and apparently proposed that the two countries agree to allow entry into the USSR through a simplified procedure. Acceding to the request, the Soviet government introduced a temporary program of visa-less immigration to the USSR from China of Soviet citizens and members of their families. From 15 October 1962 to 1 May 1963, more than 46,000 persons availed

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34. See Silverstein and Silverstein, "David Marshall and Jewish Emigration from China," 75 *The China Quarterly* 647-654 (1978).

35. Loong, "White Russians Still Wandering," *The Korea Herald* at 4 (5 June 1980).

themselves of this opportunity. In the end, the Soviet authorities found it necessary to reimpose the normal visa regime, for the flow of repatriates continued unabated and measures had to be taken to provide them with living space and employment.<sup>36</sup> The border has long since been tightly sealed and, as noted, the remnants of the Russian community in China have been trickling southward en route to new abodes overseas.

#### LOSS OF NATIONALITY

##### 1. *Forfeiture*

The 1929 law treated involuntary loss of Chinese nationality as an exceptional phenomenon and expressly sanctioned its occurrence only in the event of legitimation involving a minor who lost his (her) Chinese nationality when (1) the father was an alien and had recognized him (her) as his child, or (2) the father was unknown or did not recognize him (her) as his child and the mother was an alien and had recognized him (her) as her child. Even these few cases were subject to an array of reservations, all of which served to limit the frequency of the experience.

The 1980 edition seems to share that aversion. Thus, Art. 14 enunciates the general principle that "renunciation . . . of Chinese nationality . . . shall go through the formalities of application," with the further explanation that "applications for those under the age of 18 may be filed by the minors' parents or other legal representatives." The sole exemption—albeit a very important one—is represented by the rule featured in Art. 9 that "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." Otherwise, so the script suggests, a national of the PRC cannot be relieved of his nationality by mere legislative writ. Notice, though, that in this special context too where the latest statute licenses "forced divestiture," the scope of the formula is still drawn quite narrowly. Indeed, forfeiture of PRC nationality is contingent on both deliberate expatriation ("settled abroad") and conscious acquisition of a foreign nationality—acquisition of foreign nationality while simply "located" abroad will not suffice and neither will expatriation coupled with acquisition of a foreign nationality that smacks of *ex parte* action. According to official sources, the mainland government decided to make the switch to the current *modus operandi*—taking here a position unprecedented in the annals of Chinese nationality practice—for the sake of curbing the incidence of dual nationality "overseas" where the issue was

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36. *Supra* n. 18.

causing constant difficulties in the PRC's dealings with various countries that contained sizable ethnic Chinese minorities.

The impression, then, is that legitimation by a foreign parent will no longer entail the loss of PRC nationality by the legitimated party (in contrast with the respective 1929 norm). Nor, presumably, will adoption have that effect, despite the fact that in the 1955 treaty on dual nationality with Indonesia, the PRC regime did accept the proposition that "any child holding the nationality of the People's Republic of China, if legally adopted by a citizen of the Republic of Indonesia before attaining five years of age, acquires the nationality of the Republic of Indonesia and automatically loses the nationality of the People's Republic of China." Looked at in historical perspective, this last episode has all the earmarks of an *ad hoc* diplomatic dispensation that reflected an unusual eagerness to end a thorny international problem and a rare willingness to compromise.

An agenda hinging on refusal to postulate loss of PRC nationality in conjunction with legitimation and adoption can, of course, engender its own quota of dual nationality incidents. For example, if the foreign state which enters the picture when the legitimation or adoption of a minor possessed of PRC nationality involves a transnational dimension should subscribe to the doctrine that the nationality of the new or certified parent(s) must extend to the *de cuius*, the child will forthwith be vested with dual nationality. On the other hand, a distinct advantage of this procedure is that it precludes the inception of statelessness. One plausible reason why the PRC regime was prepared to mandate forfeiture of its nationality when an expatriate PRC national willingly acquired a foreign nationality and shied away from doing so in instances of legitimation or adoption was that in the former situation statelessness could, by definition, not occur and in the latter, if such a lapse were permitted, it certainly could. Thus, when curing dual nationality through the expedient of denaturalization by fiat poses a high risk of statelessness, the PRC law-makers seem to consider dual nationality the lesser evil where PRC nationals are concerned. A second possible explanation is simply the scale of the operation: the PRC authorities would be ready to institute emergency measures, like forfeiture, to deal with the dual nationality status of thousands of "overseas" Chinese residents naturalized in their new homelands; probably, dual nationality incurred in the wake of adoption or legitimation would not affect enough people to warrant this sort of drastic remedy.

Now, the regime's recorded opposition to the concept of automatic loss of PRC nationality, notwithstanding, and despite ample evidence that it saw fit to resort to that technique in this particular setting essentially due to recognition that it faced a *force majeure*

scene, chances are that the problem will recur every time the administration lets Chinese nationals emigrate. Although the post-1949 political leadership can hardly be called generous on that score, people do manage to get official permission to leave the country and a legally sanctioned outflow of modest magnitude has been a feature of the Chinese scene for the past several years. Mention has already been made of the gradual departure of the "White Russian" contingent from mainland China that began in 1956 and continues to this day. The initial exodus involved individuals who apparently never acquired Chinese nationality and so did not raise any denaturalization questions, but soon after the government started granting exit visas to their Chinese spouses and children born of mixed marriages who were also allowed to emigrate, once they had been accepted by another country.<sup>37</sup> Here, the prospect of settlement abroad and eventual acquisition of foreign citizenship tripping the mechanism of synchronous forfeiture of PRC nationality was very real.<sup>38</sup>

In conclusion, a further curious aspect of the PRC policy deserves a moment's attention. Note that forfeiture of PRC nationality under the terms of the 1980 act is conceived exclusively as a consequence of designated prior initiatives by the private party. No reference, for instance, is made to the possibility of an individual being deprived of his (her) PRC nationality by judicial decree or executive edict as a form of punishment that is familiar to many legal systems.

## 2. Renunciation

The old law dealt with loss of Chinese nationality through formal relinquishment very briefly. Art. 11 established that a Chinese national wishing to acquire the nationality of a foreign country could be permitted by the Ministry of the Interior to renounce his (her) Chinese nationality provided that he (she) was more than twenty years of age and had legal capacity under Chinese law. The statute imposed no other prerequisite and appeared to treat exit from Chinese nationality as a personal right that did not require citation of any positive grounds for its exercise. However, in a negative sense, the 1929 enactment did raise a number of substantial barriers.

First, a person was not allowed to renounce Chinese nationality if he (she) had attained military age, was not exempted from military service and had not yet served in the army, was performing mil-

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37. Loong, *supra* n. 35.

38. Another recent incident concerned the return of Japanese orphans abandoned in China at the end of the Far East War, and their families. *The Korea Herald* at 5 (21 Oct. 1980).

itary service, or was holding Chinese civil or military office. Second, a person was ineligible to renounce (as well as forfeit) Chinese nationality if he (she) was a suspect or an accused in a criminal case, or had been sentenced for a criminal offense and the sentence had not been completely executed, was a defendant in a civil case, was subject to a compulsory execution that had been ordered and had not been completely carried out, had been declared bankrupt and had not been rehabilitated, or, finally, was in arrears in the payment of imposts or taxes or had incurred a penalty due to such arrearage and the penalty had not been completely executed.

Unlike its predecessor, the 1980 act enumerates particular circumstances that might justify approving an individual's request for release from PRC nationality. To be sure, under the terms of neither the 1929 nor the 1980 regulations are the competent administrative organs obliged to acquiesce. Nevertheless, the impression one gets from the wording of the older law is that, in the normal course of events, such permission would be forthcoming unless the petitioner fell under one of the specific prohibitions named in the statute, whereas now the applicant can count on being allowed to relinquish PRC citizenship only if he (she) fulfills certain special criteria and not, as in the past, because he (she) is generally entitled to exchange Chinese nationality for a different status. According to the new rules, then, Chinese nationals may renounce PRC nationality upon approval of their applications provided that: (1) they are close relatives of aliens; or, (2) they have settled abroad; or (3) they have other legitimate reasons. The last clause functions as a catch-all device that guarantees the bureaucracy complete discretion since nobody can know in advance what else might here qualify as a "legitimate reason." However, since this flexibility is in principle intended to benefit the private party by giving the responsible officialdom ample room to discover a suitable alibi for concurring in the person's expressed desires on this count, the stylistic artifice should raise no objections.

The two remaining standards are more focused. Expatriation figures as an important element in the PRC's current repertory on nationality affairs and it is therefore no surprise that a PRC national who manages to establish permanent residence abroad should be deemed eligible for denaturalization on these grounds. By the same token, one can fairly assume that the yardstick of close kinship to an alien is meant for situations where the unity of the family is at stake and is designed to be invoked primarily in cases of mixed marriage. Indeed, the marriage of a Chinese national to a foreigner cannot *per se* affect the nationality position of the Chinese partner, but the resulting association will apparently be recognized as a legitimate reason for asking for release from PRC nationality in anticipa-

tion of conversion to the nationality held by the foreign spouse. Interestingly enough, the 1980 script echoes the language of its antecedent on a related item in next decreeing that "state functionaries and soldiers shall not renounce Chinese nationality." This is the only disqualification of the kind in the present text, though, compared to the lengthy catalogue of analogous constraints proclaimed earlier. Art. 11 rings down the curtain by declaring that "any person whose application has been approved loses Chinese nationality."

Several points need to be made in this connection. As already mentioned, renunciation of PRC citizenship works strictly as a joint enterprise in the sense that the procedure calls for the consent of both the individual and the state. The practical significance of this formulation lies in the fact that the individual cannot on his (her) own legally divest himself (herself) of PRC nationality, but must always win the regime's explicit agreement to the formal dissolution of the "partnership." Hardest hit by this rule are the people located inside the PRC who are at the utter mercy of the authorities in having to obtain proper approval of any plans they might have to quit PRC nationality. Even acquiring a foreign nationality under these circumstances offers no relief, for we are told that, since Chinese citizens are not allowed to hold dual citizenship, "anyone who applies for foreign nationality must gain approval of his request to renounce his or her Chinese nationality" in order to prevent the spread of dual citizenship.<sup>39</sup> Hence, if a Chinese national residing in the PRC did succeed in obtaining a foreign nationality, the home government would presumably still be free to pronounce the latter invalid and treat the *de cuius* as purely a PRC national. True, the legal question of dual nationality would not be settled by such an approach, but in fact PRC nationality would then plainly prevail.

A PRC national "overseas" would be somewhat better placed in that respect. Undoubtedly, genuine renunciation of PRC citizenship would continue to depend on the person's ability to receive official permission to surrender PRC nationality. Failure to do so would deprive the individual's unilateral bid to shed PRC nationality of any juridical value, except that in this case any attempt to assert PRC jurisdiction would now be checkmated by logistical considerations. On the other hand, an interested party could ostensibly manage in this setting to engineer automatic forfeiture of PRC nationality by establishing permanent residence abroad and willingly acquiring a foreign nationality. The two experiences are not identical, however.

Note that forfeiture is contingent on both settlement and voluntary naturalization in a foreign country. People who do not satisfy the entire package cannot expect to see their PRC nationality lapse

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39. Gong Qiuxiang, *supra* n. 8 at 25.

forthwith. Thus, an individual who does not maintain regular domicile abroad or would rather not strap himself (herself) with one, or is resigned, *ultima ratio*, to a stateless lot technically cannot count on the phenomenon of forfeiture to rid him (her) of PRC nationality and, once again, will be forced to revert to the standard *modus operandi* of renunciation to stage the escape. Furthermore, where the record indicates that the twin indicia of foreign domicile and naturalization have nominally been met, no forfeiture may yet occur on the pretext that the acquisition of foreign nationality was less than 100 percent voluntary. Finally, the picture would be incomplete without taking into account that for renunciation of PRC nationality evidence of prior acquisition of a substitute foreign nationality is not required (whereas with forfeiture it is) so that an individual duly granted release from PRC nationality can incur statelessness, a condition from which the PRC's legal system fully protects its citizens whenever they are slated to forfeit PRC nationality.

Neither the 1929 nor the 1980 statute says anything on the subject of the effects of relinquishment of Chinese nationality by the *pater familias* on the nationality status of the wife and children. From other sources, one gathers that on the domestic scene the mainland regime has consistently followed the policy that change of nationality by one member of the family does not affect the others.

The results get mixed ratings. Among the progressive features one can cite the obvious respect for the principle of exercise of free will by each party involved in expressing his or her nationality preference, eschewing the old concept which relegated the wife and progeny to playing a passive role in these transactions. The fact that the present format precludes the inception of statelessness in these circumstances likewise earns good grades. Two items belong on the debit sheet. First, the current *modus operandi* will tend to increase the incidence of dual nationality. Many states still practice the rule that a foreign female married to one of their citizens automatically acquires the husband's citizenship and that the minor children follow suit; hence, if the wife and children vested with PRC nationality do not in this sort of situation seek to transfer to the husband's new nationality or are denied permission to do so, dual nationality can easily ensue. Second, by requiring each member of the family to apply individually for denaturalization, the latest procedure will multiply the chances of splits occurring within the unit: the failure of one spouse to ask for release from PRC nationality simultaneously with the other or neglect to put in the necessary papers in the name of the offspring or refusal by the authorities to sanction renunciation of PRC nationality by a particular member of the family (husband, wife or progeny) while letting the others relinquish theirs, will produce a family marked by divided nationality.



To be sure, the law recognizes that being a close relative of an alien is grounds for requesting exit from PRC nationality and this reason could certainly be invoked in those conditions, but no real guarantee exists that official approval for renunciation of PRC nationality would now be granted on that basis.

#### RECOVERY OF NATIONALITY

The 1929 statute paid considerable attention to the theme of recovery of Chinese nationality. Under its terms, such restoration was possible in the case of a woman who had once possessed Chinese nationality and lost it when she married an alien and, upon her application, then obtained permission from the Ministry of the Interior to renounce her nationality—following the annulment of her matrimonial relationship and provided the reversion was approved by the Ministry of the Interior. Similarly, a person who had been released from Chinese nationality with the consent of the Ministry of the Interior upon his (her) wish to acquire the nationality of a foreign country could recoup his (her) Chinese nationality on the condition that he (she) have a domicile in China, be of good moral character and have enough property and skill and ability to earn a livelihood. This reentry procedure did not apply to a naturalized person and his wife and children who, having acquired Chinese nationality in conjunction with that person's naturalization, later lost their Chinese nationality. Recovery of Chinese nationality by the *pater familias* in the manner specified above had the same effect on the nationality of the wife and children as original naturalization, namely: the wife and children who had not attained majority under the law of their own country acquired, by virtue of the husband's and father's reinstatement, the nationality of the Republic of China except where the law of the wife's and children's own country prescribed the contrary. An individual who recovered Chinese nationality was barred, just like a newly naturalized person, from holding certain public offices,—but only for a 3 year probation, as compared to 5 or 10 for a freshly naturalized person.

On a quantitative scale, recovery of Chinese nationality cannot amount to a major piece of business.<sup>40</sup> Yet, the issue seems to have a special symbolic meaning for the Chinese and even in the period of *ad hoc* experimentation in citizenship affairs during 1949-1980, references to it figure in the record more often than one would ordinarily have any reason to expect. Chou En-lai reportedly attached enough importance to the matter to raise it in diplomatic meetings

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40. About 260,000 returnees since 1949 has been estimated but many of these presumably never lost their Chinese nationality. See Szulc, "The Refugee Explosion," *The New York Times Magazine* at 136-141 (23 Nov. 1980).

with foreign visitors. On one occasion, for instance, when the subject of the status of the Chinese community in Singapore came up, the PRC's Premier took the opportunity to reemphasize that, in his view, "there must be a proviso in the future constitution of Singapore which would permit those of Chinese origin to return to China and live out their days, if they so wished; it must be possible for them to renounce their citizenship and return to the land of their ancestors."<sup>41</sup>

The 1980 law deals with the theme of recovery of PRC nationality quite succinctly. The first half of Art. 13 prescribes that "aliens who were once of Chinese nationality may apply for restoration of Chinese nationality provided that they have legitimate reasons." The latest formula differs from its 1929 predecessor and its 1949-1980 forerunners in several significant ways. First, a distinction is no longer made between the reasons for the initial loss of Chinese nationality leading to efforts at recovery. Where the 1929 statute had treated separately restoration to Chinese nationality following its loss as a consequence of denaturalization or marriage, the 1980 version features a general rule which governs all such contingencies, whatever the source of the problem now calling for this remedy. The stylistic switch is perfectly understandable in view of the fact that, unlike the prevailing practice in 1929, marriage to a foreigner has no special connotation any more in terms of its capacity to modify the nationality status of the Chinese party involved and so the extra reference to this offshoot could be dropped in favor of a uniform procedure designed to service the entire species. Second, to the extent that the 1980 edition does not single out marriage in this context, there is no further need to comment on the position of the woman in that eventuality and the generic language lends a more socialist flavor to the current script (compared even to the 1949-1980 precedent) by making it sound as though both men and women can lose their PRC nationality in the wake of marriage to aliens and recoup it in identical fashion: the implied equality of the spouses in this respect fits the Communist canon better than did the tone of the random 1949-1980 pronouncements on the subject with their idiosyncratic focus on the woman's lot in these cases.

Third, while the 1929 regulations specified domicile on native soil as a precondition for reinstatement in Chinese nationality for those who had lost it through the mechanics of formal renunciation, the 1980 model talks of restoration being feasible given "legitimate reasons"—whatever this may mean. Interestingly enough, though, the official rapporteur for the bill in the national legislature chose to couch his remarks on the possibility of restoration to PRC national-

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41. Cited by Silverstein and Silverstein, *supra* n. 34 at 652.

ity in the framework of a goal attainable to overseas Chinese who "decide in future to return and settle down in China."<sup>42</sup> Thus, despite legislative silence, repatriation may still be considered a prime prerequisite for recovery of PRC nationality, at least at the administrative level where the vague concept of "legitimate reasons" will have to be filled with concrete substance. The interpretation is plausible enough, but cannot pretend to offer a definite answer since the evidence is so sparse. At any rate, if restoration to PRC nationality is going to be contingent on the idea of "coming home," a common theme will run from the 1929 statute through Chou En-lai's proposals regarding the Chinese minority in Singapore to the 1980 enactment (missing, one might add, from the 1955 Sino-Indonesian treaty and the various *ad hoc* statements on PRC nationality policy dating from the 1949-1980 period).

Fourth, the "domicile" clause may be very relevant to the principle enunciated in the second half of Art. 13 that "those whose applications for restoration of Chinese nationality are approved shall not retain foreign nationality." Indeed, if recovery of PRC nationality will be sanctioned solely where the petitioner resides on PRC territory, the ban on retention of foreign nationality may then be practically enforceable irrespective of the legal technicalities. In other words, without concerning themselves with whether or not the applicant has formally divested himself (herself) of the existing foreign nationality when requesting reinstatement in the nationality of the PRC, the authorities may succeed in their objective by simply refusing to ascribe any actual validity to the foreign nationality through exercise of physical jurisdiction over the *de cuius*. If, on the other hand, presence within the borders of the PRC is not mandatory for a person to be eligible to ask for reversion to PRC nationality, telling the individual in question that he (she) cannot retain the foreign nationality without spelling out how and when he (she) is expected to get rid of it may end up meaning very little, for once both nationalities are obtained the prohibition cannot be viably implemented against an individual living abroad, except by means of unilateral cancellation of his newly reacquired PRC nationality. This latter option does not figure in the law, leaving the matter shrouded in ambiguity. Making repatriation a *sine qua non* of restoration would provide at least a logistical, though not a juridical, solution to the problem.

Fifth, a few peripheral insignia should also be catalogued. For example, in the matter of entitlement to restoration of Chinese nationality, the 1929 legislation discriminated against those who had initially acquired it by primary or derivative naturalization and sub-

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42. Peng Zhen, *supra* n. 7 at 32.

sequently lost it, while the 1980 document does not penalize any class of people who desire reinstatement in PRC nationality and seems to envisage equal treatment for both natural and naturalized "apostates" seeking to rejoin the flock. Next, the old law established certain temporary disqualifications for "restored" Chinese nationals as regards access to assorted public offices and the latest statute contains no trace of like stigma which would clearly be viewed as incompatible with the socialist ethos. Finally, the 1929 script did not indicate whether recovery of Chinese nationality was open just to appropriate individuals who owned a foreign citizenship or to those among them who were stateless as well. Inasmuch as the 1980 edition speaks of returnees not being permitted to "retain foreign nationality," the wording tends to suggest that possession of foreign citizenship is a prerequisite here, but such a reading could be too literal and poor drafting may be responsible for creating a false impression; chances are that stateless persons otherwise eligible would, *ceteris paribus*, be as welcome for "reentry" as their fellow expatriates now equipped with a valid foreign passport.

The last item in this rubric concerns the effects of restoration of Chinese nationality on the status of the other members of his (her) family. The 1980 statute deals with the issue only in tangential fashion: thus, Art. 14 explains that the restoration of Chinese nationality shall go through the formalities of application and that "applications for those under the age of 18 may be filed by the minors' parents or other legal representatives." The difference from the matching norm featured in the 1929 statute is substantial: there, a semi-automatic procedure governed the acquisition of Chinese nationality by the wife and minor children of a *pater familias* who himself recovered Chinese nationality, i.e., a system where the man's immediate "dependents" were summarily extended Chinese nationality, unless the law of the wife's or children's own country provided to the contrary (meaning that the relevant foreign law did not sanction involuntary loss of its citizenship by the wife and children where the husband and father quit the local nationality). Now, however, individual petitions must be lodged by or in the name of every eligible member of the family in order to regain PRC nationality. If one or more do not qualify under this rubric, they may invoke the ordinary naturalization procedure presently assisted by the reason that "they are close relatives of Chinese nationals."

#### EFFECTS OF MARRIAGE

The 1929 statute followed the view prevalent at the time that: (1) marriage can affect the nationality of the wife alone; and, (2) the wife ought to share the husband's nationality. It therefore pre-

scribed (Arts. 2 and 10) that the nationality of the Republic of China be acquired by one who was the wife of a Chinese national and lost by one who was the wife of an alien. However, the legislators were also sufficiently progressive to add a proviso that made the process less than fully automatic: the foreign wife was duly granted Chinese nationality except where according to the law of her own country she retained her nationality; and the Chinese wife shed her nationality where, upon her own application, she had obtained permission from the Ministry of the Interior to renounce it. The formula protected the foreign wife of a Chinese national from incurring both statelessness and dual nationality and safeguarded the Chinese wife of a foreign national from contracting statelessness, although she could still end up with dual nationality if she failed to get a release from Chinese nationality and was instantly vested with her husband's nationality.

The subject of the relationship between marriage and nationality figured in several statements issued by PRC sources during the post-1949 period. In November 1955, for instance, the chargé d'affaires of the Netherlands in Peking was officially informed that local administrative practice observed the principle that a foreign woman did not acquire Chinese nationality automatically on marrying a Chinese man but could receive it only upon proper application.<sup>43</sup> In the oft-cited memorandum of 3 September 1958, the same point is made, along with the explanation that a Chinese woman who married a foreigner did not lose her Chinese citizenship.<sup>44</sup> Finally, PRC spokesmen attach a special significance to the fact that the 1955 Sino-Indonesian convention on dual nationality embodied the concept that "both men and women have the right and freedom to retain their original nationality after marriage. . ."<sup>45</sup>

The 1980 statute says nothing about the effects of marriage on nationality, presumably letting the act of omission underscore that no legal connection exists between the two phenomena. Mainland commentators confirm the absence of a link and note that, "under Chinese law, a foreign citizen who marries a Chinese will not automatically acquire Chinese citizenship."<sup>46</sup> The phrasing refers equally to men and women—in the best socialist tradition—and propounds a standard article of faith starring freedom of choice, parity of the sexes, and right of independent decision by each spouse in nationality matters. However, legislative silence also means that no specific remedies are prescribed for the accidental consequences of

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43. See Tomson, *supra* n. 4 at 84.

44. Reproduced in Hecker, *supra* n. 6 at 302-303.

45. Wang Chi-yuan, *supra* n. 33, quoted in Cohen and Hungdah Chiu, *supra* n. 10 at 759.

46. Gong Qiuxiang, *supra* n. 8 at 24.

the official policy, i.e., such by-products as the prospect of a Chinese woman being stuck with dual nationality upon marrying a foreigner or a foreign woman being plunged into statelessness upon marrying a Chinese national. (Men are rarely caught in this particular conflicts-in-law warp in any event.)

The cure here lies in resort to the established procedures governing the acquisition or renunciation of PRC nationality since the law expressly recognizes that being the close relative of a Chinese national entitles a person to seek admission to PRC nationality and being the close relative of an alien is grounds for requesting permission to leave PRC nationality. The main problem with the proposed solution, of course, is that it neither offers quick relief nor a firm guarantee that the administrative apparatus will in fact accede to the private party's wishes. On the plus side, either the husband or the wife in a "mixed" marriage can now sponsor each other's conversion in terms of acquisition or loss of PRC nationality through naturalization or denaturalization.

#### ORGANIZATIONAL FORMAT

The 1929 statute entrusted the administration of nationality affairs to the Ministry of the Interior, with referral in special circumstances to the National Government. In the PRC, too, this business was initially relegated to the care of the Ministry of the Interior and its subordinate offices, but pursuant to the instructions of the State Council dated 23 January 1956, jurisdiction over these questions was transferred to the Ministry of Public Security and its local branches.

The 1980 script features essentially the same cast. According to Art. 15, "the organs handling nationality applications are local, municipal and county public security bureaus at home and China's diplomatic representatives and consular offices abroad." Art. 16 adds that applications for naturalization and for renunciation or restoration of Chinese nationality are subject to examination and approval by the PRC Ministry of Public Security, which issues a certificate to any person whose application is approved. The police apparatus thus exercises a monopoly over these activities, presumably because of their implications for national security. The procedure sticks to historical precedent by putting the administrative branch in full control of the operation—no institution of review of its decisions, whether judicial or otherwise, is ever mentioned, although one can definitely assume that, statutory silence notwithstanding, at least the upper echelons of the Party always can, on an extra-curricular footing, monitor its performance and change its rulings.

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Since the individual facets of the record have been fully ana-

lyzed en route, a few general remarks will suffice to conclude this essay. The most notable aspect of the picture, of course, is simply the enactment of the statute itself. For decades, the PRC had postponed tackling the job because it was obviously fraught with so many difficulties—logistical, political, and ideological. Two major considerations probably account for the regime's willingness finally to address itself to the task: the current campaign promoting legality at home and the concomitant need to assemble a credible stock of legal artifacts; and the push to normalize relations with the external world and, *inter alia*, modernize the PRC's legal repertory to help attract foreigners and overseas creditors. The quality of China's legal conduct has often been looked at by outsiders as an index to how safe it was to consort with the local mandarins and putting on an impressive display of new legal "products" is one way for the present PRC hierarchy to advertise its commitment to and dramatize its stake in maintaining an effective structure of substantive and procedural rules. So, the desire to project a law-minded image must be seen as the paramount motive for passing the 1980 Nationality Law.

From the stylistic standpoint, the present piece of legislation is quite well crafted, although the contents still show some gaps—mostly on the margins of the main agenda. Such items as the effects of adoption, legitimation and marriage on the nationality status of the interested parties are not explored in the text—either through oversight, technical lapse, or a conscious preference for concentrating on the salient features of the prospectus and avoiding petty details. In material terms, the drastic move to abort the inception of dual nationality at birth among the Chinese domiciled abroad marks a critical development. More than anything else, the step symbolizes the lengths to which the current mainland leadership seems prepared to go to accommodate neighboring countries by encouraging the systematic integration of future generations of local Chinese residents into the respective host community. The importance of this innovation can hardly be exaggerated and the break thus consummated with traditional attitudes here is nothing short of epochal.

Several other themes, though less revolutionary in concept and mission, also deserve mention: parity of the sexes; change of nationality affiliation contingent on personal choice; total protection of PRC nationals from inadvertent affliction with statelessness; concern for reduction of the over-all incidence of dual nationality and adoption of appropriate counter-measures; abstention from ouster from PRC nationality by administrative or executive fiat or judicial decree as a form of punishment; equal treatment for natural and naturalized nationals as regards civic privileges. The obvious policy

animus against involuntary exposure to statelessness and dual nationality in fact sounds very enlightened, even by modern standards, and fits nicely today's human rights liturgy. To be sure, there are some dark spots too—chief among them the hegemonic role assigned to the state in sanctioning any shift in an individual's nationality so that the person alone cannot validly decide to alter his or her nationality status, and the lack of viable procedures for challenging the propriety of administrative acts pertaining to nationality questions where they adversely affect a person's lawful interests.