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THE NATIONALITY LAW OF THE PEOPLE'S REPUBLIC OF CHINA AND THE OVERSEAS CHINESE IN HONG KONG, MACAO AND SOUTHEAST ASIA

TUNG-PI CHEN*

INTRODUCTION

After thirty years of existence, the Government of the People's Republic of China (PRC) enacted the long-awaited Nationality Law in 1980. Based on the PRC Government's enduring principle of racial and sexual equality, the new law is designed to reduce dual nationality and statelessness by combining the principles of *jus sanguinis* and *jus soli* to determine nationality at birth. The need for a Chinese nationality law had long been recognized, but it was not until the adoption of the "open door" policy in 1978 after the downfall of the "Gang of Four," as well as the institution of codification efforts, that the urgency of the task was recognized.

The new law has two main objectives: (1) to improve friendly relations with foreign countries, particularly those in Southeast Asia where a large number of ethnic Chinese reside, and (2) to aid in China's thrust toward modernization. China's changing foreign policy provides the main impetus for the first objective. The pledge of the present, pragmatic leadership to achieve a peaceful international environment has replaced the Gang of Four's encouragement of a world of "great disorder." Especially significant is China's determination to unilaterally resolve the thorny issue of the nationality problems of the overseas Chinese (*Huachiaos*) in Southeast Asia in order to improve friendly relations with neighboring countries.

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Concerning the second purpose, the Nationality Law serves to define the nationality status of Chinese students and experts studying abroad over whom the PRC may exercise jurisdiction on a non-territorial basis. It also prescribes a naturalization and nationality restoration process to help attract alien experts, particularly the "patriotic" overseas Chinese, to participate in the nation's modernization efforts. Finally, the enactment of the Nationality Law enlarges the growing body of Chinese law, which in turn will enhance her domestic stability and lend credence to her foreign posture as a civilized nation in a modern world.

Prior to the adoption of the 1980 Nationality Law, the previous governments had unveiled a succession of three nationality laws. China's first nationality law was adopted in 1909 by the Qing (Manchu) dynasty (1644-1911), in an attempt to justify her claim to the allegiance and protection of overseas Chinese in Java and Sumatra (now Indonesia). The law applied the principle of _jus sanguinis_ to male lineage as the major basis for acquiring Chinese nationality, regardless of the country of birth.

After the fall of the Qing Imperial Government and the formation of the Republic of China in 1912, the nationality law of 1909 was abolished and the second nationality law was promulgated. In 1914, the 1912 statute was revised as the Amended Nationality Law. The third nationality law was adopted in 1929 by the Kuomintang (Nationalist)

3. The original text of the law was drafted by the Ministry of Public Security, an organ that has been entrusted with the administration of Chinese nationality matters since the establishment of the PRC in 1949. The draft was then submitted to the Standing Committee of the National People's Congress in February 1980 for adoption. The law was distributed to the lower people's congresses of all provinces and autonomous regions and to the three cities directly under the jurisdiction of the central Government (Beijing, Tianjin and Shanghai) for discussion and commentary. The final version was adopted and put into force by the Fifth National People's Congress at its Third Session on September 10, 1980, after extensive consultations with and review by the Ministries of Public Security and Foreign and Internal Affairs, as well as by the Office of the Overseas Chinese Affairs. See EDITORIAL DEP'T LEGAL TEXT, FAGUI XUANBIAN (Selected Laws & Regulations) 603 (1983). See also BEIJING REV. No. 40, at 17 (1980).


5. See Sheng, _supra_ note 1, at 207-09.
NATIONALITY LAW OF THE PRC

No formal nationality legislation was enacted by the succeeding Government of the People's Republic until 1980.7

This article will (1) discuss the general principles running throughout the new Nationality Law and compare the philosophical differences between the 1980 law and its three predecessors, (2) analyze the new Nationality Law in detail and discuss some of its features and implications, (3) comment on the policy of the new law and its effects on the nationality problems of overseas Chinese in Southeast Asia and (4) as an adjunct issue, discuss the implications of the newly-negotiated agreement between China and Britain on the nationality status of Hong Kong residents.

I. BASIC PRINCIPLES

Before analyzing the details of the PRC's new nationality legislation, the basic principles of the law should be reviewed. The four underlying principles are (1) unity (one single class) of nationality, (2) a combination of \textit{jus sanguinis} and \textit{jus soli}, (3) equality between the sexes and (4) nonrecognition of dual nationality. The latter two mark a sharp departure from the principles and spirit of China's three previous nationality laws. All four principles are consistent with modern and progressive nationality legislation in other countries, as well as international conventions and treaties on nationality laws.

A. One Single Class of Nationality with Equal Status

China's 1980 Nationality Law refers to "Chinese nationality" but offers no definition as to what constitutes that nationality.8 In article 2, the law proclaims that China is "a unified, multi-racial country" and that "persons belonging to any of the nationalities of China [ethnic origin] have Chinese nationality."9 This illustrates two important prin-

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7. Many commentators, including Chinese legal scholars, agree with this conclusion. \textit{See supra} note 1.
8. Article 1 of the 1980 Nationality Law states: "This law is applicable to the acquisition, renunciation and restoration of the nationality of the People's Republic of China." It has been ascertained that China has 56 minority ethnic groups, most populating the frontier regions of the country. Although ethnic minorities account for only 6% of the population (the remaining 94% being the majority Han), they inhabit between 50 to 60% of the entire country's land mass. \textit{See C. Fang, LAW ANNUAL OF CHINA 1982/83 7 (1982); see also Ulanhu, National Regional Autonomy, BEIJING REV. No. 46, at 15 (1981).}
9. Article 2 of the 1980 Nationality Law states: "The People's Republic of China is a unified, multi-national country; Persons belonging to any of the nationalities of China
ciples underlying China's socialist legal system: (1) that all of China's ethnic groups share a unified and single category of nationality and (2) that every member of an ethnic group residing within Chinese territory enjoys equal nationality status.

This single category of nationality in China's new Nationality Law contrasts sharply with equivalent legislation in other countries, most notably the British Nationality Act of 1981, which classifies three categories of British citizenship with different rights attributed to each category.10 Furthermore, the Chinese Nationality Law draws no distinction between the concept of citizenship and nationality, as is the case in some countries.11 This principle prevails even though China's enormous frontier regions are populated mainly by ethnic minorities with autonomous status under the constitution of a primarily centrist government.12 Under this principle, a person with Chinese nationality, regardless of ethnic origin, race, sex, religion, creed, education, wealth or length of residence, and whether native-born or naturalized, is a citizen of China and has constitutional rights and duties identical to those of any other person with Chinese nationality. Although the three previous nationality statutes implied the same principle of a single category of Chinese nationality,13 none contained an explicit statement to that ef-


11. See also 3 G. HACKWORTH, DIGEST OF INTERNATIONAL LAW 1-2 (1942).

The term citizen, in its general acceptance, is applicable only to a person who is endowed with full political and civil rights in the body politic of the state. The term national includes a citizen as well as a person who, though not a citizen, owes permanent allegiance to the state and is entitled to its protection, as, for example, natives of certain outlying possessions of the United States.

Id.

12. Currently, five autonomous regions, 29 autonomous prefectures and 75 autonomous counties have been established in China. See C. FANG, supra note 8.

The four constitutions that the PRC has adopted so far all grant regional autonomy to the ethnic minorities in these close-knit communities, usually in the frontier regions. Compare Zhonghua Renmin Gongheguo Xianfa (PRC Const.) art. 4, reprinted in BEIJING REV. No. 52, at 10 (1982) with PRC Const. art. 4 (1978), reprinted in BEIJING REV. No. 11, at 5 (1978), PRC Const. art. 4 (1975), and PRC Const. art. 3 (1954).

13. See 1909 Law, supra note 4, art. 1; Sheng, supra note 1; 1929 Law, supra note 6,
fect. Moreover, an interesting exception to the principle of equal status of nationality existed in the 1909 and 1929 nationality laws which restricted the rights of naturalized aliens to serve in the military or high public office. This seemingly harsh rule was adopted because of the imperial fear of foreign subversion at a time when China remembered bitterly the disasters she had suffered at the hands of foreign powers.

The use of a single category of nationality/citizenship in the new law reflects China's policy of unity among all ethnic groups and discards the unwritten and antiquated tradition of "Han Chauvinism." The equal nationality status of all ethnic groups reinforces the constitutional tenet that

[all] nationalities in the People's Republic of China are equal . . . . Discrimination against and oppression of any nationality are prohibited; any acts that undermine the unity of the nationalities or instigate their secession are prohibited.

China's Constitution and its recently promulgated Law of National Autonomous Regions also include special protective provisions for ethnic minorities in the frontier regions. This treatment of Chinese ethnic minorities in the Constitution and new laws emphasizes the Government's desire to engender feelings of allegiance and brotherhood in these strategically located groups. The principles contained in article 2 of the Nationality Law mirror the PRC's internal policy of goodwill toward national ethnic minorities; the PRC seeks to encourage loyalty and solidarity under the unified leadership of the central Government to promote a strong national defense.

B. Combination of Jus Sanguinis and Jus Soli

Historically, China adhered to the principle of jus sanguinis (blood relationship, or the right of blood) as virtually the sole method for original acquisition of nationality, and denied its nationals the right to denaturalize without government consent. All three previous laws disregarded jus soli (the place of birth) as a factor for determining Chinese nationality. Thus, a child was given the nationality of her father, regardless of where she was born. A child was given her

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14. 1909 Law, supra note 4, art. VIII; 1929 Law, supra note 6, art. IX. See also 1 J. COHEN & H. CHIU, PEOPLE'S CHINA AND INTERNATIONAL LAW 748 (1974).
17. See generally Ulanhu, supra note 8, at 15.
18. See supra notes 4-6.
mother's nationality only when her father's nationality was uncertain or unknown. When the nationality of both parents was uncertain or unknown, the principle of *jus sanguinis* was relaxed and the doctrine of *jus soli* was invoked to give Chinese nationality to a child born in China. The prominence of the doctrine of *jus sanguinis* and the denial of the right of automatic expatriation in these old nationality laws derived naturally from China's traditional view of the perpetual allegiance of the overseas Chinese as a source of strength, and from China's policy of preventing these Chinese from falling under foreign domination. Moreover, China believed that her population was already too large to admit additional people from outside the country, which would have resulted from the adoption of the doctrine of *jus soli*.

In the PRC's 1980 law, *jus sanguinis* remains the primary method for determining original acquisition of Chinese nationality, but notions of *jus soli* have also been incorporated. In deference to the general trend of nationality laws in other countries and in reaction to the problems resulting after World War II from double nationality, the new law combines the doctrines of *jus sanguinis* and *jus soli* to deny Chinese nationality to a child born overseas to Chinese parents settled abroad when the child acquires foreign nationality at birth. A more detailed analysis of the effects of the 1980 Nationality Law follows in section II of this article.

**C. Equality of the Sexes**

Although not explicitly stipulated, one of the basic principles of the PRC's new Nationality Law is equality of the sexes. This principle is consistent with China's socialist ideology of law and is expressed in its Constitution, which states: Women enjoy equal rights with men in all spheres of political, economic, cultural, social and family life.

19. For the historical background of China's first nationality law, see 1 J. COHEN & H. CHIU, supra note 14, at 746.
22. Article 5 of the 1980 Nationality Law states:

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

23. PRC CONST. art. 48 states: "Women in the People's Republic of China enjoy equal rights with men in all spheres of life, political, economic, cultural and social, including
Sexual equality or sexual discrimination in a nationality law is normally manifested in two areas: (1) the method of original acquisition of nationality by lineage and (2) the effect of a change in marital status on nationality. In both instances, China's three pre-PRC nationality laws demonstrate clear discrimination against women.

In the three previous laws a child's nationality was determined by the nationality of the father; the child took the mother's nationality only when the father's was unknown or when he was without any nationality. With respect to the second area of discrimination, the predecessor laws stipulated that an alien woman automatically acquired Chinese nationality upon marriage to a Chinese. The 1929 Act contained the exception that an alien woman reserved her original nationality if her country's nationality law did not revoke it upon marriage to a foreigner. According to China's 1909 and 1914 nationality laws, a Chinese woman was deemed in principle to have lost her Chinese nationality automatically upon marriage to a foreigner, except when statelessness would result for the married woman. In the 1929 law, as in the 1980 law, a married Chinese woman's denaturalization occurred only on a voluntary basis.

Unlike its predecessors, the 1980 law is phrased in neutral terminology applicable to men and women alike—such as “Chinese national,” “parent,” “one of the parents,” “alien,” “stateless person” and “close relatives.” The provisions concerning children's original acquisition of nationality at birth refer to both maternal and paternal nationalities. Similarly, in an application for naturalization, restoration or renunciation of Chinese nationality, both spouses are guaranteed the right of voluntary and independent determination. The result is sexual equality in nationality matters consistent with both international conventions and the 1967 United Nations Declaration on the Elimination of Discrimination against Women. Article 5 of the Declaration provides that “a woman should have the same rights as a man to acquire or retain nationality” and that “[m]arriage to an alien husband should not automatically deprive her of nationality, nor should a husband’s

24. 1909 Law, supra note 4, arts. I, II, V; Sheng, supra note 1, at 207 (quoting the 1914 Amended Nationality Law); 1929 Law, supra note 6, art. I.
25. 1909 Law, supra note 4, art. XIII; Sheng, supra note 1, at 207 (quoting the 1914 Amended Nationality Law).
26. Article 10(1) of the 1929 Law, supra note 6, at 96 states: “One who is the wife of an alien and who has, upon her own application, obtained the permission from the Ministry of the Interior to renounce her nationality . . . may do so.” Article 9 of the 1980 Nationality Law states: “Any person who has settled abroad and who has been naturalized there or has acquired foreign nationality of his own free will will automatically lose Chinese nationality.”
affect her nationality." This is a major advance in China's nationality laws which in the past were colored by the patriarchal society in existence at the time of their enactment.

D. Nonrecognition and Reduction of Dual Nationality

Another salient feature of China's new Nationality Law is its treatment of dual nationality. At the outset of the law, article 3 succinctly proclaims that the PRC refuses to "recognise dual nationality for any Chinese national." This principle is explicated throughout the 1980 law, and is designed to reduce the occurrence of duality. These provisions represent a growing sensitivity to international problems involving dual nationality, a reality ignored by the 1929 law, though acknowledged in the first two nationality laws. The policy of nonrecognition of dual nationality provides that a Chinese national's foreign nationality may be valid under the law of the foreign country, but it will not be recognized or accepted by the PRC; China will treat a dual national only as Chinese. As a statement of principle, article 3 is consistent with customary international law and the Hague Convention

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1. State Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.
2. State Parties shall grant women equal rights with men with respect to the nationality of their children.

Id. art. 9. See also N. HEVENER, INTERNATIONAL LAW AND THE STATUS OF WOMEN 194, 197 (1983); UNIFO, INTERNATIONAL HUMAN RIGHTS INSTRUMENTS OF THE UNITED NATIONS 1948-1952 51 (1983) (collected and arranged by the UNIFO editorial staff, Pleasantville, N.Y.) [hereinafter cited as INT'L HUMAN RIGHTS INSTRUMENTS].

on Conflict of Nationality Laws (1930), which states that "a person having two or more nationalities may be regarded as its national by each of the states whose nationality he possesses." Dual nationality is prevalent among overseas Chinese in Southeast Asia. This results primarily from conflicts between the nationality laws of China and those of the countries where overseas Chinese reside, referred to as "host countries." China's historical use of the principle of jus sanguinis and her refusal to recognize denaturalization without government consent were the direct antithesis to the broad application of the doctrine of jus soli used by most of the host countries. With the emergence of post-war nationalism in Southeast Asia, the large number of Chinese dual nationals in the region has caused numerous international controversies and frequent tension between China and the host countries over the allegiance of these dual nationals, a situation exacerbated by the Huachiaos domination of the local economies.

In the past the PRC has consistently advocated the principle of nonrecognition of dual nationality in order to promote friendly relations with the Association of Southeast Asian Nations (ASEAN) and to eliminate unhealthy suspicions between its member governments and resident Huachiaos. Espousing the principle, however, does not in itself solve the fundamental problem of dual nationality. This can only be accomplished through direct measures to reduce its occurrence.

T.S. No. 43 (1963).

Article 6 of the 1980 law expressly awards Chinese nationality to children born in China of stateless parents, or parents with uncertain nationality. Chinese nationality is also awarded to children born in China if at least one parent is a Chinese national (art. 4). Lastly, automatic loss of Chinese nationality only occurs after a foreign nationality has been obtained and the individual concerned resides abroad (art. 9).


31. See G. Jan, supra note 30, at 36. See also Yee, supra note 2; Tasker, The Roots of the Problem, 120 Far E. Econ. Rev. 18 (1983).
While the reduction of dual nationality underlies the PRC's elaborate diplomatic efforts to deal with the problem over the years by treaties or ad hoc settlements, these efforts are more an expression of China's desire to improve relations with its Southeast Asian neighbors than a concrete measure to amend nationality law.

II. ANALYSIS OF THE 1980 LAW

Compared to its predecessors, the 1980 law is brief. In only eighteen short articles, the Chinese have covered most issues relevant to nationality law. These include original acquisition of nationality and naturalization; dual nationality; renunciation (by application or operation of law); restoration of Chinese nationality and administrative organs for implementing the law. Such brevity is not uncommon to PRC legislation, but naturally it results in some ambiguity and incompleteness, and leaves large room for administrative discretion. These conditions present potential problems in the new Nationality law.

A. Acquisition and Retention of Nationality

The 1980 law provides only two means of acquiring PRC nationality: by birth and by naturalization. The law fails to provide a method for determining the nationality status of foundlings.

1. Acquisition at Birth

Depending on the parents' nationality and the child's place of birth, the new law contemplates three different situations in which Chinese nationality would be acquired at birth: (1) a child born in China whose parents are Chinese nationals, (2) a child born abroad whose parents are Chinese nationals, except where the child's parents have settled abroad and the child acquires foreign nationality at birth, and (3) a child born in China whose parents are stateless or of uncertain nationality, but who have settled in China. The first two cases combine the concepts of *jus sanguinis* and *jus soli*: the place of

32. See infra notes 95-100 and accompanying text.
33. 1980 Nationality Law, arts. 4-6.
34. 1980 Nationality Law, arts. 7-9.
35. Article 4 of the 1980 Nationality Law states: "Any person born in China whose parents are Chinese nationals or one of whose parents is a Chinese national has Chinese nationality."
36. 1980 Nationality Law, art. 5.
37. Article 6 of the 1980 Nationality Law states: "Any person born in China whose parents are stateless or of uncertain nationality but have settled in China has Chinese nationality."
birth plus Chinese parentage determines nationality. The third case is a modified application of \textit{jus soli} employed to reduce statelessness.

The first method for acquiring nationality by birth could actually lead to the undesirable result of a child born stateless. For example, if a child were born in China to foreign parents whose nation adheres purely to the doctrine of \textit{jus soli}, the child would receive neither country's nationality because, under article 4, birth on Chinese territory would not confer Chinese nationality on the child. Since China has never been a country of immigrants and has always shared the traditional view that permanent allegiance is a basic criterion for conferring nationality, it is justified in not extending Chinese nationality to the child in the above predicament. Reduction of statelessness in such a situation is a question for resolution by the cooperative efforts of the international community, in particular the country of the parents. The just and humane solution would be for the international community and the foreign state to extend a remedy to the stateless child. It is the responsibility of the parents' state and the international community to rationalize nationality laws to prevent such a situation from occurring.

The second method of acquiring nationality at birth, pertaining to children born abroad, codifies the PRC's policy of nonrecognition of dual nationality. The law moves a step closer towards the realization of this policy; it eliminates the acquisition of dual nationality at birth by denying Chinese nationality to the child if his parents are settled abroad.

At first glance, this denial of Chinese nationality deprives the child of the freedom to choose nationality, which in some countries is a right. Upon closer examination, however, Chinese nationality is available to the child through naturalization; one of the primary criteria for naturalization in China is that the person seeking naturalization is a "close relative" of Chinese nationals, and a child's Chinese parents certainly qualify as "close relatives."

The third method for acquiring nationality at birth applies to children born of parents who are both stateless or of uncertain nationality and permanently settled in China (article 6). Even though China cannot be expected to give nationality to a child whose parents have only a tenuous connection with China, requiring the child's parents to be permanently settled in China seems rather harsh, considering the likelihood that the parents' residency in China is transient. China's Nationality Law, however, does exhibit a sincere effort to reduce the inci-

\begin{itemize}
\item 38. See Gong, \textit{supra} note 20.
\item 39. See U.N. International Covenant on Civil and Political Rights, \textit{supra} note 29, art. 24.3.
\end{itemize}
dence of statelessness occurring on Chinese soil; the law extends Chinese nationality, reducing the number of children who may be otherwise stateless or of uncertain nationality.

Other nationality issues pertinent to children include the nationality status of foundlings and those born out of wedlock. The 1980 Nationality Law is unusually silent on these issues, but perhaps the omission was intentional. Since children born out of wedlock are ensured equal treatment under China's Marriage Law, the usual rules of acquisition by birth would therefore apply to children in these situations.

The fact that "found" children were not singled out for special treatment under the law may be a reflection of a social reality in China rather than an oversight. In light of the emphasis placed on communal lifestyle and family planning, and the practical difficulty of concealing a pregnancy, it may simply be that any child "found" in China can always be traced to her parents. Once that task is accomplished, the express provisions of the Nationality Law may be applied to the child. As more foreigners enter the country to contribute to China's modernization program, however, China may in the future adopt the general practice in most nations of automatically bestowing nationality on foundlings.

2. Acquisition by Naturalization

The next major method for acquiring PRC nationality is naturalization. In summary fashion, the law names three alternative grounds for the acquisition of nationality through naturalization: (1) the person must be a close relative of Chinese nationals, (2) the person must have settled in China, or (3) the person must have other legitimate reasons. Once Chinese nationality is effective, the applicant is not per-

40. Article 19 of the 1980 Marriage Law of the PRC states:
Children born out of wedlock enjoy the same rights as children born in lawful wedlock. No person shall harm them or discriminate against them.
The father of a child born out of wedlock must bear part [of or the whole] cost of maintenance and education of the child until he or she can live on his or her own.
41. But see Ginsburgs, supra note 1, at 473.
42. Article 7 of the 1980 Nationality Law states:
Aliens or stateless persons who are willing to abide by China's Constitution and laws may acquire Chinese nationality upon approval of their applications provided that:
(1) they are close relatives of Chinese nationals; or
(2) they have settled in China; or
(3) they have other legitimate reasons.
mitted to retain any previous nationality. These three criteria are much simpler and more discretionary than those cited in China's previous nationality statutes. For example, the 1980 law departs from its predecessors by not affixing the duration of domicile or residence necessary to satisfy the requirement that the person has "settled" in China. Further, the PRC's new law does not define the degree of kinship required to be considered "a close relative." Additional discretion is granted to the administrative authorities in deciding on an ad hoc basis what constitutes "other legitimate reasons." For example, a "foreign friend" who has made a substantial contribution to the PRC's revolution or socialist construction may have such a "legitimate reason." Finally, since the ultimate authority for approval of naturalization lies with the Ministry of Public Security, an applicant's ideological persuasion and qualifications—e.g., skills and means of subsistence—may constitute other important considerations in the applications process, although this would not be in strict observance of socialist egalitarian principles.

As a precondition for approval of an application, the administrative organs may require the applicant to renounce any previous nationality, unless the foreign nationality would be lost automatically upon acquisition of Chinese nationality. Alternatively, the approval could be made effective only upon renunciation of any previous nationality. Although the phraseology does not literally support this view, contingent approval is consistent with both the PRC's past practice and with a natural interpretation of China's commitment to nonrecognition and reduction of dual nationality. A similar condition was expressly pro-

43. Article 8 of the 1980 Nationality Law states:
Any person who applies for naturalization in China acquires Chinese nationality upon approval of his or her application; no person whose application for naturalization in China has been approved is permitted to retain foreign nationality.

44. For example, article 3 of the 1929 Law, supra note 6, at 94, required applicants to reside for more than five uninterrupted years (i.e., to be domiciled) in China, to be at least 20 years of age, to have good moral character and to have the ability to support themselves.

Article 3 of the 1909 Law, supra note 4, at 161, was even more stringent. It required applicants to reside for more than 10 uninterrupted years in China, to be at least 20 years of age and sui juris under their state's law, to have good moral character, to live independently and to lose their original nationality upon naturalization.

45. See M. Jin & F. Cai, supra note 1, at 19.

46. This interpretation is consistent with the practice of the PRC authorities and the 1953 Ministry of the Interior decree which required foreign nationals, in their application for naturalization, to renounce their foreign nationality; if unable to do so, they could declare their intention to renounce in the newspaper. See Sheng, supra note 1, at 211.

In the following year (1954) a decree by the same Ministry prescribed that those
vided for in the 1909 and 1914 laws, but not in the 1929 statute.

The new law, unlike China’s previous laws and the legislation in some other countries, provides that the wife of a naturalized Chinese citizen does not automatically derive her nationality from her husband’s choice. Similarly, children do not acquire PRC nationality *ipso facto* when their parents acquire Chinese nationality through naturalization. The traditional patriarchal doctrine of derivation, which ignores the desired nationality of the wife and children, is now considered objectionable in China. The new approach of the 1980 law is the use of nonderivative nationality in favor of free choice.

If all members of a family desire the same nationality, however, the loosely defined grounds for naturalization provide them with an easy method for acquiring Chinese nationality. Since the spouse and the children become “close relatives” of a Chinese national upon the husband’s naturalization, the wife may separately apply for naturalization; the applications of children under eighteen years of age may be filed by their parents or guardians.

Parents or guardians may follow an identical procedure to acquire Chinese nationality for an adopted child because China’s Marriage Law draws no distinction between adopted and natural children. The procedure is the same for native Chinese and naturalized Chinese parents. This view is contrary to that of another commentator who, based on the Kuomintang’s repudiated 1929 law and the 1955 Sino-Indonesian Treaty on Dual Nationality, concluded that after adoption a

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48. See supra text accompanying notes 23-27. See also Ginsburgs, supra note 1, at 480.
49. Article 14 of the 1980 Nationality Law states:
   The acquisition, renunciation and restoration of Chinese nationality, with the exception of cases provided for in Article 9, shall go through the formalities of application. Applications for those under the age of 18 may be filed by the minors’ parents or other legal representatives.
50. See supra note 40 and accompanying text; Ginsburgs, supra note 1, at 476.
51. 1929 Law, supra note 6, arts. 2 & 8, at 94-95.
52. The relevant provision in the Sino-Indonesian Treaty is art. IX, which states:
   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 na-
child acquired ipso facto the adoptors' nationality.53

China recognizes that the decision to naturalize is not made by the minors themselves; therefore China allows minors the freedom to choose nationality upon reaching the age of majority. Past PRC treaty practice reveals a record of commitment to assuring free choice for children. In the Sino-Indonesian Treaty on Dual Nationality, minor children were given the right to freely choose between Indonesian or Chinese nationality, but had to exercise that right within a year after "coming of age."54 This example was followed in the 1957 Sino-Mongolian Treaty.55 These treaties provide ideal models in the sense that the individuals involved were automatically accepted by the preferred nation, and likewise abandoned by the rejected nation. Such an ideal, however, cannot be attained unilaterally.

The 1980 law provides that naturalized children, upon reaching adulthood, may independently acquire the nationality of their choice. If they choose their former nationality and are settled abroad, they will "automatically" lose their naturalized Chinese nationality.56 If they are not settled abroad, they must undergo formal denaturalization procedures and await approval from the Ministry of Public Security before discarding Chinese nationality.

One restriction on this freedom of choice is that another nationality must be obtained before the naturalized Chinese nationality can be discarded. This restriction is reasonable because it ensures that nationality of the People's Republic of China and automatically loses the nationality of the Republic of Indonesia.


53. See Ginsburgs, supra note 1, at 476-78.
54. Sino-Indonesian Treaty, supra note 52, art. VI, at 756, states:
   All those persons who hold the two nationalities mentioned in Article I and who have not come of age when the present treaty comes into effect shall choose their nationality within a year of their coming of age. Pending their coming of age, they shall be considered as only holding the nationality chosen by their parents or their fathers in accordance with the provisions of the present treaty . . . .
55. The Sino-Mongolian Treaty, see D. JOHNSTON & H. CHIU, AGREEMENTS OF THE PEOPLE'S REPUBLIC OF CHINA 1947-1967: A CALANDER (1968), stipulates that the nationality of children of a mixed marriage between a Chinese and a Mongolian would be jointly decided by the parents, and upon becoming 18 years old, the children would be free to choose either nationality. See H. Li, GUOJI WENTI DE BIJIAO YANGJU (A Comparative Study of Nationality Questions) 242 (1981).
56. Article 9 of the 1980 Nationality Law states: "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."
eralized individuals will not be left stateless in the event they are unable to obtain the nationality of their choice. This precondition is necessary because China does not permit naturalized children to maintain dual nationality until the age of majority; thus, they must have renounced any other nationality before acquiring the Chinese one. If they had retained dual nationality until majority, they could simply opt for their preferred nationality and renounce the rejected one.\textsuperscript{57}

Requiring individuals to be settled abroad before they are permitted to bypass formal denaturalization procedures\textsuperscript{58} eliminates dual nationality; it further serves as recognition of China's inability to effectively exercise jurisdiction over her nationals abroad. Requiring approval before denaturalization for those living in China emphasizes the Government's concern for domestic public security, and is another example of the wide range of discretion afforded to administrative authorities.

The PRC has exhibited some unilateral effort to facilitate the principle of free choice, subject to restrictions necessitated by the Government's commitment to the paramount policies of nonrecognition and reduction of dual nationality and the reduction of statelessness, policies which are consistent with the spirit of international conventions encouraging the avoidance of positive or passive conflict of nationality laws.\textsuperscript{59} An ideal solution to the problem of free choice in this context would be to utilize multilateral treaties guaranteeing to children the right to restore their former nationality if they so desired within a certain period after reaching adulthood, a proposal which is similar to the terms of the aforementioned bilateral treaties.

\textbf{B. Loss of Nationality}

The PRC's Nationality Law establishes two conditions for the loss of Chinese nationality: (1) renunciation by voluntary application for denaturalization and (2) forfeiture (automatic loss by operation of law). The new law, unlike the law in some other countries, does not provide for deprivation of nationality.\textsuperscript{60}

\textsuperscript{57} Avoiding statelessness could be procedurally cumbersome for nationals living abroad if the country of choice does not provide summary procedures for restoring the citizenship of a former national.

\textsuperscript{58} See supra text accompanying note 57.

\textsuperscript{59} See supra notes 28 & 29.

\textsuperscript{60} See, e.g., British Nationality Act, 1981, § 40; I. Stanbrook, supra note 10, at 102.
1. Renunciation

Formal renunciation of nationality in favor of another is required for all Chinese living in China, but not for those "settled abroad." The process of renunciation is the reverse of naturalization. Accordingly, the grounds for renunciation mirror those for naturalization: (1) the person must be a close relative of aliens, (2) the person must have settled abroad, or (3) the person must have other legitimate reasons. Moreover, as with naturalization, the Minister of Public Security has wide administrative authority in assessing the aforementioned broad and extralegal factors.

Since the applicant is not expressly required to obtain another nationality before renouncing the Chinese one, theoretically an individual could incur statelessness. The administrative authorities, however, are not likely to deliberately swell the ranks of stateless persons by allowing denaturalization unless the person has a replacement nationality. A practice such as this would be in direct opposition to the law's spirit of reducing statelessness. A more plausible use of denaturalization enables dual nationals to request renunciation of Chinese nationality in favor of a foreign one which China does not formally recognize, but which nevertheless may be valid. By renouncing Chinese nationality, the foreign one is validated in the eyes of the Chinese Government. It is therefore reasonable to expect that evidence of a claim to a foreign nationality would be required before an application for renunciation would be approved by the PRC authorities. Renunciation by state functionaries and armed services personnel in active service, however, is prohibited for obvious security reasons.

2. Forfeiture

Forfeiture is the only method specified in the new law for discarding Chinese nationality without government approval. Article 9, which states that Chinese nationality is automatically lost only by those who have settled abroad and "voluntarily joined or acquired" a foreign nationality, eliminates any deliberate dual nationality for overseas Chinese living abroad. It does not apply, however, to those residing within

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61. Article 10 of the 1980 Nationality Law states:

Chinese nationals may renounce Chinese nationality upon approval of their application provided that:

(1) they are close relative of aliens; or
(2) they have settled abroad; or
(3) they have other legitimate reasons.

62. Article 12 of the 1980 Nationality Law states: "State functionaries and armymen on active service shall not renounce Chinese nationality."
The phrase "voluntarily joined or acquired" is interpreted by Chinese authorities and commentators as those individuals not compelled by some kind of voluntary act or derivation from another's voluntary act to take a foreign nationality. This interpretation is flexible enough to avoid dual nationality as a result of a conflicting application of the doctrine of derivative nationality, because nationality derived from the voluntary act of another is considered a non-compelled nationality. Thus, for example, a Chinese woman living abroad, upon deriving a foreign nationality from her husband, is considered to have voluntarily acquiesced to that nationality if she does not renounce it in favor of her previous one, or take some other action to retain Chinese nationality. Consequently, her Chinese nationality would be forfeited in favor of her foreign one. If the woman lived within the PRC, however, the Chinese Government would simply ignore her derived second nationality and consider her solely as a Chinese national. This interpretation is based on the diplomatic practice of the PRC, a practice which has consistently opposed unilateral imposition of local nationality on the many overseas Chinese and has promoted the right of free choice of nationality.

Another consistent action by the PRC is its omission of a provision for unilateral deprivation of Chinese nationality by the authorities. This position echoes those in the 1909 and 1929 laws; the 1914 law was the only one in China's history which adopted deprivation. To deprive an individual of his nationality is a rather harsh and unnecessary measure given the comprehensive nature of existing formal and informal sanctions against nationals in bad standing with the Government. Moreover, by continuing to recognize the Chinese nationality of an undesirable individual, the Government retains its right to exercise jurisdiction over the individual's fate.

63. This interpretation is based on the PRC's consistent diplomatic practice which has always opposed unilateral imposition of a local nationality on overseas Chinese. See Gong, supra note 20; M. Jin & F. Cai, supra note 1, at 13, 23.


65. See Sheng, supra note 1, at 209; M. Jin & F. Cai, supra note 1, at 21.
C. Restoration

All three previous nationality laws contained procedures for restoring Chinese nationality. Summary procedures, however, were provided only for those who acquired foreign nationality by operation of the derivative doctrine. For example, under previous law a Chinese woman who derived her foreign husband's nationality was allowed to apply for restoration of Chinese nationality only if she had been "judicially divorced from her husband or had become a widow." Upon reaching majority, minors who were naturalized aliens by derivative means were also permitted to use the summary procedure to restore their Chinese nationality.

The 1980 law, on the other hand, contains a general summary procedure for restoration of Chinese nationality to any expatriate who has lost it for any reason whatsoever. The main purpose of this provision is to facilitate the restoration of Chinese nationality to an applicant who returns to the "motherland" to retire or to participate in the modernization program. An ancillary reason may be to expedite the repatriation of ethnic Chinese to take on sensitive positions in highly advanced and secret technological fields or public offices.

Once restoration is approved, the applicant is not permitted to retain foreign nationality. As in the naturalization procedure, it would be reasonable to expect that proof of renunciation of foreign nationality would be a practical prerequisite for restoration of Chinese nationality, even though this is not explicitly stated in the text of the 1980 law.

D. Administrative Organs

Since its inception, the PRC has entrusted all nationality matters to the Ministry of Public Security. In the same vein, the 1980 Nationality Law designates the Ministry of Public Security as the ultimate administrative authority for examining and approving all changes of

66. These procedures are summary only in the sense that they are not subject to the character or means tests that were used in all other petitions for restoration; however, their restoration still depended on Government approval.
68. Id. at 165.
69. Article 13 of the 1980 Nationality Law states:
   Aliens who were once of Chinese nationality may apply for restoration of Chinese nationality provided that they have legitimate reasons; those whose applications for restoration of Chinese nationality are approved shall not retain foreign nationality.
70. Id.
nationality, including acquisition, renunciation and restoration.\textsuperscript{71} Inside China, the administrative organs handling nationality applications are the local, municipal and county public security bureaus. Outside the country, diplomatic representatives and consular offices address these affairs.\textsuperscript{72}

As stated earlier, given the broad discretionary and administrative powers in all nationality matters that are entrusted to the public security agencies, the drafters of the Nationality Law must have considered nationality a primary concern of public security. Customarily, the movements and proof of identity of all individuals in the country are monitored and controlled by the Ministry of Public Security.\textsuperscript{73} The granting of jurisdiction over nationality to this same Ministry reveals the sensitive nature of this matter in the eyes of the regime, and its relation to the other activities regulated by this agency.

Once approval of naturalization, renunciation or restoration of Chinese nationality is granted, certificates are issued by the Ministry to verify the individual's status.\textsuperscript{74} No official swearing in ceremony or ritual testimony of allegiance is mandatory, though for naturalization the law requires that applicants are willing "to abide by China's constitution and law."\textsuperscript{75} Perhaps the Government presumes that applicants are "willing," a presumption which renders formal confirmation of such intention unnecessary. Furthermore, since religion has been an anathema to communist ideology, such rites may be considered meaningless.

One major defect of the PRC's Nationality Law is the lack of a

\textsuperscript{71} Article 16 of the 1980 Nationality Law states: Applications for naturalization and for renunciation or restoration of Chinese nationality are subject to examination and approval by the Ministry of Public Security of the People's Republic of China. The Ministry of Public Security issues a certificate to any person whose application is approved.

\textsuperscript{72} Article 15 of the 1980 Nationality Law states: "The organs handling nationality applications are local, municipal and county public security bureaus at home and China's diplomatic representations and consular offices abroad."

\textsuperscript{73} For examples of the laws and regulations concerning the control of entry, movement and registration of Chinese nationals, as well as overseas Chinese and aliens in China, see Gongan FaGui Huibian 135-46, 253-70 (1981) (compendium of public security laws and regulations from 1950 to 1979); Zhonghua Renmin Gongheguo Gongan FaGui Xuanbian 141-72 (1982) (selected public security laws of the PRC). See also the Provisional Regulation of Residence Identification Cards for PRC Residents, in Zhonghua Renmin Gongheguo Guowuyuan Gongbao No. 8, at 246-47 (1984), which requires all Chinese nationals residing in the PRC to apply for residence identification cards (art. 2). This requirement is applicable also to overseas Chinese in Hong Kong, Macao and Taiwan, who return to settle on the mainland (art. 7). The regulation, however, does not apply to foreign nationals or to stateless persons residing in China (art. 19).

\textsuperscript{74} 1980 Nationality Law, art. 16.

\textsuperscript{75} 1980 Nationality Law, art. 7.
formal appellate procedure by which an aggrieved individual, whether foreign or Chinese, may seek reexamination of a rejected application. An informal appeal for administrative review to the higher echelons of the administrative authorities, however, may be available. Another defect is the absence of a concrete time period within which an application for naturalization, renunciation or restoration must be processed. Thus, an application conceivably may be "set aside" indefinitely for undisclosed private reasons.

E. The Application of the Law

Since the PRC's first formal nationality legislation was not enacted until 1980\(^{76}\) and since the 1980 law is not retroactive, obvious questions arise as to what law governs events which occurred during the 1949 to 1980 "silent period," when no formal nationality law was in force. The Common Program of the Chinese People's Political Consultative Conference of September 29, 1949 proclaimed the establishment of the People's Republic of China. This statute, which served until 1954 as an interim government charter,\(^{77}\) repudiated all "reactionary laws" of the Nationalist regime. The Kuomintang's 1929 Nationality Law appears to have fallen into this category,\(^{78}\) although its demise has been disputed.\(^{79}\)

Nationality problems during the "silent period" were largely addressed through internal administrative directives which, as far as can be discerned from the limited information available, do not differ significantly from the current formal legislation. Moreover, international conflicts involving nationality status were handled by the Ministry of Foreign Affairs and the foreign government involved through treaties or ad hoc settlements.\(^{80}\) Thus, all events related to nationality during

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\(^{76}\) See 1980 Nationality Law, art. 18.

\(^{77}\) For an English translation of the Common Program, see FUNDAMENTAL LEGAL DOCUMENTS OF COMMUNIST CHINA 34-53 (Blaustein ed. 1962).

\(^{78}\) M. Jin & F. Cai, supra note 1, at 5. Several principles inherent in the 1929 law differ significantly from the basic policy of the present Government, e.g., adherence to the principles of sexual and racial equality and nonrecognition of dual nationality. Accordingly, it is unlikely that the 1929 law remained in force after 1949. In fact, PRC commentators unanimously agree that the Nationality Law of 1929 was abolished together with all other laws of the Kuomintang Government. The PRC commentators, however, also agree that the 1980 Nationality Law continues to recognize the validity of Chinese nationality acquired or lost under the previous three statutes. See Zhang & Lu, supra note 1, at 48; Sheng, supra note 1, at 204; Wang, supra note 1, at 220.

\(^{79}\) See Ginsburgs, supra note 1, at 459-60.

\(^{80}\) See id. at 465-71. Under the internal administrative directives it was decided, for example, that (1) a Chinese woman did not automatically lose her Chinese nationality
the "silent period" would be governed generally by the internal administrative directives existing at that time. Two problems, however, are manifest. First, since administrative decisions were made only when the need arose, the question remains as to what principles should govern problems of Chinese nationality which arise in the present, but whose events transpired at the time these internal directives were in force. Second, even if it were desirable to look to these directives for rules, this would be difficult since the directives were never disclosed to the public and are presumably vague and incomplete.

The most likely solution would be for government authorities to use the principles embodied in the 1980 law as guidelines. This method would effectuate a practical and indirect application of the statute rather than a formal and retroactive application.

A Chinese national, for example, who settled abroad and had been voluntarily naturalized during the "silent period" in a foreign country where dual nationality was allowed, would be considered a dual national if the PRC's internal directives at that time permitted. Both nationalities would remain valid under the foreign law and the PRC's 1980 law, respectively, despite the fact that under article 9 of the 1980 law the Chinese nationality would be automatically forfeited upon voluntary naturalization abroad. Article 3 of the 1980 law, however, would not recognize the effect of the foreign nationality. Therefore, in order for the foreign state to exercise its right of international protection against China on behalf of a national, the individual must formally renunciate the Chinese nationality so that China will recognize the foreign one.

Conversely, if no relevant internal directives were applicable at the time the individual was naturalized abroad, Chinese authorities would likely turn to article 9 of the 1980 law, and following its principles by analogy, consider the individual as a single nationality alien. If the individual wished to regain his Chinese nationality, he could resort to the summary restoration procedures under the new law and relinquish his foreign nationality.

upon marriage to a foreign spouse, J. COHEN & H. CHIU, supra note 14, at 775, and conversely, a foreign woman did not automatically acquire Chinese nationality upon marriage to a Chinese husband, id.; (2) a Chinese child adopted by foreign parents did not automatically lose his or her Chinese nationality; and (3) aliens applying for naturalization in China were required to renounce their foreign nationality, 1980 Nationality Law, art. 8.


By the same token, if a Chinese citizen had become stateless during or prior to the "silent period," which is unlikely, he remains stateless under the new law. The summary procedures, however, enable this stateless person to apply for restoration of his PRC nationality.

Regarding the effect of pre-PRC laws, article 17 of the 1980 Nationality Law confirms that the PRC recognizes and abides by the legal consequences of the 1909, 1914 and 1929 nationality laws; Chinese nationality acquired or lost under the previous laws remains valid and is recognized under the 1980 law. Article 17 also affirms the continued relevance of China's bilateral treaties and ad hoc solutions for dual or other nationality problems. Moreover, the 1980 law does not affect the "vested rights" of individuals in Chinese nationality matters or nationality problems handled on an ad hoc diplomatic or administrative basis. Since the 1980 law takes effect from the "day of promulgation," it does not have retroactive application to the acquisition or loss of Chinese nationality which occurred prior to 1949 or during the "silent period." Hence, nationality acquired or lost during those periods pursuant to the prior laws continues to be valid. This interpretation is based on the clear language of the law, and the general rule of statutory interpretation that a substantive law does not have retroactive effect unless otherwise expressly stipulated. This interpretation is also the shared opinion of commentators of the PRC.

The PRC Government, rather than minutely detailing the effect of pre-PRC laws, has decided to recognize the nationality status of persons who have acquired or lost Chinese nationality before the promulgation of this law remains valid.

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83. See 1980 Nationality Law, arts. 4, 6 & 9.
84. Article 17 of the 1980 Nationality Law states: "The nationality status of persons who have acquired or lost Chinese nationality before the promulgation of this law remains valid."
85. See id.
86. In the view of at least one PRC commentator, from the establishment of the PRC up to the present, most of the nationality problems have been resolved (art. 17 of the 1980 law recognizes the historically resolved dual nationality problems). See G. Zhou, GUOJIFA (International Law) 273 (1981).
87. Article 18 of the 1980 Nationality Law states: "This law comes into force from the day of promulgation."
88. But see Ginsburgs, supra note 1, at 462. Ginsburgs' interpretation that article 9 is retroactive with respect to persons who became dual nationals before 1980, particularly including the "silent period," is an affront to the law's express recognition of nationality acquired or lost before the law came into force. This interpretation may be due to his confusion between the delineation of nonrecognition of dual nationality as expressed in article 3 and the validity of dual nationality under each country's law. For the delineation between the two, see supra note 81 and accompanying text. Article 9 of China's Nationality Law is simply a unilateral measure to reduce future dual nationality in accordance with the doctrine stated in article 3.
89. The purpose of the 1980 law is to insure continuity of law, not to uproot or unsettle the results of the previous three laws, nor to derogate the bilateral treaties on dual nationality. See G. Zhou, supra note 86; see also Zhang & Lu, supra note 1.
all combinations and permutations of conflicting and unknown nationality laws during the “silent period” and before, will probably “let sleeping dogs lie” and resolve each case as it arises.

III. Dual Nationality and Overseas Chinese in Southeast Asia

The current Chinese Government has repeatedly enunciated a three-pronged position towards overseas Chinese (Huachiaos): (1) urging overseas Chinese to voluntarily acquire local nationality and hoping that the host countries treat naturalized Chinese as equal partners of the indigenous people; (2) providing automatic loss of “Chinese citizenship” for those who are voluntarily naturalized and (3) encouraging Huachiaos who decline the local nationality to respect the laws, customs and culture of the host countries, as well as cooperate with the local authorities.90 Consistent with this policy, a basic goal of China’s new Nationality Law is to reduce dual nationality of overseas Chinese. The purposes, as stated earlier, are (1) to eliminate the potential tensions between China and the Southeast Asian countries where a large number of overseas Chinese reside, (2) to avoid the host countries’ frequent suspicion of China’s potential interference in their internal affairs while still acting in accordance with China’s constitutional commitment to protecting overseas nationals and (3) to encourage overseas Chinese to face the economic and political facts of life in the host countries, because the abandonment of Chinese nationality in favor of the local one is often the only avenue to eliminate the discriminatory policies against alien Chinese.

Historically, in the overwhelming majority of cases dual nationality of overseas Chinese arose out of conflicts between China’s previous nationality laws and those of the host countries. As stated earlier, China traditionally invoked the principle of jus sanguinis and prohibited naturalization without government consent.91 This policy was contrary to the doctrine of jus soli introduced by the British and Dutch colonial powers and subsequently implemented by emerging independent Southeast Asian countries. These former colonial countries include Malaysia, Singapore, Indonesia and Vietnam, where most of the twenty million (or more) overseas Chinese reside.92 The widespread use of opposing doctrines in traditional China and the ASEAN countries ensured the continuation of dual nationality problems.

The policies of past Chinese Governments towards overseas Chinese have varied considerably, from the early prohibition of emigration

90. See Gong, supra note 20, at 26.
91. See supra § II(B).
92. See Zhang & Lu, supra note 1, at 49.
out of China, to the tolerance of emigration and dual nationality, to
the current Government's encouragement of overseas Chinese to main-
tain their local nationality alone and the institution of unilateral mea-
tures to eliminate dual nationality. Until the mid-nineteenth century,
the Imperial Government avoided the dual nationality problem by
keeping its subjects "at home." When that solution was no longer feasi-
ble, the Qing emperors displayed an indifference to emigration and tol-
erated dual nationality, perhaps believing in their hearts that "once a
Chinese, always a Chinese" whatever the nationality held. Realizing
that the Huachiaos were a potential source of national strength, the
succeeding Nationalist Government encouraged retention of Chinese
nationality and accepted dual nationality. Therefore, neither the Qing
nor the Nationalist Governments made any real attempt to settle the
problem of dual nationality with the Southeast Asian countries.93

Over its thirty-five year history, the PRC's own attitude towards
the overseas Chinese has gone through several changes. During the
emergence of the communist state, Huachiaos were encouraged to
spread the ideology of communism in their lands of residence, much to
the chagrin and fear of the Southeast Asian countries. In the aftermath
of this initial fervor, the PRC Government attempted in the 1950's to
reduce the fear of communist insurgence and to gain the trust of rising
neutralist Afro-Asian states by initiating diplomatic efforts to resolve
the dual nationality problems. The Chinese position went full circle
again during the "Cultural Revolution," from the early suppression of
the returned "bourgeois" Huachiaos and belittlement of those who
were overseas, to the later worldwide incitement of their revolutionary
zeal. With the advent of the PRC's current pragmatic leadership and
its predominant policy of promoting friendly relations with the
ASEAN countries, not only have diplomatic efforts resumed, but the
Government is also—for the first time in China's history—taking con-
crete measures in its nationality legislation to reduce the incidence of
dual nationality.94

A. Diplomatic Efforts Prior to 1980

From early in its reign, the PRC has sought to settle the dual na-
tionality problem with Southeast Asian countries through friendly ne-
gotiations. On April 19, 1955, Premier Chou En-Lai declared at the
Afro-Asian Conference that dual nationality was an historical problem
for overseas Chinese and one which the PRC Government was pre-

93. For a brief account of China's emigration policies, see G. Jan, supra note 30, at
12.

pared to settle with all countries concerned.\(^{95}\) In a conversation with the Burmese Ambassador to China on June 22, 1956, Premier Chou En-Lai further stated that the PRC Government opposed dual nationality. In a visit to Burma on December 18th of the same year, he reiterated that China wished to settle the dual nationality problem and that as long as overseas Chinese voluntarily acquired a local nationality, they would no longer be considered Chinese nationals.\(^{96}\)

The late Premier, in a conversation on October 2, 1957 with an Indonesian official, further emphasized:

China has no intention whatsoever of using the overseas Chinese to interfere in the internal affairs of other countries. On the contrary, we are prepared to solve the overseas Chinese problem in order to avoid its interference with our friendly relations with other countries. The overseas Chinese are hereby encouraged to acquire local nationality and to participate in the development of the local economy. Those who do not wish to acquire the local nationality should also be expected to abide by the local law.\(^{97}\)

This basic policy was consistently followed in China's dealings with the Philippines in 1973, and succinctly reaffirmed in a communique jointly issued with the Kingdom of Thailand on July 1, 1975, which read:

The PRC hereby declares that she does not recognize dual nationality. The two governments herein agree that any person of Chinese nationality or Chinese ancestry who has acquired Thai nationality would automatically lose Chinese nationality. For those who intend to preserve their Chinese nationality the PRC government, according to her consistent policy, would require that they respect the laws, customs and culture of the Kingdom of Thailand, and that they cooperate with the local authorities.\(^{98}\)

As recently as November 1978, during his visit to Malaysia, Deng Xiaoping also declared:

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96. See J. Jing & Z. Li, Guojifa qiantan (A Brief Discussion of the Nationality Law) 41-42 (1980).
97. Id. at 42.
98. Id. at 40.
The Chinese government has always encouraged the overseas Chinese to voluntarily take up the nationality of the host country. And those who have been naturalized shall, like other ethnic Malays, discharge the same obligations and receive equal treatment under the Malaysian law.  

The best example of China's diplomatic efforts to settle the dual nationality problem with the Southeast Asian countries may be found in the 1955 Sino-Indonesian Treaty on Dual Nationality. This comprehensive treaty, which was intended as a model for similar treaties with other ASEAN countries, requires dual nationals to opt for one of the two nationalities. The treaty provides:

All persons who hold simultaneously the nationality of the People's Republic of China and the nationality of the Republic of Indonesia shall choose, in accordance with their own will, between the nationality of the People's Republic of China and the nationality of the Republic of Indonesia. . . . In addition, all children born in the Republic of Indonesia acquire upon their birth, the nationality of the People's Republic of China if both their parents or only their fathers hold the nationality of the People's Republic of China.  

B. Concrete Measures in the 1980 Law

In general, there are three principal measures through which a country can utilize domestic law to reduce the incidence of dual nationality. These measures involve devices applicable to the original acquisition of nationality at birth, change in nationality by naturalization and change in nationality caused by a change in personal status, such as marriage or adoption. The elaborate anti-dual nationality devices of the 1980 Nationality Law are found in articles 5, 8, 9 and 13.  

Articles 5 and 9 are the most important and effective devices for reducing the incidence of dual nationality among overseas Chinese. According to article 5, "a person whose parents are Chinese nationals and have settled abroad and who has acquired foreign nationality at birth does not have Chinese nationality." Moreover, article 9 provides 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." Applied in conjunction with the wide use of the *jus soli* doctrine by the ASEAN countries, these two provisions are known to have reduced the population of overseas

99. Id. at 42.
100. Sino-Indonesian Treaty on Dual Nationality (1955), supra note 52.
Chinese nationals to an insignificant number, although exact statistics are unavailable.\textsuperscript{101}

Effective as the 1980 Nationality Law may be in reducing the number of dual nationals among the \textit{Huachiaos}, it has not completely eliminated the possibility of duality for subjects residing abroad and "at home" in China. Dual nationality may still occur in cases of birth, foreign naturalization and change of personal status.

1. Original Acquisition at Birth

Through a combination of the doctrines of \textit{jus sanguinis} and \textit{jus soli} and by granting women the right to bequeath nationality, article 4 may create dual nationality at birth in four ways.\textsuperscript{102} First, consider a couple composed of a foreign husband and Chinese wife (the particular sexes may be relevant to the foreign law, though not to China's). If the couple were settled in China, their progeny born in China would inherit Chinese nationality and possibly the foreign one as well, if the applicable foreign nationality law followed the principle of pure \textit{jus sanguinis}. Even if the same couple were settled abroad, as long as the mother gave birth on Chinese soil, the child would also acquire Chinese nationality.

Second, consider the same couple, settled in China, but whose child is born while the parents are visiting relatives in the husband's country. The child would definitely acquire the father's nationality, whether his country subscribes to \textit{jus sanguinis} or \textit{jus soli}. Because both parents are settled in China and one parent is Chinese, the child would also acquire Chinese nationality at birth. If the couple were visiting a third state—like Canada or the United States which subscribe to pure \textit{jus soli}—and the husband's state subscribes to \textit{jus sanguinis}, triple nationality could conceivably occur.

Third, dual nationality is not confined to the children of Chinese/foreign couples alone. A Chinese couple who are "settled" in China but give birth while abroad would bequeath Chinese nationality to the child. If progeny were born in a country subscribing to the principle of \textit{jus soli}, dual nationality would again result.

A fourth case is a couple comprised of a Chinese and a stateless person or a person of uncertain nationality. If this couple were settled in China, but bore a child while outside China, the newborn could be a dual national if the land of birth follows \textit{jus soli}, since Chinese nation-

\textsuperscript{101} The author has interviewed overseas Chinese in various Southeast Asian countries.

\textsuperscript{102} Article 4 of the 1980 Nationality Law awards Chinese nationality to children born in China if at least one parent is a Chinese national.
ality was already acquired through the Chinese parent.

2. Foreign Naturalization

Voluntary acquisition of foreign nationality by a Chinese citizen settled in China could also result in dual nationality, as the provision for automatic forfeiture is not applicable to Chinese residing in China. Dual nationality results because the PRC Government cannot prevent its own citizens from acquiring foreign nationality, even if they are settled inside the country. Yet, these resident Chinese must apply for government consent to renounce Chinese nationality. In fact, an individual may choose to obtain the foreign nationality before renouncing the Chinese one, as temporary statelessness would otherwise result. Since some countries permit the existence of dual nationality and grant nationalities to citizens of other countries, a Chinese so graced becomes a dual national until the Ministry of Public Security approves his renunciation of Chinese nationality. 103

3. Change in Personal Status

As stated earlier, under the new Chinese law a change in the personal status of an individual by marriage or adoption has no automatic derivative effect on a spouse’s nationality, or on that of an adopted child. 104 This results in both the naturalization and the denaturalization situations. Hence, a Chinese woman married to a foreigner does not automatically lose her Chinese nationality—even if her husband’s country subscribes to the notion of derivative nationality—as long as she remains settled in China. 105 The same is also true for the adopted child in a similar situation. The child would become a dual national if the foreign husband or adopting parents’ country awards nationality to the Chinese wife or adopted child on a derivative basis. Conversely, a Chinese woman or child settled in China whose legal relationship dissolved would lose her or his derivative nationality and retain Chinese nationality alone.

103. 1980 Nationality Law, art. 10.
104. See supra notes 48 and 50 and accompanying text.
105. According to conflict of laws principles, the woman is derivatively naturalized as a foreigner under the law applicable to her husband. At the same time, however, she retains her Chinese nationality until formally renouncing it under Chinese law. Hence, she becomes a dual national. If she remains in China, her foreign nationality will not be recognized and she will be treated as Chinese. If she voluntarily joins her husband overseas, she is deemed to have voluntarily acquired the foreign nationality, and because she settled abroad, the woman automatically loses Chinese nationality under the 1980 Nationality Law, art. 9.
Although dual nationality may still occur under the provisions of the 1980 Nationality Law, the impact of dual nationals is expected to be negligible in terms of actual numbers. The largest population of dual nationals arose as a consequence of the traditional Chinese policy prohibiting denaturalization without consent, adopted by both the Qing dynasty and the Nationalist regime, and the latter's policy of indifference to dual nationality. The remnants of this population, however, will fade in a short time because of the current PRC Government's strong dilution of the "blood" connection. By adding a *jus soli* requirement, the Government has made it difficult for children born abroad of Chinese parents who are settled abroad to acquire Chinese nationality.

C. Nonrecognition of Dual Nationality

In light of the PRC's policy of nonrecognition of dual nationality, and the elaborate measures adopted in the Nationality Law to reduce dual nationality, the loopholes illustrated above appear to be oversights in drafting. More likely, however, these deviations are tolerated in favor of overriding policy goals, such as the socialist ideal of equality between the sexes, integrity of national security and the ability to exercise jurisdiction over individuals settled or present within the national territories.

In the limited number of situations where dual nationality may occur under China's new Nationality Law, in general only individuals settled in China will be affected. The Government created the antidual nationality policy largely to soothe relations with Southeast Asian countries, not with its own loyal nationals. Therefore, it is understandable for the PRC to persist in granting nationality, even where dual nationality results, when the individual is settled within China's own boundaries, and when other factors may urge the granting of nationality.

This approach is illustrated by the acquisition of dual nationality at birth. Newborns become dual nationals when Chinese nationality is conferred in addition to a foreign one. Since the child's family must be residing in China and at least one parent must be Chinese, however, the child may be considered to have a "close connection" with China. Extending Chinese nationality under these circumstances may be more justifiable than not extending it.

The PRC may also tolerate dual nationality when a Chinese national acquires a foreign nationality but remains in China, although the Government does have the ability to eliminate dual nationality by revoking the Chinese one. For example, if the person involved is privy to information sensitive to China, his acquisition of a foreign nationality
and continued residence in China may be contrary to the national interest of China. Therefore, China may wish to exercise jurisdiction over him without his other national government's interference. On the contrary, when a dual national settles abroad he is allowed to automatically forfeit his Chinese nationality. As a practical matter, China is powerless to exercise its jurisdiction over the dual national who settles abroad.

When duality occurs as a consequence of the derivative acquisition of a foreign nationality, the problem is ephemeral. The dual nationality of Chinese women resulting from China's rejection of the derivative doctrine will cease to be a problem as more countries adopt more egalitarian policies. In the interim, however, the principles of equality of the sexes and freedom to choose one's nationality appear to at least balance the Government's opposition to dual nationality.

Dual nationality involving Huachiaos may cause foreign relations conflicts for China only where the wife in a mixed Chinese/foreign marriage gives birth to a child in China. In this situation the child of an overseas Chinese citizen settled abroad acquires dual nationality at birth. Perhaps the drafters of the law compromised once again and bestowed Chinese nationality because of the child's close ties with China in terms of jus sanguinis and jus soli. A fair assessment of the law's ability to reduce—if not completely eliminate—the incidence of dual nationality must be presented in the context of the competing nationality laws. The drafters of the 1980 Nationality Law had to skillfully balance the sometimes conflicting policy goals and national interests of China. Responsibility for the final and complete settlement of the dual nationality problem does not lie with China alone. Rather, the ultimate solution can only be reached through international efforts to resolve the conflict of nationality laws among countries—by multilateral covenants and bilateral international agreements—and through the conscientious drafting of nationality laws of individual states.

In the meantime, “China does not recognize [the] dual nationality of any Chinese national,” as declared unequivocally in article 3 of the Nationality Law. Therefore, regardless of how dual nationality occurs, and despite the validity and effectiveness of the foreign nationality under the law of the foreign states, an individual is simply considered a Chinese national in the eyes of all laws of the PRC. Thus, an individual can be found guilty of treason (a “counter-revolutionary” offense) under the Chinese Criminal Code, even though his “real and effective nationality” in terms of subjective emotional allegiance and factual ties is connected solely to the foreign state. The same individual may also

106. For documents supporting this policy, see supra note 27.
be the subject of claims for duties and obligations that China imposes on ordinary citizens, including compulsory military service.

IV. NATIONALITY PROBLEMS OF CHINESE RESIDENTS IN HONG KONG AND MACAO

The greatest challenge facing the PRC's Nationality Law, and perhaps the one of most immediate concern, is its application to Chinese residents of Hong Kong and Macao. After two years of laborious and often tense negotiations, on September 26, 1984 Britain and China initialed a "Joint Declaration" on the future of Hong Kong settling the terms of the transfer of power over this territory.\textsuperscript{107} Under this Joint Declaration, which has been acknowledged by both Governments to have binding effect as an ordinary international agreement,\textsuperscript{108} Britain will "restore" Hong Kong to China, and China will "resume the exercise of sovereignty" over the colony on July 1, 1997.\textsuperscript{109}

According to the Joint Declaration, China will establish a Special Administrative Region (SAR) for Hong Kong by a basic law enacted in accordance with its 1982 Constitution.\textsuperscript{110} China guarantees the continuity of Hong Kong's capitalist socio-economic system and lifestyle for fifty years after 1997, and promises to vest in the region a high degree of autonomous executive and legislative power, as well as an


\textsuperscript{108} See British White Paper on Hong Kong, supra note 107, at 5; and the Report to the Standing Committee of the National People's Congress on the Hong Kong Question (Nov. 6, 1984), reprinted in ZHONGGUO FAZHI BAO, Nov. 7, 1984, at 1-2.

\textsuperscript{109} Joint Declaration, infra app. I, annex I, art. I.

\textsuperscript{110} PRC CONST. art. 31 states: "The state may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People's Congress in the light of the specific conditions."
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independent judiciary—the so-called "one country, two systems" formula.111

In the negotiations preceding the Declaration, the nationality status of the five million Chinese residing in Hong Kong was a key and emotive issue. This question has been clouded by the fact that the territory has been held de jure and de facto by Britain for over a century, even while the PRC claimed to be its supreme sovereign.112 Further, until 1980, the PRC did not have a formal nationality law with a clear definition of Chinese nationality. In light of the potential conflicts between British and Chinese nationality laws, and the recently negotiated Joint Declaration which purports to deal with such issues, it will be fruitful to discuss the nationality status of Hong Kong Chinese after 1997. This section will review the historical Chinese and British positions on this issue, the mutual understanding contained in the memoranda associated with the Joint Declaration, and some of the implications of the Declaration on the nationality status, right to travel and international protection for the Chinese residents of Hong Kong.

A. British Laws

The population of Hong Kong is 5.3 million; ninety-eight percent of the people are ethnic Chinese; three million of them were born in the colony.113 British law has consistently treated all residents at the

111. Joint Declaration, infra app. I, annex I, art. III.
112. For the legal status of Hong Kong, see generally Dicks, Treaty Grant, Usage or Sufferance? Some Legal Aspects of the Status of Hong Kong, 95 CHINA Q. 427 (1983); Note, The Legal Implications of the Sino-British Treaties Regarding Hong Kong, 4 LOY. L.A. INT'L & COMP. L.J. 111 (1981). For the Chinese claim, see Zhao, Cong Guojifa Kan Xianggang Wenti (Legal Status of Hong Kong in International Law), FAXUEZAZHI No. 2, at 9 (1984).

Hong Kong consists not only of the island, but includes Kowloon Peninsula, Stonecutters Island and the New Territories. Hong Kong Island, with an area of twenty-nine square miles, was ceded to the British in 1842, under the provisions of the Treaty of Nanking. Following this treaty, conflicts continued between the British and Chinese. In 1860, the British, at the Convention of Peking, took control of both Kowloon Peninsula and Stonecutters Island. China's vulnerability was apparent once again when it was defeated by Japan in 1895. The British "recognized that an extension of Hong Kong territory [was] necessary for the proper defense and protection of the Colony." Consequently, under the terms of the 1898 Convention of Peking, Britain was able to obtain a ninety-nine year lease for the New Territories, located on the mainland north of Kowloon. As Norman Miners noted, "These New Territories increased the area of the colony from 43 to 400 square miles."
time of the British takeover and all persons born thereafter in Hong Kong as "Citizens of the United Kingdom and Colonies" holding Hong Kong British passports. The remaining two million resident Chinese are considered non-British nationals permitted to reside in Hong Kong as certificate of identity (CI) holders.

Over the past forty years, British nationality law has undergone several changes, with each new version holding different nationality and immigration implications for its colonies. The most recent law is the British Nationality Act of 1981 (BNA), which seeks to "define the British national identity in specific legal terms and to restrict British citizenship to those with close connections with the United Kingdom." This is accomplished by dividing British nationality into three classes of citizenship, and by severely restricting a parent's ability to bequeath British citizenship.

Hong Kong residents are relegated to "British Dependent Territories Citizenship" (BDTC) status, which was granted on "Commencement Day" (January 1, 1983) to all persons born in a British Dependent Territory. Thus, all Hong Kong British passport holders received BDTC designation. Under the BNA, however, there is no restriction on dual nationality for BDTC. Although in international law those


115. For the earlier historical development of the British nationality laws, see M. JONES, BRITISH NATIONALITY LAW AND PRACTICE (1947); C. PARRY, supra note 114, pt. 2.


118. British Nationality Act, ch. 61, § 17.

119. Id. § 23.

120. The British Nationality Act, 1981, § 15(1) states:

A child born in a British dependent territory on or after Commencement Day will be a British Dependent Territories citizen at birth if at the time of birth one of his parents is a British Dependent Territories citizen or is settled in a British dependent territory.

In this context a parent may be either the mother or the father. If one of the parents is a British citizen, any British Citizenship deriving from that parentage (usually British Citizenship by Descent) will also be possessed at birth together with the British Dependent Territories Citizenship derived from the other par-
with BDTC status continue to have British nationality, the 1981 BNA
denies them the right of abode in the United Kingdom (a measure re-
affirming Britain’s Commonwealth Immigrants Act of 1962). Thus, the
residence status of these people in Hong Kong hinges solely on the
immigration law of the colony.

After the cessation of Hong Kong’s status as a British Dependent
Territory in 1997, the BNA envisions that the first generation born in
Hong Kong would receive the cumbersome title of “British Dependent
Territory Citizen by descent.” This first generation, however, could not
pass on their British status by virtue of blood ties alone. Thus, BDTC
status would be conferred only on the first generation born after
the reversion of Hong Kong to Chinese authority, and thereafter
the link to Britain through BDTC would be broken.

B. The PRC Laws

It will be useful here to juxtapose China’s historical position on
the nationality of Chinese in Hong Kong with the discussion above.
The cessions of Hong Kong and Kowloon and the lease of the New
Territories to Britain was completed in 1898 before the adoption of
the first Chinese nationality law in 1909. Despite the absence of laws
on nationality until this time, China had traditionally considered all
persons of pure Chinese race as Chinese nationals, regardless of place
of birth. This unwritten policy of nationality based on jus sanguinis
was subsequently codified in the three nationality statutes preceding
the PRC regime.

The Government of the PRC has always treated the ethnic Chi-
inese residing in Hong Kong, whether locally born or otherwise, as
“compatriots.” Application of articles 4 and 5 of the 1980 National-
ity Law to Hong Kong as a Chinese territory suggests that these per-
sons would become Chinese nationals. Those born before the promul-
gation of the law—either under pre-statute policy on nationality (i.e.,
up until 1909), the three pre-PRC statutes, or the PRC policy until

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123. British Nationality Act, § 16.
125. See supra note 4.
126. See supra notes 4-6.
127. See 1980 Nationality Law, arts. 4-5.
1980—would be affected because under the principle of *jus sanguinis* Chinese nationality would be conferred on the offspring of Hong Kong's ethnic Chinese.

The PRC's position on the nationality of these persons is illustrated by the recurrent sentencing in China of Hong Kong and Macao Chinese as PRC nationals. Additional proof is provided by the recently enacted Provisional Regulations on the Identity Cards for Residents, under which Hong Kong, Macao and Taiwanese "compatriots" residing in China are required to carry internal identification cards, a requirement which applies to all PRC nationals.

Thus, the current status of Chinese born in Hong Kong is that of dual nationals: they are British nationals under British law with BDTC and Chinese nationals under PRC law. Since the new Nationality Law will not recognize this foreign nationality, however, these persons will be treated exclusively as Chinese.

**C. The Joint Declaration**

In considering alternative methods of resolving the nationality question of Hong Kong born Chinese, the negotiators could have looked to models used in past practice by both countries in similar situations. For example, Britain's experience with decolonization may have provided some suggestions, though in this context the PRC would not characterize the transfer of Hong Kong as a decolonization, and Hong Kong is certainly not a "colony" that is to become an independent state. Nevertheless, Britain has resolved the nationality problems of decolonization by simply not addressing them explicitly in treaties; rather, it has allowed the domestic laws of the two concerned states (i.e., those of the former colony and the colonizer) to settle the issue.

In the past the PRC has had to resolve similar questions of nationality with respect to border delimitations and transfers of territory therein. For example, in the Exchange of Notes Concerning the Sino-Burmese Boundary Treaty of 1960, residents of the transferred territory who continued to reside there were to become nationals of the receiving country by default. They were also given the option, exercisable within one year, to retain their former nationality. Inhabitants who declared their preference for the foreign nationality were permit-

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128. See Dicks, *supra* note 112, at 440-41.
129. See *supra* note 73.
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ted to relocate freely to their original country within two years of their declaration. Similar agreement was reached in the 1962 Sino-Nepalese Exchange of Notes Concerning the Choice of Nationality by Inhabitants of Certain Border Areas, although the two-year limit on repatriation was removed.133

In light of the British and Chinese practices of resolving issues of nationality, two questions arise: what is the most appropriate model to apply in the context of Hong Kong after 1997 and whether the solution actually arrived at in the Joint Declaration is a desirable one. It is submitted that the terms of the Joint Declaration are a wise and tactful compromise on this sensitive issue, ultimately reflecting more of the British approach than the Chinese one. The status of Chinese in Hong Kong as of 1997 is addressed in two memoranda that will be formally exchanged between Britain and China on the day of the final signing of the Joint Declaration.134 Essentially, the Chinese memorandum declares that under China's Nationality Law all Hong Kong Chinese compatriots, whether or not they have BDTC status, are Chinese nationals. It grants BDTC holders the right to use their British travel documents for travel to other states and regions. While the memorandum seems to reflect a continuation of the PRC's basic policy of nonrecognition of dual nationality, it falls short of a clear statement to this effect. Perhaps this can be construed as an affirmation of exclusive Chinese nationality, evidencing tolerance, although not recognition, of BDTC status.135 Finally, China states that BDTC holders will not be entitled to British consular protection in China or Hong Kong on the basis of this document.

The reciprocal British memorandum essentially ends further grants of BDTC or equivalent status as of July 1, 1997. This will require an amendment of the British Nationality Act which, as mentioned earlier, would have extended BDTC status to the first generation born in Hong Kong after 1997.136

These memoranda reject the freedom of choice model that had been used by China previously. As the following discussion will make clear, such a model would not have been practical or even meaningful


134. See supra note 107.

135. The term BDTC will be used in this section to designate the status before 1997 called BDTC and also, for simplicity's sake, the new as-yet unnamed "appropriate status" which will come into being in 1997, when BDTC ceases to exist.

136. See supra note 107.
to the Hong Kong Chinese in the post-1997 context.

Although Hong Kong has been under foreign administration for several generations, most people there still regard themselves as Chinese by heritage and, as such, take pride in observing the development of a prosperous and strong China. Furthermore, most of them still have relatives in the mainland and are in favor of China's recent modernization efforts. The 1949 closing of the border between the colony and China, however, separated the inhabitants physically and, to a certain extent, emotionally. For example, the vastly different political and economic systems flourishing on each side of the "closed doors" have led to varying perspectives of the "Hong Kong Man" (Gangren) and his counterpart on the other side of the border. Since the Chinese of Hong Kong have developed a cultural and political outlook vividly distinct from those living in the PRC, they may have little empathy with the socialist ideology of China.\footnote{Cheng, The Future of Hong Kong: A Hong Kong Belonger's View, 1982 Int'l Aff. 476, 482.}

Considering these historical reasons, had Britain and the PRC opted for a quick solution to the colonial inhabitants' nationality problem by arbitrarily assigning a nationality to them, or even by affording them an option exercisable within a limited period of time, the fear of uncertainty and confusion might have prevented BDTC holders from overwhelmingly opting for Chinese nationality alone. Such an outcome would have proved not only an acute embarrassment to the PRC but also would have resulted in a mass and chaotic exodus of capital and human talent from Hong Kong.

Furthermore, the right of a foreign national to reside in Hong Kong will be subject to the goodwill of the succeeding PRC administration. For the Government to have allowed more than three million dual nationals to opt out of Chinese nationality and permitted them to reside indefinitely within its territories would have been an untenable position. China would consequently have been faced with millions of resident aliens converged in a small and confined area. Strategically located at her doorstep, this massive concentration of foreigners could have been a destabilizing factor and a threat to her national security.

From the standpoint of the BDTC holder, free choice would have held little advantage. Chinese nationality as an exclusive choice is uncertain, and the utility of BDTC, or its equivalent after 1997, is undeniably limited. In the three areas that give nationality meaning and utility—the right to live in one's own country, to have a passport recognized by third countries for travel purposes and to be provided with international protection—the BDTC status would have had little sub-
stance and practical meaning. Although mandatory choice between nationalities has been rejected by Britain and China as a solution, since the PRC has decided to tolerate the existence of BDTC among its nationals in Hong Kong for a generation after 1997, it may be useful to explore the essence of this status and its practical utility.

Perhaps the most important right that a citizen holds is the right of residence in the state of his nationality. BDTC holders neither have the right of abode in the United Kingdom, nor do they enjoy any special advantage in seeking residence elsewhere. In fact, the immigrant selection criteria in most states are based on the merit of the individual applicant rather than on nationality. A possible exception may occur when a country applies a quota system in which the selection criteria are partly based on the applicant's national origin. In this situation, BDTC status may work to the detriment or to the favor of an individual, depending on the policy of the state. Further, the right of residence in post-1997 Hong Kong guaranteed under the Joint Declaration is not derived from an individual's BDTC status but from his status as an ordinary resident of the SAR.

With respect to the meaning of nationality for travel purposes, a passport represents the issuing state's willingness to receive the holder. Thus, if a person's presence in a foreign country becomes undesirable, he can be repatriated or compelled to leave. Canada's Department of External Affairs, for example, defines "passport" to include an implicit guarantee to this effect. The post-1997 BDTC passport (or its equivalent) is actually of little meaning as a travel document per se. In fact, its utility for travel hinges solely on China's assurance in the Joint Declaration and the forthcoming basic law regarding the rights of holders to exit, entry and residence in the Hong Kong SAR.

138. See, e.g., article 12(4) of the International Covenant on Civil and Political Rights, supra note 29 (Britain is a signatory), which provides: "No one shall be arbitrarily deprived of the right to enter his own country." See also article 13 of the Universal Declaration of Human Rights, Dec. 10, 1948, G.A. Res. 217, U.N. Doc. A/810 at 71 (1948), which states "1. Everyone has the right to freedom of movement and residence within the borders of each State. 2. Everyone has the right to leave any country, including his own, and to return to his country."

139. See Joint Declaration, infra app. I, annex I, art. XIV.

140. Canada's Department of External Affairs asserts that a passport is a "document of identity issued by a state, ordinarily to its own nationals, which requests foreign governments to grant the bearer safe and free passage and all lawful aid and protection while within their jurisdiction, and implicitly guarantees that they will be readmitted to the issuing country." See Can. Dep't External Aff., Can. Passports, EXTERNAL AFF. No. 5, at 75 (1953).

141. See Joint Declaration, infra app. I, annex I, art. XIV, and the Chinese Memorandum thereto, see supra note 107.
In the memorandum associated with the Joint Declaration, the PRC did not reverse its traditional position with regard to the acceptability of the passport for travel to mainland China. The Chinese Government still requires all Hong Kong and Macao compatriots visiting the "motherland" to make use of huexiangzheng issued by the Guangdong Provincial Public Security Bureau, except in special cases where a Hong Kong British passport is acceptable.\(^\text{142}\)

Currently, BDTC holders enjoy a special privilege under reciprocal arrangements between Britain and some other countries whereby visa requirements are waived for British nationals. This privilege is not inherent in the BDTC status per se. After 1997, such arrangements must be authorized by the Hong Kong SAR Government with the assistance of the PRC.\(^\text{143}\) Hence, the continuation of this privilege will depend on the policies of the future Government of Hong Kong, and on the cooperation of foreign countries which, in turn, will be forthcoming only with Hong Kong's continuing stability and prosperity. Therefore, BDTC cannot be viewed as a source of acquiring the right to travel abroad.

International protection is another important aspect of nationality status. Under a universally recognized principle of international law, a state is entitled to protect its nationals who are located abroad.\(^\text{144}\) Although BDTC confers British nationality, seeking British diplomatic protection against either China or a third state would prove ineffective. China unequivocally states in its memorandum on nationality that it will not accept British consular protection on behalf of BDTC holders. Moreover, although Britain declares in its memorandum that BDTC holders will be entitled to receive British consular protection (as distinguished from the broader concept of diplomatic protection),\(^\text{145}\) such

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142. See Guangdongsen Gonganju Guanyu Gangao Tongbao Kao “Gongao Tongbao Huexiangzheng” Laiwang Wenti de Tonggao (Decree of the Guangdong Provincial Public Security Bureau on the Hong Kong/Macao Compatriots’ Use of “Homecoming Certificates”); Zhonghua Renmin Gongheguo Gongan Fangui Xuanbian, supra note 73, at 257.
143. Joint Declaration, infra app. I, annex I, art. XIV.
144. The Permanent Court of International Justice declared in the Marronnatis Palestine Concessions case: "It is an elementary principle of international law that a State is entitled to protect its subjects, when injured by acts contrary to international law committed by another state, from whom they have been unable to obtain satisfaction through the ordinary channels." 1924 P.C.I.J., ser. A, No. 2, at 12.
145. The British Memorandum, annexed to the British White Paper on Hong Kong, see supra note 107, states that BDTC holders will be entitled under the agreement to receive, upon request, British consular services and protection when in third countries. The Memorandum notes that BDTC holders “will cease to be BDTCs with effect from 1 July 1997, but will be eligible to retain an appropriate status which, without conferring the right of abode in the United Kingdom, will entitle them to continue to use passports issued by the Government of the United Kingdom.” Id.
protection cannot be assured. Given the limited interests of Britain in Hong Kong residents after 1997, Britain cannot be expected to exercise its discretionary right of diplomatic protection on their behalf.

Further, because the BDTC holders are also Chinese nationals with real and effective connections with the PRC, current principles of international law on nationality constitute insurmountable obstacles to Britain's right of diplomatic protection. Even apart from China's memorandum, both the traditional and modern rules of international law would certainly bar such a claim. According to the traditional rule of dual nationality, a claimant state would be denied the right to espouse the interests of a national who is also the national of the respondent state. Under the recently emerged doctrine of dominant and effective nationality, however, a claim can be brought by one state on behalf of a dual national against the other state of which he is also a national if the claimant has closer and more effective ties with the claimant state. Based on this modern principle, Britain would be barred from raising a claim against China on behalf of a BDTC holder. Instead, China would have to bring a claim against Britain, because as a Chinese national and resident, the BDTC holder has closer links to China.

Under the dominant and effective nationality rule, it is also questionable whether Britain would be able to exert such a claim against a third state. Article 5 of the 1930 Hague Convention on the Conflict of Nationality Laws provides that when a person of more than one nationality is in a third state he shall be treated as if he has only one...
nationality. The third state shall recognize exclusively the nationality of either the country in which he is "habitually and principally resident" or the country with which "he appears to be in fact most closely connected." 149 Therefore, in third countries the multiple national may have the protection of only one state—the state of dominant and effective nationality. 150 Based on this theory, a claim by Britain against a third state on behalf of a Hong Kong BDTC holder after 1997 would be questionable, in light of the BDTC holder's tenuous connection to Britain and obvious and direct link to China.

In conclusion, the status conferred on BDTC holders after 1997 cannot be considered meaningful in terms of nationality. In fact, the rights attached to the BDTC holder after 1997 are fewer and less substantial than those normally associated with nationality. The new status conferred after 1997 does not fulfill Britain's moral obligations towards the residents of Hong Kong, which arise out of its colonial history.

The approach that China has taken towards the sensitive issue of nationality in the Joint Declaration reflects considerable pragmatism and tolerance. Despite the basic principle of nonrecognition of dual nationality under the 1980 Nationality Law, the PRC has continued to recognize BDTC, or an equivalent status, along with Chinese nationality for one generation after 1997. Children born thereafter will acquire only Chinese nationality under the Joint Declaration, and the vexing problem of Hong Kong residents' dual nationality will ultimately require resolution.

In the interval, if China's attempt to implement its imaginative concept of "one country, two systems" proves unworkable, 151 a mass exodus of political refugees from Hong Kong will likely result. With the onus on Great Britain to provide political shelter to these bona fide refugees, Britain will be fulfilling its moral obligation to these people in a meaningful way while maintaining its international obligations as signatory of the 1951 United Nations Convention Relating to the Status of Refugees. 152

149. Hague Convention on the Conflict of Nationality Laws, see supra note 27.
152. July 28, 1951, 19 U.S.T. 6223, T.I.A.S. No. 6577, 189 U.N.T.S. 150. See also Int'l Human Rights Instruments, supra note 27, at 19. Politically, it is highly unlikely that the BNA will be amended to grant Hong Kong BDTC holders the right of residence in Britain. Section 4(5) of the Act, however, enables the Home Secretary to register as a British citizen a person who has served the Crown in a dependency or served on a legislative council or similar body. This provision may benefit selected Chinese BDTCs in Hong Kong; it will be, however, of little comfort to the majority of the residents there.
D. Macao

Macao was ceded to Portugal by China in an 1887 treaty.\(^{153}\) Reportedly, following Lisbon's unsuccessful attempt to return the territory to China, the two countries secretly agreed in 1975 that Macao would revert to Chinese sovereignty but remain under Portuguese administration. Four years later this agreement was reaffirmed when Lisbon and Beijing resumed diplomatic ties.\(^{154}\) Although China has yet to announce officially its plans for Macao, the future of the small Portuguese enclave is closely tied to the destiny of Hong Kong. The issue of nationality in Macao, as in Hong Kong, must be resolved in order to quell the uneasiness of its inhabitants.

The nationality law of Portugal provides that all persons born in Macao before 1980 are considered Portuguese nationals, as well as those born after 1980 who can demonstrate familiarity with Portuguese culture, or alternatively, have Portuguese parents. All nationals thus defined have the right under Portuguese law to live in Portugal.\(^{155}\)

The position of the PRC with respect to the nationality of the residents in Macao is the same as towards those in Hong Kong—all ethnic Chinese residing there, locally born or otherwise, are Chinese nationals. Thus, dual nationality is present in the context of Macao.

The prime difference between the situations in Hong Kong and Macao is that no treaty imposes a deadline on Macao respecting a transfer of administration to China. While China has made no official pronouncement on this subject, it seems to be taking, in effect, a relaxed, wait-and-see attitude. Recent reports, however, indicate that China is not yet prepared to take over this territory. There is some expectation that Macao can serve as a buffer zone between the Kuomintang and the PRC, so that the Kuomintang can carry on commercial and limited political activities, and perhaps in the future serve as the locale for political negotiations between the two regimes.\(^{156}\)

When the future of Macao and its inhabitants emerges as a concern of the PRC, the nationality question will have to be addressed. It

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153. Under the Sino-Portuguese Treaty of December 1, 1887, Macao was ceded in perpetuity to Portugal (art. 2). The treaty is reprinted in 2 TREATIES, CONVENTIONS, ETC., BETWEEN CHINA AND FOREIGN STATES 274, 275 (2d ed. 1973). See also M. Tyau, THE LEGAL OBLIGATIONS ARISING OUT OF TREATY RELATIONS BETWEEN CHINA AND OTHER STATES 8 (1917).
155. See Bowring & Ma, End of the Old Order, FAR E. ECON. REV., May 17, 1984, at 46, 47.
would be reasonable to assume that the principles outlined in the memoranda exchanged between China and Great Britain will be followed with respect to the inhabitants of Macao.  

CONCLUSION

Thirty years after the PRC’s establishment, the uncertainty surrounding its nationality problem has been essentially resolved in the Nationality Law of 1980. This law has had an enormous impact on the one billion people of mainland China. Its numerous implications affect the twenty million overseas Chinese settled in Southeast Asia, and eventually it will influence the future status of the more than five million ethnic Chinese of Hong Kong and Macao. Because of the broad repercussions of the Nationality Law on foreign relations as well as domestic affairs, its drafting was of major international interest.

Although to date the PRC has fashioned a modest record in attaining human rights goals and is not known for its sophistication in modern lawmaking, the new Nationality Law seems unconventionally progressive. The provisions of the law and the PRC’s previous diplomatic efforts in nationality matters have not explicitly referred to the protection of human rights, but it is clear that both vehicles have been implicitly guided by references to important human rights principles. These principles include respect for equality of both sexes and all races, reverence for free will and voluntary choice, concern for the actual quality of life for expatriates residing in a foreign state and reduction of dual nationality and statelessness.

In its composition, the law appears to have been carefully deliberated and skillfully composed. It covers almost all foreseeable contingencies in nationality questions that China may encounter in the next fifty years and beyond, such as conscientiously designed solutions to the problems of dual nationality of overseas Chinese and the future status of the inhabitants of Hong Kong and Macao. In its form and structure, the law may be criticized for vagueness and incompleteness by Western lawyers who in their meticulous legal environment may consider the law devoid of detailed rules and procedural regulations. Moreover, the broad scope of discretionary power given to China’s public security agencies in the administration of the law may also cause uneasiness to some outsiders. These characteristics, however, are not uncommon to both China’s traditional and current socialist legal systems.

157. A statement by Chinese Foreign Minister Wu Xueqian during a recent visit to Portugal supports the inference that the nationality issue between China and Portugal over Macao will be handled similarly to the Hong Kong agreements with Great Britain. See Shing Tao Daily News, Nov. 20, 1984, at 7, col. 1 (N. Am. ed.).
system, where the purpose of administrative law is simply to provide guidelines for authorities to flexibly apply the law in a particular context.

China's century-old suspicion and anxiety towards foreign countries was undoubtedly present in the minds of the drafters of the Nationality Law. The discretionary powers given to the Public Security Bureaus might have been intended to safeguard against any undermining of China's national interest caused by unforeseen events. In view of the abundant goodwill demonstrated by the current leadership in its "open door" policy towards the Western world and the relaxation of domestic control, as well as the Nationality Law's adherence to the spirit of international conventions, this concern for possible abuse of discretionary powers appears unnecessary.
APPENDIX I


The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China have reviewed with satisfaction the friendly relations existing between the two Governments and peoples in recent years and agreed that a proper negotiated settlement of the question of Hong Kong, which is left over from the past, is conducive to the maintenance of the prosperity and stability of Hong Kong and to the further strengthening and development of the relations between the two countries on a new basis. To this end, they have, after talks between the delegations of the two Governments, agreed to declare as follows:

1. The Government of the People's Republic of China declares that to recover the Hong Kong area (including Hong Kong Island, Kowloon and the New Territories, hereinafter referred to as Hong Kong) is the common aspiration of the entire Chinese people, and that it has decided to resume the exercise of sovereignty over Hong Kong with effect from 1 July 1997.

2. The Government of the United Kingdom declares that it will restore Hong Kong to the People's Republic of China with effect from 1 July 1997.

3. The Government of the People's Republic of China declares that the basic policies of the People's Republic of China regarding Hong Kong are as follows:

   (1) Upholding national unity and territorial integrity and taking account of the history of Hong Kong and its realities, the People's Republic of China has decided to establish, in accordance with the provisions of Article 31 of the Constitution of the People's Republic of China, a Hong Kong Special Administrative Region upon resuming the exercise of sovereignty over Hong Kong.

   (2) The Hong Kong Special Administrative Region will be directly under the authority of the Central People's Government of the People's Republic of China. The Hong Kong Special Administrative Region will enjoy a high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the Central People's Government.

   (3) The Hong Kong Special Administrative Region will be vested with executive, legislative, and independent judicial
power, including that of final adjudication. The laws currently in force in Hong Kong will remain basically unchanged.

(4) The Government of the Hong Kong Special Administrative Region will be composed of local inhabitants. The chief executive will be appointed by the Central People's Government on the basis of the results of elections or consultations to be held locally. Principal officials will be nominated by the chief executive of the Hong Kong Special Administrative Region for appointment by the Central People's Government. Chinese and foreign nationals previously working in the public and police services in the government departments of Hong Kong may remain in employment. British and other foreign nationals may also be employed to serve as advisers or hold certain public posts in government departments of the Hong Kong Special Administrative Region.

(5) The current social and economic systems in Hong Kong will remain unchanged, and so will the life-style. Rights and freedoms, including those of the person, of speech, of the press, of assembly, of association, of travel, of movement, of correspondence, of strike, of choice of occupation, of academic research and of religious belief will be ensured by law in the Hong Kong Special Administrative Region. Private property, ownership of enterprises, legitimate right of inheritance and foreign investment will be protected by law.

(6) The Hong Kong Special Administrative Region will retain the status of a free port and a separate customs territory.

(7) The Hong Kong Special Administrative Region will retain the status of an international financial centre, and its markets for foreign exchange, gold, securities and futures will continue. There will be free flow of capital. The Hong Kong dollar will continue to circulate and remain freely convertible.

(8) The Hong Kong Special Administrative Region will have independent finances. The Central People's Government will not levy taxes on the Hong Kong Special Administrative Region.

(9) The Hong Kong Special Administrative Region may establish mutually beneficial economic relations with the United Kingdom and other countries, whose economic interests in Hong Kong will be given due regard.

(10) Using the name of "Hong Kong, China", the Hong Kong Special Administrative Region may on its own maintain and develop economic and cultural relations and conclude relevant agreements with states, regions and relevant international
organisations.

The Government of the Hong Kong Special Administrative Region may on its own issue travel documents for entry into and exit from Hong Kong.

(11) The maintenance of public order in the Hong Kong Special Administrative Region will be the responsibility of the Government of the Hong Kong Special Administrative Region.

(12) The above-stated basic policies of the People's Republic of China regarding Hong Kong and the elaboration of them in Annex I to this Joint Declaration will be stipulated, in a Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, by the National People's Congress of the People's Republic of China, and they will remain unchanged for 50 years.

4. The Government of the United Kingdom and the Government of the People's Republic of China declare that, during the transitional period between the date of the entry into force of this Joint Declaration and 30 June 1997, the Government of the United Kingdom will be responsible for the administration of Hong Kong with the object of maintaining and preserving its economic prosperity and social stability; and that the Government of the People's Republic of China will give its cooperation in this connection.

5. The Government of the United Kingdom and the Government of the People's Republic of China declare that, in order to ensure a smooth transfer of government in 1997, and with a view to the effective implementation of this Joint Declaration, a Sino-British Joint Liaison Group will be set up when this Joint Declaration enters into force; and that it will be established and will function in accordance with the provisions of Annex II to this Joint Declaration.

6. The Government of the United Kingdom and the Government of the People's Republic of China declare that land leases in Hong Kong and other related matters will be dealt with in accordance with the provisions of Annex III to this Joint Declaration.

7. The Government of the United Kingdom and the Government of the People's Republic of China agree to implement the preceding declarations and the Annexes to this Joint Declaration.

8. This Joint Declaration is subject to ratification and shall enter into force on the date of the exchange of instruments of ratification, which shall take place in Beijing before 30 June 1985. This Joint Declaration and its Annexes shall be equally binding.

Done in duplicate at Beijing on 18 April 1984 in the English and Chinese languages, both texts being equally authentic.
For the
Government of the United
Kingdom of Great Britain
and Northern Ireland

For the
Government of the
People’s Republic of
China

ANNEX I

ELABORATION BY THE GOVERNMENT OF THE PEOPLE’S REPUBLIC OF CHINA OF ITS BASIC POLICIES REGARDING HONG KONG

The Government of the People’s Republic of China elaborates the basic policies of the People’s Republic of China regarding Hong Kong as set out in paragraph 3 of the Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People’s Republic of China on the Question of Hong Kong as follows:

I

The Constitution of the People’s Republic of China stipulates in Article 31 that “the state may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by laws enacted by the National People’s Congress in the light of the specific conditions”. In accordance with this Article, the People’s Republic of China shall, upon the resumption of the exercise of sovereignty over Hong Kong on 1 July 1997, establish the Hong Kong Special Administrative Region of the People’s Republic of China. The National People’s Congress of the People’s Republic of China shall enact and promulgate a Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China (hereinafter referred to as the Basic Law) in accordance with the Constitution of the People’s Republic of China, stipulating that after the establishment of the Hong Kong Special Administrative Region the socialist system and socialist policies shall not be practised in the Hong Kong Special Administrative Region and that Hong Kong’s previous capitalist system and life-style shall remain unchanged for 50 years.

The Hong Kong Special Administrative Region shall be directly under the authority of the Central People’s Government of the People’s Republic of China and shall enjoy a high degree of autonomy. Except for foreign and defence affairs which are the responsibilities of
the Central People's Government, the Hong Kong Special Administrative Region shall be vested with executive, legislative and independent judicial power, including that of final adjudication. The Central People's Government shall authorise the Hong Kong Special Administrative Region to conduct on its own those external affairs specified in Section XI of this Annex.

The government and legislature of the Hong Kong Special Administrative Region shall be composed of local inhabitants. The chief executive of the Hong Kong Special Administrative Region shall be selected by election or through consultations held locally and be appointed by the Central People's Government. Principal officials (equivalent to Secretaries) shall be nominated by the chief executive of the Hong Kong Special Administrative Region and appointed by the Central People's Government. The legislature of the Hong Kong Special Administrative Region shall be constituted by elections. The executive authorities shall abide by the law and shall be accountable to the legislature.

In addition to Chinese, English may also be used in organs of government and in the courts in the Hong Kong Special Administrative Region.

Apart from displaying the national flag and national emblem of the People's Republic of China, the Hong Kong Special Administrative Region may use a regional flag and emblem of its own.

II

After the establishment of the Hong Kong Special Administrative Region, the laws previously in force in Hong Kong (i.e. the common law, rules of equity, ordinances, subordinate legislation and customary law) shall be maintained, save for any that contravene the Basic Law and subject to any amendment by the Hong Kong Special Administrative Region legislature.

The legislative power of the Hong Kong Special Administrative Region shall be vested in the legislature of the Hong Kong Special Administrative Region. The legislature may on its own authority enact laws in accordance with the provisions of the Basic Law and legal procedures, and report them to the Standing Committee of the National People's Congress for the record. Laws enacted by the legislature which are in accordance with the Basic Law and legal procedures shall be regarded as valid.

The laws of the Hong Kong Special Administrative Region shall be the Basic Law, and the laws previously in force in Hong Kong and laws enacted by the Hong Kong Special Administrative Region legislature as above.
After the establishment of the Hong Kong Special Administrative Region, the judicial system previously practised in Hong Kong shall be maintained except for those changes consequent upon the vesting in the courts of the Hong Kong Special Administrative Region of the power of final adjudication.

Judicial power in the Hong Kong Special Administrative Region shall be vested in the courts of the Hong Kong Special Administrative Region. The courts shall exercise judicial power independently and free from any interference. Members of the judiciary shall be immune from legal action in respect of their judicial functions. The courts shall decide cases in accordance with the laws of the Hong Kong Special Administrative Region and may refer to precedents in other common law jurisdictions.

Judges of the Hong Kong Special Administrative Region courts shall be appointed by the chief executive of the Hong Kong Special Administrative Region acting in accordance with the recommendation of an independent commission composed of local judges, persons from the legal profession and other eminent persons. Judges shall be chosen by reference to their judicial qualities and may be recruited from other common law jurisdictions. A judge may only be removed for inability to discharge the functions of his office, or for misbehaviour, by the chief executive of the Hong Kong Special Administrative Region acting in accordance with the recommendation of a tribunal appointed by the chief judge of the court of final appeal, consisting of not fewer than three local judges. Additionally, the appointment or removal of principal judges (i.e. those of the highest rank) shall be made by the chief executive with the endorsement of the Hong Special Administrative Region legislature and reported to the Standing Committee of the National People's Congress for the record. The system of appointment and removal of judicial officers other than judges shall be maintained.

The power of final judgment of the Hong Kong Special Administrative Region shall be vested in the court of final appeal in the Hong Kong Special Administrative Region, which may as required invite judges from other common law jurisdictions to sit on the court of final appeal.

A prosecuting authority of the Hong Kong Special Administrative Region shall control criminal prosecutions free from any interference.

On the basis of the system previously operating in Hong Kong, the Hong Kong Special Administrative Region Government shall on its own make provision for local lawyers and lawyers from outside the Hong Kong Special Administrative Region to work and practise in the Hong Kong Special Administrative Region.
The Central People’s Government shall assist or authorise the Hong Kong Special Administrative Region Government to make appropriate arrangements for reciprocal juridical assistance with foreign states.

IV

After the establishment of the Hong Kong Special Administrative Region, public servants previously serving in Hong Kong in all government departments, including the police department, and members of the judiciary may all remain in employment and continue their service with pay, allowances, benefits and conditions of service no less favourable than before. The Hong Kong Special Administrative Region Government shall pay to such persons who retire or complete their contracts, as well as to those who have retired before 1 July 1997, or to their dependants, all pensions, gratuities, allowances and benefits due to them on terms no less favourable than before, and irrespective of their nationality or place of residence.

The Hong Kong Special Administrative Region Government may employ British and other foreign nationals previously serving in the public service in Hong Kong, and may recruit British and other foreign nationals holding permanent identity cards of the Hong Kong Special Administrative Region to serve as public servants at all levels, except as heads of major government departments (corresponding to branches or departments at Secretary level) including the police department, and as deputy heads of some of those departments. The Hong Kong Special Administrative Region Government may also employ British and other foreign nationals as advisers to government departments and, when there is a need, may recruit qualified candidates from outside the Hong Kong Special Administrative Region to professional and technical posts in government departments. The above shall be employed only in their individual capacities and, like other public servants, shall be responsible to the Hong Kong Special Administrative Region Government.

The appointment and promotion of public servants shall be on the basis of qualifications, experience and ability. Hong Kong’s previous system of recruitment, employment, assessment, discipline, training and management for the public service (including special bodies for appointment, pay and conditions of service) shall, save for any provisions providing privileged treatment for foreign nationals, be maintained.
V

The Hong Kong Special Administrative Region shall deal on its own with financial matters, including disposing of its financial resources and drawing up its budgets and its final accounts. The Hong Kong Special Administrative Region shall report its budgets and final accounts to the Central People's Government for the record.

The Central People's Government shall not levy taxes on the Hong Kong Special Administrative Region. The Hong Kong Special Administrative Region shall use its financial revenues exclusively for its own purposes and they shall not be handed over to the Central People's Government. The systems by which taxation and public expenditure must be approved by the legislature, and by which there is accountability to the legislature for all public expenditure, and the system for auditing public accounts shall be maintained.

VI

The Hong Kong Special Administrative Region shall maintain the capitalist economic and trade systems previously practised in Hong Kong. The Hong Kong Special Administrative Region Government shall decide its economic and trade policies on its own. Rights concerning the ownership of property, including those relating to acquisition, use, disposal, inheritance and compensation for lawful deprivation (corresponding to the real value of the property concerned, freely convertible and paid without undue delay) shall continue to be protected by law.

The Hong Kong Special Administrative Region shall retain the status of a free port and continue a free trade policy, including the free movement of goods and capital. The Hong Kong Special Administrative Region may on its own maintain and develop economic and trade relations with all states and regions.

The Hong Kong Special Administrative Region shall be a separate customs territory. It may participate in relevant international organisations and international trade agreements (including preferential trade arrangements), such as the General Agreement on Tariffs and Trade and arrangements regarding international trade in textiles. Export quotas, tariff preferences and other similar arrangements obtained by the Hong Kong Special Administrative Region shall be enjoyed exclusively by the Hong Kong Special Administrative Region. The Hong Kong Special Administrative Region shall have authority to issue its own certificates of origin for products manufactured locally, in accordance with prevailing rules of origin.

The Hong Kong Special Administrative Region may, as necessary,
establish official and semi-official economic and trade missions in foreign countries, reporting the establishment of such missions to the Central People’s Government for the record.

VII

The Hong Kong Special Administrative Region shall retain the status of an international financial centre. The monetary and financial systems previously practised in Hong Kong, including the systems of regulation and supervision of deposit taking institutions and financial markets, shall be maintained.

The Hong Kong Special Administrative Region Government may decide its monetary and financial policies on its own. It shall safeguard the free operation of financial business and the free flow of capital within, into and out of the Hong Kong Special Administrative Region. No exchange control policy shall be applied in the Hong Kong Special Administrative Region. Markets for foreign exchange, gold, securities and futures shall continue.

The Hong Kong dollar, as the local legal tender, shall continue to circulate and remain freely convertible. The authority to issue Hong Kong currency shall be vested in the Hong Kong Special Administrative Region Government. The Hong Kong Special Administrative Region Government may authorise designated banks to issue or to continue to issue Hong Kong currency under statutory authority, after satisfying itself that any issue of currency will be soundly based and that the arrangements for such issue are consistent with the object of maintaining the stability of the currency. Hong Kong currency bearing references inappropriate to the status of Hong Kong as a Special Administrative Region of the People’s Republic of China shall be progressively replaced and withdrawn from circulation.

The Exchange Fund shall be managed and controlled by the Hong Kong Special Administrative Region Government, primarily for regulating the exchange value of the Hong Kong dollar.

VIII

The Hong Kong Special Administrative Region shall maintain Hong Kong’s previous systems of shipping management and shipping regulation, including the system for regulating conditions of seamen. The specific functions and responsibilities of the Hong Kong Special Administrative Region Government in the field of shipping shall be defined by the Hong Kong Special Administrative Region Government on its own. Private shipping businesses and shipping-related businesses and private container terminals in Hong Kong may continue to operate
freely.

The Hong Kong Special Administrative Region shall be authorised by the Central People's Government to continue to maintain a shipping register and issue related certificates under its own legislation in the name of "Hong Kong, China".

With the exception of foreign warships, access for which requires the permission of the Central People's Government, ships shall enjoy access to the ports of the Hong Kong Special Administrative Region in accordance with the laws of the Hong Kong Special Administrative Region.

IX

The Hong Kong Special Administrative Region shall maintain the status of Hong Kong as a centre of international and regional aviation. Airlines incorporated and having their principal place of business in Hong Kong and civil aviation related businesses may continue to operate. The Hong Kong Special Administrative Region shall continue the previous system of civil aviation management in Hong Kong, and keep its own aircraft register in accordance with provisions laid down by the Central People's Government concerning nationality marks and registration marks of aircraft. The Hong Kong Special Administrative Region shall be responsible on its own for matters of routine business and technical management of civil aviation, including the management of airports, the provision of air traffic services within the flight information region of the Hong Kong Special Administrative Region, and the discharge of other responsibilities allocated under the regional air navigation procedures of the International Civil Aviation Organisation.

The Central People's Government shall, in consultation with the Hong Kong Special Administrative Region Government, make arrangements providing for air services between the Hong Kong Special Administrative Region and other parts of the People's Republic of China for airlines incorporated and having their principal place of business in the Hong Kong Special Administrative Region and other airlines of the People's Republic of China. All air service agreements providing for air services between other parts of the People's Republic of China and other states and regions with stops at the Hong Kong Special Administrative Region and air services between the Hong Kong Special Administrative Region and other states and regions with stops at other parts of the People's Republic of China shall be concluded by the Central People's Government. For this purpose, the Central People's Government shall take account of the special conditions and economic interests of the Hong Kong Special Administrative Region and consult the Hong Kong Special Administrative Region Government. Representa-
tives of the Hong Kong Special Administrative Region Government may participate as members of delegations of the Government of the People’s Republic of China in air service consultations with foreign governments concerning arrangements for such services.

Acting under specific authorisations from the Central People’s Government, the Hong Kong Special Administrative Region Government may:

—renew or amend Air Service Agreements and arrangements previously in force; in principle, all such Agreements and arrangements may be renewed or amended with the rights contained in such previous Agreements and arrangements being as far as possible maintained;
—negotiate and conclude new Air Service Agreements providing routes for airlines incorporated and having their principal place of business in the Hong Kong Special Administrative Region and rights for overflights and technical stops; and
—negotiate and conclude provisional arrangements where no Air Service Agreement with a foreign state or other region is in force.

All scheduled air services to, from or through the Hong Kong Special Administrative Region which do not operate to, from or through the mainland of China shall be regulated by Air Service Agreements or provisional arrangements referred to in this paragraph.

The Central People’s Government shall give the Hong Kong Special Administrative Region Government the authority to:

—negotiate and conclude with other authorities all arrangements concerning the implementation of the above Air Service Agreements and provisional arrangements;
—issue licenses to airlines incorporated and having their principal place of business in the Hong Kong Special Administrative Region;
—designate such airlines under the above Air Service Agreements and provisional arrangements; and
—issue permits to foreign airlines for services other than those to, from or through the mainland of China.

X

The Hong Kong Special Administrative Region shall maintain the educational system previously practised in Hong Kong. The Hong Kong Special Administrative Region Government shall on its own decide policies in the fields of culture, education, science and technology,
including policies regarding the educational system and its administration, the language of instruction, the allocation of funds, the examination system, the system of academic awards and the recognition of educational and technological qualifications. Institutions of all kinds, including those run by religious and community organisations, may retain their autonomy. They may continue to recruit staff and use teaching materials from outside the Hong Kong Special Administrative Region. Students shall enjoy freedom of choice of education and freedom to pursue their education outside the Hong Kong Special Administrative Region.

XI

Subject to the principle that foreign affairs are the responsibility of the Central People’s Government, representatives of the Hong Kong Special Administrative Region Government may participate, as members of delegations of the Government of the People’s Republic of China, in negotiations at the diplomatic level directly affecting the Hong Kong Special Administrative Region conducted by the Central People’s Government. The Hong Kong Special Administrative Region may on its own, using the name “Hong Kong, China”, maintain and develop relations and conclude and implement agreements with states, regions and relevant international organisations in the appropriate fields, including the economic, trade, financial and monetary, shipping, communications, touristic, cultural and sporting fields. Representatives of the Hong Kong Special Administrative Region Government may participate, as members of delegations of the Government of the People’s Republic of China, in international organisations or conferences in appropriate fields limited to states and affecting the Hong Kong Special Administrative Region, or may attend in such other capacity as may be permitted by the Central People’s Government and the organisation or conference concerned, and may express their views in the name of “Hong Kong, China”. The Hong Kong Special Administrative Region may, using the name “Hong Kong, China”, participate in international organisations and conferences not limited to states.

The application to the Hong Kong Special Administrative Region of international agreements to which the People’s Republic of China is or becomes a party shall be decided by the Central People’s Government, in accordance with the circumstances and needs of the Hong Kong Special Administrative Region, and after seeking the views of the Hong Kong Special Administrative Region Government. International agreements to which the People’s Republic of China is not a party but which are implemented in Hong Kong may remain implemented in the Hong Kong Special Administrative Region. The Central People’s Gov-
ernment shall, as necessary, authorise and assist the Hong Kong Special Administrative Region Government to make appropriate arrangements for the application to the Hong Kong Special Administrative Region of other relevant international agreements. The Central People's Government shall take the necessary steps to ensure that the Hong Kong Special Administrative Region shall continue to retain its status in an appropriate capacity in those international organisations of which the People's Republic of China is a member and in which Hong Kong participates in one capacity or another. The Central People's Government shall, where necessary, facilitate the continued participation of the Hong Kong Special Administrative Region in an appropriate capacity in those international organisations in which Hong Kong is a participant in one capacity or another, but of which the People's Republic of China is not a member.

Foreign consular and other official or semi-official missions may be established in the Hong Kong Special Administrative Region with the approval of the Central People's Government. Consular and other official missions established in Hong Kong by states which have established formal diplomatic relations with the People's Republic of China may be maintained. According to the circumstances of each case, consular and other official missions of states having no formal diplomatic relations with the People's Republic of China may either be maintained or changed to semi-official missions. States not recognised by the People's Republic of China can only establish non-governmental institutions.

The United Kingdom may establish a Consulate-General in the Hong Kong Special Administrative Region.

XII

The maintenance of public order in the Hong Kong Special Administrative Region shall be the responsibility of the Hong Kong Special Administrative Region Government. Military forces sent by the Central People's Government to be stationed in the Hong Kong Special Administrative Region for the purpose of defence shall not interfere in the internal affairs of the Hong Kong Special Administrative Region. Expenditure for these military forces shall be borne by the Central People's Government.

XIII

The Hong Kong Special Administrative Region Government shall protect the rights and freedoms of inhabitants and other persons in the Hong Kong Special Administrative Region according to law. The Hong
Kong Special Administrative Region Government shall maintain the rights and freedoms as provided for by the laws previously in force in Hong Kong, including freedom of the person, of speech, of the press, of assembly, of association, to form and join trade unions, of correspondence, of travel, of movement, of strike, of demonstration, of choice of occupation, of academic research, of belief, inviolability of the home, the freedom to marry and the right to raise a family freely.

Every person shall have the right to confidential legal advice, access to the courts, representation in the courts by lawyers of his choice, and to obtain judicial remedies. Every person shall have the right to challenge the actions of the executive in the courts.

Religious organisations and believers may maintain their relations with religious organisations and believers elsewhere, and schools, hospitals and welfare institutions run by religious organisations may be continued. The relationship between religious organisations in the Hong Kong Special Administrative Region and those in other parts of the People's Republic of China shall be based on the principles of non-subordination, non-interference and mutual respect.

The provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong shall remain in force.

XIV

The following categories of persons shall have the right of abode in the Hong Kong Special Administrative Region, and, in accordance with the law of the Hong Kong Special Administrative Region, be qualified to obtain permanent identity cards issued by the Hong Kong Special Administrative Region Government, which state their right of abode:

—all Chinese nationals who were born or who have ordinarily resided in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region for a continuous period of 7 years or more, and persons of Chinese nationality born outside Hong Kong of such Chinese nationals;

—all other persons who have ordinarily resided in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region for a continuous period of 7 years or more and who have taken Hong Kong as their place of permanent residence before or after the establishment of the Hong Kong Special Administrative Region, and persons under 21 years of age who were born of such persons in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region;
—any other persons who had the right of abode only in Hong Kong before the establishment of the Hong Kong Special Administrative Region.

The Central People's Government shall authorise the Hong Kong Special Administrative Region Government to issue, in accordance with the law, passports of the Hong Kong Special Administrative Region of the People's Republic of China to all Chinese nationals who hold permanent identity cards of the Hong Kong Special Administrative Region, and travel documents of the Hong Kong Special Administrative Region of the People's Republic of China to all other persons lawfully residing in the Hong Kong Special Administrative Region. The above passports and documents shall be valid for all states and regions and shall record the holder's right to return to the Hong Kong Special Administrative Region.

For the purpose of travelling to and from the Hong Kong Special Administrative Region, residents of the Hong Kong Special Administrative Region may use travel documents issued by the Hong Kong Special Administrative Region Government, or by other competent authorities of the People's Republic of China, or of other states. Holders of permanent identity cards of the Hong Kong Special Administrative Region may have this fact stated in their travel documents as evidence that the holders have the right of abode in the Hong Kong Special Administrative Region.

Entry into the Hong Kong Special Administrative Region of persons from other parts of China shall continue to be regulated in accordance with the present practice.

The Hong Kong Special Administrative Region Government may apply immigration controls on entry, stay in and departure from the Hong Kong Special Administrative Region by persons from foreign states and regions.

Unless restrained by law, holders of valid travel documents shall be free to leave the Hong Kong Special Administrative Region without special authorisation.

The Central People's Government shall assist or authorise the Hong Kong Special Administrative Region Government to conclude visa abolition agreements with states or regions.