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THE PROBLEM OF STATELESSNESS

Information transmitted by States in pursuance of  
Economic and Social Council resolution  
352 (XII) relating to the problem  
of statelessness

The Secretary-General has the honour to circulate the following communication dated 31 October 1951 which he has received from the Chinese Delegation to the United Nations:

"The Acting Director of the permanent office of the Chinese Delegation to the United Nations presents his compliments to the Secretary-General of the United Nations and has the honour to refer to his notes No. SOA 325/5/02 dated 27 September 1950 and No. SOA 325/04 dated 5 April 1951, addressed to the Minister for foreign Affairs of China, requesting information concerning paragraphs 6 and 7 of resolution 319 B (iii) (XI) of the Economic and Social Council on the problem of statelessness.

The Acting Director has the honour to state that the competent Chinese authorities have carefully examined this resolution and, in response to the above-mentioned request, prepared an analysis of Chinese laws and regulations relating to statelessness and their actual application, a copy of which is hereby transmitted."

"AN ANALYSIS OF THE LAWS AND REGULATIONS OF THE  
REPUBLIC OF CHINA GOVERNING STATELESSNESS  
AND THEIR PRACTICAL APPLICATION"

(1) With regard to the recommendations contained in paragraph 6 of Resolution 319 B III (XI) of the Economic and Social Council of the United Nations to the effect that States involved in changes of territorial sovereignty should include in the arrangements for such changes the necessary provisions for the avoidance of statelessness, the National Government of the Republic of China had, since the successful termination of its war of resistance against Japan and consequent re-establishment of its territorial sovereignty over Taiwan (Formosa), formally declared that, as from 25 December 1945, all the Taiwanese who, as a result of the forced cession of Taiwan to Japan, had been deprived of their former Chinese nationality, their descendants who had been born subsequent to such cession, and such Taiwanese as were then residing abroad, should re-acquire the nationality of the Republic of China. This is one of the effective measures taken with a view to avoiding statelessness following the change of the territorial sovereignty of Taiwan.

(2) With regard to the recommendations contained in paragraph 7 of the same Resolution, the Chinese Government proposes to deal with them in two parts:

A. The first part refers to the request to States to examine sympathetically applications for naturalization submitted by stateless persons habitually resident in their territory. According to the Nationality Law of China, stateless persons residing in China, like any other aliens resident in China who possess nationalities, shall be eligible for naturalization if their applications comply with the conditions prescribed by law. The general conditions governing naturalization in China are laid down in the same law as follows:

'Article 3. An alien or a stateless person may, with the authorization of the Ministry of Interior, be naturalized in China.

'The Ministry of Interior shall not give the above-mentioned authorization, unless the applicant for naturalization fulfils all the conditions provided in the following sub-paragraphs, namely:

'1. He has been continuously domiciled in China for a period of more than five years;

'2. He is above twenty years of age and has legal capacity according to both Chinese law and his national law;

'3. He is of

'3. He is of good character and behaviour;

'4. He has sufficient financial means, or skill and ability to earn his own living.

'If an applicant for naturalization is a stateless person, the requirements stated in sub-paragraph 2 above shall be determined solely by Chinese law.'

On the other hand, Articles 4 to 8 of the Chinese Nationality Law, which lay down conditions governing applications for naturalization by certain particular categories of aliens, are also applicable to stateless persons. Thus, the same law provides as follows:

'Article 4. An alien in the categories mentioned in the following sub-paragraphs, who is at present domiciled in China, shall be eligible for naturalization, even though he has not been continuously domiciled for a period of more than five years, if

'1. His father or mother was previously a Chinese;

'2. His wife was previously a Chinese;

'3. He was born in Chinese territory;

'4. He has continuously resided in China for a period of more than ten years.

'Aliens mentioned in sub-paragraphs 1, 2 and 3 shall not be eligible for naturalization, unless they have continuously resided in China for more than three years; but this shall not apply to aliens mentioned in sub-paragraph 3 whose father or mother was born in Chinese territory.

'Article 5. An alien at present domiciled in China whose father or mother is Chinese shall be eligible for naturalization even though he does not meet the conditions mentioned in sub-paragraphs 1, 2 and 4, Article 3, paragraph 2.

'Article 6. An alien who has rendered meritorious services to the cause of China shall be eligible for naturalization notwithstanding the conditions mentioned in the sub-paragraphs of Article 3, paragraph 2.

'Article 8. The wife of a naturalized person, and his child who is a minor under his national law, shall acquire Chinese nationality at the same time as the naturalized person, if his national law does not provide to the contrary.'

B. The second part refers to the request to States to re-examine, if necessary, their nationality laws with a view to reducing as far as possible the number of cases of statelessness created by the operation of such laws. This could be dealt with from two aspects, namely: acquisition of Chinese nationality by birth and loss of Chinese nationality by post-natal occurrences:

a. Acquisition of Chinese nationality by birth. Article 1, sub-paragraphs 1, 2 and 3 of the Chinese Nationality Law follow the doctrine of jus sanguinis. A person always acquires Chinese nationality wherever he is born, if 'at the time of his birth his father was a Chinese', 'if he was born after the death of his father who was a Chinese at the time of his death', or if 'while his father is unknown or stateless, his mother is a Chinese'. Sub-paragraph 4 of the same article, however, follows the doctrine of jus soli. Thus, any person 'born in Chinese territory' would acquire Chinese nationality 'if both his parents are unknown or stateless'. The situations mentioned in the above provisions give rise to a nationality of origin; there is not the least possibility of creating stateless persons.

On the other hand, under Article 2 of the same law, an alien may likewise acquire Chinese nationality through quasi-blood relationship, that is to say, if, being an illegitimate child, he is acknowledged by his father or mother, who is a Chinese, as his or her child, or if he is adopted by a Chinese as his adopted child. Besides, an alien woman who is married to a Chinese husband could also acquire Chinese nationality. There is little likelihood, therefore, that the operation of this article could ever lead to statelessness, unless the person concerned is unwilling to acquire Chinese nationality.

b. Loss of Chinese nationality by post-natal occurrences. It is possible that cases of statelessness are more frequently created by the operation of laws governing loss of nationality. The provisions of the Nationality Law of the Republic of China governing the loss of Chinese nationality are as follows:

'Article 10. A Chinese shall lose his or her nationality if

'1. Upon marriage to an alien she has applied for permission to renounce her Chinese nationality and has been granted such permission by the Ministry of the Interior; or

'2. His or her father is an alien and has acknowledged him or her as his child; or

'3. His or

'3. His or her mother is an alien and has acknowledged him or her as her child, in case his or her father is unknown or has not made such acknowledgment.

'The loss of Chinese nationality under the provision of sub-paragraphs 2 and 3 of the preceding paragraph shall only apply to a person who is a minor according to Chinese law or who has not been married to a Chinese husband.

'Article 11. A person who desires to acquire a foreign nationality may, with the authorization of the Ministry of the Interior, renounce his Chinese nationality, provided that he is over twenty years of age and has legal capacity according to Chinese law.'

An analysis of the text of the above-mentioned provisions of the Nationality Law of the Republic of China governing loss of Chinese nationality shows that the loss of Chinese nationality through the operation of the various sub-paragraph of Article 10 of this law would seldom lead to the creation of statelessness. Occasionally, such a situation may arise when a Chinese woman loses her Chinese nationality on marriage with an alien but does not, under the national law of her husband, acquire the nationality of the latter. Nevertheless, such instances are few and far between. On the other hand, in virtue of Article 11 of the same law, it is more likely that the loss of Chinese nationality through 'voluntary' acquisition of foreign nationality might lead to statelessness. Still, such a situation will arise only when the party concerned willingly chooses to become stateless. Moreover, the Ministry of the Interior of the Republic of China, in authorizing such cases of renunciation of Chinese nationality, is subject to the restrictions provided in the various sub-paragraphs of Articles 12 and 13. Thus:

'Article 12. The Ministry of the Interior shall not authorize renunciation of Chinese nationality by a person who falls under one of the following categories namely:

- '1. If having reached the age for military service and not having been exempted from military service, he has not yet performed military service;
- '2. If he is actually performing military service;
- '3. If he is in the Chinese civil service or is serving as a military officer.

'Article 13. A person who falls under one of the following categories may not renounce his nationality even though he complies with the provisions of Articles 10 and 11, namely:

/'1. If he

- '1. If he is a suspect or defendant in criminal proceedings;
- '2. If he has received a sentence in criminal proceedings and its execution has not yet been completed;
- '3. If he is a defendant in civil proceedings;
- '4. If he has been subject to measures of compulsory execution the enforcement of which has not yet been completed;
- '5. If he has been declared bankrupt and has not yet been discharged.
- '6. If he has been in default in the payment of taxes, or if, because of such default, he has been subject to punishment the execution of which has not yet been completed'.

In practice, therefore, there is again no need to express concern over the occurrence of the above-mentioned situations."

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