



Legal Consideration of Recognizing Dual Nationality in China

VISANT SUR LA REFLECTION DE LOI DE LA DOUBLE NATIONALITES APPROUVEES PAR LA CHINE

ZHANG Xuan^{1*}; ZHU Yujing¹; ZHAN Hongde²

¹ College of Arts and Humanities, Beijing Forestry University, Beijing, China. Research direction: International Relations and China's Diplomacy.

² Associate Professors. College of Arts and Humanities, Beijing Forestry University, Beijing, China. Research direction: International Economic Law.

*Corresponding author.

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Abstract

Currently, China adopts the principle of non-recognition of dual nationality. However, with the continuous development of society, and increasingly frequent international cooperation and exchanges, Chinese emigrants abroad are crying for state to recognize dual nationality system. And also, the issue of dual nationality has triggered a fierce debate in China. Under new situation in China, limited or targeted recognizing dual nationality meets the requirements of the law and applies theory to practice. China should make appropriate adaptations to the nationality policy so as to meet the demands of current economic and social development better.

Key words: Dual nationality; Nationality law; Reciprocal principle; Overseas Chinese

Résumé

Actuellement, la loi de la naturalisation n'approuve pas la double nationalités. Cependant, avec le développement sans cesse de notre société, l'augmentation de jour en jour de la collaboration et l'échange de la communication avec l'international, La demande des immigrants qui sont des chinois d'origine pour la réforme d'approuvement de la Double nationalités ne cesse de se croître, le sujet de la Double Nationalité, ce sujet de la Double nationalité a également entrainer des discussions animées. La Chine sous la nouvelle forme, l'approuvement de la double nationalités est limité ou visée, mais ce dernier est conformé aux exigences judiciaires et l'application

de la pratique. La Chine devrait ajuster un peu ses réformes, afin de mieux s'adapter aux besoins de l'ère du développement de la société et de l'économie d'actuelle.

Mots clés: Double nationalités; Loi de la naturalisation; Principe égale; Chinois d'étranger

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According to Nationality Law of the People's Republic of China, the People's Republic of China does not recognize dual nationality for any Chinese national. Under this section, overseas Chinese who has acquired foreign nationality shall automatically lose Chinese nationality. With this limitation, there has always been a good deal of reaction to it both at home and abroad. The second Session of the Ninth CPPCC introduced a proposal ("No. 2172" project) about revoking the rule of not recognizing dual nationality for any Chinese national in 1999. After that, overseas Chinese in New Zealand presented a petition of 'We Are Eagerly Looking Forward to Amending Nationality Laws of Our Motherland and Recognizing Dual Nationality as Quickly as Possible', to Luo Haocai, former vice-president of CPPCC, when he visiting Singapore; overseas Chinese in European Union also submitted a letter to Chinese Premier Wen Jiabao during his visiting of EU in 2004, about suggestion of amending nationality laws and recognizing dual nationality, in which, the common desire of vast number of overseas Chinese for dual nationality was illustrated by voluminous facts and generous sentiments (Shang, 2008). All these may reflect the dual nationality has become a international hot topic, and whether China should recognize dual nationality is an issue for us to ponder over.

1. NATIONALITY AND DUAL NATIONALITY

Nationality goes with the country. With the building of the State and the concept of state sovereignty becoming increasingly deep, the national affiliation of the country has made important significance. In the perspective of International Law, the nationality of a natural person refers to not only his or her qualification as a national, but also important relation with International Law (Jennings, 1998). In the perspective of Domestic Law, nationality refers to the legal qualification of a person belonging to a particular country as a national (Wang, 1995). As the country is naturally entitled to its own laws to decide who is its own nationals, therefore, the gaining and losing of nationality in principle belongs to the domestic jurisdiction and remains a domestic issue of a country.

More variable with the international concept, each country in its own respective has developed the Nationality Law on different basis. This inevitably produced differences in the legislation of nationality and the nationality conflicts, in which the most representative one was dual nationality. What is called ‘dual nationality’ refers to the legal status of a natural person who has nationality in

two countries at the same time. It is undeniable that the dual nationality conflict may lead to many adverse effects. Particularly in early concept of nationality, nationals had the obligation of ‘permanent allegiance’ to their own country. Based on this dominant international concept, early nationals with dual nationality were considered betraying their principles of loyalty to their country. Until 1991, apart from four countries in South America (Uruguay, Panama, Peru, El Salvador), Nationality Laws of the vast majority countries in the world had a clear rejection to dual nationality, or even in extremely way of abolishing some relevant planning regulations in Nationality Law.

But, the trend of globalization has prompted countries to change attitudes towards dual nationality. This is not just based on national interests; another important reason is the increasingly louder call for self-interest of the emigrants. Under the new world situation, the international exchanges in areas such as personnel, trade, capital, technology, become more and more frequent, and diversification becomes the mainstream of today’s world. Meanwhile, the sovereignty concept of traditional nation-state has increasingly faded and weakened. The trend of dual nationality is compatible with the development of the world, and a necessary requisition of history.

Table 1
Statistical Table of Relevant Regulations about Nationality in Some Countries

Classification number	Condition	The Number of countries	Proportion
2	Recognizing dual nationality	65	66%
	Not recognizing dual nationality	34	34%
	Total	99	100%

Table 2
Statistical Table of the Classification According to Constitution

Classification number	Condition	The Number of countries	Proportion	Remark
1	Provision on dual nationality	95	86%	
1A	Recognizing or not prohibiting dual nationality	45	41%	76%
1B	Not recognizing dual nationality	14	12%	24%
1C	No specific statement on dual nationality	36	33%	47%
0	No provision on dual nationality	15	14%	
	Total	110	100%	

According to statistics (Wang, 2010), besides the infatuation of developed countries with the implementation of dual nationality, although some Asian countries did not emphasis on multiculturalism and the principle of human rights like western countries, they have still taken dual nationality system driven by the principle of economic utilitarianism and the pride of nationalism. In Asia, Philippines and India have

announced the introduction of dual nationality policy. Due to the similarity of the national situation, India’s move had great reference significance for China.

2. ORIGIN OF DUAL NATIONALITY IN CHINA

2.1 Changes in the Attitudes of China Towards Dual Nationality

In history, China had implemented dual nationality system. In 1909, the government of Qing Dynasty promulgated Chinese first Nationality Law, 'Nationality Regulations of the Great Qing', which confirming *jus sanguinis* as the principle of nationality, based on feudal idea of 'All over the world, earth and nationals belong to the King'. As long as one of the parents having Chinese nationality, their children can have Chinese nationality regardless of birthplace in China or abroad. Even if the person voluntarily joined other country, he or she still maintained the Chinese nationality. Excepting death, there was no reason to cancel the affiliation of the subjects to the Emperor (Li, 2005). Since then, 'Nationality Law of Republic of China' of Yuan shi-kai Government in 1912, and that of the government of the Republic of China in 1929, had not changed the legislative principle of *jus sanguinis*. At that time, the main aim of the Government was to get the help and support from the majority of overseas Chinese, and to reflect the defending of diplomatic sovereignty and the interests of its nationals.

In China, the current promulgation of Nationality Law has special and profound historical background. In the early years of New China, with the emergence of anti-China power and the reflux of Chinese Exclusion among other countries in the world, especially the large-scale slaughter to the Chinese in the Indonesian region, the problem of dual nationality had intertwined with the founding problems of some Southeast Asia countries, racial problems, class issues and the problems of Cold War in international political relations. In order to express diplomatic goodwill and properly solve the problem of left overseas Chinese, the new China Government had developed a series of regulations and policies, and concluded a series of treaties with relevant countries, making it clear that China does not recognize dual nationality. In that international environment, the policy of not recognizing dual nationality were conducive to developing normal diplomatic relations between China and relevant countries, and more conducive to local long-term survival and development for overseas Chinese.

Based on all factual conditions, and summarizing historical experience and considering realistic environment, China had introduced 'Nationality Law of the People's Republic of China' in 1980, which forming China's nationality policy in legal form. This law was consisted of 18 acts, which taking the combination of the principle of *jus sanguinis* and *jussoli*. It was stipulated in its third item that 'the People's Republic of China does not recognize the Chinese citizens with dual nationality.' And it was stipulated in its third item, the fifth item and the eighth item about different circumstances of losing Chinese nationality or any other foreign nationality, but simply retaining a single nationality. June 25, 1999, the Ministry

of Public Security made it clear in No. 2172 project reply previously mentioned that: 'The nearly two decades practice of promulgation and implementation of Nationality Law has proved that the principle of not recognizing dual nationality in China playing an important role in dealing with international conflicts, and be in line with the current situation and national interests in China (Li, 2005).

2.2 Disadvantage of the Present Nationality System in China

The Nationality Law of the People's Republic of China was promulgated in 1980. As the only Nationality Law since the founding of new China, it had played an active role in handling national relations with some related countries in history, but, in a globalization world at present, it was obviously not able to meet the needs of the time, and exposed many deficiencies and shortcomings.

2.2.1 Careless Omissions of the Legal Provisions

Firstly, the present Nationality Law is unable to deal with some special circumstances. According to the fourth item and fifth item of the Nationality Law, there even exist situations of obtaining two nationalities at the same time or whether being a Chinese citizen decided by a foreign law. This not only violates the principle of national sovereignty, but also apparently disobeys our current "people-oriented" ruling idea. Secondly, the current Nationality Law system is not scientific. From international treaties and Nationality Laws of countries all over the world, the Nationality Law system should include general principles, naturalization and renouncing one's nationality. However, the current Nationality Law in China only includes 18 provisions, and has never been revised since the formulation. It is a chaotic one without distinguishing in style, too simple without substantive provisions, and therefore very prone to legislative blind spots.

2.2.2 Improper Value Orientation

As an indispensable part of the sovereignty of a country, Nationality Law should firstly defend national sovereignty, confirm status and protect the interests of citizens of their own as its primary goal; and then secondary goal should be committed to the nationality conflict elimination. In terms of national interests, Mr. Yan Xuetong believed that 'national interests can be defined to meet legal material and spiritual needs of all people' (Yan, 2007). Thus national interests should not be divorced from the interests of the people and stand alone. But Chinese current Nationality Law only emphasize on single nationality. If countries unilaterally and actively give up their own citizens, it means voluntarily giving up national sovereignty and also undermining the interests of their citizens in fact and in practice. In addition, the current Nationality Law also reflects the absolutely mandatory, basically not considering the citizens' rights of free choice of nationality, failing to embody the principle of full protection of chil-

dren nationality rights, and also ignoring the protection of women's international rights in transnational marriages.

2.2.3 Difficult to Adapt to Changes in the International Environment

Different from the diplomatic predicament of early days, the world and China has undergone tremendous changes. With ever-closer cooperation between regions, and pluralistic development of cultures and nations, many countries once with hostile policy against our country for quite a long time, have become cultural and economic partners of our country. Furthermore, overseas Chinese put great care for the development of our motherland, and hope to have Chinese nationality again. A public opinion survey in 2003 on dual nationality in Canada, which lasted for 16 days with a total of 1888 participants, showed that the 92.6 percent of participants of the emigrants from China held that the Chinese government should recognize dual nationality. According to this survey results, Ordinary Overseas Chinese Association submitted a written report to Chen Yujie, the director of Overseas Chinese Affairs Office of the State Council, and this report had been send a duplicate to the NPC and the CPPCC at the same time. The results of the survey had caused a strong reaction both at home and abroad, Chinese immigrants in the United States, Australia, New Zealand and other countries have responded to it one after another (Xiao & Guo, 2006). The current nationality policy is completely unable to meet their needs and hopes.

3. POSSIBILITY OF NOT RECOGNIZING DUAL NATIONALITY IN CHINA

According to incomplete statistics, at present there are already 93 countries around the world recognizing dual nationality. As China is moving toward the ranks of the great powers, the implementation of dual nationality is feasibility.

3.1 Globalization Promotes Population Movements and the Implementation of Dual Nationality

With the development of globalization and more and more frequent transnational flows, the implementation of dual nationality is an inevitable trend. The primary cause of this trend could be that the social background of internationalization has prompted the increase of international migration. According to 'Global Migration Report in 2003' released by the International Organization for Migration (IOM), the number of international migrants was more than 175 million. Such a huge number of immigrants have had an important impact on the political, economic, legal development of all countries. Emigration countries hoped to strengthen the link with emigrations through dual nationality systems, and immigrant receiving countries wanted to use dual nationality to control these

immigrants better. Under the influence of this objective reality, countries had to examine the issue of dual nationality, and thus promoted the transformation from rejection to acceptance gradually of countries all over the world.

3.2 Acceptance of Dual Nationality Meets the Needs of National Interests

The pursuit of national interests made many countries to recognize the opportunities and challenges of modern society, and countries have to seek their own development to the greatest extent. In this international war, dual nationality has become a weapon of contention; countries have adopted the dual nationality system in order to attract population, capital and technology. For example, the United States, Canada, Australia and other countries has always insisted on the use of skilled migrants and capital migrants to attract excellent talents. Moreover, Greece hoped to strengthen contacts with immigrants in Germany, North America through the dual nationality system, and Spain hoped to strengthen contacts with the Spanish-speaking countries (Hansen & Patrick, 2001).

China, as a brain drain country, its implementation of dual nationality would help attracting a large number of overseas Chinese, especially talents, technology, capital and other. 'Global Politics and Security in 2007' showed that China was the world's largest emigration country and also the biggest brain drain country for losing elites. China must face this reality, and fully embody the great attention to respecting talent in policies and actions, promote the talents returning, and encourage overseas talents to return or make contribution to the motherland abroad.

4. CONCRETE WAYS OF RECOGNIZING DUAL NATIONALITY IN CHINA

Firstly, China could take the green card system, which has been widely used in the United States, Canada and other countries relative to national policies of all countries. Green card, also known as a permanent resident card, is used to prove that foreigners have an ID card for permanent resident status in the country. August 15, 2004, China issued a formal green card system, and released the new Regulations on the Examination and Approval of Permanent Residence of Aliens in China. However, from the provisions of applying for a green card, highly educated, senior management, and technical personnel were mainly targeted. Since the threshold was so high, that there was very little number of cases approved by relevant authorities (Yang & Yin, 2006). So if the final construction of the green card system is needed, it requires a combination with practical demands and appropriate relaxation of access policy and eligibility criteria, given the majority of overseas Chinese more possibility.

Secondly, China could take reciprocal principle. The

Chinese government can recognize dual nationality by using conditional bilateral agreements, and relax the policy on the Hong Kong and Macao, or learn from India's practice on the problem of how to taking policy of dual nationality. There were many similarities in the development of overseas migration and immigration policy between China and India. In January 2003, India officially announced the implementation of the dual nationality policy, the content was as follows: Firstly, the Indian nationality was only granted to foreigners of Indian origin. Secondly, nationals with dual nationality were only eligible for part of the national treatment in India. Finally, the dual nationality policy applied only to overseas Indians in 18 countries in Europe, America and Southeast Asia (Liu & Jia, 2005). In fact, China can learn from this way, and give Chinese nationality selectively to those overseas Chinese who do not exclude dual or multiple nationalities.

Based on the above, although revising the Nationality Law in a short time is very difficult, we can insist on an international principle of policy, at the same time implement a multi-line flexible approach. Taking dual nationality cannot be simply determined by the wishes of the Chinese side, or simply attributed to the choices of the patriotic overseas Chinese, but more of trade-offs in many factors such as specific national conditions, requirements for citizens, the number of migrants, and development strategy. Therefore, government decision-making institutions and relevant departments should be more concerned about how to design a better China's nationality policy suited to national conditions, meeting the needs of human rights as much as possible, and thus it would guide China to a road of orderly and healthy development, with positive and effective handling of immigration problems.

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