

DOES THE *NATIONALITY LAW*, AND ITS PROHIBITION OF
DUAL NATIONALITY, NEED REFORM. . .

Stephanie Wang

I.INTRODUCTION.....	314
II.DEFINITIONS	316
A. Citizenship and Nationality.....	316
B. Overseas Chinese	317
III.APPLICABILITY OF THE CURRENT LAW	318
A. The Non-recognition Principle	318
B. Problems with the Current Law	319
1. Meaning of ‘settled abroad’	319
2. Children with Chinese-foreign parents.....	320
IV.WHAT IS THE MOST SUITABLE FOR CHINA TODAY. . .	321
A. Reasons for Non-recognition	321
B. China’s Changing Circumstances	322
C. National Interest.....	323
D. Sovereignty and Influence	326
V.INTERNATIONAL DEVELOPMENTS IN CITIZENSHIP LAW	327
A. Changing Global Situation.....	327
B. Hong Kong.....	328
C. India	329
D. Flexible Approach To Citizenship	330
E. Separating Citizenship and Sociopolitical Rights.....	331
F. Gradual Reform	332
VI.RECOMMENDATIONS FOR REFORM.....	332
VII.CONCLUSION.....	334

DOES THE NATIONALITY LAW, AND ITS PROHIBITION OF DUAL NATIONALITY, NEED REFORM. . .

Stephanie Wang*

Abstract

To be, or not to be Chinese, that is the question. This question is facing an increasing number of people as China becomes interconnected with the world. The question arises because China's Nationality Law prohibits dual nationality. This essay examines the purposes of this prohibition and finds that it was a response to specific historical circumstances, which no longer apply. Furthermore, the Nationality Law is now increasingly creating problems and anomalies for a rising number of Chinese nationals who migrate overseas, foreign nationals who migrate to China, and children born to a Chinese national and a foreign national in China. This essay finds that the Nationality Law's prohibition of dual nationality is outdated and needs to be reformed to deal with the needs and challenges posed by globalization and China's development. After examining the indirect recognition of dual nationality in Hong Kong and the nationality law reforms in India, this essay proposes that China should adopt a pragmatic and flexible form of dual nationality recognition, which separates nationality and entitlement to sociopolitical rights. This approach will further China's national interest by allowing China to assert its sovereignty, maintain and attract talent, capital and resources, while maintaining its national security and political stability.

I. INTRODUCTION

Citizenship defines a person's legal status as a member of a nation-state. It also affects their sense of identity.¹ In recent years, globalization has caused the international community to adopt a more accommodating attitude towards dual citizenship.² National interest has become the main guiding factor of citizenship law reform. Yet, China's *Nationality Law*³, and its prohibition of dual nationality, has remained unchanged since its promulgation 30 years ago. Hence, a review of its continuing relevance to China's current situation is needed, particularly given that recent academic attention in this area seems to be lacking.⁴

* The author is a Solicitor and Barrister of the Supreme Court of Victoria and the High Court of Australia and practices corporate law at Minter Ellison. She holds a Bachelor of Laws with First Class Honours and a Bachelor of Commerce from the University of Melbourne.

¹ See *infra* pt. II for definitions. Kim Rubenstein, *Citizenship in an Age of Globalisation: The Cosmopolitan Citizen?*, 25 L. IN CONTEXT 88, 89 (2007).

² See *infra* pt. V; Tanja Brondsted Sejersen, 'I Vow to Thee My Countries' – *The Expansion of Dual Citizenship in the 21st Century*, 42 INT'L MIGRATION REV. 523(2008).

³ Guoji fa (国籍法) [Nationality Law] (promulgated by the Standing Comm. Nat'l People's Cong., Sept. 10, 1980, effective Sept. 10, 1980) (ChinaLawinfo).

⁴ With the exception of Hyun Choe, *National Identity and Citizenship in the People's Republic of China and the Republic of Korea*, 19 J. HIST. SOC. 84 (2006); Anshan Li (李安山), *Huaqia Huaren Guoji Wenti Chuyi* (华侨华人国籍问题刍议) [The Question of Nationality of the Overseas Chinese], 96 GUOJI ZHENGZHI YANJIU (国际政治研究) [STUD. INT'L POL.] 101 (2005). Older articles include

This essay seeks to identify problems and suggest possible areas of reform, drawing inspiration from international practice and citizenship law reforms in other countries. Instead of repeating the arguments for and against dual citizenship,⁵ it will look at the situational and national interest factors that led China to adopt non-recognition of dual nationality and examine whether current circumstances still justify adherence to this principle. This essay argues that the *Nationality Law*'s prohibition of dual nationality is outdated and needs to be reformed to deal with the needs and challenges globalization poses to China's development.

After defining the key terms in part II, the *Nationality Law* and some of its problems concerning the issue of dual nationality will be examined in part III. Part IV then considers whether China should recognize dual nationality, in light of its developmental needs, national interest, and current global position. Part V discusses international developments in citizenship law, including the trends in citizenship law reform around the world. This will shed light on feasible reforms for China's *Nationality Law*.

The situation in Hong Kong and India are of particular relevance to China. Although Hong Kong operates under a separate political and legal system, it is still under PRC rule.⁶ Dual citizenship is indirectly tolerated in Hong Kong, which can serve as an encouraging starting point for the gradual acceptance of dual nationality by the PRC's government. On the other hand, India's experience should also be considered because it has the second largest diaspora in the world, after China's,⁷ and shares many of the same circumstances, interests, and challenges as China. A limited form of dual citizenship has been in operation in India since 2003. This may serve as a source of inspiration for China. The essay closes with recommendations for reforms in developing a flexible citizenship law that serves China's national interests.

George Ginsburgs, *The 1980 Nationality Law of the People's Republic of China*, 30 AM. J. COMP. L. 459 (1982); Tung-pi Chen, *The Nationality Law of the People's Republic of China and the Overseas Chinese in Hong Kong, Macau and Southeast Asia*, 5 N.Y.L. SCH. J. INT'L & COMP. L. 281 (1984).

⁵ For general arguments for and against dual citizenship, see generally RANDALL HANSEN & PATRICK WEIL, DUAL NATIONALITY, SOCIAL RIGHTS AND FEDERAL CITIZENSHIP IN THE U.S. AND EUROPE (2002); ADRIENNE MILLBANK, SOC. POL. GRP., PARLIAMENT LIBRARY OF AUSTL., CURRENT ISSUES BRIEF 5 2000-01, DUAL CITIZENSHIP IN AUSTRALIA, available at <http://www.aph.gov.au/library/pubs/cib/2000-01/01cib05.htm> (last visited Mar. 16, 2011).

⁶ Eric Huang, *The Modern Concept of Sovereignty, Statehood and Recognition: A Case Study of Hong Kong*, 16 N.Y. INT'L L. REV. 99, 140 (2003).

⁷ Jayanta Roy, *Drumming up diaspora dollars*, FIN. EXPRESS, Aug. 6, 2007, <http://www.financialexpress.com/news/drumming-up-diaspora-dollars/208739/0> (last visited Mar. 16, 2011).

II. DEFINITIONS

A. *Citizenship and Nationality*

Both citizenship and nationality refer to membership or inclusion in a political system or nation-state.⁸ Citizenship is usually used in the domestic legal forum where citizens' membership in a nation-state is defined as against non-citizens, who are outside this membership. States have a right to exclude non-citizens, such as preventing them from entering the country.⁹ Nationality, on the other hand, is generally used in international contexts where a state has rights over and obligations towards its nationals, as against other states, which do not have such jurisdiction. Interfering with another state's national violates that other state's sovereignty.¹⁰ Therefore, the two terms 'emphasise [*sic*] different aspects of the same notion'.¹¹

Nevertheless, over the years any distinction between the terms have become blurred because some countries, like China, use the term nationality even in the domestic context,¹² while others like the US, UK, and Australia use the term citizenship. Furthermore, since this essay focuses on dual nationality issues, it will be dealing with issues that constantly cross between the domestic and international contexts. In these circumstances, it is futile to attempt to distinguish the terms.¹³ Therefore, the terms will be used interchangeably throughout this essay.

Citizenship can be seen to entail two components. The first concerns a person's legal status as a citizen and the formal basis for the rights and obligations in the individual-state relationship.¹⁴ The second is the collection of rights, duties and privileges, defining sociopolitical membership within a community or nation-state.¹⁵ This includes an individual's:¹⁶

social welfare rights: government support payments, pensions, access to health care, and education;

⁸ Rubenstein, *supra* note 1, at 89.

⁹ *Musgrove v. Toy* [1891] AC 272 at 283; *Chu Kheng Lim v. Minister for Immigration Local Government and Ethnic Affairs* (1992) 176 CLR 1, 19.

¹⁰ COMM. ON FEMINISM & INT'L L., INT'L L. ASS'N, FINAL REPORT (2000), WOMEN'S EQUALITY AND NATIONALITY IN INTERNATIONAL LAW, 248.

¹¹ PAUL WEIS, NATIONALITY AND STATELESSNESS IN INTERNATIONAL LAW 5 (1956).

¹² Guoji (国籍) [nationality], instead of Gongmin (公民) [citizenship]; Choe, *supra* note 4, at 89.

¹³ Rubenstein states that 'citizenship' and 'nationality' are 'generalizable concepts'. Cf. Choe, *supra* note 4, at 89.

¹⁴ ROBERTO ALEJANDRO, HERMENEUTICS, CITIZENSHIP AND THE PUBLIC SPHERE (1993), at 14.

¹⁵ *Id.* at 21.

¹⁶ Rubenstein, *supra* note 1, at 89-90.

economic rights: protection of private property and regulation of economic activity;
 participation in governance and public policy: voting or running for public office; and
 obligations to the state: taxes and military service.
 The above factors will be referred to collectively as sociopolitical rights in this essay.

B. Overseas Chinese

‘Overseas Chinese’¹⁷ has become a broad term used loosely by academics, journalists and governments within and outside China.¹⁸ It may refer to one or more of the following:¹⁹

1. PRC nationals residing overseas (‘PRC nationals overseas’)
2. Hong Kong, Macau and Taiwan residents
3. Chinese diaspora who are non-Chinese citizens (‘Diaspora’)

This essay will use ‘overseas Chinese’ when referring to all three groups in general.

Chinese legislation has limited the definition of overseas Chinese to the first group.²⁰ This is because firstly, different laws apply to the people of Hong Kong and Macau concerning nationality.²¹ The PRC’s government in attempting to instill the view that the people of Hong Kong and Macau belong to the PRC, avoid the term ‘overseas’ and prefer the term ‘compatriots’.²² Nationality questions related to the people of Taiwan will not be dealt with in this essay. These questions are directly linked to broader controversies over the sovereignty of Taiwan beyond the scope of this essay.

Secondly, confining ‘overseas Chinese’ to PRC nationals avoids diplomatic problems arising from the perception that the PRC’s government is attempting to assert jurisdiction over another

¹⁷ 华侨.

¹⁸ Cai Sulong & Niu Qiushi (蔡孙龙 & 牛秋实), *Huaqiao Huaren De Gainian Yu Dingyi Huayu De Bianqian* (华侨、华人的概念与定义: 话语的变迁) [*The Concept and Meaning of Overseas Chinese and Ethnic Chinese: Its Shifting Meanings*], 23 YUNMENG XUEKAN (云梦学刊) [J. YUNMENG] 43, 44 (2002).

¹⁹ Gungwu Wang, *Greater China and the Chinese Overseas*, 136 CHINA Q. 926, 926-927 (1993) (U.K.).

²⁰ Guqiao Qiaojuan Quanyi Baohu Fa (归侨侨眷权益保护法) [Law on the Protection of the Rights and Interests of Returned Overseas Chinese and the Family Members of Overseas Chinese] (promulgated by the Standing Comm. Nat’l People’s Cong., Oct. 31, 2000, effective Jan. 1, 1991) art. 2 (Chinalawinfo). Guanyu Jieding Huaqiao Waiji Huaren Guqiao Qiaojuan Shenfen (关于界定华侨外籍华人归侨侨眷身份的规定) [Regulations Defining Overseas Chinese and Diasporas with Foreign Nationality] (promulgated by Overseas Chinese Affairs Office of the St. Council, April 24, 2009) (Chinalawinfo).

²¹ YONG ZHANG & YUTIAN CHEN (张勇 & 陈玉田), XIANGGANG JUMIN DE GUOJI WENTI (香港居民的国籍问题) [NATIONALITY ISSUES CONCERNING HONG KONG RESIDENTS] 180-81 (2001).

²² 港、澳、台同胞.

country's citizens. Yet, execution of the law in practice does not seem to distinguish between the Chinese Diaspora and PRC's nationals. The PRC has been giving economic rights and privileges to both Chinese nationals and the Chinese Diaspora to attract them to China.²³ Furthermore, a significant amount of the work and attention of the Overseas Chinese Affairs Office is devoted to the Chinese Diaspora.²⁴

This discrepancy between law and practice suggests a tension between the need to connect with the Chinese Diaspora to benefit China's development and the government's fear of been perceived as interfering with another state's nationals. However, attempting to connect with the Chinese Diaspora without a clear legal basis is likely to be viewed with suspicion by other nations. This essay proposes that some form of dual citizenship recognition is a possible way forward for China. Such recognition could be a restricted or unrestricted form of Chinese citizenship that former Chinese citizens and people of Chinese heritage may apply for. This will enable China to be selective about the people it retains or rebuilds connections with.

III. APPLICABILITY OF THE CURRENT LAW

A. *The Non-recognition Principle*

One of the *Nationality Law*'s most fundamental principles is set out in Article 3: 'the People's Republic of China does not recognize dual nationality for any Chinese national.'²⁵ This codifies a principle that the Chinese government has consistently followed

²³ Mette Thunø, *Reaching Out and Incorporating Chinese Overseas: The Trans-territorial Scope of the PRC by the End of the 20th Century*, 168 CHINA Q. 910, 920 (2001) (U.K.); Guanyu Guli Huaqiao He Xianggang Aomen Tongbao Touzi de Guiding (关于鼓励华侨和香港澳门同胞投资的规定) [Regulations on Encouraging Investments from Overseas Chinese and Hong Kong and Macau Compatriots] (promulgated by St. Council, Aug. 19, 1990, effective Aug. 19, 1990) (Chinalawinfo).

²⁴ See, e.g., *Haiwai Huayi Qingnian Jiechu Renshi Huaxiaying* (海外华裔青年杰出人士华夏行) [Discovery Trip for Eminent Young Overseas Chinese] (2008), OVERSEAS CHINESE AFFAIRS WEB, http://www.chinaqw.com/special/2008/1029/19_2.html (last visited Mar. 17, 2011); *Jianada Ji Huaren Sun Xiaorong: Huachuanghui Rang Wo Zai Zhongguo Chnegjiu Shiye* (加拿大籍华人孙小蓉: 华创会让我在中国成就事业) [Canadian Chinese Xiaorong Sun: Chinese Entrepreneurs Association helps me build business in China] (2009), OVERSEAS CHINESE AFFAIRS OFF. ST. COUNCIL, <http://www.gqb.gov.cn/news/2009/1016/16253.shtml> (last visited Mar. 17, 2011).

²⁴ See, e.g., *Haiwai Huayi Qingnian Jiechu Renshi Huaxiaying* (海外华裔青年杰出人士华夏行) [Discovery Trip for Eminent Young Overseas Chinese] (2008), OVERSEAS CHINESE AFFAIRS WEB, http://www.chinaqw.com/special/2008/1029/19_2.html (last visited Mar. 17, 2011); *Jianada Ji Huaren Sun Xiaorong: Huachuanghui Rang Wo Zai Zhongguo Chnegjiu Shiye* (加拿大籍华人孙小蓉: 华创会让我在中国成就事业) [Canadian Chinese Xiaorong Sun: Chinese Entrepreneurs Association helps me build business in China] (2009), OVERSEAS CHINESE AFFAIRS OFF. ST. COUNCIL, <http://www.gqb.gov.cn/news/2009/1016/16253.shtml> (last visited Mar. 17, 2011).

²⁵ Non-recognition Principle.

since the 1950s in resolving conflict of nationality problems involving the Chinese residing in neighboring countries.

When the PRC was founded in 1949, there were large numbers of Chinese residing in Southeast Asian countries. Many of these countries, newly formed after World War 2, 'wanted to produce loyal citizens'²⁶ and to ensure their own country's sovereignty.²⁷ In addition, they feared that the PRC was spreading communism through the Chinese residing within their countries. Thus, they objected to any interference by the PRC's government towards these overseas Chinese.²⁸ The fear of communism and threat to sovereignty created anti-Chinese sentiments within these nations, threatening the wellbeing of the overseas Chinese living there. Therefore, in 1955 the PRC signed a treaty with Indonesia prohibiting the Chinese in Indonesia from maintaining dual citizenship. It provided that they must choose between Indonesian or Chinese nationality. Those who chose Indonesian nationality automatically lost their Chinese nationality.²⁹

At the time, this solution suited the view within China that the overseas Chinese were 'treacherous' and that ties with them should be severed.³⁰ From then on, this principle guided the PRC in dealing with questions of nationality concerning the overseas Chinese.³¹

B. Problems with the Current Law

In attempting to prevent dual nationality, Article 9 states that 'any Chinese national who has settled abroad and...acquired foreign nationality of his own free-will automatically loses Chinese nationality'. This means that Chinese citizenship is automatically lost if the Chinese national meets both of the following conditions:

- has settled abroad; and
- acquired foreign nationality of his own free-will.

1. Meaning of 'settled abroad'

The reference to 'settled abroad' seems to target those overseas Chinese who had already resided in these Southeast Asian countries for the long term. So the Chinese government did not feel the need to elaborate on the meaning of 'settled abroad' when the law was

²⁶ Choe, *supra* note 4, at 96.

²⁷ Ginsburgs, *supra* note 4, at 463.

²⁸ Choe, *supra* note 4, at 96.

²⁹ Ginsburgs, *supra* note 4, at 476.

³⁰ Thunø, *supra* note 23, at 912.

³¹ Cai & Niu, *supra* note 18, at 45 (Similar treaties were concluded with Nepal in 1956, Mongolia in 1957, Malaysia in 1974, Philippines in 1975 and Thailand in 1975.).

first promulgated. With China's opening up and the increasing cross border mobility of people, what constitutes 'settled' is now unclear. Thus, this year, the regulations stipulated that 'settled' means having 'the right of permanent residence in another country, and living there for an aggregate of two years, with at least 18 months consecutive residence.'³²

Since Article 9 only applies to those who have 'settled abroad', it creates anomalies where foreign citizenship is acquired while still inside China. This can occur if a PRC national marries a foreign national inside China and obtains foreign citizenship. Another situation is where a PRC child has been adopted by foreign nationals inside China. Both the *Nationality Law* and the Adoption Law is silent about how to deal with such cases of potential dual nationality. The only response that can be found is a Ministry of Foreign Affairs statement encouraging such people to apply for renunciation of their Chinese citizenship.³³ However, the *Nationality Law* does not compel such an application, and provides no penalties for non-compliance.

2. Children with Chinese-foreign parents

The *Nationality Law* also causes problems for children born of Chinese-foreign marriages. Under Article 4, 'any person born in China...one of whose parents is a Chinese national shall have Chinese nationality'. It is notable that the word 'shall'³⁴ is used, automatically granting the child Chinese nationality. Yet, if the foreign citizen's country also follows the *jus sanguinis* principle, such as Australia,³⁵ the child is also entitled to Australian citizenship, resulting in dual citizenship. China does not recognize dual citizenship, so this can create problems for determining the child's status, such as when entering and exiting China. These problems seem to be occurring with enough frequency that the

³² Guanyu Jieding Huaqiao Waiji Huaren Guiqiao Qiaojuan Shenfen (关于界定华侨外籍华人归侨侨眷身份的规定) [Regulations Defining Overseas Chinese and Diasporas with Foreign Nationality] (promulgated by Overseas Chinese Affairs Office of the St. Council, April 24, 2009), pt. 1, para. 1, (Chinalawinfo), available at <http://cuggroup.cug.edu.cn/tzb/newscontent.asp?ID=12013&ClassID=278> ("中国公民已取得住在国长期或者永久居留权，并已在住在国连续居留两年，两年内累计居留不少于18个月").

³³ Qiuxiang Gong, *On the Nationality Law*, 45 BEIJING REV. 25 (1980); Ministry of Foreign Affairs Consulate Division, Zhongguo Gongmin Ruhe Yifa Chuli Geren Guoji Wenti (中国公民如何依法处理个人国籍问题) [How Chinese Citizens Should Manage Their Own Affairs Related to Nationality] (Press Release, 14 April 2008), available at http://www.china.com.cn/travel/txt/2008-04/14/content_14951501.htm (last updated Apr. 14, 2008).

³⁴ Guoji Fa (国籍法) [Nationality Law] (promulgated by the Standing Comm. Nat'l People's Cong., Sept. 10, 1980, effective Sept. 10, 1980) art.4 (Chinalawinfo) ("父母...一方为中国公民，本人出生在中国，具有中国国籍").

³⁵ *Australian Citizenship Act 2007* (Cth) s 16 (Austl.).

website of the Australian embassy in China discusses the issue and advises:

In order to legally leave the country, parents will have to apply to renounce the child's Chinese citizenship. The process can take more than three months. the local public security entry and exit bureau will then recognize the child's Australian passport and issue an exit visa.³⁶

Arguably, the occurrence of this anomaly can be minimized through appropriate mechanisms during the citizenship registration process at the foreign embassies in China. Nevertheless, the Chinese government can only ask for cooperation from the foreign embassies, it cannot rely on these representatives of foreign governments to implement or enforce Chinese policies. It is not the responsibility of other nations or foreign embassies to enforce Chinese policies, particularly where dual citizenship is a recognized part of the relevant foreign country's laws.

The increasing prevalence of these problems and anomalies related to the *Nationality Law* suggests that this law needs to be amended and clarified.

IV. WHAT IS THE MOST SUITABLE FOR CHINA TODAY. . .

A. *Reasons for Non-recognition*

In recent years, the PRC government has given two main reasons for maintaining its non-recognition of dual nationality. In 2005, the State Council's Overseas Chinese Affairs Office ('OCAO') made a statement that 'such recognition is not in the interests of the majority of Diasporas',³⁷ because, firstly, it creates conflicting loyalties for those with dual nationalities. This is particularly a problem in Southeast Asia, where a Diaspora's link to China could be viewed unfavorably or with suspicion, and used 'as an excuse for anti-Chinese acts.'³⁸ Currently, 95 percent of all the Chinese Diaspora

³⁶ *Having a Baby in China*, AUSTRALIAN EMBASSY CHINA, http://www.china.embassy.gov.au/bjng/Consular3_2.html (last visited Mar. 29, 2011).

³⁷ Huasheng Bao (华声报) [Chinese Report], *Chen Yujie: Bu Chengren Shuangchong Guoji Shi Wei Duoshu Qiaobao Zhaoxiang* (陈玉杰: 不承认双重国籍是为多数侨胞着想) [Chen Yujie: Not Recognizing Dual Nationality is in the Interests of Most Overseas Chinese], GOCN.SOUTHCN.COM (June 8th, 2005), available at <http://gocn.southcn.com/qwxw/200506080046.htm>.

³⁸ *Id.*

lives in Southeast Asia, and taking their wellbeing into consideration, China should maintain its non-recognition of dual nationality.³⁹

Secondly, recognizing dual citizenship now not only overturns a fundamental principle of the *Nationality Law*, it rejects this long standing policy's historical significance. The OCAO stated that many years of experience in adhering to this policy has shown that it complements China's foreign relations.⁴⁰ These reasons were reiterated as recently as November 2008 by the current director of the OCAO, Li Haifeng, at a conference for overseas Chinese that I attended.⁴¹

B. China's Changing Circumstances

The extent to which these justifications for non-recognition of dual citizenship reflect China's current circumstances and challenges is questionable. The enactment of every law has a historical background, which justifies the law's existence.⁴² Nonetheless, when circumstances have changed or the problem the law intended to address no longer exists, it is no longer justified.⁴³ From the 1950s to 1980 when the *Nationality Law* was enacted, anti-Chinese sentiments were prevalent in many countries, particularly in Southeast Asia. By adopting the non-recognition principle and severing its ties with the overseas Chinese, China alleviated a point of tension in its relations with many countries.⁴⁴ Such a policy is claimed to have helped the overseas Chinese integrate better into their local communities.⁴⁵

However, since China began its reforms in 1979, it has undergone rapid economic growth; its citizens enjoy economic liberties, and rising living standards.⁴⁶ China has increased trade with other

³⁹ Not recognizing dual nationality is for the sake of most overseas compatriots, PEOPLE.COM.CN (June 9, 2005, 16:12), http://english.people.com.cn/200506/09/eng20050609_189401.html.

⁴⁰ Press Release, Guowuyuan Qiaowu Bangongshi (国务院侨务办公室) [Overseas Chinese Affairs Office of the State Council], Xu Yousheng: Zhongguo Bu Chengren Shuangzhong Guoji Youli Yu Huaren Shengcun Fazhan (许又声: 中国不承认双重国籍有利于华人生存发展) [Xu Yousheng: Not Recognizing Dual Nationality Benefits Overseas Chinese Local Integration and Development] (Aug. 4, 2008), <http://www.gqb.gov.cn/news/2008/0804/1/10013.shtml>.

⁴¹ See 2008 Nian Haiwai Huayi Qingnian Jiechu Ren shi Huaxia Xing (2008年海外华裔青年杰出人士华夏行) [2008 Discovery Trip to China for Eminent Young Overseas Chinese], ZHONGGUO QIAO WANG (中国侨网) [CHINAQW.COM] Nov. 4, 2008), <http://www.chinaqw.com/news/200811/04/136382.shtml> (information on this conference).

⁴² DAVID LYONS, MORAL ASPECTS OF LEGAL THEORY: ESSAYS ON LAW, JUSTICE, AND POLITICAL RESPONSIBILITY 190 (1993).

⁴³ SHARYN ROACH ANLEU, LAW AND SOCIAL CHANGE 1-3 (2000).

⁴⁴ Chen, *supra* note 4, at 281.

⁴⁵ Thunø, *supra* note 23, at 91.

⁴⁶ Randall Peerenboom, *Law and Development of Constitutional Democracy in China: Problem or Paradigm?*, 19 COLUM. J. ASIAN L. 185, 209 (2005).

countries and improved relations with the Southeast Asian nations. Its economic and military might, and its active approach in engaging in foreign relations and diplomacy, has increased its status and influence in Asia and around the world. China today is more open, more active internationally and is very different from how it was in the 1950s.⁴⁷

China's market reforms and focus on economic development mean that those Southeast Asian nations now have no reason to fear that China will attempt to spread the 'Communist Revolution' through overseas Chinese.⁴⁸ Given that China's circumstances are now considerably different and its relations with its Southeast Asian neighbors have vastly improved,⁴⁹ the justifications behind the non-recognition principle are losing their applicability. There is no need to stick to old ways, particularly where it is to the detriment of China's other interests.

C. National Interest

Reform of the *Nationality Law* can further national interest. Developing countries tend to face problems such as inadequate capital, loss of talent, skills shortage,⁵⁰ and China is no exception. According to the Chinese Ministry of Education, in the past 25 years, over 580,000 Chinese students have gone overseas to study, with only 150,000 returning to China.⁵¹ This means that most have settled overseas and are likely to have gained foreign citizenship. These figures suggest there is a significant outflow of people with high education and skills. Furthermore, a study suggested that assets held by the 55 million overseas Chinese amount to USD 2 trillion.⁵² This is a significant source of capital that China should seek to attract for its economic development.

⁴⁷ Reuben Mondejar & Wai Lung Chu, *ASEAN-China Relations: Legacies and Future Directions*, in CHINA AND SOUTHEAST ASIA: CHANGES IN STRATEGIC PERCEPTIONS 220 (Khai Ho & Samuel Ku eds., 2005).

⁴⁸ Thunø, *supra* note 23, at 913.

⁴⁹ Although points of tension, suspicion and tension still remain, on the whole, relations have improved, see Gungwu Wang, *China and Southeast Asia: global changes and regional challenges*, in CHINA AND SOUTHEAST ASIA: CHANGES IN STRATEGIC PERCEPTIONS 9 (Khai Ho & Samuel Ku eds., 2005).

⁵⁰ ORGANISATION FOR ECON. CO-OPERATION & DEV., THE GLOBAL COMPETITION FOR TALENT: MOBILITY OF THE HIGHLY SKILLED 23 (2008).

⁵¹ *China has sent 580 Thousand Students Studying Abroad*, PEOPLE'S DAILY ONLINE, http://english.people.com.cn/200301/28/eng20030128_110870.shtml (last updated Jan. 28, 2003).

⁵² STERLING SEAGRAVE, LORDS OF THE RIM: THE INVISIBLE EMPIRE OF THE OVERSEAS CHINESE 3 (1995).

Countries such as Ghana⁵³ and India⁵⁴ have introduced restricted recognition of dual citizenship to strengthen affinity from their Diasporas. The conveniences of holding dual citizenship often include ease of entrance and exit from the country, equal treatment in commercial transactions such as when investing, borrowing or lending money, and protection of person and property.⁵⁵ Therefore, this helps retain and attract talent, capital, technology, and assistance, which will assist in the country's economic development.⁵⁶ Developed countries have also adopted flexible, responsive management of citizenship policies to attract and compete for talent and capital investment.⁵⁷ National interest is often a driving force behind the recognition of dual citizenship.

China seems aware of the need to attract the skills and capital of its Diaspora and PRC nationals overseas. Deng Xiaoping declared in 1977 that 'overseas Chinese should form an important part of the national reforms', as a major source of capital, expertise, remittances, investment and to help improve trade and business relations.⁵⁸ The PRC has promulgated a few laws and regulations giving economic rights and privileges to both PRC Chinese nationals and its Diaspora.⁵⁹ These have brought some investments into China, especially in the early stages of China's national reforms, by allowing them to invest in industries previously closed to

⁵³ See generally Papa Owusu-Ankomah, Minister for the Interior (Ghana), Speech delivered at the International Dialogue on Migration, Geneva: Promoting Policy Coherence – The Importance of Migration to the Achievement of MDGs (Nov. 29, 2005) (transcript available at http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/microsites/IDM/sessions/90th/docs/pdf/Ghana_90th.pdf).

⁵⁴ See generally Overseas Citizenship of India, MINISTRY OF HOME AFFAIRS, GOV'T OF INDIA, http://mha.nic.in/uniquepage.asp?Id_Pk=553 (last modified Dec. 24, 2009).

⁵⁵ See generally Mark Bridge, *Dual nationality: a passport to riches?*, TIMES ONLINE, May 29, 2009, http://www.timesonline.co.uk/tol/money/consumer_affairs/article4029272.ece.

⁵⁶ See Owusu-Ankomah, *supra* note 53.

⁵⁷ Barry Chiswick, *High Skilled Immigration in the International Arena* 3 (Sept. 2005), IZA Discussion Paper No.1782 ("Immigration policies in the advanced economies have shown a recent tendency to shift toward a focus on attracting high-skilled workers.").

⁵⁸ Thunø, *supra* note 23, at 921.

⁵⁹ See, e.g., Guowuyuan Guanyu Guli Huaqiao he Xianggang Aomen Tongbao Touzi de Guiding (国务院关于鼓励华侨和香港澳门同胞投资的规定) [State Council Regulations Encouraging Investments By Overseas Chinese and Compatriots from Hong Kong and Macau] (promulgated by State Council, Aug. 19, 1990, effective Aug. 19, 1990) (Chinalawinfo); Guiqiao Qiaojuan Quanyi Baohu Fa (归侨侨眷权益保护法) [Law on Protection of Rights & Interests of Returned Overseas Chinese and the Family Members of Overseas Chinese] (promulgated by Nat'l People's Cong., Sept. 7, 1990, effective Jan. 1, 1991) (amended 2000) STANDING COMM. NATIONAL PEOPLE'S CONG. GAZ. 1990(2); Guiqiao Qiaojuan Quanyi Baohu Shishi Banfa (归侨侨眷权益保护法实施办法) [Implementation Regulations of the Law on Protection of the Rights and Interests of Returned Overseas Chinese and the Family Members of Overseas Chinese] (promulgated by St. Council, July 19, 1993, effective July 19, 1993) (repealed 2004) (Chinalawinfo).

foreigners,⁶⁰ providing for protection of their property rights,⁶¹ and allowing them to leave China at any time.⁶² However, many of these rights now seem basic. China has also appealed to them through its various organizations for overseas Chinese affairs⁶³ by evoking their supposed love of China.⁶⁴ It is unlikely that rhetoric alone will attract them to invest their time and capital. Profitability and ease of doing business are major determining factors.⁶⁵ In order to attract more overseas Chinese, greater incentives and conveniences are needed, such as those that come with dual citizenship.

In response to repeated requests for recognition of dual citizenship by the overseas Chinese,⁶⁶ in 2004, the government announced that foreigners may apply for permanent residency if they have:⁶⁷

- held a senior position⁶⁸ for four continuous years and have resided in China for an aggregate of three years and their tax payment record is good; or
- made an outstanding contribution to China; or
- spouse or are a child of a Chinese citizen or a foreigner with permanent residence in China, provided they have been married for five years, and lived in China for five years; or
- invested in China.⁶⁹

⁶⁰ Cf. Guowuyuan Guanyu Guli Huaqiao he Xianggang Aomen Tongbao Touzi de Guiding (国务院关于鼓励华侨和香港澳门同胞投资的规定) [State Council Regulations Encouraging Investments By Overseas Chinese and Compatriots from Hong Kong and Macau] (promulgated by State Council, Aug. 19, 1990, effective Aug. 19, 1990) art. 4 (Chinalawinfo).

⁶¹ See, e.g., Guqiao Qiaojuan Quanyi Baohu Fa (归侨侨眷权益保护法) [Law of the People's Republic of China on the Protection of the Rights and Interests of Returned Overseas Chinese and the Family Members of Overseas Chinese] (promulgated by Nat'l People's Cong., Sept. 7, 1990, effective Jan. 1, 1991) art. 7 (Chinalawinfo) (amended 2000).

⁶² Cf. *id.*, art. 18.

⁶³ PAUL J. BOLT, CHINA AND SOUTHEAST ASIA'S ETHNIC CHINESE: STATE AND DIASPORA IN CONTEMPORARY ASIA 12 (2000).

⁶⁴ *Id.* at 911; see John Garnaut, *Chinese Urged to Unite Behind Communist Party*, THE AGE (MELBOURNE), July 27, 2009, at 2, available at <http://www.theage.com.au/world/chinese-urged-to-unite-behind-communist-party-20090726-dxhf.html>.

⁶⁵ Hong Liu, *Old Linkages, New Networks: The Globalization of Overseas Chinese Voluntary Associations and Its Implications*, 155 CHINA Q. 582, 603 (1998) (U.K.).

⁶⁶ Li (李), *supra* note 4, at 104.

⁶⁷ Waiguo Ren Zai Zhongguo Yongjiu Juliu Shenpi Guanli Banfa (外国人在中国永久居留审批管理办法) [Measures for the Administration of Examination and Approval of Foreigners' Permanent Residence in China] (promulgated by Ministry of Public Security & Ministry of Foreign Affairs, Aug. 15, 2004, effective Aug. 15, 2004) (Chinalawinfo).

⁶⁸ *Id.* art. 6(2) (stipulating that holding the position of deputy general manager or assistant professor or above those levels).

⁶⁹ *Id.* art. 7 (listing various categories satisfying eligibility for permanent residence including investing US\$500,000 in an encouraged industry or poor area; US\$1 million in China's central region, or general investments of US\$2 million in China).

As of 30 September 2005, 1835 applied for permanent residence in China, with only 649 successful applications, mostly to members of the Chinese Diaspora.⁷⁰ Naturalization applications are rare, but it requires renunciation of the applicants' foreign citizenship.⁷¹ Thus far, China's permanent residency program seems to have had little effect on attracting former citizens and foreigners to China.

D. Sovereignty and Influence

Reform of the *Nationality Law* benefits China's sovereignty and increasing its global influence. Citizenship laws concern a state's sovereignty because it defines the state's jurisdiction over the protection of its citizens' interest and enforcement of obligations.⁷² By automatically 'letting go' of its citizens who take up foreign citizenship, China is giving up a part of its sovereignty as a state. There are approximately 37 million members of the Chinese Diaspora around the world, comprising 18% of total global migration in the last 25 years.⁷³ This suggests there is vast potential for China to capture the capital, skills, and experience of its Diaspora. Connecting with its Diaspora through opening up its citizenship also helps China assert its influence throughout the world.

Although the Chinese government claims that non-recognition of dual nationality minimizes or eliminates conflicts of nationality,⁷⁴ this is a blunt tool for achieving the desired aim. Firstly, because it is achieved at the cost of undermining China's sovereignty, economic, and development interests. Secondly, other mechanisms exist to deal with conflicts of nationality, such as customary international law and international treaties.⁷⁵

⁷⁰ Gong'anbu Jiu 20 Nian Lai Churujing Guanli Chengjiu Juxing Xinwen Fabu Hui (公安部就20年来出入境管理成就举行新闻发布会) [Public Security Bureau's Achievements in 20 Years of Managing Entry and Exit Press Conference], ZHONGYANG RENMIN ZHENGFU (中央人民政府) [CENTRAL PEOPLE'S GOV'T], Nov. 22, 2005, http://www.gov.cn/xwfb/2005-11/22/content_106081.htm.

⁷¹ *Id.*

⁷² Jost Halfmann, *Citizenship Universalism - Migration and the Risks of Exclusion*, 49 BRIT. J. SOC. 513, 515 (1998) (U.K.).

⁷³ Kee Pookong, *Diasporas: General Perspectives and Overview*, Speech at 5th Diversity Matters Commonwealth Forum on Cultural Diversity, Monash University (Nov. 19, 2008) (transcript available at http://amf.net.au/library/file/Kee_Pookong_01.ppt).

⁷⁴ Chen (陈), *supra* note 37.

⁷⁵ Convention concerning Certain Questions relating to the Conflict of Nationality Laws, July 1, 1937, 179 UNTS 89.

V. INTERNATIONAL DEVELOPMENTS IN CITIZENSHIP LAW

A. Changing Global Situation

Globalization has changed the meaning and significance of citizenship.⁷⁶ Traditionally, it signified identification with and allegiance to a nation-state.⁷⁷ When China established its non-recognition principle, it was broadly consistent with international practice at the time. The 1930 *Convention on Certain Questions Relating to the Conflict of Nationality Law*,⁷⁸ and the 1950 *European Convention on Human Rights* Article 20⁷⁹ prohibited dual citizenship.

Yet, changes that have occurred in the past two decades mean that recognizing dual citizenship has become a practical reality. After the end of the Cold War, there has been increasing interconnection between states and individuals around the world,⁸⁰ rapid growth in mobility of people across borders, transnational marriages, children born from these marriages, and transnational adoption.⁸¹ The significance of the dual allegiances problem has also decreased in the current era where there has been a 'decline in the number of conflicts between states.'⁸² Thus, as people increasingly identify with and become members of more than one nation-state, there has been growing acceptance of multi-citizenship.⁸³ The 1997 *European Convention on Nationality*⁸⁴ no longer rejects dual citizenship. Instead, it sets out procedures and frameworks for negotiation of problems and conflict of nationalities issues that arise from it.⁸⁵ Recognition of dual citizenship has become the trend. Currently, over 50% of the world recognizes dual citizenship.⁸⁶

China's *Nationality Law* was drafted nearly 3 decades ago, before significant changes had occurred internationally and within China. Furthermore, this law is based on principles established in the 1950s. Thus, the *Nationality Law* is outdated and needs to be revised. In

⁷⁶ Rubinstein, *supra* note 1, at 93-94.

⁷⁷ *Id.* at 101.

⁷⁸ Convention concerning Certain Questions relating to the Conflict of Nationality Laws, July 1, 1937, 179 UNTS 89, pmbl. ("[I]t is in the general interest of the international community...that every person should have a nationality and should have one nationality.").

⁷⁹ Convention for the Protection of Human Rights and Fundamental Freedoms, Sept. 3, 1953, 213 U.N.T.S. 222.

⁸⁰ Rubinstein, *supra* note 1, at 91.

⁸¹ Sejersen, *supra* note 2, at 538.

⁸² *Id.* at 540.

⁸³ *Id.* at 524-25; *supra* note 1, at 103.

⁸⁴ European Convention on Nationality, Mar. 1, 2000, ETS 166.

⁸⁵ *Id.* art. 14-17.

⁸⁶ Sejersen, *supra* note 2, at 533 (finding 115 countries recognized dual citizenship).

conducting this revision, China can draw insights from citizenship law reforms undertaken in other nations and regions.

B. Hong Kong

Despite China's non-recognition principle, there is indirect recognition of dual citizenship in Hong Kong as a result of a special interpretation of China's *Nationality Law*.⁸⁷ As a result of a compromise when the Sino-British Joint Declaration⁸⁸ was signed, a special class of people with British Nationals (Overseas) status was created in response to concerns and uncertainty over the future of the people of Hong Kong.⁸⁹ Until 30 June 1997, this was available for registration to Hong Kong residents who were British Dependent Territories Citizens. The British National (Overseas) status can no longer be acquired. However, 3.4 million Hong Kong residents currently hold this status.⁹⁰ This means that while they are recognized as Chinese nationals, they are allowed to use British National (Overseas) passports when traveling to other countries. However, they are not entitled to British consular protection while inside China or Hong Kong.⁹¹

Furthermore, people with British National (Overseas) status can register their foreign nationality with Hong Kong's Immigration Department if they wish to access foreign consular services.⁹² Their right of residence and other rights in Hong Kong are not affected.⁹³ To alleviate the concern of conflicting loyalties, the

⁸⁷ Quanguo Renmin Daibiao Dahui Changwu Weiyuanhui Guanyu Guoji Fa Zai Xianggang Tebie Xingzhengqu Shishi de Jige Wenti de Jieshi (全国人民代表大会常务委员会关于《中华人民共和国国籍法》在香港特别行政区实施的几个问题的解释) [Standing Committee of the National People's Congress - Explanations Concerning the Implementation of the Nationality Law of the People's Republic of China in the Hong Kong Special Administrative Region] (promulgated by Standing Comm. Nat'l People's Cong., May 15, 1996) (Chinalawinfo).

⁸⁸ 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, U.K.-China, July 1, 1997, 23 ILM 1366.

⁸⁹ Chen, *supra* note 4, 317-22.

⁹⁰ AUSTRALIAN REFUGEE REVIEW TRIBUNAL, PRT RESEARCH RESPONSE (Nov.14, 2006), available at <http://www.unhcr.org/refworld/pdfid/4b6fe1650.pdf>.

⁹¹ *Id.* art. 2.

⁹² Quanguo Renmin Daibiao Dahui Changwu Weiyuanhui Guanyu Guoji Fa Zai Xianggang Tebie Xingzhengqu Shishi de Jige Wenti de Jieshi (全国人民代表大会常务委员会关于《中华人民共和国国籍法》在香港特别行政区实施的几个问题的解释) [Standing Committee of the National People's Congress - Explanations Concerning the Implementation of the *Nationality Law* of the People's Republic of China in the Hong Kong Special Administrative Region] (promulgated by Standing Comm. Nat'l People's Cong., May 15, 1996) art. 5 (Chinalawinfo).

⁹³ , *Application for declaration of change of nationality (Overseas)*, IMMIGRATION DEPARTMENT, HKSAR, http://www.immd.gov.hk/ehhtml/chnnationality_3_5.htm#P2 (last updated at Nov. 9, 2009).

Chief Executive Officer and other specified senior public officials must not hold foreign citizenship.⁹⁴

Although Hong Kong is under PRC rule, this indirect recognition currently operates separately from mainland China because Hong Kong has a separate legal and governance system from the mainland.⁹⁵ Nevertheless, it suggests that the PRC's government is not completely opposed to dual nationality on an ideological basis. The situation in Hong Kong can be seen as a seed for the wider acceptance of dual nationality in China.

C. India

India's Citizenship Act of 1955 prohibited dual nationality.⁹⁶ Yet, like China, the Indian government wanted to utilize the expertise and capital of the Indian diaspora in the country's development. There are approximately 25 million Indians in its diaspora, spread across 130 countries with a combined income of USD 160 billion, equal to one third of India's GDP.⁹⁷ Thus in 2003, its citizenship law was reformed to recognize a category of 'Overseas Citizen of India' available to its diaspora in 16 developed countries ('Overseas Citizen').⁹⁸ In 2005, eligibility was expanded to its diaspora in all countries.⁹⁹ The Overseas Citizen is entitled to unlimited entry and stay in India, the same economic rights and access to education as Indian citizens.¹⁰⁰ The range of rights and privileges has been gradually expanding every year.¹⁰¹ However, the Overseas Citizen is not granted political rights such as voting and eligibility for certain public offices. Thus, this appears to be denizenship or limited citizenship with certain economic and social welfare rights but no political rights.¹⁰² Nevertheless, it has been

⁹⁴ XIANGGANG JIBEN FA art. 44, 61, 67, 90 (Chinalawinfo).

⁹⁵ See, e.g., 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, U.K.-China, art. 3, July 1, 1997, 23 ILM 1366 ("[Hong Kong] will be vested with executive, legislative and independent judicial power, including that of final adjudication...[Hong Kong] will have independent finances.").

⁹⁶ Citizenship Act 1955 § 9 (amended 2003) (India).

⁹⁷ Jen Dickinson & Adrian Bailey, *(Re)membering Diaspora: Uneven Geographies of Indian Dual Citizenship*, 26 POL. GEOGRAPHY 757, 764 (2007).

⁹⁸ Citizenship (Amendment) Act 2003 § 7A (India).

⁹⁹ Citizenship (Amendment) Act 2005 § 4 (India).

¹⁰⁰ Citizenship (Amendment) Act 2003 § 7B (India).

¹⁰¹ Ministry of Overseas Indian Affairs, *25 million Indians across the globe*, 3rd Annual Report (2006-07) 11, available at http://moia.gov.in/pdf/Annual_Report2006-07-English_nic.pdf (last updated Nov. 7, 2009).

¹⁰² TOMAS HAMMAR, DEMOCRACY AND THE NATION STATE: ALIENS, DENIZENS AND CITIZENS IN A WORLD OF INTERNATIONAL MIGRATION 13 (1990).

effective in increasing its diaspora's involvement in India. As of 31 July 2008, there were 285,611 Overseas Citizens.¹⁰³

The similarities between India and China's circumstances suggest that China can draw inspiration from India's Overseas Citizen program. China seems to be proceeding along this path already, establishing a permanent residency program in 2004. However, compared to India, China has received relatively few applications and approved even fewer.¹⁰⁴ To increase the scale of China's program, it should broaden and clearly define the benefits given to holders of permanent residency, as well as lower the standards of approval. Like India, China can expand economic and cultural access and rights but limit political rights. This will be consistent with the direction of China's current liberalization in the economic and social arena, while limiting civil and political freedoms.¹⁰⁵

Reforms of citizenship laws have been undertaken in many other countries over the past two decades. These reforms are generally characterized by flexibility, pragmatism and separation of citizenship and sociopolitical rights.

D. Flexible Approach To Citizenship

Nations have adopted a pragmatic and flexible approach to citizenship. The approach is one that does not stick rigidly to a single principle or ideology, but is continually adapted to the circumstances.¹⁰⁶ India introduced the Overseas Citizen program believing this will increase its access to high quality human resources and capital, which are important to its economic development. Initially only citizens of 16 developed countries were eligible, because citizens of these countries were more likely to be highly educated or wealthy, with a higher potential to contribute to India.¹⁰⁷ Only after the government was confident that the program was managed smoothly did eligibility expand to all countries.

In 2002, Australia removed the provision which stipulated the automatic loss of citizenship on acquisition of another nationality.¹⁰⁸ The key consideration for this was the 'national level benefits' brought by dual citizenship, and removing a deterrent for the many

¹⁰³ Arunava Biswas, *Three lakh granted Overseas Citizenship of India status*, ECON. TIMES, (Aug. 6, 2008) <http://economictimes.indiatimes.com/News/News-By-Industry/Services/Travel/Visa-Power/Three-lakh-granted-Overseas-Citizenship-of-India-status/articleshow/3334491.cms> (India).

¹⁰⁴ See pt. IV(C).

¹⁰⁵ Peerenboom, *supra* note 46, at 209.

¹⁰⁶ Sejersen, *supra* note 2, at 527; Rubenstein, *supra* note 1, at 105.

¹⁰⁷ Dickinson & Bailey, *supra* note 97, at 764.

¹⁰⁸ Australian Citizenship Act 1948 (Cth) § 17 repealed by Australian Citizenship Legislation Amendment Act 2002 (Cth).

‘highly skilled’ who leave Australia to return in the future.¹⁰⁹ These pragmatic reasons won over the ideological reasons of sovereignty, security and loyalty which argue against recognition of dual nationality.¹¹⁰ Thus, what these examples mean for China is that it should adopt a flexible approach to its citizenship law and use national interest as the main measure of the suitability of its law and proposed reform.

E. Separating Citizenship and Sociopolitical Rights

Traditionally, citizenship and sociopolitical rights go hand-in-hand. However, globalization has now spurned citizenship law towards taking more flexible approaches to citizenship.¹¹¹ In order to achieve their national interests, and respond to the challenges posed by globalization, states have increasingly separated these two components.¹¹²

This has given rise to ‘permanent residency’ systems where individuals have the right to enter and remain in the country but their sociopolitical rights are limited. Many states have taken the approach that sociopolitical rights should depend on the extent of how ‘close a connection’ a person has with the nation. For example, in 2005, the voting law in South Korea was amended to allow voting by foreigners who have resided there for more than three years after obtaining permanent residency.¹¹³ In 2004, voting rights in municipal elections were extended to non-European Union foreigners who have lived in Belgium for over five years, upon signing an oath of allegiance to the Belgian constitution, the European Convention on Human Rights and formally agreeing to respect the country’s laws.¹¹⁴

On the other hand, being formally a citizen, but not maintaining a close connection, such as prolonged absence from the country, can mean loss of eligibility for rights such as social welfare.¹¹⁵ For example, social security payments stop after Australians leave the country for 13 weeks, unless prior arrangements are made with the

¹⁰⁹ Millbank, *supra* note 5.

¹¹⁰ *Id.*

¹¹¹ Rubenstein, *supra* note 1, at 93-95.

¹¹² Sejersen, *supra* note 2, at 543.

¹¹³ Unofficial translation of *Public Official Election Act* (Republic of Korea) art 15(2) at www.nec.go.kr/english/res/Public_Official_Election.pdf: (“[F]oreigners who are aged 19 or above and for whom 3 years lapse from the date on which they obtain they permanent status. . .”).

¹¹⁴ *Parliamentary Developments*, 15 WORLD PARLIAMENTS Q. REV., Oct. 2004, at 11, available at http://www.ipu.org/PDF/wop/15_en.pdf (stating that Belgium’s ‘Communal Elections Act of 4 August 1932 was modified by an act adopted on 19 March 2004 to permit foreigners to vote in communal elections).

¹¹⁵ Halfmann, *supra* note 72, at 517.

relevant government department.¹¹⁶ Similarly, in the Republic of Ireland a person must show 'habitual residence' to be eligible for social security payments.¹¹⁷ Factors to be considered are whether they have been present in the Republic of Ireland for over two years, and whether they have a right of residence. This means permanent residency is enough, citizenship is not required.¹¹⁸ Payments are generally stopped after a person leaves Ireland, unless special arrangements are made.¹¹⁹

Thus, China could consider extending certain sociopolitical rights depending a person's contribution or connection to the country.

F. Gradual Reform

Gradual reform in planned stages minimizes shocks to the system. When the Overseas Citizen of India was introduced, eligibility was limited to its diaspora in selected countries and the rights of the Overseas Citizen were limited. As this initiative became more established, eligibility was extended to its diaspora in all countries and their rights were expanded. Gradual reform is particularly relevant to China because citizenship law is a complex issue that concerns the 1.3 billion people within China and the millions of its Diaspora outside China. Immediately instituting recognition of dual citizenship would be a huge shock to the system.

VI. RECOMMENDATIONS FOR REFORM

In an era where the trend is towards liberalization and increasing migration, the question is not whether or not to recognize dual citizenship, but how best to move towards a citizenship system that will be responsive to internal and international circumstances, maximizing national interests and protecting citizenship rights. A feasible reform path for China is a gradual move towards a flexible citizenship system. Reforms steps China should consider in the near future are:

1. removing the blanket non-recognition of dual citizenship rule in the *Nationality Law*, and accepting dual citizenship resulting from involuntary circumstances such as by birth, marriage or adoption. This will remove many of the current problems with the *Nationality Law*. When a child with dual citizenship comes of age, respect its choice of nationality.

¹¹⁶ Social Security Act (Cth) § 93(Austl.).

¹¹⁷ Social Welfare Consolidation Act 2005§246 (Ir.).

¹¹⁸ *Id.*

¹¹⁹ Social Welfare (Absence from the State) Regulations 1967 (Ir.).

2. allowing Chinese citizens to acquire citizenship of selected foreign countries without loss of their Chinese citizenship. Generally, Chinese citizens who move to a developed country to work or study are highly skilled and have potential to contribute to China.
3. allowing the Chinese Diaspora or citizens of selected countries to apply for permanent residency or denizenship under a special program like in India.

China should attach conditions to its permanent residents, by inserting provisions in the relevant laws, such as:

1. promising to respect China's laws and institutions;
2. maintaining a 'close connection' with China. This can be determined used; specified criteria such as main place of residence, work, family and assets in the country;
3. restrictions on working in the public service;
4. forfeiting foreign consular protection; and
5. separating sociopolitical rights from citizenship.

Conditions 3 and 4 minimize conflict of loyalty and jurisdiction problems. These two conditions already exist in Hong Kong. Furthermore, China already has systems where merely being a Chinese citizen is not enough to be entitled to social services and civil rights. These entitlements are currently tied to a person's *hukou*. This is a household registration system and a residence permit in a local area.¹²⁰ Each person must be registered at birth with the local authorities and can choose to inherit either their mother or father's *hukou* location and type.¹²¹ It deters people from moving around China because access to public services, education, medical facilities and some jobs in any one province or area depend on whether the person has *hukou* in that area.¹²²

Any reform should consider the practicalities of implementation. The above recommendations present one possible path of reform which attempts to utilize China's existing legal and social

¹²⁰ COUNTRY RESEARCH SECTION OF THE REFUGEE REVIEW TRIBUNAL AUSTRALIA, RRT RESEARCH RESPONSE (Apr.13, 2007), available at www.mrt-rrt.gov.au/docs/research/CHN/rr/CHN31574.pdf.

¹²¹ Hukou Dengji Tiaoli (户口登记条例) [Regulations on Hukou Registration] (promulgated by Standing Comm. Nat'l People's Cong., Jan. 9, 1958, effective Jan. 9, 1958) art. 5 (Chinalawinfo); Guowuyuan Pizhuan Gongganbu Guanyu Jiejue Dangqian Hukou Guanli Gongzuo Zhong Jige Tuchu Wenti Yijian de Tongzhi (国务院批转公安部关于解决当前户口管理工作中几个突出问题意见的通知) [State Council's Notice of Opinions on Resolving Several Outstanding Problems in Current Administration of Hukou Work] (promulgated by St. Council, July 22, 1998, effective July 22, 1998) art. 1 (Chinalawinfo).

¹²² CONG.-EXEC. COMM. ON CHINA, CHINA'S HOUSEHOLD REGISTRATION SYSTEM: SUSTAINED REFORM NEEDED TO PROTECT CHINA'S RURAL MIGRANTS (2006), available at <http://www.cecc.gov/pages/news/hukou.php>.

infrastructure. Reforms that can be incorporated into and are compatible with the existing system are easier to implement, increasing the likelihood of a successful outcome.

VII. CONCLUSION

The *Nationality Law* and its non-recognition principle appear to be a response to historical circumstances involving large numbers of PRC nationals settled overseas during a time of anti-Chinese sentiment, particularly in Southeast Asia. China's situation domestically and internationally has significantly changed since then, such that the *Nationality Law* has become outdated.

In the past few decades, nations around the world have been responding to globalization by reforming their citizenship laws to take into account their national interests. The trend has been towards adopting a more accommodating approach towards dual citizenship and flexible citizenship policies. This approach is also suitable for reform of China's *Nationality Law*.