Mexico Allows Dual Nationality

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Constitutional Reform

On December 5, 1996, the Mexican Senate approved by consensus the decree to reform Articles 30, 32 and 37 of the Constitution to include the concept of "dual nationality."[1]

The decree, which will go into effect at the end of this year, will require changes in approximately 80 federal laws which mention Mexican nationality and the 1993 Law of Mexican Nationality to regulate the exercise of the constitutional rights of Mexicans who hold another nationality.

Among other things, this new legislation could allow more than two million Mexicans who have become naturalized U.S. citizens to exercise their right to vote in Mexico.

To understand the scope of the constitutional reforms, we must briefly mention a few basic points of international law dealing with the attribution of nationality.

Criteria of Attribution

The rules of international law establish a commitment between the state's exclusive jurisdiction and the rule of the "effective link" between the individual and the state.

International precedent, established both by the current International Court of Justice (World Court) and its predecessor, categorically gives the state the exclusive power to confer nationality through legislation.

The criteria for attributing nationality of origin are practically universal: by reason of filial consanguinity (*ius sanguini*) and by reason of a territorial link (*ius soli*).

Along with these two criteria, nationality may also be conferred as a result of the individual's express wish to acquire a new nationality; this is called "nationality by naturalization."

However, World Court decisions, mainly in the "leading case", or Notteböhn Case (April 6, 1955), have added an extremely important limitation to the states' discretional ability to attribute nationality.

In order for the attribution of nationality to have its full effects with regard to diplomatic protection, particularly in the case of naturalization, that nationality must be recognized by the affected states or the objective arguments must be in place which make it legally possible to oppose those third states. This is the case when there is an "effective sociological link" between the state and the individual.

In current international law there is no doubt that an arbitrating body, an institution with international jurisdiction or a joint grievance commission (for example, the many Mexico-U.S., Mexico-Germany, Mexico-Great Britain joint commissions, among others) are completely competent to decide whether an individual whose rights have been violated effectively and authentically has the

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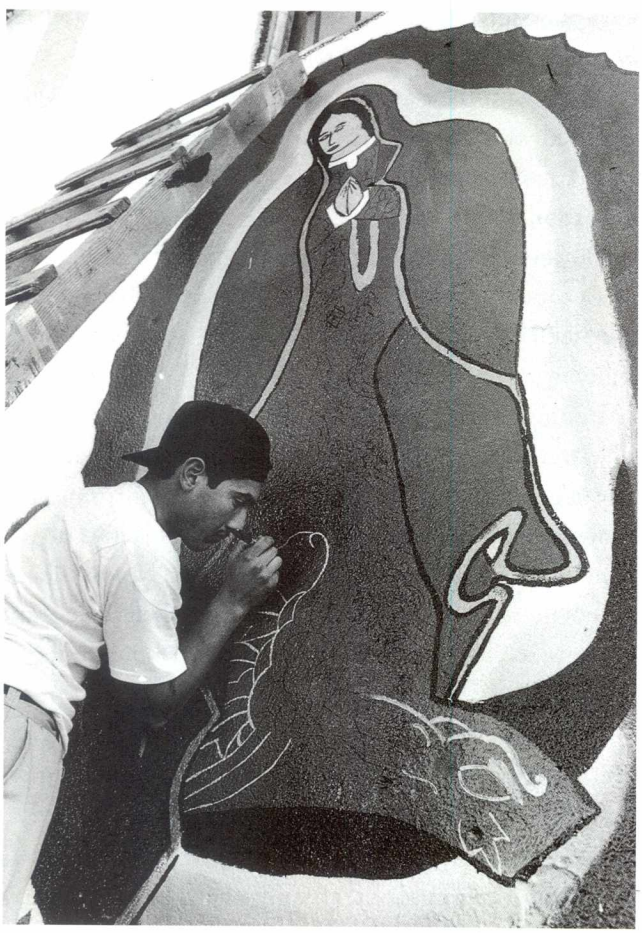
[1] Throughout this article, the term used will be "dual nationality" and not "dual citizenship" since Mexico's Constitution confers citizenship on its nationals only upon coming of age. The legal changes discussed in this article have not yet been extended to all rights of citizenship, but only to nationality. [Translator's Note.]

Until recently, Mexico had always opposed conferring dual nationality. If an individual held one or more nationalities, Mexican law and jurisprudence only recognized one.



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Dual nationality could allow over two million Mexicans, who currently hold U.S. citizenship, to vote in Mexico.

nationality that he or she claims to have in order to enjoy diplomatic protection.

EFFECTIVE NATIONALITY

"Dual nationality" almost always refers to one individual simultaneously possessing "apparent nationality," which he or she claims under the laws and regulations of a particular legal system, and "effective nationality," based on different kinds of de facto considerations of unequal weight.

Therefore, when a controversy with regard to dual nationality is brought before jurisdictional bodies of one of the two states involved, there is generally no great difficulty in making a decision, given that the judge must apply the law of the government to which his court belongs.

The problem becomes much more complex when the question of dual nationality comes before the court of a third party state or an international body, whether arbitrational or court.

International jurisprudence on this question considers the judge or arbiter must inquire into the individual's "active or effective nationality," thus taking into consideration all the circumstances and facts which will allow for the determination of his or her real, authentic nationality: among other things, home address, habitual residence, place of work, language, etc.

DIPLOMATIC PROTECTION

It is important to mention a significant legal principle generally accepted in most international legal practice today: the principle that one state cannot legitimately exercise diplomatic protection for one of its nationals vis-à-vis another which also considers that individual its national.

This principle was established in international jurisprudence in the last century. But here, it should suffice to recall the World Court's "consulting opinion" on the "Case of Reparations to the United Nations Service," which established this ruling for the first time, stating that a claimant cannot be protected against his or her own state. This is a question of common law.

Loss of Nationality

The legislation of most countries establishes provisions for the loss of nationality, usually due to the *breaking* of the bond between the individual and the state in question.

Currently, the great majority of states have provisions which establish that obtaining citizenship of a new country, or naturalization, is sufficient cause for the loss of the nationality of origin.

However, this disposition is not without its contradictions. For example, a person should be allowed to repudiate his or her nationality at the same time that he or she retains a home address in his or her country of origin.

Obviously, the loss of nationality may make an individual stateless: he or she is the national of no state at all. This happens mainly under dictatorships, as was the case of Germany under the Third Reich or the ex-Soviet Union (a paradigmatic case was that of the Russian writer Alexander Solzhenitsyn).

In these cases, the international community has attempted to limit the right of a state to take away its citizens' nationality. Today, the international community holds that a state must not deprive individuals of their nationality for purely political, racial or religious reasons.

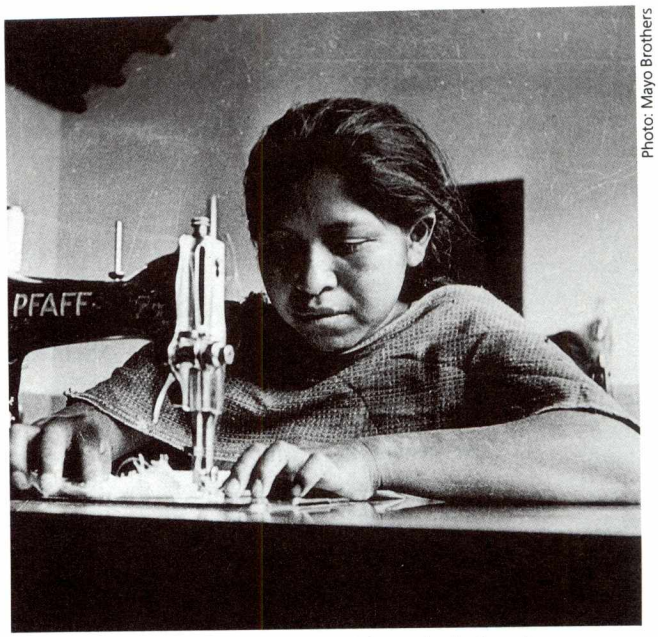

Photo: Mayo Brothers

Mexicans in the United States will be able to obtain American citizenship without losing their own.

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Dual nationality will transform life on the border.

The Change in Mexico's Policy

Until very recently, Mexico had always opposed conferring dual nationality. If an individual held one or more nationalities besides the Mexican, Mexican law and jurisprudence only recognized one, whether it be the one corresponding to the country where he/she had his/her habitual place of residence or the one to which he/she was most closely linked by circumstances.

The recent constitutional reforms were an about-face in Mexican government policy.

We should not forget that the Law of Mexican Nationality (June 21, 1993) establishes that Mexican nationality is not lost when naturalization in another country was acquired by a Mexican: a) by law of that country; b) by simply residing in that country; c) because it was a strict requirement for employment in that country; or d) in order to preserve already acquired employment (Article 22, Fraction I).

From that perspective, we must ask ourselves whether it would not have been much better to broaden, increase or thoroughly detail the Law of Mexican Nationality so that our countrymen and women abroad be allowed to keep their original nationality instead of embarking on the extremely sensitive road of reforming the Constitution, with all its attendant problems, particularly since, as we have seen, the exercise of diplomatic protection is practically void in these circumstances. VM