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JAPAN'S LAWS ON DUAL NATIONALITY IN THE CONTEXT OF A GLOBALIZED WORLD

Mie Murazumi

Abstract: Japan's Nationality Law has evolved into a law that tends to prevent or eliminate dual nationality. This characteristic conforms with the traditional view that every country should take steps to avoid situations of dual nationality. It also fits in with Japan's cultural homogeneity and long-developed sense of national loyalty. For over a century, the world viewed dual nationality as an evil to be avoided because of conflict of loyalty problems and difficulties with diplomatic protection. However, the postwar globalization process has produced a desire in many people to have dual nationality as a part of their global identity. Fewer conflicts among nations and more frequent international cooperation has lessened the significance of the problems traditionally associated with dual nationality. Many countries are now changing their laws to allow dual nationality, and the consensus on the undesirability of dual nationality is breaking down. Under such conditions, Japan's continued insistence on the "one person one nationality" principle will only serve to hinder overseas Japanese as they try to participate in the societies in which they live. It is therefore in Japan's interest to change its laws to allow Japanese nationals to hold dual nationality. This will allow overseas Japanese to fulfill their role as bridges between Japan and the world.

I. INTRODUCTION

Japan's Nationality Law,¹ based largely on the *jus sanguinis* rule,² includes many provisions that are intended to minimize the occurrence of dual nationality.³ For example, voluntary acquisition of a foreign nationality automatically extinguishes the individual's Japanese nationality.⁴ Those born abroad with dual nationality automatically lose their Japanese nationality unless the parent or guardian expressly retains it⁵ within three months of the birth of the child.⁶ Even if the parent expressly retains the child's Japanese nationality, that dual-national child must "choose" between

¹ Kokusekihō [Nationality Law] (adopted May 4, 1950, amended by Law No. 268 of 1952, Law No. 45 of 1984, Law No. 89 of 1993) Law No. 147 [hereinafter Nationality Law], reprinted in ROPPŌ ZENSHO [COMPENDIUM OF LAWS] 69 (1999), translated in Ministry of Justice of Japan Homepage (visited Mar. 11, 2000) <www.moj.go.jp/ENGLISH/CIAB/law01.htm>.

² *Jus sanguinis* means "right of blood." Under the rule, a child's citizenship is determined by the parent's citizenship. BLACK'S LAW DICTIONARY 868 (7th ed. 1999).

³ See Nationality Law, *supra* note 1, arts. 11-12, 14.

⁴ *Id.* art. 11 ("A Japanese national shall lose Japanese nationality when he or she acquires a foreign nationality by his or her own choice.").

⁵ *Id.* art. 12 ("A Japanese national who is born in a foreign country and has acquired a foreign nationality by birth shall lose Japanese nationality retroactively as from the time of birth, unless the Japanese national clearly indicates his or her volition to reserve Japanese nationality according to the provisions of the Family Registration Law.").

⁶ Kosekihō [Family Registration Law] (adopted Dec. 22, 1947, multiple amendments) Law No. 224, art. 104, reprinted in ROPPŌ ZENSHO [COMPENDIUM OF LAWS] 2332, 2335 (1999).

the two nationalities by age twenty-two.⁷ These strict provisions against dual nationality, while conforming with traditional international norms, are rapidly becoming outdated.

Dual nationality is the simultaneous possession of two nationalities.⁸ Dual nationality arises when an individual is subject to the nationality laws of two countries.⁹ In general, nationality¹⁰ is conferred on an individual at birth either by the *jus sanguinis* rule, whereby the nationality of the parent is passed on to the child,¹¹ or by the *jus soli* rule, whereby nationality is based upon birth in the national territory.¹² Thus, dual nationality can occur when an individual is born to parents from a *jus sanguinis* country living in a *jus soli* country.¹³ In addition, most countries allow naturalization, the granting of nationality to a foreign national, under certain conditions such as residence in that country for a required period or marriage to a national of that country.¹⁴ Thus, dual nationality can also occur when an individual

⁷ Nationality Law, *supra* note 1, art. 14 (“A Japanese national having a foreign nationality shall choose either of the nationalities before he or she reaches twenty-two years of age if he or she has acquired both nationalities on or before the day when he or she reaches twenty years of age . . .”).

⁸ The simultaneous possession of two or more nationalities is more generally termed “multiple nationality” or “plural nationality.” For the sake of simplicity, the more familiar term “dual nationality” will be used throughout this Comment to describe all cases of multiple nationality.

⁹ Peter J. Spiro, *Dual Nationality and the Meaning of Citizenship*, 46 EMORY L.J. 1411, 1417 (1997).

¹⁰ “Nationality” denotes the quality of belonging to a particular nation. It is for each nation to determine under its own laws who are its nationals. “Citizenship” often denotes the enjoyment of full political rights, but the two are used synonymously in many cases. L. OPPENHEIM, INTERNATIONAL LAW: A TREATISE 642-45 (H. Lauterpacht ed., 8th ed. 1955). See BLACK’S LAW DICTIONARY, *supra* note 2, at 1046 (“[N]ationality” is defined as “the relationship between a citizen of a nation and the nation itself . . .”).

The terms “nationality” and “citizenship” will be used synonymously for the purposes of this Comment, except in reference to the case of Mexican “nationals,” who are granted limited rights that fall short of full “citizenship.” See *infra* note 194 and accompanying text.

¹¹ There are three variations of the *jus sanguinis* rule: (1) patrilineal—only the father passes on his nationality to the child; (2) matrilineal—only the mother passes on her nationality to the child; (3) bilineal—both the father and the mother pass on their nationalities to the child. Many countries, including Japan, first adopted the patrilineal system, then later switched to the bilineal system when equality of sexes gained greater acceptance. HIDEFUMI EGAWA ET AL., KOKUSEIKIHO [NATIONALITY LAW] 67-63 (3d ed. 1979). See discussion *infra* Part II.A.1, 4.

¹² THOMAS ALEXANDER ALEINIKOFF ET AL., IMMIGRATION AND CITIZENSHIP 22-26 (4th ed. 1998). In practice, many countries supplement one principle with the other. For example, the United States supplements its *jus soli* rules with limited *jus sanguinis* rules for children of United States citizens born abroad. Immigration and Nationality Act § 301(c), 8 U.S.C. § 1401(c) (1994). Japan supplements its *jus sanguinis* rules with *jus soli* rules in the case of stateless babies born in Japan. Nationality Law, *supra* note 1, art. 2, para. 3.

¹³ Thus, second-generation Japanese immigrants in the United States in the early 1900s had dual nationality: Japanese nationality passed on through their parents, and U.S. citizenship through birth in the United States. FRANK F. CHUMAN, THE BAMBOO PEOPLE: THE LAW AND JAPANESE-AMERICANS 167 (1976).

¹⁴ OPPENHEIM, *supra* note 10, at 654-56. Since naturalization is entirely a matter of discretion for a government, the conditions for it vary greatly from country to country. *Id.* at 661.

acquires a second nationality through naturalization while retaining the original nationality.¹⁵

For over a century, dual nationality was considered undesirable by most countries because it presented problems to both the dual nationals and the countries concerned.¹⁶ Traditional concepts of undivided loyalty to one's nation underpinned the belief that each country should adjust its laws in an effort to preempt and eliminate cases of dual nationality.¹⁷ However, dual nationality is now becoming increasingly accepted.¹⁸

This Comment discusses Japan's stance on dual nationality in the context of the global trend towards increased acceptance of dual nationality. Part II traces the history of Japan's Nationality Law and describes legislation that has strengthened Japan's stance against dual nationality. Part III explores the reasons behind Japan's strong aversion to dual nationality. Part IV examines global changes that have influenced international attitudes toward dual nationality. Part V recommends that Japan should change its Nationality Law to allow its nationals to hold dual nationality.

II. BACKGROUND

A. *History of Japan's Nationality Law*

Japan's Nationality Law has undergone several major changes since it was first promulgated in the late nineteenth century.¹⁹ Evolving international norms and the emerging needs of Japanese nationals living overseas necessitated changes in the Nationality Law. These changes resulted in increasingly strict provisions intended to eliminate or prevent the occurrence of dual nationality.

¹⁵ Rules regarding loss of citizenship in different countries at various times ranged from "perpetual allegiance," whereby a country forbade its nationals to ever renounce their nationality, to automatic loss of nationality triggered by certain events. See discussion *infra* Part IV.A.

¹⁶ Spiro, *supra* note 9, at 1414.

¹⁷ The Preamble to the 1930 Hague Convention stated that "the ideal towards which the efforts of humanity should be directed . . . is the abolition of all cases . . . of double nationality." Convention on Certain Questions Relating to the Conflict of Nationality Laws, Apr. 12, 1930, 179-80 L.N.T.S. 89.

¹⁸ See *infra* Part IV.C-D.

¹⁹ The modern nation of Japan was created in 1868, at which time feudal rule and more than two centuries of deliberate seclusion from the outside world came to an end. Modernization proceeded rapidly. A bicameral legislative system was established under the Constitution of 1889, and basic laws necessary for a modern nation, including the Nationality Law of 1899, were passed in rapid succession by the legislature. EDWIN O. REISCHAUER, *THE JAPANESE* 32, 89 (Tuttle 1986) (1977); T.M.C. ASSER INSTITUUT, *NATIONALITY AND INTERNATIONAL LAW IN ASIAN PERSPECTIVE* 181, 183 (Ko Swan Sik ed., 1990).

1. *The "Old Nationality Law" of 1899*

The first comprehensive Nationality Law of Japan ("Old Nationality Law") was promulgated in 1899.²⁰ The Old Nationality Law followed the European rule of *jus sanguinis* and provided that a child born to a Japanese father²¹ acquired Japanese nationality.²² Renunciation of nationality was only possible in the case of those who actively acquired a foreign nationality by naturalization,²³ but not to those born with dual nationality.²⁴

It was around this time that immigration from Japan to North and South America began in earnest.²⁵ According to Japanese law, first-generation immigrants to the United States could renounce Japanese nationality if they naturalized and became U.S. citizens.²⁶ However, most of them were unable to naturalize in the United States because of racially discriminatory U.S. policies,²⁷ and they remained citizens of Japan.²⁸ Their children, born in the United States, acquired U.S. nationality according to U.S. law,²⁹ but also had Japanese nationality passed on through their fathers.³⁰ These second-generation Japanese were thus born with dual

²⁰ Kokusekihō [Nationality Law] (adopted Mar. 15, 1899) Law No. 66 [hereinafter Old Nationality Law], reprinted in 3 HŌREI ZENSHO [COMPENDIUM OF LAWS & REGULATIONS] 241 (1899). Prior to this law, there were nationality regulations dealing just with international marriages and adoptions. Gaikokujin tō kon-in sakyō jōki [Regulation concerning marriage with foreigners] (adopted Mar. 14, 1873) Proclamation No. 103, reprinted in HŌREI ZENSHO [COMPENDIUM OF LAWS & REGULATIONS] 132 (1873); Gaikokujin wo yōshi matawa nyūfuto nasunoken [Regulation concerning adoption or adoption-by-marriage of foreigners] (adopted July 9, 1898) Law No. 21, reprinted in HŌREI ZENSHO [COMPENDIUM OF LAWS & REGULATIONS] 13 (1898). During that period, a Japanese national did not lose Japanese nationality even upon voluntary naturalization in a foreign country. T.M.C. ASSER INSTITUUT, *supra* note 19, at 182 (citing Ministry of Justice, Directive of the Director General of the Civil Affairs Bureau (Oct. 4, 1931) Senrei Taikei 2739).

²¹ Japan adopted the patrilineal system. See *supra* note 11.

²² Old Nationality Law, *supra* note 20, art 1; CHUMAN, *supra* note 13, at 167.

²³ Old Nationality Law, *supra* note 20, art. 20. However, men 17 years and older did not lose their Japanese nationality unless they had fulfilled their Japanese military obligations. *Id.* art. 24.

²⁴ EGAWA ET AL., *supra* note 11, at 141 n.2; T.M.C. ASSER INSTITUUT, *supra* note 19, at 185.

²⁵ In 1884, the Japanese government adopted a policy of allowing its laboring classes to emigrate to foreign countries under labor contracts. The number of such immigrants rose sharply in the 1890s. CHUMAN, *supra* note 13, at 10-11. The number of Japanese arriving in the United States was 2,270 from 1881 to 1890 and 20,826 from 1891 to 1900. SIDNEY L. GULICK, THE AMERICAN JAPANESE PROBLEM 10 (1914).

²⁶ See *supra* note 23 and accompanying text.

²⁷ The Act of 1790 restricted eligibility for naturalization to the United States to aliens who were "free white person[s]." 1 Stat. 103 (1790). Persons "of African nativity or descent" were granted naturalization privileges after the Civil War. 16 Stat. 254, 256 (1870). The Japanese were finally granted naturalization privileges in 1952, when the race qualification was completely eliminated as a condition of eligibility for naturalization. 66 Stat. 163 (1952).

²⁸ CHUMAN, *supra* note 13, at 65-71.

²⁹ U.S. CONST. amend. XIV, § 1.

³⁰ See *supra* note 22 and accompanying text.

nationality and remained dual nationals because they were not permitted to renounce their Japanese nationality under Japanese law.³¹

The sudden increase of Japanese immigrants engaged in low-wage contract labor in the United States triggered an anti-Japanese movement.³² First-generation Japanese, already ineligible for U.S. citizenship, were also prohibited from owning land in California.³³ Japanese children, including second-generation Japanese who were U.S. citizens, were segregated in San Francisco into a separate Oriental public school.³⁴ The fact that Japan did not allow the dual nationals to renounce Japanese nationality gave force to anti-Japanese arguments that the Japanese would never assimilate and would forever remain loyal to the Emperor.³⁵ This situation prompted those Japanese in the United States to petition the Japanese government for the right to renounce Japanese nationality.³⁶

2. *Amendments to the Old Nationality Law*

In 1916, Law No. 27 amended the Old Nationality Law, opening the way for overseas Japanese nationals born with dual nationality to renounce their Japanese nationality.³⁷ However, loss of Japanese nationality was conditioned on a grant of permission by the Minister of Interior, who had discretion to refuse permission on any ground.³⁸ Moreover, the law provided that men aged seventeen and older would not lose their Japanese nationality unless they fulfilled their Japanese military duties.³⁹ This

³¹ KOKUSAIKON O KANGAERUKAI, NIJŪ KOKUSEKI [DUAL NATIONALITY] 66 (1991).

³² CHUMAN, *supra* note 13, at 10.

³³ The Alien Land Law passed in 1913 in California forbade land ownership by those "ineligible to citizenship." The Japanese farmers could thus only rent land on three-year leases. *Id.* at 46-48.

³⁴ Resolution of the San Francisco Board of Education of 1906. *Id.* at 20, 24.

³⁵ EGAWA ET AL., *supra* note 11, at 141. See GULICK, *supra* note 25, at 20 ("Another argument urged by some is that it would be folly to adjust our laws so as to admit of Japanese naturalization, seeing that the Japanese Government permits no Japanese to expatriate himself."). See also *Hirabayashi v. United States*, 320 U.S. 81, 97 (1943) ("Congress and Executive . . . could have attributed special significance, in its bearing on the loyalties of persons of Japanese descent, to the maintenance by Japan of its system of dual citizenship.").

³⁶ EGAWA ET AL., *supra* note 11, at 141; CHUMAN, *supra* note 13, at 167 (The Japanese on the U.S. West Coast made the petition in 1914.).

³⁷ Kokusekihō chū kaisei hōritsu [Law Amending the Nationality Law] (adopted Mar. 15, 1916) Law No. 27, art. 20-2, para. 1, *reprinted in* 3 HŌREI ZENSHO [COMPENDIUM OF LAWS & REGULATIONS] 52 (1916).

³⁸ *Id.* In addition, many Japanese-Americans were ignorant of the requirements of the renunciation procedures. Even under the simplified renunciation procedures of the 1924 amendment, it was only through the vigorous efforts of the Japanese American Citizens League to inform Japanese immigrants of the new law that many people took the step of renouncing Japanese nationality. CHUMAN, *supra* note 13, at 167-68.

³⁹ EGAWA ET AL., *supra* note 11, at 141; see also *supra* note 23 and accompanying text.

measure had little effect on the dual nationality situation, and anti-Japanese sentiment in the United States continued to grow.⁴⁰ The 1920 Alien Land Law passed in California strengthened the prohibition on land ownership by Japanese immigrants.⁴¹ Many other states passed similar legislation.⁴² Finally, in May 1924, Congress passed the Immigration Quota Law, also known as the "Japanese Exclusion Act," which excluded all Japanese nationals from entering the United States for permanent residence.⁴³

Japan responded by amending the Old Nationality Law again in July 1924.⁴⁴ This amendment provided that Japanese children born in the United States and several other *jus soli* countries⁴⁵ would automatically lose their Japanese nationality unless it was expressly retained within fourteen days of birth.⁴⁶ In addition, people already in possession of dual nationality in those same countries could unilaterally renounce their Japanese nationality without permission.⁴⁷

3. *The "New Nationality Law" of 1950*

In 1950, a newly promulgated Nationality Law ("New Nationality Law")⁴⁸ in conformity with the new Constitution of Japan granted Japanese an unconditional right to renounce their nationality. Following the Second World War, American forces occupied Japan for over six years.⁴⁹ The Japanese government, at the instigation of the Supreme Commander of Allied Powers in charge of the Occupation, promulgated a new Japanese

⁴⁰ EGAWA ET AL., *supra* note 11, at 141; CHUMAN, *supra* note 13, at 73-89.

⁴¹ After the passage of the law, first-generation Japanese were unable even to lease any land, and loophole measures such as ownership by a U.S. citizen on behalf of such Japanese were expressly forbidden. CHUMAN, *supra* note 13, at 79-80.

⁴² Washington, Arizona, Oregon, Idaho, Nebraska, Texas, Kansas, Louisiana, Montana, New Mexico, Minnesota, and Missouri passed similar legislation. *Id.* at 77.

⁴³ 43 Stat 153 (1924); CHUMAN, *supra* note 13, at 33, 53.

⁴⁴ Kokusekihō chū kaisei hōritsu [Law Amending the Nationality Law] (adopted July 22, 1924) Law No. 19 [hereinafter 1924 Amendment], reprinted in HŌREI ZENSHO [COMPENDIUM OF LAWS & REGULATIONS] 18 (1924); CHUMAN, *supra* note 13, at 167.

⁴⁵ The countries were Argentina, Brazil, Canada, Chile, Peru, and, later, Mexico. Imperial Ordinance No. 262, reprinted in 11 HŌREI ZENSHO [COMPENDIUM OF LAWS & REGULATIONS] 201, 202 (1924), amended by Imperial Ordinance No. 16, reprinted in HŌREI ZENSHO [COMPENDIUM OF LAWS & REGULATIONS] (1926); T.M.C. ASSER INSTITUUT, *supra* note 19, at 185.

⁴⁶ 1924 Amendment, *supra* note 44, art. 20-2, para. 1.

⁴⁷ *Id.* art. 20-2, para. 2; CHUMAN, *supra* note 13, at 167. The 1916 system continued to apply to immigrants in those countries not enumerated in the 1924 amendment, but the military service requirements no longer applied to them. 1924 Amendment, *supra* note 44, art. 20-3.

⁴⁸ Kokusekihō [Nationality Law] (adopted May 4, 1950) Law No. 147 [hereinafter New Nationality Law], reprinted in 5 HŌREI ZENSHO [COMPENDIUM OF LAWS & REGULATIONS] 68 (1950).

⁴⁹ The Occupation lasted from August 1945 to April 1952. RICHARD STORRY, A HISTORY OF MODERN JAPAN 238-58 (1960).

Constitution in 1946.⁵⁰ This constitution granted equality of the sexes in marriage⁵¹ and guaranteed Japanese the freedom to renounce their nationality.⁵² An entirely new Nationality Law, promulgated in 1950,⁵³ incorporated these constitutional guarantees.⁵⁴

The New Nationality Law made it much easier for Japanese citizens to renounce their Japanese nationality in favor of another nationality. Whereas the Old Nationality Law as amended in 1916 and 1924 allowed unilateral renunciation of nationality in only a limited number of situations and in all other cases conditioned it on the permission of the Minister of Interior,⁵⁵ the New Nationality Law allowed anyone with dual nationality to freely renounce his or her Japanese nationality.⁵⁶ Under the New Nationality Law, the rule that Japanese children born abroad with dual nationality would lose Japanese nationality unless they specifically retained it applied to those born in all *jus soli* countries, not just the seven countries designated under the Old Nationality Law.⁵⁷

4. *The 1985 Amendment of the New Nationality Law*

In 1985, to prepare for the ratification of the U.N. Convention on the Elimination of All Forms of Discrimination Against Women,⁵⁸ Japan amended the New Nationality Law.⁵⁹ The 1985 amendment eliminated

⁵⁰ Nihonkoku Kenpō [Constitution of Japan] (adopted Nov. 3, 1946), translated in 1 EHS LAW BULLETIN SERIES AA (1998). See STORRY, *supra* note 49, at 250-53.

⁵¹ Constitution of Japan, *supra* note 50, art. 24.

⁵² *Id.* art. 22 ("Freedom of all persons to move to a foreign country and to divest themselves of their nationality shall be inviolate.")

⁵³ New Nationality Law, *supra* note 48.

⁵⁴ EGAWA ET AL., *supra* note 11, at 38. The Old Nationality Law followed the example of many countries at the time and provided that when a woman married, she automatically acquired the nationality of her husband. It further provided that any subsequent change in the husband's nationality automatically changed the wife's nationality, regardless of the wife's personal preference. The New Nationality Law of 1950 treated the nationalities of the husband and wife independently, in view of the constitutional guarantee of equality of the sexes in marriage. *Id.* at 39; T.M.C. ASSER INSTITUUT, *supra* note 19, at 187.

⁵⁵ See *supra* note 46 and accompanying text.

⁵⁶ New Nationality Law, *supra* note 48, art. 10, paras. 1-2 ("A Japanese national having a foreign nationality may renounce his or her Japanese nationality. The renunciation of nationality shall be made by notifying the Minister of Justice.")

⁵⁷ New Nationality Law, *supra* note 48, arts. 5, 9; EGAWA ET AL., *supra* note 11, at 144.

⁵⁸ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13. Japan signed the convention at the time of adoption. "Ratification" is the term for the final confirmation given by the parties to an international treaty signed by their representatives. Although the contents of a treaty are fixed at the time of signing, its binding force is, as a rule, suspended until ratification is given. OPPENHEIM, *supra* note 10, at 903.

⁵⁹ EGAWA ET AL., *supra* note 11, at 39-40; T.M.C. ASSER INSTITUUT, *supra* note 19, at 187.

unequal treatment of men and women under the law.⁶⁰ The amendment provided that a child born to either a Japanese father or a Japanese mother was a Japanese citizen, whereas previously only children born to Japanese fathers were considered Japanese citizens.⁶¹

The Japanese government realized that this amendment, which gave women the power to pass on their Japanese nationality, would increase the incidence of dual nationality in children born to Japanese mothers.⁶² The government therefore added provisions designed to counteract this effect. For example, the “retention requirement,” which provides for loss of Japanese nationality for the dual national unless it is specifically retained at birth and was previously applicable only in cases of dual nationality due to birth in *jus soli* countries, was made applicable to any foreign-born dual national, whatever the cause of dual nationality.⁶³ Furthermore, a new “election requirement” was introduced, requiring all dual nationals to choose one nationality shortly after reaching the age of majority.⁶⁴ These measures not only counteracted any increase in the number of dual nationals, but also closed off previous loopholes, including a Japanese woman’s automatic acquisition of her husband’s nationality at marriage, and a child’s acquisition of Japanese nationality from a Japanese father and foreign nationality from a foreign mother.⁶⁵ The overall effect of the 1985 amendment was to tighten government control over dual nationality situations.

⁶⁰ Kokusekihō oyobi kosekihōno ichibu kaiseisuru hōritsu [Law Partially Amending the Nationality Law and Family Registration Law] (adopted May 25, 1984) Law No. 45, reprinted in 5 HŌREI ZENSHO [COMPENDIUM OF LAWS & REGULATIONS] 61 (1984); T.M.C. ASSER INSTITUUT, *supra* note 19, at 187.

⁶¹ Nationality Law, *supra* note 1, art. 2 (“A child shall . . . be a Japanese national [w]hen, at the time of its birth, the father or the mother is a Japanese national.”). Japan adopted the bilineal system in lieu of the patrilineal system. See *supra* note 11 for an explanation of the different *jus sanguinis* systems. The 1985 amendment also eliminated the difference in naturalization conditions when a foreign man married a Japanese woman and when a foreign woman married a Japanese man. Nationality Law, *supra* note 1, art. 7. Under the 1950 law, it was much easier for a Japanese man to have his foreign wife naturalized than it was for a Japanese woman to have her foreign husband naturalized. HIDEO TOKUNAGA, KOKUSEKITO SHŌGAIKOSEKI [NATIONALITY AND FOREIGN ASPECTS OF FAMILY REGISTRATION] 34-35 (1981).

⁶² Ministry of Justice, *The Choice of Nationality* (visited Mar. 11, 2000) <<http://www.moj.go.jp/ENGLISH/CIAB/ciab-04.htm>>. Additional examples of dual nationality include children born to Japanese mothers (and non-Japanese fathers) in a *jus soli* country and children born to Japanese mothers and foreign fathers who could also pass on their nationality. *Id.*

⁶³ Nationality Law, *supra* note 1, art. 12.

⁶⁴ The legal age of majority in Japan is 20. Minpō [Civil Code] (adopted Apr. 27, 1896, multiple amendments) art. 3, translated in 2 EHS LAW BULLETIN SERIES FA (1998).

⁶⁵ This is the case where the mother is from a country adhering to the bilineal (or matrilineal) *jus sanguinis* system, and is thus able to pass on her nationality to her children. KOKUSAIKEKKON O KANGAERUKAI, *supra* note 31, at 68.

B. *Japan's Current Attitude Towards Dual Nationality*

Japan's current Nationality Law contains strict provisions against dual nationality. These provisions effectively prevent or eliminate all but a few cases of dual nationality.

1. *Automatic Loss of Nationality*

The current Nationality Law states that a Japanese national loses Japanese nationality when he or she acquires a foreign nationality by choice.⁶⁶ By actively naturalizing in a foreign country, the Japanese national is presumed to have the intent to relinquish Japanese nationality, and the loss of Japanese nationality takes effect by operation of law.⁶⁷ The Family Registration Law requires the person concerned to notify the Japanese government of his or her loss of Japanese nationality due to naturalization abroad.⁶⁸ However, the loss of nationality occurs whether or not this notification is made⁶⁹ and is effective as of the date of naturalization.⁷⁰

The current law also provides that children of Japanese nationals born abroad with dual nationality lose Japanese nationality retroactively from the time of birth unless a clear indication of intent to reserve Japanese nationality is given.⁷¹ This provision applies to births in any foreign country, not just *jus soli* countries.⁷² It also applies regardless of the manner in which the foreign nationality is acquired, whether by place of birth or through a parent.⁷³

The Japanese government considered abolishing this "nationality retention requirement" on the grounds that the decision of whether or not to retain Japanese nationality lies, in effect, in the hands of a parent or guardian and not in the dual national himself.⁷⁴ However, the provision was retained

⁶⁶ Nationality Law, *supra* note 1, art. 11 ("A Japanese national shall lose Japanese nationality when he or she acquires a foreign nationality by his or her own choice.").

⁶⁷ T.M.C. ASSER INSTITUUT, *supra* note 19, at 204.

⁶⁸ Family Registration Law, *supra* note 6, art. 103.

⁶⁹ EGAWA ET AL., *supra* note 11, at 134.

⁷⁰ *Id.*

⁷¹ Nationality Law, *supra* note 1, art 12 ("A Japanese national who is born in a foreign country and has acquired a foreign nationality by birth shall lose Japanese nationality retroactively as from the time of birth, unless the Japanese national clearly indicates his or her volition to reserve Japanese nationality according to the provisions of the Family Registration Law."). This indication must be given within three months of the date of birth by a parent or legal guardian at the Japanese Embassy or Consulate. Family Registration Law, *supra* note 6, arts. 104, 52, 40.

⁷² EGAWA ET AL., *supra* note 11, at 144.

⁷³ *Id.*

⁷⁴ *Id.*

because of the importance of preventing automatic acquisition of Japanese nationality by foreign-born children who have no real ties with Japan.⁷⁵

Finally, if a person with dual nationality voluntarily takes public office in a foreign country, that person may lose his or her Japanese nationality. This loss of nationality takes place by declaration of the Minister of Justice.⁷⁶

2. *The Obligation to Choose One Nationality*

All Japanese dual nationals, regardless of how they obtain foreign nationality, must choose one nationality within two years of reaching the age of twenty,⁷⁷ or within two years of acquisition of the foreign nationality, whichever occurs later.⁷⁸ For example, if a child is born abroad with dual nationality and the child's parents retain his or her Japanese nationality at birth, by the age of twenty-two the child must choose between the two nationalities.⁷⁹ The same applies for a child who acquires a foreign nationality through adoption.⁸⁰ A Japanese citizen over the age of twenty who acquires a foreign nationality, most often through marriage, must choose between the two nationalities within two years of becoming a dual national.⁸¹ The aim of this provision is to eliminate cases of dual nationality

⁷⁵ *Id.* at 145.

⁷⁶ Nationality Law, *supra* note 1, art. 16, para 2

(In the case where a Japanese national who has made the declaration of choice but still possesses a foreign nationality has voluntarily taken public office in the foreign country [excluding an office which a person not having the nationality of such country is able to take], the Minister of Justice may declare that he or she shall lose Japanese nationality if the Minister finds that taking such public office would substantially contradict his or her choice of Japanese nationality.)

⁷⁷ Since the age of majority in Japan is twenty, this provision gives the dual national two years after achieving majority to make a decision. EGAWA ET AL., *supra* note 11, at 150-51.

⁷⁸ Nationality Law, *supra* note 1, art. 14

(A Japanese national having a foreign nationality shall choose either of the nationalities before he or she reaches twenty-two years of age if he or she has acquired both nationalities on and before the day when he or she reaches twenty years of age or, within two years after the day when he or she acquired the second nationality if he or she acquired such nationality after the day when he or she reached twenty years of age)

⁷⁹ EGAWA ET AL., *supra* note 11, at 150-51.

⁸⁰ *Id.* A Japanese government publicity pamphlet lists five examples of dual nationality: (1) a person born of a Japanese mother and a foreign father from a patrilineal *jus sanguinis* country; (2) a person born of a Japanese parent and a foreign parent from a bilineal *jus sanguinis* country; (3) a person born of a Japanese parent in a *jus soli* country; (4) a Japanese national who has acquired a foreign nationality as the result of acknowledgment by a father of foreign nationality or through adoption by or marriage to a foreign national; and (5) a person who still possesses a foreign nationality after acquiring Japanese nationality by naturalization. Ministry of Justice, *supra* note 62.

⁸¹ National Law, *supra* note 1, art. 14, para. 1.

by encouraging the dual national to make a choice "of [his] own free will."⁸² The dual national who selects Japanese nationality must declare to the Japanese government⁸³ that he or she chooses to be a Japanese national and renounces the foreign nationality.⁸⁴

If the dual national does not make a selection within the requisite time, the Minister of Justice will issue a notice to the dual national.⁸⁵ If still no selection is made within one month of receipt of the notice, the dual national will lose his or her Japanese nationality.⁸⁶

III. JAPAN'S AVERSION TO DUAL NATIONALITY

The main reason for Japan's strict policy towards dual nationality is that the "one person one nationality principle"⁸⁷ has long been held as the ideal toward which all nations should strive.⁸⁸ However, Japan's aversion to the concept of dual nationality also has roots in past problems encountered

⁸² Ministry of Justice, *supra* note 62; EGAWA ET AL., *supra* note 11, at 150.

⁸³ The declaration of selection of Japanese nationality should be submitted to the local government office in Japan or to a Japanese Embassy or Consulate abroad. Family Registration Law, *supra* note 6, art. 40.

⁸⁴ Nationality Law, *supra* note 1, art. 14, para. 2.

⁸⁵ *Id.* art. 15, para. 1 ("The Minister of Justice may, by written notice, require a Japanese national having a foreign nationality who fails to choose Japanese nationality within the period prescribed in paragraph 1 of the last preceding Article to choose one of the nationalities he or she possesses."). If the dual national cannot be located, the notice may be made by announcement in the Official Gazette. *Id.* art. 15, para. 2.

⁸⁶ *Id.* art. 15, para. 3 ("The person to whom the notice has been sent in accordance with the preceding two paragraphs shall lose Japanese nationality at the expiration of one month after the day he or she receives the notice, unless he or she chooses Japanese nationality within such period."). However, renouncing foreign nationality in a declaration to Japanese authorities seldom has direct legal effect in the foreign nation concerned. Expatriation rules vary from country to country, and in some cases it is difficult or impossible to renounce one's nationality. Therefore, the Japanese law only imposes an obligation on the dual national to "endeavor" to renounce his or her foreign nationality. *Id.* art. 16, para. 1 ("A Japanese national who has made the declaration of choice shall endeavor to deprive himself or herself of the foreign nationality."). There is no sanction for failing to actually renounce the foreign nationality. Therefore, a Japanese dual national could in practice retain both nationalities by expressly selecting Japanese nationality and then "failing" in the "endeavor" to renounce the foreign nationality. However, this "loophole" is only available to those born with dual nationality or to those automatically acquiring the foreign nationality as a result of marriage or adoption, and not to those voluntarily naturalizing in a foreign country. EGAWA ET AL, *supra* note 11, at 155-56.

⁸⁷ This expression is derived from the so-called 1930 Hague Convention, which states in its preamble, "each person should have a nationality and should have one nationality only." Convention on Certain Questions Relating to the Conflict of Nationality Laws, Apr. 12, 1930, 179-180 L.N.T.S. 89. Japan signed the convention in 1930 but did not ratify it because of its withdrawal from the League of Nations. T.M.C. ASSER INSTITUUT, *supra* note 19, at 240. However, the principle embodied in the Hague Convention is accepted among Japanese scholars as the internationally accepted norm. EGAWA ET AL, *supra* note 11, at 23.

⁸⁸ EGAWA ET AL, *supra* note 11, at 18-19. For a minority opinion advocating dual nationality in Japan, see *id.* at 19-20 nn.1-3.

by its dual nationals and the traditional emphasis on the notion of loyalty in Japan's culturally homogeneous society.

A. *Past Experience with Dual Nationality*

There is some evidence that Japan's strict stance against dual nationality is at least partly a result of past events involving dual nationals of Japanese origin. For example, the dual nationality of early twentieth century Japanese immigrants contributed to anti-Japanese sentiment, especially in the United States.⁸⁹ It was fairly recently that Japan took drastic measures to ease the plight of these immigrants by allowing Japanese dual nationals to give up their Japanese citizenship.⁹⁰ Dual nationality resulted in charges of treason against some Japanese-Americans after World War II. The most well-known of these charges of treason is documented in the case of *Kawakita v. United States*.⁹¹ Kawakita, a U.S.-born dual national, went to Japan and, using his Japanese nationality, found employment as an English interpreter for a Japanese company under which American prisoners of war were put to work in mines and a factory. After the war, Kawakita returned to the United States and was convicted of treason.⁹² After the Supreme Court upheld Kawakita's conviction and death sentence in 1952, the fate of Kawakita remained part of the U.S.-Japan agenda for almost two decades; President Eisenhower commuted his death sentence to life imprisonment in

⁸⁹ See discussion *supra* Part II.A.1.

⁹⁰ See discussion *supra* Part II.A.2.

⁹¹ *Kawakita v. United States*, 343 U.S. 717, *reh'g denied*, 344 U.S. 850 (1952).

⁹² Tomoya Kawakita was born in 1921 of Japanese parents in Calexico, California, and thus held dual nationality. *Kawakita v. United States*, 190 F.2d 506, 507 (9th Cir. 1951). When he went to Japan in 1939 for his university education, he asserted his U.S. citizenship by traveling on an American passport and registering as an "alien" in Japan. By the time he completed his schooling in 1943, Japan was at war with the United States. Kawakita therefore canceled his alien registration and registered as a Japanese national in his uncle's family registry. *Kawakita*, 343 U.S. at 720-22; See Taimie L. Bryant, *For the Sake of the Country, for the Sake of the Family: The Oppressive Impact of Family Registration on Women and Minorities in Japan*, 39 UCLA L. REV. 109, 124 (1991) (the family registry is the authoritative source of Japanese nationality). He used a copy of this Japanese family register to obtain a job as an English-Japanese interpreter at Oeyama Nickel Industry Co., Ltd., where American prisoners of war were used as laborers in its factory and mines. After the war, Kawakita obtained a new U.S. passport at the American Consul in Yokohama by declaring himself a U.S. citizen. He returned to the United States in 1946 on his U.S. passport. *Kawakita*, 343 U.S. at 720-23. In 1947, a former prisoner of war at the Oeyama Mine, Sergeant William L. Bruce, recognized Kawakita in a large department store in Los Angeles and reported him to the FBI. Kawakita was charged with the crime of treason for torturing American prisoners. CHUMAN, *supra* note 13, at 289. Kawakita's defense was that by entering his name on the family register, he believed he had lost his U.S. citizenship. *United States v. Kawakita*, 94 F. Supp. 824, 829 (S.D. Cal. 1950). In 1948, the jury found that Kawakita had not lost his U.S. citizenship and that he was guilty of treason. CHUMAN, *supra* note 13, at 290. Judge Mathes imposed the death sentence in 1950. *Kawakita*, 94 F. Supp. at 860.

1953, and President Kennedy granted him a presidential pardon in 1963 on the condition that he return to Japan permanently.⁹³ As late as 1984, legislators in Japan continued to refer to this case as an example of the conflicting obligations imposed on dual nationals, indicating its lasting influence.⁹⁴

B. *The Homogeneous Society*

Another factor in Japan's negative attitude towards dual nationality is the cultural and racial homogeneity of the Japanese people, which is a result of their long history of isolation.⁹⁵ The Japanese tend to draw sharp distinctions between those who are Japanese and those who are not,⁹⁶ a trait that fits in well with the "one person one nationality principle."⁹⁷

Although the Japanese people were originally the product of the commingling of different peoples, prolonged isolation from other countries has produced a high degree of cultural homogeneity.⁹⁸ The commingling process was largely completed by the eighth century.⁹⁹ For most of its recorded history, the people of this island nation had only intermittent contact with neighboring China and Korea.¹⁰⁰ As the development of transport made wider international contact possible, the Tokugawa government, in 1638, instituted a firm policy of seclusion from the outside world.¹⁰¹ This seclusion lasted for more than two centuries¹⁰² and served to enhance Japan's cultural homogeneity. Even after this seclusion ended in 1853, the adoption of the *jus sanguinis* principle in Japan's Nationality Law helped maintain the homogeneity of the Japanese people.¹⁰³

This national homogeneity has produced among the Japanese a strong feeling of belonging to the Japanese nation and a sharp sense of distinction between Japanese and non-Japanese.¹⁰⁴ It is therefore difficult for the

⁹³ CHUMAN, *supra* note 13, at 288-90.

⁹⁴ Kiyoshi Hosokawa, *Amendment of the Nationality Law*, 28 JAPANESE ANN. INT'L L. 11, 20 n.18 (1985).

⁹⁵ See *infra* notes 101-102 and accompanying text.

⁹⁶ REISCHAUER, *supra* note 19, at 33, 403.

⁹⁷ See *supra* note 87-88 and accompanying text.

⁹⁸ T.M.C. ASSER INSTITUUT, *supra* note 1, at 180.

⁹⁹ REISCHAUER, *supra* note 19, at 34-35.

¹⁰⁰ *Id.* at 32.

¹⁰¹ *Id.* The government's motivation in adopting the seclusion policy was to strengthen its political control over the entire nation. STORRY, *supra* note 49, at 61-65.

¹⁰² REISCHAUER, *supra* note 19, at 32.

¹⁰³ See *supra* note 2.

¹⁰⁴ REISCHAUER, *supra* note 19, at 33, 403.

Japanese to accept a scheme under which a person can be Japanese and non-Japanese at the same time.

C. *The Japanese Sense of Loyalty*

Equally important to the Japanese is their strong sense of loyalty to the nation. The sense of loyalty began as the prime virtue in the Japanese feudal system, which depended on bonds of personal loyalty.¹⁰⁵ In Japan, loyalty to the lord was central. The lord-vassal relationship was seen as one of unlimited and absolute loyalty on the part of the vassal, not merely one of legal contract between the two as in Europe.¹⁰⁶ Many of the attitudes developed at this time were preserved and reshaped in the later phases of Japanese feudalism and have continued into modern times.¹⁰⁷ A strong sense of loyalty, duty, self-discipline, and self-denial lingers on from feudal days¹⁰⁸ and has been transformed in modern times to loyalty to the nation.¹⁰⁹ Such a strong focus on loyalty inevitably goes against the modern globalized notion of dual nationality.¹¹⁰

IV. GLOBAL CHANGES AND INTERNATIONAL ATTITUDES TOWARD DUAL NATIONALITY

Japan's history of legislation on dual nationality reflects past world developments. The original concept of nationality based on "perpetual allegiance" had the effect of generating dual nationality in those who emigrated. This is because even though the emigrant intended to shed his original nationality and become the national of his new country, his country of origin still regarded him as its citizen.¹¹¹ Problems associated with the dual nationality status led to a concerted effort among nations to avoid the

¹⁰⁵ *Id.* at 57.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 59. Loyalty in modern Japan may be observed in the field of employment. A job in Japan is traditionally not merely a contractual arrangement under which a person works for compensation, but often creates in the employee a satisfying sense of belonging to the company. This engenders a sense of pride in and loyalty to the company. *Id.* at 131-32.

¹⁰⁸ *Id.* at 59.

¹⁰⁹ *Id.* at 57.

¹¹⁰ See Hosokawa, *supra* note 94, at 45 ("[M]ost countries require their nationals to pledge their loyalty and, if necessary, to devote their lives to those countries. Thus, cases may occur where contradictory obligations are imposed on Japanese nationals concurrently having a foreign nationality.").

¹¹¹ Spiro, *supra* note 9, at 1421.

occurrence of dual nationality.¹¹² Recently, however, there has been a marked softening in state attitudes towards dual nationality.¹¹³

A. *The Traditional View Disfavoring Dual Nationality*

Early concepts of nationality were based on the notion of "perpetual allegiance."¹¹⁴ In the medieval world, individuals were identified by personal allegiances to their feudal lords.¹¹⁵ "The notion of personal allegiances persisted as Europe divided into distinct territorial units, each ruled by an individual sovereign."¹¹⁶ The concept of nationality was based on the notion of permanent allegiance of the individual to the sovereign.¹¹⁷ The individual was not free to cut off his allegiance, and was therefore not allowed to renounce his nationality.¹¹⁸

The combination of the perpetual allegiance doctrine and the increased mobility of people gave rise to dual nationality in a large number of people.¹¹⁹ Perpetual allegiance developed in societies where people had limited mobility.¹²⁰ With greater global mobility in the late eighteenth and early nineteenth centuries, however, many subjects of sovereigns requiring perpetual allegiance naturalized in new countries. These people unwittingly became dual nationals, because once they moved, two sovereigns demanded their allegiance.¹²¹

This kind of dual nationality created some problems, as individuals could be forced to fulfill obligations to their original country despite their intention to transfer allegiance to a new country. For example, at the beginning of the nineteenth century, the British navy routinely stopped U.S. flag ships and seized crew members thought to be British subjects on the grounds that they had never been released from their obligations to Britain.¹²² Naturalized Americans returned to Britain at the risk of being required to fulfill their duties as British subjects, including service in the military.¹²³ Similarly, France,¹²⁴ Italy,¹²⁵ Prussia, and Spain attempted to

¹¹² P. WEIS, NATIONALITY AND STATELESSNESS IN INTERNATIONAL LAW 190-93 (2d ed. 1979).

¹¹³ Spiro, *supra* note 9, at 1453.

¹¹⁴ *Id.* at 1419-20.

¹¹⁵ *Id.* at 1419.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 1420. It was a system of "once a subject, always a subject." *Id.*

¹¹⁹ *Id.* at 1421.

¹²⁰ *Id.* at 1420.

¹²¹ *Id.* at 1421.

¹²² *Id.* at 1422.

¹²³ *Id.* at 1424.

extract military service from individuals who had been born in these respective countries and who returned for visits after becoming naturalized American citizens.¹²⁶

Dual nationality also hampered governmental efforts to provide diplomatic protection to citizens traveling or residing abroad.¹²⁷ Under nineteenth century international law, if a citizen living or travelling in a foreign country was mistreated by the foreign government and was not able to find redress through the judicial system of that country, the government of the citizen could act on his or her behalf and accord "diplomatic protection" to the citizen.¹²⁸ On the other hand, international law imposed few restraints on a state's treatment of its own nationals. Those two legal rules were in conflict in the case of the dual national.¹²⁹

Generally, the U.S. State Department had no success in obtaining the release of its dual nationals impressed into military service by their country of origin. For example, the State Department unsuccessfully attempted during the First World War to obtain the release of naturalized citizens of the United States from military service in Switzerland.¹³⁰ The Swiss attitude was that as long as a person retained Swiss nationality, he retained all the rights of a citizen, and, upon his return to Switzerland, must submit to the military obligations, regardless of what other nationality he may have acquired.¹³¹

In this way, the status of dual nationals continued to create diplomatic tensions¹³² until the late nineteenth century, when the issue was finally resolved by a series of bilateral treaties reciprocally recognizing naturalization, and by countries providing for loss of nationality in their laws.¹³³ By the beginning of the twentieth century, this right to expatriation was gaining general international acceptance.¹³⁴

¹²⁴ In the years leading up to the First World War, the French government, despite the protests of the United States government, conscripted naturalized French-American dual nationals and even summoned dual nationals living in the United States to return to France to perform military service. NISSIM BAR-YAACOV, *DUAL NATIONALITY* 151-52 (1961).

¹²⁵ Similar difficulties arose in connection with the naturalized Italian-American and Swiss-American citizens who were impressed into Italian military service and Swiss military service. *Id.* at 151-52.

¹²⁶ Spiro, *supra* note 9, at 1424.

¹²⁷ Marian Nash (Leich), *Contemporary Practice of the United States Relating to International Law*, 87 AM. J. INT'L L. 595, 603 (1993).

¹²⁸ Spiro, *supra* note 9, at 1424.

¹²⁹ *Id.* at 1425.

¹³⁰ BAR-YAACOV, *supra* note 124, at 151-52.

¹³¹ *Id.*

¹³² Spiro, *supra* note 9, at 1427.

¹³³ In 1870, a bilateral treaty between the United States and Great Britain recognized the legitimacy of U.S. naturalization. Great Britain recognized the right of British subjects to expatriate, or to withdraw from British citizenship, by its Naturalization Act of 1870. The United States had in the meantime negotiated the

The inherently exclusive nature of nationality based on allegiance allowed little tolerance for dual nationality by choice. When countries started recognizing expatriation in order to eliminate "unintentional" dual nationality, they often made the expatriation automatic upon naturalization in another country.¹³⁵ This was done to prevent an individual from purposely accumulating nationalities.¹³⁶ Similarly, those born with dual nationality were in most cases required to choose a nationality upon reaching the age of majority.¹³⁷ In a world of state competition and national interest, states could not conceive of an individual maintaining conflicting loyalties.¹³⁸

B. *Evolution of the World Order Affecting the Concept of Nationality*

Since the Second World War, significant societal changes have taken place that have affected the concept of nationality. Technological advances have led to globalization and a blurring of national boundaries. At the same time, difficulties associated with dual nationality have diminished significantly as the world has transformed from a group of independent nations with discrete national interests to a more interdependent system of nations. The notion of exclusive allegiance has gradually given way to a more functional concept of nationality based on rights and obligations. This has opened the door to the idea that nationalities can be cumulative rather than exclusive.

1. *Globalization*

The rapid and significant technological advances of the postwar era have led to "globalization," or the identification of a community on the world level as opposed to the national level.¹³⁹ Today, people increasingly live their lives on a global scale.¹⁴⁰ The development of air transport has enabled faster, cheaper, and more frequent travel between distant parts of the

so-called Bancroft treaties with Belgium, Austria-Hungary, Sweden, Norway, Denmark, Ecuador, and several German states, under which naturalization was reciprocally recognized. *Id.* at 1427-28.

¹³⁴ *Id.* at 1430.

¹³⁵ *Id.* at 1431.

¹³⁶ *Id.* at 1431-32.

¹³⁷ *Id.* at 1432, 1437.

¹³⁸ *Id.* at 1431.

¹³⁹ Michael D. Pendleton, *A New Human Right—The Right to Globalization*, 22 *FORDHAM INT'L L.J.* 2052, 2054 (1999).

¹⁴⁰ *Id.*

globe.¹⁴¹ The development of telecommunications has enabled worldwide mass communication as well as fast and easy personal communication.¹⁴² These developments have brought about the globalization of commerce, finance, culture, and education.¹⁴³

In today's globalized world, there is an increasing population of "transnationals" who go back and forth between two different countries, as well as "global nomads" who move around the world for their entire lives.¹⁴⁴ For example, many people of Caribbean and Mexican origin earn their living in the United States while maintaining family, social ties, and a residence in their country of origin.¹⁴⁵ Another example is that of the Hong Kong "astronauts," who divide their time between the West Coast of Canada or the United States, where they have established residency, and their native Hong Kong, where they still maintain their businesses.¹⁴⁶ Members of transnational communities are often bilingual, move easily between different cultures, frequently maintain homes in two countries, and pursue economic, political, and cultural interests that require their presence in both countries.¹⁴⁷ "Global nomads" is a term coined to describe those people who spend their formative years in multiple countries because a parent is employed by a multinational corporation, an international agency, a church mission, or is in the military or foreign service of a government.¹⁴⁸ Because of their upbringing, global nomads have a global, rather than national, sense of belonging.¹⁴⁹ They often have unique professional skills including linguistic abilities, a high degree of flexibility, and an innate talent for diplomacy.¹⁵⁰

Many people in our increasingly globalized world wish to maintain dual nationality as a reflection of their globalized identity. These

¹⁴¹ Nancy Foner, *The Transnationals; Status of Immigrants in the US*, NAT. HIST., Mar. 1998, at 34, 34.

¹⁴² *Id.*; TAKAMICHI KAJITA, TRANSNATIONAL SOCIOLOGY 79 (1996).

¹⁴³ DAVID HELD ET AL., GLOBAL TRANSFORMATIONS 49, 302 (1999).

¹⁴⁴ Today's immigrants can fly to and from their home countries and communicate with people there via phone, fax, or electronic mail. Video recordings of events in another country may be sent by mail or even as e-mail attachments, and television programs from the home country can be received abroad through satellite broadcasting. Micheline Labelle & Franklin Midy, *Re-Reading Citizenship and the Transnational Practices of Immigrants*; 25 J. ETHNIC & MIGRATION STUD. 213, 217 (1999); Delphine Matthieussent, *Global Nomads Live the Future*, JAPAN TIMES, Aug. 29, 1999, at 14.

¹⁴⁵ Labelle & Midy, *supra* note 144, at 216.

¹⁴⁶ Dr. Alejandro Portes, *Globalization From Below: The Rise of Transnational Communities*, Address Before the University of Washington Department of Sociology Advisory Board & Sociology Alumni Association (Nov. 2, 1999).

¹⁴⁷ Labelle & Midy, *supra* note 144 at 217.

¹⁴⁸ Matthieussent, *supra* note, 144.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

transnationals and global nomads have very real ties to two or more countries simultaneously.¹⁵¹ They not only feel they can cope with the loyalty demands of dual nationality, but desire dual nationality in order to keep their identity intact.¹⁵²

2. Fewer Conflicts Among Nations

The dual national today faces fewer conflict-of-loyalty issues because fewer countries are at war or in deep conflict with one another than in the past. In addition, international protection of human rights has reduced the relative significance of diplomatic protection.

In the post-cold war world, the dual national is less likely to face the conflict-of-loyalty problem of the past. After the Second World War, the United Nations was established for the purpose of safeguarding peace and promoting international cooperation.¹⁵³ According to the United Nations Charter, war is no longer a legitimate means of resolving international conflict.¹⁵⁴ The risk of nuclear war has declined dramatically with the fall of the Soviet Union and the spread of democracy to Eastern Europe.¹⁵⁵ At the same time, the steady increase in the number of international treaties and conventions among nations is evidence of increasing international cooperation on a wide variety of matters.¹⁵⁶ Whereas in the past, the world consisted of discrete "national" interests, today, those interests have, in many cases, been replaced by "global" interests.¹⁵⁷ This is true in the areas of politics, trade, finance, industry, culture, and the environment.¹⁵⁸ In such an environment, the conflict of loyalty previously faced by dual nationals is less of a problem to the individual and to the nations concerned.¹⁵⁹

The significance of diplomatic protection is diminishing with the increased protection of human rights through international conventions and

¹⁵¹ Thomas M. Franck, *Is Personal Freedom a Western Value?*, 91 AM. J. INT'L L. 593, 593 (1997).

¹⁵² August Gribbin, *Dual Citizenship Explodes in U.S.*, WASH. TIMES, Nov. 14, 1999, at C1; T. Alexander Aleinikoff, *Between National and Post-National: Membership in the United States*, 4 MICH. J. RACE & L. 241 (1999); see also Pendleton, *supra* note 139, at 2079.

¹⁵³ OPPENHEIM, *supra* note 10, at 400-05.

¹⁵⁴ U.N. CHARTER, preamble; see OPPENHEIM, *supra* note 10, at 404.

¹⁵⁵ See Anne-Marie Burley, *Toward an Age of Liberal Nations*, 33 HARV. INT'L L.J. 393 (1992).

¹⁵⁶ David Jacobson, *New Border Customs: Migration and the Changing Role of the State*, 3 UCLA J. INT'L L. & FOR. AFF. 443, 443 (1999). For example, some areas addressed by United Nations organizations include: disarmament; human rights; trade and development; transnational corporations; environment; education, science, and culture; population; refugees; and children. HELD ET AL., *supra* note 143, at xxiii.

¹⁵⁷ HELD ET AL., *supra* note 143, at 15.

¹⁵⁸ *Id.* at v-xi.

¹⁵⁹ Spiro, *supra* note 9, at 1416.

agreements.¹⁶⁰ In contrast to the past, when diplomatic protection was often the only recourse available to an individual mistreated by a foreign government, most countries now have assumed an international obligation to respect the human rights of all persons, regardless of their nationality.¹⁶¹

3. *Solutions to Other Dual Nationality Problems*

In recent years, many of the other difficulties created by dual nationality, such as conflicting military obligations¹⁶² or passport and visa problems,¹⁶³ have been addressed by bilateral or multilateral agreements and by the coordination of state practice. For example, the 1997 European Convention on Nationality provides that a dual national should only be required to fulfill his military obligations in relation to his "country of habitual residence."¹⁶⁴ To circumvent problems concerning travel by a dual national, the United States requires that all United States citizens travel on U.S. passports when entering or leaving U.S. territory.¹⁶⁵ At the same time, the U.S. government warns dual nationals that they may be required by the other country of which they are citizens to use that country's passport to enter and leave that country.¹⁶⁶ Overall, the historically significant difficulties related to the retention of dual nationality are becoming easier to resolve in a world where international cooperation is taking the place of interstate conflict.¹⁶⁷

¹⁶⁰ *Id.* at 1462-63. Although diplomatic protection remains an important means for a country to protect its nationals abroad in specific instances, the difference now is that there is also an international pressure for all countries to respect the human rights of both its own nationals and the foreigners visiting or residing there. *Id.* at 1463.

¹⁶¹ *See, e.g.*, International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171; International Covenant on Economic, Social and Cultural Rights, Dec. 19, 1966, 993 U.N.T.S. 3.

¹⁶² *See* discussion *supra* Part III.A.

¹⁶³ Passport and visa problems arose in the early twenties between the United States and France when a dual national used a U.S. passport to obtain a visa for entry into France. The French consular officials insisted that the dual nationals use French passports that described their holders as French citizens. Similarly, in 1937, Yugoslavia refused to issue visas to Yugoslav emigrants to the United States who were carrying U.S. passports. BAR-YAACOV, *supra* note 124, at 153-54.

¹⁶⁴ Council of Europe, European Convention on Nationality, art. 21, E.T.S. 166-1997 [hereinafter 1997 Convention].

¹⁶⁵ Immigration and Nationalization Act § 215(b), 8 U.S.C. § 1185(b) (1994).

¹⁶⁶ Complying with such a requirement does not endanger the dual national's U.S. citizenship. The dual national in this case would need to carry two passports to comply with the requirements of both countries. The U.S. State Department warns dual nationals that they may also be required by the foreign country to use that country's passport to enter and leave that country. It assures them that use of the foreign passport does not endanger their U.S. citizenship. Nash, *supra* note 127; *see also* U.S. State Department, *Dual Nationality* (visited Mar. 11, 2000) <<http://travel.state.gov/dualnationality.html>>.

¹⁶⁷ Spiro, *supra* note 9, at 1465.

C. Countries Allowing Dual Nationality

The changes occurring worldwide have prompted a significant number of countries to change their national policies to permit those individuals who naturalize abroad to retain their original nationalities.¹⁶⁸ Particularly in the 1990s,¹⁶⁹ the trend towards dual nationality has accelerated.¹⁷⁰ As of 1999, some seventy nations allow their citizens to retain or regain citizenship or nationality after becoming naturalized in another nation.¹⁷¹ Other countries are in the process of considering similar amendments.

1. Dual Nationality in Europe

The United Kingdom was one of the first countries to allow dual nationality.¹⁷² The 1948 British Nationality Act abandoned expatriation by naturalization in a foreign country¹⁷³ and retained only the provision regarding expatriation by "declaration of renunciation."¹⁷⁴ The British government reasoned that "many persons of unimpeachable British association became naturalised in foreign countries for purely business

¹⁶⁸ Franck, *supra* note 151, at 593.

¹⁶⁹ This timing suggests that the relaxation of world tension after the end of the Cold War changed state attitudes towards dual nationality. See discussion *supra* Part III.B.2.

¹⁷⁰ Jacobson, *supra* note 156, at 444.

¹⁷¹ Gribbin, *supra* note 152. According to one count, 37 countries allowed dual nationality as of 1994. Jorge A. Vargas, *Dual Nationality for Mexicans? A Comparative Legal Analysis of the Dual Nationality Proposal and Its Eventual Political and Socio-Economic Implications*, 18 CHICANO-LATINO L. REV. 1, 50 (1996). These include the United States, Belgium, Bulgaria, Israel, Italy, Greece, Portugal, Russia, Switzerland, Turkey, Argentina, Costa Rica, Chile, Columbia, Dominican Republic, Ecuador, El Salvador, Guatemala, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, South Africa, New Zealand, and India. Gribbin, *supra* note 152; Vargas, *supra*; Thomas M. Franck, *Clan and Superclan: Loyalty, Identity and Community in Law and Practice*, 90 AM. J. INT'L L. 359, 380 (1996); Randall Hansen, *A European Citizenship or a Europe of Citizens? Third Country Nationals in the EU; European Union*, 24 J. ETHNIC & MIGRATION STUD. 751 (1998); Jacobson, *supra* note 156, at 444; Bulgaria: Law Amending and Supplementing the Law on Bulgarian Citizenship, 29 I.L.M. 538 (1990); Rey Koslowski, *European Migration Regimes: Emerging, Enlarging and Deteriorating*, 24 J. ETHNIC & MIGRATION STUD. 735 (1998). German citizens must obtain permission to retain their citizenship if they wish to assume an additional nationality. This permission is granted or denied by the applicant's state, rather than by federal authorities. Franck, *supra*, at 381 (citing Grundgesetz [Basic Law] art. 116(1) (FRG); Reichs und Staatsangehörigkeitsgesetz [RuStaG] § 17 (1913); RuStaG § 25, para. 2 (1977)). Austrian law is similar to that of Germany. *Id.*

¹⁷² British Nationality and Status of Aliens Act of 1943, 6 & 7 Geo. VI, Chap. 14.

¹⁷³ WEIS, *supra* note 112, at 199. The Naturalisation Act of 1870 stipulated that British nationals would lose their British nationality by voluntarily acquiring another nationality. *Id.*

¹⁷⁴ BAR-YAACOV, *supra* note 124, at 112.

reasons, and it was no longer felt justifiable to cause them to lose their nationality automatically in such circumstances."¹⁷⁵

The French Civil Code was amended in 1973 so that a French citizen naturalizing abroad would lose French nationality only "if he expressly so declares."¹⁷⁶ The motive underlying the new legislation was to enable French persons residing abroad to accept employment and to enjoy the status of citizens in the country of their residence without any guilty conscience with regard to France.¹⁷⁷

2. *Dual Nationality in North America*

For over three decades, Canada's Citizenship Act provided that Canadian citizens could lose their status by voluntarily acquiring citizenship in another country.¹⁷⁸ In 1976, Canada passed a new statute on citizenship. Under the 1976 Citizenship Act of Canada, a citizen only loses citizenship when he or she applies for permission to renounce and such permission is granted by a citizenship judge.¹⁷⁹ The government commented that "for some people, dual citizenship . . . may . . . enhance their feeling of belonging, because they have personal ties to more than one country."¹⁸⁰

In 1990, the U.S. State Department adopted a policy statement that provides that a United States citizen naturalizing in another country is presumed to have the intent to retain U.S. citizenship.¹⁸¹ Loss of citizenship occurs only when this presumption is overcome by the person's express declaration.¹⁸² As the State Department more recently observed in a 1995

¹⁷⁵ *Id.* at 263-64 (quoting M. Jones, *British Nationality Act, 1948*, 25 BRIT. Y.B. INT'L L. 158, 174 (1948)). When the United Kingdom changed its law in 1949 to permit dual nationality, many of its former colonies followed suit. Stanley Mailman & Ted J. Chiappari, *Nationality Law Issues Subject to Debate: Major Themes Include Birthright, Dual Citizenship*, N.Y.L.J., June 14, 1999, at 9.

¹⁷⁶ Franck, *supra* note 171, at 380-81 (quoting Law No. 73-42 of Jan. 9, 1973, Code civil de la nationalité, titre IV, ch. I: De la perte de la nationalité française, art. 87).

¹⁷⁷ BAR-YAACOV, *supra* note 124, at 120.

¹⁷⁸ J. Donald Galloway, *The Dilemmas of Canadian Citizenship Law*, 13 GEO. IMMIGR. L.J. 201, 216 (1999).

¹⁷⁹ Franck, *supra* note 171, at 380 (citing Citizenship Act of 1976, ch. 108 § 9(1), R.S.C., ch. C-29 (1985)).

¹⁸⁰ Thomas M. Franck, *Community Based on Autonomy*, 36 COLUM. J. TRANSNAT'L L. 41, 45 (1997) (quoting statement by the Canadian government, reprinted in CITIZENSHIP AND IMMIGRATION CANADA, DUAL CITIZENSHIP 2 (1991)).

¹⁸¹ U.S. Dep't of State, *Advice About Possible Loss of U.S. Citizenship and Dual Nationality*, reprinted in 67 INTERPRETER RELEASES 1092, 1092-93 (1990).

¹⁸² *Id.* The Department of State has a uniform administrative standard of evidence based on the premise that U.S. citizens intend to retain United States citizenship when they are naturalized in a foreign state, subscribe to routine declarations of allegiance to a foreign state, or accept non-policy level employment with a foreign government. Nash, *supra* note 127, at 600.

opinion circulated to all U.S. diplomatic posts, "it is no longer possible to terminate an American's citizenship without the citizen's cooperation."¹⁸³ Therefore, naturalization by a United States citizen in another country now results in the loss of citizenship only if the U.S. citizen specifically intends that result.¹⁸⁴

This change in U.S. attitude came about gradually as a result of the interplay of case law, statutory law, and government practice. The 1907 Expatriation Act provided that "any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state. . . ."¹⁸⁵ Similarly, under the Nationality Act of 1940, a United States citizen would lose her citizenship if she took an oath or made an affirmation of allegiance to a foreign state, served in its armed forces, or voted in its elections.¹⁸⁶ However, in 1967, the Supreme Court recognized that United States citizens had a constitutional right to retain citizenship even when they voluntarily voted in a foreign election, so long as they did not actively relinquish U.S. citizenship.¹⁸⁷ The Nationality Act was amended in 1986 to state that U.S. citizenship may be lost by "voluntarily performing any of the [certain] acts¹⁸⁸ with the intention of relinquishing United States nationality."¹⁸⁹ Following the 1986 amendment, the State Department Board of Appellate Review held that merely becoming a citizen in another country no longer constituted sufficient evidence of an intent to renounce U.S.

¹⁸³ U.S. Dep't of State, *State Department Discusses Loss of Nationality Issues*, reprinted in 72 INTERPRETER RELEASES 1618, 1618 (1995).

¹⁸⁴ David A. Martin, *The Civic Republican Ideal for Citizenship, and for Our Common Life*, 35 VA. J. INT'L L. 301, 315 (1994). In the early twentieth century, the Department of State attempted to curtail dual nationality by requiring U.S. citizens born with dual nationality to choose one nationality upon reaching the age of majority. However, in 1952, the Supreme Court in *Mandoli v. Acheson*, 344 U.S. 133 (1952), ruled that this election requirement was unwarranted by statute. *Id.* at 139. Today, there is no requirement that a person born with dual nationality choose one nationality or the other when he becomes an adult. Martin, *supra*, at 317; IRA J. KURZBAN, IMMIGRATION LAW SOURCEBOOK 816 (5th ed. 1995).

¹⁸⁵ Act of March 2, 1907, ch. 2534, § 2, 34 Stat. 1228 (1907) (repealed 1940).

¹⁸⁶ Nationality Act of 1940, ch. 876, § 401, 54 Stat. 1137, 1168-69 (1940).

¹⁸⁷ *Afroyim v. Rusk*, 387 U.S. 253, 254, 268 (1967). Petitioner, a naturalized U.S. citizen of Polish birth, went to Israel and voted in an election for the Israeli Knesset. *Id.* at 254. The Court held that the Fourteenth Amendment gave U.S. citizens the right "to remain a citizen in a free country unless he voluntarily relinquishes that citizenship." *Id.* at 268.

¹⁸⁸ These acts are: becoming a naturalized citizen of a foreign state; taking an oath, or making an affirmation or other formal declaration to a foreign state or its political subdivisions; entering or serving in the armed forces of a foreign state engaged in hostilities against the United States or serving as a commissioned or non-commissioned officer in the armed forces of a foreign state; accepting employment with a foreign government if one has the nationality of that state or a declaration of allegiance is required in accepting the position; formally renouncing U.S. citizenship before a United States consular officer outside of the United States; formally renouncing U.S. citizenship within the United States (but only in time of war); or conviction for an act of treason. Immigration and Naturalization Act § 349(a), 8 U.S.C. § 1481(a).

¹⁸⁹ *Id.* (emphasis added).

citizenship.¹⁹⁰ Today, even accepting a seat in the parliament of a foreign state will not deprive a person of U.S. citizenship, as long as the person does not expressly relinquish his or her U.S. citizenship.¹⁹¹

In 1998, after more than a century of forbidding dual nationality,¹⁹² Mexico amended its constitution and statutes to permit Mexicans to simultaneously hold foreign citizenship and Mexican nationality.¹⁹³ These amendments enable Mexican dual nationals to preserve their Mexican-owned property, protect family inheritances, and avoid the business and stock ownership restrictions placed on foreigners.¹⁹⁴

3. *Dual Citizenship in the Asia-Pacific Region*

In Australia, the 1994 report of the Parliamentary Joint Standing Committee on Migration ("JSCM") explicitly supported the acceptance of dual nationality. The JSCM researched the citizenship laws of other countries and found that "dual citizenship was increasingly accepted, especially because of the needs of the individuals¹⁹⁵ and states in an increasingly interconnected world . . ."¹⁹⁶

In Korea, the government of President Kim Dae Jung, in its comprehensive reform of science and technology policy, decided to extend dual citizenship to Korean scientists and engineers so that these designated professionals could become citizens in the country in which they study or work and still freely return to Korea afterwards.¹⁹⁷ The government is also considering plans to offer dual citizenship to ethnic Korean scientists abroad who currently hold only a foreign citizenship because top positions at

¹⁹⁰ Franck, *supra* note 171, at 379 (citing *In re J.J.S.*, Bd. App. Rev. (Dec. 17, 1987); and *In re E.J.P.*, Bd. App. Rev. (Oct. 12, 1987), cited in 4 CHARLES GORDON & E. GITTEL GORDON, IMMIGRATION AND NATURALIZATION LAW n.55e.1 (Supp. 1989, 1990, 1991)).

¹⁹¹ *Kahane v. Shultz*, 653 F. Supp. 1486 (E.D.N.Y. 1987).

¹⁹² Vargas, *supra* note 171, at 51.

¹⁹³ Paula Gutierrez, *Mexico's Dual Nationality Amendments: They Do Not Undermine U.S. Citizens' Allegiance and Loyalty or U.S. Political Sovereignty*, 19 LOY. L.A. INT'L & COMP. L.J. 999, 1009 (1997).

¹⁹⁴ The new law differentiates between citizenship with full political rights and nationality without political rights. *Id.* at 1005-10.

¹⁹⁵ See *supra* notes 151-152 and accompanying text.

¹⁹⁶ Gianni Zappala & Stephen Castles, *Citizenship and Immigration in Australia*, 13 GEO. IMMIGR. L.J. 273, 297 (1999). Along the same lines, the Australian Minister for Immigration and Multicultural Affairs stated in 1997 that "increasing [globalization] is forcing us as a nation to re-examine our notions of citizenship . . . Debate is now focusing on whether loyalty needs to be a singular concept and whether it is possible for individuals to owe their allegiance to different countries simultaneously." *Id.* at 298 (quoting Phillip Ruddock, M.P., *Citizenship: A Bond Shared by All Australians* (Jan. 20, 1997) (press release)).

¹⁹⁷ Michael Baker, *Major Reforms Proposed to Improve Science Payoffs; South Korea Begins Comprehensive Reform of Science and Technology Policy*, SCIENCE, July 10, 1998, at 163.

national institutes and universities in Korea require Korean citizenship.¹⁹⁸ Likewise, the Philippines is currently studying a proposal to grant dual citizenship to Filipinos residing overseas who have acquired foreign citizenship in order to entice them to repatriate and invest funds in the Philippines.¹⁹⁹

D. *The Evolution of International Agreements on Dual Nationality*

The worldwide trend in favor of dual nationality is also reflected in international agreements. While agreements before World War II and others made during the cold war show a fundamental consensus on the need to reduce the incidence of dual nationality,²⁰⁰ multilateral agreements in the 1990s indicate a breakdown of this consensus.²⁰¹

The Convention on Certain Questions Relating to the Conflict of Nationality Laws, adopted in the Hague in 1930 ("1930 Hague Convention"), stated that "every person should have a nationality and should have one nationality only."²⁰² Similarly, the Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality, adopted in 1963 by the Council of Europe ("1963 Convention"), called for "joint action to reduce as far as possible the number of cases of multiple nationality"²⁰³

In 1991, the Standing Conference of Local and Regional Authorities of Europe issued the Frankfurt Declaration, entitled "Towards a New Municipal Policy for Multicultural Integration in Europe."²⁰⁴ This declaration included proposals for the removal of obstacles to multiple

¹⁹⁸ *Id.*

¹⁹⁹ Center for Immigration Studies Overseas Immigration News, Oct. 19, 1999.

²⁰⁰ In 1933, 19 Latin American countries signed the Montevideo Pact, which restricted their respective citizens to single nationalities. Gutierrez, *supra* note 193, at 1011. Montevideo Pact, Dec. 26, 1933, 165 L.N.T.S. 19.

²⁰¹ See *infra* note 210 and accompanying text.

²⁰² Convention on Certain Questions Relating to the Conflict of Nationality Laws, Apr. 12, 1930, preamble, 179 L.N.T.S. 89. This convention was adopted at the International Conference for the Codification of International Law held at the Hague in 1930. The conference also recommended that countries provide for automatic loss of nationality when a foreign nationality is acquired. WEIS, *supra* note 112, at 26, 129.

²⁰³ Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality, May 6, 1963, preamble, ETS 43-1963. In Latin America, 19 countries signed the Montevideo Pact in 1933, restricting their respective citizens to single nationalities. However, 13 of them subsequently withdrew due to emigration patterns and changing economic interdependence. Gutierrez, *supra* note 193, at 1011; see Montevideo Pact, *supra* note 200.

²⁰⁴ STANDING CONFERENCE OF LOCAL AND REGIONAL AUTHORITIES OF EUROPE, EUROPE 1990-2000: MULTICULTURALISM IN THE CITY: THE INTEGRATION OF IMMIGRANTS 166 (1992).

nationality.²⁰⁵ Two years later, in 1993, the Council of Europe adopted a protocol that amended the dual-nationality provision of the 1963 Convention.²⁰⁶ Under this protocol, parties to the 1963 Convention could allow retention of the original nationality where a person “acquires the nationality of another Contracting Party on whose territory either he was born and is resident, or has been ordinarily resident for a period of time beginning before the age of eighteen,” or “in cases of marriage,” or where the “parents are nationals of different Contracting Parties.”²⁰⁷

In 1997, the Council of Europe adopted a new “European Convention on Nationality” (“1997 Convention”).²⁰⁸ In marked contrast to the 1963 Convention and the 1930 Hague Convention, the preamble to the 1997 Convention notes “the varied approach of States to the question of multiple nationality.”²⁰⁹ The 1997 Convention recognizes that “each State is free to decide” whether or not to allow dual nationality, and focuses more on “finding appropriate solutions to consequences of multiple nationalities.”²¹⁰ The 1997 Convention marks a definite shift away from the previous international norms disfavoring dual nationality.

V. ANALYSIS OF JAPAN’S POSITION IN LIGHT OF INTERNATIONAL TRENDS

As an increasing number of countries accept dual nationals, Japan’s present stance is becoming not only unnecessary in the international context, but also harmful to its national interests. Permitting Japanese nationals to naturalize abroad while retaining their Japanese nationality will facilitate the achievement of Japan’s foreign policy goals. Japan should amend its Nationality Law to allow nationals to hold dual nationality.

A. *The Weakening of International Coordination*

The recent change in state attitudes towards dual nationality is undermining Japan’s official reasons for its present policy. Because dual nationality arises out of an interplay of the laws of different countries, all the nations must coordinate their domestic laws in order to reduce the incidence

²⁰⁵ *Id.* at 169.

²⁰⁶ Second Protocol Amending the Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality, ETS 149-1993.

²⁰⁷ *Id.* art. 1.

²⁰⁸ 1997 Convention, *supra* note 164.

²⁰⁹ *Id.*

²¹⁰ *Id.*; Spiro, *supra* note 9, at 1458 n.208.

of dual nationality around the world.²¹¹ Official reasons for Japan's anti-dual nationality policy are for the most part stated in the context of this need for worldwide coordination of domestic laws.²¹² However, this international coordination is weakening as more and more countries opt to embrace dual nationality.²¹³ Although Japan would still be able to control those dual nationality situations that involve Japanese nationals, this is no longer required from the point of view of international policy coordination, and the number of dual nationals will continue to increase, regardless of Japan's policies.²¹⁴

B. *The Dilemma of the Overseas Japanese*

Despite its traditional stance on dual nationality, Japan is very much a part of the globalization trend, as is evident from the tenfold increase since 1975 in the number of Japanese nationals who depart for permanent residence abroad each year.²¹⁵ In October 1997, for example, 274,819 Japanese nationals resided abroad on a permanent basis.²¹⁶

With an ever-increasing number of Japanese living abroad, continued insistence on the "one person one nationality principle" will be damaging to these overseas nationals because of the deterrent effect it has on naturalization abroad.²¹⁷ "Deterred naturalizations" occur when large numbers of nationals of a certain country live and work in another country²¹⁸ but do not choose to naturalize.²¹⁹ The reasons why people do not naturalize are threefold: (1) people have the desire to return to their country of origin, either permanently or from time to time, and prefer to be able to enter their home country as a national and not to have to obtain visas or register as

²¹¹ WEIS, *supra* note 173, at 27-28.

²¹² EGAWA ET AL., *supra* note 11, at 23; Hosokawa, *supra* note 94, at 20.

²¹³ See *supra* notes 168, 201 and accompanying text.

²¹⁴ See Aleinikoff, *supra* note 152; Peter J. Spiro, *Embracing Dual Nationality*, reprinted in 4 BENDER'S IMMIGRATION BULLETIN 427, 427 (1990).

²¹⁵ The number of Japanese who departed from Japan for permanent residence abroad rose from 12,445 in 1975 to 114,612 in 1997. MANAGEMENT AND COORDINATION AGENCY, GOVERNMENT OF JAPAN, NIHON TŌKEI NENKAN [JAPAN STATISTICAL YEARBOOK] 61 (1989); MANAGEMENT AND COORDINATION AGENCY, GOVERNMENT OF JAPAN, NIHON TŌKEI NENKAN [JAPAN STATISTICAL YEARBOOK] 70 (1999).

²¹⁶ Ministry of Foreign Affairs of Japan, 1999 *Diplomatic Bluebook* (visited Mar. 10, 2000) <<http://www.mofa.go.jp/policy/other/bluebook/1999/V-b.html>>. In addition, a total of 507,749 Japanese nationals were classified as long-term residents overseas (non-permanent residents staying abroad for three months or longer). Thus, the total number of Japanese nationals residing abroad was an all-time high of 782,568, an increase of 2.4% over the previous year. *Id.*

²¹⁷ Spiro, *supra* note 214, at 434.

²¹⁸ Turks in Germany, Algerians in France, and Mexicans in the United States are such examples. KAJITA, *supra* note 142, at 195.

²¹⁹ Spiro, *supra* note 214, at 434; KAJITA, *supra* note 142, at 195; Vargas, *supra* note 171, at 6.

aliens;²²⁰ (2) the loss of nationality may entail practical damage such as the forfeiture of property rights, inheritance rights, or other economic benefits;²²¹ and (3) people may attach great symbolic value to nationality as a tie to their cultural or ethnic roots, and may not wish to shoulder the psychological burden of having abandoned their country.²²² These deterred naturalizations deprive individuals of the rights and privileges attendant to citizenship.²²³ Overseas Japanese, deterred from naturalizing, will forever be foreigners in their country of residence. In many cases this means total or partial disqualification of voting rights, social security benefits, schooling and scholarships, career opportunities, property rights, and security of residential status.²²⁴

C. *Importance of the Role of Overseas Japanese in Japan's Foreign Policy*

Postwar Japanese foreign policy fundamentally relies on the “stability and prosperity of the international community” and “stable relations with other nations over the long term.”²²⁵ These goals are to be achieved by the “introduction of Japanese culture abroad and promotion of understanding of Japan by the general public overseas.”²²⁶ However, Japan’s linguistic and cultural uniqueness, coupled with its inherent sense of separateness, has always imposed a barrier to international understanding.²²⁷ Thus, the

²²⁰ KAJITA, *supra* note 142, at 195.

²²¹ See *Korean Soldier Loses Claim*, JAPAN TIMES, Aug. 1, 1998 (The Tokyo District Court dismissed a Korean ex-Japanese veteran’s suit contesting the constitutionality of the nationality clause of the Japanese Pension Law. The Pension Law disqualifies those who have lost their Japanese citizenship from pension benefits.)

²²² Spiro, *supra* note 214, at 434-35; KAJITA, *supra* note 142, at 195; Vargas, *supra* note 171, at 6.

²²³ Spiro, *supra* note 214, at 434.

²²⁴ See Spiro, *Questioning Barriers to Naturalization*, 13 GEO. IMMIGR. L.J. 479, 483 (1999) (U.S. federal benefits being made contingent to citizenship); *Trop v. Dulles*, 356 U.S. 86, 101 (1958) (deprivation of citizenship destroys the individual political existence); *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 160 (1963) (“U.S. citizenship is one of the most valuable rights in the world today”) (quoting Report of the President’s Commission on Immigration and Naturalization (1953)); Gutierrez, *supra* note 193, at 1009-10 (Mexico places land ownership and business stock ownership restrictions on foreigners.)

²²⁵ The Ministry of Foreign Affairs of Japan, *Challenge 2001—Japan’s Foreign Policy Toward the 21st Century* (visited Dec. 4, 1999) <<http://www.mofa.go.jp>> [hereinafter *Challenge 2001*] (proposal submitted to Foreign Minister Masahiko Koumura by seven prominent Japanese professors indicating the aims and aspirations of Japan in the twenty-first century); see Constitution of Japan, *supra* note 50, preface (“[W]e have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world.”)

²²⁶ *Challenge 2001*, *supra* note 225; Ministry of Foreign Affairs of Japan, *1999 Diplomatic Bluebook* (visited Mar. 31, 2000) <<http://www.mofa.go.jp/policy/other/bluebook/1999/IV-a.html>> [hereinafter *1999 Diplomatic Bluebook*].

²²⁷ See REISCHAUER, *supra* note 19, at 401-21 (stressing the need for Japan to improve overseas communication and build up mutual trust between Japan and other countries).

government has stressed that foreign policy should not be left entirely to official diplomatic transactions, but must be promoted through "international networking" at all levels.²²⁸

Japan may best achieve this "international networking" by having a large number of Japanese people abroad, who, while firmly maintaining their identity as Japanese, are also able to fully participate in the social, political, and cultural life of the country of their residence by naturalizing in that country.²²⁹ This would enhance cross-border relations at the grass-roots level and increase international contact and understanding, which would in turn fulfill Japan's foreign policy objectives.²³⁰

VI. CONCLUSION

The postwar world has truly evolved. The world is now a much smaller place for many people, nations are more interdependent, and the once abhorred concept of dual nationality is rapidly becoming the accepted norm. A marked acceleration of this trend towards accepting dual nationality took place shortly after the end of the cold war. Many countries changed their laws in the 1990s, and the Council of Europe Convention of 1997 officially recognized this change in state practice. The change that has taken place in the last ten years is so pronounced that the world already appears strikingly different than it appeared in 1985, when Japan last amended its Nationality Law. It is time for Japan to reconsider the current world situation and the value of its overseas nationals. The Nationality Law should be changed without delay to allow those Japanese nationals who acquire another nationality through naturalization, birth, or other means to retain their Japanese nationality throughout their lives. Such a change would further Japan's foreign policy and would help prepare Japan for the significant role it aspires to play in the increasingly globalized world of the twenty-first century.

²²⁸ *Challenge 2001*, *supra* note 225 ("Diplomatic authorities are not necessarily the only actors engaged in international relations."); *1999 Diplomatic Bluebook*, *supra* note 226.

²²⁹ See Franck, *supra* note 176, at 382-83 ("In an increasingly interdependent world, personal ties [of dual nationals] often are eagerly exploited by foreign offices, businesses, educational institutions, churches and the communications industry. The fact that, in 1996, the Foreign Minister of Bosnia also happened to be an American citizen, if it raised eyebrows, did so in subtle appreciation of its potentially beneficial implications."); William C. Mann, *Albright Is Put on the Czech List for Presidency*, SEATTLE POST-INTELLIGENCER, Feb. 28, 2000, at A4 (Czech officials considering the possibility of Czech-born U.S. Secretary of State Madeleine Albright becoming the next Czech president).

²³⁰ Aleinikoff, *supra* note 152.

