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REPORT ON CITIZENSHIP LAW: JAPAN

AUTHORED BY
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Report on Citizenship Law

Japan¹

Atsushi Kondo

1. Introduction

The Citizenship Act of Japan applies primarily *ius sanguinis* (the bloodline principle), and *ius soli* (the territorial principle) is limited to the case of children born in Japan whose parents are unknown. The rule emphasising descent rather than birthplace appears to fit well with the image of the ethnically exclusive nature of contemporary Japanese society (Kashiwazaki: 1998, 278). Foreign nationals of the second and third generation are required to apply for naturalisation. Besides ‘general residence-based’ naturalisation, some European states have established a ‘socialisation-based’ notification system for young foreigners, on the condition of a certain period of domicile or education in their settled states (Waldrauch: 2006). There is no such notification system based on *ius domicilii* (the principle of residence) for the second generation immigrants in Japan. The notification process is limited to the cases of 1) acknowledged children and 2) reacquisition of citizenship for foreign-born children who did not reserve their Japanese citizenship. The five-year residence requirement for naturalisation set forth in the Citizenship Act of Japan is not particularly strict, but multiple citizenship is not recognised. Consequently, the naturalisation rate of Japan, at 0.4 percent of the foreign population in 2013, is extremely low among OECD countries (OECD: 2015, 350). The Migrant Integration Policy Index (MIPEX), which is an international comparative research instrument measuring policies to integrate migrants in 28 EU Member States, Australia, Canada, Iceland, Japan, South Korea, New Zealand, Norway, Switzerland, Turkey and the USA, shows the relatively low evaluation of Japan’s policy on access to nationality. Japan is placed 23rd out of 38 countries (MIPEX: 2015).²

This report will analyse the acquisition and loss of citizenship in Japan and discuss multiple citizenship and statelessness. Japan has three special features comprising (i) the ‘system of reservation’ for children born abroad, (ii) the ‘system of option’ for dual citizens, and (iii) the ‘system of special permanent residents’ for former colonial persons and their descendants. After first explaining the history of Japanese nationality legislation, I will discuss the acquisition of citizenship and the prevention of discrimination in acquiring Japanese citizenship. Then, I will examine the loss of citizenship and the prohibition of arbitrary deprivation of citizenship. The last part of this report will focus on the influence of international human rights laws as regards the prevention of discrimination and arbitrary deprivation of citizenship.

¹ This report is a more extensive version of A. Kondo, ‘Citizenship in Japan and the Influence of International Human Rights Law’, in *Liber Amicorum Prof. Gerard-René de Groot*, (eds.) Olivier Vonk et al., Deventer: Kluwer, 2016, p. 229-239.

² As for Japan in the MIPEX 2010, see Kondo and Yamawaki (2014).

2. Nationality Legislation in Historical Perspective

It is generally agreed in Japan that the modern concept of nationality as membership of a State was established after the creation of Imperial Japan in 1868 (Hosokawa: 1990, 190). Until then, Japan was not a modern nation state, and was comprised of a loose confederation of feudal domains (Wetherall: 2006, 14). It should be noted that the regime of the Tokugawa Shogunate (the last feudal military government in Japan) had a policy of seclusion from 1639 to 1853. The Shogunate suspected that Catholic traders and missionaries were forerunners of a military conquest by European powers and prohibited both nationals and non-nationals from entering or leaving the country, with the exception of trade relations with China and the Netherlands in the port of Nagasaki (Kondo: 2015, 156). Thus, the Meiji Government considered that the population of Japan at that time consisted almost entirely of ethnic Japanese who were born and had been residing in Japan for several generations, and that such people became nationals under the new regime (Hosokawa: 1990, 191). Almost all inhabitants of Japan were treated as Japanese nationals and registered as such in the family registration.³

The 1871 Family Registration Act (Edict No. 170) was the first nationwide family registration law, which is related to the abolition of feudal domains and served as an important tool for fostering national unity (Kashiwazaki: 1998, 285). Unlike in many other nations, citizenship in Japan is traditionally based not on the idea of citizenship of the individual, but rather of the family (Lecea: 2010, 26). In most developed states the basic unit in the registry is the individual, but Japan uses the unit of the administrative household (family registration). Under the Preamble of the 1871 Family Registration Act, ‘those who are not registered or not counted cannot receive government protection and are as if placed outside the nation. Because of this, the people must be listed in the family registration’. Article 170 of the 1898 Family Registration Act stipulated that ‘a person who does not possess Japanese nationality cannot establish a location of family registration’ (Krogness: 2014, 147-8). Therefore, the family registration had a function of determination who were Japanese nationals.

The first law dealing with nationality in Japan was the International Marriage Proclamation of the Great Council of State (Edict No. 103) of 1873. This was not a comprehensive law, but simply prescribed the effect of marriage and nationality. The Proclamation provided that the international marriages had to be permitted by the government and that a foreign woman who became the wife of a Japanese man would automatically become a Japanese national. A Japanese woman who became the wife of a foreign man would lose her Japanese nationality if she acquired her husband’s nationality, securing the uniformity of nationality in a family. The Proclamation made no provision for expatriation. Thus, a Japanese national did not lose Japanese nationality even if he or she had acquired a foreign nationality by naturalisation (Hosokawa: 1990, 181-182).

The 1899 Nationality Act was the first comprehensive law dealing with nationality. This Act was based on the principle of *ius sanguinis a patre* which gives priority to the male line of descent with respect to the acquisition of Japanese nationality by birth. However, for the purpose of reducing cases of statelessness among children born in Japan, the Act was

³ Family registration included communities such as the indigenous Ainu and Okinawan populations, the members of former outcast communities and the early settlers of Ogasawara Islands who were originally from the Pacific, America and Europe. However, Karafuto (Sakhalin) was treated differently; especially the indigenous Oroch and Nivkh populations were not registered. Foreigners (born abroad and not registered) could be registered under the conditions of the International Marriage Proclamation of 1873 (Chapman: 2014, 94-5).

supplemented by elements of *ius soli*, stating that ‘a child shall be a Japanese national if born in Japan and both of the parents are unknown or are without nationality’ (Article 4). The principle of *ius sanguinis* was a logical choice in the late 19th century in Japan because it was compatible with the previous legal practices of the family registration system to define the subject population and because many legal advisers to the Japanese government came from continental European countries such as Germany and France (Kashiwazaki: 2000, 438; Kashiwazaki: 1998, 283, 289).

The 1899 Nationality Act was revised in 1916, adding provisions for renunciation by dual nationals who are domiciled in the country of their foreign nationality, for the purpose of coping with difficulties caused by anti-Japanese sentiment in North and South American countries, especially in the United States. However, a Japanese subject of 17 or more years of age could not divest himself of Japanese nationality unless he performed his military service or was exempt therefrom (Scott: 1916, 367).

It should be added that the renunciation procedure for dual nationals was followed in 1924 by a reform introducing the ‘system of reservation’ for children born in designated *ius soli* states. The 1924 Imperial Ordinance designated Argentina, Brazil, Canada, Chile, Peru and the USA, and Mexico was added by the 1926 Imperial Ordinance. Children born in these states needed to show the will to reserve (i.e., retain) their Japanese nationality within two weeks of their birth, otherwise they could not retain it.

Something else to be borne in mind here is that Imperial Japan acquired Taiwan in 1895 after the Sino-Japanese War, and the southern part of Sakhalin in 1905 after the Russo-Japanese War. The 1899 Nationality Act was declared applicable to Taiwan by Imperial Ordinance (Edict No. 289) of 1899 and to Sakhalin by Imperial Ordinance (Edict No. 88) of 1924, but was never applied to Korea which was annexed by Imperial Japan in 1910. Due to the Japan–Korea Annexation Treaty, local residents in Korea were deemed to have become Japanese subjects. Acquisition and loss of the status of Japanese subject was subsequently determined by customary law, which did not allow for renunciation of the status. The major reason for this was that the 1899 Nationality Act made it clear that Japanese subjects who took up a foreign nationality would lose their Japanese nationality; its application to Korea would have made it all too easy for Korean emigrants to China (primarily to Manchuria⁴) to be naturalised to Chinese, or later Manchukuo, citizens. Rural poverty in Korea prompted a massive flow of landless farmers from Korea into Manchuria. By 1942 the number of Koreans in Manchuria had reached about 1.5 million. For these migrants, the difficulties of adjusting to a new life in a harsh environment were aggravated by their uncertain nationality status. In many cases, they faced discrimination from Chinese authorities because they were ‘aliens’. (Morris-Suzuki: 2008, 16-7).

Under the new Constitution after World War II, a new Citizenship Act was enacted in 1950. This Act deregulated the renunciation of Japanese citizenship by simple declaration, removed restrictions on the rights of a naturalised person, and abolished the automatic change of citizenship after international marriage etc. The 1950 Citizenship Act was reformed in 1952 and the naturalisation authority was transferred from the Attorney General to the Minister of Justice.⁵ Major reforms were the 1984 Amendment, transforming the principle from *ius sanguinis a patre* to *ius sanguinis a patre et a matre*; and the 2008 Amendment,

⁴ Manchuria is located in northeast China. Under Japanese control it was declared an ‘independent state’, and the Japanese appointed the dethroned Qing emperor Puyi as puppet emperor of Manchukuo from 1931 to 1945. However, the Nationality Act did not establish in Manchukuo. There were many Chinese and some Japanese, Korean and Russian residents.

⁵ Under the 1947 Amendment Act for the 1899 Nationality Act, naturalisation authority was transferred from the Home Affairs Minister to the competent minister and then to the Attorney General.

removing the requirement of marriage of parents in Article 3 for the acquisition of citizenship through legitimation after birth because of a decision of the Supreme Court (see below section 3). Minor technical reforms concerned the 1993 Amendment caused by enforcing the Administrative Procedure Act,⁶ the 2004 Amendment caused by the reform of the Civil Act for using modern Japanese notation, and the 2014 Amendment, adding Article 18 bis for the exclusion from application of the Administrative Procedure Act.⁷

3. Acquisition of Citizenship and Preventing Discrimination

3.1. The 1899 Nationality Act and the 1950 Citizenship Act

Nationality is a matter of the sovereignty of each state and the legislative body has a wide discretion over state membership. However, legislative discretion has been shrinking due to the development of human rights law. Article 18 of the Constitution of the Empire of Japan (1889) stipulated that ‘the conditions necessary for being a Japanese subject shall be determined by law’. The former Nationality Act (1899) adopted the principle of *ius sanguinis a patre*, presupposing the principle that the nationality of a married woman follows that of her husband. This principle of ‘dependent nationality’ was justified by the traditional conceptions of family structure and male pre-eminence. It was abandoned in the revised Citizenship Act⁸ (1950) in accordance with the new Constitution. Article 14(1)⁹ of the Constitution of Japan (1947) prohibits discrimination on the grounds of sex and other attributes by declaring the equality of the people under the law, and Article 24(2) guarantees individual dignity and the essential equality of the sexes especially with respect to family life. These articles of the Constitution stand in contradiction to the principle of *ius sanguinis a patre* (Yamada: 1981, 20). However, this principle was left untouched,¹⁰ mainly for the purpose of preventing dual citizenship at birth (Yokomizo: 2014, 988-9).

⁶ The Administrative Procedure Act was applicable only to Article 16(3) of the Citizenship Act, requiring that the proceedings on the date of the hearing pertaining to the pronouncement of judgment of loss of Japanese citizenship shall be conducted open to the public. It should be noted that the Administrative Procedure Act has not been applicable to naturalisation procedures.

⁷ Article 18 bis stipulates that ‘in cases of written notice under Article 15(1), Article 36(3) of the Administrative Procedure Act (Act No. 88 of 1993) shall not be applied’. Article 36(3) of the Administrative Procedure Act provides that every person can ask to the competent Administrative Organs to impose Administrative Disposition and render Administrative Guidance if there is the fact of illegality. Therefore, no one can ask to provide the written notice to the Minister of Justice if a dual citizen does not select citizenship within the specified period.

⁸ The Japanese term ‘*Kokuseki Ho* (Nationality Act)’ remains unchanged, however, as sovereignty has been transferred from the Emperor to the people under the present Constitution, I will use the term Citizenship Act for the post-war law. However, the official translation uses the term Nationality Act. An English translation is available at:

[http://www.japaneselawtranslation.go.jp/law/detail/?printID=&ft=2&re=02&dn=1&yo=&ia=03&x=9&y=17&al\[\]=N&ky=&page=4&vm=02](http://www.japaneselawtranslation.go.jp/law/detail/?printID=&ft=2&re=02&dn=1&yo=&ia=03&x=9&y=17&al[]=N&ky=&page=4&vm=02) (accessed 10 September 2016).

⁹ ‘All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin’.

¹⁰ In addition, the *Horei* (law concerning the application of laws), which in determining the governing law regarding marriage and parental relationships gives priority to the citizenship of a husband and a father over a wife and a mother, has not been reformed. See Torii (1978, 104). The *Horei* abolished the husband’s nationality principle in 1989 and was reformed by the Act on General Rules for Application of Laws in 2006.

Article 10 of the new Constitution provides that ‘the conditions necessary for being a Japanese national shall be determined by law’, with the exception of Article 22(2), stipulating that the ‘freedom of all persons ... to divest themselves of their nationality shall be inviolate’. Article 22(2) of the new constitution is similar to freedom of any person from being ‘arbitrarily deprived of his nationality’ and ‘the right to change his nationality’ under Article 15(2) of the Universal Declaration of Human Rights. Article 10 of the new Constitution is almost identical to Article 18 of the old Constitution. However, the concept of human rights in the new Constitution is quite different from the rights of subjects laid down in the former Constitution. Human rights are inalienable and universal rights. Article 98(2) of the new Constitution stipulates that ‘treaties concluded by Japan and established laws of nations shall be faithfully observed’. This article expresses the basic characteristics of Japan’s approach to international relations, which is international cooperation and pursuit of world peace. Recently, the *pro homine* principle has been pointed out under Article 11 of the Constitution, stating that ‘the people shall not be prevented from enjoying any of the fundamental human rights’ (de Oliveira Mazzuoli and Ribeiro: 2015, 253, 270). Fundamental human rights are not only constitutional rights but also international human rights. According to the *pro homine* principle, human rights instruments must seek the best possible protection for the human person regardless of whether the rights concerned are national or international human rights.

3.2. Ius Sanguinis and Gender Equality

In 1979, when the Diet (Japan’s bicameral legislature) considered the ratification of the 1966 International Covenant on Civil and Political Rights (ICCPR) and the 1966 International Covenant on Economic, Social and Cultural Rights (ICESC), Foreign Minister Sonoda admitted that the principle of *ius sanguinis a patre* discriminated against women, although officials of the Ministry of Justice maintained that it did not contravene the principle of gender equality stipulated in the covenants (Iwasawa: 1997, 273). In the early 1980s, a number of Japanese women married to American men initiated lawsuits, requesting the courts to confirm that their children had Japanese citizenship, otherwise they would be left stateless because their fathers had not been residents in American territory for ten consecutive years – a condition for inheriting American citizenship.¹¹ The Tokyo District Court decided that the Citizenship Act was not contrary to constitutional gender equality because the principle of *ius sanguinis a patre* was reasonable for avoiding dual citizenship and was complemented by the facilitated naturalisation system for children of Japanese citizens living in Japan for three consecutive years.¹² The Tokyo High Court’s final decision declared that the Diet had the authority to correct the defect of the Citizenship Act, and it was not within the court’s power.¹³ Compared to the German Federal Constitutional Court, which considered the Nationality Act based on a paternal lineage standard to be unconstitutional for reason of contravening gender equality principles,¹⁴ Japanese courts were reluctant to decide on the law’s unconstitutionality. While the German Federal Constitutional Court decided in 1974 that multiple citizenship was an ‘evil’,¹⁵ in 1998 the German Federal Administrative Court pointed out that ‘rules prohibiting multiple citizenship have been eroding in many

¹¹ In addition, when an American soldier deserted his Japanese family, children often became stateless. When a Japanese woman who had unsuccessfully tried to divorce an American who had deserted her had a child with a Japanese man out of wedlock, this child could become stateless. See Abe (2010), 34.

¹² Tokyo District Court, 437 *Hanrei Times* 75 (30 March 1981).

¹³ Tokyo High Court, 470 *Hanrei Times* 90 (23 June 1982).

¹⁴ BVerfGE 37, 217 (21 May 1974).

¹⁵ *Ibid.*

countries'.¹⁶ In Japan, by contrast, the Tokyo District Court noted the 'evil of multiple citizenship' in 1981,¹⁷ the Osaka High Court ruled in 1998 that it was 'ideal to avoid' the emergence of multiple citizenship as much as possible,¹⁸ and the Supreme Court, as recently as in 2015, underscored the 'harmful effects of multiple citizenship on the domestic legal order'.¹⁹

In 1985, Japan ratified the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Article 9(2) CEDAW states that 'States Parties shall grant women equal rights with men with respect to the nationality of their children', and created the need for citizenship reforms, from paternal to both maternal and paternal lineages. Before ratifying the convention, the Diet amended the Citizenship Act in 1984. However, the Diet established the unique 'system of option' based on the principle of avoiding dual citizenship even in the case of a child born from an international marriage. Under the new Article 14 of the Citizenship Act, Japanese citizens having foreign citizenship must select one of the nationalities before their twenty-second birthday, or within two years of acquiring the foreign nationality, whichever occurs later.²⁰ It should be noted that this situation constitutes different treatment between citizens²¹.

However, the obligation to choose one nationality is not a strict one. Under Article 16, 'Japanese citizens who make a declaration of choice shall endeavour to renounce their foreign citizenship'. Indeed, while the Minister of Justice may provide written notice on this renunciation duty (Article 15), there has been no practice of actually doing so. Those who oppose multiple citizenship in Japan raise loyalty conflicts, clashes in rights of diplomatic protection, and problems related to personal statuses such as bigamy, as arguments. However, one Director-General of the Civil Affairs Bureau acknowledged that 'there is no precedent of actual problems having been caused by multiple citizenship'.²²

3.3. Acknowledged Illegitimate Children

Under the revised Article 2(1) of the Citizenship Act, Japanese citizenship by birth is acquired from the citizenship of either Japanese parent. However, Article 3 of the Citizenship Act formerly denied citizenship to children born out of wedlock and acknowledged by the Japanese father after birth based on the requirement of (i) acknowledgment before birth or (ii) marriage of the parents after birth. In 2008, the Supreme Court declared Article 3 of the

¹⁶ BVerwG 107, 223 (29 September 1998).

¹⁷ Tokyo District Court, 437 *Hanrei Times* 75 (30 March 1981).

¹⁸ The Osaka High Court decided that refusing Japanese citizenship to an illegitimate child, even where the child was acknowledged by the parent after birth, did not constitute unreasonable discrimination, as prohibited in Article 14 of the Constitution. 992 *Hanrei Times* 103 (25 September 1999).

¹⁹ Supreme Court, 3rd petty bench, 10 Mar. 2015, 69:2 *Minshu* 265. An English translation is available at: http://www.courts.go.jp/app/hanrei_en/detail?id=1348 (accessed 30 September 2016).

²⁰ Article 14 is modelled on the resolution which was adopted in 1977 by the Committee of Ministers of the Council of Europe. However, this resolution was only followed by Italy which then abolished the provision on the selection of nationality in 1992 (Okuda: 2003, 101).

²¹ Germany tolerates dual citizenship *iure sanguinis*, but adopted a requirement to renounce a foreign citizenship acquired at birth before the age of 23 for citizens *iure soli* when *ius soli* was introduced in 1999. Since 2015 this 'option duty' for *ius soli* children no longer applies to those who have resided for 8 years in Germany or have attended public education there. It can be argued that this option duty is in fact discriminatory. Article 17(1) of the European Convention on Nationality stipulates that 'nationals of a State Party in possession of another nationality shall have, in the territory of that State Party in which they reside, the same rights and duties as other nationals of that State Party'.

²² *Seiichi Fusamura* at the House of Representatives Committee on Judicial Affairs (2 June 2004).

Citizenship Act to be unconstitutional under the equal protection clause of Article 14(1), in a case where a child was born in Japan to a Japanese father and a Philippine mother who were not married and the child had been acknowledged by the father after birth. The Court mentioned the fact that Japan had ratified the ICCPR and the 1989 Convention on the Rights of the Child (CRC) prohibiting discrimination of any kind because of birth and also the fact that many states that had previously required legitimation for granting citizenship to children born out of wedlock to fathers who are their citizens had revised their laws in order to grant citizenship without any other requirement if it was found that the father-child relationship with their citizens was established as a result of acknowledgement.²³ This decision criticised, for example, that ‘the CRC should be construed as prohibiting discrimination against illegitimate children under nationality law, and could therefore have been directly referred to as the human rights basis for the limitation upon the legislative discretion’ (Okuda and Nasu: 2008, 111; Okuda, 2005, 40-41). Eventually, following the court decision the Diet amended the article, admitting citizenship after birth through notification to the Minister of Justice.²⁴

3.4. Naturalisation

Under Article 5 of the Citizenship Act, the Minister of Justice may permit naturalisation under certain conditions: (i) having had domicile in Japan for at least five consecutive years;²⁵ (ii) being at least twenty years of age; (iii) being a person of good conduct; (iv) being able to make a living through one’s assets or abilities, or those of a spouse or relative; (v) not having the citizenship of another country, or renouncing one’s citizenship due to the acquisition of Japanese citizenship; and (vi) not having planned or advocated the destruction of the Constitution or the Government of Japan.²⁶ In practice, knowledge of the Japanese language at the level of a third year elementary school pupil (age eight to nine) is necessary, but there is no civic knowledge or assimilation requirement. The low naturalisation rate, therefore, mainly stems from the principle of avoiding dual citizenship. If foreign residents were allowed to keep their original citizenship, many would be willing to apply for naturalisation.

Historically, the naturalisation procedure included assimilationist requirements. Assessment of assimilation into the Japanese lifestyle was required under the old administrative guidance on naturalisation (Kondo: 2000, 126). Many Koreans refuse naturalisation, despite long term residence in Japan, because they do not want to lose their ethnic identity, which is connected to their citizenship. It should be added that they have not forgotten the history of Japanese colonisation when they were forced to take Japanese nationality and Japanese names (Kondo: 2001, 13). In 1959, the large number of denied applications (3,020) was almost the same as the number of approvals (3,076). These phenomena show that the Japanese government was strictly screening those who were qualified to be Japanese and those who were not (Lee: 2005, 43). Following the amendment of the Citizenship Act in 1984, the phrase ‘Japanese name only’ in the administrative

²³ Supreme Court, Grand Chamber, 4 June 2008, 62:6 *Minshu* 1367. English translation is available at http://www.courts.go.jp/app/hanrei_en/detail?id=955 (accessed 30 September 2016).

²⁴ See Criteria Changes to Acquisition of Japanese Nationality. Available at <http://www.moj.go.jp/content/000001921.pdf> (accessed 30 September 2016).

²⁵ Under Article 7, spouses of citizens can apply for naturalisation after three years’ residence (or one year of residence if the marriage has existed for more than three years). Under Article 8, stateless persons born in Japan can apply for naturalisation after three years’ residence, adopted children of Japanese citizens can apply for naturalisation after one-year’s residence, and children of Japanese citizens or persons who have lost Japanese citizenship can apply at any time if they have domicile in Japan.

²⁶ Conditions (i) (ii) (iii) (iv) (v) have been in effect since 1899, and condition (vi) has been in force since 1950.

guidelines on naturalisation was eliminated.²⁷ However, some officials continued to give an advice to use Japanese name for avoiding discrimination and it is still necessary to write the name with Japanese characters (kanji, hiragana or katakana); some characters used in Korean names could not be translated into Japanese name characters (Kondo: 2002, 422). Since 9 July 2012, only family names are deregulated and most Korean family names can be translated into Japanese family name kanjis. Besides official requirements, naturalisation applicants need to submit two documents asking whether the other family members are willing to naturalise or support the applicant’s decision and asking whether neighbours or colleagues know the applicant’s original citizenship (Lee: 2005, 46-47). These documents are problematic because of the right to self-determination and privacy.

Table 1 shows the number of naturalisation applications, approvals and rejections. Since 1989, the ratio of rejections has been relatively small. This was caused by the pre-application interviews between applicants and officials of the local legal affairs bureaus. If persons who were considering to apply for naturalisation but received a negative advice because of their failure to meet certain requirements, they usually decided not to apply. However, since 2012, the ratio of rejections is relatively large. With the introduction of the new Residence Card System on 9 July, 2012, naturalisation applicants are more strictly screened, for example as regards their pension premium payment records or the residence records of their spouses. Previously, this was done on a case by case basis only.

Table 1 Numbers of Naturalisation Applicants, Permits and Rejects

	Applications	Approvals				Rejections
		Total	Koreans	Chinese	Others	
Pre-1952	-	333	-	-	-	-
1952-1966	-	46,932	41,151	4,320	1,461	-
1967	-	4,150	3,391	589	170	-
1968	-	3,501	3,194	114	193	-
1969	5,372	2,153	1,889	124	140	-
1970	5,663	5,379	4,646	320	413	-
1971	6,784	3,386	2,874	249	263	-
1972	12,417	6,825	4,983	1,303	539	-
1973	11,436	13,629	5,769	7,338	522	-
1974	9,728	7,393	3,973	3,026	394	-
1975	9,080	8,568	6,323	1,641	604	-
1976	8,325	5,605	3,951	1,323	331	-
1977	8,628	5,680	4,261	1,113	306	-
1978	8,440	7,391	5,362	1,620	409	-

²⁷ The ‘Japanese name only’ guideline is thought to be in contradiction with Article 27 ICCPR which requires ratifying states to allow minorities in their societies to maintain their own ethnic or cultural identities. See Port: 1991, 158. The Amendment Act and the Family Registration Act from 1984 (in force since January 1985) admitted foreign names for spouses and children born from mixed marriages. Persons who held Japanese citizenship, in turn, could now also have foreign names, and the presupposition that Japanese citizens should have Japanese names disappeared at the same time that naturalised citizens were allowed to have foreign names.

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1979	9,786	6,458	4,701	1,402	355	-
1980	9,158	8,004	5,987	1,619	398	-
1981	9,168	8,823	6,829	1,572	422	-
1982	9,126	8,494	6,521	1,542	431	-
1983	8,463	7,435	5,532	1,560	343	-
1984	8,034	6,169	4,608	1,183	378	-
1985	7,930	6,824	5,040	1,434	350	-
1986	7,664	6,636	5,110	1,304	222	-
1987	7,587	6,222	4,882	1,131	209	-
1988	7,523	5,767	4,595	990	182	-
1989	8,702	6,089	4,759	1,066	264	399
1990	9,904	6,794	5,216	1,349	229	274
1991	10,373	7,788	5,665	1,818	305	223
1992	11,479	9,363	7,244	1,794	325	162
1993	12,706	10,452	7,697	2,244	511	126
1994	12,278	11,146	8,244	2,478	424	146
1995	12,346	14,104	10,327	3,184	593	93
1996	14,944	14,495	9,898	3,976	621	97
1997	16,164	15,061	9,678	4,729	654	90
1998	17,486	14,779	9,561	4,637	581	108
1999	17,067	16,120	10,059	5,335	726	202
2000	14,936	15,812	9,842	5,245	725	215
2001	13,442	15,291	10,295	4,377	619	130
2002	13,344	14,339	9,188	4,442	709	107
2003	15,666	17,633	11,778	4,722	1,133	150
2004	16,790	16,336	11,031	4,122	1,183	148
2005	14,666	15,251	9,689	4,427	1,135	166
2006	15,340	14,108	8,531	4,347	1,230	255
2007	16,107	14,680	8,546	4,740	1,394	260
2008	15,440	13,218	7,412	4,322	1,484	269
2009	14,878	14,785	7,637	5,392	1,756	201
2010	13,391	13,072	6,668	4,816	1,588	234
2011	11,008	10,359	5,656	3,259	1,444	279
2012	9,940	10,622	5,581	3,598	1,443	457
2013	10,119	8,646	4,331	2,845	1,470	332
2014	11,377	9,277	4,744	3,060	1,473	509
2015	12,442	9,469	5,247	2,813	1,409	603

Source: Civil Affairs Bureau in the Ministry of Justice (2016).

3.5. Statelessness

Article 15(1) of the Universal Declaration of Human Rights (UDHR) stipulates that ‘everyone has the right to a nationality, and Article 24(3) ICCPR and Article 7(1) CRC state that ‘every child has the right to acquire a nationality’. The right to a nationality can be interpreted as a positive formulation of the duty to avoid statelessness. Japan has not acceded to the 1954 Convention relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness. In the Committee on Judicial Affairs, House of Councillors, on 10 May 1984, government delegate Taisuke Biwata explained that Articles 1(2)(a) and 1(2)(b) of the 1961 Convention are not compatible with the Citizenship Act (Arakaki: 2015, 29). According to resident registration data of 2015, there were 587 stateless persons in Japan. In addition, there are presumed to be a number of unregistered stateless persons who are irregular residents and some *de facto* stateless persons.²⁸ Under Article 2(3) of the Citizenship Act, if born in Japan and both parents are unknown or are without citizenship, a child can acquire Japanese citizenship by virtue of *ius soli* due to the principle of avoiding statelessness. In the Andrew case, the Supreme Court granted Japanese citizenship to a child born in Japan whose father was unknown and mother missing, thereby expanding the interpretation of Article 2(3) of the Citizenship Act. The Article which stipulates ‘both of the parents are unknown’ was interpreted as, ‘both of the parents are not identified’ for the sake of avoiding statelessness.²⁹ However, the Court did not admit the plaintiff’s argument that Article 24(3) ICCPR demands the principle avoiding statelessness but affirmed this principle in the purpose and objective of Article 2(3) of the Citizenship Act.

4. Loss of Citizenship and the Prohibition of Arbitrary Deprivation of Citizenship

4.1. Voluntary Renunciation

Under the 1899 Nationality Act, renunciation of nationality was only possible by those who actively acquired a foreign nationality by naturalisation, but not those born with dual nationality. In 1916, the 1899 Nationality Act was amended, opening the way for overseas Japanese nationals born with dual nationality to renounce their Japanese nationality. However, loss of Japanese nationality was conditional on the granting of permission by the Minister of Interior, who had discretion to refuse permission on any ground. Therefore, second generation emigrants can renounce Japanese nationality, although adult males could only do so after completing compulsory military service. This was followed by a more fundamental reform in 1924 through the introduction of the ‘system of reservation’, which made it necessary for children born in *ius soli* nations (specified as the USA, Argentina, Brazil, Canada, Chile and Peru) to be registered with the Japanese consulate within two weeks of their birth if they were to retain Japanese nationality (Morris-Suzuki: 2008, 12). Thereafter, children born in the abovementioned countries could renounce Japanese nationality without reservation. Since 1950, children born in all *ius soli* countries (Article 9 of the Citizenship Act), and since 1985,

²⁸ Those who are denied the diplomatic protection or assistance of their country of citizenship.

²⁹ Supreme Court, 2nd petty bench, 27 January 1995, 49:1 *Minshu* 56. An English translation is available at *JAIL* 40 (1997), 129. See Okuda (2003) and Steele (2004).

children born in all foreign countries (Article 12) have retroactively lost Japanese citizenship to the time of birth unless they expressed the intention to retain it. Prior to WWII, the ‘system of reservation’ was established for the sake of protecting emigrant children’s human rights, but after WWII it became a hurdle for children who want to live and work in Japan (see below subsection 3).

4.2. Involuntary Deprivation

Japan colonised Taiwan in 1895 and Korea in 1910. After World War II Japan was forced to give up its colonies, and the majority of people who had been brought to the Japanese islands from these colonies returned to their countries of origin. However, a large number of Koreans and a small number of Taiwanese remained in Japan. In 1952, the San Francisco Peace Treaty took effect and pursuant to the 1952 Circular of the Ministry of Justice, Korean and Taiwanese residents lost Japanese citizenship without their consent.³⁰ Since 1965, with the normalisation of relations between Japan and South Korea, only old-comers registered as South Koreans were granted permanent resident status; old-comers registered as Korean (that is, those pro-North Korea and those not willing to declare an affiliation) were denied this status. Since 1992, Special Permanent Resident³¹ status has been granted to all old-comers. Even now more than 348,000 of their descendants are foreign residents with special residence permission. Japan mistakenly expected them either to return to their countries of origin or to naturalise through the relevant procedures, which required them to take Japanese names until 1985. Because of the legacy of this policy, Japan is currently the only advanced democracy with a fourth-generation immigrant problem (Chung: 2010, 3).

The Supreme Court decided that Japanese women married to Korean men and entered in a Korean family register lost their Japanese citizenship after the 1952 San Francisco Peace Treaty.³² Also, the Supreme Court rejected the request for confirmation of Japanese citizenship from a Korean special permanent resident born in Japan of Korean parents who had lost his Japanese citizenship after the 1952 San Francisco Peace Treaty.³³ Furthermore, the Tokyo District Court and Tokyo High Court rejected the request to revoke the naturalisation rejection of a Korean son and mother married with a Japanese man because the Minister of Justice had wide discretion for granting permission for naturalisation; attending a (pro-North) Korean school could be considered as a negative factor, even for special permanent residents.³⁴

³⁰ Circular No. 438 of the Director of the Criminal Affairs Bureau of the Ministry of Justice Concerning Nationality and Family Registration of Koreans, Taiwanese and Other Alien Residents after the Peace Treaty (19 April 1952). See Iwasawa, (1998), 144. The Japanese government, and especially the Ministry of Foreign Affairs, changed its original plan, which would have allowed former colonial subjects to choose their nationalities. This change is attributed to a perceived security threat (Kalicki *et al.*: 2013, 226).

³¹ Under Article 22 of the Special Act on the Immigration Control of, Inter Alia, Those Who Have Lost Japanese Nationality Pursuant to the Treaty of Peace with Japan, special permanent residents are protected from deportation except when they are sentenced to imprisonment for more than seven years and the Minister of Justice finds that the vital interests of Japan are jeopardised by their crimes.

³² Supreme Court, Grand Chamber, 5 April 1961, 62:6 *Minshu* 1367. An English translation is available at *JAIL* 8 (1964), 153.

³³ Supreme Court, 2nd petty bench, 12 December 2014. (There is no official report).

³⁴ Tokyo District Court, 6 February 2015, Website (Courts in Japan); Tokyo High Court, 16 July 2015, Website (Courts in Japan).

The UN Articles on Nationality of Natural Persons in Relation to the Succession of States³⁵ have special relevance for the case of decolonised Korean and Taiwanese residents in Japan. From the viewpoint of recent international law, loss of citizenship without consent in relation to the succession of a state should be regarded as arbitrary deprivation of citizenship. Some decolonised residents lack social rights such as pensions (Shin: 2012, 370-1). In my view, the deprivation of their Japanese citizenship was arbitrary based on discrimination of national origin. The Secretary General of the United Nations submitted a report on ‘human rights and arbitrary deprivation of nationality’ to the Human Rights Council on 14 December 2009. The notion of arbitrariness could be interpreted to include not only acts that are against the law but, more broadly, elements of inappropriateness, injustice and lack of predictability also (Secretary General of the United Nations: 2009, para. 25). Therefore, the prevention of arbitrary deprivation of citizenship includes some guiding principles, namely: the consequences of a deprivation-decision must be proportional; the administrative practice based on loss or deprivation provisions may not be discriminatory; and a legal provision regarding loss or allowing deprivation of nationality may not be enacted with retroactivity (de Groot and Vink: 2014, 4-5).

Article 15(2) of the UDHR states that ‘no one shall be arbitrarily deprived of his or her nationality nor denied the right to change his or her nationality’. The principle of prohibition of arbitrary deprivation of nationality has not been paid attention to in Japan but Article 15(2) was referred to in the interpretation of Article 22(2) of the Constitution, providing for the freedom to divest citizenship. According to the dominant opinion of constitutional lawyers, there is no freedom to be stateless because ‘divest’ should be interpreted as ‘change’ as stipulated in the UDHR.

4.3. The ‘System of Reservation’

Under Article 13 of the Citizenship Act, Japanese citizens having foreign citizenship may renounce their Japanese citizenship by notification to the Minister of Justice. A unique feature of Japanese citizenship is the ‘system of reservation’ for the sake of preventing automatic acquisition of Japanese citizenship by foreign-born children who have no real ties with Japan. Under Article 12 of the Citizenship Act, ‘a Japanese citizen who was born abroad and has acquired a foreign nationality by birth shall lose Japanese citizenship retroactively as from the time of birth, unless the Japanese citizen clearly indicates his or her volition to reserve Japanese citizenship’. This provision applies to births in any foreign country, not just *ius soli* countries (Article 9 of the former Nationality Act). Indeed, persons under 20 years of age who have lost Japanese citizenship under this system may reacquire Japanese citizenship by making a notification to the Minister of Justice if they have domicile in Japan. However, it is difficult for many foreign-born children who live with non-Japanese mothers abroad to have domicile in Japan because it is not sufficient for them to enter Japan as tourists or for family visits. They do not have adequate skills or financial resources to acquire domicile in Japan for the purpose of making a notification. The Supreme Court decided that this system did not contravene the equality protection clause because it prevented Japanese citizenship from losing substance and limited the occurrence of multiple citizenship to the greatest possible

³⁵ UN General Assembly resolution 55/153 (2000), Articles on Nationality of Natural Persons in Relation to the Succession of States, http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/55/153 (accessed on 10 February 2016).

extent.³⁶ In my view, the avoidance of multiple citizenship is not a reasonable ground. The ‘system of reservation’ comprises a case of arbitrary deprivation of citizenship.

4.4. Multiple Citizenship

A UN convention on the elimination of multiple citizenship does not exist. The preamble of the 1930 Convention on Certain Questions Relating to the Conflict of Nationality Laws stipulates the principle of ‘one nationality only’, but it lacks binding legal authority. Recent international Conventions such as the 1997 European Convention on Nationality (ECN) stand neutral on the issue of multiple citizenship (Article 15), and leave the decision open to signatory nations (Council of Europe: 1997, para. 97). Additionally, Article 14 ECN protects multiple citizenship status acquired through marriage or birth right, and it also limits the forfeiture of citizenship by listing specific exceptions in Article 7. These provisions offer concrete examples of what constitutes the prohibition of arbitrary deprivation of nationality as set forth in Article 4c ECN and Article 15(2) UDHR. Coercing children of cross-national marriages to choose their citizenship after reaching adulthood and foreign-born children to indicate an intention to reserve their Japanese citizenship immediately after birth, by contrast, contradicts modern principles of international law. As a means of promoting pacifism, democracy, human rights protection, and international transactions, views accepting multiple citizenship are increasing (Martin: 2003, 5). The end of the Cold War, the abolishment of conscription systems, the surge of migration and cross-national marriages, and changes in international law can be mentioned as factors contributing to the rise of multiple citizenship in recent years.

Unfortunately, the Cold War sentiment still lingers on in East Asia. In addition, three factors contribute to Japan’s aversion to dual citizenship: (i) the past experience of an American-Japanese being charged with treason;³⁷ (ii) a relatively homogeneous society; and (iii) the Japanese sense of loyalty (Murazumi: 2000, 425-8). In order to avoid dual citizenship, Japan’s Citizenship Act has devised the peculiar systems of the ‘option’ and the ‘reservation’. However, these systems are contrary to the principle of non-discrimination. Furthermore, Koreans and Taiwanese who remained in Japan after WWII should have been given the option of retaining their Japanese citizenship.³⁸ In the case of special permanent residents who lost Japanese citizenship without their consent, Japan’s actions can only be qualified as a form of arbitrary deprivation of citizenship.

Taro Kono, a Lower House member of the Liberal Democratic Party (LDP), the larger of the two-party ruling coalition, explained that there are 600,000 to 700,000 Japanese who are 22 years or older with two nationalities, if not more (Matsutani: 2009, 4)³⁹. In other words, fewer than 10 percent of the Japanese with more than one nationality decide to retain

³⁶ Supreme Court, 3rd petty bench, 10 March 2015, 69:2 *Minshu* 265. An English translation is available at: http://www.courts.go.jp/app/hanrei_en/detail?id=1348 (accessed 30 September 2016).

³⁷ *Kawakita v. United States*, 343 U.S. 717 (1952). Mr. Kawakita was born in the US from Japanese parents. He had dual citizenship and stayed in Japan during WWII. After returning to the US, he was arrested and charged with treason for having mistreated American prisoners of war. The Supreme Court sentenced him to death, but the US President eventually pardoned him and deported him to Japan. Since then there has been no similar case as *Kawakita*.

³⁸ This option is in accordance with present international human rights law such as the 2000 United Nations’ Declaration of Articles on Nationality of natural persons in relation to the succession of States.

³⁹ Seiichi Fusamura, an official at the Ministry of Justice, estimated that about 400,000 persons became dual citizens between 1985 to 2002. Statement made in the Diet on 17 November 2004.

their Japanese nationality by the time they turn 22 years of age.⁴⁰ He said that ‘the current system puts honest people and those who appear in the media at a disadvantage’ and in 2008 submitted a proposal to an LDP panel he headed calling for the Citizenship Act to be revised to allow Japanese to hold other nationalities (Matsutani: 2009, 4). However, the proposal to allow multiple nationalities was not submitted to the Diet. The LDP lost the elections in 2009. According to Seiichi Fusamura, an official at the Ministry of Justice, dual citizenship is associated with lack of loyalty to the state, the collision of diplomatic protection and bigamy.⁴¹ However, he added that ‘we could not find concrete cases of such problems’. Currently, Japan has a rapidly ageing and decreasing population and Japan should therefore be regarded as a potential immigration country (Kondo: 2015, 155). In the near future, the Government should examine the introduction of the *ius soli* system (or, at least, the *ius soli* system for children born to permanent residents) or the *ius domicilii* system for the second generation children born to foreign parents in Japan, allowing these children to acquire citizenship after having resided a number of years in Japan after birth, and it should recognise multiple citizenship.

5. Conclusion

Traditionally, the principle of sovereignty affirms that each state shall determine under its own law who are its nationals. At the same time, this law shall only be accepted as far as it is consistent with international treaties, customary international law and constitutional law and, due to the development in the field of human rights law. Consequently, the state’s discretion with respect to the Citizenship Act is at present narrower than before. At this moment in time, the principles that statelessness should be avoided and that arbitrary deprivation of citizenship is prohibited are considered to be customary international law (Hailbronner: 2006, 65, 70). In addition, the principle of non-discrimination is a significant motive for reforming Citizenship Act.

The Constitution of the Empire of Japan did not stipulate gender equality. Whilst the present Constitution does have a gender equality clause, the courts initially confirmed the constitutionality of the principle of *ius sanguinis a patre* for the sake of avoiding dual citizenship. Eventually in 1984 before ratifying CEDAW, the Diet amended the clause to conform to the principle of *ius sanguinis a matre et patre*. After ratifying the ICCPR in 1979 and the CRC in 1994, the government did not show any initiative to amend the Citizenship Act, but in 2008 the Supreme Court at last decided that the discrimination between legitimate and illegitimate children acknowledged by Japanese father was unconstitutional. However, discriminative treatment in respect of former colonial subjects who were deprived of Japanese citizenship without their consent in 1952 still remains. For a long time the acquisition of

⁴⁰ According to Taro Kono’s blog of 21 June 2007, the sample survey conducted by the Ministry of Justice showed that 20 percent of Japanese nationals under the age of 22 have decided on which citizenship they wished to retain. According to government’s reply to MP Nobuto Hosaka of 11 December 2007, 49 out of 245 respondents made such a decision. Itsuro Terada, an official from the Ministry of Justice explained that 440,000 persons had selected citizenship between 1985 and 2003 and that 220,000 of them had opted for Japanese citizenship, thereby renouncing or losing their foreign citizenship (statement made in the Diet on 18 March 2005). That explains the 10 percent, because half of the 20 per cent chose to give up their Japanese citizenship.

⁴¹ Seiichi Fusamura in an answer to the Diet on 17 November 2004.

Japanese citizenship suffered from discriminative practices and deprivation of citizenship was conducted arbitrarily. Over time international human rights laws had some positive influence on the abolishment of discriminatory legislation regarding the acquisition of citizenship, but they had no influence on the practice of arbitrary and discriminatory deprivation of Japanese citizenship. In order to avoid dual citizenship, the Citizenship Act keeps the unique systems of the ‘option’ and the ‘reservation’. Such ‘deprivation’, ‘option’ and ‘reservation’ need to be reconsidered from the perspective of the principle of the prohibition of arbitrary deprivation of citizenship under Article 22(1) of the Constitution – stating that ‘freedom of all persons ... to divest themselves of their nationality shall be inviolate’ – in conjunction with Article 15(2) UDHR.

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