THE LAW OF CITIZENSHIP: INTERNATIONAL LEGAL QUESTIONS ARISING

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I. Introduction

International legal questions of nationality and the legal status of foreigners initially played a fundamental role in cooperation among States. These questions arose as a result of the common concern of States for protecting the rights of their citizens in other countries. International customs and agreements in this field were aimed at providing specific minimum rights to those citizens who went to foreign states to engage in trade, business and other contracts. The internationalization of economic life, increasing population, migration, the development of comprehensive economic, cultural and other relations among people and countries have led to a significant increase in the number of international legal norms relating to the status of foreigners, questions of nationality, prevention or abolition of the status of persons with dual nationality and without nationality, the right of asylum, etc.

The Citizenship Act 2000, Act 591 which aims at bringing the citizenship law of Ghana in conformity with the 1992 Constitution and the principles of international law, has taken certain unfamiliar, yet interesting dimensions with impact on both domestic and international practice, which cannot be ignored in our present discussion about the law of citizenship and international legal questions.

The primary concern of the present article is to discuss the law of citizenship and international legal questions arising, highlighting areas where the citizenship law of States is confronted by questions concerning the protection of the rights and basic freedoms of individuals (irrespective of their nationality).

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1 Protection that a government gives to people who have left their own country, usually because they were in danger for political reasons.


3 Economic dimension in particular. It is plausible to suggest, that at least at the preparatory stages of the dual citizenship Regulation Act or before its promulgation, majority of members of parliament, the ruling government, the Ghanaian media and the general public considered the whole concept of dual citizenship merely as a socio-economic regime being created for reasons of economic advantage to the state and not as a politico-legal regime in which relationship of a person is characterized by the possession of rights and duties with regard to the state.
The following issues are considered:
1. The Concept of Citizenship;
2. The Acquisition of Citizenship;
3. Loss of Citizenship;
4. Statelessness;
5. Dual Citizenship;
6. Conclusion and Recommendations.

II. The Concept of Citizenship

Citizenship (nationality) is the legal relationship of a person to a state resulting from birth, adoption, naturalization, marriage etc. It is a relationship characterized by stability, possession of certain rights and duties with regard to the State.

The stability of this relationship is expressed in that: (a) it begins as a rule, with the birth of the individual and is retained throughout his or her life; (b) it is not limited to the spatial boundaries of the state, that is, it is preserved independently of where the person finds himself or herself within his or her own state, or abroad.

Concerning citizenship, it is important not only that the citizen has duties of allegiance in relation to his or her state, but also possesses definite rights and freedom. Citizenship serves, above all, to determine that the person upon whom it is conferred enjoys the rights and is bound by the obligations which the law of the state in question grants to or imposes on its nationals. This is implied in the wider concept that nationality is within the domestic jurisdiction of the state.

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4 Historically, the word “citizen” comes from the Latin word “civitas” which in ancient times meant membership in a city. The idea of “citizenship” developed in the cities of ancient Greece and Rome about 700 B.C. Not all people of these cities had citizenship at that period. In AD 212, ancient Greek and Roman cities denied citizenship to slaves. During the 1500s and 1600s (i.e., the age of feudalism) nations ruled by Kings or queens developed. As a result, people began to think of citizenship as membership in a nation. The people of these nations gave their loyalty to their monarch and were often called “subjects.” During the 1700s democracies began to develop, people living in democracies gave their loyalty to the nations instead of the nation’s ruler. As a result the term “citizen” and “national” began to replace “subject”—the subordination of the individual to the power of monarch. Today, citizenship means full membership in a nation or in some other unit of government. See, The World Book Encyclopedia, USA, 1988 pp568-572; and The New Encyclopedia Britanica, Vol. 3. USA, 1994.

5 “Nationality” in the sense of citizenship of a certain state must not be confused with nationality as meaning membership of a certain nation in the sense of race, as in the case of London Borough of Ealing V. Race Relations Board 1972, I.AII ER. 104. In some cases, nationality means a person who owes loyalty to a country but lacks full membership in it. See, Camber’s Encyclopedia vol. IX, N.Y.1973 pp. 690-691


7 Harris D.J., Cases and Materials on International Law, 1998 p. 597
The rights of citizens differ from country to country. In Great Britain or Ghana these rights are referred to as civil and political rights which include the right to vote and the right to hold public office. In the U.S. they are referred to as civil rights and they include freedom of speech, freedom of religion and freedom of assembly (the right to gather peacefully for political or other purpose).

The duties of citizens of practically all States include the duty to pay taxes and to defend their State. Citizenship is, above all, a national institution. Therefore, each historical type of state is characterized by its own historical type of citizenship. In the conditions of economic inequality of people there is a vast difference between the legal status of a citizen and his or her actual position in society. The declared rights and freedoms of citizens are often practically unattainable for some categories of citizens in some countries. In addition, in a number of countries the legal status of various categories of citizens is sometimes quite different.

In the Nationality Decrees in Tunis and Morocco case of 1924, the Permanent Court of International Justice stated:

"Thus, in the present state of international law, questions of nationality are... in principle within the reserved domain of a State's domestic jurisdiction."

Nothing in the above statement should be construed as affecting the relevant provisions of international conventions and charters relating to questions of nationality. There is the duty of States to observe the rules set out in those international documents. The institution of citizenship (nationality) has international legal significance. Not only that it separates nationals of one state from nationals of another state, but also as a result of the nationality a person enjoys during his or her stay on the territory of another state, definite rights are provided for both citizens and foreigners. In addition, when abroad, nationals have the right to diplomatic protection on the part of their State.

Significant changes have occurred in the international legal institution of nationality under the influence of democratic ideas of developing countries subsequently embodied in their legislation. Entirely new norms have appeared.

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8 In Ghana, citizenship is an institution which has developed under the influence and experience of the colonial past, together with the development of the political and legal systems.

9 For example, under the British Nationality Act 1981 (or one of the corresponding categories under earlier legislation), individuals fall into one of the following categories: (a) British Citizens; (b) British Overseas Commonwealth Citizens; (c) British subjects under part IV of the Act; (d) British Department Territories Citizens (ie: Bermuda, Falkland Islands, Gibraltar, etc., B.N.A. 1981 sec. 6 and B.N.I. Hong Kong, 1977); (e) British Protected Persons. The U.S. Immigration and Naturalization Act of 1952 (Pub. Law 414) divided into two categories persons belonging to the USA as a state: (a) citizens of the United States and (b) "Second Class" citizens of the U.S. Today under the new enactment, no American is regarded a second - class citizen. Also the 1965 amendment gives preference to immigrants who have skills needed in the USA and have close relatives who are US citizens. The Canadian citizenship Act 1977 also provides for preferential approach to granting its citizenship. Australia and New Zealand also followed suit in this regard.
in international law on the legal status of the individual which require from States universal respect for basic human rights and freedoms of every individual without discrimination. In modern International law, principles and norms relating to questions of nationality are contained primarily in - the United Nations Charter; the 1957 Convention on the Nationality of Married Women; the 1948 Universal Declaration of Human Rights; the 1965 International Convention on the Elimination of All Forms of Racial Discrimination; the 1966 International Covenant on Economic, Social and Cultural Rights; and also numerous regional and bilateral treaties among states. Importantly, general rules are embodied in the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws. The general rules are:

**Article 1**

It is for each state to determine under its own law who are its nationals. This law shall be recognized by other states in so far as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality.

**Article 2**

Any question as to whether a person possesses the nationality of a particular State shall be determined in accordance with the law of that State.

**Article 3**

Subject to the provision of the present convention, a person having two or more nationalities may be regarded as its national by each of the states whose nationality he possesses.

**Article 4**

A state may not afford diplomatic protection to one of its nationals against a State whose nationality such person also possesses.

**Articles 5**

Within a third State, a person having more than one nationality shall be treated as if he had only one. Without prejudice to the application of its law in matters of personal status and of any conventions in force, a third State shall, of the nationalities which any such person possesses, recognize exclusively in its territory either the nationality of the country in which he is habitually and principally resident or the nationality of the country with which, in the circumstances, he appears to be in fact, most closely connected.

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11 In force since 1937 and Ghana is party to it. See (179) L.N.T.S 89.
12 For discussion on this rule, See Donner, "The Regulation of Nationality in International Law," (2nd ed. 1994) chap. 2; Hurst (1926) 7 B.Y. L.I. 163; Leigh (1971) 201 C.L.Q. 453; Sinclair (1950) 27 B.
The practice of certain States (those which refrain from exercising protection in favour of naturalized persons when the latter has in fact, by his prolonged absence, severed his links with what is no longer for him anything but his nominal country), manifests the view that, in order to be capable of being invoked against another State, nationality must correspond with the factual situation.

This principle of "domestic jurisdiction", cannot be said to apply to nationality acquired by naturalization following the decision of the International Court of Justice in the Nottebohm (Liechtenstein V. Guatemala) case of 1955.  

III. The Acquisition of Citizenship

The fact that nationality falls within the domestic jurisdiction of States means that the basis of the law varies from country to country. However, certain broad generalizations are possible.

1. Citizenship by Birth

Citizenship is primarily acquired at birth in the practice of States. This is the reason why the question of citizenship of children is always of special significance in the legislation of any state. In dealing with this question, states adhere to two principles namely, *jus sanguinis* (right of blood) and *jus soli* (right of soil). According to *jus sanguinis*, the nationality of a newly-born child is determined by the nationality possessed by his father or mother if illegitimate at the time of birth and does not depend on the place (territory) of birth. That principle is followed by many States in Europe, Asia and Africa including Ghana.

According to *jus soli*, the nationality of a child is determined by the place (territory) of his or her birth and does not depend on the nationality of his father or mother. The acceptance of *jus soli* as an exclusive principle is not

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13 The Court was asked to "adjudge and declare that the Government of Guatemala in arresting, detaining, expelling and refusing to re-admit Mr. Nottebohn and in seizing and retaining his property without compensation acted in breach of their obligation under international law." (I.C.J. Rep. 1955, pp 6-7). The court considered and rejected this contention on the evidence. It dismissed part of the evidence as irrelevant because it referred to "the control of aliens in Guatemala and not to the exercise of diplomatic protection" For details, see Jones (1956) 5, I.C.L.Q 230; Kunz (1960) 54, A.J.I.L.536; 2 Verzijl 210; I.C.J Report 1955, p4.

14 In Europe they include Austria, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Rep. Denmark, Estonia, Finland, Germany, Hungary, Latvia, Liechtenstein, Lithuania, Luxembourg, Italy, Netherlands, Poland, Slovenia, Ukraine, Turkey, Russian Federation, Yugoslavia. In Asia they include Bahrain, Bhutan, Cambodia, Japan, North Korea, South Korea, Sri-Lanka, Singapore, Thailand and almost all the Arab states. In Africa they include all states. All adherent states to the "Nationality of Parents rule" reject the exclusive "territorial rule", on the basis that it breaks up the traditional and religious order of lineage or descent in relation to place of birth. An exception to the nationality of parents rule in the legislation of some states is the adoption of children even when both parents are not nationals of the states in question. Part II Section 9 of the citizenship Act 200, of Ghana provided for such an exception.
common, although some Latin American countries like Brazil and Argentina turned that way. For example, any person born on the territory of Brazil is considered a Brazilian citizen, even if both parents are not Brazilians, while a child born of Brazilian parents outside Brazil is not considered to be a citizen of Brazil. And by the Argentine Nationality Act of 1954, the child of an Argentine father or mother born abroad acquires Argentine nationality only if one or both parents are in Argentine government service, or if the child returns to Argentine territory before he or she is eighteen years of age and maintained his or her domicile for at least one year.

The practice of exclusive territorial doctrine by these States, in fact, violates international human rights agreements related to children and their rights. On the one hand, it deprives the child of his right to his motherland (i.e., where parents are citizens). On the other hand, it imposes certain rights on a child whose parents are not nationals of the imposing state (i.e., when born on a foreign territory).

Many States are beginning to incorporate in their legislation the territorial principles but with certain limitations. Today in the United States, Great Britain, France, Canada, New Zealand, Belgium and many others, the principle of jus soli applies. For example, after the commencement of British Nationality Act of 1981, Britain maintains or extends British Citizenship to: British Dependent Territories Citizens, British Overseas Citizens, British Subjects, and British Protected Persons. A minor born abroad may be registered as a British Citizen where he or she is stateless, or one of his or her parents is a British citizen by descent. It is also extended to citizens of colonies who had the right of abode. Every person, who under the B.N.A. 1981, is a British citizen of any category, has the status of Commonwealth Citizen.
amended by B.N. Falklands Act 1983, S.4) In the case of United States of America, nationality will only extend to a child born abroad if one of its parents has maintained a residence in the United State for a given period prior to the birth.

Many complicated questions arise when the parents of a child possess different citizenships or nationalities. The legislation of some European States (for example, Italy, Germany, and Austria) give preference in such cases to the nationality of the father ("fatherland") and not of the mother ("motherland"). This clearly reflects the continuous existence of inequality between men and women in determining nationality in those countries. This practice, however, violates the principle of non-discrimination on the basis of sex, embodied in many international documents of which practically all States are signatories and have a duty to observe. One of the tasks of the United Nations in this regard, is to "reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small..." (Preamble of the U.N. Charter).

Ghanaian Practice

The Ghanaian legislation on citizenship proceeds from three important principles namely, "jus sanguinis", "equality" and "humanity". Citizenship of Ghana is primarily acquired by birth and adoption. If one of the parents of a child is a citizen of Ghana and the other a foreign national, the citizenship of the child does not depend on whether it is the father or the mother who is the Ghanaian citizen. And concerning the principle of humanity, the Ghanaian legislation includes the provision that:

"A child of not more than seven years of age found in Ghana whose parents are not known shall be presumed to be a citizen of Ghana by birth".  

17 See in particular, British Nationality Act 1981 - S1 for citizenship by birth or adoption; S.2 for classes of persons regarded as British Citizens not by descent; S.4 citizens by descent; S.5, 7, 8, 9, 10. for citizens by virtue of marriage; II (2) for exceptions to automatic acquisition. Note that the 1948 Nationality Act gave self-governing countries within the Commonwealth the right to nationality of their own Country and also to possess the status of a British citizen and described as "British Subject" or "Commonwealth Citizen". The U.K. also extends its nationality to all persons born on ships entitled to its nationality, but not to a child of alien parentage born on a foreign ship within British territorial waters.

18 They include, the Universal Declaration of Human Rights of 1948; the 1963 UN Declaration on the Elimination of All Forms of Racial Discrimination; International Covenant on Economic, Social and Cultural Rights of 1966; the Covenant on Civil and Political Rights of 1966; the 1953 Convention on the Political Rights of Women; the 1957 Convention on the Nationality of Married Women.

19 Part I section 7 of citizenship Act, 2000 (Act 591). Similar provision is embodied in all previous Acts of Parliament and Constitutions of Ghana. In the legislation of many other states like Great Britain, United State, Canada and majority of African states, it is clearly stated that - at least one parent should possess the citizenship of that country irrespective of sex.

20 Part I section 8 of citizenship Act, 2000 (Act 591). This provision affects children displaced in civil conflicts and war (eg. Children from Liberia whose parents are unknown).
The status conferred by adoption order requires that an adopted child (not more than sixteen years of age) is treated, where the adopters are married couple, as if he or she had been born as a child of the marriage and in any other case, as if he or she were not the child of any person other than the adopters.

2. Citizenship by Naturalization:
Naturalization is the legal method by which a foreigner can become the citizen or national of a country by fulfilling the stipulations of the relevant legislation in that country. \(^{21}\) Naturalization at the request of either a stateless person or a foreigner is the form that is most widespread \(^{22}\).

Each nation sets requirements that foreigners or aliens must meet to become naturalized. For example, foreigners cannot undergo naturalization in Canada or the United States unless they have lived there for a number of years (for example, three years in Canada, five years in UK, France and the United States) \(^{23}\). On the other hand, Israel allows Jewish immigrants to become Israeli citizens the day they arrive under a rule called "the Law of Return". Other nations naturalize only people who understand the rights and duties of their citizenship, or have "good character," \(^{24}\) and can use the national language or one of the local languages where the official language of that nation is the colonial one, (as required in many African and Asian countries). Additional qualifications often include the attainment of a definite age in the case of children (at least eighteen years old as in UK, United States, Canada and Ghana); a desire to settle permanently in the given State; having made or capable of making a substantial contribution to the advancement of the State of naturalization, (one of the listed requirements, as in the case of Ghana or the US); and many European countries require foreigners to give up citizenship in their homelands to become naturalized. Most of these requirements manifest a class approach to naturalization in those countries, an attempt to create grounds and pretexts for refusing naturalization to persons that are

\(^{21}\) This definition is taken from Cambers Encyclopedia vol. ix N.Y. (1973) P. 690. See also the definition from the following sources: The world Book Encyclopedia USA, (1988), P 570; Curzon, L.B., Dictionary of Law, FTPL, Great Britain (1988), P. 252.

\(^{22}\) In rare cases treaties or the passage of special laws may naturalize groups of people without the usual naturalization process. For example, an act of Congress naturalized the people of Puerto Rico in 1917. The United States had taken over Puerto Rico through the treaty that ended the Spanish–American War in 1898

\(^{23}\) Under the British Nationality Act 1981 S. 6(1), s. 1, the alien must show that he was in the UK at the beginning of the period of five years ending with the date of his application and that he has not been absent in that period from the UK for more than 450 days and has not been in breach of immigration Law.

\(^{24}\) Evidence of "good character" of a foreigner requesting naturalization (whether based on reputation, disposition of loyalty, law-abiding) vary from country to country and depends more on the political climate of a country at the time of application.
undesirable for political, social or other reasons. This amounts to discrimination against certain nationals and in international law it undermines the universality of the rule of law.

The Liechtenstein Law of 1934, for example, lays down conditions for the naturalization of foreigners. The law specified certain mandatory requirements, namely: the applicant for naturalization should prove:

1. That the acceptance into the Home Corporation (Heimatverband) of the Liechtenstein Commune has been promised to him in case of acquisition of nationality of the State;
2. That he will lose his former nationality as a result of naturalization, although this requirement may be waived under stated conditions (for example, residence for at least three years in the territory of the principality).

Similar conditions are manifested in the relevant provisions of the bilateral treaties concluded between the United States of America and other States since 1868, such as those sometimes referred to as “Bancroft Treaties,” and in the Pan-American Convention, signed at Rio-Janeiro in 1906, on the status of naturalized citizens who resume residence in their country of origin. The character, thus recognized on the international level as pertaining to nationality, is in no way inconsistent with the fact that international law leaves it to each State to lay down the rules governing the granting of its own nationality. The reason for this is that the diversity of demographic conditions has thus far made it impossible for any general agreement to be reached on the rules relating to nationality; although the latter by its very nature affects international relations.

Naturalization in the event of marriage is also regulated primarily by the domestic legislation of the state concerned. Because of this, there arises conflict of laws as a result of which a woman marrying a foreigner may either find herself a stateless person or, on the contrary, possess dual citizenship automatically (these are discussed in more detail in the next two sections). In order to facilitate the position of women, the Convention on the Nationality of Married Women was drawn up under the auspices of the United Nations in 1957. This convention stipulates that neither the celebration nor the dissolution of a marriage between the citizen of a given state and his foreign wife nor a change of the nationality by the husband during marriage shall automatically affect the nationality of the wife. Under this law a foreign wife may acquire, at her own request, the nationality of her husband in a specially

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35 The US has recently blacklisted states whose nationals are not eligible to naturalize in the US. (E.g. Iraq, Iran, Somalia, Afghanistan, North Korea, etc.) described as “Rogue States.” This is based on allegations that these states associate or support terrorist activities and/or other political activities.
36 In force since 1967 and Ghana is a party thereto.
simplified procedure of naturalization. In Ghana, under section 10(2) of the Citizenship Act, 2000, "a person who is not a citizen and is or was married to a citizen of Ghana may, upon application in the prescribed manner, be registered as a citizen of Ghana." To supplement the above provision, the Immigration Act, 2000 (Act 573) introduces another means by which persons married to Ghanaian citizens can acquire constitutional rights and duties assigned to Ghanaian citizens. In particular, section 16 of this Act grants indefinite residence for foreign spouses of Ghanaian nationals.

Many states which are party to the Convention on the Nationality of Women have not adhered to it, and in many of them discriminatory legislation continues to remain in force. For example, under the legislation of many Latin American States (Brazil, Argentina and Ecuador, in particular) a foreign woman who marries a national of a given State automatically acquires the nationality of her husband. In Afghanistan, should a foreign woman be a widow or divorcee, her newly acquired Afghan nationality will also extend to the children by the previous marriage even if their father is a non-Afghan, while in the UK, a British woman marrying a foreigner only loses her British nationality if she acquires that of the husband. Under the citizenship law of the United States, a foreign woman does not become American citizen until the necessary period of residence in the United States is completed. In addition to that, she must fulfill the statutory requirements in order to naturalize in that country.

The granting and reintegration (the restoration of original nationality) are special cases in the acquisition of citizenship. They are regulated by both legislative instrument of a state and international law. International legal practice also knows such special cases of changing nationality as option and repatriation. The restoration of nationality and granting of nationality are seldom practised today. In the event of restoration, a simplified procedure is used to recover the original nationality. In accordance with Section 16(5) of the Citizenship Act of Ghana.

A citizen who lost his citizenship as a result of the law in Ghana which prohibited the holding of dual citizenship by a Ghanaian.

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27 Citizenship by marriage is acquired through simple registration (not automatic) in most African and Asian countries.

28 Option or the selection of a nationality normally takes place during the transfer of a given territory from one state to another. The people living in that territory may, on a voluntary basis and individually, choose nationality - either retaining their original nationality or adopting the nationality of the state to which the territory is being transferred. And it is presumed that the applicant will live on the territory of the states whose nationality he has chosen, for example option was provided for in the Peace Treaties of 1947, in connection with territorial changes in Europe, following the Second World War. Also option was provided for in the transfer documents that granted African countries independence from colonial rule, giving Europeans in the African countries the chance to select nationality (eg. British in Zimbabwe, Belgians in Congo; the French in Algeria).
may on an application to the Minister be issued with certificate of citizenship which shall be effective from the date of issue.

A certificate issued under the above section shall specify whether the citizenship is by birth, adoption or naturalization.

IV. Loss of Citizenship

Citizenship or nationality may be lost by voluntary renunciation or through involuntary loss or deprivation. The conditions for this vary from country to country, but the general situation can be considered here.

1. In order to renounce one's citizenship what is required above all is an initiative by the applicant in accordance with the procedures established by the given State's legislation. The State has the right to refuse application to renounce nationality. The grounds on which an application for renunciation of citizenship may be refused are usually indicated in the legislation of the state concerned. It is normally refused if the applicant has failed to discharge his legal obligations to the State, or has not fulfilled his property obligations which substantially affect the interest of citizens or the State or other public organizations. The nationality law of Ghana is not specific about the conditions under which renunciation may be refused, but the decision lies with the Minister of Interior.

2. Involuntary loss of citizenship or deprivation of nationality occurs when the citizen's actions are viewed by the legislation of a given state as incompatible with the citizenship law of the state as in the case of United Kingdom, France, Italy, United State and Canada. These countries allow citizens to expatriate themselves. In that case, a distinction is usually made between citizens by birth and naturalized citizens. Actions that result in an involuntary loss of citizenship or nationality include the following: acquisition of nationality of another state as in the case of United States, Canada, Germany and Ghana.

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29 Repatriation in the sense of resumption of one's former nationality by leaving one country and settling in another. A classical example is the former Soviet Polish agreement on repatriation on 25th March 1957 in which persons of Polish nationality, living in the former USSR and having before 17th September 1939 Polish nationality, could repatriate into Poland where they would automatically receive Polish nationality. A recent case is the repatriation of Soviet Jews to Israel after the collapse of the USSR in December 1991.

30 French legislation of 1921 applying the policy of compulsory change, (deprivation by process of law) to Tunisia and Morocco which was contested by Great Britain and led to the advisory opinion of the permanent Court of International Justice on Nationality Decree in Tunisia and Morocco. See Hudson M.O., World Court Reports 1934 vol. 1. P. 134. The case was finally settled by a treaty between the two powers (Britain and France). Similar problems were considered by the “Franco–Mexican Claims Commission” in the Pinson case of 1952 concerning Arbitral Awards, (1952 Vol. 51. 327).
(before the commencement of the citizenship Act 2000); entry into the military service of another state as in the case of Cuba, China, North Korea, Russia, Ukraine, Azerbaijan, Armenia, Belarus, and Georgia; desertion or evasion of military service in time of war and state of emergency as used to be the case in former Soviet Union, or in Poland (before 1991 reforms, or GDR (before 1990 unification); disloyalty as in the case of United Kingdom (event of manifestion of disloyalty to the British Crown); supporting organizations whose activities are incompatible with the acquisition of nationality through naturalization and disloyalty to the principles of the constitution as in the case of United States; acquisition of citizenship by fraud as in the case of Ghana.\footnote{For a quarter of a century ago (particularly during the cold war) grounds for deprivation of citizenship or nationality were defined by ideological concepts by the configuration of three worlds- the Communist, the Capitalists, and Non-alignment - so there were no common grounds. Following the disintegration of the Soviet Union, efforts are being made by States for common purpose and interest concerning questions of nationality. For further discussion on this point see, Henken, International Law, Politics and Value, 1995, 229-263.}

In Ghana, deprivation of citizenship may take place by a decision of the High Court on application by the Attorney General but in exceptional cases when the person has committed acts discrediting the lofty status of citizens of Ghana and damaging the prestige or threatening the security of state. Deprivation does not, however, affect citizenship by birth or adoption and does not affect nationality of the spouse or children of an affected person. It should be possible under the present law, for a person who has been deprived of Ghanaian citizenship, to regain it on request upon a decision of the High Court.
V. Stateless Persons

Statelessness is the lack of citizenship in any country. Lack of citizenship, a situation in which a person is not a citizen or national of any State, may result from the following cases:

1. When a person has lost his citizenship (either by giving the citizenship up voluntarily or through an action of government) in one country without acquiring citizenship of any other state;

2. When upon marriage to a foreigner, a woman automatically loses her own nationality and according to the laws of her husband's country she does not also acquire its nationality by marriage until certain requirements are fulfilled (for example, a Brazilian woman or a Mexican woman married to an American becomes stateless for so long as she loses her own nationality by marriage and does not also satisfy the laid down conditions of becoming an American citizen);

3. When a child of foreign parents is born in a country that does not grant "jus soli" and the parents' homeland does not also grant "jus sanguinis". For example, a child born of Argentine parents on the Ghanaian territory is denied Argentine citizenship and does not also acquire the Ghanaian citizenship since Ghana adheres to the "principle of nationality of parents" (ie. one of the parents should be a Ghanaian citizen), that child becomes stateless unless he is either adopted by a Ghanaian citizen before the age of sixteen or he acquires it himself by means of naturalization when he is of age);

4. When a person has his homeland destroyed by war (with no state system in place) and does not acquire citizenship of any other State (for example, Liberians who came to Ghana during the civil conflict or Somalis living in neighbouring States as a result of the 1991 civil war).

32 See, provision for reducing statelessness under the British Nationality Act 1981, S. 36 s. 2.

33 Government action could be through expatriation or deportation. In 1935 for example the German government led by the Nazi dictator Adolf Hitler expatriated all Jews living in Germany which resulted into many Jews becoming stateless persons for decades. With regard to the deportation of stateless persons British practice has been expressed as follows: "H. M. Government observe the principle that an alien should not be deported except to the country of which he is a national. Accordingly, it is not the practice to deport stateless aliens resident in the United Kingdom (L.N.O. J 1934 P 373. This remains in Britain practice and other commonwealth nations. See also the 1955 European Convention on Establishment, European Communities allow freedom of movement for employment for nationals of member states. Also several human rights treaties include provisions against the expulsion of aliens (CCPS, Act 13).

34 Note that the opposite would be a different situation – ie if a child is born to Ghanaian parents on the Brazilian or Argentine territory, the child will automatically possess Brazilian or Argentine citizenship by "jus soli" and at the same time posses the Ghanaian citizenship by "jus sanguinis". Such a situation will result into the child possessing automatically dual citizenship.
Stateless persons find themselves in a less advantageous position than citizens of any state. They do not enjoy all those rights the state provides for its citizens and also they do not have right to diplomatic protection on the part of any state. In a few countries, stateless persons are given the rights of foreign nationals. Such practice is followed by countries like, Latvia, Albania, Russia, Hungary and Romania. Stateless persons residing in those countries are protected under special law. Their rights and freedom are specified by legislation, including the right to apply to a court and other state bodies for the protection of their personal property, family and other rights. Stateless persons residing in those countries are obliged to respect the constitution and observe the laws of the host country.

In the United States and some European countries like United Kingdom, France, Italy, Germany, Spain and Portugal, stateless persons have quite limited rights (for example, the right to work and the right to receive subsidies). The Ghanaian legislation does not specifically provide for stateless persons though it does not prohibit their residence in Ghana. Generally, legislations of States have not gone far enough to protect the interest and freedom of stateless persons.

VI. Dual Citizenship

Concerning dual citizenship, the present article does not address the socio-economic facts in particular nor advocate any position beyond the application of both national legislation and international law. The aim here is not to condemn or defend the new enactment (which at the moment, is practically insignificant), but an attempt to provide a resource for others grappling with the many legal questions raised by the citizenship law of Ghana and to modify our comprehension of certain fundamental issues relating to dual citizenship as in the practice of States.

Under dual citizenship, a person is simultaneously a national of two States. This legal status usually arises not at the request of the person in question, but as a result of different decisions by the legislation of particular countries on questions relating to the acquisition and loss of nationality. For example a child born on the territory of "jus soli" (as in Argentina) of a mother and father who are citizens of a State in which citizenship is determined by the citizenship of the father (as in Italy), will have dual citizenship automatically.

33 The economic motive of the Ghana government for creating the dual citizenship regime was confirmed by the then Acting Minister of Interior, Dr. Kwame Addo-Kufuor in his statement that "it has become imperative for the government to quickly put into effect measures to enhance access to the dual citizenship due to the contributions Ghanaians abroad made towards the economic development of the nation... USS 400 Million is remitted annually by Ghanaians abroad to boost Ghana’s economy against contributions from foreign direct investment which records about USS 200 Million annually... (see, the Daily Graphic of July 4, 2002)."

34 The child may even possess multiple citizenship when born on the territory of "jus soli" (eg Peru) and the father from a country, where citizenship is determined by citizenship of the father (eg Italy) and the mother from a country where her citizenship could also determine citizenship of the child (eg Ghana).
Dual citizenship may occur in the event of the marriage of a woman to a foreigner if she automatically acquires the citizenship of her husband's country by the marriage, while still considered by her home country as a citizen. For example, a Russian woman married to a Mexican, will be recognized in both countries as their citizen so long as she remains in the marriage.

Dual citizenship may be the result of naturalization if the State of the original citizenship refuses to recognize renunciation of the original citizenship.

Dual citizenship in rare cases\(^{37}\) may be the result of a country's parliamentary enactment as in the case of Ghana\(^{38}\) to enable its citizens hold the citizenship of any other country in addition to the original citizenship.

In the event of dual citizenship, each State in accordance with international law may refuse to recognize another citizenship for its citizen and view him only as its own citizen. This generally recognized provision is recorded in particular, in the Convention on Certain Questions Relating to the Conflict of Nationality Law of 1930\(^{39}\) which states inter alia:

"A person having two or more nationality may be regarded as its national by each of the States whose nationality he possess."

Apart from the social and economic implications, such legislation undermines the sovereignty of a State\(^{40}\). Hence, majority of States avoid dual citizenship as a legal regime established by a legislative act. The laws of many countries in the world prohibit dual citizenship for their nationals. And some of these countries, including Germany, Italy, Austria, Netherlands, Ukraine, Finland, Canada, Romania and some Asian countries, require foreigners to renounce citizenship in their homeland in accordance with procedures established by their legislation to become naturalized\(^{41}\).

It means that Ghanaians holding citizenship of these countries or who wish to acquire any one of them would still not derive any benefit from the dual citizenship regime. It must be noted that, dual citizenship does not yield any advantages but leads, in a number of cases, to difficulties for the State and the person possessing dual citizenship with regard to compulsory military service, especially in the event of war between the States of nationality; in

\(^{37}\) Apart from Ghana only a few countries have dual citizenship by a legislative act.

\(^{38}\) In Ghana dual citizenship is regulated by the citizenship Act, 200 (Act 591) and in particular, part III Section 16 (1) of the Act.

\(^{39}\) (179) UNTS, 89

\(^{40}\) The ultimate authority in a state over its national and freedom of a state from external control. Sovereign equality principle is not attainable.

\(^{41}\) The Minister of Interior Hackman Owusu – Agyemang was reported recently in the papers "worried about the rate at which Ghanaians are renouncing their Ghanaian citizenship to become German citizens" (Network Herald vol.223, 1st – 2nd Sept.2000 P 7). That country does not recognize dual citizenship or allow the holding of any other national passport in addition to their own.
diplomatic protection; ineligibility for certain jobs requiring high-level security clearances etc. When one State has conferred its citizenship upon an individual and another State has conferred its own on the same person, it may occur that each of these two States (considering itself to have acted in the exercise of its domestic jurisdiction) adheres to its own view and bases itself thereon in so far as its own actions are concerned. In so doing each State remains within the limits of domestic jurisdiction. Another important disadvantage for the individual is that, a holder of dual citizenship always has his rights limited in both countries of nationality which constitute a violation of his human rights and freedom under the constitutions of both countries.

International arbitrations have decided numerous cases of dual nationality, where questions arose with regard to the exercise of protection. They have given their preference to the “real and effective” nationality, that which is accorded with the facts and based on stronger factual ties between the person concerned and one of the States whose nationality is involved. Different factors are taken into consideration, and their importance will vary from one case to the next. The habitual residence of the individual concerned is an important factor, but there are other factors such as the centre of his interest, his family ties, his participation in public life, attachment shown by him for a given country and inculcated in his children etc.

National laws reflect this tendency when, inter alia, they make naturalization dependent on link, which may vary in their purpose or in their nature but which are essentially concerned with this idea.

VII. Conclusion and Recommendations

Conclusion

As we can see from the descriptive analysis and discussions presented in this article, citizenship regimes are complex and often fraught with obstacles. For example, as indicated, there are several grounds for refusing naturalization to persons that are undesirable for political, social, national or other reasons, and constitutional problems in certain states that may limit the ability to cooperate where there is conflict of laws. In certain circumstances States may consider that such cooperative procedures are wholly inapplicable especially where the urgency of the situation demands swift action.

42 The right of a state to use its discretion is nevertheless restricted by obligations which it may have undertaken towards other states, see Canevari case, Italy v. Peru (1912); Salem case, Egypt v. U.S. (1932); Iran – US Claims Tribunal (1984) – see these cases in Harris D.J., Cases and Materials on International Law, London, 1998 pp 586 – 623.

43 Cases of this nature are handled by international arbitrators or by the court of a third state. But they often find that they were confronted by two contradictory assertions made by two sovereign states. An assertion made would consequently have to be regarded as having equal weight and thus fail to resolve the conflict submitted to them.
It has been considered that, the best way of making nationality rules accord with the varying demographic conditions in different countries is to leave the fixing of such rules to the competence of each State. On the other hand, a State cannot claim that the rules it has thus laid down are entitled to recognition by another State, unless it has acted in conformity with the general aim of making the legal bond of nationality accord with the individual's genuine connection with the State which assumes the defence of its citizens by means of protection as against another State.

It can be said that the Ghanaian experiment, on the whole, is not peculiar so far as theory and practice are concerned. However, after the commencement of the 

\textit{citizenship} Act, 2000, the citizenship law of Ghana has assumed new dimensions worth studying. For example, the dual citizenship is of special interest. It is clear from all indications that dual citizenship by legislation is not the common practice of States and it is a regime far beyond the concept of \textit{Golden Age of Business}. It is a regime more of a politico-legal relationship of a person to the states concerned, rather than an economic relationship between the states of citizenship for mutual benefits. The disadvantages of dual citizenship which are discussed in the present article (from legal perspective) warn us against any false economic optimism. Over 500 Ghanaians in the diaspora have since the implementation of provisions of the Dual Citizenship Act in May 2004, been already issued with dual citizenship by the Ghana Immigration Service. However, it does not necessarily mean that it will cause any significant increase in the remittances of these individuals. If the aim is to reward Ghanaians with foreign nationalities in recognition of their contribution to the development of the nation through their remittances, then it unfairly excludes Ghanaians who also remit some of their income to relatives at home regularly but do not acquire citizenship of their country of residence for one reason or the other. As we have seen, the law of most of the developed countries in particular do not recognize or accept dual citizenship and even ask for renunciation of one's original citizenship before being allowed to naturalize. It follows, therefore, that Ghanaians holding the citizenship of the "rich" countries like Germany, Netherlands, Canada; Japan and France, from where the bulk of Ghana's foreign remittances come, can still not enjoy any benefits of the dual citizenship in Ghana because these countries and many others do not recognize dual citizenship for their nationals, whether by birth, adoption or naturalization. And the individuals who really possess the dual citizenship also have limited rights in both countries of nationality or they lack full

\textsuperscript{44}The sustainability of the current annual remittances level of US $ 400 million is quite unpredictable under the changing economic conditions of other states. The extent to which this is true lies in the fact that the amount of money which individual Ghanaians transfer from abroad is related to socio-economic and legal conditions in those countries which also have the tendency to change.
membership of any State. At the institutional level also, the right of a State
to use its discretion is nevertheless restricted by obligations which it may have
undertaken towards other States on the question of citizenship. So far as a
holder of dual citizenship is simultaneously a national of two States, difficulties
inherent in varying and conflicting citizenship laws are likely to be encountered.

Recommendations:
In order to prevent or reduce cases of nationality (citizenship), certain
legal arrangements should be in place and the most important of these are the
following:

i. It should be recommended that, Ghana should endeavour to
   conclude bilateral and multilateral agreements with other states
to regulate questions of citizenship. Such agreements should
first and foremost reflect maximum protection of individual
rights of persons possessing the citizenship of the contracting states.

ii. The basic principle of such agreements should be that parents
   (who are citizens of the contracting States) should by mutual
consent, choose for a child the citizenship of either of the States.

iii. Agreements may include a provision that persons residing on
    the territory of one of the contracting States, whom both States
consider their citizen may freely choose the nationality of the
contracting States as his place of domicile (permanent home).

iv. Agreements with other States should provide for optional legal
    mechanisms, which are acceptable to contracting States for the
settlement of conflicts that may arise from dual citizenship. It
is only under conditions of common concern of States, that it
is possible to secure and exercise the basic rights and freedom
of the individual holding dual citizenship and ensure national
security of States that encourage dual citizenship.