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The Nationality of Married Women Under Ethiopian Law

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I

The provisions of the Ethiopian Law of Lationality of 1930 relating to the nationality of married women have, of late, been the subject of different interpretations. In a labour dispute[1] between Mrs. Svetlana Mamadova and the American Community School which involved the nationality of a Russian woman married to an Ethiopian subject, the Conciliation Officer of the Ministry of Labour and Social Affairs held that Mrs. Svetlana had become an Ethiopian subject by virtue of her marriage with an Ethiopian national. On appeal, the Awraja Court ruled that Mrs. Svetlana would not become an Ethiopian subject under Ethiopian law, by the mere fact of her marriage with an Ethiopian national. This decision of the court was subsequently endorsed by the Office of the Procuracy.

The decision of the Awraja Court raises two interesting and important issues regarding the nationality of alien women married to Ethiopian nationals: What is the effect of marriage, under Ethiopian law, on the nationality of alien women married to Ethiopian nationals? Can Ethiopian court deny Ethiopian Nationality to an alien women married to an Ethiopian national on the ground that the Ethiopian Law of Nationality does not allow dual nationality?

In this paper, it is proposed to show that the provisions of the Ethiopian Nationality Law of 1930 relating to the nationality of alien women married to Ethiopian nationals are based on the old concept of the unity of the family. For this purpose, the evolution of the law on the nationality of married women is examined with a view to putting the Ethiopian Law of Nationality regarding married women in context. This is followed by a brief discussion of the issue of dual nationality, as this, too, is an issue with regard to which there appear to be differences of conceptions and interpretations. After a brief survey of the possible sources of the Ethiopian Law of Nationality of 1930,the application of this law by the Awraja Court to a case involving the nationally of an alien women married to an Ethiopian national is examined. Finally, a few remarks are made, by way of conclusion, on the distinction between law making and the judicial function, and the danger of

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overlooking the consequences which follow when one oversteps into the realm of the other.

II

The development of the concept of nationality presupposes the emergence of nation-states and a system of international relations.[2] The enactment of nationality rules is of no practical significance for a state's population where such a state does not have international relations with other states. In the absence of other states, and, therefore, of international relations, the problem of what Panhuys calls "marginal cases" [3] does not arise. Because a plurality of states exists interconnected more and more within a system of international relations, the problem arises when there occurs doubt as to whether or not an individual belongs to one state or another. The problem of determining whether an individual belongs to one state or another appeared in its concrete form with the introduction of compulsory military service and the universalization of national political rights.[4]

A determination that an individual is a national of a state to the exclusion of other states necessarily involves the relationship between states. It can be seen, therefore, that, ideally, questions of nationality ought to be determined by international law.

However, as the concept of nationality is a recent phenomenon, international law has not as yet developed concrete rules to govern matters of nationality. International law simply recognizes that each state has the right to determine under its own law who its nationals are.[5]

The nationality of married women is, thus, determined by the laws of each state. Provisions of the nationality laws of states are based on one of the two basic principles governing the nationality of married women. The first of these principles is one which requires the nationality of the wife to follow that of her husband, while the second principle reserves to the married woman the right to choose her own nationality. Until the close of World War I, states invariably applied the first principle in accordance with which marriage by itself conferred the nationality of the husband on the woman. A number of arguments are forwarded to justify the acquisition by the wife of the husband's nationality. It is urged that the unity of the family should be maintained by having all members of the family - wife, husband and children under age - belong to the same nationality. The argument here is that this avoids the difficulties that the family faces when husband and wife are subjected to

different and possibly conflicting regimes of allegiance.

Where wife and husband belong to different legal systems, the family can be made to face serious hardships when called upon to discharge different legal obligations which have to be met from resources which may or may not be held in common.[6] From the point of the state, too, it is argued that the sovereign is entitled to the undivided allegiance of the family as a whole. It is almost always the case that marriage brings the wife to the state of which the husband is a national. And whoever is found in the territory of a sovereign owes allegiance to him. Moreover, it is said, in connection with this, that it is convenient for the state to take the family as the unit of nationality.

It is, however, obvious that the concern for maintaining family unity or the unity of allegiance of the family by having the women acquire the nationality of the husband without consideration of the consent of the wife hides a serious imbalance behind it. For it is clear that the law fails to take the woman as an individual in whom inheres the inalienable right of being consulted for her consent in a matter that directly affects her as an individual.

The unity of the family and its unity of allegiance could have been preserved by having the husband acquire the nationality of the wife in the same manner as the wife is made to acquire the nationality of the husband. It has almost always been the case that it was the woman who had to adopt the nationality of the husband and not the husband who had to adopt the nationality of the wife. [7] In the relatively rare case of the husband living in the territory of the state of which the wife is a national, the procedure of naturalization in which both the act and intent coincide was made available to the husband. The wife did not enjoy this opportunity.

This disregard of the right of the woman in the law of the nationality of married women represents a development backwards. Before the advent of male chauvinism during the feudal era, the law of nationality of married woman was more humane and egalitarian. It was by and large based on the principle of Roman law, "No one should change his *civitas* or remain in one against his will."[8]

In the United States of America, the acquisition, retention and loss of nationality was, until 1855, a matter that depended on the will of the person concerned. Indeed, such freedom was thought to be a natural and inherent right of all people, indispensable to the enjoyment of the right of life, liberty and the pursuit of happiness.[9]

However, one observes that it did not take long for the American legal system to fall into the traps of male chauvinism. In 1855, the American Congress passed an Act which conferred U.S. citizenship on any alien woman who married an American citizen.[10] And in 1907, the picture was completed when the U.S. Congress passed another Act, pursuant to which a U.S. woman married to a foreigner acquired the nationality of her husband, i.e., she lost her American citizenship.[11]

The American law of nationality was thus brought "up-to-date" to make it conform with the common law principle applied by the British legal system after 1844. In England, the common law principle that the national status of a woman did not change upon marriage applied until 1844.[12] This common law rule applied both in the case of an alien woman married to a British subject and a British woman married to a foreigner. [13] The basis of this rule is the feudal concept of allegiance, that one's allegiance to the king could not be changed at will.

This common law rule, however, had to give in,finally,to the influence of the relatively modernized feudal rule which appeared in the Code Napoleon of 1804. The Code Napoleon, while retaining, in Article 12, the rule that an alien woman married to a Frenchman followed the condition of her husband, provided in Article 19 that a French woman who married a foreigner would also follow the condition of her husband. This provision of the Code represented a step forward, since, under the feudal rule as expressed in the principle of the common law, a woman married to a foreigner was not allowed to change her allegiance by acquiring the nationality of the husband.[14]

This, then, was a partial liberation for women in the spirit of the French Revolution.

The Code Napoleon was more significant by the influence it had over the evolution of the law of nationality of married woman throughout the continent of Europe. Thus, in 1844 the British Parliament adopted an Act in accordance with which an alien woman who married a British subject acquired the character of a naturalized British subject. This was the first departure from the common law principle. The British law of nationality of married women was made more complete when, in 1870, Parliament passed another Act, pursuant to which a married woman would be deemed to be the subject of the state of which her husband was for the time being a subject.[15]

Again, the French legal system took the lead in the area of the nationality of

married women when, in 1889, Article 12 of the Code was altered and a further proviso added to the effect that a French woman would not change her national status upon marriage unless her marriage conferred upon her the nationality of the husband.[16]

The principles laid down in the Code Napoleon regrading the nationality of married women had their gradual impact throughout the so-called civilized world.

The influence of the Code enormously increased especially during the period that followed the conclusion of the First World War. By around 1930, as many as fifteen of the European States had adopted nationality laws providing for the acquisition by an alien woman of her husband's nationality. Some of the Latin American states and all five of the Scandinavian states had adopted similar laws.[17]

III

It has been said that citizenship is a result of both act and intent, and that a person may reside in one state and be a citizen of another state.[18] This implies that a person cannot be forced to acquire or lose his citizenship unless he has taken some action and shown some intention to that effect. This statement may be correct with regard to cases of the acquisition and loss of citizenship in connection with the normal procedure of naturalization and expatriation. With regard to the acquisition and loss of nationality by married women, however, this statement could not have been correct between the second half of the 19th century and the first half of the 20th century. It is not correct even to this date with regard to the legal systems of many states, including that of Ethiopia.

Article 12 and 19 of the Code Napoleon, the Acts of 1844 and 1870 passed by the British Parliament and the laws of 1855 and 1907 adopted by the U.S. Congress, which enormously influenced the development of nationality laws adopted by other states, were all based on the feudal concept of allegiance. Because of this circumstance, we find the interests of the sovereign for the undivided allegiance of the family under the guise of maintaining the unity of the family, having been given preference at the expense of the freedom of the married woman. Thus, the mere fact of marriage was sufficient to deem the wife the national of the state of her husband. The consent of the women was bluntly disregarded, and sometimes assumed in a matter that directly concerned her personal status.

In the United States, prior to 1922, an alien woman married to a U.S. citizen

became herself a U.S citizen irrespective of her consent. In a case of marriage of an alien woman to a U.S. citizen (Brader v.Zubrick), which occurred in 1922, the U.S. Court held that the alien woman had acquired U.S. citizenship *by such marriage*[19] (emphasis added). During the period that preceded 1922, the rule laid down in Kelly v. Owen applied, so that a *state of marriage* to a citizen was sufficient to confer citizenship.[20] In general, in the absence of a contravening status, the citizenship or nationality of a wife was, during coverture, that of her husband.[21]

Sometimes, consent to renounce nationality by the woman was held to be implied from the act of marriage itself. In Mackenizie v. Hare, the U.S. Supreme Court found the intent to renounce U.S. citizenship in the act of marriage and the presumed knowledge of the legal consequences of such an act.[22]

The same argument can be made that the consent of alien woman to acquire the nationality of the husband is implied from the act of marriage. In the opinion of this writer, however, it is difficult to take conset given in respect of marriage as consent given in respeect of the acquisition or loss of one's nationality. The conclusion of marriage is a juridical act having its own juridical consequences. The acquisition or renunciation of nationality is an entirely different and independent juridical act, having separate and other juridical consequences.

One can give his consent to accept the juridical consequences of marriage and still withhold his consent to accept the juridical consequences of acquiring a new nationality or of renouncing his nationality. To imply consent to acquire or renounce one's nationality from the act of concluding marriage, it appears, is yet another method which tends to perpetuate a basically unjust legal situation that developed on the basis of an outworn concept of allegiance.

The difficulty of having to justify a discriminatory and unjust rule is apparent from the reasoning of the Court.

In this same case (Mackenzie v. Hare) where the status imposing loss of nationality upon American women on marriage to foreigners was challenged as discriminatory and arbitrary, the Court ruled that, since the wife acquired automatically her husband's nationality under the concept of marital unity then prevalent in the laws of other states, the law causing American women to lose involuntarily their American citizenship simultaneously was a reasonable attempt to achieve the political ideal of unitary citizenship.[23] It did not then matter that this political ideal of unitary citizenship was achieved at the expense of the freedom of married woman to choose her own nationality.

Viewed from this point of view, the categorization of the acquisition upon marriage by an alien woman of her husband's nationality as a form of acquisition of nationality by naturalization [24] is equally misleading. To the extent that acquisition of nationality by naturalization presupposes both the act and intent of the person naturalized,[25] it certainly cannot describe the manner of acquisition of nationality by an alien woman married to the national of another state. For, in the marriage of an alien woman to the national of another state, the effect of marriage was automatic, and neither act nor intent was required for the alien wife to acquire her husband's nationality and to lose her original nationality, too. The real purpose of nationality laws prior to 1922 as regards some countries, and long afterwards as regards many others, it should be noted, was, with respect to married women, to achieve the political ideal of unitary citizenship and thereby to maintain a unity of allegiance. [26] This political ideal was achieved by ignoring the natural right of the married woman to express her consent when she acquired her husband's nationality and lost her original nationality.

The practice of continental Europe was not different from that of the U.S. in this regard. In Europe, too, marriage *ipso facto* involved a loss of nationality by the wife. During the period that elapsed after World War I, as many as fifteen European states had adopted nationality laws on the basis of which alien women married to their nationals acquired their husbands' nationality *unconditionally*.[27]

In all the five Scandinavian states, alien women automatically acquired their husband's nationality. In Germany and Italy, too, marriage of an alien woman to a national had the automatic effect of giving to the alien woman the husband's nationality.

As things stood then, the automatic effect of marriage was so widely practised and strongly adhered to by so many of the major countries of the world, that President Hammarskjld had to admit at the International Law Conference held in Stockholm (1923): "Under present conditions, a reform which would deprive marriage of its automatic effect on the nationality of the wife would have very little chance of being universally accepted." [28] Indeed, some international jurists went even further and suggested, as a principle of international law, that the nationality of the married woman was presumptively that of her husband.[29]

Thanks to the efforts of women's organizations since the beginning of the 20th century, and the opinions of prominent international jurists, the law relating to the nationality of married women continued to draw the attention of the legislators of

different states, especially after the end of World War I. No doubt, this legislative concern was prompted by the difficulties alien women and their husbands had to face during the course of the war.

Russia was the first state to take legislative action in this regard. In 1918, she adopted a law to the effect that marriage per se did not affect the nationality of the wife.[30] However, the law cannot be complete where it does not adequately provide for the procedure whereby an alien woman married to a national can, if she desires, acquire her husband's nationality and lose her original nationality.

It was, therefore, the Act of 1922 passed by the U.S Congress which really set in motion legislative activity relating to the nationality of married women. In this Act (known as the Cable Act), certain provisions were made so that:

a) mere marriage of an alien woman to a U.S. citizen did not automatically give her U.S.citizenship, which she could acquire only through naturalization; and

b) the mere marriage of a U.S. woman to an alien did not result in her loss of U.S. citizenship unless she made formal renunciation.[31]

The Cable Act had had its gradual impact on the legislation of a number of states. Belgium (1922), Rumania (1924),France (1927), Norway, Sweden, Denmark, Iceland and Finland (1924-27) adopted new laws affecting to varying degrees the principle that a woman's nationality depended on that of her husband.[32]

Around this period, too, various international bodies were actively involved in the development of concepts that would guide national legislation on the issue of the nationality of married women. In its 1922 Conference, the International Law Association declared that, in its opinion, it would be desirable to fix by treaty the nationality of the married woman, reserving to her as far as possible the right to choose her own nationality.[33] A model status prepared along those lines was adopted the following year, 1923, at the Stockholm Conference of the Association.

The Commonwealth Conference, too, held in 1926, expressed its concern over the effect of marriage on the nationality of married women.[34]

Finally, the Committee of Experts for the Progressive Development of International Law set up by the League of Nations found that the law of nationality (including that of married women) was ripe for codification.

These various efforts led to the adoption at the Hague, in 1930, of the Convention on Certain Questions Relating to the Conflict of Nationality Laws.

Nevertheless, this Convention did not go as far as restoring to the married woman the right to choose her own nationality. Article 8 of the Convention stated:

> "If the national law of the wife causes her to lose her nationality on marriage with a foreigner, this shall be conditional on her acquiring her husband's nationality."[35]

The Convention in its very first Article reaffirmed the rule that it is the right of each state to determine under its own law who are its nationals. Once this rule was adopted, it was inevitable that the automatic effect of marriage had to be recognized in an indirect way. Articles 8,9 and 11 are based on this recognition. Thus, the Convention limited itself, in this regard, to regulating the problems of dual nationality and statelessness which unavoidably followed from the rule laid down in Article 1. Consequently, the problem of the nationality of married women was not considered as a problem by itself; the Convention was interested in the law of nationality of married women only as it gave rise to dual nationality and statelessness.

Indeed, as general state practice and international conventional law was based on the traditional principle that, during coverture, the nationality of the wife followed that of the husband, the authors of the 1930 Convention did not seek to promote the recognition of the rights of women nor to achieve equality of rights between husband and wife in matters of nationality.[36] The Conference, therefore, deemed it necessary to append a recommendation for national legislation. Recommendation IV thus adopted by the Conference stated:

> "The Conference recommends to the States the study of the question of whether it would not be possible.
>
> (1) to introduce into their law the principle of the equality of the sexes in matters of nationality, taking into consideration the interest of the children, and especially,

(2) to decide that, in principle, the nationality of the wife shall henceforth be not affected without her consent either by the mere fact of marriage or any change in the nationality of her husband."[37]

The Convention was ratified very late (on 1 July 1937, the day it was registered with the Secretariat at the League), and by very few countries (only by 11 of the 32 signatories). Despite this, however, the Convention itself and specially Recommendation IV appended to it appear to have had some influence on national legislation adopted subsequently. Thus, with regard to a native-born woman married to an alien, some states showed willingness to allow her to retain her original nationality unless she made a formal declaration of renunciation. However, practically all states, with few exceptions, were unwilling to reserve to the alien woman married to a national the same right that they reserved to their own nationals.[38]

Accordingly, with regard to alien women married to nationals, the old rule that the nationality of the married woman follows that of her husband, irrespective of her consent, continued to apply.

Meanwhile, various women's organizations, international jurists, regional and world bodies continued their efforts with a view to adopting principles of nationality law relating to married women that would ensure equality of the sexes.

The Montevideo Convention on the Nationality of Women of 1933 deserves particular mention here, as it was the first multilateral convention to recognize the equality of the sexes in matters of nationality.[39] Article 1 of this Convention obliged parties to accept the assessment, "There shall be no distinction based on sex as regards nationality in their legislation or in their practice."[40] The adoption in 1945 of the Charter of the United Nations at the San Francisco Conference on International Organization had a significant influence on the evolution of the law on the nationality of married women. Article 1, paragraph 3 of the Charter provides, as one of the purposes of the United Nations, the achievement of international co-operation in promoting and encouraging respect of human rights and for fundamental freedoms for all, without distinction as to sex, race or religion.[41] See also Article 55, 56, 62, 68 and 76 of the Charter.

In 1948, the Universal Declaration of Human Rights was adopted. Articles 15 and 16 of this Declaration provided, *inter alia*, that everyone has the right to a

nationality; that no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality, and that men and women are entitled to equal rights as to marriage, during marriage and at its dissolution.[42]

In the meantime, under pressure from women's organizations and other groups, a Commission on the Status of Women was set up by the Economic and Social Council of the U.N. charged with the task of attaining equality between men and women. Though the original intention of the Economic and Social Council was to charge the International Law Commission with the responsibility of preparing a draft convention, it was found out that that would take a longer time than the situation of married women would allow. In the event, the Commission on the Status of Women was entrusted with the task of preparing such a draft convention.[43] After around ten years of study and discussion, the Commission came up with a draft Convention on the Nationality of Married Women. The draft Convention was adopted by the U.N. General Assembly and opened for signature by member states on 28 January 1957.[44] It came into force on 11 August 1958.

The 1957 Convention on the Nationality of Married Women is based on the recognition that the nationality of married women is a problem that attaches to the dignity and freedom of women as individuals. It therefore directly addresses the very core of the problem - the effect of marriage on the nationality of the married women.

Article 1 of the Convention gives the following significant provision:

"Each contracting party agrees that neither the celebration nor the dissolution of a marriage between one of its nationals and an alien, nor the change of nationality by the husband during marriage, shall *automatically* affect the nationality of the wife" (emphasis added).

By this Convention, the international community assembled in the General Assembly of the United Nations stood in unison and recognized the right of the married woman to choose her own nationality. The Convention represents a victorious conclusion of the struggle for the previous one hundred years of women's organizations and international jurists. And, one may add, it represents a victory for justice.

However, the problem of nationality of married women is still far from being over. By around 1979, the Convention had been ratified and acceded to by very few countries,[45] and it appears that not many even of those states seem to have adopted

national legislation to give effect to the Convention.

The report of the U.N. Secretary General submitted in 1963, five years after the Convention came into effect, makes this clear.[46]

According to the report, the legal systems of states are classified into three main groups:

a) The first group consists of legal systems where the nationality of the wife follows automatically the nationality of the husband, i.e., marriage itself, the dissolution of marriage and change of nationality by the husband during marriage have direct effect on the nationality of the wife. The Ethiopian Law of Nationality of 1930 is shown in the report [47] as falling under this group. Some twenty-seven states fall into this group, including Ethiopia, Italy, Austria, Greece, the Netherlands, Switzerland, Portugal and Turkey.

b) The second group consists of legal systems where marriage automatically affects the nationality of the alien wife, but, to avoid statelessness and dual nationality, the principle of the unity of the family is somewhat modified to accord with the provision of the law of the husband's state. About thirteen states fall under this group, including China, Belgium, Tunisia, Bolivia and Cameroon.

c) The final group consists of legal systems where marriage has no effect on the nationality of the alien wife without her consent. Of these, approximately twenty-four states simply recognize the right of the alien wife to acquire the husband's nationality; some 24 states have provided for easier terms of naturalization; some 12 states simply do not recognize marriage as having any effect on the nationality of the alien wife.[48]

The picture is quite different as regards marriage of a woman national to an alien husband.[49] Six states provide for the automatic loss of nationality of a woman national married to an alien husband; the Ethiopian Law of Nationality, according to the report, comes under this group. However, the loss of Ethiopian nationality by an Ethiopian woman is conditional upon her acquiring her husband's nationality. Some seventeen states provide for the automatic loss of nationality by a woman national upon marriage to an alien if she acquires the nationality of the husband. About seventy-seven states reserve to their woman nationals the right to retain their nationalities upon marriage to aliens.

As can be seen, though the 1957 Convention is an achievement by itself, there

is a long way to go before its letter and spirit are fully given effect by the generality of states.

V

One of the effects of marriage on the nationality of the married woman is that it increases the chances under which the woman can have, voluntarily or involuntarily, not only dual but also multiple nationality. Normally, dual nationality occurs in respect of any person when conflict arises between different principles followed by states to determine who their nationals are. Thus, if a person *born of Ethiopian parents* in the United States is naturalized in Great Britain, such a person will have not just dual but multiple nationality. This is so because Ethiopia follows the principle of *jus sanguinis*, while the United States applies the principlé of *jus soli*. The naturalization law of Great Britain does not require[50] a person's release from his original nationality for naturalization as a British national. So, if an Ethiopian woman, born in the U.S.A. and naturalized in Great Britain marries a German national (whose nationality law gives automatically the nationality of the husband to an alien wife,[51]) she ends up having the nationality of four states.

Dual nationality occurs not only due to the conflicting application by states of the principles of *jus sanguinis* and *jus soli*, but also because of refusal by states to allow their citizens to expatriate themselves (to renounce their nationality), and because of failure by some states to require release from original nationality or allegiance before conferring their citizenship by naturalization.[52]

The automatic effect of marriage on the nationality of married women increases the incidence of dual or multiple nationality. A good example of this is the case of the Complainant referred to in the first paragraph and also later in this paper. Under the Law of Citizenship of the Soviet Union of which the Complainant is a national, marriage does not change the nationality of a Soviet woman,[53] while under the Ethiopian Law of Nationality, the lawful marriage of an alien woman to an Ethiopian subject confers Ethiopian nationality on her. As argued here, the Ethiopian Law of Nationality is based on the old rule that the nationality of an alien wife unconditionally follows that of her husband, while, under U.S.S.R. law, a Soviet woman married to an Ethiopian subject inevitably acquires dual nationality.

A person may use his dual or multiple nationality to avoid legal duties, or to realize benefits by moving from one state to another of those whose nationalities he possesses.

On the other hand, a person who possesses dual or multiple nationality can be required to discharge his duties under different legal systems of the states of which he is a national. Obligations of military service and tax liabilities are classical examples of duties which a person of dual or multiple nationality is usually called upon to discharge by states whose nationalities he possesses. This can obviously make the life of such a person difficult.

However, the real difficulties in respect of a person of dual or multiple nationality arise when such a person is injured by a state. When this occurs, the person injured cannot himself bring an international claim against the state which injured him, since it is generally agreed that individuals are not the subjects of international law, and that therefore they do not have international standing.[54] The injured person can bring an international claim against the state which injured him only by seeking the diplomatic protection of one or the other of the states whose nationality he possesses. As nationality is a legal relationship between a person and a state which allows the jurisdiction of the state to be extended, and the laws of the state to be applied to the person,[55] the issue of jurisdiction and of diplomatic protection of a person of dual or multiple nationality interests all the state of which such a person is a national.[56] In these circumstances, conflict of jurisdiction and of claim to extend diplomatic protection to a person of dual or multiple nationality is inevitably bound to arise among the states involved.

How then are the claims of states for the diplomatic protection of a person of dual or multiple nationality to be settled ?

As these claims are international claims of states, they are settled in accordance with international law, conventional and customary.

It is now an accepted principle of international law that the power to determine who the nationals of a state are remains within the *domain reserve* of each state. This is confirmed by cases decided by both the Permanent Court of International Justice and the International Court of Justice.[57] The Hague Convention of 1930 accepts the principle, "It is for each state to determine under its own law who are its nationals. [58]" Even such writers as Van Panhuys and Joseph L.Kunz, who differ on the findings of the Court of International Justice in the Nottebohm case, agree that international law recognizes the right of each state to determine who its nationals are[59]. Accordingly, "How far a given state intends to stretch its personal jurisdiction or sovereignty with regard to nationals abroad is a matter of domestic law"[60].

If each state has, under international law, the general right to determine who its nationals are in accordance with its own domestic law, it follows that other states have the general duty to recognize such determination. Indeed, Article 1 of the Hague Convention cited above stipulates that the domestic law under which each state determines who its nationals are "shall be recognized by other states insofar as it is consistent with international conventions, international custom and the principle of law generally recognized with regard to nationality."

Insofar as the question of nationality is concerned, Article I above is consistent with the principle that the competence of the legislator of a state, and therefore the force of its law, are limited to the territory of that state.[61]

Hence, in this regard, it is correct to say, " In the absence of any treaty or some other form of international compulsion, the (Ethiopian) court can refuse to consider any law but its own" [62]

In other words, an Ethiopian court cannot refuse to declare a person of Soviet origin an Ethiopian national under the Ethiopian Law of Nationality on the ground that to declare him so would make him a double national because of the conflict between the nationality laws of the two states.[63] In Ethiopia, Ethiopian courts are not duty-bound to apply Soviet law which is inconsistent with Ethiopian law, and the courts can therefore declare a person an Ethiopian national irrespective of Soviet law. Since the Ethiopian Nationality Law does not recognize dual nationality, Ethiopian courts cannot recognize a person as a foreign national if he is at the same time an Ethiopian national under Ethiopian law.

This, indeed, is the rule that has been laid down in Article 3 of the Hague Convention which provides: "Subject to the provisions 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."[64]

When a person possesses dual nationality, the state of which such person is a national cannot afford diplomatic protection to such person against the state of which he is also a national. This rule which has been confirmed by the International Court of Justice in the Nottebohm case, is laid down in Article 4 of the Hague Convention thus: "A State may not afford diplomatic protection to one of its nationals against a State whose nationality such a person also possesses."[65]

As regards third states, practice can differ from one state to another. In Great Britain, for example, a person naturalized as British is expected to be recognized as such everywhere except only within the territory of that state from whose citizenship he has not been legally released.[66] However, other states may not necessarily recognize a person as British if that person is also a national of another state. A British international jurist once suggested that, in such a case, the true test for all states would be, apart from treaty obligation, to recognize the nationality of that state which the individual himself has last selected.[67]

The Hague Convention appears to have adopted a more objective test. Article 5 of the Convention stated:

" Within a third State, a person having more than one nationality shall be treated as if he has only one ... 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."[68]

In cases where two or more states are in dispute over the right to extend diplomatic protection to a person who possesses their nationality, the situation is controversial. In a dispute between Guatemala and Liechtenstein over the diplomatic protection of a certain Mr. Nottebohm, the International Court of Justice ruled that the state with which the person had a *genuine link* had the right to extend diplomatic protection to such a person.[69]

The " genuine link " concept of the International Court of Justice has been disputed by a number of international jurists. And, indeed, the concept appears to be contrary to the basic rule laid down in Article 3 of the Hague Convention, that where a person possesses the nationality of two or more states in accordance with their respective domestic laws, each of such states may regard such person as its national irrespective of any " genuine link ". A state which applies the principle of *jus sanguine*, for example, regards as its national any person born of its nationals, even when the person has never seen the territory of that state, and where, therefore, there is nothing which one can call a "link" between such person and such state. Both Van Panhuys and J.L. Kunz argued that there is no sufficient evidence to justify that the "genuine link" rule has developed as a customary rule of international law. [70] It has been suggested, instead, that a person is a national of a state as long as there is some *minimum* connection or link between such person and

state.

Nevertheless, it is generally agreed that the "genuine link" rule laid down by the International Court of Justice in the Nottebohm case is the rule applicable to dispute between two or more states on the diplomatic protection of a person who possesses their nationality.[71]

The problems of dual nationality and statelessness appear to be problems the international community have to live with for some time to come. These problems will continue to arise simply because no two states legislate alike on the admission of individuals as members, or on releasing them from the bond which attaches them to the state; such phenomena as war and revolution cause cession of territory, or dismemberment of a state, which create conditions rendering certain individuals stateless and giving others more than one nationality, with all the consequences emanating therefrom.[72]

As the incidence of conflict of nationality laws is relatively a new problem, occasioned by the emergence of nation-states, it appears that it will take some time before appropriate rules of international law, conventional and customary, are developed to avoid such conflict. The consolidation of such supranational institutions as the European Economic Community to higher forms of integration can perhaps lead to new experience, whereby it may not matter where a person is born or who his parents are. The national barrier, it seems, can only disappear when states adopt a new outlook about their sovereignty.

Until then, however, international law simply recognizes the existence of dual nationality and statelessness. The 1930 Hague Conference and Convention accept the occurrence of dual nationality and statelessness as they arise. They have dealt with the symptoms of the problems, not their causes. This was so because states were simply not willing to compromise their absolute sovereignty, which gave them the right to determine who should be their nationals.[73]

Cases of statelessness and dual nationality cause serious difficulties to individuals, and may sometimes lead to confrontations between states. It is, therefore, desirable to avoid such cases. To achieve this goal, nothing less than what Joseph L.Kunz suggested as early as 1960 is required:

"...it would be necessary for international law to regulate the problem of nationality, not by a mere attribution of competence to sovereign states, but by direct

substantive rules establishing uniform principles for the grant of nationality. Even that would not be sufficient. For, even if a universal treaty to this effect were concluded and ratified, the difference of languages and the difference of interpretation by municipal courts would soon again introduce causes of conflict. It would, therefore, be necessary also to create a Supreme International Court of Nationality to keep the application of the universal treaty uniform.[74]

But the world has to go a long way before this ideal situation prevails. States still retain broad powers to determine who are their nationals in accordance with their domestic laws. In determining who are their nationals, states are obviously guided by a number of considerations, including treaty obligations. They try to avoid in their domestic laws provisions which may have the effect of giving dual nationality to their nationals and of making their nationals stateless. Provisions such as Article 4 of the Ethiopian Law of Nationality of 1930 are guided by such considerations. If an Ethiopian woman acquires the nationality of her foreign husband, she automatically loses her Ethiopian nationality. This avoids the situation where the woman can have both Ethiopian nationality and the nationality of her husband. On the other hand she automatically retains Ethiopian nationality if the law of the state of her husband does not confer her husband's nationality on her. This is intended to avoid a situation where an Ethiopian woman married to a foreigner loses her Ethiopian nationality without acquiring the nationality of her husband, and becomes stateless.

States can incorporate such considerations only in their domestic laws. They have no power to influence the domestic laws of other states. In other words, they cannot prevent other states from enacting nationality laws which have the effect of creating situations where dual nationality can occur. Such is the case, for instance, where states in their nationality laws provide that marriage has no effect on the national status of women. The Law of Citizenship of the Soviet Union is one such law.[75]

In such cases, a woman cannot acquire the nationality of her husband even if she wants to. Thus, if a Soviet woman marries an Ethiopian national, she possesses dual nationality. If, however, a Jordanian woman marries a Soviet national, she becomes stateless, since, under the law of Jordan, a Jordanian woman married to a foreigner automatically loses her Jordanian nationality,[76] and, under Soviet Law, her national status does not change upon marriage.[77]

Precisely because of the diversity of factors and considerations which influence the domestic laws of states, a state simply cannot afford to condition the

force and effect of its law on its consistency with the laws of other states. Apart from treaty obligations, it has neither a legal nor a moral duty to do that. This, however, does not mean that states can dispense with the principles generally accepted with regard to nationality.[78]

The principles generally accepted with regard to nationality which became clear from the foregoing discussion can be briefly reviewed here for purposes of clarity.

A state which is a party to a treaty governing dual or multiple nationality must give effect to the provisions of that treaty, and its courts have to apply these provisions. Non- compliance with the provisions of such a treaty will be subject to whatever sanction is available under international law.

In the absence of any treaty obligations, the issue of nationality is settled in accordance with municipal law. International law recognizes that the matter of admission of an individual to membership of a state or of releasing him from such membership is a subject of municipal law. The generally accepted principles in accordance with which states confer nationality on individuals are *jus sanguinis* and *jus soli*. The principle of *jus sanguinis* is based on the nationality of the parents of the person, while that of *jus soli* is based on the place of birth of the person. The automatic effect of marriage on the nationality of a woman is another principle widely applied by states in their nationality laws.

Where the nationality of a person becomes a contentious issue between two or more states, the rule laid down in the Nottebohm case applies, so that a person is a national of the state with which he has a "genuine link". Whether a person has a "genuine link" with a state is determined by having regard to a number of factors of varying importance. These include habitual residence, centre of interests, family ties, participation in public life, attachment shown to the given state and inculcation of such attachment to children (ICJ Reports, 1955, pp. 4 *et seq*). Though challenged by some authorities, the "link" theory of the International Court of Justice as elaborated in the Nottebohm Case appears to have developed as a customary rule of international law.

VI

The Ethiopian Law of Nationality of 1930, with regard to the nationality of the married woman, does not depart from the principles generally accepted with regard to nationality around that period. i.e., the period that followed the end of World

War I. Indeed, this writer observes that the provisions of this law regarding the nationality of married women are based on the principles of family unity, which was then applied by the majority of the states which had diplomatic and other relations with Ethiopia around 1930.

It is to be noted that before the end of the 19th century, not many Ethiopians lived abroad, and not many foreigners lived in Ethiopia. As a result, the problem of a person's nationality did not concretely arise, and the country did not have any concretely formulated nationality concepts and rules of its own. The law of 1930 was the first law ever issued to regulate the problem of nationality.

By the turn of the century, however, one finds a number of foreign powers represented in Ethiopia. Most of these powers, it may be noticed, were powers which had colonial ambitions over one or the other part of the country. At any rate, around this period, some seven states were represented in Ethiopia by ordinary legations (the United States of America, Great Britain, Belgium, France, Greece and Germany) and two others, Sweden and Turkey, had honourary consulate.[79]

In 1908, France, through her representative named Klobukowski, concluded with Emperor Menelik of Ethiopia a treaty (known as the Klobukowski Treaty) providing *inter alia* for the establishment of a special court to hear disputes between French nationals, and between French nationals and Ethiopian nationals.[80] As most of the foreign powers had separately concluded treaties with Ethiopia providing for most-favoured-nation treatment, this provision of the Klobukowski Treaty automatically applied to the other powers as well.

Though France had insisted that the composition of the court be that of ordinary consular courts, Emperor Menelik was adamant on this point.[81] Consequently, the Special Court was composed of a representative of each of the states whose nationals were involved in the dispute, and Ethiopian judges.

One of the provisions of the Klobukowski Treaty was that an Ethiopian member of the Special Court had the duty to know the laws of Great Britain, France and Italy.[82] It is interesting to note in this connection that Ras Tafari Mekonnen, who in 1930 become Emperor Haile Selassie I, and who as Emperor issued the Ethiopian Law of Nationality of 1930, had served as an Ethiopian member of the Special Court.[83]

The klobukowski Treaty appears to have had a big impact on the evolution in Ethiopia of modern legal concepts in general. The Special Court had to apply

foreign law to foreign parties, and Ethiopian law to Ethiopian disputants.[84] It was therefore inevitable that Ethiopian legal concepts had to be confronted with modern European legal thinking before the Special Court. Accordingly, the Special Court served as an early forum through which European legal concepts could be introduced into the Ethiopian legal system.

From the point of view of the Ethiopian Nationality Law, the significance of the Klobukowski Treaty is the fact that it established the need for defining who were Ethiopian nationals for the purpose of the jurisdiction of the Special Court. Moreover, the Special Court provided a forum in which future Ethiopian legislators became acquainted with the concepts and rules contained in the nationality laws of the various states then represented in Ethiopia, especially those of Great Britain, France and Italy.

By 1930, states whose nationality laws relating to married woman were based on the primacy of family unity, as well as those states whose nationality laws were based on the principle of equality of the sexes, were represented in Ethiopia. Of these, the nationality laws of the United States and France were based on the principle of equality of the sexes, while the nationality laws of the other states were based on the principle of family unity.

According to the French Law of 10 August 1927,[85] " A foreign woman who marries a French man becomes a French woman only on her express application, or when, in accordance with the provisions of the law of her nation, she is necessarily put in the condition of her husband..." and

" A French woman who should marry an alien maintains her French nationality unless she expressly declared a wish to acquire, in accordance with the provisions of the law of the nation of her husband, the said husband's nationality...".

The law of 22 September 1922 of the United States [86] is very much the same as the French one:

" Any woman who marries a citizen of the U.S. after the passage of this Act... shall not become the citizen of the U.S by reason of such marriage...but, if eligible for citizenship, she may be naturalized..." and

" A woman citizen of the U.S. shall not cease to be a citizen of the U.S. by reason of her marriage after the passage of this Act, unless she makes a formal renunciation of her citizenship..."

The U.S. Law of 1922 and the French Law of 1927 are typical examples of nationality laws which reserved to the married woman the right to choose her own nationality.

It is interesting to note here that the two states, by these laws, completely reversed their respective positions as regards the nationality of the married woman. The U.S. Law of 1855, as supplemented by the Law of 1907, as well as Arts. 12 and 19 of the Code Napoleon of 1804, as amended by the Law of 1889, were, as far as the nationality of married women is concerned, the same as the present Ethiopian Laws of Nationality. They were then based on the principle of family unity, pursuant to which marriage had the automatic effect of conferring on the woman the nationality of her husband.

As can readily be seen, the Ethiopian Law of Nationality of 1930 bears no resemblance either in letter or spirit to the U.S. Law of 1922 and the French Law of 1927. It appears that these were laws which were too modern for the Ethiopian legislator of 1930 to accept.

It is, on the other hand, clear that the Ethiopian Law of Nationality is based on concepts and rules which one observes in the nationality laws of the other powers represented in Ethiopia around that period. Of these, the nationality laws of Belgium, Italy and Greece[87] bear a striking similarity to the Ethiopian Law of Nationality.

The Law of 15 May 1922 of Belgium states:
" The foreign woman who marries a Belgian... follows the nationality of the husband," and

"The following persons lose Belgium nationality:

(2) the woman who marries a foreigner of specified nationality if, by virtue of the law in force in her husband's country, she acquires his nationality."

This law reserves to the Belgian woman the right to retain her Belgian nationality upon declaration to do so.

The law of 13 June 1912 of Italy stated:
" A Foreign woman who marries a citizen acquires Italian citizenship,... " and

" A female citizen who marries a foreigner loses Italian citizenship if her husband possesses a citizenship which may be communicated to her by marriage...."

Finally, Law No. 391 of October 29, 1856 of Greece stated:

" An alien woman married to a Greek becomes Greek," and
" A Hellenic woman who marries a foreigner loses her Hellenic nationality only in the case where her marriage confers upon her the husband's nationality."

As the 1931 Constitution of Ethiopia had the Meiji Constitution of Japan as its model,[88] the Ethiopian legislator seems to have had some special interest in the legal system of the Meiji dynasty of Japan. Though Japan had no legation or consulate in Ethiopia by 1930, her Law No. 66 of March 1899 [89] bears another striking resemblance to the Ethiopian Nationality Law.

This Law's provisions stated:
" An alien acquires Japanese nationality in the following cases:

(1) by becoming a wife of a Japanese"; but

" A Japanese who, on becoming the wife of an alien, has acquired her husband's nationality loses Japanese nationality."

The Ethiopian Law of Nationality of 1930 states:
" A lawful marriage of an Ethiopian subject with a foreign woman confers Ethiopian nationality upon her..." and
"A lawful marriage contracted abroad of an Ethiopian woman with a foreigner deprives her of the Ethiopian nationality if her marriage with the foreigner gives her the nationality of her husband. Otherwise she keeps her Ethiopian nationality."

It should be stated here that the U.S. Law of 1922 and the French law of 1927 were, even as late as the 1940s, considered to be the novelties,[90] and were therefore exceptions, as they were based on the new concept of the freedom of the married woman to choose her own nationality.

By 1930, the rule that prevailed was that which was reflected in the nationality laws of the other powers represented in Ethiopia.

According to the rule which then prevailed, the automatic effect of marriage on the nationality of the alien married woman was taken for granted.[91] Article 2 of

the Ethiopian Law of Nationality of 1930, above, is a typical example of this rule.

VII

The preceding brief discussion on the evolution and development of the law of nationality relating to married women showed that states applied two concepts in their nationality laws. The first and older concept is based on the principle of family unity, according to which marriage has the automatic effect of giving to the wife the nationality of her husband. The second and latest concept is based on the principle of the freedom of the married woman to choose her own nationality, according to which marriage *per se* had no automatic effect on the nationality of the Wife.

The Ethiopian Law of Nationality is clearly based on the old principle, so that marriage of an alien woman with an Ethiopian subject has the automatic effect of giving to the alien woman the nationality of her husband, i.e., she automatically becomes an ethiopian subject. According to Article 2 of the Ethiopian Law of Nationality, it is the marriage that gives Ethiopian nationality to the alien woman.

The only fact that needs to be proved is, therefore, whether the alien woman has concluded a lawful marriage with an Ethiopian subject. Once this is proved, she automatically becomes an Ethiopian subject. It is not open to the alien woman to deny that she has become an Ethiopian subject. Nor is it open for the Ethiopian authorities to deny her the necessary documents showing that she has become an Ethiopian subject as of the legal ceremony of marriage. Since it is marriage that gives the alien woman Ethiopian nationality, the Ethiopian authorities can only declare that the alien woman is an Ethiopian subject. They cannot create the fact of her being an Ethiopian subject, so that, under the Ethiopian Law of Nationality, the action of the authorities is declaratory, and not constitutive of the fact of the alien woman being an Ethiopian subject. In this regard, therefore, the action of the authorities relative to alien woman has no more nor less effect than on native-born Ethiopian subjects.

To condition the acquisition of Ethiopian nationality by an alien woman married to an Ethiopian subject upon her declaration or consent is to apply the latest rule that, under the Ethiopian Law of Nationality, marriage *per se* has no automatic effect on the nationality of an alien woman married to an Ethiopian subject. It now remains to test against this background the decision of the *Awraja* Court in the case of Svetllana Mamadova v. the American Community School.

In the labour dispute referred to earlier (p.1) between a certain Mrs. Svetlana Mamadoova, hereinafter the "Complainant", and the American Community School, hereinafter the "Defendant", here in Addis Ababa, the issue of the nationality of married women under Ethiopian law was raised.

The Complainant, a citizen of the Soviet Union, was married to an Ethiopian national under a marriage contract concluded in 1979 in Moscow in accordance with the laws of the Soviet Union. Here in Addis Ababa, the Complainant was employed in 1982 by the Defendant, subject to the renewal of her work permit by the Ethiopian Ministry of Labour and Social Affairs, as is required of foreigners working in Ethiopia in accordance with Labour Proclamation No. 64 of 1975.

When the Defendant refused to have the work permit of the Complainant renewed and cancelled her contract of employment on the ground that she was found to be not competent for the job, she lodged her complaint with the Conciliation Officer of the Ministry of Labour and Social Affairs. One of the submissions of the Complainant was that, as, under the Ethiopian Law of Nationality of 1930, she had herself become an Ethiopian subject by virtue of her marriage with an Ethiopian subject, she did not need any work permit as a foreigner, and failure to renew her work permit would not therefore be a ground for the cancellation of her contract of employment.

On the issue of the nationality of the Complainant, the Conciliation Officer held that she had automatically become an Ethiopian subject by virtue of her marriage with an Ethiopian subject.

On appeal, the Labour Division of the Awraja Court reversed the decision of the Conciliation Officer, *inter alia*, on the following dubious ground:

(a) Under Article 2 of the Ethiopian Law of Nationality of 1930, an alien woman married with an Ethiopian subject cannot acquire Ethiopian nationality unless she makes a declaration to become an Ethiopian subject and renounces her original nationality.

(b) Since the Ethiopian Law of Nationality of 1930 prohibits dual nationality, the Complainant cannot be a citizen of the Soviet Union and an Ethiopian subject at one and the same time. When the Complainant petitioned to the Office of the Procuracy for referral of her case to the Supreme Court for hearing on cassation, of quashing the decision, the Office denied the petition on the ground that the decision of the Awraja Court was in conformity with the Ethiopian Law of Nationality of 1930

and that, therefore, the Office found no cause to justify the referral of the case to the Supreme Court.

Article 2 of the Ethiopian Law of Nationality of 1930 states the following provision:

" A lawful marriage of an Ethiopian subject with a foreign woman confers Ethiopian nationality upon her."[92] (The Amharic version of this same Article, though not literally identical with the English version, is, by its effect, the same as the English.)

This Article is a typical example of nationality laws, in accordance with which a lawful marriage is sufficient to confer the husband's nationality on a foreign woman. As this Article is based on the principle of what is known as the "unity of the family", it is clear that, under the Ethiopian Law of Nationality, marriage has an automatic effect on the nationality of a foreign woman.

This is consistent with Article 4 of the Ethiopian Law of Nationality, regarding an Ethiopian woman married with a foreigner, which affirms:

" A lawful marriage contracted abroad of an Ethiopian woman with a foreigner deprives her of the Ethiopian nationality if her marriage with a foreigner gives her the nationality of the husband. Otherwise, she keeps her Ethiopian nationality."

Here again, primacy is given to the principle of the unity of the family, and marriage itself, irrespective of the consent of the woman, deprives an Ethiopian woman of her Ethiopian nationality. This, of course, is conditional upon her acquiring the nationality of her husband in accordance with the law of the state of which the husband is a national. Loss and retention of Ethiopian nationality by the Ethiopian women under this Article occurs irrespective of the consent of the woman.

The acquisition of Ethiopian nationality by an alien woman pursuant to Article 2, and the loss of Ethiopian nationality by an Ethiopian woman pursuant to Article 4, are not conditional upon the consent or the prior or subsequent declaration of the woman. Acquisition and loss of Ethiopian nationality by married women under Ethiopian law are thus considered automatic.

It seems, therefore, that both the Awraja Court and the Office of the Procuracy wrongly applied to this case the principle of the equality of the sexes to

determine the nationality of the Complainant, for it is actually the principle of the unity of the family that the Ethiopian legislator has provided for in the Ethiopian Law of Nationality of 1930. Equality of the sexes as a principle of the law of nationality of married women is the most recent rule, which is itself in the process of development. The Ethiopian Law of Nationality of 1930, on the other hand, incorporates with regard to the nationality of married women the old rule that the nationality of the woman follows that of the husband, and is thus a long way behind the latest rule.

Speaking in terms of *de lege lata*, the decision of the Court in this case is not based on Article 2 of the Ethiopian Law of Nationality of 1930. It is based on an entirely new law based on an entirely different principle: the freedom of the alien married woman to choose her own nationality. The decision is based on new, judge-made law.

This writer realizes that the Ethiopian judge, in common with judges of other countries which follow both the common Low System and the Civil Law System, has a role to play in the constructive elaboration and development of statutory law, in adapting the law to new situations which the Ethiopian legislature could not have foreseen when it enacted the particular piece of legislation at issue. However, the judge, in encouraging development, remains within the boundaries of his judicial function.

The first principle that the judge should be guided by, however, is that he should apply the law as he finds it. He should discover the law and not anticipate it. In this connection one can only admit that the Ethiopian Law of Nationality of 1930 is an old law, because of this, it is based on an old concept as regards the nationality of a married woman.

Despite this, however, the judge can only apply the law as he finds it. He cannot disregard the law simply because he disagrees with the values it protects. In finding the law, in discovering it, he should note that the rule for the construction of acts of the legislature is that they should be construed according to the intent of the legislature which passed them.[93] He must at the same time note that he cannot impute to the legislator an intent such as is not supported by the face of the law itself.[94] "The duty of the court is neither to add to nor to take from a statute anything, unless there are good grounds for thinking that the legislature intended something which it has failed precisely to express.[95] It cannot be said in this case that the Ethiopian legislature of 1930 intended the new rule and failed to express it precisely.

When, under the guise of the judicial function, the court comes up in its decision with a new law, then that is the end of the law itself as far as our legal system is concerned. For it should be noted that the promulgation of laws has the effect of creating expectations in the general public.

The public conduct themselves in their day-to-day behaviour in general accord with the expectations created by the law as promulgated. If the decision of the court is such that it cannot be reasonably predicted, then the law will cease to create such expectations and will therefore fail to achieve one of its principal objectives. In this regard, the court should appreciate the essential nature and purpose of law, for "enacted law is the creature of the legislator's thought and will."[96]

The provisions of the Ethiopian Law of Nationality of 1930 relating to the nationality of married women are based on concepts too old for our period of equality between the sexes. They need a re-examination, preferably with a view to making them conform with the United Nations Convention of 1957 on the Nationality of Married Women. This writer believes that it will be in the interests of the Ethiopian legal system as a whole if changes in the law are effected through the normal law-making process, rather than in the form of judicial decisions.

NOTES

1. See Svetelana Mamadova v. American Community School, Addis Ababa Awraja Court, Labour Division, File No. 1272/77; see also Higawinet, Office of the Procuracy of Ethiopia, Vol. 1, No.1, April 1989). pp. 63 et seq.

2. Clive Parry, "Plural Nationality and Citizenship with Special Reference to the Commonwealth", British Yearbook of International law, Vol. 30 (1953), p. 244.

3. Van Panhuys, The Role of Nationality in International Law, (Leyden, A.W. Sythoff, 1959). p. 150.

4. Clive Parry, op. cit. p. 249.

5. See notes 59 and 60 infra.

6. For a detailed discussion of this point, see Beroe Bicknell, "The Nationality of Married Women", Transactions of the Grotius Society, Vol. 20 (1934), pp. 118-211.

7. See, for example, the survey of nationality laws annexed to Nationality of Married Woman

(Report of the Secretary General). (United Nations, New York, 1963); see also the collection of nationality laws in the work cited in note 32 infra.

8. R.S. Fraser, "Expatriation As Practised in Great Britain", Transactions of the Grotius Society, Vol.16,p.78.

9. Ibid., p. 74.

10. G. Van Glahan, Law Among Nations, An Introduction to Public International Law, (The Macmillan Company, 1972), p. 104; Corpus Juris Secundum, p. 1138.

11. Corpus Juris Secundum, p. 1138.

12. F. Llewellyn, " The Nationality of Married Women", Transactions of the Grotius Society, Vol. 15, p. 122.

13. Ibid.

14. Ibid., p.123.

15. Ibid.

16. Ibid., p.12.

17. Ibid.

18. Corpus Juris Secundum, p. 1138; see also Fasil Nahom, "(Ethiopian) Nationality Law and Practice", p.1 (unpublished), Law Library, Haile Selassie I University; Higawinet, pp. 64, 68.

19. Corpus, Juris Secundum, p. 1138,

20. Harvard Law Review, Vol. 50, p. 831.

21. Corpus Juris Secundum, p. 1138.

22. "Developments in the Law; Immigration and Nationality", Harvard Law Review, Vol. 34, p.867.

23. See Harvard Law Review, Vol. 63,p. 886.

24. Paul Weis, Nationality and Statelessness (2nd ed.), (1979). passim; Fassil Nahom, op. cit., chart.

25. See Corpus Juris Secundum, p. 1138; Paul Weis, op. cit., p. 239; Fassil Nahom, op. cit. pp. 3 et Seq.

26. See, for example, Harvard Law Review, Vol. 50, p.83.

27. F.Llewellyn, op.cit., p. 133; see also B. Bicknell, op.cit., pp. 106 et seq.

28. Quoteed in Lleewellyn, op.cit., p.134.

29. Clive Parry, op.cit., p. 254.

30. Bicknell, op.cit., p. 112; see also V. Shevtsov, Citizenship of the U.S.R.,(Progress Publishers, Moscow, 1979). p. 82.

31. A Collection of Nationality Laws of Various Countries As Contained in Constitutions, Statutes and Treaties, (eds. Richard W. Flournoy, Jr., and Manley O. Hudson), New York, 1929, p. 608.

32. Bicknell, op.cit., p. 112; Llewellyn, op.cit., pp. 121 et seq.

33. Llewellyn, op.cit., p. 125.

34. Ibid., p. 127.

35. League of Nations Treaty Series, Vol. 197, p. 89.

36. Convention on the Nationality of Married Women: Historical Background and Commentary,(United Nations, New York, 1962). p.9.

37. Ibid., p.11.

38. Ibid., p.7; see also Bicknell, op.cit., p. 113.

39 Convention on the Nationality of Married Women..., p.11

40. Ibid., p. 12.

41. Basic Documents in International Law (ed. Ian Brownlie, 3rd edition), Clarendon Press, Oxford, 1984, pp. 2 et seq.

42. Ibid., pp. 251 et seq.

43. Convention on the Nationality of Married Women..., p.17.

44. United Nation Treaty Series. Vol. 309, (1958), pp. 68 et seq.

45. V.. Shevtsov, op.cit., p. 105

46. See note 8 supra.

47. Convention on the Nationality of Married Women..., Annex.

48. Ibid.

49. Ibid; see also Bicknell, op.cit., pp. 112-3.

50. Quoted in Fraser, op.cit., p.85.

51. See Bicknell op.cit., p. 114; Llewellyn, op.cit., p. 115;Collection of Nationality Laws..., p. 306.

52. Fraser, op.cit., p. 85; Joseph L. Kunf, " The Nottebohm Judgement", American Journal of International Law, Vol. 54 (1960),pp. 543, 553.

53. " Law of The Union of Soviet Socialist Republic On Citizenship of the U.S.S.R. of December 1, 1978", in Legislative Acts of The U.S.S.R., 1977-1979, Progress Publisher, Moscow, 1981, pp. 353 et seq.

54. International jurists hold different views on this point; for our purpose here, see Article 34 of the Statute of the International Court of Justice, Basic Documents, note 42 supra, which provides: "Only States may be parties in cases before the Court." See also Daniell T. Murphy, The Restatement (Third's) of Human Rights Provisions: Nothing New, But very welcome", The International Lawyer, Vol. 24 (1990), No. 4, p. 927.

55. See, for example, Shevtsov, op.cit., p.21.

56. Some jurists argue that states have the duty to bring an International claim on behalf of their nationals: see, for example, W.R. Bisschop, " Nationality in International Law", American Journal of International Law, Vol. 37 (1943), p. 323; Shevtsov, op.cit., pp. 31 et seq.

57. See The Tunis and Marocco Nationality Decrees Case, Permanent Court of International Justice Reports, Series B,No.4,p.24; The Nottebohm Case, International Court of Justice Reports, 1955.

58. League of Nations Treaty Series, Vol. 179, p. 89, Article 1.

59. van Panhuys, op.cit., P. 55, 150 passim; Kunz, op.cit., p. 545.

60. Macmillan Koessier," "Subject", "Citizen", "National" and "Permanent Allegiance", Yale Law Journal, Vol. 56 (1946-47), p.70.

61. F.A. Mann, Recueil des Courts, Vol. 111 (1964), pp.9 et seq.; Ian Brownlie, "Public International Law", British Yearbook of International Law, Vol. 39 (1965), pp.432-3.

62. R.A. Sedler, The Conflict of Laws in Ethiopia, (Faculty of Law, Haile Selassie I University, Addis Ababa, 1965),p.6. see also Shevtsov, op.cit., p. 49, who says, "One of the fundamental aspects of state sovereignty - independence with reference to citizenship - is expressed, above all, in the fact that every sovereign state regulates all matters pertaining to its citizenship on its own account, independently of any other authority whether inside or outside its borders."

63. See Article 4 of the Law of the Union of Soviet Socialist Republics on Citizenship of

December 1, 1978, note 54 supra, in accordance with which marriage has no effect on the citizenship of the spouses, while, under the Ethiopian Law of Nationality of 1930, marriage confers the nationality of the husbands on the wives.

64. United Nations Treaty Series, note 44, supra.

65. Ibid.

66. Fraser, op.cit., p.82.

67. Ibid.

68. See Note 57 supra.

69. International Court of Justice Reports, 1965, pp. 22-3.

70. See note 60 supra.

71. See note 57 supra.

72. Biscope, op.cit., p. 321.

73. Ibid., p. 324

74. Kunz, op.cit., pp. 563-4.

75. See note 53 supra.

76. Convention on the Nationality of Married Women..., Annex.

77. See note 54 supra.

78. See, for example Kunz, op.cit., p. 546; van Panhuys, op.cit., passim; Koessler, op.cit., p.74.

79. Heinrich Scholler, The Special Court of Ethioipia, 1920 -1935, Stuttgart, 1985, p. 48.

80. Ibid., p. 45.

81. Ibid.

82. Ibid.

83. Ibid.

84. Ibid.

85. Collection of Nationality Laws..., p. 245.

86. Ibid., p. 608.

87. Ibid., pp. 29, 363, 315.

88. James C.N. Paul and Christopher Clapham, Ethiopian Constitutional Development: A Source book,(Faculty of Law, Haile Sellassie I University, Addis Ababa, Vol. I, p. 336.

89. Collection of Nationality Laws..., p. 382.

90. van Panhuys, op.cit., p. 161.

91. See, for example, Llewellyn op.cit., p. 133; Bicknell op.cit, p. 113, Convention on the Nationality of Married Women..., note 32 supra; Collection of Nationality Laws..., passim.

92. For the text of the law, see Consolidated Laws of Ethiopia, Vol. I; also available in Balambaras Mahtema Selassie Wolde Meskel, Zikre Neger, 1939 (Eth. Cal.), pp. 183 et seq. (Amharic); N. Marein, The Ethiopian Empire Federation and Laws, Hotterdam, 1954, pp. 61 et seq. (English); the Ethiopian law of Nationality of 1930 is one of the laws issued before the Italian envasion, and just one year before Ethiopia received its first written constitution in 1931.

93. C.K. Allen, Law in the Making, Oxford, (7th edition 1964),p.491.

94. M.Farani, The Interpretation of Statutes,(Lahore Law Times Publications, 1970), p. 33.

95. Ibid., p. 107.

96. Allen, op.cit., p. 427.