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A. Introduction

1 A permanent population living in a defined territory becomes one of the elements of statehood when it is legally defined as a group of persons that belongs to a State according to certain criteria. By means of that definition and its practical implementation, a legal relationship is established between the individual members of the group and that State, which in international law and practice is usually called nationality. As the ICJ described it in the → *Nottebohm Case*:

[N]ationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties. It may be said to constitute the juridical expression of the fact that the individual upon whom it is conferred, either directly by the law or as a result of an act of the authorities, is in fact more closely connected with the population of the State conferring nationality than with that of any other State (at 23). Thus, the legal term 'nationality' reflects upon the formal relationship of individuals with a State and not on their ethnic origin or affiliation (cf Art. 2 (a) European Convention on Nationality). The sum of its nationals, and thus the concept of nationality as such, determines the 'personal dimension' of a State in its international relations (→ *Jurisdiction of States*) and gives rise to specific rights and duties of States.

2 Nationality is a legal concept of both domestic and international law. For the purposes of the former it is often referred to as 'citizenship', although as a matter of terminology, it would seem much more precise to denote the legal status of the individual as 'nationality' and the consequences of that status, ie the rights and duties under national law, as 'citizenship'. From the late 18th century, States have adopted rules on nationality as part of their constitutions (eg France, Spain, and Portugal), while during the 19th century those rules became the regular subject of domestic statutes.

3 Through its regulation in domestic law and its recognition in international law, the legal bond of nationality becomes the essential element of the individual's legal status under international law: it is only captured by the 'classical' rules of international law in its capacity as a national of a sovereign State and by thus falling under the latter's jurisdiction. It was only with the development of the international protection of → *human rights*, and it still is only for the purposes of that area of international law, that nationality as core of the individual's status became irrelevant, since under human rights law the individual is addressed and protected as a human being, not as the national of a State.

B. Basic Concept under International Law

4 The most prominent feature of nationality under international law is that it is in principle no matter for international law, but for the domestic law of States. In 1923, the → *Permanent Court of International Justice (PCIJ)* held that in the then state of international law, questions of nationality were in principle within the domestic jurisdiction of States (*Nationality Decrees Issued in Tunis and Morocco* 24). Even if the freedom of States to regulate their nationality is much more restricted today, considering the development of international law since 1923, that statement is essentially still valid: each State is in principle still entitled to determine under its own law who are its nationals (cf Art. 3 (1) European Convention on Nationality). International law limits that discretion, but it neither contains nor prescribes certain criteria for acquisition and loss of nationality. Also, the—scarce—rules of international law with respect to nationality mostly do not affect the legal validity of conferment of nationality under national law, but simply its acceptance on the international plane, ie the consequences of nationality vis-à-vis other States. This dichotomy of conferment of nationality and its recognition had been aptly formulated in the *1930 Convention on Certain Questions relating to the Conflicts of Nationality Laws*, Art. 1 of which reads:

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

It is only where human rights law is applied to questions of nationality that the conferment (or denial) of nationality itself is being addressed by international law.

5 The most fundamental rule on nationality is derived from the principle of State → *sovereignty*: a State may only regulate acquisition, loss, and consequences of its own nationality, and not of that of other States. This does not exclude, however, that a State lays down rules on who is, for the purpose of its own legislation (eg → *immigration* quota), to be considered a national of another State; such legislation can naturally only have a binding effect for the legislating State itself. Also beyond that, the discretion of States with respect to nationality is limited by the principle of non-intervention: if a State would use the conferment of nationality as a means of → *coercion*, eg by naturalizing on a massive scale the nationals or inhabitants of another State, this could amount to a violation of the rights of that other State under international law (→ *Intervention, Prohibition of*).

6 Moreover, the freedom of States to regulate their own nationality is restricted to the extent to which nationality has come within the scope of human rights law. Several of the universal treaties for the protection of human rights contain specific provisions relating to nationality and thereby pre-determine the nationality laws of their States Parties. Thus, Art. 5 (d) (iii) Convention on the Elimination of All Forms of Racial Discrimination extends the prohibition of racial discrimination to 'the right to nationality', so that parties to that Convention must enact laws on acquisition and loss of their nationality without any distinction as to race, colour, or national or ethnic origin. Almost universal participation in that Convention suggests that the non-discrimination principle as to nationality also constitutes a rule of customary inter-national law (→ *Racial and Religious Discrimination*). A similar prohibition is contained in Art. 5 (1) European Convention on Nationality which, moreover, prohibits any discrimination on the grounds of sex and religion. Art. 9 (1) Convention on the Elimination of All Forms of Discrimination against Women ('CEDAW') obliges the States Parties, which are almost all existing States of the world, to grant women equal rights with men to acquire, change, or retain their nationality. Art. 18 (1) Convention on the Rights of Persons with Disabilities grants equal treatment with regard to nationality and binds the parties to ensure that persons with disabilities have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability.

7 Beside those guarantees of non-discrimination in respect of nationality, several international documents purport to establish an individual human right to nationality. This was already set out, albeit in a legally non-binding manner, in Art. 15 (1) → *Universal Declaration of Human Rights (1948)* and Art. 19 → *American Declaration of the Rights and Duties of Man (1948)*. The right to acquire a nationality is explicitly laid down for children in Art. 24 (3) → *International Covenant on Civil and Political Rights (1966)* ('ICCPR'), and in Art. 7 Convention on the Rights of the Child, as well as for children with disabilities in Art. 18 (2) Convention on the Rights of Persons with Disabilities. Without being restricted to a certain group of persons, it is guaranteed in Art. 20 American Convention on Human Rights, and in Art. 4 European Convention on Nationality. As early as 1984, the Inter-American Court of Human Rights (IACtHR), in an advisory opinion, held it to be generally accepted that 'nationality is an inherent right of all human beings' and that this fact must have a bearing on the manner in which States regulate matters relating to nationality (*Amendments to the Naturalization Provisions of the Constitution of Costa Rica* paras 32–33). However, since the universal and the European systems for the protection of human rights do not know of an unfettered right to nationality, and as the European Convention on Nationality is only binding for 20 European States, it seems rather doubtful if such a right exists under customary international law (Chan 10–11), at least outside Latin America.

8 Even if there is no right to nationality outside the scope of specific treaty provisions, issues of

nationality and citizenship might arise with regard to other human rights guarantees and be dealt with in accordance with their particular legal content. As the → *European Court of Human Rights (ECtHR)* held, summarizing its permanent jurisprudence in this respect, in *Kuric v Slovenia*:

The Court further reiterates that no right to acquire or retain a particular nationality is as such included among the rights and freedoms guaranteed by the Convention or its Protocols. Nevertheless, the Court does not exclude the possibility that an arbitrary denial of citizenship might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such a denial on the private life of the individual (at para. 353).

It seems that not only the denial of nationality, but also, vice versa, the conferment of nationality against the will of the person concerned, could raise an issue under the human rights guarantee of private life.

9 Since no general right to nationality can be identified in inter-national law, it is equally doubtful whether, under customary inter-national law, there is an obligation of States to avoid statelessness (→ *Stateless Persons*). Statelessness, just as multiple nationality, is a possible result of the freedom of States to decide on the criteria for acquisition and loss of their nationality. For various practical reasons, it is undesirable not only from the viewpoint of the individual, but also of States, and therefore has been, since 1930, the object of various treaties aiming at reducing the cases of statelessness. Thus, the 1961 Convention on the Reduction of Statelessness provides that States Parties shall, in specific situations and under certain conditions, grant their nationality to persons who would otherwise be stateless, that States shall not deprive a person of their nationality if such act would render the person stateless, and that States shall in general ensure that the application of their laws does not result in statelessness of persons under their jurisdiction. Art. 4 (b) European Convention on Nationality stipulates as a basic principle that statelessness shall be avoided, and the Explanatory Report to that Convention considers that obligation to have become part of customary inter-national law (at para. 33). In particular, with regard to State succession, this obligation is inserted in various inter-national documents, such as the 1999 ILC Draft Articles on Nationality of Natural Persons in relation to the Succession of States (Art. 4) and the Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession of 2006 (Art. 3). However, all three Conventions mentioned are so far only binding for a limited number of States, and the ILC draft has only been endorsed by a non-binding UN General Assembly resolution (UNGA Res 55/153 of 12 December 2000). Moreover, various UNGA resolutions of recent years explicitly point out that the 'prevention and reduction of statelessness are primarily the responsibility of States, in appropriate cooperation with the inter-national community' (eg UNGA Res 61/137, 62/124, 63/148, and 64/127, all in para. 7), thus falling far short of expressing an *opinio iuris* which would refer to a general legal duty of States. It is submitted, therefore, that outside specific treaty commitments no general obligation of States to avoid statelessness, as a legal obligation of result, can be identified (Randelzhofer 508-9).

10 Nationality has by now also become an issue of European Union ('EU'; 'Union') law which has its share, therefore, in reducing the regulatory freedom of States on those matters. According to Art. 20 (1) Treaty on the Functioning of the European Union ('TFEU' [signed 13 December 2007, entered into force 1 December 2009] [2008] OJ C115/47), the Union citizenship follows the nationality of the EU Member States, which means that the scope of a concept of EU law is explicitly made dependent upon the national laws of the Member States and their application. This regularly leads the European Court of Justice to hold that the EU Member States must exercise their powers in the sphere of nationality having due regard to Union law (eg Case C-369/90 *Micheletti v Delegación del Gobierno en Cantabria* [1992] ECR I-4239 para. 10; Case C-200/02 *Zhu v Secretary of State for the Home Department* [2004] ECR I-9925 para. 37; Case C-135/08 *Rottmann v Freistaat Bayern* para. 45) which, in the view of the Court, does not compromise the principle of inter-national law that States have the power to lay down the conditions for the acquisition and loss of nationality, but rather enshrines the principle that, in respect of citizens of the Union, the

exercise of that power, in so far as it affects the rights conferred and protected by the EU legal order, is amenable to judicial review carried out in the light of European Union law. In the *Rottmann* case the ECJ considered a decision withdrawing naturalization because of deception to correspond to a reason of public interest and that, in this regard, it is legitimate for a Member State to wish to protect the special relationship of solidarity and good faith between it and its nationals and also the reciprocity of rights and duties, which form the bedrock of the bond of nationality (at para. 51).

C. Acquisition of Nationality

11 Even if inter-national law does not prescribe or prohibit certain criteria for the acquisition of nationality by States, it limits the recognition of that acquisition in the inter-national relations of States, ie its consequences on the inter-national plane. The traditional rule is that States are obliged to recognize the conferment of another State's nationality only if it is based on a generally accepted criterion. Those criteria reflect the requirement that some kind of connection must exist between the State and the individual concerned which can basically find expression in a conferment of nationality *ex lege* or in a naturalization upon request.

1. Conferment of Nationality *ex lege*

12 The two most common connections that are generally accepted as criteria for the conferment of nationality *ex lege* are descent and place of birth. They constitute the basis of the nationality laws of most States, even though the concrete form they are being given in national legislation differs considerably. The criterion of descent is commonly labelled the principle of *ius sanguinis*, which means that children acquire by birth the nationality which at the time of their birth the parents possess. It is explicitly laid down in Art. 6 (1) (a) European Convention on Nationality. The laws of several States confine the *ius sanguinis* principle to the nationality of the father, whereas Art. 9 (2) CEDAW requires all States Parties to grant women equal rights with men with respect to the nationality of their children.

13 Under the principle of *ius soli* States confer their nationality upon children who are born in their territory. It is laid down in Art. 6 (2) European Convention on Nationality and generally recognized as a legitimate criterion, just as well as its extension to birth on a ship or in an aircraft which is deemed to have taken place in the territory of the State whose flag the ship flies or where the aircraft is registered (cf Art. 3 Convention on the Reduction of Statelessness; → *Flag of Ships*). Customary inter-national law restricts the principle to the effect that children of persons entitled to diplomatic immunity (→ *Immunity, Diplomatic*) in the State where the birth occurs shall not automatically acquire that State's nationality; this rule has been laid down explicitly in Art. 12 Convention on Certain Questions relating to the Conflicts of Nationality Laws, in Art. II of the respective Optional Protocols concerning Acquisition of Nationality to the → *Vienna Convention on Diplomatic Relations (1961)* and the → *Vienna Convention on Consular Relations (1963)*, and is moreover generally recognized.

14 Another criterion which is applied by some domestic laws for the conferment of nationality *ex lege* is the acquisition of domicile with the intention of establishing permanent residence (*animus manendi*) in the territory of the State concerned. Since voluntary acquisition of domicile is a much stronger connection with a State than the mere fact of being born in its territory, the conferment of nationality is recognized in inter-national law, even if it occurs against the will of the person concerned. The State must, however, usually be seen as waiving its right to confer its nationality under such circumstances, if it grants to foreign nationals by treaty the right of abode or domicile (Randelzhofer 503-4). Art. 6 (3) European Convention on Nationality identifies the lawful and habitual residence in the territory of a State as a case in which that State shall provide for the possibility of naturalization.

15 The nationality laws of some States confer nationality *ex lege* upon certain changes in the civil

status of persons, such as the adoption or legitimation by, or the marriage with, a national of that State. Although that kind of connection is traditionally recognized as legitimate under inter-national law, it is today only admissible within the limits of applicable treaty law, especially with regard to the equality of women. Thus, several treaties explicitly stipulate that neither marriage, nor the dissolution of marriage, nor the change of nationality by her husband during marriage, shall automatically affect the nationality of a woman (Arts 10 and 11 Convention on Certain Questions relating to the Conflicts of Nationality Laws, Art. 1 Convention on the Nationality of Married Women, Art. 9 (1) CEDAW). Art. 4 (d) European Convention on Nationality extends that rule to both spouses. Naturally, this leaves the possibility of a voluntary change of nationality in connection with a marriage unaffected.

16 When the inter-national responsibility for territory changes from one State to another (State succession), this does not cause an automatic change of nationality, but gives the successor State the right under customary inter-national law to confer its nationality upon the people which are permanently resident in its (new) territory, or which have another connection with that State. Treaty and State practice clearly show that any transfer of territory does not change the nationalities of the populations involved automatically, but gives rise to the right of constitutive conferment on part of every successor State (Peters 695). Thus, Art. 10 (2) Convention on the Reduction of Statelessness provides that a State which acquires territory 'shall confer its nationality' on such persons as would otherwise become stateless; the same applies to the European Convention on the Avoidance of Statelessness in relation to State Succession of 2006 (Arts 5 and 7), and Art. 18 (2) European Convention on Nationality addresses the decision of States 'on the granting or the retention of nationality in cases of State succession'. The ILC Draft Articles on the Nationality of Natural Persons in Relation to the Succession of States establish the presumption that habitual residents acquire the nationality of the successor State on the date of the succession (Art. 5), but it also provides for legislation to be enacted by the States concerned on the attribution of their respective nationality, which attribution is clearly supposed to be of a constitutive character, rather than only declaratory (Arts 6, 8, 20-22, and 24). Thus, the presumption laid down in Art. 5, regardless of whether it codifies an existing rule of customary law or constitutes a progressive development of inter-national law, simply addresses the problem of the time-lag between the date of succession and the adoption of legislation by the successor States, and does not purport to establish a rule of automatic change of nationality. State succession thus remains a case where States are entitled to legitimately confer their nationality *ex lege*.

17 Only a few limits are established in inter-national law to the freedom of States to confer their nationality; that is situations in which the conferment would not be recognized on the inter-national plane. Such a situation is the naturalization *ex lege* of persons who are nationals of another State and who do not have any connections with the naturalizing State. Also, if a State would attempt to confer its nationality on the basis of race, sex, language, religion, or sexual or political preference, this would not only be contrary to certain human rights treaties (see para. 6 above), but also be based upon criteria not recognized as legitimate for the purpose of conferring nationality. Moreover, the mere acquisition of real estate was held to be an insufficient connection with the State to justify the automatic conferment of its nationality by the → *mixed claims commissions* established in the 1920s between Mexico and several other States. Finally, the fact of belligerent occupation does not entitle the occupying power to confer its nationality on the inhabitants of the occupied territory, since the rules on belligerent occupation allow only for temporal rights of administration, and not for permanent jurisdiction (Randelzhofer 505; → *Occupation, Belligerent*).

2. Naturalization

18 **Voluntary naturalization** is the conferment of nationality onto an alien (→ *Aliens*) by a formal individual act with the consent of, and usually upon special application by, the person concerned. The free will of the individual to associate itself with the State in question, which finds expression in the application for nationality, constitutes a sufficient connection and is therefore recognized as a

legitimate ground for the conferment of nationality. Further preconditions, as are often required by national law, such as prolonged lawful residence or knowledge of the language, or indeed any other form of 'genuine link', are not requirements of inter-national law. This is not contrary to the decision of the ICJ in *Nottebohm* which set up a genuine link requirement, since in that case the Court explicitly only ruled on the right of Liechtenstein to exercise diplomatic protection as a consequence of naturalization, and not on the validity, or even legality, of the naturalization as such (Randelzhofer 504). Thus, under inter-national law States are in principle free to decide on the individual naturalization; the consent of the hitherto home State of the person concerned is not required.

19 Under treaty law States are in some cases obliged to provide for the possibility of, or even to facilitate naturalization for, certain groups of persons. This applies traditionally for stateless persons (Art. 1 Convention on the Reduction of Statelessness; Art. 6 (4) (g) European Convention on Nationality), but Arts 6 (3) and (4) European Convention on Nationality create that obligation also with regard to persons lawfully and habitually resident on the territory, the period of residence to be required not exceeding ten years, as well as to spouses and children of nationals. Even under those treaty provisions, however, naturalization remains a discretionary act of the State, even if it is to be 'facilitated' in the internal law of the States Parties, and does not, under inter-national law, become the object of an individual legal right.

20 On the other hand, there are few restrictions established in inter-national law on the freedom of States to naturalize, ie situations in which naturalization may be prohibited by inter-national law. To force naturalization upon a person in an individual case may under certain circumstances be contrary to applicable human rights provisions, unless, of course, the conferment of nationality is in conformity with one of the criteria discussed earlier (see paras 12-16 above). Collective naturalizations in large numbers, even upon application of the persons concerned, may be contrary to the principle of non-intervention, if it is used by one State as a means of coercion against another (see para. 5 above). A fictitious-situation may be given as an example, where a State combines the widespread naturalization of nationals of another State who continue to reside in that other State's territory with the announcement that it will take appropriate measures to 'protect' its new nationals abroad, unless certain conditions are met. Even beyond cases of coercion, reasonable limits to extraterritorial naturalizations may be developed from the principle of State sovereignty. To some there already exists a prohibition under customary inter-national law of collective naturalizations of non-residents (Peters 699).

3. Issues of Multiple Nationality

21 Multiple nationality, ie a situation where a person holds the nationality of more than one State, occurs when several legitimate criteria for the grant of nationality coincide in the case of one person; the standard scenario being that a child is born in a State, where the *ius soli* principle applies, to parents having the nationality of a State which applies the *ius sanguinis* principle. Multiple nationality as such is not contrary to inter-national law. States allowing their nationals to acquire or retain another nationality do not *eo ipso* violate general rules; under some circumstances they are even required by treaty to allow multiple nationality (cf Arts 14-16 European Convention on Nationality; the Explanatory Report to that Convention explicitly underlines in para. 97 that 'the new Convention is neutral on the issue of the desirability of multiple nationality').

22 However, since it leads to the collision of rights (eg of diplomatic protection) and duties (eg of allegiance, of military service etc), multiple nationality is traditionally considered undesirable by States, and treaties have been concluded to reduce the number of such cases and to resolve conflicts arising therefrom. The best-known of those treaties is the Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality, concluded under auspices of the Council of Europe in 1963, which basically lays down two rules: nationals of

States Parties which acquire the nationality of another party by means of naturalization shall lose their former nationality (Art. 1); and persons who possess the nationality of two or more States Parties may, with the consent of the State concerned, renounce one or more of these nationalities (Art. 2). On the whole, however, recent State and treaty practice suggests that the fact of multiple nationality might have become considerably more acceptable to States than it was before—the 1963 Convention is only in force for 12 European States, and the 1997 European Convention on Nationality clearly takes a neutral stand toward multiple nationality (see para. 21 above). Among the reasons for this growing acceptance could be that in a globalized world mobility and migration are common features of everyday life, for some States even an economic necessity, which may make the price—a growing number of persons holding more than one nationality—seem worth paying.

23 Several legal consequences of multiple nationality are established in inter-national law. The basic rule of non-discrimination of persons holding more than one nationality is contained in Art. 17 (1) European Convention on Nationality, according to which dual nationals shall, in the territory of that State Party in which they reside, 'have the same rights and duties as other nationals of that State Party'. In the context of the Convention, this must be taken to mean that dual nationals shall not be subject to discrimination on account of their dual nationality. As to the obligation of military service, persons possessing more than one nationality shall be required to fulfil that obligation in only one State, and that is the State of habitual residence. This conflict rule can be found in Arts 5-6 Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality, as well as in Art. 21 European Convention on Nationality. Finally, the exercise of diplomatic protection in cases of multiple nationality is subject to specific restrictions between different States of nationality, as well as vis-à-vis third States (see para. 55 below).

4. 'Nationality' of Legal Persons

24 Legal persons, such as associations, foundations, corporations, and other forms of business enterprises (→ *Corporations in International Law*), are usually said to possess a 'nationality', which in their case, however, is the result of a functional attribution of the person to a State, which is necessary for the purpose of applying certain rules of inter-national law, rather than a personal bond giving rise to a formal status. For all legal entities created as artefacts under some national law, no matter if their basis is public or private law, if they have a commercial or non-commercial purpose, or if their activities are basically confined to the national legal order or have a multinational pattern, there is a need under inter-national law to establish an affiliation to a State as the basis for personal jurisdiction, for the attribution of activities and property etc.

25 Just as for natural persons, it is recognized that the criteria for the allocation of 'nationality' to legal persons is basically a matter of the domestic jurisdiction of States. Legal persons are artefacts of national law; it is therefore in the latter's domain to determine which legal persons acquire under what conditions the 'nationality' of the respective State. As the ICJ pointed out in the → *Barcelona Traction Case*:

inter-national law has had to recognize the corporate entity as an institution created by States in a domain essentially within their domestic jurisdiction. This in turn requires that, whenever legal issues arise concerning the rights of States with regard to the treatment of companies and shareholders, as to which rights international law has not established its own rules, it has to refer to the relevant rules of municipal law (at para. 38).

26 However, it is for international law to decide under what conditions States may draw consequences from the 'nationality' of a legal person on the international plane, ie when that attribution of the entity to a State is recognized under international law. State practice has in principle developed two criteria for allocating legal persons to a State: the place of seat (*siège social*), ie the State in whose territory the corporate entity has its seat of management or its headquarters; and the incorporation, ie the State under whose laws the person has been

incorporated and acquired the status of a legal person. Usually the two criteria are applied cumulatively, ie 'nationality' is allocated to the legal person if its seat is located in the State of incorporation. This cumulative approach is laid down in Art. 1 Hague Convention concerning the Recognition of the Legal Personality of Foreign Companies, Associations and Institutions ([done 1 June 1956] 1 AJCL 277), which is, however, only binding for three European States, and this was also the approach of the ICJ in its *Barcelona Traction* dictum where it held: 'The traditional rule attributes the right of diplomatic protection of a corporate entity to the State under the laws of which it is incorporated and in whose territory it has its registered office' (at para. 70).

27 The Court acknowledged in that case that other criteria, such as the majority of the shares of a company being owned by nationals of another State than that of seat or incorporation (financial control test), might also give rise to a 'genuine connection' between State and corporate entity (ibid). Accordingly, in State and treaty practice, a variety of criteria, and different combinations of them, has been applied in order to establish jurisdiction of States with regard to corporate entities, but it is submitted that no other customary rule than that of incorporation and seat in the cumulative approach has been established so far. It remains unsettled in practice, therefore, which 'nationality' a corporation is deemed to have whose seat of management is no longer in its State of incorporation. To recognize that both criteria of attribution could apply separately, ie that 'nationality' of a legal person can be based on each of them alone, would give rise to cases of dual 'nationality'.

28 The → *International Law Commission (ILC)* in its 2006 Draft Articles on Diplomatic Protection adopted a slightly different approach. Firstly, in Art. 9 Draft Articles on Diplomatic Protection, the ILC simply stipulates that 'the State of nationality means the State under whose law the corporation was incorporated', thus the fact of incorporation alone is supposed to determine the allocation of the legal person to a State. Secondly, Art. 9 Draft Articles on Diplomatic Protection reads:

However, when the corporation is controlled by nationals of another State or States and has no substantial business activities in the State of incorporation, and the seat of management and the financial control of the corporation are both located in another State, that State shall be regarded as the State of nationality. Thus, in cases where there is no significant connection between the corporate entity and its State of incorporation, and where effective connections in the form of seat of management and financial control exist with another State, the latter would be established as the alternative State of nationality. Since the ILC itself does not purport to base this proposal on uniform State practice, but on 'policy and fairness' (cf the Commentary to Art. 9, para. 4), it cannot be taken to reflect customary international law.

29 In European Union law, a specific version of the cumulative approach is being applied: according to Art. 54 TFEU, EU law applies to those companies that are formed in accordance with the law of a Member State and that have their registered office, central administration, or principal place of business within the Union. The same rule was laid down in Art. 1 Convention on the Mutual Recognition of Companies and Bodies Corporate ([signed 29 February 1968, entered into force 5 January 1974] Bulletin of the European Communities 2-1969, 7-18), concluded among the original EU Member States. Neither provision contains rules on the attribution of legal persons to a State, thus on 'nationality', but only to the European Union as such. They may, however, be taken to confirm that the allocation of corporate entities to a State requires both the physical connection of the seat in the territory and the procedural connection of incorporation.

5. 'Nationality' of Ships and Aircraft

30 The exclusive jurisdiction of States over granting their nationality to ships is a well-established rule of general international law (*M/V 'Saiga' [No 2] [Merits]* para. 63: → *Saiga Cases*). According

to Art. 91 United Nations Convention on the Law of the Sea ('UNCLOS' [concluded 10 December 1982, entered into force 16 November 1994] 1833 UNTS 397), adopting a rule that was already contained in Art. 5 Geneva Convention on the High Seas ([done 29 April 1958, entered into force 30 September 1962] 450 UNTS 82), ships have the nationality of the State whose flag they are entitled to fly. Every State is entitled to fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory and for the right to fly its flag, provided, however, that there must be a genuine link between the State and the ship. In practice, however, the genuine link requirement is widely ignored by States; → *flags of convenience* are being granted to ships with no effective connection to the flag State. It could be argued, therefore, that in respect of this requirement Art. 91 UNCLOS, if it has not fallen into desuetude (→ *Desuetudo*), at least remains *lex imperfecta*. As the → *International Tribunal for the Law of the Sea (ITLOS)* pointed out in the *M/V 'Saiga' (No 2)* case, however, the non-existence of a genuine link between a ship and its flag State does not give other States the right to refuse to recognize the nationality of the ship (at paras 79–86). According to Art. 17 → *Chicago Convention (1944)* (Convention on International Civil Aviation [signed 7 December 1944, entered into force 4 April 1947] 15 UNTS 295), aircraft have the nationality of the State in which they are registered. The conditions for registration are a matter for national law (Art. 19).

6. Procedural Issues

31 Since the acquisition of nationality is in principle a matter in the exclusive competence of States, so is the administrative and judicial procedure to be followed with regard to nationality issues. However, Arts 10–13 European Convention on Nationality set up some basic procedural requirements which States Parties must comply with in relation to the acquisition, retention, loss, recovery, and certification of their nationality. Thus, individual applications must be processed within a reasonable time, and administrative decisions must contain reasons in writing. Decisions must be open to administrative or judicial review. Fees for the administrative acts must be reasonable and they must not be an obstacle for applicants in review proceedings. The same rules are contained in Art. 12 Convention on the Avoidance of Statelessness in relation to State Succession (2006), and very similar ones in Art. 17 ILC Draft Articles on Nationality of Natural Persons in Relation to the Succession of States. Those provisions seem very much inspired by European views on the → *rule of law* in administrative and judicial proceedings and certainly do not reflect rules of customary international law.

D. Loss of Nationality

32 As a corollary of the scarcely limited freedom of States with regard to their nationality laws, the loss of nationality is also basically within their domestic jurisdiction. However, as one of the restrictions set by international law, the principle of non-discrimination in relation to the regulation of nationality (see para. 6 above) also applies to rules and practices of States as to the loss of nationality. It is in this sense that the stipulation contained in Art. 15 (2) Universal Declaration on Human Rights (1948), that 'no one shall be arbitrarily deprived of his nationality', can today be considered a rule of customary international law.

33 The same can probably be said with regard to the rule that neither marriage, nor dissolution of marriage, nor the change of nationality of the spouse during marriage shall affect the nationality of natural persons (see para. 15 above). Although the traditional view was that marriage can be taken to constitute a legitimate reason (for women) to lose their nationality and acquire that of their spouse, the new rule is binding for the vast majority of States as a matter of treaty law, and only very few States (Iraq, Monaco, the Republic of Korea, and the United Arab Emirates) have declared reservations to it. Assuming that these treaty commitments are also influencing the actual State practice, it may be concluded that under customary international law marriage is no longer a legitimate reason for the involuntary loss of nationality.

34 The loss of nationality can result from the initiative of the State or from that of the individual, but in both cases it is usually effected by an act of the State. Thus, the voluntary renunciation of nationality by the individual must also be followed by an official act of acceptance on the part of the State. International law does not prohibit States providing in their national law the possibility of renunciation of nationality, and it barely restricts that possibility, except in cases where the person concerned would become stateless (Art. 7 (1) Convention on the Reduction of Statelessness; Art. 8 (1) European Convention on Nationality). On the other hand, there seems to be no rule in general international law which would oblige States to provide for the possibility of renunciation in their national legal systems. As a matter of treaty law, however, Art. 8 (1) European Convention on Nationality contains such an obligation for the States Parties, allowing in para. 2 only for the limitation to be made in domestic law that renunciation may be effected only by nationals who are habitually resident abroad.

35 Of much greater importance in practice is the involuntary loss of nationality by denaturalization, either through legislation, or administrative or judicial acts of the State. Here rules of general international law that would restrict the freedom of States beyond the general prohibition of discrimination (see para. 32 above) are also scarce. However, collective denaturalizations, as they have occurred in the past on the grounds of race, ethnic origin, or religion, would today certainly be in violation of the prohibition of discrimination, firmly recognized as a general rule of international law on nationality (→ *Denaturalization and Forced Exile*).

36 Apart from that, European Convention on Nationality sets up an exhaustive list of legitimate grounds for the loss of nationality at the initiative of the State. Among those are widely recognized grounds, such as the voluntary acquisition of another nationality, voluntary service in a foreign military force, and the acquisition of the nationality of the State by means of fraudulent conduct, false information etc. The loss of nationality on the latter ground may even result in the person concerned becoming stateless (Art. 7 (3) European Convention on Nationality), an approach that was in principle adopted for the purposes of European Union law by the European Court of Justice in the *Rottmann case*. Moreover, the list in Art. 7 (1) European Convention on Nationality contains as legitimate ground for denaturalization, 'conduct seriously prejudicial to the vital interests of the State Party', thereby emphasizing once more the wide discretion of States under international law to deprive their nationals of their nationality.

E. Nationality and State Succession

37 As has been shown above (see para. 16 above), an event of State succession (→ *State Succession in Treaties*; → *State Succession in Other Matters than Treaties*) does not automatically change the nationality of the persons concerned, but gives the successor State the right under customary international law to confer its nationality upon the people which are habitually resident in its (new) territory, provided, however, that the acquisition of territory was lawful. State succession is thus a case of constitutive conferment of nationality. That international law does not contain any rules on automatic succession in nationality is further demonstrated by the fact that the rules in force on the subject do in fact appeal to the States concerned to 'endeavour to regulate matters relating to nationality by agreement amongst themselves' (cf Art. 19 European Convention on Nationality; Convention on the Avoidance of Statelessness in Relation to State Succession, thus to agree on a constitutive solution which is supposed to comply with some general principles.

38 The freedom of States to determine the consequences of a territorial change (→ *Territorial Change, Effects of*) is limited by general principles that have an overarching influence on all international rules on nationality, such as non-discrimination, the avoidance of statelessness, and the effective connection of persons with a State. The latter point is specified to the effect that the habitual residence of persons at the time of State succession and their territorial origin shall be taken into account when States decide on the granting or retention of nationality in cases of State succession (Art. 18 (2) European Convention on Nationality; Art. 5 (2) Convention on the

Avoidance of Statelessness in Relation to State Succession). Art. 12 ILC Draft Articles on Nationality of Natural Persons in Relation to the Succession of States adds the unity of family to the principles to be considered.

39 One of the most controversial issues in respect of nationality and State succession has traditionally been the question whether persons affected by a transfer of territory have a right of option, i.e. the right to choose the nationality of one of the successor States (→ *Option of Nationality*). Although the free choice of nationality was laid down in some treaties and official documents, and although quite a few authors have advocated such a right in legal doctrine, it never became a firmly established feature of State practice and was thus never recognized as a rule of customary international law (cf Brownlie 341–42; Peters 697). There does not, therefore, exist as part of the *lex lata* a right of option under international law itself, nor a legally binding obligation of successor States to grant such a right of option in their national laws. This state of the law is implicitly confirmed by Art. 18 (2) (c) European Convention on Nationality, which merely stipulates that States shall ‘take account of the will of the person concerned’; thus the will of the population is one amongst several factors to be considered. This seems in general also to be the view of the ILC which in Art. 11 (1) Draft Articles on Nationality of Natural Persons in Relation to Succession of States requires the States concerned to ‘give consideration to the will of persons concerned’, whenever those persons are qualified to acquire the nationality of two or more States. In its commentary to the draft provision, the Commission explicitly emphasizes that its wording implies that there is no strict obligation to grant a right of option (Commentary Art. 11 para. 8).

40 However, the ILC goes far beyond that and in the course of its draft establishes the obligation of States involved in cases of dissolution and separation of States to ‘grant a right of option to persons concerned’ who are qualified to acquire the nationality of more than one of the States involved (Arts 23 and 26). Thus, the special provisions of the ILC Draft are in contradiction to the general norm in Art. 11 (1) that confined the obligation of States to a ‘duty to consider’. The Commission justifies this inconsistency by alluding to ‘the respect for the will of the individual ... which, with the development of human rights law, has become paramount’ (Commentary Art. 11 para. 6). Even those who regard this argument as convincing will have to admit that what the ILC Draft is driving at in this respect is progressive development of international law, not the codification of existing law.

41 Also, in cases where the persons affected by a transfer of territory would otherwise become stateless, the duty of States to consider the will of the people concerned is supposed to evolve into a duty to grant a right of option. Thus, Art. 11 (2) ILC Draft sets out the obligation of every State to grant ‘a right to opt for its nationality’ to persons who have appropriate connection with that State. In this respect, the draft of an obligation has at least some basis in the *lex lata*, since Art. 7 Convention on the Avoidance of Statelessness in Relation to State Succession, currently binding upon six European States, stipulates that a State shall ‘not refuse to grant its nationality’ where such nationality reflects the expressed will of a person who would otherwise become stateless.

F. Consequences of Nationality

42 Nationality has a variety of legal consequences under international law which are basically an expression of the fact that by virtue of its nationality the individual is attached to a State, more than to any other, and part of its population. This fact becomes important for the application of all rules of international law which refer to nationality as a precondition of their application. This is a priori not the case for human rights law, which in principle applies to persons regardless of their nationality, the exception being provisions on expulsion, such as Art. 13 ICCPR and Arts 3 and 4 Protocol No. 4 to the ECHR (→ *Aliens, Expulsion and Deportation*; → *Population, Expulsion and Transfer*), and on the right to enter one’s own country (Art. 12 (4) ICCPR, Art. 3 (2) Protocol No. 4 to the ECHR). Also, the rules on State responsibility do not have regard to the nationality of the acting persons, as the attribution of conduct to a State is in principle based on *de iure* and *de facto*

authority or on direction and control by the State (cf Arts 4–11 of the 2001 ILC Draft Articles on the Responsibility of States for Internationally Wrongful Acts). A State is in principle not internationally responsible for the conduct of its nationals, only because they are its nationals. Nationality does matter, however, and entails legal consequences with regard to: (1) jurisdiction; (2) admission; and (3) protection.

1. Personal Jurisdiction

43 If nationality determines the ‘personal dimension’ of the State (see para. 1 above), this also means that it delimits the personal scope of the legal authority of the State. The latter extends under international law to all nationals of the State, thus nationality is a traditional and still valid concept of establishing and delineating the jurisdiction of States, both in relation to other States and to other individuals. By virtue of nationality, ie of personal jurisdiction, the individual falls under the legal authority of the State for the purposes of legislation, and administrative and judicial proceedings. That authority finds its limits under international law mainly in the rules on human rights applicable to the State concerned.

44 The legal authority of States with regard to their nationals extends to their relations with other States and allows them to make the rights and duties of their nationals a matter of their international relations. By treaty, but also by unilateral declaration, a State is competent to create legal consequences for its nationals in relation to other States, which can take the form of direct rights, obligations, or the acquisition or loss of claims and property. State practice knows many examples for the use of this competence, one of the more prominent being the conclusion of → *compensation* or → *lump sum agreements*, where States receive compensation for damage incurred by their nationals and in consideration waive any individual claims which their nationals might have against the other State. By virtue of such a → *waiver* on part of the State, the private rights, and possibly property, of nationals cease to exist.

45 From the perspective of other States, personal jurisdiction is a recognized criterion under international law for establishing a State’s competence in matters and cases that have a transnational element. Thus, the criminal and civil jurisdiction of a State’s national courts extends to the conduct of its nationals abroad (active personality principle) and in principle to conduct vis-à-vis its nationals in another State (passive personality principle). Legislation of a State may be adopted and applied with regard to the conduct of its nationals abroad and their affairs in another country. As long as this personal connection is present and sufficiently effective, the scope of application of official acts of the State may extend beyond its borders and capture transnational cases, without violating another State’s sovereignty. This does not mean, of course, that those legal acts would also be valid outside the territory of the State, thus their area of legal validity (*Geltungsbereich*) and their scope of application (*Anwendungsbereich*) can differ in cross-border cases.

46 In treaty law, nationality is an essential element in bringing individuals under the personal scope of certain treaties, and thus making the latter applicable to them, where that scope is determined by reference to nationality. Traditional examples are bilateral treaties between States on the freedom of establishment and movement of their nationals, but also on the protection of investments, or on other economic privileges. Not least, multilateral treaty systems created for the purpose of establishing and guaranteeing individual economic freedoms, such as the European Union and its internal market (European [Economic] Community), determine the scope of those freedoms by reference to the nationality of the Member States. Art. 20 (1) TFEU is but one explicit expression of this nationality-based approach.

47 Apart from the rights of the individual, the scope of treaties is also quite often determined by reference to nationality. To give but a few examples: traditionally bilateral → *extradition* treaties contain an exemption clause which allows each party to decline extradition with regard to its own

nationals; Art. 38 Vienna Convention on Diplomatic Relations restricts the privileges and immunities of members of a diplomatic mission who are nationals of the receiving State (→ *Members of the Staff of Diplomatic Missions*); and Art. 36 Vienna Convention on Consular Relations lays down rights of the sending State relating to communication and contact with its nationals.

48 A particular example of nationality-based jurisdiction, which at the same time illustrates the growing autonomy of the legal status of individuals under modern international law, is Art. 12 (2) Rome Statute of the → *International Criminal Court (ICC)*. According to lit. (b) of the provision, the ICC may exercise its jurisdiction if the State of which the accused person is a national is a party to the Statute: here nationality serves in a quite traditional manner as the basis of jurisdiction. On the other hand, the Court also has jurisdiction under lit. (a) if the State on the territory of which the conduct in question occurred is a party to the Statute. And since for the jurisdiction of the Court in a given case it is sufficient that either the territorial or the personal basis is established, it becomes apparent that the individual is in the end subject to that jurisdiction regardless of its nationality and of the status of its national State under the Statute. As a result, Art. 12 (2) Rome Statute constitutes an example for nationality as the basis of both international jurisdiction and autonomous legal obligations which the individual possesses under international law independently from its nationality. Thus, the bond of personal jurisdiction between the State and its nationals is at the same time confirmed and undermined by this provision.

49 Moreover, personal jurisdiction is the basis for the unwritten exception to the international prohibition on the use of force, which allows States to protect their own nationals, or nationals of another State that has requested such protection by virtue of its personal jurisdiction, by forcible means in the territory of another State. This exception has been developed in State practice for many years, and is in principle recognized today as a permissive rule of customary international law (→ *Use of Force, Prohibition of*).

2. Duty of Admission

50 Under general international law, States are not obliged to grant aliens access to or residence in their territory. This implies that, as a corollary, every State is under an international legal obligation to admit its own nationals to its territory and grant them residence there, since otherwise the freedom of States to decide on the access of foreign nationals to their territory would be undermined. It is a general obligation under customary international law which is owed to other States and supposed to protect their sovereign rights. In modern times, the content of this obligation is often implemented through the conclusion of readmission agreements between States.

51 Besides being an obligation between States, its basic content has also acquired the status of a human right under treaty law. Taking up the non-binding stipulation in Art. 13 (2) Universal Declaration of Human Rights to the effect that everyone has 'the right to return to his country', Art. 3 Protocol No 4 to the European Convention on Human Rights ([done 16 September 1963, entered into force 2 May 1968] 1496 UNTS 263) guarantees that no one 'shall be deprived of the right to enter the territory of the State of which he is a national'. Somewhat more restrictively, Art. 12 (4) ICCPR stipulates that no one 'shall be arbitrarily deprived of the right to enter his own country'. Considering the restricted wording of the latter provision, it remains doubtful if the right to enter the home country is, as some writers argue, a human right under universal customary international law.

3. Diplomatic Protection

52 Probably the most important consequence of nationality in international practice is the right of the home State to exercise → *diplomatic protection* for its nationals. The traditional instrument of diplomatic protection was described by the PCIJ in the famous *Mavrommatis* case as the right of the State 'to ensure, in the person of its subjects, respect for the rules of international law' (*Mavrommatis Palestine Concessions [Greece v Great Britain] [Jurisdiction]* PCIJ Series A No 2, 12

[1924]; → *Mavrommatis Concessions Cases*). Among others, it provides the State of nationality with *locus standi* in proceedings to protect the interests and rights of its nationals. More recently, diplomatic protection is defined in Art. 1 ILC Draft Articles on Diplomatic Protection (2006) as follows:

Diplomatic protection consists of the invocation by a State, through diplomatic action or other means of peaceful settlement, of the responsibility of another State for an injury caused by an internationally wrongful act of that State to a natural or legal person that is a national of the former State with a view to the implementation of such responsibility.

This definition is considered by the ICJ to be declaratory of existing customary law (*Ahmadou Sadio Diallo Case [Preliminary Objections]* para. 39).

53 The main requirement for the exercise of diplomatic protection under customary law, which has now been codified in Art. 5 (1) ILC Draft Articles on Diplomatic Protection, is that the person concerned was a national of the claiming State continuously from the date of the injury to the date of the official presentation of the claim (→ *Continuous Nationality*). The same applies in principle if the national to be protected is a corporation or another legal person (cf Art. 10 ILC Draft Articles on Diplomatic Protection).

54 In its famous dictum in the *Nottebohm* case the ICJ set up as an additional requirement for an exercise of diplomatic protection in the case of a national who had acquired the nationality through naturalization, that a 'genuine connection' exists between the naturalized person and its (new) State of nationality (at 23). This requirement has been severely criticized both in legal doctrine and in judicial practice for at least two reasons: firstly, the Court in fact applied the concept of 'effective nationality', which is recognized for cases of multiple nationality, to the essentially different case of sole nationality where it does not quite fit. As a consequence, it deprived the individual of the advantages of nationality in relation to other States and thereby rendered him *de facto* stateless. Secondly, by setting up the requirement of a genuine link for naturalized persons, the Court in fact established, for the purpose of relations to other States, different classes of nationals: those having acquired their nationality by birth or change of civil status, and those having been naturalized. Such a distinction hardly seems conceivable and, moreover, unacceptable in light of the principle of non-discrimination stipulated in Art. 5 (2) European Convention on Nationality. Although it has been followed in some cases, the '*Nottebohm* rule' is not generally accepted and therefore not part of customary international law. This is aptly illustrated not only by Art. 4 ILC Draft Articles on Diplomatic Protection which does not make the exercise of the right of diplomatic protection dependent on any kind of link between individual and State, but also by a recent ICSID award (International Centre for Settlement of Investment Disputes [ICSID]) which held:

The Tribunal notes that the role of a genuine or effective link with the state of nationality is disputable in public international law, and is indeed disputed, particularly in the case of a single nationality There is thus a clear reluctance in public international law to apply the genuine link test where only a single nationality is at issue, such as in the case at hand (*Micula et al v Romania* ICSID Case No. ARB/05/20, Decision on Jurisdiction and Admissibility of 24 September 2008, para. 99, (2009) 48 ILM 51).

55 In cases of multiple nationality the right of diplomatic protection is traditionally subject to some restrictions which arise from the general principle of sovereign equality (→ *States, Sovereign Equality*). As between two States of nationality of a person, the traditional rule of equality was set out in Art. 4 Convention on Certain Questions relating to the Conflicts of Nationality Laws, according to which a State may not afford diplomatic protection to one of its nationals against a State whose nationality such a person also possesses. In the *Reparation for Injuries Suffered in the Service of the United Nations* Advisory Opinion the ICJ described this concept as the 'ordinary practice' of States ([1949] ICJ Rep 174 at 186). In relation to a third State, it was the traditional view that only

one of the States of nationality shall be entitled to exercise diplomatic protection and that is the State of the **effective or dominant nationality**. Convention on Certain Questions relating to the Conflicts of Nationality Laws stated that every third State 'shall, of the nationalities which any such person possesses, recognise 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'.

56 It appears, however, that in practice both principles have not been uniformly followed, so that their status as rules of customary international law is open to considerable doubt. In Arts 6 and 7 ILC Draft Articles on Diplomatic Protection different rules are being presented instead. As against a third State, every State of nationality may exercise diplomatic protection, and as among States of nationality no diplomatic protection may be exercised, unless the nationality of one of them is predominant. Thus, the principle of predominant nationality is supposed to apply solely as a restriction to the equality principle in the relations between different States of nationality. The ILC considers this to be an existing customary rule and finds authority for that above all in the practice of the Italian–United States Conciliation Commission and of the Iran–United States Claims Tribunal.

57 As for corporate entities that have been granted a distinct legal personality of their own, it is established in the case-law of the ICJ that only the national State of the corporation, ie the State of seat and incorporation, is entitled to exercise diplomatic protection (*Barcelona Traction, Light and Power Co Ltd [Second Phase]* para. 93; *Ahmadou Sadio Diallo [Preliminary Objections]* para. 61). The national State of the majority of the shareholders of a company (control test, see para. 27 above) is entitled to exercise diplomatic protection, 'by substitution' of the company, only in very exceptional circumstances which the ILC Draft Articles on Diplomatic Protection summarize in Art. 11: (a) when the company has ceased to exist for reasons unrelated to the injury; and (b) when the company's State of incorporation is the State alleged to have caused the injury and incorporation in that State 'was required by it as a precondition for doing business there'. The ICJ left open in the *Diallo* case whether this rule is reflecting customary law (*Ahmadou Sadio Diallo [Preliminary Objections]* paras 91–93).

58 Diplomatic protection of ships and aircraft can only be exercised by or on behalf of the flag State (cf Art. 292 (2) UNCLOS). As the ITLOS emphasized in the *M/V 'Saiga' (No 2)* case, under the law of the sea it is the flag State that bears the rights and obligations with regard to the ship, so that 'the ship, every thing on it and every person involved or interested in its obligations are treated as an entity linked to the flag State. The nationalities of these persons are not relevant' (at para. 106).

Select Bibliography

- R Graupner 'Nationality and State Succession: General Principles of the Effect of Territorial Changes on Individuals in International Law' (1947) 32 *Grotius Society Transactions* 87–120.
- HF van Panhuys *The Rôle of Nationality in International Law: An Outline* (Sijthoff Leiden 1959).
- I Brownlie 'The Relations of Nationality in Public International Law' (1963) 39 *BYIL* 284–364.
- K Ginther 'Nationality of Corporations' (1966) 16 *österreichische Zeitschrift für Öffentliches Recht und Völkerrecht* 27–83.
- E Lapenna *La cittadinanza nel diritto internazionale generale* (Giuffré Milan 1966).
- C Joseph *Diplomatic Protection and Nationality: The Commonwealth of Nations* (Northumberland Genf 1968).
- JHW Verzijl *International Law in Historical Perspective*, vol 5 *Nationality and Other Matters Relating to Individuals* (Sijthoff Leiden 1972).
- M Diez de Velasco Vallejo 'La protection diplomatique des sociétés et des actionnaires' (1974) 141 *RdC* 87–186.
- P Weis *Nationality and Statelessness in International Law* (2nd ed Sijthoff Leiden 1979).

L Levy *La nationalité des sociétés* (Librairie Générale Paris 1984).
 JF Rezek 'Le droit international de la nationalité' (1986) 198 RdC 333–400.
 I Seidl-Hohenveldern *Corporations in and under International Law* (Grotius Cambridge 1987).
 JMM Chan 'The Right to a Nationality as a Human Right' (1991) 12 HRLJ 1–14.
 R Donner *The Regulation of Nationality in International Law* (2nd ed Transnational Irvington-on-Hudson NY 1994).
 L Henkin "'Nationality" at the Turn of the Century' in U Beyerlin *Recht zwischen Umbruch und Bewahrung: Festschrift für Rudolf Bernhardt* (Springer Berlin 1995) 89–102.
 AA Fatouros 'National Legal Persons' in R Bernhardt (ed) *Encyclopedia of Public International Law* vol 3 (Elsevier Amsterdam 1997) 495–501.
 A Randelzhofer 'Nationality' in R Bernhardt (ed) *Encyclopedia of Public International Law* vol 3 (Elsevier Amsterdam 1997) 501–10.
 JL Blackman 'State Successions and Statelessness: The Emerging Right to an **Effective Nationality** under International Law' (1998) 19 MichJntL 1141–94.
 M Verwilghen 'Conflits de nationalités: Plurinationalité et apatridie' (1999) 277 RdC 13–484.
 A Grossman 'Nationality and the Unrecognised State' (2001) 50 ICLQ 849–76.
 AI Muchmore 'Passports and Nationality in International Law' (2003–4) 10 University of California Davis Journal of International Law and Policy 301–55.
 AM Boll *Multiple Nationality and International Law* (Nijhoff Leiden 2007).
 RD Sloane 'Breaking the Genuine Link: The Contemporary International Legal Regulation of Nationality' (2009) 50 HarvIntLJ 1–60.
 A Peters, 'Extraterritorial Naturalizations: Between the Human Right to Nationality, State Sovereignty and Fair Principles of Jurisdiction' (2010) 53 GYL 623–726.

Select Documents

Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of Congo) (Preliminary Objections) [2007] ICJ Rep 20.
Barcelona Traction, Light and Power Co Ltd (Belgium v Spain) (Second Phase) [1970] ICJ Rep 3.
 Case C-135/08 *Rottmann v Freistaat Bayern* [2010] ECR I-0000 (2 March 2010).
 COE 'Convention on the Avoidance of Statelessness in Relation to State Succession' (adopted 15 March 2006, entered into force 1 May 2009) CETS No 200.
 COE 'Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality' (done 6 May 1963, entered into force 28 March 1968) CETS No 43.
 COE 'European Convention on Nationality' (done 6 November 1997, entered into force 1 March 2000) CETS No 166.
 COE 'European Convention on Nationality: Explanatory Report' (7 July 2011).
 COE 'Protocol Amending the Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality' (done 24 November 1977, entered into force 8 September 1978) CETS No 95.
 Convention on Certain Questions relating to the Conflicts of Nationality Laws (done 12 April 1930, entered into force 1 July 1937) 179 LNTS 89.
 Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13.
 Convention on the Nationality of Married Women (adopted 29 January 1957, entered into force 11 August 1958) 309 UNTS 65.
 Convention on the Reduction of Statelessness (concluded 30 August 1961, entered into force 13 December 1975) 989 UNTS 175.
 Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.
 International Convention on the Elimination of all Forms of Racial Discrimination (opened for

signature 7 March 1966, entered into force 4 January 1969) 660 UNTS 195.
Kuric v Slovenia (ECtHR) App No 26828/06 (13 July 2010).
M/V 'SAIGA' (No 2) (Saint Vincent and the Grenadines v Guinea) (Merits) ITLOS Case No 2 (1 July 1999).
Nationality Decrees Issued in Tunis and Morocco (French Zone) (Advisory Opinion) PCIJ Series B No 4 (1923).
Nottebohm (Liechtenstein v Guatemala) (Second Phase) [1955] ICJ Rep 4.
Optional Protocol to the Vienna Convention on Consular Relations concerning Acquisition of Nationality (signed 24 April 1963, entered into force 19 March 1967) 596 UNTS 469.
Optional Protocol to the Vienna Convention on Diplomatic Relations concerning Acquisition of Nationality (done 18 April 1961, entered into force 24 April 1964) 500 UNTS 223.
Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica (Advisory Opinion) IACtHR Series A No 4 (19 January 1984).
UNGA Res 55/153 'Nationality of Natural Persons in Relation to the Succession of States' (12 December 2000) GAOR 55th Session Supp 49 vol 1, 285.
UN ILC 'Draft Articles on Diplomatic Protection' (2006) GAOR 61st Session Supp 10, 16.
UN ILC 'Draft Articles on Nationality of Natural Persons in relation to the Succession of States' (1999) GAOR 54th Session Supp 10, 15.
-United Nations Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) GAOR 61st Session Supp 49 vol 1, 65.