The Right to a Nationality as a Human Right

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The notions of “citizenship” and “nationality” need to be distinguished on the basis of their nature in domestic law and international law.

Citizenship

”Citizenship” includes the rights and obligations of a person originating from his/her citizenship. Since the existence of citizenship rights and obligations is relevant from the point of view of domestic law, the term “citizenship” is mainly used as a notion of domestic law.

Nationality

”Nationality” primarily means the belonging of an individual to a state irrespective of citizenship rights and obligations. For analyses focusing on nationality in international law, it is the bond between the individual and the state that has significance; the existence of rights and obligations is irrelevant. Consequently, the term “nationality” has to be used in international law.
NATIONALITY MATTERS AND DOMAINE RÉSERVÉ

Domaine réservé includes:

- matters in which states enjoy absolute and unrestricted discretion.

Matters of nationality

- fall within the domestic jurisdiction of states, and
- form part of domaine réservé.

1. The determination of conditions of the granting and loss of nationality
2. The prohibition or recognition of dual nationality
The discretion of states likewise includes:

- the undertaking of international obligations concerning these matters, whereby states may establish limits on their own.

The undertaking of an international obligation:

- places a restriction upon the exercise of the sovereign rights of the state,
- but limits cannot be presumed in the lack of will of the state.

The sovereignty of states and the limits of international law on matters of nationality are well compatible.
The relationship of human rights and the domaine réservé of states can be illustrated, inter alia, by *General Assembly Resolution 36/103 of 9 September 1981*, which – unlike the previous resolutions concerning the inadmissibility of intervention – referred to the respect for human rights in the following manner:

„The duty of a State to refrain from the exploitation and the distortion of human rights issues as a means of interference in the internal affairs of States […].”

Kofi Annan, the Secretary-General of the United Nations stated (Standing up for Human rights, Geneva, 7 April 1999) that:

“No government has the right to hide behind national sovereignty in order to violate the human rights or fundamental freedoms of its peoples.”
Human rights issues had already left the realm of domaine réservé by the 1980s.

This conclusion can also be substantiated by an important resolution adopted by the Institute of International Law during its session in Santiago de Compostela in 1989, which holds that:

- in case of a breach of human rights obligations, states cannot evade responsibility by claiming that the matter pertains essentially to the reserved domain.

States may no longer invoke the inviolability of sovereignty and the principle of non-intervention in case they are being criticized for serious breaches of human rights.
HUMAN RIGHTS OBLIGATIONS CONCERNING NATIONALITY

When interpreting the right to a nationality as a human right, one must take into account that matters of nationality fall within the domestic jurisdiction of states.

Human rights obligations of states limiting the regulation of acquisition and loss of nationality in domestic law are:

- the respect for the right to a nationality,
- the prohibition of (arbitrary) deprivation of nationality and
- the prohibition of discrimination.
HUMAN RIGHTS OBLIGATIONS CONCERNING NATIONALITY

Although human rights issues were removed from domestic jurisdiction, the nature of the right to a nationality as a human right is nevertheless influenced by that nationality matters form part of the domaine réservé.

This clearly manifests itself in the fact that:

- its regulation on the international level reflects the interests of states, and
- the wording of relevant documents is typically vague in order to enable states to retain the regulation of nationality as far as possible within their respective domestic spheres.

Thus, the right ensured on the international level is frequently rendered meaningless in practice.
Divergent interpretations of the content of the right to a nationality also give rise to problems:

- It is believed that the right to a nationality should be construed as a **right to one nationality**, and as such, it includes the prohibition of dual nationality.

- Yet others urge the recognition of **dual nationality as a human right**.

- The **right to a nationality** is primarily meant to **eliminate statelessness**, since the right was originally created for this objective.
Right to a citizenship

The right to a citizenship as a precursor of the right to a nationality had emerged during the 16th century in a lecture of an outstanding member of the Spanish school of international law, Francisco de Vitoria. (F. de Vitoria, ‘De Indis prior Relectio’, in F. de Vitoria (Ed.), Relectiones Theologicae, Manuel Martin, Matriti, 1765, p. 229.)

He boldly claimed that:

- certain persons ‘cannot be excluded’ from citizenship.
HISTORY – FORMULATION OF THE RIGHT TO A NATIONALITY

Right to a nationality as a human right

However, the formulation of right to a nationality as a human right only took place in the mid-20th century.

- This right was first mentioned in a non-binding regional document, the *American Declaration on the Rights and Duties of Man*. The draft of the declaration was negotiated at a conference in Bogotá between 30 March and 2 May in 1948, parallel to the Charter of the Organization of American States, and was adopted on 2 May, eight months before the naissance of the Universal Declaration of Human Rights.
- The universal protection of the right to a nationality was envisaged by the *Universal Declaration of Human Rights*, adopted on 10 December 1948 by a resolution of the United Nations General Assembly, a non-binding document, which has since become binding as customary international law.
  - The drafting process of the Universal Declaration of Human Rights was influenced by the American Declaration on the Rights and Duties of Man.
  - The references to the right to a nationality, the change of nationality as well as to statelessness had already emerged at the beginning of the drafting of the Universal declaration of Human Rights in 1947.
HISTORY – FORMULATION OF THE RIGHT TO A NATIONALITY

Drafting process of the Universal Declaration of Human Rights

11 June 1947
The Chilean government presented the draft proposal of the Inter-American Juridical Committee, which included the right to a nationality, the prohibition of deprivation of nationality and the right to change nationality in June 1947.

1 July 1947
Subsequently, René Cassin submitted a detailed proposal containing the right to a nationality and ensuring the elimination of statelessness by member states of the United Nations, but the latter was not endorsed for incorporation into the Universal Declaration by other members of the Drafting Committee.

24 May 1948
India and the United Kingdom proposed an amendment, inter alia, to the article concerning nationality, in which the provision ‘Everyone has the right to a nationality’ was replaced by the phase ‘No one shall be arbitrarily, deprived of his nationality.’ Peng-Chun Chang and Eleanor Roosevelt supported this text and stated that it was more preferable to guard persons against the arbitrary deprivation of nationality than to attempt to provide everyone the right to a nationality.
HISTORY – FORMULATION OF THE RIGHT TO A NATIONALITY

Drafting process of the Universal Declaration of Human Rights

10 June 1948 The representative of Uruguay, Roberto Fontaina, concurred and suggested an amendment to the joint proposal by the delegations of India and United Kingdom that the declaration should contain the right to change of nationality similarly to the American Declaration.

28 June 1948 Therefore, the Commission on Human Rights adopted the following text: ‘No one shall be arbitrarily deprived of his nationality or denied the right to change his nationality.’

8 October 1948 Finally, in the course of the debate of the draft declaration in the Third Committee of the UN General Assembly, the right to a nationality was included into the text after the proposal by René Cassin.

18/30 October 1948 The proposal of René Cassin had been supported by a number of states, particularly by Cuba, Egypt, Lebanon and Uruguay. The proponents pointed out that the phrasing of deprivation of nationality was overly negative and the protection of stateless persons should enjoy priority.
Domestic regulation

Even though nationality is governed in detail by domestic law, the domestic regulation of the right to a nationality is a rare phenomenon.

International regulation

The right to a nationality appears in international documents instead:

- primarily in human rights documents and,
- to some extent, in international treaties concerning nationality.

The interpretation and thorough analysis of these documents should be based upon a distinction of universal and regional protection of this right.
The right to a nationality is guaranteed to a wide group of persons, and the Declaration simultaneously recognizes the right to a nationality and the right to change nationality.

The prohibition of arbitrary deprivation offers both protection against statelessness and a possibility to change nationality.

One shortcoming of the text is that it fails to clarify which state has the obligation to grant nationality, and as such, the right to a nationality loses much of its importance.

The wording of arbitrary deprivation of nationality and denying the right to change the nationality is equally inappropriate, as the expression ‘arbitrary’ is not defined.

The right to change nationality needs to be interpreted so that the former state of nationality has an obligation to withdraw its nationality upon a request by a person who acquires another nationality. However, it cannot provide effective protection, if a person renounces his or her nationality, but is unable to acquire a new nationality.
UNIVERSAL PROTECTION


“The child shall be entitled from his birth to a name and a nationality.”

- Declaration was also adopted as a resolution of the UN General Assembly, but, it has never gained binding force.
- Principle 3 of this declaration only offers the ‘child’ the right to a nationality from his or her birth, in conformity with the limited scope of the document.
- At the meeting of the Third Committee of the UN General Assembly on 6 October 1959, Thailand suggested the deletion of this principle from the draft declaration claiming that it raised too many complex legal questions, including the differences between domestic legal systems applying either the principle of ius soli or of ius sanguinis, that cannot be resolved by the declaration. Later on, this position was modified due to the fundamental importance of the right to a nationality.
UNIVERSAL PROTECTION


“1. A Contracting State shall not deprive a person of his nationality if such deprivation would render him stateless.
2. Notwithstanding the provisions of paragraph 1 of this article, a person may be deprived of the nationality of a Contracting State:
   (a) In the circumstances in which, under paragraphs 4 and 5 of article 7, it is permissible that a person should lose his nationality;
   (b) Where the nationality has been obtained by misrepresentation or fraud.
3. Notwithstanding the provisions of paragraph 1 of this article, a Contracting State may retain the right to deprive a person of his nationality, if […]:
   (a) That, inconsistently with his duty of loyalty to the Contracting State, the person:
      (i) Has, [...] rendered or continued to render services to, or received or continued to receive emoluments from, another State, or
      (ii) Has conducted himself in a manner seriously prejudicial to the vital interests of the State;
   (b) That the person has taken an oath, or made a formal declaration, of allegiance to another State, or given definite evidence of his determination to repudiate his allegiance to the Contracting State.
4. A Contracting State shall not exercise a power of deprivation permitted by paragraphs 2 or 3 of this article except in accordance with law, which shall provide for the person concerned the right to a fair hearing by a court or other independent body.”

- The Convention does not contain the right to a nationality.
- Paragraph 1, prohibits the deprivation of nationality: states may not deprive anyone of his or her nationality if such deprivation would render him or her stateless – save for a few exceptions in paragraphs 2-3.
- Remarkably, the draft convention had envisaged a general prohibition of deprivation, but during the debates states pressed the inclusion of several exceptions into the final text, which substantially weakened the prohibition.
- Still, there are important guarantees in paragraph 4, namely that the exceptions can only be exercised in accordance with law, and states must provide the right to a fair hearing by a court or other independent body.
UNIVERSAL PROTECTION

International Covenant on Civil and Political Rights, New York, 16 December 1966, Article 24, paragraph 3.

“3. Every child has the right to acquire a nationality.”

- Covenant does not contain the right to a nationality in general, it only provides for the right to acquire a nationality, and only provides it to children.
- This obviously represents a step back as compared to the Declaration on the Rights of the Child.
- Human Rights Committee interpreted the article as follows:
  - It merely requires states to ‘adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born.’
  - The purpose of this article ‘is to prevent a child from being afforded less protection by society and the State because he or she is stateless, rather than to afford an entitlement to a nationality of one’s own choice.’ The body did not consider demands by persons possessing a nationality to acquire a new nationality substantiated under this paragraph.
- The Article fails to clarify which state specifically bears the responsibility to provide nationality. Therefore, it may not be claimed that it is the obligation of the state of birth to do so.
- The provision does not concern cases of change or loss of nationality, even if persons indeed of protection happen to be children.
UNIVERSAL PROTECTION


“The child should at all times have [...] a nationality [...]. The child should not, as a result of foster placement, adoption or any alternative regime, be deprived of his or her [...] nationality [...] unless the child thereby acquires a new [...] nationality [...].”

- The Declaration on Social and Legal Principles relating to the Protection and Welfare of Children being a General Assembly resolution, is merely a recommendation.
- In keeping with the Declaration of the Rights of the Child, the document involves the recognition of the right to acquire a nationality and the elimination of statelessness caused by the loss of nationality.
- It also prohibits the deprivation of nationality of children, except for cases when they acquire a new nationality. In other words, the declaration expressly acknowledges that children may be deprived of their previous nationality upon becoming a dual or multiple national.
UNIVERSAL PROTECTION


“1. The child shall be registered immediately after birth and shall have [...] the right to acquire a nationality [...].
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.”

- The Convention is one of the human rights instrument with the highest number of states parties.
- This was the first human rights document to pay special attention to statelessness. The article reveals that states have a sovereign right to determine the conditions for the acquisition and loss of nationality, but states are restricted by the international obligations undertaken concerning nationality, including the enforcement of the requirement to eliminate the occurrence of statelessness.
- The registration of children is usually a key element for the acquisition of nationality, thus the Committee on the Rights of the Child emphasized that states should make every necessary effort to register children after birth.
- Article 7 does not prescribe the application of ius soli principle, but states parties shall provide the acquisition of nationality for children, in particular where they would otherwise be stateless, according to their relevant international obligations including the Convention on the Reduction of Statelessness of 1961.

“1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.”

- Article 8 obliges states to respect the right of the child to **preserve his or her identity**, including nationality, name and family relations as recognized by law without unlawful interference.
- This right is safeguarded by the requirement that states parties must provide **appropriate assistance and protection**, with a view to **speedily re-establish the identity of the child**, if he or she is illegally deprived of some or all of the elements of his or her identity.
- The right to retain nationality offers protection against statelessness in lieu of the prohibition of arbitrary deprivation, albeit in a weaker fashion, as the **obligation of states to take appropriate measures** in cases of illegal deprivation is not sufficiently specified.
The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990 contains the right to a nationality in general terms, but only for a special group of subjects.

In keeping with the limited scope of the convention, Article 29 recognizes the right to a nationality of children of migrant workers in much the same spirit as the Universal Declaration of Human Rights provides that right to ‘everyone’.

The requirement of registration too affords protection to the child, similarly to the analogous stipulations of other instruments.
The Convention on the Rights of Persons with Disabilities of 2006 follows the pattern of Article 7 of the Convention on the Rights of the Child, when it recognizes the right to a nationality.

As a result of the specialized nature of the convention, the bearers of that right under Article 18, paragraph 2, are children with disabilities, to whom the instruments offers registration and acquisition of a nationality.

The requirement of registration is phrased similarly to its earlier counterpart. The instrument also resembles the Convention on the Rights of the Child in that it only lays down the right to acquire a nationality.
The Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 contains neither the right to a nationality nor the prohibition of arbitrary deprivation of nationality.

However, nearly four decades later, in April 1988, the Committee of Experts for the Development of Human Rights examined of the feasibility of incorporation of the right to a nationality into the convention by way of a questionnaire addressed to states parties.

Five main questions were raised for states in the questionnaire made by the Committee of Experts for the Development of Human Rights:

1. Is every stateless person born in the country entitled to acquire its nationality?
2. Is every person entitled to change his or her nationality?
3. Can any person be arbitrarily deprived of his or her nationality?
4. To what extent does a stateless adult have a right to acquire the nationality of the given state?
5. What are the reasons not to ratify, inter alia, the United Nations Convention on the Reduction of Statelessness and, for those countries that have ratified them, have they encountered any difficulties in implementing these conventions?
The survey revealed that European states had similar positions. There was widespread agreement that the draft should include the following elements:

- everyone has a right to a nationality;
- everyone has a right to acquire the nationality of the state in whose territory he or she was born, if he or she would otherwise become stateless;
- and no one can be arbitrarily deprived of his or her nationality or the right to change nationality.

Although the envisaged regulation mostly conforms the prevailing domestic regulations of European states, there has not been any progress in the drafting of such a protocol to the convention since 1989. It appears that states are reluctant to extend the supervisory role of the European Court of Human Rights to matters of nationality.
Article 8 – Right to respect for private and family life
1 Everyone has the right to respect for his private and family life, his home and his correspondence.
2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

- The case-law of the court indicates that the judicial organ seeks to provide protection to individuals against the consequences of statelessness by invoking the right to respect for private and family life.
- The respect for private and family life was first associated with the issues of statelessness in 1997. Even the European Commission of Human Rights had pointed out in a report that, notwithstanding the absence of the right to a nationality from the convention, statelessness, at least to some extent, affects and perturbs the private and family life of the individual (Kafkasli contre la Turquie, Appl. No. 21106/92, 1 July 1997, Para. 33.)
- The European Convention on Nationality of 1997, recalled Article 8 in its preamble in the following manner: ‘[a]ware of the right to respect for family life as contained in Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms’. This reference also suggests the applicability of the said article in relation to statelessness.
In 1999, the European Court of Human Rights (Karassev v. Finland, ECHR, Appl. No. 31414/96, Decision as to the admissibility of 12 January 1999, Part The Law, Para. 1.b) remarked that:

„Although right to a citizenship is not as such guaranteed by the Convention or its Protocols [...], the Court does not exclude that an arbitrary denial of a 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 [...]."

- Hence an arbitrary deprivation of nationality may result in a violation of the right to respect for private and family life as provided for in the convention, but such a violation can occur only if the consequences of deprivation affect the private life of the individual.
- The Court extended the right to respect for private and family life to persons, who had become stateless or foreigners as a result of state succession with a view to protect them from adverse consequences, such as expulsion. The settlement of the status of such persons in conformity with Article 8 might as well enable them to acquire nationality by ordinary or preferential naturalization.
Convention to Reduce the Number of Cases of Statelessness, Bern, 13 September 1973, Article 1.

“A child whose mother holds the nationality of a Contracting State shall acquire her nationality at birth if he would otherwise have been stateless. However, where maternal descent only becomes effective as regards nationality on the date when such descent is established, a child who is still a minor shall acquire his mother’s nationality on that date.”

- The Convention was concluded under the aegis of the International Commission on Civil Status, an inter-governmental organization.
- This content of this provision is closely related to human rights instruments, and though it does not use the term ‘right’, it clearly recognizes the right to a nationality of the child.
- Similarly to the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, this convention does not make mention of the change or retaining of nationality either. Furthermore, the quoted provision fails to embrace children, whose mothers are stateless at the time of birth.
The participating States
(55) Recognize that everyone has the right to a nationality and that no one should be deprived of his/her nationality arbitrarily;
(56) Underline that all aspects of nationality will be governed by the process of law. They will, as appropriate, take measures, consistent with their constitutional framework not to increase statelessness;
(57) Will continue within the CSCE the discussion on these issues.

- A resolution of the Conference on Security and Co-operation in Europe (The name of the organization (CSCE) was changed to Organization for Security and Co-operation in Europe (OSCE) at its summit in Budapest, in December 1994), adopted at a meeting in July 1992 as a soft law document, likewise contains the right to a nationality and the prohibition of arbitrary deprivation, similarly to the Universal Declaration of Human Rights.
- It requires states to govern all aspects of nationality by the process of law, and to take all appropriate measures not to increase statelessness.
- Measures taken by states should be ‘consistent with their constitutional framework’, which slightly weakens the requirement.
1. Everyone shall have the right to citizenship.
2. No one shall be arbitrarily deprived of his citizenship or of the right to change it.

- The **right to citizenship** and the **prohibition of deprivation of nationality** was included into the Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms of 1995.
- This **right** appears in the English text of the document **without an indefinite article** and with the expression ‘**citizenship’**, which does not reveal substantial differences as compared to the meaning of the formula of the Universal Declaration of Human Rights.
- The **prohibition of arbitrary deprivation of nationality** also **reflects the wording of the declaration**, since the convention covers the right to both **retain and change** nationality.
REGIONAL PROTECTION – EUROPEAN REGION

European Convention on Nationality, Strasbourg, 6 November 1997, Article 4.

“The rules on nationality of each State Party shall be based on the following principles:

a everyone has the right to a nationality;
b statelessness shall be avoided;
c no one shall be arbitrarily deprived of his or her nationality;
d neither marriage nor the dissolution of a marriage between a national of a State Party and an alien, nor the change of nationality by one of the spouses during marriage, shall automatically affect the nationality of the other spouse.”

- The European Convention on Nationality, adopted by the Council of Europe, guarantees – similarly to the Universal Declaration of Human Rights – in Article 4, among the principles concerning nationality, the right to a nationality.
- Principles in the convention includes the avoidance of statelessness and the prohibition of arbitrary deprivation of nationality, as well.
- Nevertheless, the convention permits states to decide on the loss of nationality in cases of voluntary acquisition of another nationality, unless the person concerned would otherwise be stateless.

Preamble: “In order to give effect to the principles established in the European Convention on Nationality that everyone has the right to a nationality and that the rule of law and human rights, including the prohibition of arbitrary deprivation of nationality […], must be respected in order to avoid statelessness,

Have agrees as follows:”

Article 2: “Everyone who, at the time of the State succession, had the nationality of the predecessor State and who has or would become stateless as a result of the State succession has the right to the nationality of a State concerned, in accordance with the following articles.”

- The preamble and the commentary of the Convention both recall the right to a nationality as contained in the Universal Declaration of Human Rights and the European Convention on Nationality.
- The convention recognizes the right to a nationality in cases of state succession only.
- Article 2 ensures that individuals having the nationality of the predecessor state at the time of the State succession ‘have the right to the nationality of a State concerned’, if they have or would become stateless as a result of the State succession. The provision reveals that the aim of the convention is to eliminate statelessness caused by state succession, and does not affect cases of statelessness already existing in the predecessor state.
American Declaration of the Rights and Duties of Man, O.A.S. Res. III, Bogotá, 2 May 1948, Article XIX.

“Every person has the right to the nationality to which he is entitled by law and to change it, if he so wishes, for the nationality of any other country that is willing to grant it to him.”

- In the American continent the American Declaration of the Rights and Duties of Man of 1948 is a non-binding document, which was adopted eight months before the Universal Declaration of Human Rights.
- As it has been adequately claimed, this article offers nothing else than persons should possess a nationality under any domestic law, and as such, it only lays down the right to acquire and change nationality as prescribed by law.
- However, the Inter-American Commission on Human Rights stated that the deprivation of nationality during war is an unwarranted punishment, and violates Article 19.

“1. Every person has the right to a nationality.
2. Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality.
3. No one shall be arbitrarily deprived of his nationality or of the right to change it.”

- The American Convention on Human Rights was the first to spell out, upon recognizing the right to a nationality, which state is ultimately responsible to provide nationality to avoid statelessness.
- Paragraph 1, granting the right to a nationality for everyone, and paragraph 3, prohibiting the arbitrary deprivation of nationality or the right to change nationality echo the wording of the Universal Declaration of Human Rights.
- Paragraph 2 declares the right of every person to the nationality of the state in whose territory he or she was born, if he or she is not entitled to any other nationality. This provision is at times recalled as an instrument of the elimination of statelessness evolving at birth, but it should be noted that it also protects persons, who subsequently become stateless by obliging, as a last resort, the state of birth to provide nationality.
- However, it is worth mentioning that it does not protect stateless individuals whose place of birth is unknown. For example, the place of birth of a foundling is not to be automatically presumed to be in the state, where he or she was found.

“2. Every child shall be registered immediately after birth.
3. Every child has the right to acquire a nationality.
4. States Parties to the present Charter shall undertake to ensure that their Constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.”

- The necessity of registration of children is regulated by the Article 6. The importance of registration and the ‘strong and direct link between birth registration and nationality’ was highlighted by the African Committee of Experts on the Rights and Welfare of the Child, as children may become stateless without birth registration, if their place of birth or descent cannot be proven.
- Paragraph 4 is particularly important, which – similarly to the American Convention on Human Rights – provides, as a last resort, the right to a nationality on the basis of the ius soli principle to eliminate statelessness. Nevertheless, it has a more restricted scope than the convention, as the bearer of the right is the child and the ensured right is the right to acquire a nationality. The expression ‘from his birth’ is not added to the right to acquire a nationality, but the African Committee of Experts on the Rights and Welfare of the Child declared that ‘as much as possible, children should have a nationality beginning from birth’.
- But the charter goes beyond the American Convention on Human Rights by setting out additional obligations for states in order to ensure that right. Remarkably, states undertake to ensure that their constitutional legislation recognizes this principle. According to the interpretation by the African Committee of Experts on the Rights and Welfare of the Child, the phrase ‘undertake to ensure’ implies an obligation of result, that is, states need to take all necessary measures to prevent the child from becoming stateless.

“States Parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage. They shall enact appropriate national legislative measures to guarantee that: [...] a woman shall have the right to retain her nationality or to acquire the nationality of her husband; a woman and a man shall have equal rights, with respect to the nationality of their children except where this is contrary to a provision in national legislation or is contrary to national security interests; [...]”

- The African Charter on Human and Peoples’ Rights of 1981 does not make mention of the right to a nationality, and even its protocol on the rights of women in Africa of 2003 recalls it in the context of marriage only.
- The purpose of this provision is to ensure that marriage does not affect the nationality of a woman against her will.
- Therefore, its content encompasses only the right to retain nationality and the right to acquire a nationality, with the latter being limited to the nationality of the husband.
ASEAN Human Rights Declaration, Phnom Penh, 18 November 2012, Article 18.

“Every person has the right to a nationality as prescribed by law. No person shall be arbitrarily deprived of such nationality nor denied the right to change that nationality.”

- In 2009, the Association of Southeast Asian Nations (ASEAN) established the ASEAN Intergovernmental Commission on Human Rights to promote human rights in the ten ASEAN countries.
- By mid-2012, the Commission had drafted the ASEAN Human Rights Declaration. The Declaration was adopted unanimously by ASEAN members at its November 2012 meeting in Phnom Penh.
- Article 18 is similar to the Article 15 of the Universal Declaration of Human Rights, as Article 10 contains: “ASEAN Member States affirm all the civil and political rights in the Universal Declaration of Human Rights. Specifically, ASEAN Member States affirm the following rights and fundamental freedoms: [...]”
Arab Charter on Human Rights, Tunis, 22 May 2004, Article 29.

“1. Everyone has the right to nationality. No one shall be arbitrarily or unlawfully deprived of his nationality.
2. States parties shall take such measures as they deem appropriate, in accordance with their domestic laws on nationality, to allow a child to acquire the mother's nationality, having due regard, in all cases, to the best interests of the child.
3. No one shall be denied the right to acquire another nationality, having due regard for the domestic legal procedures in his country.”

- The initial version of the Arab Charter on Human Rights was adopted on 15 September 1994, but never entered into force. Article 24 of the charter did not include the right to a nationality; it only contained the prohibition of arbitrary deprivation of the original nationality and the deprivation of the right to acquire another nationality without a legally valid reason. The Council of the League of Arab States adopted resolutions in 2002 concerning the review of the charter.
- The revised Arab Charter on Human Rights includes the right to a nationality.
- Paragraph 1 declares the right to a nationality in general, for everyone, and contains the epithets ‘unlawfully’ and ‘arbitrarily’ as alternatives with regard to the deprivation of nationality.
- The right of the child to acquire the nationality of his or her mother in paragraph 2 points towards the prohibition of discrimination.
- Paragraph 3 further states that no one shall be denied the right to acquire another nationality in accordance with the applicable legal procedures of his country.

“1. A child shall, from birth, have right [...] to be registered with authorities concerned, to have his nationality determined [...].
2. State Parties to the Covenant shall safeguard the elements of the child’s identity, including his/her [...] nationality [...], in accordance with their domestic laws, and shall make every effort to resolve the issue of statelessness for any child born on their territories or to any of their citizens outside their territory.
3. A child of unknown descent or who is legally assimilated to this status [...] shall have a rights to a [...] nationality.”

- The Covenant on the Rights of the Child in Islam was concluded under the aegis of the Organization of the Islamic Conference.
- Given the subject of the charter, paragraph 1 designates the child as the beneficiary of having his or her nationality determined rather than the right to a nationality. Besides, this paragraph includes the necessity of registration of children with the authorities concerned.
- According to paragraph 2, states shall safeguard the elements of the child identity in accordance with their domestic laws, and states shall make every effort to resolve the issue of statelessness for any child born on their territories or to any of their citizens outside the territory.
- Therefore, paragraph 2 excludes a potential interpretation of the curiously worded paragraph 1 that it does not refer to the right to acquire a nationality. The aim of the drafters seems to be obvious, namely to ensure the right to a nationality for children by virtue of both the ius soli and the ius sanguinis principles.
When analysing the content of the right to a nationality, one needs to make a distinction between the right to a nationality of every person and that of children in view of the divergences of various documents.

**Right to a nationality of every person**

The provision of the *Universal Declaration of Human Rights*, which states that ‘[e]everyone has a right to a nationality’, was subsequently taken over by several documents, such as:

- the American Convention on Human Rights,
- the Arab Charter on Human Rights and
- the European Convention of Nationality.

The records of debates that took place during the drafting of the Universal Declaration of Human Rights suggest that the **purpose of this provision** was to ensure protection against statelessness, but the obscure phrasing leaves room for divergent interpretations.
Meaning of the right to a nationality of every person

- The **indefinite article** ‘a’ before the expression ‘nationality’ is similar to the numeral ‘one’ in certain languages – for example, ‘une’ in French stands for either an indefinite article or a numeral. Due to the fact that the purpose of regulation was undoubtedly to eliminate statelessness, neither a **human right of dual nationality**, nor a **prohibition of dual nationality** can be deduced from the provision under consideration.

- Through this purpose, it can be accepted, that the right to a nationality includes:
  - the right to **acquisition of nationality** and
  - the right to **retention of nationality**.

- Notwithstanding that scholarly opinions significantly differ concerning the **right to change nationality**, as that particular right is related to the disposition of nationality rather than to the elimination of statelessness.
ASSESSMENT OF THE RIGHT TO A NATIONALITY

Right to a nationality of a child

Having analysed the regulation of the right of the child to a nationality, it may be pointed out that in the legally binding documents its content usually:

- covers the **right to acquisition** of a nationality only, and
- **aims to eliminate statelessness** emerging at birth.

The Convention on the Rights of the Child is a notable exception. This exceptional rule needs to be evaluated in light of the fact that the number of states parties of the convention exceeds 190, and as such, it is applicable in a much wider sphere than the above-mentioned and more frequent solution.

- The Convention includes not only the **right to acquire**, but also the **right to retain** a nationality; thus it even provides protection to children against becoming stateless at a later stage.

In addition, the previous remarks concerning the **indefinite article** also hold true for the relevant right of the child.
ASSESSMENT OF THE RIGHT TO A NATIONALITY

Shortcoming of the right to a nationality

- The main shortcoming of the right to a nationality is that documents usually do not designate the state that has an obligation to provide nationality for the individual.
- This substantially reduces the significance of that right, as states may easily shift onto one another the obligation of providing nationality.
- Thus, the right to a nationality may become an empty shell, and the efficiency of any reference to that right may be rendered dubious.
- Only two documents remedy this shortcoming:
  - the American Convention on Human Rights and
  - the African Charter on the Rights and Welfare of the Child
- These documents oblige, as a last resort, the state of birth to provide nationality by applying the ius soli principle – the former for everyone, the latter for children. It is worth mentioning that even these documents cannot protect stateless persons, for example foundlings, whose place of birth is not determinable.
Prohibition of deprivation of nationality

- The prohibition of deprivation of nationality cannot be directly deduced from the right to a nationality, albeit examples can be found in the practice of the Inter-American Commission on Human Rights.

- The prohibition of deprivation is closely linked to the right to a nationality, and it generally follows the right to a nationality in international instruments.

- The epithets ‘arbitrary’ and ‘unlawfully’ are frequently attached as attributes to the prohibition of deprivation, but their interpretation gives rise to debates:
  - ‘Arbitrary’ as an attribute is used by the Universal Declaration of Human Rights, the American Convention on Human Rights, the Arab Charter on Human Rights and the European Convention on Nationality.
  - ‘Unlawful’ appears in the Convention on the Rights of Child and in the Arab Charter on Human Rights – in the latter alongside ‘arbitrary’.
Definition of arbitrariness

1. deprivation results in statelessness

- The Universal Declaration of Human Rights includes the prohibition of arbitrary deprivation of nationality without offering a definition of arbitrariness. However, the drafting process reveals that the drafters reckoned the elimination of statelessness as the main purpose of the right to a nationality.
- The statement that a deprivation of nationality is arbitrary, if it results in statelessness can be deduced from the said purpose of the declaration.
- Therefore, if the right to a nationality is considered as a fundamental human right, any deprivation of nationality resulting in statelessness can be labelled as ‘arbitrary’, as it would be blatantly incompatible with the purposes of the declaration.
- It should be recalled that the Convention on the Reduction of Statelessness of 1961 stipulates that states shall not deprive a person of his or her nationality, if such deprivation would render him or her stateless. The text of the prohibition, however, does not contain any epithets. Although there are some exceptions from the above mentioned statement.
Definition of arbitrariness

1. deprivation results in statelessness

Exceptions:

- According to the report of the UN Secretary-General on human rights and arbitrary deprivation of nationality of 14 December 2009, a deprivation resulting in statelessness would not be arbitrary if it would serve a legitimate purpose that is consistent with international law, or would comply with the principle of proportionality.

- For example, a deprivation resulting in statelessness would observe the principle of proportionality, if the nationality has been obtained by deception as indicated by the Court of Justice of the European Union in the Rottmann case (Judgment of 2 March 2010 in Case C-135/8, Rottmann v. Freistaat Bayern [1976] ECR, Para. 59.)
Definition of arbitrariness

2. does not cover dual or multiple nationals

- The prohibition of arbitrary deprivation of nationality does not cover dual or multiple nationals, who will possess at least one nationality after losing a nationality through deprivation.

- This can be illustrated by Article 7 of the European Convention of Nationality that, in addition to the prohibition of arbitrary deprivation of nationality in Article 4(c), permits states to provide for the loss of nationality in their domestic enactments either ex lege, or at the initiative of the state, in case a person voluntarily acquires another nationality.

- The Declaration on Social and Legal Principles relating to the Protection and Welfare of Children of 1986 also mentions the acquisition of a new nationality – and the dual or multiple nationality of the child – as an exception to the prohibition of deprivation of nationality of the child. In other words, it permits the deprivation of the previous nationality.
Deprivation is arbitrary if:

1. person concerned would thereby become stateless, with the exception of the cases of ‘acquisition of the nationality [...] by means of fraudulent conduct, false information or concealment of any relevant fact attributable to the applicant’.
2. not foreseeable
3. not proportional
4. not prescribed by law
5. based on discrimination
6. without procedural safeguards: ‘[s]tates are [...] expected to observe minimum procedural standards in order to ensure that decisions on nationality matters do not contain any element of arbitrariness’, so ‘decisions relating to nationality shall contain reasons in writing and shall be open to an administrative or judicial review.’
ASSESSMENT OF THE RIGHT TO A NATIONALITY

Prohibition of denying the right to change nationality

- The prohibition of denying the right to change nationality:
  - in the Universal Declaration of Human Rights and
  - in the American Convention on Human Rights
entails the prohibition of deprivation of both the right to renounce a nationality and to acquire another nationality.

- It cannot be construed, however, as a prohibition of deprivation of and a right to retain the former nationality, not to mention that the expression ‘change’ suggests the loss of that nationality.
The inherent vagueness and shortcomings of the right to a nationality considerably decrease the effectiveness of the protection it affords, and exposes its realization to the will of states.

However, the elimination and reduction of statelessness usually become state interest due to problems originating from the status of stateless persons.

Besides, provisions supplementing the right to a nationality concerning the prohibition of deprivation may offer appropriate protection against statelessness for individuals possessing a nationality.

In order to enhance the protection of stateless individuals, it is worth to consider Hersch Lauterpacht’s proposal, which advocates the granting of nationality by the state of birth as a last resort and the preconditioning of the acquisition of a new nationality for the deprivation of the previous nationality (H. Lauterpacht, International Law and Human Rights, Archon Books, London, 1968, p. 346.)
Thank you for your attention!

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