

The law of nationality : comparative and international perspective

Patrick Wautelet

A few practical arrangements

- Class : Monday 11 am – 1 pm - Tocqueville
- For each class : outline + ppt.
- Materials : statutory materials
- For some topics : cases
- Exam : January – oral exam – reasoning tested on the basis of cases

Outline

- Introduction (and general principles)
- 1st theme : nationality within families (acquisition *ius sanguinis*)
- 2nd theme : nationality and migration (acquisition *ius soli*)
- 3rd theme : Loss of nationality
- 4th theme : Dual nationalities
- (5th theme : EU and nationality)

1. Introduction : 3 questions

- 1st) What is 'nationality' and the law of nationality?
- 2nd) How to study nationality law?
- 3rd) Where to find nationality law?

1. Introduction : 1st question

A. What is 'nationality'?

I. First approach

- What is nationality?

1. Introduction : 1st question

A. What is 'nationality'?

I. First approach

- Starting point : nationality is a link between an individual and a State (not applicable to legal persons)
- Nationality : not the only link between individual and a State → residence and domicile
- Differences :
 - *Stability* of the links
 - Nature and importance of the rights/consequences arising out these links

1. Introduction : 1st question

A. What is 'nationality'?

I. First approach

- Nationality gives a *legal form* to bond between individual and a State
- *Other dimensions* to the bond which may exist between individual and state - different forms of connection between an individual and a State
 - Psychological / based on sentiments
 - Economic, etc.

1. Introduction : 1st question

A. What is 'nationality'?

I. First approach

- ICJ has captured the multi-layered nature of nationality when it defined nationality as follows:
- « Nationality is a legal bond having at its basis a social fact of attachment, a genuine connection of existence, sentiments and interests together with the existence of reciprocal rights and duties »
(ICJ – *Nottenbohm* – 1955)

1. Introduction : 1st question

A. What is 'nationality'?

I. First approach

- What is the difference between 'nationality' and 'citizenship'? Distinction is not always made – depends on the language used
- One possible distinction:
 - *Nationality* : legal concept, expresses the link between a State and members of its community (as in 'membership in a state')
 - *Citizenship* : various meanings, from synonym to nationality, to a more comprehensive concept, covering all residents ('members of a polity') or at least all legal residents. Special relevance in EU : 'citizenship' of the Union (see Article 20 Treaty EU : « *Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.* »).

1. Introduction : 1st question

A. What is 'nationality'?

I. First approach

- Whatever version of the concept of nationality is chosen, important to note that nationality does not say much about the *position* of nationals
- Nationality as a 'framework legal relationship' : it does not establish or grant rights / duties to individuals concerned. It merely represents a *necessary condition* for the entitlement to these rights / duties (as laid out in other legal disciplines)

1. Introduction : 1st question

A. What is 'nationality'?

I. First approach

- Law of nationality : concerned with (acquisition and loss of) nationality as such, not with the *consequences* of nationality (even if these should be taken into consideration)
- Before studying the formal rules on acquisition and loss of nationality, important to have a minimal understanding of the consequences / effects of nationality (even though these consequences / effects are *not* as such the subject of nationality law but are determined by other legal disciplines)

1. Introduction : 1st question

A. What is 'nationality'?

II. Consequences of nationality

- When is nationality relevant?
 - Mr Smith, 34 y. old teacher born in Canada from English parents who migrated to Canada : should he pay taxes in UK because he also has British nationality?
 - Ms Hirsi, Somalian national living in Belgium since 17 y., loses her job : may she apply for unemployment benefits or is she barred because of her nationality?
 - May Mr Jenk, Dutch national stand for local elections in Brussels where he lives since 15 y.?

1. Introduction : 1st question

A. What is 'nationality'?

II. Consequences of nationality

- What are the consequences / effects of nationality ?
 - (Unlimited) Freedom to enter and settle in a country (+ no extradition – exception : European Arrest Warrant)
 - Right to participate in public / political life of the country (*e.g.* right to vote; access to certain public offices)
 - Other 'minor' entitlements (diplomatic protection; benefits granted by country X to nationals of country Y, *e.g.* under a bilateral treaty)
 - Civil/family status (in some jurisdictions where civil/family status connected with nationality – *e.g.* France)

1. Introduction : 1st question

A. What is 'nationality'?

II. Consequences of nationality

- Duties imposed by possession of a nationality?
 - (In some countries) : military service
 - Loyalty to one's country? (only indirectly, *e.g.* art. 113 Criminal Code : specific punishment of Belgian citizen who was enrolled in an army fighting against Belgium)
 - Other 'minor' duties (such as duty to be a member of jury in a criminal trial or duty to help with organisation of elections)

1. Introduction : 1st question

A. What is 'nationality'?

II. Consequences of nationality

- Nationality is in principle *not* relevant for:
 - _ Possibility to obtain assistance from the State and public authorities - *e.g.*
 - Police, etc.
 - Assistance from welfare agencies – but certain social security benefits may be reserved to nationals and assimilated – *e.g.* special entitlements for handicapped persons ('Income Replacing Benefit' and 'Integration Benefit') reserved under Belgian law to Belgian/EU nationals, nationals of certain countries or family members of such nationals – US citizen living in Belgium with US family not entitled

1. Introduction : 1st question

A. What is 'nationality'?

II. Consequences of nationality

- Nationality is in principle *not* relevant for (continued):
 - Local voting rights (at least in the EU)
 - Payment of taxes... (in some countries, tax jurisdiction is nationality sensitive, see USA → Tax Code's Nasty Bite in 2012)
 - Civil/family status (at least in jurisdictions where civil/family status connected with residence)
 - Fundamental rights (*e.g.* right to marry, right to life etc.)

1. Introduction : 1st question

A. What is 'nationality'?

II. Consequences of nationality

- On balance:
 - Limited direct impact of nationality (mainly in the public sphere)
 - In addition, consequences of nationality have in practice greatly *decreased* since WWII

1. Introduction : 1st question

A. What is 'nationality'?

II. Consequences of nationality

- Decreased importance of nationality:
 - _ Nationality used to be the key for entitlement to a great number of rights - *e.g.*
 - Access to public offices and exercise of political rights
 - or even the right to be a member of an association – see 1921 Belgian statute on 'ASBL'
 - _ Nowadays nationality has lost a substantial part of its importance – recent examples :
 - Possibility to become a notary (ECJ 24 May 2011)
 - 'Décret Communauté française élargissant les conditions de nationalité pour l'accès aux emplois de la Fonction publique de la Communauté française 19 avril 2012'

1. Introduction : 1st question

A. What is 'nationality'?

II. Consequences of nationality

- 1st factor explaining decreasing importance of nationality : rise of membership in 'supra-national' entities
- In some regions of the world, creation of new forms of 'membership' – most developed example is EU
 - Positive rights linked to EU citizenship (*e.g.* right to vote for EU elections, right to travel and settle, etc.)
 - Negative right : right not to be discriminated
- This does not mean, however, that nationality is subject to European rules (see later)

1. Introduction : 1st question

A. What is 'nationality'?

II. Consequences of nationality

- 2nd factor explaining decreasing importance of nationality : rise of human rights
- Human and fundamental rights coupled not so much to nationality, but rather to 'personhood', fact of being a human being (under the jurisdiction of a State)

1. Introduction : 1st question

A. What is 'nationality'?

II. Consequences of nationality

- Two trends taken together : demise of nationality and rise of a 'postnational membership' model?
- Model : describes the fact that fundamental (social, civic and sometimes even political) rights are not tied to a person's formal citizen status, but instead to his/her residence status or to his/her person

1. Introduction : 1st question

A. What is 'nationality'?

II. Consequences of nationality

- In practice, nationality remains important:
 - For some issues, nationality remains crucial (access to territory - Full exercise of political rights, in particular right to be elected)
 - Psychological element (sense of belonging to a community – not being a 'foreigner' or a 'guest', even a 'long term guest', 'We/They')
 - In many parts of the world : nationality could still make a major difference (*e.g.* South Sudan)

1. Introduction : 2nd question

B. How to study nationality law ?

- Nationality law : legal discipline including rules on *acquisition* and *loss* of nationality – e.g. how does one become a French citizen, how may one lose German nationality?
- Ambitious perspective : since nationality law does *not* in itself determine what are the consequences of nationality, study nationality law, but also look at other legal disciplines to determine the content of the status of citizen

1. Introduction : 2nd question

B. How to study nationality law ?

- Perspective for this course *less ambitious* : focus on the rules determining whether the status of national is attributed, determined and lost (citizen or not)
- Broad perspective comes from:
 - Focus not on one country, but on general principles and trends in EU Member States
 - Attention for the (historical, political, sociological) reasons underlying changes in nationality law

1. Introduction : 3rd question

C. Sources of Nationality Law

- Where do I find nationality law?
- Nationality law is first national law
- *E.g.* in Belgium : Code of Belgian nationality (Law of 28 June 1984, as modified many times) (exclusive federal jurisdiction)
- In some countries : nationality law part of a general Code (*e.g.* France : Civil code); in other countries : separate Act (*e.g.* German Act on *Staatsangehörigkeit*)

1. Introduction : 3rd question

C. Sources of Nationality Law

- Two important questions in relation to the national rules concerning nationality:
 - Influence of *time factor*?
 - *Which legislation* is relevant ?

1. Introduction : 3rd question

C. Sources of Nationality Law

- 1st question : which version in time of the law of nationality ?
- Importance of the element of time : a question of nationality must be solved using the rules in force at the time the question (facts) arose
- Important because nationality is in general made to stay (one does not change easily of nationality...), but at the same time, nationality laws are subject to (frequent) changes

1. Introduction : 3rd question

C. Sources of Nationality Law

I. Influence of time on Nationality Law

- *E.g.:* Mr. John Sibelman born in Belgium in 1932 out of Belgian parents
- In 1937 emigrated with his parents to the U.S.
- The parents obtained US citizenship in 1947
- John also acquired US citizenship as a consequence of naturalization of his parents
- In 2012, Mr. Sibelman, who has retired and wishes to visit relatives in Belgium and spend time there, enquires to know if he has kept his Belgian nationality

1. Introduction : 3rd question

C. Sources of Nationality Law

I. Influence of time on Nationality Law

- 1st question : was Mr Sibelman a Belgian citizen when he was born
- Question must be addressed based on the legislation applicable in 1932
- 2nd question : did Mr Sibelman lose his Belgian nationality when becoming a US citizen in 1947
- Question must be addressed based on the legislation applicable in 1947 and in fact, at any point later in time Mr Sibelman at which may have lost his original Belgian nationality

1. Introduction : 3rd question

C. Sources of Nationality Law

I. Influence of time on Nationality Law

- See Article 18-4° of the Coordinated Laws of 1932 (applicable legislation on nationality until adoption of the CBN in 1984) : the underage child of a Belgian citizen *automatically lost* his/her Belgian nationality if (and when) his/her Belgian parents lost the Belgian nationality by application of Art. 18 (*e.g.* upon voluntary acquisition of another nationality), provided the child acquired the foreign nationality together with his parents

1. Introduction : 3rd question

C. Sources of Nationality Law

I. Influence of time on Nationality Law

- Conclusion :
 - M. Sibelman *lost* his Belgian nationality in 1947 (he was not yet 18 y. old at that time)
 - If M. Sibelman had not lost his Belgian nationality at that time, examine *whether he may have lost it afterwards* (e.g. because of prolonged residence outside Belgium) on the basis of law at the relevant point in time

1. Introduction : 3rd question

C. Sources of Nationality Law

I. Influence of time on Nationality Law

- Difficulty : identify the relevant material fact, which determines the appropriate version of nationality law:
 - Birth
 - Marriage
 - Acquisition of nationality by parents
 - Etc.

1. Introduction : 3rd question
C. Sources of Nationality Law
II. Which Nationality Law?

- 2nd question : which law applies?
- Each State is the sole master of its nationality:
 - It is up to each State to determine who are its nationals (and who may lose its nationality)
 - Foreign law has no role to play in determining who are nationals of State X and law of State X has nothing to say on who are nationals of other States

1. Introduction : 3rd question
C. Sources of Nationality Law
II. Which Nationality Law?

- *Nuances* – interactions between nationality laws
- 1^o) Local law may make acquisition of local nationality dependent on loss of foreign nationality (*e.g.* will a French national have to waive his French nationality when becoming Dutch by naturalization?)
- Loss always occurs in application of law of (former) nationality concerned (and not in application of law of newly acquired nationality)

1. Introduction : 3rd question
C. Sources of Nationality Law
II. Which Nationality Law?

- Allocation of questions:
 - Law of new nationality : does acquisition of new nationality require loss of existing nationality?
 - Law of former nationality : if law of new nationality requires loss of existing nationality, how can applicant lose his/her existing nationality?

1. Introduction : 3rd question
C. Sources of Nationality Law
II. Which Nationality Law?

- *Nuances* – interactions between nationality laws
- 2°) Local law may provide that nationality will be lost if acquisition of foreign nationality -
e.g. will an Italian national lose his Italian nationality if becoming French by naturalization
(answer : no : art. 11 Italian nationality law)

1. Introduction : 3rd question
C. Sources of Nationality Law
II. Which Nationality Law?

- Allocation of questions:
 - Law of new nationality : only relevant to determine whether applicant obtains new nationality
 - Law of former nationality : relevant to determine whether acquisition of new nationality brings about loss of existing nationality

1. Introduction : 3rd question

C. Sources of Nationality Law

III. International Law of Nationality

- Customary international law ? Very limited impact on nationality rules. Limited to few vague principles, such as:
 - States should strive to avoid creating cases of statelessness
 - States should avoid arbitrary deprivation of nationality, etc.
- Regional customary rules – within Council of Europe, probably greater role - *e.g.* equality of treatment of father and mother in transmission *ius sanguinis* of their nationality

1. Introduction : 3rd question

C. Sources of Nationality Law

III. International Law of Nationality

- Conventional international law ?
 - Great number of international conventions, dealing with various issues
 - However, these conventions do not touch the 'core' of nationality law (acquisition and loss) - *e.g.* Hague Protocol of 12 April 1930 relating to military obligations in certain cases of double nationality

1. Introduction : 3rd question

C. Sources of Nationality Law

III. International Law of Nationality

- One exception : *1997 European Convention on Nationality* (Council of Europe)
- Rules on :
 - General principles (*e.g.* art. 5 Convention : no discrimination on the basis of sex, religion, race, etc. in matters of nationality)
 - Acquisition (at birth, for adults, etc.)
 - Loss of nationality
 - Procedures
 - Multiple nationalities
 - State succession
- Convention negotiated in the aftermath of liberation of Central and Eastern Europe. Unfortunately, not yet signed or ratified by Belgium...
But 20 ratifications

1. Introduction : 3rd question

C. Sources of Nationality Law

III. International Law of Nationality

- Besides international conventional law, 'national' nationality law is also influenced by:
 - European law (see later)
 - European Convention on Human Rights ?
 - No direct impact of ECHR, no fundamental right to obtain or keep a nationality under ECHR
 - However, application of other rights could limit action of States in matters of nationality

1. Introduction : 3rd question

C. Sources of Nationality Law

III. International Law of Nationality

- *e.g.* : ECHR, 11 Oct. 2011, *Genovese v. Malta* :
 - Child born in Scotland out of British mother and Maltese father, not married
 - At first father refuses to recognize his son
 - Mother obtains from Scottish court that father is recognized as father of the child
 - Maltese authorities refuse Maltese nationality to the son because born to an unmarried couple

1. Introduction : 3rd question

C. Sources of Nationality Law

III. International Law of Nationality

- ECHR :
 - Art. 8 ECHR does not guarantee a right to a acquire a particular nationality
 - But arbitrary denial of citizenship might raise an issue under art. 8 ECHR because of the impact of such a denial on the private life of the individual
 - Since only reason for denial of nationality was that child was born out of wedlock, Court finds that there is a violation of art. 8 combined with art. 14

The law of nationality : comparative and international perspective

Patrick Wautelet

Outline

- Acquisition of nationality
 - **General introduction : overview of the methods of acquisition**
 - 1st theme : nationality within families (acquisition *ius sanguinis*)
 - 2nd theme : nationality and migration (acquisition *ius soli*)

I. Overview of the methods of acquisition



- Traditional distinction between various methods of acquisition of nationality:
 - Blood link with a national (*ius sanguinis*) – 'being' a national, state as a 'family' united by a common origin
 - Birth on territory (*ius soli*) – state as a 'community' united by notion of participation (closer to 'modernity')

I. Overview of the methods of acquisition



- Distinction between *ius soli* and *ius sanguinis* is deceptive and not useful for analysis:
- 1) Some means of acquiring nationality do not fit neatly in this *summa divisio* – e.g. :
 - Acquisition through continued (long term?) residence on territory (*ius educationis / socialis*?)
 - Acquisition through marriage with a national : acquisition is not automatic but merely possible following marriage (family link) *and* provided foreign spouse resides for a certain period in country - requires elements of both methods

I. Overview of the methods of acquisition



- 2) Characterization of acquisition *ius sanguinis* / *ius soli* must be nuanced
- e.g. is acquisition *ius soli* really more 'modern' and open than acquisition *ius sanguinis*?
- Acquisition *ius soli* has long been a feudal mechanism of acquisition (becoming a national because birth on the estate of the Lord, allegiance through ownership of the land)...

I. Overview of the methods of acquisition



- 3) Finally, there has been a process of convergence between the traditional *ius sanguinis* countries and the traditional *ius soli* countries
 - Traditional *ius sanguinis* countries (such as Belgium, Germany, Greece) have introduced or extended *ius soli* provisions for second and 3rd generation immigrants
 - Classic *ius soli* countries (UK, Ireland) have limited these provisions
- Distinction has therefore lost some of its relevance as a 'meta-divider' between countries

I. Overview of the methods of acquisition



- Conclusion : distinction between *ius soli* and *ius sanguinis* not much useful as tool for analysis
- Comparative analysis reveals that many different means of acquisition of nationality today (EUDO-classification : distinction between 25 modes...)

I. Overview of the methods of acquisition



- Many doors to obtaining a nationality – an attempt at classification:
 - _ Acquisition through family relationship – covers various aspects:
 - Blood link with a national – acquisition through birth - acquisition '*ius sanguinis*' sensu stricto
 - Other family law relationships which do not rest upon blood link – *e.g.* adoption or marriage
 - _ Residence on the territory of a State or other territorial link - distinction:
 - Automatic acquisition – *e.g.* State may grant its nationality to all children born on the territory ('*ius soli*' sensu stricto)
 - After a (long term) residence (provided a request is made and after examination)

I. Overview of the methods of acquisition



- Today, nationality law of (most?) countries is based on a *mix* of various grounds of acquisition
- System based on only one method of acquisition not tenable – *e.g.*
 - If nationality of State X is acquired *exclusively* through long term residence – what about children of nationals, stateless during their first years of existence?
 - If nationality of State X is acquired *exclusively* through blood link with a national – potential exclusion of all foreigners residing in the country, even those born out of foreigners born out of foreigners born in the country
- How much *ius soli*, how much *ius sanguinis*, etc. is the product of history and various elements – (im-)migration, politics, demography, etc.

I. Overview of the methods of acquisition



- Is the law of nationality the product of a clear reflection on what the nation is/should be?
- Difference between theoretical models (e.g. nation based on 'civic citizenship' if acquisition is predominantly premised on long term residence or birth on the territory / based on 'ethnic citizenship' if acquisition is premised mainly on *ius sanguinis*) and practice (most nationality laws are more nuanced, with various elements and policy concerns – ever changing compromise...)

I. Overview of the methods of acquisition



- Analysis suggested for this course :
 - Focus on the *main* grounds of acquisition
 - Analysis in the light of recent trends and general principles

I. Overview of the methods of acquisition



- Keep in mind that in order to obtain complete view of a system and identify the general balance of a system:
 - Grounds of acquisition should be considered together (*e.g.* if system is generous towards second or third generation foreigners, less need to open up naturalization for 1st generation foreigners)
 - Grounds of acquisition should be studied *together* with causes of loss of nationality

Outline

- Acquisition of nationality
 - General introduction : overview of the methods of acquisition
 - **1st theme : nationality within families**
 - 2nd theme : nationality and migration

II. Acquisition of nationality in family relations

1. Introduction

- Family relationships (and most specifically link with parents) : (probably) most common way for person to acquire a nationality
- Outline of the analysis :
 - Acquisition through 'blood links' – parents and children
→ examine whether the law of nationality has kept up with the evolution of family law
 - Equality men/women
 - Children born in marriage/ outside marriage
 - Acquisition through marriage

II. Acquisition of nationality in family relations

1. Introduction

- Acquisition *ius sanguinis* is (in most cases) automatic (by operation of the law – *ex lege*) → difficulty to demonstrate that acquisition took place
- Two methods to show that acquisition took place :
 - Demonstrate that legal requirements were fulfilled (implies using the law at the time the family event took place)
 - Demonstrate the '*possession d'état*' (if allowed in matters of nationality – see *e.g.* Art. 30-2 French Civil Code).

II. Acquisition of nationality in family relations

2. Acquisition *ius sanguinis* and the evolution of family relationships



- Starting point : birth in country of origin of family (e.g. : child born in France out of French parents)
- Two questions:
 - Will a child acquire mother's *and* father's nationality?
 - Equality of children born from married parents and outside wedlock?

2. Acquisition *ius sanguinis* and the evolution of family relationships

A. Are parents equal before the law of nationality?



- *1st question* : does child acquire nationality of his father, mother or both ?
- For a long time : traditional rule of acquisition of nationality only through the father (*ius sanguinis a patre*)
- e.g. : Belgium : Art. 1-1° Coordinated Laws of 1932 :
“*Sont belges . . . 1° L'enfant légitime né, même en pays étranger, d'un père ayant la qualité de Belge au jour de la naissance*”



2. Acquisition *ius sanguinis* and the evolution of family relationships

A. Are parents equal before the law of nationality?



- Today : rule has been abandoned – equality men/woman in transmission of nationality - principle that child can obtain nationality of both his father and mother
- Evolution started after WWII and reached apex in 1970's and 1980's in Western Europe (in Central and Eastern Europe, equal treatment took place earlier, on account of Soviet inspired legislation)

2. Acquisition *ius sanguinis* and the evolution of family relationships

A. Are parents equal before the law of nationality?



- Evolution towards equality men-women : slow and progressive:
 - France : 1945
 - Ireland : 1956
 - Denmark : 1978
 - Netherlands : 1985
 - Luxemburg : 1987
 - Cyprus : 1999

2. Acquisition *ius sanguinis* and the evolution of family relationships

A. Are parents equal before the law of nationality?



- Sometimes evolution through *legislator* – e.g. Philippines:
 - 1935 Constitution: only the child of a Filipino father acquired Filipino citizenship at birth
 - 1973 Constitution : Filipino citizenship granted to children whose fathers *or* mothers are citizens of the country (today, see Art. IV, Section 1(2) 1987 Constitution)



2. Acquisition *ius sanguinis* and the evolution of family relationships

A. Are parents equal before the law of nationality?



- Sometimes evolution through *case law* – e.g. Germany
- E.g. German Constitutional Court, ruling of 21 May 1974 : the Court found that § 4 – 1 of the German Act on Nationality (as applied then), according to which German nationality was only transmitted *ius sanguinis a patre*, was in violation of the principle of equality between men and women
- Court annulled the provision and required the legislator to provide for equal treatment for acquisition of the nationality of the father and of the mother.

2. Acquisition *ius sanguinis* and the evolution of family relationships

A. Are parents equal before the law of nationality?



- In 1979 principle of equality of men and women is recognized generally : Art. 9 § 2 of the UN Int'l Convention on the Elimination of All Forms of Discrimination of Women (NY, 18.12.1979) : “States Parties shall grant women equal rights with men with respect to the nationality of their children.”

2. Acquisition *ius sanguinis* and the evolution of family relationships

A. Are parents equal before the law of nationality?



- Today principle is well established in Western Europe - see art. 6 § 1 (a) Eur. Conv. Nationality : “Each State Party shall provide in its internal law for its nationality to be acquired *ex lege* by the following persons : a children one of whose parents possesses, at the time of the birth of these children, the nationality of that State Party... »
- Belgium : Art. 8 CBN; France : Art. 18 Civil Code; Italy : Art. 1-1(a); Germany : section 4 Nationality act, etc.

2. Acquisition *ius sanguinis* and the evolution of family relationships

A. Are parents equal before the law of nationality?



- Consequence of this evolution : increasing number of cases of multiple nationalities - child obtaining nationalities of both his parents (see *infra* : marriage has no automatic influence on nationality of spouses)

2. Acquisition *ius sanguinis* and the evolution of family relationships

A. Are parents equal before the law of nationality?



- Acquisition *ius sanguinis a patre* remains however the rule in some countries
- 1°) Most extreme case : no transmission *a matre*
- e.g. Kuwaiti Nationality Law 5 Dec. 1959:
 - Art. 2 :”Any person born in, or outside, Kuwait whose father is a Kuwaiti national shall be a Kuwaiti national himself”
 - Art. 3 : “Kuwaiti nationality is acquired by any person born in Kuwait whose parents are unknown. A foundling is deemed to have been born in Kuwait unless the contrary is proved”

2. Acquisition *ius sanguinis* and the evolution of family relationships

A. Are parents equal before the law of nationality?



- Consequences:
 - Child born from Kuwaiti father : always obtains Kuwaiti nationality, even if born abroad
 - Child born from Kuwaiti mother : does not obtain nationality from mother (eg. mother married to a foreigner)

2. Acquisition *ius sanguinis* and the evolution of family relationships

A. Are parents equal before the law of nationality?



- See reservation made by Kuwait in respect of art. 9 § 2 of the 1979 Int'l Convention on the Elimination of All Forms of Discrimination of Women : “The Government of Kuwait reserves its right not to implement the provision contained in article 9, par. 2, of the Convention, inasmuch as it runs counter to the Kuwaiti Nationality Act, which stipulates that a child’s nationality shall be determined by that of his father”.

2. Acquisition *ius sanguinis* and the evolution of family relationships

A. Are parents equal before the law of nationality?



- 2°) In other countries : acquisition *ius sanguinis a matre* restricted to specific circumstances
- *E.g.* Art. 6 Tunisian Nationality Code (1963) : is Tunisian
 - The child born out of a Tunisian father
 - The child born out of a Tunisian mother and an unknown father or father without nationality
 - The child born in Tunisia out of a Tunisian mother and a foreign father

2. Acquisition *ius sanguinis* and the evolution of family relationships

A. Are parents equal before the law of nationality?



- 3°) Other restrictive provision
- *E.g.* Switzerland : special provision for marriages between 1952 and 1992 (automatic acquisition of Swiss nationality by foreign woman)
- Art. 57a Swiss Act : child of a Swiss mother who acquired her nationality by a previous marriage only acquires Swiss nationality if child does not acquire another nationality or becomes stateless before attaining the age of majority

2. Acquisition *ius sanguinis* and the evolution of family relationships

A. Are parents equal before the law of nationality?



- In some countries, restriction concerns acquisition *ius sanguinis a patre*
- *E.g.* Sect. 1 Sweden Act : acquisition of Swedish nationality:
 - Automatic if mother is Swedish (whether mother married or not, whether child born in Sweden or not)
 - If father is Swedish, acquisition only works at birth if:
 - Child born in Sweden
 - Or if father is married to the mother
 - Or if father has died and child born in Sweden

2. Acquisition *ius sanguinis* and the evolution of family relationships

B. Children in and out of marriage

- 2nd question : does it make a difference whether parents are married or not?
- *E.g.* parents are married, bound by a civil partnership (PAC's) or not married
- Any difference for the child?

2. Acquisition *ius sanguinis* and the evolution of family relationships

B. Children in and out of marriage

- Question is (in principle) only relevant for acquisition of *father's* nationality
- Transmission of *mother's* nationality is in principle not linked to her status (married or not) – parentage link between child and mother automatically established (nature) and sufficient to transmit nationality
- Exception : in some countries, mother's nationality only transmitted if child does not have a father or stateless, or not at all (*e.g.* Kuwait)

2. Acquisition *ius sanguinis* and the evolution of family relationships

B. Children in and out of marriage

- For father : nationality can only be acquired if there is a legal bond between father and child → link with family law
- 2 steps in reasoning :
 - Is father legally the father? (answer under family law)
 - May (legal) father transmit nationality?

2. Acquisition *ius sanguinis* and the evolution of family relationships

B. Children in and out of marriage

- Various situations must be distinguished
- 1st situation : parents are married
- *1st question* : is husband legally the father?
- In most legal systems, mother's husband will automatically be deemed to be the child's father (presumption of paternity – *pater est quem nuptiae demonstrant* - strength of which may vary)

2. Acquisition *ius sanguinis* and the evolution of family relationships

B. Children in and out of marriage

- *2nd question* : if link is established, will child obtain his father's nationality?
- Legal systems in Western Europe generally provide that child born within wedlock automatically acquires the citizenship of the husband of the mother (*e.g.* Art. 7(1)(a) Austrian Act; Art. 1(1) Danish Act; Art. 9(2) Finnish Act; Art. 1(3) Swedish Act, etc.)

2. Acquisition *ius sanguinis* and the evolution of family relationships

B. Children in and out of marriage

- 2nd situation : parents are bound by a civil 'partnership'
- *1st question* : is the partner legally the father?
- Whether or not the child is legally the child of the mother's partner, depends on the *consequences* of the civil partnership
- In most legal systems, partnership will not have any effect on paternity, or at least no equivalent to paternity presumption – this is the case for the French *PAC's*, the German '*partnerschaft*' or the Belgian '*cohabitation légale*', etc. - recognition of the child is necessary; without such recognition, child will not obtain his father's nationality

2. Acquisition *ius sanguinis* and the evolution of family relationships

B. Children in and out of marriage

- *2nd question* : if link is established (through recognition of the child), will child obtain his father's nationality?
- No difference with marriage – *a parent is a parent*

2. Acquisition *ius sanguinis* and the evolution of family relationships

B. Children in and out of marriage

- 3rd situation : parents are not married
- *1st question* : No automatic link between father and child; father will have to recognize the child
- Questions:
 - Which law applies to recognition?
 - How to recognize (recognition, court judgment, legitimation)?
 - Problem : sometimes no recognition outside marriage...

2. Acquisition *ius sanguinis* and the evolution of family relationships

B. Children in and out of marriage

- *2nd question* : is there transmission of father's nationality if link father-child is established?
- Picture is mixed : in some countries, *automatic* transmission, in other countries *qualified* transmission, in yet other countries *no transmission*

2. Acquisition *ius sanguinis* and the evolution of family relationships

B. Children in and out of marriage

- First category : countries where once parental link established between father and child born out of wedlock, *automatic acquisition (ex lege)* – e.g. art. 4(1) German Act, art. 2 Italian Act; art. 1(1) Lux Act; art. 14 Portuguese Act, etc.

2. Acquisition *ius sanguinis* and the evolution of family relationships

B. Children in and out of marriage

- 2nd category : transmission of the father's nationality automatic, but only until certain age
- *E.g.* transmission only if establishment of parental link takes place *before* child turns 18 y. (*e.g.* art. 2 Italian law; art. 20-1 French law); or 23 y. (Germany)
- Related question : what if child is already older (15, 16 y. etc.) : if link with father is established, child obtains nationality of father but risk that losing his/her original nationality? Consent of the child?

2. Acquisition *ius sanguinis* and the evolution of family relationships

B. Children in and out of marriage

- 3rd category : transmission of the father's nationality conditional upon other requirement
- *E.g.* no transmission if *birth abroad* – *e.g.* DK : where the child's parents are not married and only the father is a Danish national, the child will only acquire Danish nationality if born in DK (art. 1(1)(a) Danish Act) – argument? Child born out of wedlock less likely to develop close ties with the state of citizenship of his father if he lives abroad (in the same sense : Sweden)

2. Acquisition *ius sanguinis* and the evolution of family relationships

B. Children in and out of marriage

- 4th category : transmission only if specific modes of establishment of fatherhood
- Process may vary – *e.g.* :
 - Establishment of fatherhood by *recognition* (*e.g.* Art. 4(1) German Act – before child turns 23 y.)
 - Establishment of fatherhood by *judgment* – *e.g.* art. 4 Dutch Act

2. Acquisition *ius sanguinis* and the evolution of family relationships

B. Children in and out of marriage

- Diversity is in conformity with art. 6(1)(a) ECN : “With respect to children whose parenthood is established by recognition, court order or similar procedures, each State Party may provide that the child acquires its nationality following the procedure determined by its internal law...”
- See also principle 11 of Recommendation CM/Rec(2009)13 of the Committee of Ministers (9.12.2009) on the nationality of children : States should “provide that children whose parentage is established by recognition, by court order or similar procedures acquire the nationality of the parent concerned, subject only to a procedure determined by their internal law”

2. Acquisition *ius sanguinis* and the evolution of family relationships

B. Children in and out of marriage

- 5th category : transmission only possible if child is *legitimized*, i.e. through subsequent marriage between mother and father
- *E.g.* Austria : child of an unmarried Austrian mother acquires Austrian nationality (*ex lege* – art. 6(3)); child of an unmarried Austrian father : no acquisition through recognition by father, but only by marriage of parents – art. 7 (a)
- Same system in Scandinavia (Art. 2 Danish Act; Art. 11 Finnish Act; Art. 4 Swedish Act)

2. Acquisition *ius sanguinis* and the evolution of family relationships

B. Children in and out of marriage - conclusion

- If one compares the situation of the children, the treatment afforded to children may vary depending on whether the parents are married or not
- However, the distinction is not proper to the law of nationality - it follows closely the mechanisms of family law and replicates them. It should therefore not be considered to be discriminatory

2. Acquisition *ius sanguinis* and the evolution of family relationships

B. Children in and out of marriage - conclusion

- Recently, substantial number of modifications to allow fathers to pass on their citizenship *iure sanguinis* to children born out of wedlock – *e.g.* Sweden (2001); Norway (2006), the Netherlands (2009) etc.
- *e.g.* Netherlands : new provisions in Art. 4 RWN in 2009 – Dutch nationality granted *i)* to children recognized by Dutch citizens before reaching the age of 7 (art. 4.2), *ii)* to children becoming the child of a Dutch citizen through legitimation (art. 4.3) and *iii)* to children recognized by a Dutch citizen provided DNA-evidence of biological link is brought (art. 4.4)

2. Acquisition *ius sanguinis* and the evolution of family relationships

B. Children in and out of marriage - conclusion

- In some countries, situation of children born out of marriage still difficult
- See *e.g.* Malta : section 5(2) of the Maltese Citizenship Act provides that “A person born outside Malta ... shall be deemed to have become or shall become a citizen of Malta at the date of his or her birth: (b) ...if at the date of such person’s birth, his or her father or mother is a citizen of Malta ...”

2. Acquisition *ius sanguinis* and the evolution of family relationships

B. Children in and out of marriage - conclusion

- However, section 17 (1)(a) of the Act provides that “any reference to the father of a person shall, in relation to a person born out of wedlock and not legitimated, be construed as a reference to the mother of that person; ...”
- Case *Genovese v Malta* (ECHR, 11.10.2011) : M. Genovese, born in Scotland out of British mother and Maltese father, unmarried

2. Acquisition *ius sanguinis* and the evolution of family relationships

B. Children in and out of marriage - conclusion

- Father refuses to acknowledge his son, no contact – but Scottish court decides he is the father (after DNA-evidence)
- Application in Malta for the son to be granted Maltese nationality – refused on the basis that Maltese citizenship could not be granted to an illegitimate child in cases where the illegitimate offspring was born to a non-Maltese mother and a Maltese father (section 17(1)(a) of the Maltese Citizenship Act)

2. Acquisition *ius sanguinis* and the evolution of family relationships

B. Children in and out of marriage - conclusion

- Proceedings before the ECHR – claim for violation of artt. 8 and 14 ECHR
- 1st stage : is ECHR applicable? Convention does not guarantee a right to acquire a particular nationality or citizenship
- Court :
 - An arbitrary denial of citizenship might in certain circumstances raise an issue under Art. 8 because of the impact of such a denial on the private life of the individual
 - Art. 14 applies to those additional rights, falling within the general scope of any Convention Article, for which the State has voluntarily decided to provide – in this case, Malta has decided to grant the right to citizenship by descent and established a procedure to that end – this situation falls now under art. 8 (see art. 53)

2. Acquisition *ius sanguinis* and the evolution of family relationships

B. Children in and out of marriage - conclusion

- 2nd stage : merits
- Is distinction based on status of parents (married or not) justified or not? M. Genovese was in an analogous situation to other children with a father of Maltese nationality and a mother of foreign nationality
- Only distinguishing factor, which rendered him ineligible to acquire citizenship, was the fact that he had been born out of wedlock.

2. Acquisition *ius sanguinis* and the evolution of family relationships

B. Children in and out of marriage - conclusion

- Court : no sufficient reason to justify different treatment
- Idea that children born in wedlock have a link with their parents resulting from their parents' marriage, a link which did not exist in cases of children born out of wedlock is not sufficient
- Fact that, while a mother is always certain, a father is not – not sufficient (because under Maltese law, even if father is known, no possibility to obtain nationality)

2. Acquisition *ius sanguinis* and the evolution of family relationships

C. Assessment



- Looking at (Western) Europe, acquisition *ius sanguinis* is in line with principle of equality:
 - 1) Principle of equality of sexes : one parent is enough (father *or* mother); 'mixed' families (where not all members have the same and only the same nationality) are treated equally with 'purely local' families

2. Acquisition *ius sanguinis* and the evolution of family relationships

C. Assessment



- 2) Equality *less perfect* between children born out of wedlock and within marriages
- But recent evolution going in this direction

2. Acquisition *ius sanguinis* and the evolution of family relationships

C. Assessment



- 3) Equality of father and mother plants the seeds of dual nationalities - reinforced by other factors (such as lack of impact of marriage on nationality – see later)

2. Acquisition *ius sanguinis* and the evolution of family relationships

C. Assessment



- 4) Does acquisition through parents lead to 'Ethnic' nationality ?
- No : acquisition *ius sanguinis* is blind for the origin of the nationality of the parent whose nationality is acquired by child

2. Acquisition *ius sanguinis* and the evolution of family relationships

C. Assessment



- Parents who only recently obtained nationality or did not obtain nationality *ius sanguinis* : may transmit this nationality *ius sanguinis*
- *e.g.* : Moroccan parents, born in Morocco became Belgian citizens by naturalization in 2010. in 2012, the mother gives birth to a child in Belgium → Mother gives her Belgian nationality to the child

2. Acquisition *ius sanguinis* and the evolution of family relationships

C. Assessment



- Equality is the rule : no distinction is made on the basis of *how* and *when* the parents became national - no requirement that parents themselves born in 'home' country, etc.
- *E.g.* Art. 4 Latvian Act Nationality : “The rights and obligations of Latvia citizens are equal regardless of the manner in which citizenship was obtained”

II. Acquisition of nationality in family relations

3. Acquisition through marriage

A. Introduction

- Impact of marriage on nationality?
- Sensitive question : 'marriages of convenience' seen (rightly or wrongly) as a prevalent problem (linked with migration)
- Link between nationality and marriage as changed dramatically over time – distinction between *3 stages* in evolution

II. Acquisition of nationality in family relations

3. Acquisition through marriage

A. Husbands and wives : the age of domination



- 1st stage in evolution : the age of domination
- For a long time, women acquired the nationality of their husbands and lost their nationality of origin. This was common practice all over Europe

II. Acquisition of nationality in family relations

3. Acquisition through marriage

A. Husbands and wives : the age of domination

- National laws provided two parallel measures:
 - Upon marriage with a citizen, a foreign woman automatically acquired the nationality of her husband - *e.g.* Article 4 of the Belgian Coordinated Acts of 1932 : “*L'étrangère qui épouse un belge ou dont le mari devient belge par option suit la condition de son mari*” - justification : wish to guarantee unity of nationality within the family
 - Upon acquisition of the nationality of her husband by a woman married with a foreigner, the woman lost her original nationality - *e.g.* Article 19 of the French Civil Code (in force until 1927) : “*Une femme française qui épousera un étranger suivra la condition de son mari*”

II. Acquisition of nationality in family relations
3. Acquisition through marriage
A. Husbands and wives : the age of domination



- Consequence : women acquired the nationality of their husbands *and* lost their nationality of origin

II. Acquisition of nationality in family relations

3. Acquisition through marriage

B. Husbands and wives : the age of equality

- 2nd stage in evolution : starting after WWII, the situation started to change. Idea of equality between men and women gained ground
- Progressive evolution, over a couple of decades and in various stages

II. Acquisition of nationality in family relations

3. Acquisition through marriage

B. Husbands and wives : the age of equality



- 1st (timid) measure : ensure that if a women lost her nationality when marrying a foreign husband, at least loss is *conditional* upon her acquiring the nationality of her husband. Concern : prevent the woman from becoming stateless
- See Art. 8 of the 1930 Hague Convention : “*If the national law of the wife causes her to lose her nationality on marriage with a foreigner, this consequence shall be conditional on her acquiring the nationality of the husband*”

II. Acquisition of nationality in family relations

3. Acquisition through marriage

B. Husbands and wives : the age of equality



- 2nd step in evolution : impact of marriage on nationality was nuanced by providing that foreign wife still acquired the nationality of her husband, but she could resist acquisition
- e.g. Belgium : foreign woman could resist acquisition (by filing a notice) - e.g. Art. 4 Act of 1932 : “*Toutefois elle [the foreign woman marrying a Belgian citizen] peut renoncer à la nationalité belge par une déclaration ... durant les six mois à partir du jour du mariage ou du jour où le mari est devenu belge [at least provided she demonstrates that she possesses a foreign nationality or would recover one]*”
- Other example : foreign wife's consent needed for acquisition of husband's nationality (e.g. France : Act of 10.08.1927 : foreign woman marrying a French national only acquired French nationality if she consented thereto - during marriage ceremony - and she could also keep her original nationality (again, by filing a notice to that effect))

II. Acquisition of nationality in family relations

3. Acquisition through marriage

B. Husbands and wives : the age of equality

- Principle was further implemented through many bilateral conventions
- See *e.g.* Convention between France and Belgium 1947 on the nationality of the married woman:
 - A woman marrying a national of the other country, shall acquire the nationality of her husband
 - She could, however make a declaration to keep her original nationality (and hence, not acquire her husband's nationality)

II. Acquisition of nationality in family relations

3. Acquisition through marriage

B. Husbands and wives : the age of equality

- 3rd step in evolution : principle of automatic acquisition by wife of husband's nationality is abandoned
- Turning point : 1957 UN Convention on the Nationality of the Married Women
- Preamble : wish of Contracting States to promote “*universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to sex*”

II. Acquisition of nationality in family relations

3. Acquisition through marriage

B. Husbands and wives : the age of equality



- 1957 UN Convention based on the assumption that the marriage should *not* have any automatic effect on the nationality of the wife
- Art. 1 of the Convention : “*Each Contracting State agrees that neither the celebration nor the dissolution of a marriage between one of its nationals and an alien, nor the change of nationality by the husband during marriage, shall automatically affect the nationality of the wife*”

II. Acquisition of nationality in family relations

3. Acquisition through marriage

B. Husbands and wives : the age of equality



- Idea of unity of nationality within family remained a concern for States
- In order to reach this goal, the States agreed to provide a *possibility* for foreign women to acquire the nationality of their spouses
- See Art. 3 of the Convention : “*Each Contracting State agrees that the alien wife of one of its nationals may, at her request, acquire the nationality of her husband through specially privileged naturalization procedures.*” (provision only refers to acquisition by wife of husband's nationality... not the opposite)

II. Acquisition of nationality in family relations

3. Acquisition through marriage

B. Husbands and wives : the age of equality

- Today, principle that marriage has no automatic effect on nationality of the spouses is well established
- See *e.g.* art. 4 Eur. Convention on Nationality : “The rules on nationality of each State Party shall be based on the following principles : ... 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.* »
- See *e.g.*
 - Belgium : art. 16 CNB (1984)
 - France : art. 21-1 French Civil Code (principle that marriage has no automatic effect on nationality of woman accepted with Act of 9.01.1973)

II. Acquisition of nationality in family relations

3. Acquisition through marriage

B. Husbands and wives : the age of equality

- In most States, however, marriage opens the door for *facilitated acquisition* of nationality
- Marriage combined with a certain residence together : ground for acquisition
- *E.g.* art. 21-2 French Civil Code : facilitated acquisition procedure by declaration for foreign spouse
- *E.g.* : existence of marriage may also lead to a shorter naturalization period - under Dutch law, marriage with a Dutch opens the door to *naturalization* (see art. 8 § 2 Rijkswet : naturalization is possible after 3 years of marriage, no application of general requirement of 5 y. residence; but requirement that integration be demonstrated...)

II. Acquisition of nationality in family relations

3. Acquisition through marriage

C. Husbands and wives : the age of suspicion



- 3rd stage : starting in the 1990's, increased suspicion in EU vis-à-vis facilitated acquisition procedures for foreign spouses
- Reason : marriage has become one of the main doors of migration
- Gradually, restrictions were placed on the acquisition of nationality of EU spouse, with strong emphasis on residence together

II. Acquisition of nationality in family relations

3. Acquisition through marriage

C. Husbands and wives : the age of suspicion

- Suspicion led to additional requirements or additional severity in requirements for acquisition of nationality through marriage
- 1st) acquisition only provided marriage is *stable*
- 2nd) spouses should *live* in the State, the nationality of which is at stake
- 3rd) possibility to *take nationality back*

II. Acquisition of nationality in family relations

3. Acquisition through marriage

C. Husbands and wives : the age of suspicion

- 1st) acquisition is only possible after a certain period of marriage
- In order to become relevant for the acquisition of the nationality, the marriage should last for a certain period of time
- Duration required can vary:
 - *e.g.* Belgium : 3 years of 'living together' (art. 16 CNB / art. 12*bis* §1-3° CNB 2013)
 - *e.g.* France : acquisition possible after 4 years of marriage (art. 21(2) French Civil Code)

II. Acquisition of nationality in family relations

3. Acquisition through marriage

C. Husbands and wives : the age of suspicion

- No acquisition if separation / divorce of the spouses during the required period of residence (except in case of death of one of the spouses)
- Acquisition is possible whether marriage celebrated in country or abroad

II. Acquisition of nationality in family relations

3. Acquisition through marriage

C. Husbands and wives : the age of suspicion



- Recent trend : required length of marriage has *increased*
- *E.g.* France
 - Until 2006 : 2 years of marriage
 - Since 2006 : 4 years of marriage (art. 21-2 French Civil Code)

II. Acquisition of nationality in family relations

3. Acquisition through marriage

C. Husbands and wives : the age of suspicion



- 2nd) spouses should live in the State, the nationality of which is at stake
- Marriage *as such* is not sufficient, it must be combined with residence in the country. Rationale?
 - Ensure that the foreign spouse will learn about the country, its culture, language, etc. before acquiring its nationality
 - Prevent so-called 'marriages of convenience' (*'mariages de complaisance' / 'schijnhuwelijken'*), *i.e.* marriage concluded with the sole aim of circumventing the rules on entry and residence of foreign nationals and obtaining for the foreign national a residence permit

II. Acquisition of nationality in family relations

3. Acquisition through marriage

C. Husbands and wives : the age of suspicion

- How long should foreign spouse reside in the country?
 - Length of residence may coincide with required length of marriage
 - Sometimes different requirements – *e.g.*
 - Belgium : art. 12*bis* §1-3° CNB 2013
 - 3 years of marriage
 - 5 years of legal residence in Belgium
 - Netherlands : 3 years of marriage but 15 y. of legal residence (art. 6 § 1 g *Rijkswet*)

II. Acquisition of nationality in family relations

3. Acquisition through marriage

C. Husbands and wives : the age of suspicion



- Residence abroad sometimes taken into consideration – provided additional requirements are met
- *E.g.* France – art. 21-2 § 2 Civil Code : 5 years of marriage instead of 3 y. if spouses have lived abroad (or not continuous residence in France during marriage)

II. Acquisition of nationality in family relations

3. Acquisition through marriage

C. Husbands and wives : the age of suspicion



- Sometimes residence in country of spouse is as such not sufficient
- Next to marriage and residence, other requirements imposed – *e.g.*:
 - Germany : if the foreign spouse 'conform to the German way of life' (sect. 9 1)(2))
 - Belgium : knowledge of one of the national languages and demonstration of 'social integration' (art. 12*bis* §1-3° CNB 2013)

II. Acquisition of nationality in family relations

3. Acquisition through marriage

C. Husbands and wives : the age of suspicion



- 3rd) 'provisional' nature of the nationality? - specific ground of loss
- Marriage with a foreigner is no longer a ground of loss of nationality (at most, marriage with a foreigner can give a national the opportunity to waive his/her nationality – see art. 23-5 of the French civil code)

II. Acquisition of nationality in family relations

3. Acquisition through marriage

C. Husbands and wives : the age of suspicion



- However, in some countries, possibility to 'monitor' nationality acquired through marriage, with possibility to take it back in case marriage is dissolved
- France – Act of 2011 – new Art. 26-4 French Civil Code : government may oppose acquisition, delay for opposition was one year; has been brought to 2 years

II. Acquisition of nationality in family relations

3. Acquisition through marriage

C. Husbands and wives : the age of suspicion



- In addition possibility to lose one's nationality because of fraud now being considered applicable in case of marriage of convenience (*e.g.* art. 23 § 1-1 CNB and art. 23/1 § 1-3° CNB 2013)
- Recent application Court in Antwerp (Oct. 2011):
 - 1st public prosecutor obtains annulment of marriage of convenience
 - 2nd public prosecutor requests that husband be stripped of his Belgian nationality

II. Acquisition of nationality in family relations

3. Acquisition through marriage

C. Husbands and wives : the age of suspicion

- Acquisition of nationality through partnership?
*E.g. acquisition through French PAC's, German *Lebenspartnerschaft*?*
- Distinction
 - Countries where position of partners similar to that of spouse for the acquisition of nationality (*e.g. Netherlands, Germany*)
 - France, Belgium : no access to nationality through partnership

The law of nationality : comparative and international perspective

Patrick Wautelet

Outline

- Acquisition of nationality:
 - General introduction : overview of the methods of acquisition
 - 1st theme : nationality within families (acquisition *ius sanguinis*)
 - **2nd theme : nationality and migration (acquisition *ius soli*)**

Purpose

- Evolution of the law of nationality because of phenomenon of migration explored on the basis of 3 general themes:
 - _ Acquisition *ius sanguinis* and expatriation
 - _ Acquisition through long term residence
 - _ Acquisition through birth on the territory
- Before looking at these themes, some general background

II. Acquisition of nationality and migration

1. General background

- Today : in most 'old' EU Member States large numbers of inhabitants of (direct or indirect) foreign origin - most European countries have become 'immigration countries'
- It used to be *different* : substantial exit of population during 20th century in various EU countries
 - Well-known immigration countries (such as Ireland, Portugal and Spain)
 - Substantial exit of population also in other countries (*e.g.* Belgium : from 1820 to 1900 over 140,000 people emigrated from Belgium to America; census of 1930 : 64,194 people living in the US who were born in Belgium)

II. Acquisition of nationality and migration

1. General background

- Consequence : population of most Western European countries is much more diverse than 50 years ago, with large numbers of 'foreigners'
- A word of vocabulary : even though increase in number of 'foreigners' is unmistakable, very difficult to obtain comprehensive figures – who are the 'foreigners'? Possible definitions :
 - Persons who do not possess the local nationality?
 - Persons who did not possess local nationality at birth?
 - Persons who were born abroad (if yes : second generations and following do not count as foreigners)
 - Persons who were born abroad and whose parents were born abroad?

II. Acquisition of nationality and migration

1. General background

- *E.g.* figures for Belgium (population 01.01.2010 : 10.839.905)
 - Persons *born abroad* : 1.268.915 or 12 % of population (Jan. 2006); constant increase (1991 : 9,41%)
 - Persons *born with a foreign nationality* : 1.896.880 or 18 % of population (Jan. 2010) – this includes 1.057.666 'foreigners' (persons who still possess only a foreign nationality – 10% of the population) and 839.214 (8%) born with only a foreign nationality but who became Belgian citizens. Constant increase of the numbers of persons born with only a foreign nationality but who became Belgian (1991 : 250.000; 2006 : 725.000)
 - Persons *born with a foreign nationality or with at least one parent born as a foreigner* : +/- 2.000.000 or 19 % of the population (Jan. 2005) – caution with the figures, very difficult to measure

II. Acquisition of nationality and migration

1. General background

- Migration has not only become *substantial*, but also very *diverse*
- Diversity because migration both intra-EU *and* from outside EU; diversity also in non EU migration
- *E.g.* Belgium - people with a foreign nationality (01.01.2010):
 - Largest represented countries : Italy (15,7%); France (13,3%); Netherlands (12,7%)
 - 58 % of the 'foreign' population in Belgium originates from the 'old' Europe of 15 MS
 - Among other countries : Morocco (7,8%); Turkey (3,8%)
DR Congo (1,7%)

II. Acquisition of nationality and migration

1. General background

- Massive migration is not always a recent phenomenon
- France : oldest destination of choice for migrants in Western Europe (migration country since 150 years)
 - 1891 : 1.000.000 foreigners in France (from Italy, Belgium, Germany, Spain, etc.) - various reasons for migration (economic situation, politics, artistic calling, etc.)
 - After WWI : Polish, Russian and Armenian wave
 - 1960's : Algerians, Moroccans, Tunisians and Portuguese wave
 - Today : 1 out of 4 French citizen has at least a foreign grandfather; 2nd and 3rd generation of foreigners are present since decades (in 1999 : 4,500.000 of second generations, i.e. 7.7% of total population)

II. Acquisition of nationality and migration

1. General background

- In other countries, migration is much more *recent*
- Belgium, Netherlands, Germany : major migration impact only *after WWII* – consequence of the *Wirtschaftswunder* of the 1960's (see bilateral agreements with Turkey and Morocco)
- Spain, Portugal, Italy, Greece : migration only started very recently – 1980's (Portugal was an exit country until 1970's) – very intense change

II. Acquisition of nationality and migration

1. General background

- Situation in 2012 :
 - Some emigration from Western European countries – *e.g.* Belgium average of 30.000 to 60.000 departures each year since 1980
 - Most countries in 'old' EU have become 'receiving' states (more intake than departures – *e.g.* between 40.000 to 140.000 arrival in Belgium each year since 1980)

II. Acquisition of nationality and migration

1. General background

Situation in the EU : the example of Belgium

- Before 1974, large official labour migration in Belgium - large number of 'foreign workers' recruited (also in other MS)
 - Agreement on 20 June 1946 with Italy – recruitment of labor force for mining industry
 - 1956 : agreement with Spain
 - 1964 : agreements with Morocco (17.08.1964) and with Turkey
- Organized massive labour migration comes to an end in 1974
- Other forms of migration remain - and gain in importance

II. Acquisition of nationality and migration

1. General background

What type of migration today?

- Refugees : 1951 UN Convention Relating to the Status of Refugees : well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion, ... (Belgium 2011 : 24.481 applicants – including multiple requests; status granted to 2.857 applicants)
- Undocumented aliens : illegal entry in Belgium (or legal entry with short term visa and then...)
- Students : visa for duration of studies (but could attempt to remain in Belgium after studies)
- Workers : visa for duration of professional occupation (from outside EU)

II. Acquisition of nationality and migration

1. General background

Largest part of new migrants in Belgium based on *family relationship* (through family reunification procedure) – more than 50 % of long term visa issued:

- Marriage
 - Marriage BE - foreigner
 - Marriage Foreigner-foreigner (usually with person from country of origin; usually larger intake of foreign women than men; compare with labor migration which mostly concerned men)
- Children – parents

II. Acquisition of nationality and migration

1. General background

Impact of this change on nationality law?

- Question being raised starting starting in 1970's : should the law of nationality be adapted to population change?
- In majority of Western Europeans States, acquisition *ius sanguinis* was the main acquisition ground (especially Germany, less pronounced in other States)
- Little room for acquisition of nationality on other grounds, such as birth in territory or long term residence

II. Acquisition of nationality and migration

1. General background

- *E.g.* Belgium :
 - Acquisition *ius sanguinis* always been recognized
 - For a long time, only limited possibility to acquire Belgian nationality following birth in Belgium (through 'option' : if birth in Belgium, 9 y. of residence in Belgium, lengthy procedure before court)
 - Possibility to acquire Belgian nationality through naturalization, after long term residence (art. 12 Coordinated Act of 1932 : only if already 30 y. old and if 15 y. of residence in Belgium) – little used : between 1831 and 1989 only 60.000 naturalizations (i.e. less than 400 / year)

II. Acquisition of nationality and migration

1. General background

- Question being raised starting in 1970's :
should the law of nationality be adapted to
change in population?
- More specifically : should 'newcomers' have a
possibility to obtain the nationality and, if yes,
how should this be done?

II. Acquisition of nationality and migration

1. General background

- Debate around these two questions in many EU countries starting in 1970 (but sometimes much later)
- *Caveat* : debate not identical in all countries – e.g. France - : picture was slightly different; *ius sanguinis* triumphed in Code Civil in 1804 until after first World War; but *ius soli* recognized very early – see Act of 1851 introduces 'double *ius soli*' in the 'Code of French Nationality' : child born in France out of two foreigners acquires French nationality when turning 18 y., if residence in France the last 5 y. (rationale : fear of 'denatality' in France)
- E.g. Germany as illustration

II. Acquisition of nationality and migration

1. General background

- Why would Germany open up possibility to acquire its nationality?
- Debate in Germany started in 1990's – after dust of reunification had settled
- Starting point : political rights of 'immigrants' – in 1998, there were more than 7 million foreign nationals living in Germany – most of them had been living in Germany for a long time (or even born in Germany) - 2/3rd of the Turks, 30 % of the Italians were born in Germany, ...

II. Acquisition of nationality and migration

1. General background

- Realization that there was a *gap* between permanent population and political participation - excluding people born and socialized in the country from acquisition of nationality could lead to tensions (creation of 'second class' citizens) or at least raise serious concern from liberal-democratic point of view - argument could be taken from principle 'No taxation without representation'
- Concern even more pressing since *large* number of foreigners concerned (consequence of massive cross-border mobility)

II. Acquisition of nationality and migration

1. General background

- At the same time, realization in Germany that people born and socialized in the country, or having lived in this country for a long time possessed a sufficiently '*genuine link*' with the country, which should open way for acquisition of nationality (especially when compared with generous possibility of acquisition *ius sanguinis* by descendants of nationals, even though born abroad and living abroad)

II. Acquisition of nationality and migration

1. General background

- Nuance in the debate : concern for the exclusion of foreigners (to whom access to nationality was denied) existed but was not acute since substantial number of rights are 'residence based' (not enjoyed based on nationality)
- Idea of '*denizens*' – status halfway between citizens and people denied any rights (see *e.g.* 2003 Directive on Long Term Resident Third Country Nationals)

II. Acquisition of nationality and migration

1. General background

- Evolution of debate in Germany:
 - Many proposals
 - 1st limited reform in 1990 : facilitated acquisition of German nationality for young foreigners (16-23 y. old; renunciation of previous citizenship; permanent residence of 8 y. in Germany and 6 y. of school) and for 1st generation 'migrants' (15 y. of legal residence in Germany, renunciation of previous nationality and ability to earn a living)
 - Effect : large increase in the number of naturalizations but naturalization rate remained rather low (compared to other EU MS)

II. Acquisition of nationality and migration

1. General background

- In 2000 major reform adopted in Germany (after many attempts and discussions):
 - 1st change : introduction of *ius soli* acquisition (art. 4) : acquisition by child born in Germany if parent has had (legal) residence for 8 y. in Germany
 - 2nd change : naturalisation process facilitated : 8 y. of residence instead of 15 y. if residence permit, capable of earning a living and no criminal conviction

II. Acquisition of nationality and migration

1. General background

- Important element in debate (in Germany and other countries) : strong concern for dual nationalities
- Acquisition of local German nationality through birth on territory or long term residence, could lead to significant increase in number of dual nationals (if foreign parents can transmit their nationality – mostly the case)
- Result : strong opposition to dual nationality :
 - For acquisition *ius soli* : this is *optional* acquisition – child must choose between age of 18 and 23 y. between German and foreign nationality (art. 29)
 - For acquisition after long term residence : requirement that applicant waives his/her original nationality (but exceptions – *e.g.* elderly persons)

II. Acquisition of nationality and migration

1. General background

- If question of principle is solved and accepted that there is a need to open up nationality law to 'newcomers', question remains : how?
- Two main possibilities:
 - Acquisition following long term residence in the country - questions : how long? Acquisition as a right or a favour? What requirements ('integration', etc.)
 - Acquisition following birth in the country (*ius soli* - simple and double) – aims at children and grand-children of 'newcomers'
- Difficulty : grounds of acquisition may sometimes overlap and distinction not always sharp

II. Acquisition of nationality and migration

2. Acquisition *ius sanguinis* and expatriation

- 1st aspect of migration : what if a family leaves 'its' country to settle in another?
- Does this have an impact on acquisition of nationality through family links? Question is important for second (or following) generation of 'expatriates' – *e.g.*
 - Child born in Belgium, parents born in Morocco → acquisition of Moroccan nationality?
 - Child born in Germany, mother born in Germany, father born in Turkey; all 4 grandparents born in Turkey → acquisition of Turkish nationality?

II. Acquisition of nationality and migration

2. Acquisition *ius sanguinis* and expatriation

- No modification of general principles of acquisition *ius sanguinis* - acquisition if mother *or* father is national, parents married *or* not, no matter how the mother/father became a national (assignment/acquisition), no matter whether parent possesses another nationality, etc.

II. Acquisition of nationality and migration

2. Acquisition *ius sanguinis* and expatriation

- But additional questions:
 - Does birth outside country of origin prevent or otherwise limit acquisition of the 'family's nationality'?
 - Should answer to 1st question be nuanced depending on history of migration - what if family has lived abroad for a long time – additional requirement to prevent transmission of nationality from generation to generation?
 - What if the child already acquires local nationality? Should acquisition of family's nationality be restricted? Concern : dual nationalities

II. Acquisition of nationality and migration

2. Acquisition *ius sanguinis* and expatriation

- *1st question* : 'nationals forever' – Is there acquisition for the next generations? Can nationality be acquired *ius sanguinis* if the family has left the country of origin?
- If the family has emigrated, most probable that the children born in the country where the family settled, will remain there. They will have children, who will have children, etc. Will all these children acquire the nationality or origin, without any limitation?

II. Acquisition of nationality and migration

2. Acquisition *ius sanguinis* and expatriation

- Two main options:
 - Limit transmission if the parent whose nationality is transmitted, was not born in the country of origin
 - No such requirements – transmission in all cases no matter how long the family has left the country of origin

II. Acquisition of nationality and migration

2. Acquisition *ius sanguinis* and expatriation

- 1st model : in some countries, there is a limit to the transmission of the nationality *ius sanguinis* when a family has left the country (of origin)
- This is the case in Belgium (since 1985), in Germany (since 2000), in Portugal, UK, Slovenia, Cyprus, United States, etc.
- Limitation could apply to children born to expatriates (*e.g.* Portugal, Slovenia, US) or to children born to children of expatriates (*e.g.* Belgium, Germany)

II. Acquisition of nationality and migration

2. Acquisition *ius sanguinis* and expatriation

- Example : Belgium : transmission *ius sanguinis* only works automatically if the Belgian parent was born in Belgium (art. 8 Belgian CNB) – involves going back in family history (*compare* with situation of child born *in Belgium* out of Belgian parent : no question about family history - Belgian parent could have been born outside Belgium and could have acquired Belgian citizenship very recently)

II. Acquisition of nationality and migration

2. Acquisition *ius sanguinis* and expatriation

- Why limit transmission?
- Concern that the transmission of Belgian nationality through the ages, without any link with Belgium → creation of 'Paper Belgians' (concern even more pressing since right to vote of Belgians living abroad has been recognized and facilitated)

II. Acquisition of nationality and migration

2. Acquisition *ius sanguinis* and expatriation

- Other example : United States: a child is a citizen of the US at birth if :
 - _ Child born outside the US, 2 parents are US citizens and one parent has had residence in the US prior to the birth (8 USC § 1401 c)
 - _ Child born outside the US, one parent is a US citizen and this parent has been physically present in the US “for a continuous period of one year prior to the birth...” (8 USC § 1401 d)
 - _ Child born outside US, one parent is a US citizen and this parent was, prior to the birth, “physically present” in the US for a period of at least 5 years at least 2 of which were after attaining the age of 14 y. (8 USC § 1401 g)

II. Acquisition of nationality and migration

2. Acquisition *ius sanguinis* and expatriation

- Nuances to 1st model : even if parent was not born in country of origin, acquisition may not be automatic, but remains possible
- Acquisition not automatic but remains possible if child is registered *and* nationality is requested – *e.g.* :
 - Belgium - Art. 8 § 1, 2, b CNB - acquisition upon 'declaration' at the latest 5 years after birth (embassy)
 - Portugal – art. 1(1)(c) Portuguese Act
 - Ireland : no acquisition *ex lege* of citizenship in case of birth outside of Ireland if the father or mother through whom the child can derive Irish citizenship was also born outside of Ireland – but registration as an Irish citizen on application of the parent (art. 7(2) and 27 Irish Act)

II. Acquisition of nationality and migration

2. Acquisition *ius sanguinis* and expatriation

- No other requirements – in particular no 'test' for parents or for child to verify whether still sufficient link with country of origin; no payment; no verification of criminal history of parents or voting records, etc..
- *Quaere* in practice if the parents making the declaration are 4th generation and do not speak any of the languages of country of origin?

II. Acquisition of nationality and migration

2. Acquisition *ius sanguinis* and expatriation

- In countries limiting transmission if child born abroad : question : what if child becomes *stateless*?
 - Some countries : default acquisition to prevent statelessness (*e.g.* Belgium, Germany, etc.)
 - In other countries : no such default acquisition (yet?) (*e.g.* Portugal, Malta, Ireland, UK)

II. Acquisition of nationality and migration

2. Acquisition *ius sanguinis* and expatriation

- 2nd model : in other countries, nationality can be transmitted to every next generation born abroad, without any requirement. In other words, acquisition *ius sanguinis* is not limited by the expatriation → majority of States
- *E.g.* Morocco : nationality can be transmitted to all children, without any requirement related to place of birth of child or of parent 'transmitter'
- See Art. 6 Moroccan law on nationality : “*Est marocain ... 1°-l'enfant né d'un père marocain ;*”

II. Acquisition of nationality and migration

2. Acquisition *ius sanguinis* and expatriation

- Consequence : Moroccan nationality can be transmitted from generation to generation, even if all other links with Morocco lost (see Minister in charge of '*Communauté Marocaine Résidant à l'Etranger*')

II. Acquisition of nationality and migration

2. Acquisition *ius sanguinis* and expatriation

- Other countries where acquisition *ius sanguinis* works even after long term expatriation – e.g. Italy (art.1 Nationality Act), France (art. 18 French Civil Code), etc.

II. Acquisition of nationality and migration

2. Acquisition *ius sanguinis* and expatriation

- Nuances to the 2 'models' : need to take into account the *grounds of loss*
- Even if transmission is possible (automatic *or* following declaration) from a national born outside country of origin to his/her children, it may be that ground of loss will limit transmission – nationality may be lost if not 'exercised'

II. Acquisition of nationality and migration

2. Acquisition *ius sanguinis* and expatriation

- *e.g.*
 - Art. 22 § 1-5° CBN : loss of Belgian nationality if born abroad *and* if residence abroad between the age of 18 and 28 y. (*unless i*) works for Belgian government (or assimilated) or *ii*) has made a declaration to keep Belgian nationality - no test)
 - Art. 15 § 1 c Dutch Nationality Act – loss of Dutch nationality if Dutch adult possesses another nationality and lives for continuous period of 10 y. outside Netherlands (and outside EU) (*unless* works for Dutch government - or assimilated)

II. Acquisition of nationality and migration

2. Acquisition *ius sanguinis* and expatriation

- 2nd question : in some cases, a child born in another country than country of origin of his family, will obtain at birth local nationality (acquisition *ius soli* - simple *ius soli* rule (e.g. USA) or double *ius soli* rule (e.g. Belgium))
- Does acquisition of local nationality have an impact on acquisition of (the family's) nationality through *ius sanguinis*?

II. Acquisition of nationality and migration

2. Acquisition *ius sanguinis* and expatriation

- Trend is : acquisition *ius soli* does not exclude acquisition *ius sanguinis* (potential for dual nationalities)
- Eur. Convention Nationality leaves, however, room for exception to acquisition : art. 6 § 1 a : Acquisition is the rule for “... children one of whose parents possesses, at the time of the birth of these children, the nationality of that State Party, *subject to any exceptions which may be provided for by its internal law as regards children born abroad*”

II. Acquisition of nationality and migration

3. Acquisition through long term residence

A. Introduction



- Other side of migration : may family and family members acquire nationality of their 'new' country?
- Focus on one acquisition ground : long term residence (either after voluntary settling in country or since childhood – *ius educationis*)
- In same situation, other possible acquisition grounds could play a role (e.g. children younger than 18 y. benefiting from acquisition by their parents of local nationality)

II. Acquisition of nationality and migration

3. Acquisition through long term residence

A. Introduction

- *Consensus* seems to be that acquisition by first generation foreigners should be possible
- Requirements for such acquisition are, however, very different
 - In some EU countries, acquisition has been made easier over last decades
 - In other countries, regime remains more strict

II. Acquisition of nationality and migration

3. Acquisition through long term residence

A. Introduction

- Focus on several questions :
 - _ What are the requirements in terms of residence : 3, 5, 7, 10, 15 y.?
Shorter period in case of marriage with a citizen? Quality of residence?
 - _ Is there a requirement to demonstrate 'integration' (besides long term residence)? How is integration measured?
 - _ Is there an obligation to waive original nationality?
- First : overview of the *methods* of acquisition (procedures)

II. Acquisition of nationality and migration

3. Acquisition through long term residence

B. Acquisition procedures

- What is *method* to acquire local nationality?
- Substantial differences between methods – may also serve as divider between national laws
- In many countries, several methods *coexist*

II. Acquisition of nationality and migration

3. Acquisition through long term residence

B. Acquisition procedures

- Main distinction :
 - Method does not leave authority much discretion
 - Method leaves authority discretion to grant nationality or not
- Other distinction :
 - Acquisition procedure is handled at *local* level
 - Acquisition procedure is handled at *national* level
- Who decides on acquisition?
 - Decision by court
 - Decision by executive branch

II. Acquisition of nationality and migration

3. Acquisition through long term residence

B. Acquisition procedures

- 1) Method without any discretion
- Usually acquisition is done through *administrative* procedure
- See *e.g.* acquisition through 'declaration' in many countries - generally characterised by:
 - Voluntary act (no automatic character)
 - Need for an oral or written declaration (by the target person or by a legal representative) addressed to the relevant public authorities
 - Compliance with some requirements
 - A decision made by the authorities following the application (*e.g.* Belgium : art. 12*bis* CNB)
 - In some countries : applicant must also be present at 'nationality ceremony' (*e.g.* The Netherlands)

II. Acquisition of nationality and migration

3. Acquisition through long term residence

B. Acquisition procedures

- 1) Method without any discretion
- If requirements are met, opens a (subjective) *right* to obtain the nationality
- If requirements are not met : refusal and possibility to challenge decision before the court (decision is 'justiciable' – *judicial review*)

II. Acquisition of nationality and migration

3. Acquisition through long term residence

B. Acquisition procedures

- 1) Method without any discretion
- Even less discretion if acquisition through 'option' : also requires a voluntary act and compliance with legal requirements, but acquisition arises out of unilateral act by the person making the declaration and not from decision by the authorities (Eudo citizenship glossary)

II. Acquisition of nationality and migration

3. Acquisition through long term residence

B. Acquisition procedures

- 2) Method leaving discretion – *e.g.* naturalization
- Naturalization: a mode of acquisition after birth of a nationality not previously held by the person concerned that requires an application by this person ... as well as an act of granting nationality by a public authority (Eudo citizenship glossary)

II. Acquisition of nationality and migration

3. Acquisition through long term residence

B. Acquisition procedures

- Naturalization: usually no *right* to obtain nationality, grant of nationality is mostly a *discretionary favor* – discretion follows from use of broad criteria
- Extreme case : Belgium - application filed with *Parliament*; Parliament is sovereign (starting 2013 : minimum criteria for naturalisation, based on special achievements), no strict time frame for decision, in case of negative decision, no recourse to court; legal requirements are only 'minimum' requirements (artt. 18-19 CNB)

II. Acquisition of nationality and migration

3. Acquisition through long term residence

B. Acquisition procedures

- Other distinction : who decides on acquisition?
 - Courts – usually only intervene in 2nd second stage, to review decision taken by executive branch - *e.g.* challenge to negative opinion by Public Prosecutor under art. 12*bis* CNB (Belgium)
 - Executive branch – *e.g.* naturalization in the Netherlands (application filed with local authorities (city /municipality); application examined by executive branch (IND). Formal decision by the Queen. In case application is denied, challenge before the courts
 - Legislative branch - exceptional – *e.g.* naturalization in Belgium or DK (§ 44 Danish Constitution : “No alien shall be naturalized except by statute” - see also sect. 6(1) Danish Act)

II. Acquisition of nationality and migration

3. Acquisition through long term residence

C. When is acquisition possible?

- Grounds for acquisition → existence of *various* cases – comparison is difficult
- Review of two main cases, with emphasis on *substantial* requirements (not procedure)
 - 1st case : foreigner *born in* country and has always lived there
 - 2nd case : foreigners born *outside* country, but with long term residence

II. Acquisition of nationality and migration

3. Acquisition through long term residence

C. When is acquisition possible?

- 1st case : foreigner *born in* country, and has always lived there
- Acquisition possible in some countries - *e.g.* art. 12 *bis* § 1-1° CBN ; art. 6 § 1 sub a RWN (Dutch law); art. 21-7 French Civil code: art. 4(2) Italian Law 1992
- Does not exist in all countries (*e.g.* : Germany; DK)
- Ground for acquisition is *birth* in country combined with *education* there – sometimes called acquisition '*ius soli* after birth'

II. Acquisition of nationality and migration

3. Acquisition through long term residence

C. When is acquisition possible?

- Acquisition by foreigners *born in country = delayed* acquisition : usually only possible when foreigner turns 18 y.
- In most cases, acquisition only possible following *application* – exception French law for children born in France out of foreign parents: at the age of 18, *automatic* acquisition for all foreigners born in France and having lived there for at least 5 continuous years starting at the age of 11 y (art. 21-7 Civil Code)

II. Acquisition of nationality and migration

3. Acquisition through long term residence

C. When is acquisition possible?

- *Quality* of residence (legal title) as a requirement for acquisition?
- Distinction between quality when making application and during period of residence preceding application - *e.g.* art. 12 bis § 1-1° Belgian CNB 2013
- From *policy perspective*, two concerns:
 - Is quality of residence relevant in order to assess whether applicant has build a substantial link with country of residence?
 - Quality of residence as a way to avoid circumvention of migration rules

II. Acquisition of nationality and migration

3. Acquisition through long term residence

C. When is acquisition possible?

- Often, no additional requirement of demonstrating integration (*e.g.* 'inburgeringsvereiste') - integration is *presumed* to exist and must not be demonstrated...
- However, *negative* impact of 'lack of integration' : in some countries, application may be refused if applicant's criminal past is an indication of difficulties to come (to be handled with caution since applicant is only 18 y. old)

II. Acquisition of nationality and migration

3. Acquisition through long term residence

C. When is acquisition possible?

- *e.g.* Belgium : Public prosecutor may object in case of 'serious personal facts' (art. 12*bis* CNB)
 - Facts, not opinions
 - Personal facts (not family or relatives)
 - Serious character : minor criminal offences cannot block acquisition of nationality
- *E.g.* The Netherlands : application may be denied if “*serious presumption that the applicant represents a danger for the public order, the public moral or the safety of the Kingdom*” (art. 6 § 4 Rijkswet)

II. Acquisition of nationality and migration

3. Acquisition through long term residence

C. When is acquisition possible?

- 2nd case : foreigners born outside country, but with long term residence
- In many countries, continued residence is a ground for various types of acquisition methods
 - *Naturalization* : open for persons with a certain period of residence in country, without more (art. 6 § 3 Eur. Conv. Nat.)
 - *Declaration* : open for persons with residence together with other links to the country, such as birth in country, schooling as minors, residence as minor, marriage to national, etc.; usually facilitated acquisition (art. 6 § 4 (f) Eur. Conv. Nat.)
- This makes comparison between countries complex; need to take into account which mode of acquisition is concerned

II. Acquisition of nationality and migration

3. Acquisition through long term residence

C. When is acquisition possible?

- How long should residence be? No consensus – *e.g.* for naturalization :
 - *Netherlands* : naturalization after 5 y. of residence (art. 7-8-9 RWN)
 - *France* : naturalization after 5 y. (art. 21-17 Civil Code)
 - *Germany* : naturalization after 8 y. (art. 10 German Law)
 - *Austria* : naturalization after 10 y. of residence (§ 10(1)(a) Austrian Law of 1985 as amended)
 - *Belgium* : no minimum period of residence, but exceptional merits required

- Lack of consensus also apparent in Eur. Convention on Nationality : no indication of required length of residence; art. 6-3 provides only for a *maximum* of 10 years of residence as a condition for naturalization

II. Acquisition of nationality and migration

3. Acquisition through long term residence

C. When is acquisition possible?

- Lack of consensus should not hide that:
 - General trend in the EU to *sharpen* the minimum residence requirement
 - Identical residence requirements may hide different realities (*e.g.* is this a legal residence requirement or not? Does minimum length guarantee that application will be granted or simply a basic threshold to be met without any guarantee of obtaining nationality?)

II. Acquisition of nationality and migration

3. Acquisition through long term residence

C. When is acquisition possible?

- For acquisition through 'declaration', diversity is also the rule
- Cases of declaration cover well defined situations (residence + another element), which may not coincide – *e.g.* :
 - *Denmark*: acquisition by declaration if person resident in DK since before the age of 15 and received an education in DK, or obtained a substantial part of normal or professional education in DK and resided 4 years in DK (art. 6 Danish law)
 - *The Netherlands*: acquisition by declaration if
 - At the age of 18 if residence in the Netherlands since applicant was 4 y. old (art. 6 lid 1 (e) RWN) ('*ius educationis*')
 - At the age of 65 y. if residence in the Netherlands since at least 15 y. (art. 6 lid 1 (h) RWN)

II. Acquisition of nationality and migration

3. Acquisition through long term residence

C. When is acquisition possible?

- In all countries, emphasis on *legal nature* of residence for applicant when making application (see *e.g.* art. 7bis CNB; art. 6(1) Dutch 'Rijkswet') → access to nationality barred for 'undocumented' aliens and foreigners with weak residence titles

II. Acquisition of nationality and migration

3. Acquisition through long term residence

C. When is acquisition possible?

- Other element of the comparison : assessment of 'integration' as part of the genuine link?
- General trend in the EU is towards introducing such assessments (which usually take the form of 'test' or 'exam') – but not yet everywhere
- What is tested : language skills, knowing the local 'rules of the game' and economic participation

II. Acquisition of nationality and migration

3. Acquisition through long term residence

C. When is acquisition possible?

- Assessment of 'integration' as part of the genuine link? *E.g.* :
 - Belgium :
 - Before 2013 : integration was *presumed* to exist by mere fact of application
 - CNB 2013 : need to demonstrate language skills, economic participation (work) and 'integration' (*e.g.* through vocational training, etc.)

II. Acquisition of nationality and migration

3. Acquisition through long term residence

C. When is acquisition possible?

- Assessment of 'integration' as part of the genuine link? *E.g.:*
 - Netherlands :
 - Acquisition by option: no test of integration
 - Acquisition by naturalization : requirement of positive integration (art. 8-1(d) Rijkswet); integration must be demonstrated ('*naturalisatietoets*' / '*inburgeringstoets*') – objective test (knowledge of Dutch society and Dutch language – costs between 200 and 450 EUR)

II. Acquisition of nationality and migration

3. Acquisition through long term residence

C. When is acquisition possible?

- Other element of the comparison : impact of acquisition on other/former nationality?
 - Belgium : no requirement at all that applicant waives his / her other nationality (hence tolerance of multiple nationalities)
 - Netherlands : requirement that applicant waives his /her other nationality for naturalization (art. 9 (1)(b) Rijkswet) – but many exceptions to this requirement (*e.g.* if applicant is a refugee, is married with a Dutch citizen, was born in the Netherlands, etc.)
 - Denmark : renunciation requirement for naturalization (art. 4A Danish Act)

II. Acquisition of nationality and migration

3. Acquisition through long term residence

D. Appraisal

- Evaluation:
 - Diversity of regimes – with more liberals next to stricter ones
 - Diversity concerns
 - Grounds for acquisition
 - Requirements for acquisition
 - Attitude towards dual nationalities

II. Acquisition of nationality and migration

3. Acquisition through long term residence

D. Appraisal

- Beyond diversity, some common ground :
 - Wave of liberalization (1990's) followed by more restrictive approach recently
 - Insistence on 'integration' (positive demonstration – test)
 - Some common cases -
 - Residence and schooling in country of acquisition *before* 18 y
 - Retired worker
 - Adult - long terme residence and ...

II. Acquisition of nationality and migration

3. Acquisition through long term residence

D. Appraisal

- Evaluation should take into account possibility to acquire nationality *ius soli* – which may complement acquisition following long term residence (*e.g.* Belgium - art. 12 *bis* § 1-1° complements art. 11 *bis* CNB, is also aimed at 2nd generation migrants born in Belgium, in case the parents did not / could not make the declaration – *e.g.* if no residence of 10 y. or no legal residence)

II. Acquisition of nationality and migration

4. Acquisition based on birth on territory

- Second question : have States in EU opened up possibility to acquire nationality based on birth on territory? And if yes, under which circumstances?
- Focus is on acquisition *at birth* (or shortly thereafter) – in previous hypothesis, acquisition following birth on territory at the age of 18 y.
- Recognition of pure and unconditional *ius soli* is very rare
 - US (14th amendment US Constitution)
 - Ireland : Section 6 Irish Nationality Act: “Every person born in Ireland is an Irish citizen from birth” (abandoned in 2005)
- Without going that far, how far has acquisition *ius soli* been recognized?

II. Acquisition of nationality and migration

4. Acquisition based on birth on territory

- Birth on territory as ground for acquisition of nationality was for a long time restricted to a handful of countries – UK, Ireland, Portugal – *e.g.* Ireland : acquisition *ius soli* was unconditional and automatic
- In other countries, very limited consequences of birth in country – *e.g.* Belgium – very limited role of acquisition *ius soli* before Code of 1984:
 - Art. 1-2 1932 Act : if the child is born in Belgium and no parents known or child found (to avoid statelessness)
 - Art. 6-1° 1932 Act : child born in Belgium may at the age of 18 apply to obtain Belgian nationality if continuous residence in Belgium

II. Acquisition of nationality and migration

4. Acquisition based on birth on territory

- Change in recognition of *ius soli* – in two opposite directions
- (A) In traditional *ius soli* countries : restriction brought to acquisition *ius soli* - e.g.
 - change in UK in 1983, acquisition *ius soli* by children of non-citizens born in UK made dependent on residence requirements in relation to parents – acquisition only if one parent is 'settled' in the UK, ie ordinarily resident in the UK (no restriction on period for which he may remain)
 - in Ireland : change in 2005 (post-*Chen* case) : introduction of condition that at least one parent resides since 3 years in Ireland for attribution *ius soli* to children born in Ireland

II. Acquisition of nationality and migration

4. Acquisition based on birth on territory

- (B) In traditional *ius sanguinis* countries : starting in 1970's, more room is made for acquisition *ius soli*
- Introduction of *ius soli* acquisition, to various extents and in various forms, in many *ius sanguinis* countries: Belgium (1984), Germany (2000), Luxemburg (2009), Greece (2010), etc.

II. Acquisition of nationality and migration

4. Acquisition based on birth on territory

- *Caveat* : acquisition *ius soli* not recognized everywhere; in many countries, no recognition (yet?) – e.g. Austria, Bulgaria, DK, Italy, etc.
- In countries where *ius soli* does not immediately open acquisition at birth, could still play a *delayed* role later after person has become an adult (e.g. Italy : only effect of birth in Italy is that foreigner born in Italy may apply to become Italian when turning 18 y. if has been legally resident in Italy since birth – art. 4(2))

II. Acquisition of nationality and migration

4. Acquisition based on birth on territory

- Focus on evolution of '*ius sanguinis* countries' because directly related to migration
- Distinction between 2 cases :
 - Acquisition double *ius soli*
 - Acquisition simple *ius soli*
- *Ius soli* acquisition also exists in other cases but not migration related – e.g. acquisition *ius soli* at birth for child who is parentless or would otherwise be stateless (e.g. Art. 10 CNB)

II. Acquisition of nationality and migration

4. Acquisition based on birth on territory

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A. Double *ius soli*

- First case : double *ius soli*
- Birth in migration country out of a parent born in the migration country (3rd generation 'immigrant')
- Principle of acquisition double *ius soli* slowly accepted (France introduced the rule in 1851... Netherlands in 1953, Spain in 1954, Belgium in 1984 and Luxembourg in 2008 - art. 1-5° Lxbg Act)

II. Acquisition of nationality and migration

4. Acquisition based on birth on territory



A. Double *ius soli*

- Not yet part of the general '*acquis*' in Western Europe (and not yet confirmed in Eur. Conv. Nationality)
- Exists in : France (art. 19-3 French Civil Code); Belgium (art. 11 CNB); Luxbg (art. 1-5° Luxbg Act 2008); Spain (art. 17(1)(b)); Portugal (art. 1(1)(d) Act); Greece; Netherlands (art. 3(3) Rijkswet), etc.
- Does not exist in Germany, Italy; Norway, Poland, Sweden etc.

II. Acquisition of nationality and migration

4. Acquisition based on birth on territory

A. Double *ius soli*



- Acquisition is most of the time *automatic* : no choice for parents or child (e.g. art. 11 CNB : change in 1991 – used to be *upon declaration*, acquisition of Belgian nationality became automatic, *ex lege*)

II. Acquisition of nationality and migration

4. Acquisition based on birth on territory

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A. Double *ius soli*

- What if child already has another nationality (acquired *ius sanguinis*) ?
- Art. 11 CNB; art. 19-3 French Civil code : other nationality not relevant – hence will lead to increase in number of dual nationalities
- Optional model : choice could be required at age of majority between nationality acquired double *ius soli* and additional *ius sanguinis* nationality (example?)

II. Acquisition of nationality and migration

4. Acquisition based on birth on territory

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A. Double *ius soli*

- Acquisition double *ius soli* could be linked to residence and status of parents
- *e.g.* Netherlands : acquisition only if child born in the NL to a parent who had main habitual residence ('*hoofdverblijf*') in the Netherlands at the time of its birth and if this parent was born to a parent (grand-parent of the child) who habitually resided in NL at the moment of the birth of child – art. 3(3) *Rijkswet*
- *e.g.* Belgium art. 11 CNB – parent born in Belgium must have had its '*main residence*' in Belgium during 5 years of the 10 preceding birth - must be a '*legal residence*' (art. 7*bis*)

II. Acquisition of nationality and migration

4. Acquisition based on birth on territory



B. Simple *ius soli*

- Second case : 'simple *ius soli*' rule: acquisition by the child if birth on the territory *and* parents reside in the migration country – accepted in Germany, Greece, Belgium, Ireland, Portugal, etc.
- Acquisition simple *ius soli* could occur after 1st generation – more generous than acquisition double *ius soli*
- Not (yet?) commonly accepted (and certainly not in its purest 'American' form)

II. Acquisition of nationality and migration

4. Acquisition based on birth on territory

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B. Simple *ius soli*

- In most countries, simple and double *ius soli* mutually exclude each other – *e.g.*
 - France : double *ius soli* acquisition accepted; not simple *ius soli*
 - Germany : no double *ius soli* acquisition; simple *ius soli* accepted
- In few countries, both simple and double *ius soli* recognized – *e.g.* Belgium (art. 11 and 11bis CNB; art. 11 CNB 2013); Greece (since 2010)

II. Acquisition of nationality and migration

4. Acquisition based on birth on territory

B. Simple *ius soli*



- Where acquisition simple *ius soli* accepted, acquisition could be:
 - *Automatic* - e.g. sect. 4(3) German Act
 - *Conditional* - e.g.
 - Belgium, art. 11*bis* CNB : *possibility* to acquire Belgian nationality - not automatic : if child is born in Belgium *and* parents make a declaration before the child turns 12 y. old (see also art. 11 § 2 CNB 2013)
 - Greece : art. 1(a) para. 1: *possibility* to acquire Greek nationality if child born in Greece and parents (resident in Greece for 5 y.,) make a common declaration for registration

II. Acquisition of nationality and migration

4. Acquisition based on birth on territory

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B. Simple *ius soli*

- When accepted, acquisition simple *ius soli* must be conditional on other requirements - to avoid application to 'accidental' birth on territory (*e.g.* Japanese tourists in Belgium)
- Condition mainly turn on *minimum residence* of parents on territory

II. Acquisition of nationality and migration

4. Acquisition based on birth on territory

B. Simple *ius soli*



- Requirement of residence for the parents : *how long? e.g.*
 - Belgium : requirement of main residence of parents in Belgium for the last 10 y. (art. 11*bis* CNB)
 - Germany : parent must have been « normally resident [in Germany] for eight years » (sect. 4(3)(1) German Act)
 - Greece : parents must be permanent residents for 5 years (art. 1(a)(a) Greek Act 2010)

II. Acquisition of nationality and migration

4. Acquisition based on birth on territory

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B. Simple *ius soli*

- Requirement of residence for the parents : *quality* of residence? Yes – limits accessibility to acquisition - *e.g.*
 - Belgium : *legal* residence during the 10 y period and authorization to reside indefinitely in Belgium *when making* the declaration (Art. 7bis CNB)
 - Germany : parent must possess a right of residence or have possessed for three years a residence permit for an unlimited period. (section 4(3)(2) German Act)
 - Greece : parents must be 'permanent' residents

II. Acquisition of nationality and migration

4. Acquisition based on birth on territory

B. Simple *ius soli*



- Consequence : simple *ius soli* rule cannot be used by parents seeking authorization to reside in country (right of residence derived from nationality granted to child), *e.g.* undocumented aliens → nationality law does not override migration law

II. Acquisition of nationality and migration

4. Acquisition based on birth on territory

B. Simple *ius soli*



- What about the fact that child will (almost always) obtain other nationality *ius sanguinis* (from his parents)? Distinction between 2 options:
 - Indifference : no consequence (e.g. Belgium; Greece)
 - Optional model : child must make a choice when turning 18 y. (e.g. section 29 German Act – choice must be made before reaching 23 y. - if no declaration is made, German nationality is lost)

II. Acquisition of nationality and migration

4. Acquisition based on birth on territory

B. Simple *ius soli*



- In general : no specific requirement of integration (impossible to test for the child...)
- What about behaviour of parents (*e.g.* criminal record)?

II. Acquisition of nationality and migration

5. Assessment

- Important evolution of European laws on nationality under influence of migration
- In many countries with a *ius sanguinis* tradition, change towards a mixed system with a measure of *ius soli*
- In countries with a *ius soli* tradition, limits brought to the acquisition *ius soli*

II. Acquisition of nationality and migration

5. Assessment

- Main driver : democratic imperative of granting long-settled 'migrant' population access to nationality
- Evolution is nuanced and led to a very diverse (and changing) nationality landscape

II. Acquisition of nationality and migration

5. Assessment

- Some States have focused more on acquisition *ius soli*, other on acquisition based on long term residence, yet other States have worked on two options simultaneously
- Accepting either one of these acquisition methods may solve the 'problem' after a couple of generations, since parents will have acquired nationality (either on basis of long term residence or through birth on territory) and will transmit it to their children etc.

II. Acquisition of nationality and migration

5. Assessment

- For acquisition after long term residence, various positions on key questions such as :
 - _ Length of residence in country
 - _ Generation concerned - 1st generation migrant or only those born in country?
 - _ Need to demonstrate some 'integration' – different views on how to assess it :
 - Negative measure of integration exclusion of persons who have been involved in activities not worthy of a 'good citizen'
 - Positive requirement of integration – test and certificate
 - (No integration requirement – integration presumed)

II. Acquisition of nationality and migration

5. Assessment

- For acquisition based on birth in country : no State has moved towards acquisition based purely on *ius soli* – which would lead to unreasonable consequences (acquisition based on short-term stays, merely in transit; 'birth shopping')
- Acquisition *ius soli* is qualified by adding requirements
- How much effect is granted to *ius soli* may vary:
 - Some countries : recognition of double *ius soli* rule (e.g. France, Belgium, etc.)
 - Germany : qualified simple *ius soli* rule
 - Italy : very limited recognition of *ius soli*

II. Acquisition of nationality and migration

5. Assessment

- Common feature for acquisition based on birth in country : absence of any integration requirement (such as language test or test of 'integration') – because i) impossible to test integration of child and ii) *ius soli* is only taken into consideration with other factors already demonstrating or allowing to presume integration

II. Acquisition of nationality and migration

5. Assessment

- Opening to *ius soli* = in most cases ground for dual nationalities...

The law of nationality : comparative and international perspective

Patrick Wautelet

Outline

- Introduction
- Acquisition of nationality (within families + impact of migration)
- **Loss of nationality**
- Dual nationalities
- [EU and nationality]

III. Loss of nationality

1. Introduction

- All national laws provide a list of circumstances which lead or may lead to *loss* of nationality (*e.g.* Belgium : artt. 22-23 CBN; art. 23 ff French Civil Code; sect. 17 ff German Act, etc. - see also artt. 7-8 ECN)
- 1st step : general background re loss of nationality – including statelessness
- 2nd step : review of *main grounds* of loss

III. Loss of nationality

1. Introduction

- 1st question : when should loss of nationality intervene? *E.g.*
 - As punishment for serious crimes (*e.g.* rape, assault, etc.)?
 - As punishment for serious crimes related to public life (*e.g.* cheating taxes, attempt to overthrow gov't, etc.)?
 - When national embraces another nationality? ('with us or against us')?

III. Loss of nationality

1. Introduction

- 2nd question : Should loss be temporary or permanent?
 - If loss *temporary* : possibility to recover the nationality in the future
 - If loss *permanent* : 'banned' from the national community

III. Loss of nationality

1. Introduction

- In many countries, possibility for former nationals to *recover* nationality – loss may only be temporary
- *e.g.* Dutch national who has lost nationality, may recover it by filing a declaration / making an option (art. 6(1)(f) Rijkswet)
- Relevant if *e.g.* loss of Dutch nationality when marrying a foreigner or acquiring foreign nationality

III. Loss of nationality

1. Introduction

- Right to *recover* nationality often linked to residence in country of origin (e.g. 1 year main residence in the Netherlands)
- Recovery of nationality not possible in some cases (e.g. if loss of nationality consequence of attitude / behavior of individual)

III. Loss of nationality

1. Introduction

- 3rd question : what are the consequences of the loss for the persons concerned?
- See rights linked to nationality :
 - Political rights
 - Travel & residence rights

III. Loss of nationality

1. Introduction

- Consequences of the loss even more relevant if loss of the one nationality possessed by person concerned → *statelessness*
- What if loss of nationality leads to *statelessness*? Should State refrain from applying ground of loss if leads to the person being stateless?
- Discussion linked to the issue of the 'right to a nationality'

III. Loss of nationality

2. Statelessness

- What if loss of nationality leads to *statelessness*?
 - 1st question : is there a 'right to have a nationality'?
 - 2nd question : when/how does one become stateless?
 - 3rd question : legal regime of statelessness

III. Loss of nationality

2. Statelessness

A. A right to have a nationality?

- 1st question : is there a 'right' to have a nationality?
- Importance of question is *limited* since one may enjoy rights without being a national (see above)
- Further, even if one were to enjoy a 'human right' to nationality, much would still depend on the *content* of the status, i.e. the rights associated to nationality (nationality as a key to limited number of rights or large number of entitlements)

III. Loss of nationality

2. Statelessness

A. A right to have a nationality?

- 1st) International law does ***not*** firmly support a right to a nationality
- Only affirmation of a right to a nationality : art 15-1 Declaration of Human Rights 1948 (but limited legal impact)
- In other major international conventions (*e.g.* ECHR; ICCPR) : no such right
- Only exception : art. 20 Inter-American Convention on Human Rights : “1. Every person has the right to a nationality.”

III. Loss of nationality

2. Statelessness

A. A right to have a nationality?

- *Caveat* : right of children to acquire a nationality (e.g. art. 24(3) ICCPR; art. 7(1) UN Convention Rights of Child)
- Other *caveat* : indirect impact of the ECHR: according to the Court, “A “right to nationality” similar to that in Art. 15 of the Universal Declaration of Human Rights is not guaranteed by the Convention..., although an arbitrary denial of nationality may under certain circumstances amount to an interference with the rights under Art. 8 of the Convention”

III. Loss of nationality

2. Statelessness

A. A right to have a nationality?

- 2) What international law provides is obligation for States to avoid « *as much as possible* » cases of statelessness (see UN Convention of 30 August 1961 on avoidance of Statelessness – Preamble states that it is “*desirable to reduce statelessness by international agreements*”)
- Obligation is not absolute, drafted as an objective to achieve rather than a firm obligation
- Consequences?

III. Loss of nationality

2. Statelessness

A. A right to have a nationality?

- 1st consequence : many States provide 'safety provisions', ensuring that a person who otherwise would be or remain stateless, is nonetheless entitled to obtain a nationality

III. Loss of nationality

2. Statelessness

A. A right to have a nationality?

- Safety provisions : *e.g.* to avoid statelessness among children
- Two situations:
 - 1st situation : acquisition if birth on territory when the infant is *found in State* – this is a form of acquisition *ius soli* (even though there is no guarantee that the child was born on the territory - or that his parents were nationals...)
 - Acquisition ground is widely accepted : *e.g.* art. 10 CNB, sect. 4-2° German Act, art. 19 French Civil Code; art. 6 § 1 b Eur. Conv. Nationality, art. 20 Inter-American Convention on Human Rights (“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”)

III. Loss of nationality

2. Statelessness

A. A right to have a nationality?

- 2nd hypothesis : acquisition if child born in territory and *stateless* (either parents are stateless or none of the parents can transmit its nationality – *e.g.* if marriage between parents not recognized in country of father) – *e.g.* art. 19 -1 French Civ. C.; art. 6 § 2 Eur. Conv. Nationality
- *Caveat* : this could be a case of *provisional* acquisition of nationality (see *e.g.* art. 10 CNB)

III. Loss of nationality

2. Statelessness

A. A right to have a nationality?

- Acquisition *ius soli* for parentless child or stateless child : not controversial – see art. 6 § 1 (b) Eur. Conv. Nat.
- Even accepted in countries where acquisition *ius soli* otherwise not accepted – see e.g. Art. 7 Moroccan Nationality Law : “*Est Marocain : ... 2°- l'enfant né au Maroc de parents inconnus*”

III. Loss of nationality

2. Statelessness

A. A right to have a nationality?

- Escape/fraud clause : acquisition by stateless children : no acquisition if statelessness is consequence of 'legal engineering' by the parents (*e.g.* who 'forgot' to claim their own, foreign nationality for their child – Brazil, Ecuador, etc.)
- *e.g.* Art. 10 CNB also applies if the child loses its foreign nationality before reaching age of 18 y.

III. Loss of nationality

2. Statelessness

A. A right to have a nationality?

- 2nd consequence : obligation to avoid « *as much as possible* » cases of statelessness leads to principle that loss of nationality may not occur if this leads to statelessness
- However, principle is not absolute:
 - Some states have a very strong policy to avoid statelessness – *e.g.* Germany (see art. 16 German Constitution : “... Citizenship may be lost only pursuant to a law, and against the will of the person affected only if he does not become stateless as a result”)
 - Other States are less concerned about statelessness and accept more readily that statelessness may occur

III. Loss of nationality

2. Statelessness

A. A right to have a nationality?

- One case where loss may occur even if this leads to statelessness, is that of *fraud*
- See art. 7(3) ECN :“A State Party may not provide in its internal law for the loss of its nationality if the person concerned would thereby become stateless, with the exception of the cases of [acquisition of the nationality of the State Party by means of fraudulent conduct, false information or concealment of any relevant fact]”

III. Loss of nationality

2. Statelessness

A. A right to have a nationality?

- 3rd consequence of duty to avoid « *as much as possible* » cases of statelessness : *restrictive* interpretation of grounds of loss (e.g. 'voluntary' acquisition of foreign nationality : not acquisition by children as consequence of acquisition by their parents)

III. Loss of nationality

2. Statelessness

A. A right to have a nationality?

- 4th consequence : principle that no arbitrary deprivation of nationality
- *E.g.* art. 20-3 Inter-American Convention on Human Rights : “No one shall be arbitrarily deprived of his nationality or of the right to change it.”
- → no direct protection against statelessness, but could indirectly contribute to prevention of statelessness

III. Loss of nationality

2. Statelessness

B. How does one become stateless?

- International law does not offer effective protection against loss of nationality and statelessness
- When is somebody stateless?
- 1954 UN Convention Status of Stateless Persons : a stateless person is someone “not considered as a national by any State under the operation of its law” (*de jure* statelessness)
- How does one become stateless? Various cases

III. Loss of nationality

2. Statelessness

B. How does one become stateless?

- How does one become stateless?
- 1st case : Loss of nationality (rare occurrence – only in some cases will loss of nationality be possible if no other nationality)
- 2nd case : one may be *born* stateless - e.g. born in a country where nationality is only acquired *ius sanguinis*, out of foreign parents whose nationality can only be transmitted *ius sanguinis* provided the child born in country of origin (exceptional); or born to father not married to the mother, who cannot transmit her nationality to the child, etc.

III. Loss of nationality

2. Statelessness

B. How does one become stateless?

- 3rd case : one can become stateless when residing for a long time outside country (*e.g.* Uzbekistan : every 5 years, Uzbek resident outside Uzbekistan must file a declaration to prevent loss of nationality – law recently changed to prevent this)
- 4th case : following State successions or other problems of boundaries, particularly in those successor states that adopt the principle of *ius sanguinis* as the exclusive or predominant principle in granting nationality → most cases of statelessness today

III. Loss of nationality

2. Statelessness

B. How does one become stateless?

- Statelessness following State succession? 1st example : Russians in Estonia
- Estonia occupied by Soviet Union until 1989
- Large Russian population in Estonia after fall of USSR (mainly part of Russian army)
- New law on Estonian nationality: Estonian nationality granted to those who were Estonian nationals as of June 16, 1940 and their direct descendants (even if Estonian nationality had ceased to exist during Soviet occupation and the persons had left Estonia to settle abroad : simple process of recovering citizenship)

III. Loss of nationality

2. Statelessness

B. How does one become stateless?

- For the others : naturalization is possible
- Naturalization requirements?
 - Permanent resident
 - Complete schooling in Estonian language
 - Or subject to Estonian language and culture test... Very difficult for ethnic Russians who have never mingled with local Estonians

III. Loss of nationality

2. Statelessness

B. How does one become stateless?

- Many non Estonians residing in Estonia (and originally from Russia) did not apply to obtain Russian citizenship when USSR exploded
- USSR passports no longer valid → new country born out of the ashes of USSR (Russian Federation)
- In 1990's 30 % of Estonia's 1.35 million population was stateless - today around 7 %
- Situation is eased out by possibility to travel to Russia and EU – but impact on right to participate in political life (though right to vote in local elections)

III. Loss of nationality

2. Statelessness

B. How does one become stateless?

- 2nd example : Sudan:
- South Sudan becomes independent in July 2011
- South Sudan Nationality Act (enters into force in July 2011) : obtain the South Sudanese nationality:
 - Individuals with one parent, grandparent or great-grandparent born in South Sudan
 - Individuals belonging to one of the “indigenous ethnic” communities of South Sudan
 - Individuals who (or whose parents or grandparents) have been habitually resident of South Sudan since 1956

III. Loss of nationality

2. Statelessness

B. How does one become stateless?

- August 2011 : amendment to Sudan Nationality Act 1994 – any individual who “*de jure or de facto*” acquires nationality of South Sudan automatically loses Sudanese nationality – concerns around 500.000 persons
- Those persons are ordered by North Sudan to leave the country or obtain permit to stay – but impossible to move to the South because of lack of transport and fighting in the border region...
- Further : gaps between the two laws, so that many people could end up without any of the two nationalities

III. Loss of nationality

2. Statelessness

B. How does one become stateless?

- Status of statelessness sometimes excluded
- *E.g.* Palestinians who fled Palestina/Israel in 1948 and live in Lebanon, Syria and Jordan. Status?
- As long as they live in 'refugee camps', they are under protection of UNRWA → no possibility to be recognized as stateless (see Art. 1-2 (i) of 1954 Convention on Status of Statelessness, no application of the convention “*to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance so long as they are receiving such protection or assistance* »)

III. Loss of nationality

2. Statelessness

B. How does one become stateless?

- What if a Palestinian comes to Belgium? No longer under protection of UNRWA
- Possibility to be recognized as stateless? Yes – see Supreme Court, 22 January 2009 – applicant had voluntarily left protection of UNRWA in Lebanon to study in Belgium; Court of Cassation nonetheless decides that the applicant may request status of stateless

III. Loss of nationality

2. Statelessness

B. How does one become stateless?

- Important international treaty to avoid situations of statelessness in case of State succession :
Council of Europe Convention of 19 May 2006 on the “avoidance of statelessness in relation to state succession”
- Not (yet) ratified by Belgium...

III. Loss of nationality

2. Statelessness

C. Legal regime of statelessness

- What is status of statelessness?
- 1st step : person concerned must ask to be recognized stateless
- *e.g.* in Belgium : court procedure (before the *Court of First Instance*) – no intervention of the executive branch (but government can at best assist court by providing information on foreign nationality)

III. Loss of nationality

2. Statelessness

C. Legal regime of statelessness

- Test : one should demonstrate that one does not have a nationality (*negative* burden of proof)
- Status of statelessness can be granted even if applicant could obtain (or recover) another nationality (Cass., 6 June 2008 – Romanian nationality)

III. Loss of nationality

2. Statelessness

C. Legal regime of statelessness

- Not sufficient that difficult relationship with country of origin
- Example : situation of people from Kosovo – a difficult situation, but a case of statelessness?
- Status of residents of Kosovo has changed many times :
 - _ Until 1992 : part of the Socialist Federal Republic of Yugoslavia
 - _ 1992 : creation of the Federal Republic of Yugoslavia (with Serbia, Montenegro and the autonomous provinces of Kosovo and Vojvodina)
 - _ 1996-1999 : Kosovo war – Kosovo administered by the UNMIK (United Nations Mission in Kosovo – UN Security Council Resolution 1244)
 - _ February 2003 : creation of the “State Union of Serbia and Montenegro”
 - _ June 2006 Serbia and Montenegro split, both become independent; Serbia considers that the autonomous province of Kosovo is part of Serbia
 - _ 17 February 2008 : self-declared independence of Kosovo

III. Loss of nationality

2. Statelessness

C. Legal regime of statelessness

- Could a person from Kosovo living outside Kosovo obtain status of stateless?
- In principle no - because other nationality available:
 - Until Feb. 2008 : in principle possessed the Yugoslavian and later (from 2003) Serb nationality, hence no recognition as stateless. In practice, difficulty to demonstrate existence of Serb nationality (no cooperation whatsoever from Serb authorities, *e.g.* Serb embassy) and very difficult relationship with that nationality
 - As of Feb. 2008 : became citizens of a new State – Kosovo
- But concept of '*de facto*' statelessness could help (although as such challenged) – situation of a person who possesses a nationality but is only a nationality in name, the nationality is ineffective because they are unprotected by the State of their nationality)

III. Loss of nationality

2. Statelessness

C. Legal regime of statelessness

- Negative evidence ('I have no nationality') is not always easy to deliver
- *E.g. case Leys – Ryckmans* : two sons of famous sinologist, born in Hong Kong in 1967, father is a Belgian citizen, mother a Chinese

III. Loss of nationality

2. Statelessness

C. Legal regime of statelessness

- Case *Leys – Ryckmans* : two sons have been raised in Australia and have never lived in Belgium
- Dec. 2006 : Belgian embassy in Australia refuses to renew the sons' Belgian passports, arguing that the two sons have lost their Belgian nationality (art. 22 § 1 – 5 ° CNB : loss of Belgian nationality if born abroad and lived outside Belgium between age of 18 and 28 y. – see hereinafter)

III. Loss of nationality

2. Statelessness

C. Legal regime of statelessness

- Case *Leys – Ryckmans* : art 22 § 3 CNB : no loss of Belgian nationality if leads to statelessness
- Belgian Ministry of Foreign Affairs argues that since the two were born in Hong Kong out of a Chinese mother, they must have the Chinese nationality... Demonstration that they do not have the Chinese nationality?

III. Loss of nationality

2. Statelessness

C. Legal regime of statelessness

- Once recognition of status of stateless, what is status?
 - 1°) Family matters may be solved more easily thanks to application of the law of domicile (UN Convention of 1954 - Art. 12-1 : “*The personal status of a stateless person shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence*”)
 - 2°) Possibility to benefit from 'fast track' acquisition of local nationality (e.g. Art. 19 CBN)
 - 3°) Possibility to obtain identity and travel documents (role of CGRA : no decision on status of statelessness, but competence to issue administrative documents)

III. Loss of nationality

2. Statelessness

C. Legal regime of statelessness

- Legal status of stateless :
- 4°) No automatic right to obtain residence title (*e.g.* no specific provision in Belgian Act of 15.12.1980) – stateless must apply and is subject to same requirements as other 'foreigners'. At least protection against deportation and removal
- 5°) What about *children* of stateless? Facilitated acquisition of nationality if child born in territory *and* stateless (either parents are stateless or none of the parents can transmit their nationality – *e.g.* if marriage between parents not recognized in country of father) – *e.g.* art. 6 § 2 Eur. Conv. Nationality. *Caveat* : this could be a case of *provisional* acquisition of nationality (see *e.g.* art. 10 CNB)

III. Loss of nationality

3. Main grounds of loss of nationality

A. Introduction

Distinction between different categories:

- 'Waiver' : a person gives up his/her nationality
- *Involuntary* loss (covers various grounds – such as loss consequential on loss by parents)
- Based on behavior of national ('*déchéance*' / '*vervallenverklaring*') - various grounds (e.g. loss following fraud during the acquisition process)

III. Loss of nationality

3. Main grounds of loss of nationality

A. Introduction

- Diversity when looking at national laws : list of grounds of loss applied may be longer or shorter...
- Analysis based on most common grounds of loss

III. Loss of nationality

2. Various cases of loss

B. 1st case : waiver

- 1st ground of loss : 'waiver' – voluntary loss
—> 'contracting out' of a State

III. Loss of nationality

2. Various cases of loss

B. 1st case : waiver

- Generally accepted that a national may waive his / her nationality (e.g. art. 22 § 1, 2° CNB; sect. 21 Irish Nationality and Citizenship Act 1956; sect. 14 Swedish Citizenship Act 2001, art. 23-4 French Civil Code, etc.)
- See Art. 8 § 1 ECN : « *Each State Party shall permit the renunciation of its nationality...* »

III. Loss of nationality

2. Various cases of loss

B. 1st case : waiver

In some countries, waiver is excluded or strictly limited - *e.g.* Morocco :

- Waiver is only possible provided authorization of government ('*principe d'allégeance*') and in limited cases (art. 19 CNM – *e.g.* adult who voluntarily acquires foreign nationality may request authorization to repudiate nationality)
- Only case where waiver is possible *without* authorization of government : for child who acquired Moroccan nationality as a consequence of naturalization of his parents, if child was younger than 16 y. at time of acquisition – repudiation possible between 18 and 19 y. (art. 19-4 CNM)

III. Loss of nationality

2. Various cases of loss

B. 1st case : waiver

- In most countries, the repudiation of nationality is subject to various limitations :
 - 1°) Sometimes reserved to adults (Belgium : 18 y. - art. 22 § 1-2° CNB; Ireland : 18 y. - sect. 21 1956 Act)
 - In some countries however, possible for minors (Sweden : apparently no limitation; ECN : no limitation; France : art. 23-4 Civil Code : also available for minors)

III. Loss of nationality

2. Various cases of loss

B. 1st case : waiver

- Other limitations :
 - 2°) Waiver sometimes only granted to persons not domiciled in the country (e.g. Sweden : release is *automatic* if not domiciled in Sweden, *discretionary* if domiciled in the country; see art. 8 § 2 ECN : only those nationals who are “*habitually resident abroad*”)
 - Counter-example : art. 23-4 French Civil Code (no requirement of residence abroad)

III. Loss of nationality

2. Various cases of loss

B. 1st case : waiver

- Limitations : what if waiver leads to *statelessness*?
 - 3^o) Sometimes waiver is *expressly excluded* if person does not possess any other nationality (e.g. Art. 22 § 1, 2^o CBN; art. 23-4 French Civil Code; sect. 18 German Act)
 - Sometimes waiver is *indirectly* linked to possession of foreign nationality, e.g. Sect. 15 Swedish Act, which links waiver to acquisition of foreign nationality

III. Loss of nationality

2. Various cases of loss

B. 1st case : waiver

- Not limited to nationals by birth or who have acquired citizenship *ex lege*; also possible after naturalization (even though may seem peculiar)
- Other possible limitation : no waiver in case of war... (*e.g.* sect. 21(2) Irish Act) or if person concerned has yet to fulfil military obligations (*e.g.* art. 23-2 French Civil Code) or is still under tax obligations

III. Loss of nationality

2. Various cases of loss

B. 1st case : waiver

- When is a waiver to be considered?
- In principle waiver must *not* be justified – in practice often inquired by authorities why a citizen wishes to lose his/her nationality
- Different justifications for waiver:
- 1^o) Political motive : sometimes outcry threatening a waiver if this or that happens – usually linked to political situation (*e.g.* 'if ever Mr X becomes President, I'll burn my US passport') – but frequently remains only an intention

III. Loss of nationality

2. Various cases of loss

B. 1st case : waiver

- 2°) Waiver for pragmatic reasons:
 - _ To avoid military service (must be done *before* military obligation arises)
 - _ To avoid tax burdens – *e.g.* Mr Eduardo Saverin, one of the founders of Facebook, who abandoned his US nationality shortly before Facebook IPO (he lived in Singapore) - but state may limit possibility to waive nationality, to make this impossible
 - _ To obtain an advantage (*e.g.* to obtain expatriation allowance)
- 3°) Waiver to comply with a waiver requirement imposed by a foreign nationality law in case of acquisition of that nationality (*e.g.* § 29-3 German Act)

III. Loss of nationality

2. Various cases of loss

B. 2nd category

- 2nd category : 'objective' grounds of loss – loss intervenes without voluntary act of the person concerned
- Various cases – *e.g.*:
 - Loss of substantial link with country of origin
 - Consequential loss following loss by the parents

III. Loss of nationality

2. Various cases of loss

B. 2nd category - 1st case : loss of substantial link with country or origin



- Art. 7 § 1 (e) ECN : a State may provide for loss of his nationality if “*lack of a genuine link between the State Party and a national habitually residing abroad* »
- Typical case : children, grandchildren and great grandchildren of expatriate who have acquired nationality of father/grandfather/great grandfather (or mother, etc.) *ius sanguinis*, but connection with 'home country' grows thinner with the generations

III. Loss of nationality

2. Various cases of loss

B. 2nd category - 1st case : loss of substantial link with country or origin



- Loss could operate through :
 - Limitation in time of acquisition *ius sanguinis* of the nationality of the country of origin (e.g. Belgium - 3rd generation)
 - Ground of loss of the nationality for those born outside country of origin and not having any meaningful link with this country → loss through long term residence abroad

III. Loss of nationality

2. Various cases of loss

B. 2nd category - 1st case : loss of substantial link with country or origin



- Focus on 2nd category : loss for the 2nd generation and following of expatriates
- How is loss organized? Loss occurs only if birth abroad (not applicable for citizens born in the country) *and* long term residence abroad *e.g.*
 - Belgium : person born abroad *and* uninterrupted residence outside Belgium between 18 y. and 28 y.
 - Sweden : person born abroad and never been domiciled in Sweden before age of 22 y. (art. 14 Swedish Act)
 - Spain : if born and residing abroad and father or mother also born abroad – art. 24(3) Civil Code
 - France : loss if no 'possession d'état' and never resided in France and parents have not resided in France for 50 years – art. 23(6) Civil Code



III. Loss of nationality

2. Various cases of loss

B. 2nd category - 1st case : loss of substantial link with country or origin



- This ground of loss does not exist in all States
- *E.g.* : ground of loss is *unknown* in Germany, Italy, Greece, Lxbg, Portugal, Turkey, etc.
- Lithuania : art. 5(1) Nationality Act 2002 : “Residence by a citizen of the Republic of Lithuania in a foreign state shall not by itself entail loss of citizenship of the Republic of Lithuania”.

III. Loss of nationality

2. Various cases of loss

B. 2nd category - 1st case : loss of substantial link with country or origin

- Where it exists, typical features of the loss through long term residence abroad are :
 - 1°) 'Silent loss' – loss operates *ex lege* without any notice to the person concerned, can therefore go unnoticed for a long time (but see France : loss only if court so decides, art. 23-6 Civil Code)
 - 2°) Only applicable for 'adults' (Belgium : 28 y. old (art. 22 § 1 (5°) CNB); Sweden : 22 y. old (Sect. 14 A Swedish Act); Spain : when attaining majority (art. 24(3) Civil Code), etc.

III. Loss of nationality

2. Various cases of loss

B. 2nd category - 1st case : loss of substantial link with country or origin



- Typical features of this ground of loss:
 - 3^o) Permission to retain citizenship if
 - Application thereto (*e.g.* Belgium : see art. 22 § 1, 5^o CBN → Belgian citizen must confirm his/her intention to remain Belgian between age of 18 and 28 y.; sect. 14A Swedish Act; art. 24(3) Spanish Civil Code) – Belgium : 7 such declarations in 2011...
 - Link with the home country (*e.g.* professional link – sect. 14A(3^o) Swedish Act; Belgium : residence abroad 'in service of the State' (civil service, directly or indirectly for Belgian government; or employment of a Belgian company or association))



III. Loss of nationality

2. Various cases of loss

B. 2nd category - 1st case : loss of substantial link with country or origin



- Typical features of this ground of loss:
 - 4^o) Not applicable if leads to *statelessness* (art. 22 § 3 CBN; Sect. 14 final para. Swedish Act; art. 24(3) Spanish Civil Code : only if nationality of country of residence)
 - No requirement that person possesses nationality of country of residence

III. Loss of nationality

2. Various cases of loss

B. 2nd category - 1st case : loss of substantial link with country or origin



- Application : case *Leys – Ryckmans* : two sons of famous sinologist, born in Hong Kong in 1967, father is a Belgian citizen, mother a Chinese
- Two sons raised in Australia, have never lived in Belgium
- In 1995, silent loss should have occurred since sons turned 28 y., but they keep their passports
- In Dec. 2006, Belgian embassy in Australia refuses to renew Belgian passports, arguing that the two sons have lost their Belgian nationality (art. 22 § 1 – 5 ° CNB)

III. Loss of nationality

2. Various cases of loss

B. 2nd category - 1st case : loss of substantial link with country or origin

- Case *Leys – Ryckmans* : application of art. 22 § 1 – 5 ° CNB is controversial : the two sons argue that they have no other nationality (hence application of Art 22 § 3 CNB : no loss of Belgian nationality if result would be statelessness)
- Ministry of Foreign Affairs argues that since the two were born in Hong Kong out of a Chinese mother, they must have the Chinese nationality... Demonstration that they do not have the Chinese nationality?

III. Loss of nationality

2. Various cases of loss

B. 2nd category - 1st case : loss of substantial link with country or origin

- Loss through long term residence abroad: what if residence in other EU Member State? Could lead to loss of EU citizenship?
- *e.g.* Belgian national born in the US (hence, also US passport), lives in Germany starting at age of 15. At the age of 28, loses Belgian nationality → must obtain permit to keep residing in Germany?

III. Loss of nationality

2. Various cases of loss

B. 2nd category - 1st case : loss of substantial link with country or origin

- Similar question put to the ECJ in the *Rottmann* case (C-135/08)
- Austrian national becomes German by naturalization and loses its Austrian nationality
- Proceedings in Germany leading to withdrawal of German nationality because Mr. Rottmann did not mention criminal proceedings against him in Austria, during naturalization
- Does EU law prohibit loss of German nationality?

III. Loss of nationality

2. Various cases of loss

B. 2nd category - 1st case : loss of substantial link with country or origin



- ECJ :
 - This is a situation which falls within the ambit of EU law (because loss of German nationality will lead to loss of European citizenship)
 - It is for each Member State to lay down the conditions for the acquisition and loss of nationality
 - MS must, however, have 'due regard to Community law' when exercising their powers in the sphere of nationality
 - ECJ recognizes that withdrawal of naturalization is legitimate if based on deception/fraud, even if leads to statelessness
 - ECJ adds that MS should observe “principle of proportionality” when withdrawing nationality



III. Loss of nationality

2. Various cases of loss

B. 2nd category - 2nd case : consequential loss for children

- Reverse or mirror image of acquisition *ius sanguinis* : if persons can acquire their nationality by virtue of the link with their parents, nationality can also be lost when the parents' nationality disappears
- *E.g.* Martin, born in 2012 in Belgium, is the son of Marie (Belgium) and Jan (Germany), who are married. Paternity of Jan is challenged in court by Pierre (Belgium) → if court upholds challenge, Martin is no longer the son of Pierre – loss of German nationality?

III. Loss of nationality

2. Various cases of loss

B. 2nd category - 2nd case : consequential loss for children

- Extension as ground of loss exists in some countries (*e.g.* Belgium, Luxembourg or Turkey)
- 'Extension' of loss from parents to the children is recognized in ECN (see art. 7(2))
- But is not accepted in other countries (*e.g.* France, Germany, Greece, Italy, Portugal, Spain, UK – see sect. 22(2) Irish Act : “*Loss of Irish citizenship by a person shall not of itself affect the citizenship of his or her spouse or children*”)

III. Loss of nationality

2. Various cases of loss

B. 2nd category - 2nd case : consequential loss for children

- Where it exists, ground of loss operates differently depending on reason for loss by parent – *e.g.* :
 - Belgium : extension of loss from parents to children *only* in case parents have waived their Belgian nationality (art. 22 § 1-3° CNB)
 - Art. 7(2) ECN : extension to children should not apply if loss of nationality by the parent because of service in a foreign military at time of war because loss is akin to a *punishment*
- *Quaere* loss of nationality by parents as a result of fraud. Should children also lose nationality? Tolerated by ECN

III. Loss of nationality

2. Various cases of loss

B. 2nd category - 2nd case : consequential loss for children

- Usually only applies to underage children – no loss if children is 18 y. or older (art. 7§1(f) ECN : « *during the minority of a child* »)
- Cannot lead to statelessness of the child (right to nationality + right of the child)

III. Loss of nationality

2. Various cases of loss

B. 2nd category - 2nd case : consequential loss for children

- When applying this ground of loss, look for situation of both parents – if one of the parents retain nationality, child does not lose nationality, see art. 7 § 2 ECN
- *E.g.* Belgian children of Belgian parents in Australia, father acquires Australian nationality (before 2007), mother keeps Belgian nationality

III. Loss of nationality

2. Various cases of loss

B. 2nd category - 2nd case : consequential loss for children

- For underage children : another ground, specific to children (and not a consequence of loss by a/the parent(s)): disappearance of family relationship (art. 8 § 4 CBN)
- *E.g.* filiation is challenged – only applies to underage children (see art. 7 § 1(f) ECN : “where it is established during the minority of a child that the preconditions laid down by internal law which led to the *ex lege* acquisition of the nationality of the State Party are no longer fulfilled »)

III. Loss of nationality

2. Various cases of loss

B. 3rd category - loss linked to 'behavior'

- Behavior of the person concerned can also be source of loss of nationality
- Distinction between:
 - Loss because of behavior *before* the acquisition ('acquisition fraud')
 - Loss because of behavior *after* the acquisition – several cases:
 - 'Voluntary service in a foreign military force'
 - 'Conduct seriously prejudicial to the vital interests of the State'
 - Voluntary acquisition of foreign nationality

III. Loss of nationality

2. Various cases of loss

B. 3rd category - loss linked to 'behavior'

- These grounds of loss may be reserved for 'new' nationals and no application to 'old' nationals - see *e.g.*
 - Art. 23 CNB : grounds of loss not applicable if person concerned acquired Belgian nationality *ius sanguinis* or following birth in Belgium
 - Art. 25 French Civil Code : '*déchéance*' only applicable to “*l'individu qui a acquis la qualité de Français...*”

III. Loss of nationality

2. Various cases of loss

B. 3rd category - loss linked to 'behavior'

- 1st case : behavior *before* acquisition
- Acquisition fraud as a ground of loss widely accepted in EU (more than 20 countries) – but appeared rather recently (Netherlands : 2003; Belgium : 2006; Finland : 2003; Germany : 2009) – usually following highly publicized cases
- Also recognized by the ECN (art. 7 § 1 (b) ECN)

III. Loss of nationality

2. Various cases of loss

B. 3rd category - loss linked to 'behavior'

- What type of fraud? 'Acquisition fraud' : see art. 7 § 1 (b) ECN: 'acquisition of the nationality of the State Party by means of fraudulent conduct, false information or concealment of any relevant fact attributable to the applicant'
- Different cases in practice :
 - Identity fraud (concealment of real identity)
 - Use of false documents (*e.g.* to demonstrate residence in country, etc..)
 - Broader : applicant neglected to disclose important element of his past (*e.g.* *Rottmann* case)

III. Loss of nationality

2. Various cases of loss

B. 3rd category - loss linked to 'behavior'

- By essence, not applicable if nationality acquired out *ex lege (ius sanguinis)* (see art. 23 § 1 CNB) – ground of loss hence only applicable to 'new' nationals

III. Loss of nationality

2. Various cases of loss

B. 3rd category - loss linked to 'behavior'

- No automatic loss : usually only a *possibility* to be stripped of nationality taking into account all circumstances (*e.g.* Section 21 Australian Act : the Minister “may, in the Minister's discretion”)
- Who decides on the loss? : decision by court (*e.g.* Belgium : art. 23 § 2 CNB : Court of Appeal) or by Minister (Netherlands : art. 14 § 1 RWN; Australia : sect. 21 (1) Australian Citizenship Act; France : decision by 'decree' – art. 23-7 and 23-8 French Civil Code)

III. Loss of nationality

2. Various cases of loss

B. 3rd category - loss linked to 'behavior'

- Application 1 : case *Ayaan Hirsi Ali*, Somali citizen granted status of refugee in the Netherlands, then naturalized, elected MP. She concedes that she had not given her real name and real date of birth. Stripped out of her nationality by the Dutch Minister (art. 14 § 1 RWN) before Minister reversed her decision
- Application 2 : *Rottmann* case : Austrian citizen become German by naturalization and neglecting to inform the German authorities during the process of naturalization about the criminal investigation opened against him in Austria (which explained why he left Austria and settled in Germany)

III. Loss of nationality

2. Various cases of loss

B. 3rd category - loss linked to 'behavior'

- Loss also possible in most countries if leads to *statelessness* (ECN tolerates this) (but not in France or Lxbg : statelessness prevention rule)

III. Loss of nationality

2. Various cases of loss

B. 3rd category - loss linked to 'behavior'

- Statute of limitations ? Switzerland : 5 years after acquisition of nationality; Netherlands : 12 y. (art. 14 (1) RWN), Spain : 15 y.
- Loss only works for the future? Relevant *e.g.* to determine whether loss may have impact on nationality of children
 - Only for the future - *e.g.* Belgium (art. 23 § 8 *in fine* CNB)
 - Works back to acquisition – *e.g.* the Netherlands, art. 14 (1) RWN :
“*De intrekking werkt terug tot het tijdstip van verkrijging of verlening van het Nederlandschap*”

III. Loss of nationality

2. Various cases of loss

B. 3rd category - loss linked to 'behavior'

- 2nd case : what about conduct *after* one became a national?
- Two main grounds :
 - Loss if 'seriously prejudicial behavior'
 - Voluntary acquisition of other nationality

III. Loss of nationality

2. Various cases of loss

B. 3rd category - loss linked to 'behavior'

- Loss if 'seriously prejudicial behavior'
- Classically refers to serious acts directly linked to citizenship, such as treason, disloyalty, etc. (see *e.g.* art. 23 § 1 (2°) CNB : “serious breach of obligations as a Belgian citizen”; art. 17(1)(b) Greek act : loss if the citizen while residing in another country, committed acts incompatible with Greek citizenship and against the interest of Greece; art. 25-1 French Civil Code : if convicted of “ *un acte qualifié de crime ou délit constituant une atteinte aux intérêts fondamentaux de la Nation...*”)
- ECN refers to “conduct in a manner seriously prejudicial to the vital interests of the State Party” (art. 7(1)(d) ECN) – *e.g.* active collaboration with the enemy at time of war

III. Loss of nationality

2. Various cases of loss

B. 3rd category - loss linked to 'behavior'

- Vague drafting of ground of loss may be problem
- Ground could be abused for political motives - in periods of war, this ground of loss has been used sometimes massively to strip 'enemies' of their nationality (e.g. French government of Vichy has between 1940 and 1944 stripped no less than 15.000 French nationals of their nationality, 7.000 of them were Jews)
- Also problem of legal certainty – in Belgium, “serious breach of obligations as a Belgian citizen” has been recently used to withdraw Belgian citizenship of a person of Tunisian origin, who became Belgian citizen by virtue of his marriage to a Belgian citizen and had been convicted twice for activities linked to terrorism - recruiting persons and sending them to Afghanistan

III. Loss of nationality

2. Various cases of loss

B. 3rd category - loss linked to 'behavior'

- Loss if 'seriously prejudicial behavior' : recently extension to very serious criminal activities
- Until now extension only in few countries
- Usually linked to very serious criminal activities – *e.g.*
 - Lithuania : 'international crimes' such as aggression, genocide, crimes against humanity, or war crime (art. 21(1))
 - France : misconduct in office (corruption, abuse of official authority) – art. 25(2) Civil Code and 'act of terrorism' (art. 25(1))
 - Belgium : international crimes and other serious crimes (new Art. 23/1 CNB 2013)

III. Loss of nationality

2. Various cases of loss

B. 3rd category - loss linked to 'behavior'

- Difficulty with this extension: ground of loss only applicable to 'new' nationals
- Doesn't this lead to creation of two categories of citizens – the 'old' and the 'new' who may incur different consequences for the same acts?
- Or is 'genuine link' of 'old' citizens stronger and hence justify difference in treatment?

III. Loss of nationality

2. Various cases of loss

B. 3rd category - loss linked to 'behavior'

Voluntary acquisition of foreign nationality :

- → see discussion of 'double/multiple nationality'

The Law of Nationality

IV. Multiple nationalities

Outline

- Introduction
- Acquisition of nationality (within families + impact of migration)
- Loss of nationality
- **Multiple nationalities**
- [EU and nationality]

IV. Multiple nationalities

1. Introduction

- Debate around Ms. Eva Joly, candidate for the 2012 French presidential election, who holds French *and* Norwegian nationalities : does her dual nationality constitute an obstacle to her election?
- 220.783 persons living in the US born in US out of Belgian parents (1990 US census) : great number probably possess dual Belgian – US nationality → practical consequences and difficulties for the persons concerned?

IV. Multiple nationalities

1. Introduction

- First step : analysis of the *reasons* behind situations of multiple nationalities
- Second step : analysis of the *policy* of various States towards multiple nationalities, based on a review of their legislation / practice
- Third step : some considerations on the evolution of the attitude towards multiple nationalities

IV. Multiple nationalities

2. The roots

- Not an *extraordinary* situation
- Multiple reasons behind this phenomenon – and behind increase in number of dual nationals
- (1) Transmission of nationality *ius sanguinis a patre* and *a matre* : confirmed principle in Europe (France : 1945; Ireland : 1956; Germany : 1975; Italy : 1983; Belgium : 1985; Switzerland : 1985) – combined with the fact that marriage has no (longer) an automatic influence on nationality

IV. Multiple nationalities

2. The roots

- (1) Transmission of nationality *ius sanguinis a patre and a matre* :
 - e.g. child born in Belgium, mother is French, father is Belgian – child acquires two nationalities *ius sanguinis*; cannot be lost even if residence abroad (Belgian nationality : loss possible if birth outside Belgium)
 - e.g. child born in Belgium, father is Dutch and mother is French but also acquired Dutch nationality after marriage (without loss of her French nationality) : child possesses French & Dutch nationality

IV. Multiple nationalities

2. The roots

- (2) Increased possibility to acquire nationality *ius soli* (simple and double *ius soli* recognized in many States) combined with acquisition *ius sanguinis*
- *Caveat* : acquisition *ius soli* could be linked to loss of nationality acquired *ius sanguinis* – if birth outside country of origin of parents or if acquisition *ius soli* requires waiver of nationality acquired *ius sanguinis*

IV. Multiple nationalities

2. The roots

- (2) Increased possibility to acquire nationality *ius soli*
 - e.g. child born in Belgium, mother is Moroccan national born and residing in Belgium – child obtains 2 nationalities (art. 11 CNB) (and no loss of Moroccan nationality through birth and residence abroad)
 - e.g. child born in the US, mother is French and father Belgian citizen (caution : loss of Belgian nationality is possible at the age of 28)

IV. Multiple nationalities

2. The roots

- (3) Increased possibility to acquire local nationality after period of residence through various mechanisms – naturalization and option → multiple nationalities if no requirement to waive previous nationality (*e.g.* Belgium, France, etc.) (but requirement of waiver in Germany, the Netherlands, etc.)

IV. Multiple nationalities

2. The roots

- (3) Increased possibility to acquire local nationality after period of residence
e.g. child born in Belgium out of two parents with Moroccan nationality, both born in Morocco; mother acquires Belgian nationality through declaration, no loss of Moroccan nationality; if child is younger than 18 y. → child also acquires Belgian nationality (art. 12 CBN)

IV. Multiple nationalities

2. The roots

- No figures available for Belgium – since May 2008, possibility to register multiple nationalities in the '*Registre national*' (see Royal decree of 09.05.2008 re Act of 08.08.1983)
- Between 1996 and 2003, 354.340 'new' Belgian citizens – most likely that at least 60 % also have and retained another nationality
- The Netherlands : more than 1.000.000 citizens with multiple nationalities... (conservative estimate)

IV. Multiple nationalities

2. The roots

- Overview of the roots shows that there are *multiple causes* to the existence of situations of multiple nationalities
- Corollary : whether multiple nationalities exist, depend on multiple factors, hence no single legal provision governs this matter
- Whether a State allows or not multiple nationalities cannot be deducted from a single legal provision

IV. Multiple nationalities

2. The roots

- State could in fact have **mixed position** towards multiple nationalities – *e.g. tolerate* that its nationals also possess another nationality if acquired *ius sanguinis* at birth, but *discourage* or even reject voluntary acquisition of foreign nationality by its citizens

IV. Multiple nationalities

2. The roots

- *Eg* – Germany and dual nationality:
 - Principe : clear rejection of dual nationalities (see *e.g.* sect. 25 German Act : voluntary acquisition of a foreign nationality by German citizen is a ground of loss of German nationality; sect. 85 : obligation for foreigner to waive his nationality in order to be naturalized German, etc.)
 - However : Germany tolerates dual nationalities if acquired *ius sanguinis* by a child
- Art. 14 ECN : “A State Party shall allow: a children having different nationalities acquired automatically at birth to retain these nationalities...”

IV. Multiple nationalities

Ex cursus

- Another situation of 'multiple' nationalities concern the co-existence of nationalities granted by different legal orders
- Phenomenon mainly relevant in the sports area – a natural person may have a legal nationality and a 'sports' nationality

IV. Multiple nationalities

Ex cursus

- *E.g.* Mohammed 'Mémé' Tchité – born in Bujumbura in 1984 out of parents from Rwanda and RDC, apparently citizen of Burundi, Rwanda, RDC and Belgium
- After naturalization as a Belgian citizen, called up to play in Belgian national team for the World Cup qualifying campaign
- However, FIFA ruled that the player was ineligible because he had previously represented Burundi in a sports event and he had later also pledged allegiance to Rwanda (even though he never played for the Rwandan national team). According to FIFA, Mr. Tchité remained therefore only eligible to play for Rwanda.

IV. Multiple nationalities

Ex cursus

- Fifa rules : Art. 15 of the the Regulations Governing the Application of the FIFA Statutes :
 - Any person holding a permanent nationality that is not dependent on residence in a certain country is eligible to play for the representative teams of the Association of that country.
 - [...] any Player who has already participated in a match (either in full or in part) in an official competition of any category or any type of football for one Association may not play an international match for a representative team of another Association.

IV. Multiple nationalities

Ex cursus

- What Fifa rules do, is in effect select one nationality out of several nationalities possessed by an individual, one relevant 'sports nationality'

IV. Multiple nationalities

3. How States react

- How does the international community consider the phenomenon of multiple nationalities?
- *Caveat:*
 - Attitude of States may *evolve* over time
 - Difficult to capture attitude of int'l community as consensus is slow to emerge – focus on (continental) Europe

IV. Multiple nationalities

3. How States react – in Europe

- First element : Hague Convention of 12.04.1930 – not directly concerned with multiple nationalities, but Preamble stated that « Recognising ... that the ideal towards which the efforts of humanity should be directed in this domain is the *abolition of all cases both of statelessness and of double nationality*”

IV. Multiple nationalities

3. How States react – in Europe

- Hague Convention of 12.04.1930 – art. 6 provided that *“Without prejudice to the liberty of a State to accord wider rights to renounce its nationality, a person possessing two nationalities acquired without any voluntary act on his part may renounce one of them with the authorisation of the State whose nationality he desires to surrender”*
- In other words : States accepting waiver of nationality to avoid dual nationality (or how to choose for the lesser evil of the two...)

IV. Multiple nationalities

3. How States react – in Europe

- Second element : Strasbourg Convention of 1963 : express goal is to *reduce* number of multiple nationalities
- Preamble: « *Considering that cases of multiple nationality are liable to cause difficulties and that joint action to reduce as far as possible the number of cases of multiple nationality, as between member States, corresponds to the aims of the Council of Europe* »

IV. Multiple nationalities

3. How States react – in Europe

- Two parts in Strasbourg Convention of 1963 : *i*) technical rules aimed at reducing number of cases of multiple nationalities - *e.g.*
 - Art. 1 : automatic loss of nationality for citizens who voluntarily acquire foreign nationality “*by means of naturalisation, option or recovery*” → goes further than 1930 Hague Convention
 - Art. 2 : possibility for person with 2 nationalities to renounce one “with the consent of the Contracting Party”

IV. Multiple nationalities

3. How States react – in Europe

- Second part of Strasbourg Convention of 1963 : rules on military obligations in cases of multiple nationality
- 1963 Convention : ratified by 13 countries (among which Belgium) – some countries only ratified the second part (*e.g.* UK)

IV. Multiple nationalities

3. How States react – in Europe

- Third element : Second Protocol 1993 : amendment of 1963 Convention, possibility to keep original nationality in 3 cases (in which original Convention prescribed loss of nationality because of acquisition of another one)
- (Second Protocol only ratified by France - denounced in 2008 -, Italy and the Netherlands)

IV. Multiple nationalities

3. How States react – in Europe

- 1993 Protocol : 3 cases in which no automatic loss of nationality :
 - If person acquires nationality of country in which he / she was born or is resident, or has been ordinarily resident for a period of time beginning before the age of 18
 - In case of acquisition following marriage with a national
 - When a child acquires the nationality of one of his parents

IV. Multiple nationalities

3. How States react – in Europe

- 1993 Protocol : sign that States react with more nuances to dual nationalities
- Another sign : 1963 Convention denounced by Germany (2001 – full convention denounced), Belgium, France, Italy & Luxembourg (only part I denounced)
- Denunciation : sign that States have less difficulty with dual nationalities

IV. Multiple nationalities

3. How States react – in Europe

- Fourth element : 1997 European Convention on Nationality : mixed (or 'neutral') attitude on multiple nationalities, to accommodate diversity among Council of Europe Members
- On the one hand, ECN provides that States *must* allow multiple nationalities when acquired *ex lege* (e.g. children having different nationalities acquired automatically at birth) – art. 14 ECN

IV. Multiple nationalities

3. How States react – in Europe

- On the other hand, ECN permits States to prevent acquisition of multiple nationalities in case of voluntary change of nationality – art. 15 *allows* (no obligation) a State to provide that:
 - Voluntary acquisition of foreign nationality by a national is a ground of loss (art. 7 ECN - compare with Art. 1 of 1963 Convention : loss of the former nationality was *automatic* - “. . . shall lose their former nationality.”)
 - Acquisition of its nationality is subject to the renunciation to previous nationality

IV. Multiple nationalities

4. Selected States analysed

- How do States consider cases of multiple nationalities?
- *Evolution* of attitude of some selected States as example – various attitudes possible
- Reminder : State may have *unitary* (one position : rejection or tolerance) or *fragmented* position (in some contexts tolerance, in other rejection) on dual citizenship

IV. Multiple nationalities

4. Selected States analysed

A. Belgium

- Belgium:
 - General attitude of indifference/neutrality towards dual nationalities (for Belgian citizens obtaining a foreign nationality and foreigners obtaining Belgian nationality)
 - One caveat : expatriated Belgian citizens
 - risk of loss of Belgian nationality over the long run

IV. Multiple nationalities

4. Selected States analysed

A. Belgium

- 1°) Large possibility for foreigners to acquire Belgian nationality (through *ius soli*, declaration and naturalization – see above; change in 2013 with the introduction of integration requirement but Belgian law remains generous)

IV. Multiple nationalities

4. Selected States analysed

A. Belgium

- 2°) Waiver of original nationality *not* a requirement for acquisition of Belgian nationality, whatever basis for acquisition (loss of nationality occurs only if foreign nationality so decides) – [it used to be different (see Art. 14 1932 Act : “*la demande de naturalisation n'est pas recevable lorsque la loi nationale de l'intéressé lui permet de se faire autoriser à conserver sa nationalité dans le cas où il en acquérait une nouvelle*”)]

IV. Multiple nationalities

4. Selected States analysed

A. Belgium

- 3°) *Quaere* for expatriated Belgian citizens who acquire another nationality (of country of settlement)?
- A) Voluntary acquisition of foreign nationality : no (automatic) ground of loss since June 2007 – [and since April 2008 if acquisition of nationality of State party to 1963 Convention, which has been denounced]

IV. Multiple nationalities

4. Selected States analysed

A. Belgium

- B) Acquisition of Belgian nationality in case of birth abroad is limited (after 2nd generation : declaration required – art. 8 CNB)
- C) Loss of nationality through long term residence abroad (residence between 18 – 28 y.)

IV. Multiple nationalities

4. Selected States analysed

B. The Netherlands

- 1°) Possibility for foreigners to acquire Dutch nationality (through *ius soli*, option and naturalization) : acquisition is possible, but more limited than in Belgium (even after reform 2013)

IV. Multiple nationalities

4. Selected States analysed

B. The Netherlands

- 2°) Waiver of original nationality is a *requirement* for acquisition of Dutch nationality
- But waiver only required for *naturalization* (art. 9 § 1 (b) RWN) – and many exceptions; not for acquisition through '*option*'

IV. Multiple nationalities

4. Selected States analysed

B. The Netherlands

- 3°) *Quaere* for Dutch citizens who acquire another nationality?
 - Acquisition of Dutch nationality in case of birth abroad unlimited – could go on and on, but...
 - Loss of nationality through long term residence abroad (art. 15 § 1 (c) RWN : residence outside EU for 10 y. for adults – *if* other nationality)

IV. Multiple nationalities

4. Selected States analysed

B. The Netherlands

- 4°) *Quaere* for Dutch citizens who acquire another nationality?
- Voluntary acquisition of foreign nationality : (automatic) ground of loss (art. 15 § 1 (a) RWN)... – unless born in country whose nationality is acquired, or married with person of that nationality or has resided there for 5 y. before turning 18 y – 3 cases of 1993 Protocol

IV. Multiple nationalities

4. Selected States analysed

Belgium / The Netherlands

	Belgium	Results?	Netherlands	Results?
Acquisition				
- By foreigners	Broad		Moderate	
→ Waiver of other nationality?	No	→ ground for MN	Yes (not for option)	→ restricts MN
- By descendants of nationals (born abroad)	Possible	→ restricts MN	Yes	→ ground for MN
Loss				
If residence abroad?	Yes	→ restricts MN	Yes	→ restricts MN
If voluntary acquisition of Foreign nationality?	No (since 2008)	→ ground for MN	Yes (but 3 exceptions)	→ restricts MN
MN : Multiple nationalities				

IV. Multiple nationalities

4. Selected States analysed

C. Italy

- Italy is a special case : very generous attitude towards Italian citizens who obtain another nationality coexisting with more reserved attitude towards acquisition of Italian nationality by foreigners

IV. Multiple nationalities

4. Selected States analysed

C. Italy

- 1°) Italian citizens who adopt another nationality : no loss of Italian nationality (since 1992; until 2010 Italy party to Chapter I of the 1963 Strasbourg Convention...)
- 2°) No loss of Italian citizenship through long term residence abroad → 'stickiness' of Italian citizenship, resistant to emigration

IV. Multiple nationalities

4. Selected States analysed

C. Italy

- 3°) Special 'stickiness' of Italian nationality : it can come back even after having disappeared!
- Italy has for a long time been an *emigration* country (from 1861 tot 1990 : about 29.000.000 Italians left Italy..., 60 % of which between 1861 and 1920)
- Many of these emigrants acquired nationality of new country (USA, Argentina, etc.)

IV. Multiple nationalities

4. Selected States analysed

C. Italy

- At first, no particular reaction in Italian nationality law for this mass emigration - based on 1865 Italian Civil Code, these Italians *lost* Italian nationality
- Starting in 1912 (Act N° 555 of 13 June 1912) : nationality law was used as a means to keep ties with émigrés
- Act of 1912 : possibility for expatriated Italians to recover Italian nationality (former nationals who had lost Italian nationality could recover it after 2 years of residence in Italy)

IV. Multiple nationalities

4. Selected States analysed

C. Italy

- Act of 1992 (Act nr. 91 of 5 February 1991)
: special procedure for foreigners of Italian origin to recover the Italian nationality (art. 9 : 3 y. residence in Italy or 2 y. if before coming of age)

IV. Multiple nationalities

4. Selected States analysed

C. Italy

- Starting in 1992 : successive 'reacquisition programmes' : easy procedure for foreigners of Italian origin to recover Italian passport (art. 17 Act)
- Between 1992 and 2006, reacquisition programmes led to more than 580.000 new Italian passports to be issued (largest portion in Argentina – see case of Mr. *Micheletti*)
- Until 2006, no requirement to prove persistent cultural ties with Italy in order to recover Italian nationality (knowledge of Italian language)

IV. Multiple nationalities

4. Selected States analysed

C. Italy

- Consequences : many new Italians do not speak / understand Italian, no knowledge of Italian culture / history. Is there a 'devaluation' of the Italian citizenship?
- Burden on Italian welfare? No, many 'new' Italians still reside in Argentina, etc. Italian passport to be used 'in case of' (e.g. issuance of Italian passports during financial crisis in 1990's in Argentina)

IV. Multiple nationalities

4. Selected States analysed

C. Italy

- Combination with external voting rights legislation : Italy has also granted full political rights to Italians residing abroad (Act nr. 459 of 27 December 2001) —> they elect special MP's
- Italian passport —> key to EU citizenship with free movement rights in the EU (see case *Micheletti*)

IV. Multiple nationalities

4. Selected States analysed

C. Italy

- Lesson : Italy is certainly in favor of multiple nationalities for its own citizens
- 4°) Other side of the mirror? Does Italy require that foreigners lose their previous nationality when becoming Italian?

IV. Multiple nationalities

4. Selected States analysed

C. Italy

- No requirement of waiver for foreign citizens who acquire Italian nationality through naturalization
- But limited possibility to acquire nationality *ius soli* : acquisition limited to stateless child and parentless infants

IV. Multiple nationalities

5. What's Right/Wrong with Multiple Nationalities ?

- From a policy point of view, what are the arguments *pro* and *con* multiple nationalities?
- Debate is really alive in many countries – mostly from a 'negative' perspective (certainly during election campaigns...)

IV. Multiple nationalities

5. What's Right/Wrong with Multiple Nationalities ?

- *e.g.* : The Netherlands – periodical flaring up of the debate...
 - 1992 : 'afstandeis' (requirement to waive previous nationality when obtaining naturalization) abandoned
 - 1997 : 'afstandseis' reintroduced, with some exceptions
 - Bill introduced by Government in March 2012 to reinforce rules against dual nationalities (extension of the cases where foreigner must waive his nationality in order to acquire Dutch citizenship)

IV. Multiple nationalities

5. What's Right/Wrong with Multiple Nationalities ?

- Main 'arguments' made against dual nationalities :
 - 1st) Dual nationals would enjoy more rights than nationals of one State – problem of 'equality'
 - 2nd) Dual nationality would prevent 'integration' of newcomers in country of their new nationality
 - 3rd) Dual nationals could not be trusted because of allegiance to other State – problem of 'loyalty'

IV. Multiple nationalities

5. What's Right/Wrong with Multiple Nationalities ?

A. Issue of equality

- Are dual nationals in a privileged position?
Enjoying more rights than nationals?
- A) Certainly, dual nationals have two nationalities – could open the door to additional entitlements (*e.g.* Moroccan-Belgian national : right to reside in two countries)

IV. Multiple nationalities

5. What's Right/Wrong with Multiple Nationalities ?

A. Issue of equality

- B) However, dual nationals could also be subject to duties of nationals in two countries
- *E.g.* military service : obligation could exist in the 2 countries
- *e.g.* dual national Turkish – Belgian living in Belgium : no compulsory military service in Belgium, but well in Turkey (military service may be 'bought out' for 5.000 EUR / 10.000 EUR starting in 2012)

IV. Multiple nationalities

5. What's Right/Wrong with Multiple Nationalities ?

A. Issue of equality

- Problem of concurrent military obligations usually solved through bilateral agreements
- See art. 5 and 6 of the 1963 Hague Convention : under art. 5, a person with two nationalities, shall only be required to do his military service in *one* country. Which country? See bilateral agreement between the 2 States. If no such agreement, art. 6 provides for a model solution - first rule is that a person shall do his military service in the State of his residence

IV. Multiple nationalities

5. What's Right/Wrong with Multiple Nationalities ?

A. Issue of equality

- C) What about exercise of political rights?
- Voting rights are associated with citizenship. Dual nationals can therefore (in principle) vote in their country of origin and the country of ‘adoption’

IV. Multiple nationalities

5. What's Right/Wrong with Multiple Nationalities ?

A. Issue of equality

- Concern if use of multiple voting rights :
 - Dual nationals could be inclined towards radical extremes of politics, since they do not have to live with the consequences of their votes (minor concern)
 - Another concern with voting is that political rights are ‘unique’, i.e. they are the quintessential marker for equality in democratic societies. If one has the right to vote in two countries, isn’t there a problem of equality? (major concern)

IV. Multiple nationalities

5. What's Right/Wrong with Multiple Nationalities ?

A. Issue of equality

- Multiple voting rights a problem?
- External voting rights legislation —> in many countries, nationals residing abroad do not have the right to vote, or can only exercise this right under specific circumstances (which may serve as 'filter' —> only the motivated will vote)

IV. Multiple nationalities

5. What's Right/Wrong with Multiple Nationalities ?

A. Issue of equality

- D) Other situations where dual nationals enjoy 'more' rights?
- In most situations, no 'privilege' derived from dual nationality because entitlement to right derived from residence and not nationality (*e.g.* application of local laws of country of residence in tax matters, criminal matters, etc. : residence-based, nationality is not relevant)
- Only potential differential treatment for dual-nationals : family law – however :
 - public policy as a limit to application of foreign law
 - Dual nationals are treated as nationals only (*e.g.* French-Italian national living in Belgium or France)

IV. Multiple nationalities

5. What's Right/Wrong with Multiple Nationalities ?

A. Issue of equality

- E) One situation where dual nationals could be 'worse off' than nationals - when in need of diplomatic protection (no exercise of diplomatic protection if national also possesses nationality of State of origin)

IV. Multiple nationalities

5. What's Right/Wrong with Multiple Nationalities ?

A. Issue of equality

- In general :
 - Analysis reveals that 'privileged' position of dual nationals is limited
 - Further : (in)equality argument is weak because at the basis, situations of dual nationals and 'single' nationals differ - comparison is therefore not convincing

IV. Multiple nationalities

5. What's Right/Wrong with Multiple Nationalities ?

B. A barrier to integration?

- Dual nationality sometimes said to constitute a barrier to proper 'integration' in country of residence
- Argument focuses on newcomers and their acquisition of local nationality, while keeping former nationality - “can a Turkish citizen really fully become Dutch if he/she keeps his/her Turkish nationality?”

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IV. Multiple nationalities

5. What's Right/Wrong with Multiple Nationalities ?

B. A barrier to integration?

- Difficult to *verify/measure* whether acquisition of local nationality while keeping former nationality indeed constitutes barrier to 'integration' (also because need for an objective concept of 'integration')
- Analysis should look at the reasons for persistence of nationality of country of 'origin' (of the family) on top of local nationality

IV. Multiple nationalities

5. What's Right/Wrong with Multiple Nationalities ?

B. A barrier to integration?

- Reasons for persistence of nationality of country of origin after acquisition of local nationality:
 - No possibility (or very difficult) to get rid of former nationality
 - Wish to keep former nationality for various reasons (link with family history; pragmatic reasoning – ease of travel, restrictions to land/immovable ownership, etc.)
 - Indifference to former nationality
- These reasons are not necessarily indication of poor or limited integration

IV. Multiple nationalities

5. What's Right/Wrong with Multiple Nationalities ?

B. A barrier to integration?

- Useful comparison : does a State allow its nationals who emigrated, to keep their nationality when they adopt nationality of country of residence?
- Example of Belgium (as an 'exit' country):
 - Until 2007/2008 : voluntary acquisition of foreign nationality automatic ground of loss
 - Since then : no loss anymore, recognition that Belgians living abroad should be entitled to keep their Belgian nationality (strong lobbying) – or should Belgium not be concerned about limiting integration of its citizens who settled elsewhere?

IV. Multiple nationalities

5. What's Right/Wrong with Multiple Nationalities ?

B. A barrier to integration?

- In many countries, reverse situation : tolerance of dual nationality as a way to keep link with expatriate community
- *E.g.* recent change in Uganda : in 2009, change to the Uganda Citizenship and Immigration Control Act

IV. Multiple nationalities

5. What's Right/Wrong with Multiple Nationalities ?

B. A barrier to integration?

- Position in Uganda until 2009 : very strong position against dual nationalities:
 - Sect. 19(1) principle of prohibition of dual nationalities for Ugandan citizens
 - Section 19 (2) : automatic loss of nationality of Uganda for national older than 18 y. who voluntarily acquires the citizenship of another country (except through marriage)
 - Sect. 19(3) : obligation for foreigner who becomes a citizen of Uganda by registration to renounce his other citizenship (if not : person ceases to be a citizen of Uganda)

IV. Multiple nationalities

5. What's Right/Wrong with Multiple Nationalities ?

B. A barrier to integration?

- Change in 2009 : new tolerance of dual nationalities
 - Sect. 19(1) : “(1) A citizen of Uganda of 18 y. and above who voluntarily acquires the citizenship of a country other than Uganda may retain the citizenship of Uganda subject to the Constitution, this Act and any law enacted by Parliament”
 - New Sect. 19(A)(1) : if Ugandan citizen wish to keep Ugandan nationality while voluntarily acquiring another nationality, permission of Ugandan authorities required ('Board')

IV. Multiple nationalities

5. What's Right/Wrong with Multiple Nationalities ?

B. A barrier to integration?

- Reason for the change in Uganda?
- Growing recognition that the Uganda diaspora is making important contribution to the Ugandan economy ('remittances'); liberalization of dual citizenship law seen as a tool to keep a strong link with expatriate community
- → sign that a person could be linked to two countries, and bring meaningful contribution (albeit in different ways) to two different countries, without that persistence of 'old' nationality constitutes an obstacle?

IV. Multiple nationalities

5. What's Right/Wrong with Multiple Nationalities ?

C. Divided loyalty?

- 3rd argument : most important concern about multiple nationalities is that of 'divided loyalty'
- May a person who has two nationalities, be loyal at the same time to the two States of which he is a national?

IV. Multiple nationalities

5. What's Right/Wrong with Multiple Nationalities ?

C. Divided loyalty?

- Concern is in particular expressed in relation to holders of public office
- Recent cases : *Ahmed Aboutaleb*, mayor of Rotterdam (Dutch and Moroccan nationality); Belgium : *Emir Kir* (Minister/mayor Brussels – Belgian and Turkish); *Yamila Idrissi* (Brussels MP for SP.A and also Moroccan national – and also member of the '*Conseil de la communauté marocaine à l'étranger*' created by Morocco), etc.

IV. Multiple nationalities

5. What's Right/Wrong with Multiple Nationalities ?

C. Divided loyalty?

- Uganda : recent change tolerating dual nationalities, but persons holding dual citizenship not qualified to hold highest public offices (President, Vice President, Prime Minister, Cabinet Minister and other Ministers, Inspector General and the Deputy Inspector General of Government, Technical Head of the Armed Forces, Technical Heads of Branches of the Armed Forces, Commanding Officers of Armed Forces Units of at least battalion strength, etc.)

IV. Multiple nationalities

5. What's Right/Wrong with Multiple Nationalities ?

C. Divided loyalty?

- Concern is also expressed for 'normal' people
- Germany : introduction of acquisition *ius soli* in 2000 after heated debates focusing among other on loyalty argument – consequence : introduction of the *optional* model : children acquiring German nationality *ius soli* if birth in Germany (and parent legally resident in Germany for 8 years) must choose at the age of 18 y. between German nationality or other nationality (sect. 4(3) German Act)

IV. Multiple nationalities

5. What's Right/Wrong with Multiple Nationalities ?

C. Divided loyalty?

- *« La bipatridie est, au point de vue du droit international, une situation vraiment néfaste. On ne peut avoir deux patries, tout comme on ne peut avoir deux mères. La préférence donnée à l'une exclut nécessairement l'autre. Dire le contraire, c'est permettre les appétits individuels, c'est permettre la fourberie, car il n'est pas possible, et les individus aussi bien que les Etats le savent, de servir en même temps deux pays, d'être bon citoyen en même temps, de deux côtés à la fois » (R. Standaert, *La nationalité belge*, 1934, n° 72).*

IV. Multiple nationalities

5. What's Right/Wrong with Multiple Nationalities ?

C. Divided loyalty?

- Argument should be analysed looking at what it means to be 'loyal' to its country (see introduction : what is nationality?)
- In situations of war or crisis, loyalty may play a role – but these are exceptional circumstances

IV. Multiple nationalities

5. What's Right/Wrong with Multiple Nationalities ?

C. Divided loyalty?

- Quaere outside situations of crisis?
- Loyalty argument : diminished relevance with rise of supranational institutions (such as EU – direct example of multiple affiliations) and with limitations of national sovereignty?
- However, even if no substantial concern about loyalty, appearances of loyalty should be taken into account ('justice must not only be done...') : different position for highest public offices?

IV. Multiple nationalities

5. What's Right/Wrong with Multiple Nationalities ?

C. Divided loyalty?

- Loyalty argument calls for an enquiry in what is nationality
- Is nationality a source of *duties* for citizens (to pay taxes, to fight in the army or be 'loyal') or is it also (and primarily?) a source of *rights* for the nationals? Or is it both?
- And how much 'exclusivity' do these duties tolerate?

IV. Multiple nationalities

5. What's Right/Wrong with Multiple Nationalities ?

C. Divided loyalty?

- Debate on multiple nationalities require fundamental enquiry into essence of nationality
- Back to the starting point : what is nationality...