

The law of nationality : comparative and international perspective

Patrick Wautelet

A few practical arrangements

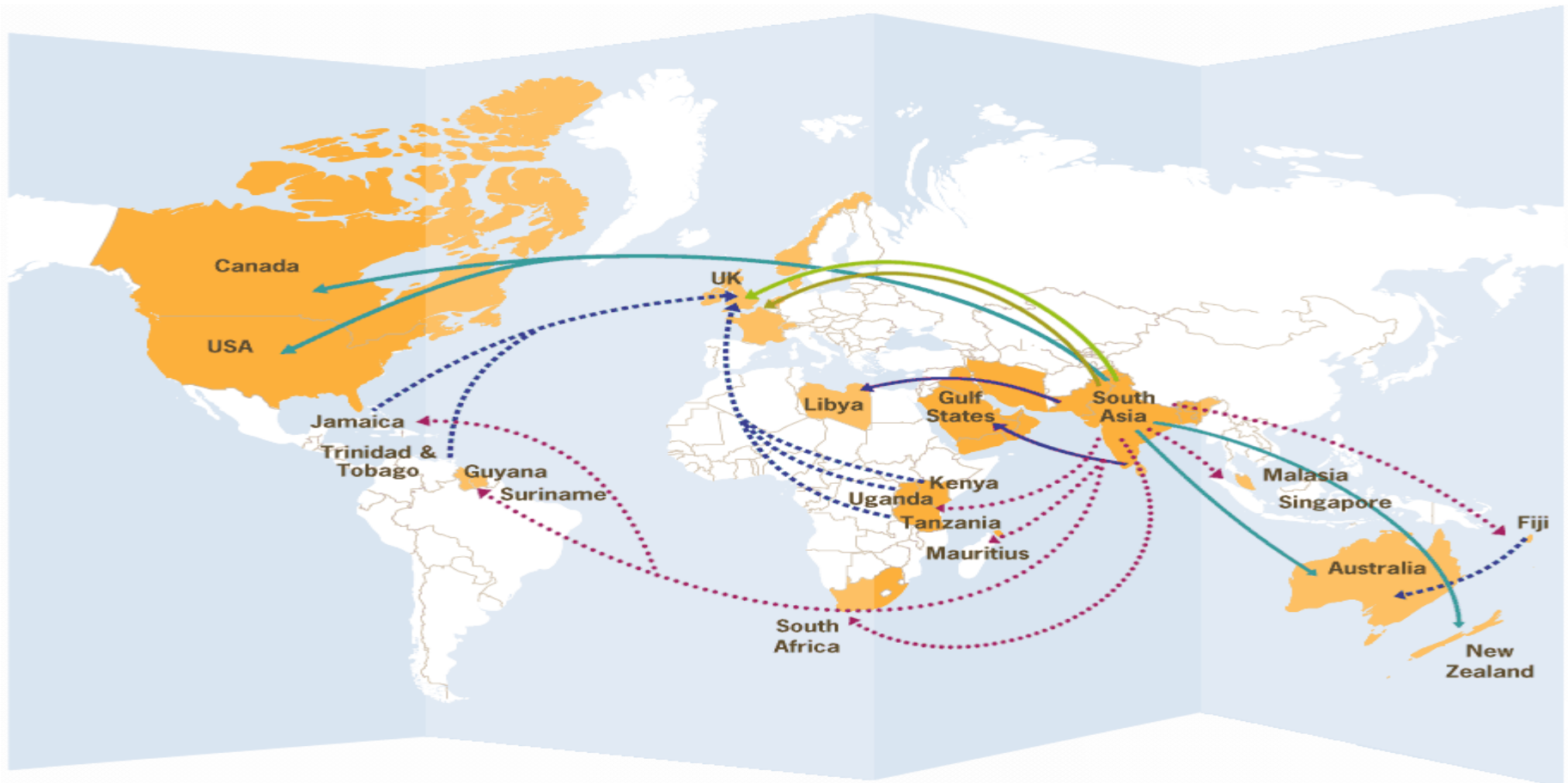
- Class : Monday 1.30 pm – 3.30 pm – 'Laurent'
- For each class : outline (ppt.)
- Materials : statutory materials – crucial to learn how to use them!
- For most topics : cases available on E-Campus (see guidelines on how to solve cases)
- Exam : June – oral exam – reasoning tested on the basis of cases

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

- This is not a course on *migration*



1. Introduction

- Migration and nationality linked – *e.g.*
 - Access to nationality influenced by migration
 - Migration triggered by nationality issues → *e.g.* Germans Jews fleeing Germany in 1930's after being stripped of their German nationality
- Migration law and policy → separate focus

1. Introduction

- Focus of the course → 'nationality'
 - A. What is behind concept of 'nationality'?
 - B. Relevance of 'nationality'?
 - C. Where to find law of nationality?

A. What is 'nationality'?

- Definition as starting point : nationality is a *link* between an individual and a State

A. What is 'nationality'?

- 1. Link only relevant for *individuals* (natural persons)?
- Companies : do they have a nationality?
- Sometimes said that companies/legal persons may have a nationality
 - *Confusing* : determination of nationality is not as clear cut as for natural persons (*e.g.* what is nationality of Coca Cola Inc.?)
 - Not the same consequences – having a nationality for a company does not mean same thing

A. What is 'nationality'?

- 2. Nationality : *not the only link* between individual and a State
- Nationality : *one possibility* to give a *legal form* to bond between individual and a State
- Other forms of legal link → residence and domicile
- Differences :
 - *Stability* of the links
 - Nature and importance of the rights/consequences arising out these links

A. What is 'nationality'?

- 3. Nationality : a *legal* link – what is behind?
- Principle : nationality translates existence of a bond between individual and state, based on many different dimensions (family relationships, residence, psychological attachment, historical reasons, economic links etc.) → *multi-layered nature* of nationality
- Richness of bond captured by ICJ : « 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)

A. What is 'nationality'?

- However, sometimes bond behind nationality less evident – purely formal – *e.g.*
 - Nationality by *investment* – *e.g.* Malta

 *Henley & Partners*

- '*Historical*' nationality – *e.g.* person born in Belgium out of one Italian parent born in Belgium out of one grandparent who came from Italy...

A. What is 'nationality'?

- 4. Nationality : in principle only relevant to indicate bond between individual and a *State*
- No 'nationality' of a sub-state entity, or supra-state entity
- Nuances:
 - EU → EU citizenship
 - *Switzerland* : Swiss citizen is also is citizen of municipality and canton and Federation (Art. 37 Federal Constitution)
 - Other federal states (see former Yugoslavia : dual regime → federal citizenship and citizenship of one of the 6 'Republics')
 - Non-state : FIFA rules on eligibility of players



A. What is 'nationality'?

- Article 6 Fifa Statutes 2015 : “Nationality entitling Players to represent more than one Association”
- “1. A Player who, under the terms of art. 5, is eligible to represent more than one Association on account of his nationality, may play in an international match for one of these Associations only if, in addition to having the relevant nationality, he fulfils at least one of the following conditions:
 - a) He was born on the territory of the relevant Association;
 - b) His biological mother or biological father was born on the territory of the relevant Association;
 - c) His grandmother or grandfather was born on the territory of the relevant Association;
 - d) He has lived continuously on the territory of the relevant Association for at least two years”

FIFA.com

A. What is 'nationality'?

- Illustration : nationality is often first item on 'to do list' of newly created State
- e.g.:
 - Belgium → 'Loi du 27 septembre 1835, sur la naturalisation' (*Bull. off.*, XII, n° 647)
 - DR Congo 1960 : Art. 6 Constitution of 1964 : is “Congolese as of 30 June 1960 all persons one of whose ancestors was or had been a member of a tribe or part of a tribe established in the Congo before 18 October 1908” (date of creation of Belgian Congo)
 - South Sudan → independence in 2011 → Nationality Act 2011

A. What is 'nationality'?

- 5. Difference between 'nationality' and 'citizenship'? Language issue
- One possible distinction:
 - *Nationality* : legal concept, expresses the link between State and members of its community (as in 'membership in a state')
 - *Citizenship* : various meanings
 - Synonym to nationality
 - More comprehensive concept, covering all residents ('members of a polity') or at least all *legal* residents
 - Special relevance in EU : 'citizenship' of Union (Article 20 Treaty EU)

A. What is 'nationality'?

- 6. Nationality is usually *exclusive*, i.e. there is only one link between a State and individuals
- Nuances:
 - Great-Britain : 'overseas' citizens
 - Lithuania : 'non citizen' → people of Russian origin, resident of Lithuania under Soviet occupation, not citizens of Lithuania, but issued passports as 'non-citizen' or 'Aliens' (right to travel to all EU Member States except UK and Ireland)

A. What is 'nationality'?

- 7. Nationality not to be reduced to holding passport
- In most cases, holders of passport issued by State A, will hold citizenship of State A (*e.g.* Article 1-13° Belgian Consular Code : Belgian passport *only* issued to Belgian citizens)
- Passport may be accepted as *evidence* of nationality - *e.g.* section 22 U.S. Code § 2705(1): “The following documents shall have the same force and effect as proof of United States citizenship as certificates of naturalization...:
(1) A passport, during its period of validity ... issued by the Secretary of State to a citizen of the United States.”

A. What is 'nationality'?

- State A may issue passport to non-citizens - *e.g.*:
 - US practice : issuance of US passport to 'US nationals'
 - persons who are not US citizens, but somehow linked to US territories such as Samoa or Swain Islands (Section 308 US Immigration and Nationality Act)
 - *Emergency* passport issued by country A to allow travel by citizen of State B
 - Jordanian passports issued to Palestinians (without national ID number...)

A. What is 'nationality'?

- 8. Law of nationality provides rules on various aspects of 'link'
 - When does one *acquire* this link – and whether this is automatic or not (*acquisition* of nationality)
 - When may one *lose* this link – and in which circumstances (*loss* of nationality)
 - Other rules providing assistance in applying nationality law (*e.g.* rules of evidence)

A. What is 'nationality'?

- Nationality law does not say much about the *position* of nationals
- In order to better understand meaning of concept, need to have a good grasp of its *consequences*
- Nationality is a “right to have rights” (H. Arendt) → rules on acquisition and loss of nationality only meaningful if one understands consequences of nationality
- Nationality → 'framework legal relationship' : it does not establish or grant rights / duties to individuals concerned → represents a *necessary condition* for the entitlement to these rights / duties

B. Consequences of nationality

- Necessary to consider consequences of nationality, in order to discover relevance of nationality in 2016
- Is nationality still a *relevant* concept and *when* is it relevant?
- Even in a 'global' world, nationality remains relevant in different contexts – such as : politics, sports, professional life, family relationships, etc.
- A few examples



Riot police fire rubber-coated bullets as anti-government protesters run for cover during clashes in the village of Sanabis west of Manama, Nov. 6, 2012. (photo by REUTERS/Hamad I Mohammed)



SHARE

Bahrain Revokes Nationality of 31 Opposition Members

As Bahrain's authorities have been overwhelmed by despair about their ability to silence the opposition, they have started to take measures, hoping to contain "the storm" that threatens to engulf them. Then, they reached at decision to strip the nationality of 31 members of Bahrain's opposition.

SUMMARY



In the latest move to stifle its political opponents, Bahrain revoked the nationality of 31 opposition members. As-Safir's Haifa Zaaiteer talks to Abdulhadi Khalaf, a veteran Bahraini opposition member, who claims the government's decision shows it is frustrated and knows that change is inevitable.

[Abdulhadi Khalaf](#), an experienced politician of Bahrain, is affected by this decision and is among those who believe that glory can only be brought about by a storm ... eradicating every tyrant, absolutist and villain, as Abdul Rahman al-Muawedah, the poet of the National Union Committee, said years before the Bahraini people first headed to the [Pearl roundabout](#).



Teenager Adnan Januzaj is the trophy in a six-way battle being fought across the international soccer spectrum. (Getty Images)



3 COMMENTS

By Graham Ruthven

Soccer is rarely the best arena for intricate social discussions. Tribalism and rivalries means the sport's response to serious issues like racism and homophobia often lack consistency and common logic.

And in the space of 20 minutes a scrawny 18-year-old from Brussels gave soccer another complex subject to debate: national identity.

With Manchester United trailing Sunderland 1-0, Adnan Januzaj scored twice on his first start for the club to announce himself as one of soccer's brightest young prospects. Now the teenager finds himself the trophy in a six-way battle being fought across the international soccer spectrum.

Under modern FIFA regulations **Januzaj is eligible to play for Albania, Belgium, Croatia, Serbia and Turkey**. But most controversially England has also planted its flag, despite the fact he wouldn't be able to play for the Three Lions until 2018 at the earliest.

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J NEWS IN FOCUS

EU court strikes down notary nationality requirements

26 MAY 2011



Six member states of the European Union have been held to be in breach of Community law because of legislation requiring persons holding the office of notary in those states to be nationals of the states concerned.

The European Court of Justice this week upheld actions by the European Commission, supported by the UK Government, against France, Germany, Belgium, Luxembourg, Austria and Greece, and granted a declaration that the nationality requirement imposed by each state was contrary to article 43 of the EC Treaty.

A separate ground of action based on failure to transpose a 2005 directive was not upheld because it was insufficiently clear that it applied to notaries, and a further action against Portugal which was based only on this ground was therefore dismissed.

Nationality Law

B. Consequences of nationality

- Relevance of nationality may *vary* depending on context:
 - Every day life of a Belgian citizen : nationality is not much present...
 - 23 y. old born in Germany and forced to choose between German and Turkish nationality : nationality → a real concern
 - Stateless child from Syria without his parents in Turkey

B. Consequences of nationality

- Nationality is in principle **not** relevant for:
 - Possibility to obtain *assistance* from the State and public authorities - *e.g.* police, etc.
 - Fundamental rights (*e.g.* right to marry, right to life etc.)
 - Welfare support – 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

B. 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')
 - Civil/family status (in jurisdictions where civil/family status connected with residence)

B. Consequences of nationality

- What are the *consequences* of nationality ?
 - Freedom to enter country of citizenship / settle in that country / be protected against expulsion/extradition (*exception* : European Arrest Warrant)



B. Consequences of nationality

- What are the *consequences* of nationality ?
 - Right to participate in public / political life of the country (*e.g.* right to vote; access to certain public offices, such as judge)



B. Consequences of nationality

- What are the *consequences* of nationality ?
 - Other 'minor' entitlements – *e.g.* consular protection
 - Civil/family status (in jurisdictions where civil/family status connected with nationality)

B. 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 enrolled in an army fighting against Belgium)
 - Other 'minor' duties (*e.g.* duty to be a member of jury in a criminal trial; duty to help with organisation of elections)

B. 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

B. Consequences of nationality

- Decreased importance of nationality:
 - Nationality used to be 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 a non-profit organization – see 1921 Belgian statute on 'ASBL'

B. Consequences of nationality

- Decreased importance of nationality:
 - Nowadays nationality has lost a substantial part of its importance – recent examples :
 - Possibility to become a notary in EU Member State (ECJ 24 May 2011)
 - Recent legislation opening civil servant jobs to non nationals (French speaking community in Belgium : decrees of 19 April 2012 and 20 June 2013)

B. Consequences of nationality

- How to explain decreasing importance of nationality?
- 1st factor : 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
- → Nationality subject to European rules?

B. Consequences of nationality

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

B. 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 not tied to a person's formal citizen status, but instead to his/her residence status or to his/her person

B. 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' – heated debates on reform of nationality laws in all countries)

B. Consequences of nationality

- In many parts of the world : strong impact of nationality – *e.g.*:
 - Great Lake Region (DRC/Rwanda/Burundi)
 - issue of Congolese nationality of '*Banyamulenge*' in South-Kivu as one of the ingredients of tension in region
 - Ivory Coast : issue of '*ivoirité*' abused to sow seeds of discord among population (context : intense migration from region to Ivory Coast during 1970's/80's)

C. Sources of Nationality Law

- Where do I find nationality law?
- Starting point : nationality law is national law
- *E.g.* in Belgium : Code of Belgian nationality (Law of 28 June 1984, as modified many times – last major overhaul : Act 04.12.2012) (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*)

C. Sources of Nationality Law

- In most countries, nationality law : competence of *central* authority
- In some federal States, mixed competence
- *Eg* Switzerland : nationality law is Swiss federal law, except for naturalisation :
 - Basic criteria at federal level
 - Cantons and municipalities may determine own additional criteria (residence, language issues, etc.) and apply them

C. Sources of Nationality Law

- Frequent changes to 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
- *E.g.*: Mr. John Silberman born in Belgium in 1937 out of Belgian parents
- In 1939 emigrated with his parents to the U.S.
- The parents obtained US citizenship in 1947
- John also acquired US citizenship in 1947 as a consequence of naturalization of his parents

C. Sources of Nationality Law

- In 2016, Mr. Silberman, who has retired and wishes to visit relatives in Belgium and spend time there, enquires to know if he has kept his Belgian nationality
 - Was Mr Silberman a Belgian citizen when he was born? Find out in legislation applicable in 1937
 - Did Mr Silberman lose his Belgian nationality when becoming a US citizen in 1947? Find out in legislation applicable in 1947

C. Sources of Nationality Law

- Perspective for this course :
 - Focus on rules determining whether the status of national is attributed, determined and lost (citizen or not) - rules on *acquisition* and *loss* of nationality – *e.g.* how does one become a French citizen, how may one lose German nationality?
 - Focus not on one country, but on general principles and trends (in EU Member States)

C. Sources of Nationality Law

- What does *international law* say in matters of nationality?
 - Customary international law?
 - Conventional international law?

C. Sources of Nationality Law

- *Customary international law* ?
- Principle : 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 - law of State X has nothing to say on who are nationals of other States

C. Sources of Nationality Law

- *Limited impact of customary international law* : few (general) principles - such as:
 - States should strive to avoid creating cases of statelessness
 - States should avoid arbitrary deprivation of nationality
- 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

C. Sources of Nationality Law

- *Conventional international law ?*
 - Great number of international conventions, dealing with various issues - *e.g.*
 - 1961 Convention on the Reduction of Statelessness
 - Hague Protocol of 12 April 1930 relating to military obligations in certain cases of double nationality
 - These conventions stay away from 'core' of nationality law (acquisition and loss)

C. Sources of Nationality Law

- One exception : *1997 European Convention on Nationality* (Council of Europe)
- Convention negotiated in the aftermath of liberation of Central and Eastern Europe. Unfortunately, not yet signed or ratified by Belgium... But 20 ratifications

C. Sources of Nationality Law

- ECN - 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

C. Sources of Nationality Law

- Besides international law, 'national' nationality law is also influenced by:
 - European law
 - European Convention on Human Rights
- In both cases, modest influence
 - No direct impact of ECHR/EU law - no fundamental/ European right to obtain or keep a nationality
 - Application of other rules/principles could limit action of States in matters of nationality

C. Sources of Nationality Law

- *e.g.* : ECHR, 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

C. Sources of Nationality Law

- 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 → there is a violation of art. 8 combined with art. 14

C. Sources of Nationality Law

- ECJ – *Janko Rottmann v Freistaat Bayern* (2010)
- Mr Rottmann Austrian national, becomes German by naturalization and as a consequence loses his Austrian citizenship
- Germany discover afterwards that he lied when applying for German nationality (no disclosure of existence of criminal court proceedings against him in Austria) → Germany intends to deprive him of his German nationality
- Mr Rottmann would become stateless → reference to the ECJ : would this be problematic under EU law?

C. Sources of Nationality Law

- ECJ :
 - Each MS defines conditions for acquisition and loss of its nationality
 - But this should be done “having due regard to Community law”
 - Situation of Mr Rottmann has clear European dimension since he benefited from free movement
 - EU intervention even more pressing since citizenship of the Union is at stake (losing German citizenship → losing EU citizenship)

Nationality Law

C. Sources of Nationality Law

- ECJ :
 - Legitimate for MS to deprive people of their nationality if naturalisation is acquired through fraud-deception → protection of special relationship of solidarity and good faith at the basis of nationality
 - However, if deprivation also brings loss of EU citizenship, withdrawal should observe principle of proportionality
 - Enquiry should focus on whether loss is justified in relation to gravity of the offence, lapse of time between the naturalisation decision and the withdrawal decision and to whether it is possible for that person to recover his original nationality

C. Sources of Nationality Law

- Future?
 - No law of EU nationality
 - Gradual development of a European framework which MS should comply when devising/applying their own nationality law

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

- Ms Guillemin, a French citizen, gives birth to a daughter in a Belgian hospital in February 2016
- Ms Guillemin was born in Québec and she is married to a Canadian national. She has lived in Belgium for the last 8 y.
- Does the baby have French and/or Belgian and/or Canadian nationality?



I. Overview of the methods of acquisition



- Studying acquisition of nationality : many distinctions
 - Methods : *automatic* acquisition (*ex lege*) vs acquisition *upon request* (rights-based / discretionary)
 - Means :
 - Acquisition based on nationality of parents/forefathers → blood' link with a national (*ius sanguinis*) – state as a 'family' united by a common origin
 - Acquisition based on (long term) residence/birth in a country (*ius soli*) → state as a 'community' united by notion of participation (closer to 'modernity'?)

I. Overview of the methods of acquisition



- Comparative analysis : need for a neutral framework
- *Summa divisio (ius sanguinis / ius soli)* : unsatisfactory, some means of acquiring nationality do not fit neatly—*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



- Simplified classification (see sophisticated classification : Eudo-citizenship):
 - Acquisition through *family relationship* – covers various aspects:
 - Blood link with a national – acquisition through parent-child link → acquisition '*ius sanguinis*' sensu stricto
 - Other family law relationships which do not rest upon parent-child link – e.g. adoption or marriage
 - *Residence on the territory of a State* or other territorial link - distinction:
 - Following birth on the territory – usually automatic acquisition → '*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.

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 & family relations

1. Introduction

- Family relationships: (probably) most common way for person to acquire a nationality (in particular link with parents)
- Outline :
 - 1°) Acquisition through 'blood links' – parents and children → Special focus on
 - Birth registration
 - Equality father/mother
 - Children born in / outside marriage
 - 2°) Acquisition through *marriage* : impact of equality and migration

II. Acquisition of nationality & family relations

2. Acquisition through 'blood links' – parents & children

- **1) Do parents transmit their nationality to children?**
- Acquisition '*ius sanguinis*' : goes back a long way – *e.g.* main ground for acquisition French nationality in Code Civil of 1804 (but before 1804 : *ius soli* prevalent)
- In most legal systems, acquisition *ius sanguinis* operates *ex lege*, automatically – *e.g.* Art. 8 BCN

II. Acquisition of nationality & family relations

2. Acquisition through 'blood links' – parents & children

- **Link acquisition – family law** → since transmission of nationality under nationality law dependent on family law rules, family law issues become relevant
- *e.g.* what if child born to two married parents, but after divorcing, father challenges his paternity when child is 12 years old → annulment of paternity leads to disappearance of nationality?

II. Acquisition of nationality & family relations

2. Acquisition through 'blood links' – parents & children

- Nationality law may go further than family law
- *e.g.* : Transmission of nationality from parent to child
 - Under family law rules, paternity (maternity : exceptional) may be established *after* birth
 - Usually statute of limitation in family law to prevent establishment of nationality at too late stage
 - Nationality law may have its *own* rules limiting transmission of nationality if establishment of parental link takes place at later stage – *e.g.* German law (no transmission of nationality if establishment of paternity takes place after child turns 23 y.); Italian, Belgian or French law (nationality law limitation : max. 18 y. old - art. 2 Italian law; art. 20-1 French law; art. 8 § 4 CNB)

II. Acquisition of nationality & family relations

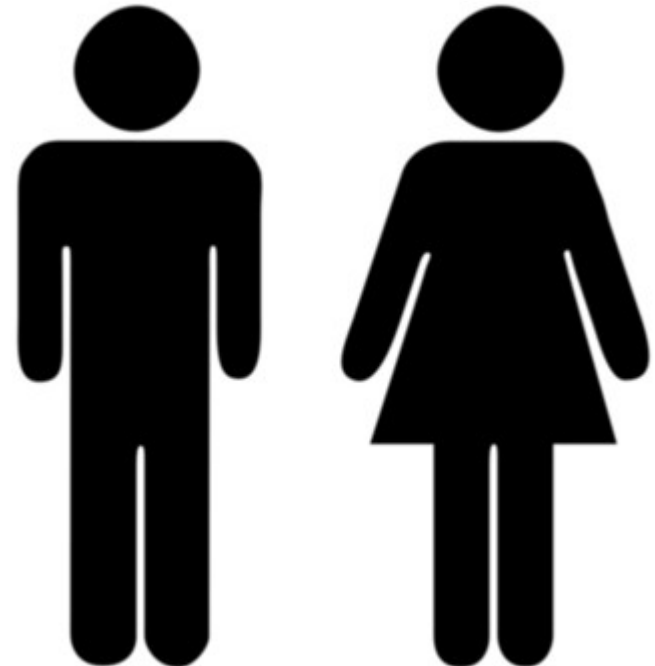
2. Acquisition through 'blood links' – parents & children

- **Main problem today** : acquisition premised on *birth registration*
- In many countries, birth registration deficient (Unicef 2013) : 56% of African children under 5 y are not registered)
- Failure to register birth → difficulties to demonstrate later on acquisition of nationality (especially if born to a single mother)
- Problem may affect several generations
- In some cases, possibility to obtain official recognition as national if person has always been treated as a national (*'possession d'état'* - e.g. Art. 31 Moroccan law)

II. Acquisition of nationality & family relations

2. Acquisition through 'blood links' – parents & children

- **2nd) Equality among parents** - what if only *one* parent is national – transmission?
- Question : will a child acquire mother's *and/or* father's nationality?



Nationality

II. Acquisition of nationality & family relations

2. Acquisition through 'blood links' – parents & children

- 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 ... d'un père ayant la qualité de Belge au jour de la naissance*” (“Acquires the Belgian nationality ... 1° the child born from married parents... whose father was a Belgian citizen when the child was born”)

II. Acquisition of nationality & family relations

2. Acquisition through 'blood links' – parents & children

- Long (and slow) evolution towards equality men-women (France : 1945; Ireland : 1956; Denmark : 1978; Netherlands : 1985; Luxembourg : 1987; Cyprus : 1999)
- Evolution started after WWII and reached apex in 1970's and 1980's in Western Europe
- Milestone in evolution : 1979 UN Convention on the Elimination of All Forms of Discrimination of Women – Article 9 § 2 : “State Parties shall grant women equal rights with men with respect to the nationality of their children

II. Acquisition of nationality & family relations

2. Acquisition through 'blood links' – parents & children

- Today : equality men/woman in transmission of nationality (within EU) → principle that child can obtain nationality of *both* his father and mother
- Principle confirmed in 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 : § 4 Nationality Act, etc.

II. Acquisition of nationality & family relations

2. Acquisition through 'blood links' – parents & children

- 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)

II. Acquisition of nationality & family relations

2. Acquisition through 'blood links' – parents & children

- Acquisition *ius sanguinis a patre* remains 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”

II. Acquisition of nationality & family relations

2. Acquisition through 'blood links' – parents & children

- 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) → could cause situations of *statelessness*

II. Acquisition of nationality & family relations

2. Acquisition through 'blood links' – parents & children

- 2°) **In other countries** : acquisition *ius sanguinis a matre* restricted to specific circumstances → possibility for mothers to transmit their nationality as a safeguard against creation of statelessness if the father is unknown or stateless
- *E.g. Burundi* : Art. 2 Nationality act : child has nationality of Burundi if:
 - Child born out of a Burundi father (born in and out of wedlock)
 - Child born out of a Burundi mother out of wedlock if no legal father or if father has challenged paternity

II. Acquisition of nationality & family relations

2. Acquisition through 'blood links' – parents & children

- *E.g.* 1925 Decree on Lebanese nationality:
 - Children born of Lebanese father → *automatic* acquisition of Lebanese nationality
 - Children born of Lebanese mother → only acquisition of Lebanese nationality if child born *out of wedlock*
- Consequence : great number of Lebanese women married to foreigners cannot pass their nationality to children – many practical obstacles for these children, such as difficulty to register for school etc. Long standing campaign to introduce general transmission *ius sanguinis a matre* unsuccessful (see *e.g.* www.youtube.com/watch?v=wEVBgUEUylk)

II. Acquisition of nationality & family relations

2. Acquisition through 'blood links' – parents & children

- 3°) **In some countries**, restriction concerns acquisition *ius sanguinis a patre*
- *E.g.* Sect. 1 Sweden Act : acquisition of Swedish nationality (until April 2015)
 - 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 / if father is married to the mother / if father has died and child born in Sweden

II. Acquisition of nationality & family relations

2. Acquisition through 'blood links' – parents & children

- Restrictive policy in relation to transmission of nationality by mothers to children may lead to *statelessness*
- *E.g.* Syria : women can only transmit their nationality to their children *if* born in Syria and father does not establish parentage → massive displacement resulting from war → many Syrian women refugees separated from husbands → no documentation to prove the paternity of children born abroad → generation of children at risk of being stateless

II. Acquisition of nationality & family relations

2. Acquisition through 'blood links' – parents & children

- Campaign to end discrimination of women in respect of transmission of their nationality (<http://equalnationalityrights.org>)
- *E.g. Surinam* : in 2014, adoption of new law making it possible for Surinamese mothers to transmit their nationality to their children → women have same right as men to confer their nationality on to their children and their spouses

II. Acquisition of nationality & family relations

2. Acquisition through 'blood links' – parents & children

- Situation in 2016 – countries where inequality persists:

Bahamas	Malaysia
Bahrain	Mauritania
Barbados	Nepal
Brunei Darussalam	Oman
Burundi	Qatar
Iran	Saudi Arabia
Iraq	Sierra Leone
Jordan	Somalia
Kuwait	Sudan
Lebanon	Suriname
Liberia (has pledged to reform law which is inconsistent with its constitutional provision)	Swaziland
Libya	Syria
Madagascar	Togo
	United Arab Emirates

II. Acquisition of nationality & family relations

2. Acquisition through 'blood links' – parents & children

- **3rd) Parents married or not** - does it make a difference whether parents are married or not?
- *E.g.* man (France) lives together with woman (Germany) – not married or bound by partnership – child is born : will child become French?

II. Acquisition of nationality & family relations

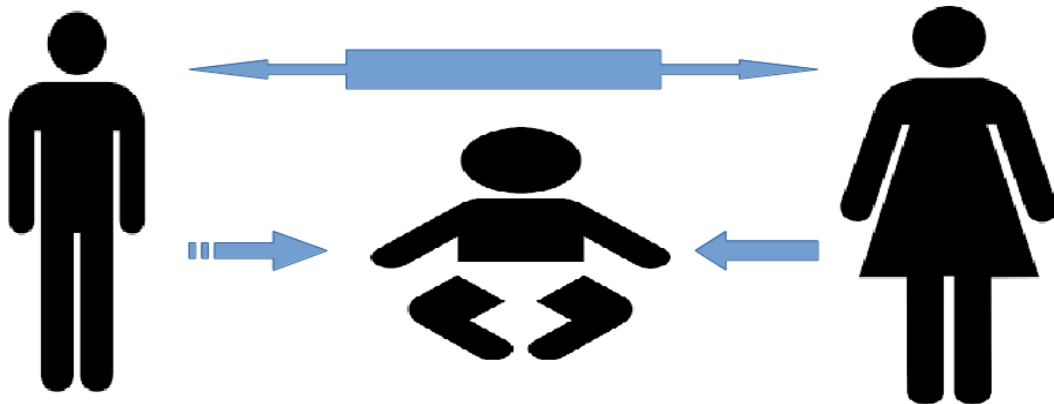
2. Acquisition through 'blood links' – parents & children

- Question is (in principle) only relevant for acquisition of *father's* nationality
- Transmission of *mother's* nationality : 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)

II. Acquisition of nationality & family relations

2. Acquisition through 'blood links' – parents & children

- 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? (family law)
 - May (legal) father transmit nationality?



II. Acquisition of nationality & family relations

2. Acquisition through 'blood links' – parents & children

- **1st question** : is 'father' legally the father?
- Answer depends on *family law*
- Family law may make distinction depending on situation

II. Acquisition of nationality & family relations

2. Acquisition through 'blood links' – parents & children

-

<i>Status of parents</i>	<i>How is paternity established?</i>	<i>If not automatic at birth, how may paternity be established?</i>
Married	Automatically – presumption of paternity	Various techniques – recognition, legitimation, etc.
Partnership	(Usually) no automatic establishment	Various means – recognition, legitimation etc.
Living together	No automatic establishment (except in few cases)	Various means – recognition, legitimation, etc.

II. Acquisition of nationality & family relations

2. Acquisition through 'blood links' – parents & children

- *Establishment of paternity:*
 - If parents *married* : in most legal systems, mother's husband will automatically be deemed to be the child's father (presumption of paternity – scope may vary)
 - *Civil partnerships – distinction*
 - In some countries : no automatic establishment of paternity – *e.g.* French *PAC*'s, Belgian '*cohabitation légale*', German '*partnerschaft*' etc. - *recognition* of the child is necessary in order for parentage to be established
 - In other countries (minority) : partner of mother enjoys benefit of presumption of paternity - *e.g.* 'Domestic partnership' of DC (USA), 'registered domestic partners' (California)
 - Living together : most of the time, no automatic establishment of paternity

II. Acquisition of nationality & family relations

2. Acquisition through 'blood links' – parents & children

- If no automatic establishment of paternity at birth, how may father become father?
 - Recognition
 - *Legitimation*
 - Court decision
 - Etc.

II. Acquisition of nationality & family relations

2. Acquisition through 'blood links' – parents & children

- **2nd question** : if parentage is established, will child obtain his father's nationality?
- Principle : a child is a child, once parental link with father is established, child automatically obtains father's nationality
- *e.g.* Art. 7(1)(a) Austrian Act; Art. 1(1) Danish Act; Art. 9(2) Finnish Act; Art. 1(3) Swedish Act; art. 4(1) German Act, art. 2 Italian Act; art. 1(1) Lux Act; art. 14 Portuguese Act, etc.

II. Acquisition of nationality & family relations

2. Acquisition through 'blood links' – parents & children

- Many nuances specific to the law of nationality
 - limiting transmission of citizenship from father to child → may lead to situation where a man is father of a child (from civil perspective) but no transmission of nationality

II. Acquisition of nationality & family relations

2. Acquisition through 'blood links' – parents & children

- **1st example** : transmission of father's nationality may only occur *until certain age*
- *E.g.* transmission of nationality 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)
- → only significant for children born outside marriage

II. Acquisition of nationality & family relations

2. Acquisition through 'blood links' – parents & children

- **2nd example** : transmission of nationality only if *specific modes of establishment* of fatherhood - *e.g.* : Austria
- Transmission only if child is *legitimized* by father (subsequent marriage between mother and father) :
 - Child of unmarried Austrian *mother* acquires Austrian nationality *ex lege* – art. 6(3)
 - Child of an unmarried Austrian *father* : acquisition only if marriage of parents – art. 7 (a)

II. Acquisition of nationality & family relations

2. Acquisition through 'blood links' – parents & children

- *Netherlands*: child only obtains Dutch nationality (ar. 4 RWN) if
 - Recognized by Dutch father before age of 7 y.
 - Paternity is established by court judgment (no limitation in time specific to nationality law)
 - Paternity link is established by legitimation (Dutch father marries mother)
 - Recognition by Dutch father if father demonstrates biological paternity (at the latest 1 year after recognition)
- In other cases, man may become a father from civil law (and social security etc.) perspective - but not from nationality perspective

II. Acquisition of nationality & family relations

2. Acquisition through 'blood links' – parents & children

- 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 ...”

II. Acquisition of nationality & family relations

2. Acquisition through 'blood links' – parents & children

- Section 17 (1)(a) of the Act : “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

II. Acquisition of nationality & family relations

2. Acquisition through 'blood links' – parents & children

- Father refuses to acknowledge his son, no contact – but Scottish court decides he is the father (DNA-evidence)
- Application in Malta for 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)

II. Acquisition of nationality & family relations

2. Acquisition through 'blood links' – parents & children

- Proceedings before the ECtHR – 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

II. Acquisition of nationality & family relations

2. Acquisition through 'blood links' – parents & children

- ECtHR:
 - Arbitrary denial of citizenship might in certain circumstances raise an issue under Art. 8 because impact of such a denial on 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)

II. Acquisition of nationality & family relations

2. Acquisition through 'blood links' – parents & children

- 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 that he was born *out of wedlock*

II. Acquisition of nationality & family relations

2. Acquisition through 'blood links' – parents & children

- ECtHR : no sufficient reason to justify different treatment
- Idea that children born in wedlock have a link with their parents resulting from their parents' marriage while link would 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)

II. Acquisition of nationality & family relations

2. Acquisition through 'blood links' – parents & children

- Assessment :
- 1) In Europe, acquisition *ius sanguinis* is commonly accepted → all States accept that parents may transmit their nationality to their children

II. Acquisition of nationality & family relations

2. Acquisition through 'blood links' – parents & children

- Assessment :
- 2) Acquisition *ius sanguinis* is in line with principle of equality of sexes :
 - Both father *and* mother may transmit their nationality
 - 'Mixed' families (where not all members have the same and only the same nationality) are treated equally with 'purely local' families

II. Acquisition of nationality & family relations

2. Acquisition through 'blood links' – parents & children

- Assessment :
- 3) Status of parents (married, partnership, living together etc.) may affect transmission of nationality to children
 - For the most part, distinction in treatment depending on whether the parents are married or not = mere consequence of family law; law of nationality follows closely mechanisms of family law → not as such discriminatory
 - Some distinctions are proper to nationality law – influence of migration policy?

II. Acquisition of nationality & family relations

2. Acquisition through 'blood links' – parents & children

- Assessment :
- 4) Equality of father and mother plants the seeds of dual nationalities - reinforced by other factors (such as lack of impact of marriage on nationality)

II. Acquisition of nationality & family relations

2. Acquisition through 'blood links' – parents & children

- Assessment :
- 5) 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
- *e.g.* : Moroccan parents, born in Morocco became Belgian citizens by naturalization in 2015. In 2016, mother gives birth to a child in Belgium → transmission of Belgian nationality to child

II. Acquisition of nationality & family relations

2. Acquisition through 'blood links' – parents & children

- Assessment :
- 6) Challenge : new developments in establishment of parent-child (, assisted reproductive technologies, surrogacy, etc.) → which impact on nationality of the child?

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 nationality of their husbands and lost their nationality of origin → common practice all over Europe
- Justification : wish to guarantee unity of nationality within the family

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, foreign woman *automatically* acquired the nationality of her husband - *e.g.* Art. 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*”
 - Upon acquisition of husband's nationality by a woman married with a foreigner, woman *lost* her original nationality - *e.g.* Article 19 of the French Civil Code (in force until 1927) : loss of French nationality for French woman marrying foreigner

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 → principle of equality between men and women gained ground
- Progressive evolution, over a couple of decades...

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 acquisition of husband's nationality (preventing statelessness)
- 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](#) : foreign wife may resist acquisition of nationality of husband
- 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]*”

II. Acquisition of nationality in family relations

3. Acquisition through marriage

B. Husbands and wives : the age of equality



- 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 marriage should *not* have any automatic effect on 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.* France : art. 21-1 French Civil Code (principle that marriage has no automatic effect on nationality of woman)

II. Acquisition of nationality in family relations

3. Acquisition through marriage

B. Husbands and wives : the age of equality



- In most States, marriage opens 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 if 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 acquisition of the nationality, marriage should last for a certain period of time
- Duration required can vary:
 - *e.g.* Belgium : 3 years of 'living together' (art. 12*bis* §1-3° CNB)
 - *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



- Rationale : 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



- 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) Marriage *as such* is not sufficient, must be combined with other factors
- Main example : residence by 2 spouses in the country
- Rationale? Ensure that foreign spouse will learn about the country, its culture, language, etc. before acquiring its nationality

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
 - 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 4 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)

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



- 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 § 1-3° CNB)
- Appeal Court 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*)**

Illustration

- Mehmet K., a Turkish citizen born in 1952 in Emirdag (Turkey), comes to Belgium in 1970 to work in a steel plant
- In 1972, Mehmet succeeds in having his wife, Melike, coming over to Belgium
- In 1975, the couple welcomes its first child, a girl named Azra
- In 1978, a second girl is born : Dilay

Illustration

Questions:

- Will the two girls obtain the Turkish nationality upon birth?
- Will the two girls also obtain Belgian nationality upon birth?
- If not, will the girls be eligible to obtain Belgian nationality upon turning 18?
- When will Mehmet and his wife Melike, become eligible to obtain Belgian nationality?
- If Mehmet and his wife Melike obtain the Belgian nationality in 1987, will they also keep their Turkish nationality?
- If Azra gives birth to a child (a boy named Görkem) in 2005, will the boy obtain Belgian nationality at birth?

Purpose

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

Outline

1. General background

2. Acquisition *ius sanguinis* and expatriation

1st model : limitation to transmission

2nd model : no limitation

Nuance : loss of nationality as a limitation

3. Acquisition for those not born in country of migration

The process - a word on the methods

The requirements - diversity

4. Acquisition for those born in country of migration

Acquisition simple *ius soli*

Acquisition double *ius soli*

Acquisition at later stage

II. Acquisition of nationality and migration

1. General background

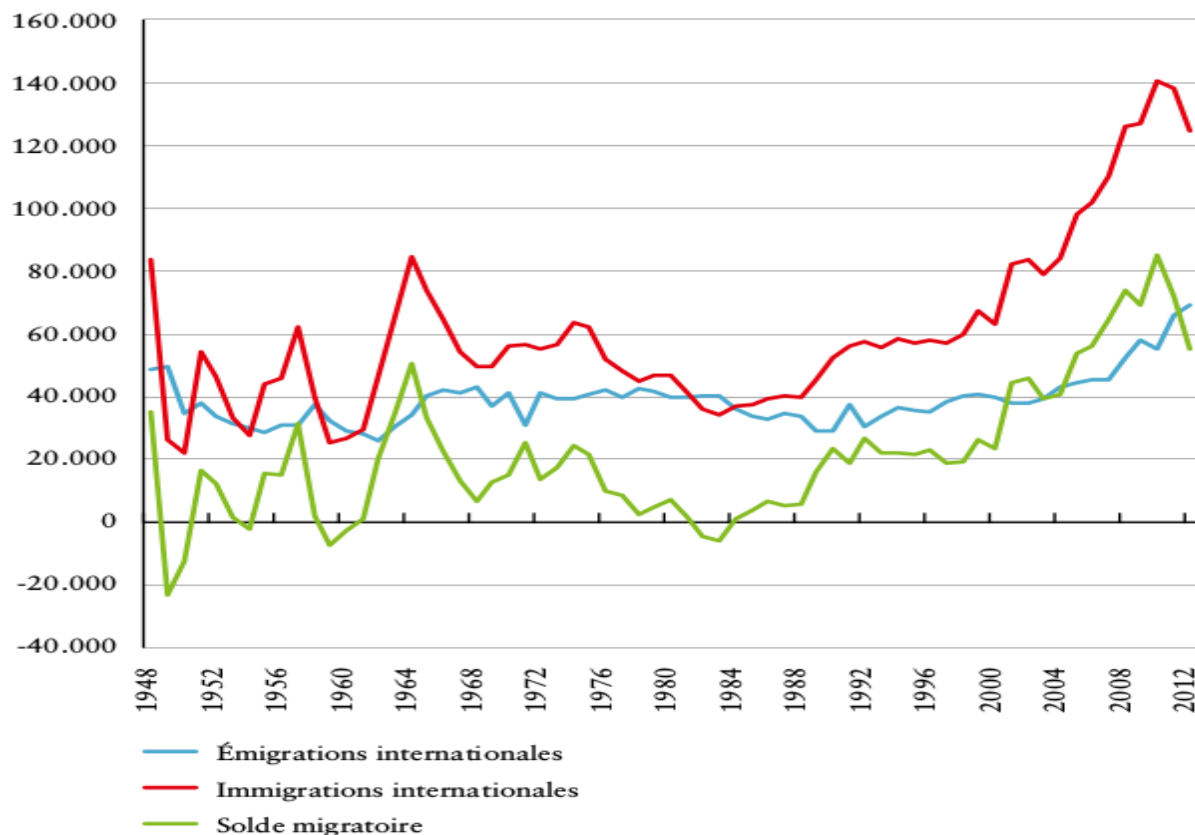
- Today : in most 'old' EU Member States large numbers of inhabitants of (direct or indirect) foreign origin - most European countries have become 'immigration countries'
- It used to be *different* : substantial *exit* of population during 20th century in various EU countries
 - Well-known immigration 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

Today : entry larger than exit, though continuous exit

Figure 1. Évolution du nombre d'immigrations et d'émigrations d'étrangers, 1948-2012 (Sources : RN-DGSIE)



II. Acquisition of nationality and migration

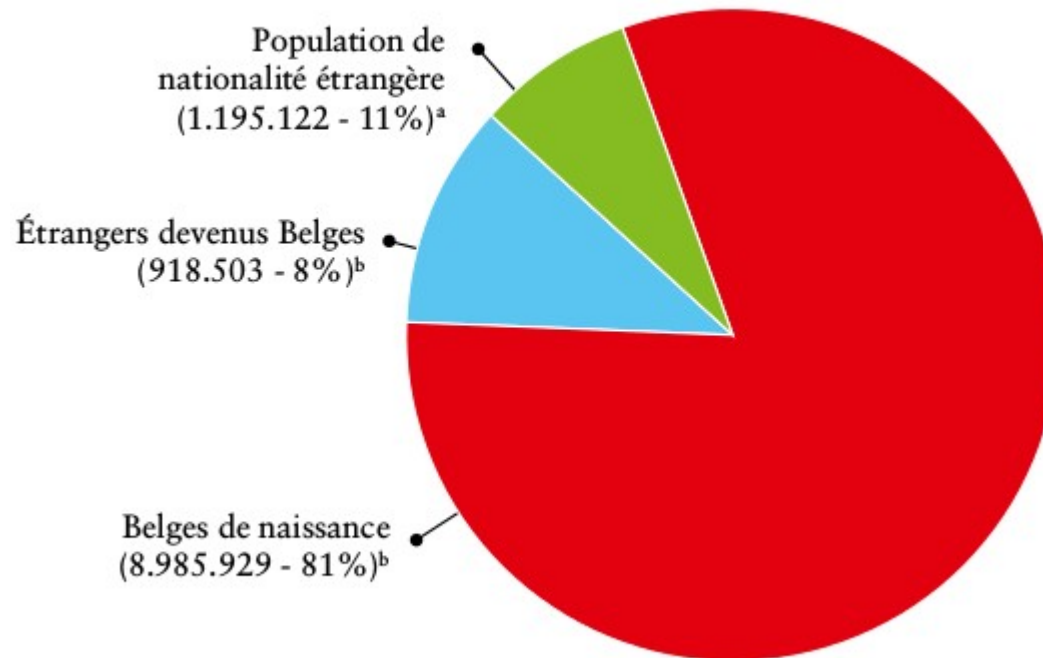
1. General background

- 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'?

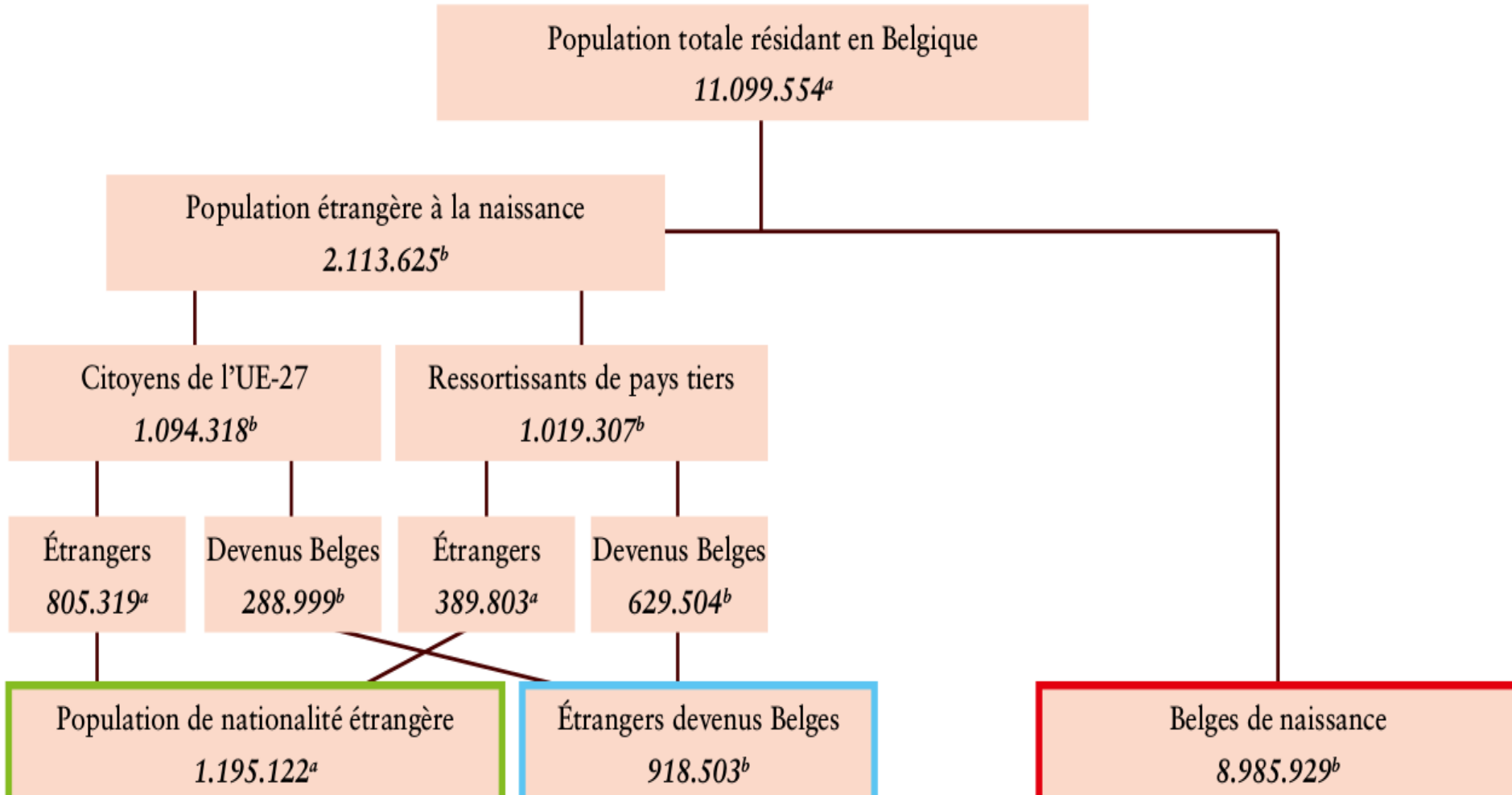
Possible definitions :

- Persons who do not possess 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?

Overview population of Belgium 2013



Overview population of Belgium 2013



II. Acquisition of nationality and migration

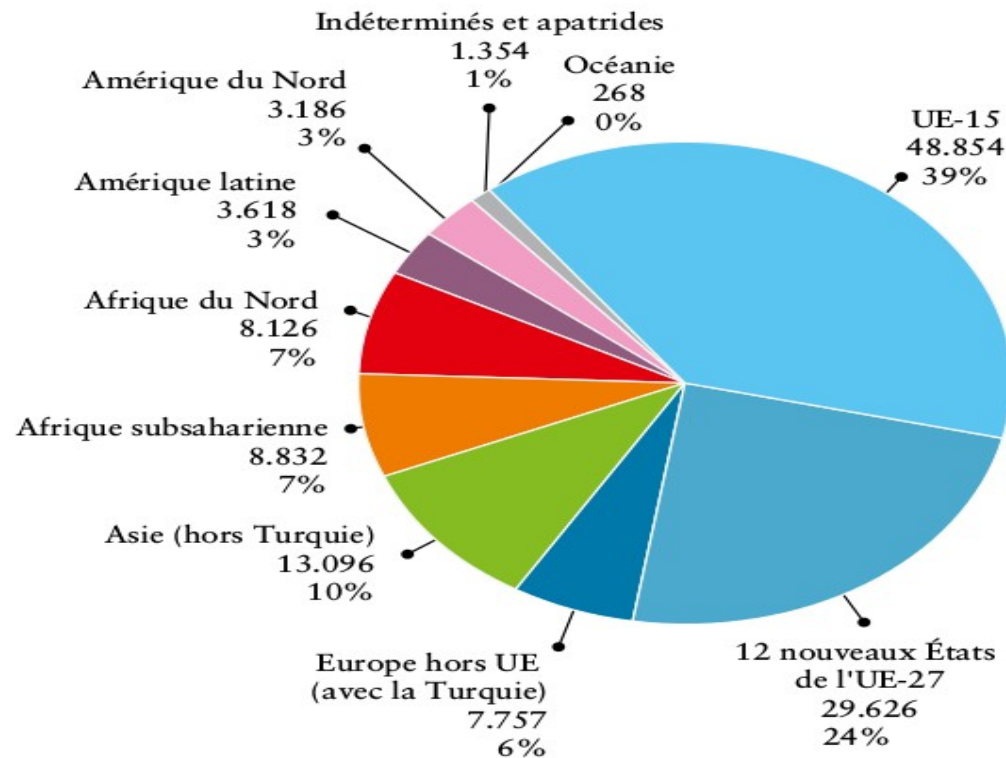
1. General background

- 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

- Migration to Belgium (1990-2012) – from where?



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 (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

- What type of migration?
- Until 1970's : massive labor migration –
recruitment of 'foreign workers' – *e.g.*
Belgium:
 - Agreement of 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*

II. Acquisition of nationality and migration

1. General background

- Since 1970's : other types of migration
 - *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 2015 : 35.476 applicants – including multiple requests; 60% answers positive)
 - *Undocumented aliens* : illegal entry in Belgium (or legal entry with short term visa and then...)
 - *Students* : visa for duration of studies (sometimes attempt to remain in Belgium after studies)
 - *Workers* : visa for duration of professional occupation (from outside EU)

II. Acquisition of nationality and migration

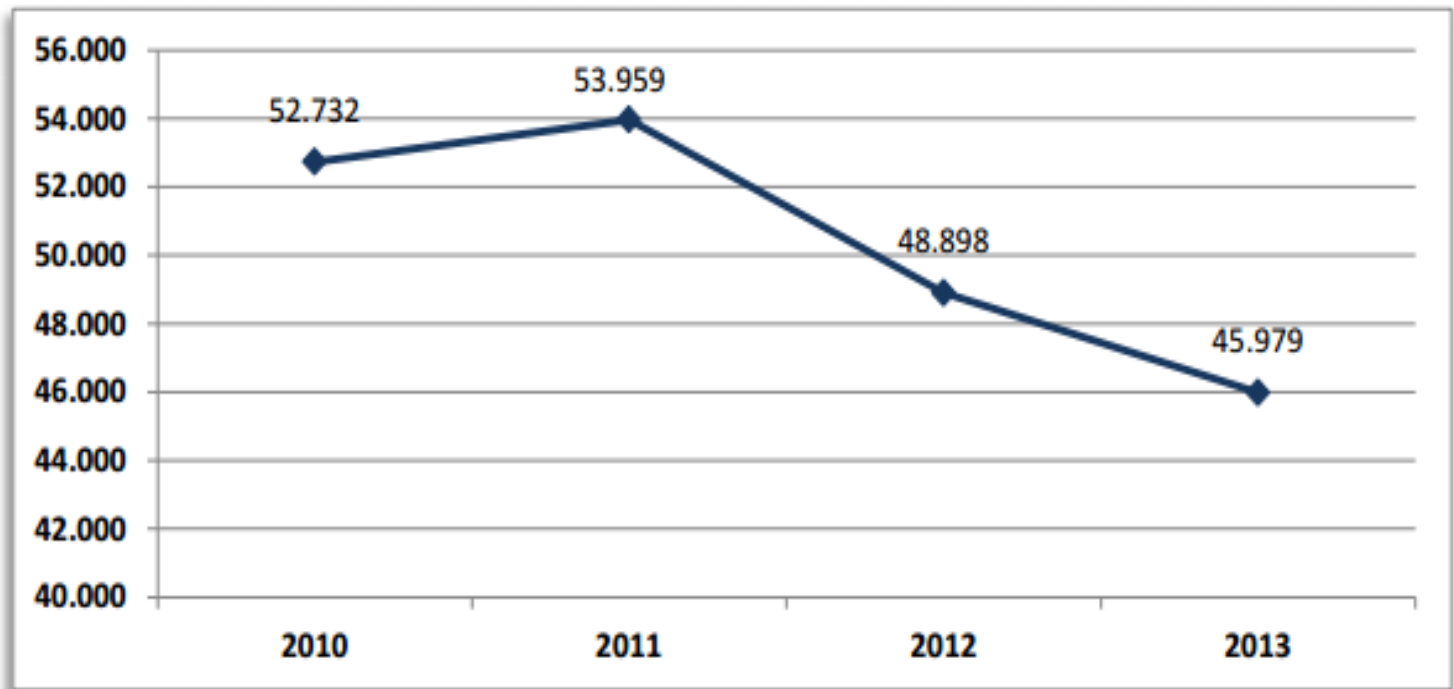
1. General background

- Largest part of new migrants in Belgium based on *family relationship* (through family reunification procedure) – more than 50 % of long term visa issued (2009 : 43.266 visas; 2015 : +/- 15.000):
 - *Marriage*
 - Marriage BE - foreigner
 - Marriage Foreigner-foreigner (usually with person from country of origin; usually larger intake of foreign women than men; no so with labor migration → mostly men)
 - *Children – parents*

II. Acquisition of nationality and migration

1. General background

1.2. Evolution du nombre total de premières cartes pour étrangers ou documents de séjour délivrés dans le cadre du regroupement familial, 2010-2013



II. Acquisition of nationality and migration

1. General background

Impact of migration on nationality law?

- Question : should the law of nationality be *adapted* to population change?
- Main focus of debate : should any room be made for acquisition of citizenship by migrants/children of migrants and, if yes, how?
- Question relevant in light of dominance of acquisition *ius sanguinis* as main acquisition ground in EU (especially Germany, less pronounced in other States) → little room for acquisition of nationality on other grounds (birth in territory / long term residence)

II. Acquisition of nationality and migration

1. General background

- *E.g.* Belgium :
 - Acquisition *ius sanguinis* recognized since 1830
 - 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

- Debate around question whether 'newcomers' should have possibility to obtain local nationality and, if yes, how
- Starting point : realization that *gap* between permanent population and political participation - excluding people born and/or having lived for a long time (and hence socialized) in the country from acquisition of nationality could raise serious concern from liberal-democratic point of view (no taxation without representation)

II. Acquisition of nationality and migration

1. General background

- Very complex debate:
 - Non acquisition of local nationality : is this really ground for exclusion of foreigners given substantial number of 'residence based'- rights - see *e.g.* 2003 Directive on Long Term Resident Third Country Nationals?
 - Possibility to acquire local nationality → increase in number of dual nationals?
 - Risk that allowing acquisition of local nationality could undermine migration/integration policy?

II. Acquisition of nationality and migration

1. General background

- If opening up nationality law to 'newcomers' : 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 grandchildren of 'newcomers'
- Difficulty : grounds of acquisition may sometimes overlap and distinction not always sharp

II. Acquisition of nationality and migration

Outline

- 1. General background
- **2. Acquisition *ius sanguinis* and expatriation**
 - 1st model : limitation to transmission
 - 2nd model : no limitation
 - Nuance : loss of nationality as a limitation
- 3. Acquisition for those not born in country of migration
 - The process - a word on the methods
 - The requirements - diversity
- 4. Acquisition for those born in country of migration
 - Acquisition simple *ius soli*
 - Acquisition double *ius soli*
 - Acquisition at later stage

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?
- Impact on acquisition of nationality through family links? Question relevant for 2nd (or following) generation of 'expatriates' – *e.g.*
 - Child born in Belgium, Moroccan 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

- Question : transmission of nationality to next generations
→ creation of '*paper*' citizens?



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 limitation → 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

- Whatever model: 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

- 1st model : in some countries, limit transmission of the nationality *ius sanguinis* when a family has left the country (of origin)
- e.g. Belgium → transmission *ius sanguinis* only works automatically if the Belgian parent was born in Belgium (art. 8 Belgian CNB) → family history relevant (*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

- 1st model : Belgium (since 1985), Germany (since 2000), Portugal, UK, Slovenia, Cyprus, United States, etc.
- Limitation applies 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

- Why limit transmission?
- *Concern* : 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)
- Limitation accepted by ECN → 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

2. Acquisition *ius sanguinis* and expatriation

- Other example : a child born outside US is a citizen of the US at birth if:
 - Two parents are US citizens and one parent has had residence in the US prior to the birth (8 USC § 1401 c)
 - 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)
 - 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 of family, acquisition may remain *possible* (but not automatic) – *e.g.* :
 - Belgium - Art. 8 § 1, 2, b CNB → acquisition upon 'declaration' at the latest 5 years after birth if child born abroad and Belgian parent born abroad (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

- In those cases : no other requirements for acquisition by child (*ex lege* or following declaration/registration) – in particular no 'test' for parents or for child to verify whether sufficient link with country of origin; no payment; no verification of criminal history of parents or voting records, etc..
- *Quaere* in practice if 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 : what if child becomes *stateless*?
- Some countries : default acquisition to prevent statelessness → nationality of family granted as 'safety net' (*e.g.* Belgium : art. 8 § 1-2 c) CNB, Germany, etc.)
- In other countries : no such default acquisition (yet?) (*e.g.* Portugal, Malta, Ireland, UK)
- State where child is born may offer 'safety net' (attribution of its nationality to children born on its territory who would otherwise remain stateless – see *e.g.* Art. 10 CNB)

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 - acquisition *ius sanguinis* is not limited by 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
- Other countries where acquisition *ius sanguinis* works even after expatriation over several generations – *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

- In those cases, what if child already acquires local nationality? Should acquisition of family's nationality be restricted?
- In general : *no exclusionary rule* → no impact of acquisition *ius soli* on acquisition of (the family's) nationality through *ius sanguinis* (potential for dual nationalities)

II. Acquisition of nationality and migration

2. Acquisition *ius sanguinis* and expatriation

- Nuances to the 2 'models' : need to take into account potential *loss* of nationality
- Even if transmission is possible (automatic *or* following declaration) from a national born outside country of origin to his/her children, ground of loss may limit transmission

II. Acquisition of nationality and migration

2. Acquisition *ius sanguinis* and expatriation

- Illustrations:
 - 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)

- 1. General background
- 2. Acquisition *ius sanguinis* and expatriation
 - 1st model : limitation to transmission
 - 2nd model : no limitation
 - Nuance : loss of nationality as a limitation
- **3. Acquisition for those not born in country of migration**
 - The process - a word on the methods
 - The requirements - diversity
- 4. Acquisition for those born in country of migration
 - Acquisition simple *ius soli*
 - Acquisition double *ius soli*
 - Acquisition at later stage

II. Acquisition of nationality and migration

3. Acquisition for those not born in country of migration

- Other side of migration : may family and family members acquire nationality of their 'new' country?
 - Focus on acquisition by those *not born in country of migration* → acquisition by those who have arrived in country following migration (at early age or later stage)
 - Focus on *individual acquisition* by person concerned (not acquisition as a *consequence* of acquisition by another person - such as parent)

II. Acquisition of nationality and migration

3. Acquisition for those not born in country of migration

- In EU *consensus* to allow acquisition by *first generation* migrants
- Requirements for such acquisition remain *very different* in EU MS
- General tendency
 - Over last decades to make acquisition *easier* – but not all States moving at same speed in this direction
 - Last decade : *new direction* (more focus on 'integration')

II. Acquisition of nationality and migration

3. Acquisition for those not born in country of migration

- In order to review current state of the law :
 - No overview of each country
 - Focus on general questions/principles – cross-section in various national laws to uncover common issues

II. Acquisition of nationality and migration

3. Acquisition for those not born in country of migration

- Focus on several questions :
 - Which ***process*** for acquisition?
 - How ***long*** should foreigner reside in country to be eligible : 3, 5, 7, 10, 15 y.? Shorter period in case of marriage with a citizen? Quality of residence?
 - Requirement to demonstrate '***integration***' (besides long term residence)? How is integration measured?
 - Obligation to ***waive*** original nationality?

II. Acquisition of nationality and migration

3. Acquisition for those not born in country of migration

- 1°) The *process*
- Acquisition following migration : *not automatic* (compare acquisition *ius sanguinis*) → migrant needs to apply
- Application process : different names ('registration'/'declaration'/'naturalisation') and features; sometimes parallel methods in one State

II. Acquisition of nationality and migration

3. Acquisition for those not born in country of migration

- *e.g.* Belgium:
 - *Declaration* (art. 12bis CBN) → various categories; decision by court
 - *Naturalization* (art. 19 CBN) → only for those having 'exceptional merits' – decision by Parliament

II. Acquisition of nationality and migration

3. Acquisition for those not born in country of migration

- Acquisition process – different features :
 - *Who decides?* (acquisition procedure at *local* or *national* level; decided by court / executive branch / legislative branch etc.)
 - *How much?* Fees to file an application (*e.g.* Belgium : non refundable fee of EUR 150 + city taxes; Netherlands : 810 EUR for naturalization)
 - *Accessibility of procedure* – where can applicant obtain application (on/off line)
 - *Documents* (birth certificates, etc.) to be produced by applicants

II. Acquisition of nationality and migration

3. Acquisition for those not born in country of migration

- Acquisition process is *not neutral* – how acquisition procedure is framed may influence outcome (possibility to obtain nationality)
- *e.g.*
 - Discretion ('naturalization')
 - No discretion ('declaration')

II. Acquisition of nationality and migration

3. Acquisition for those not born in country of migration

- Acquisition process without discretion : usually through *administrative* procedure (*e.g.* acquisition through 'declaration' in many countries) - generally characterised by:
 - Request by migrant (no automatic character)
 - Request (by target person or by a legal representative) addressed relevant public authorities
 - Compliance with some requirements
 - Decision made by authorities
 - Presence at 'nationality ceremony' (*e.g.* The Netherlands)

II. Acquisition of nationality and migration

3. Acquisition for those not born in country of migration

- If process without 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 for those not born in country of migration

- Acquisition process with discretion : *e.g.* naturalization
 - 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 for those not born in country of migration

- EUDO Citizenship Implementation Indicators : study measuring how procedure affects acquisition of nationality through 5 indicators:
 - *Promotion*: how much do authorities encourage eligible applicants to apply?
 - *Documentation*: how easy is it for applicants to prove that they meet the legal conditions?
 - *Discretion*: how much room do authorities have to interpret the legal conditions?
 - *Bureaucracy*: how easy is it for authorities to come to a decision?
 - *Review*: how strong is judicial oversight of the procedure?

II. Acquisition of nationality and migration

3. Acquisition for those not born in country of migration

- 2°) The *requirements*
- Comparative analysis difficult – States build their own law on various concepts/categories

II. Acquisition of nationality and migration

3. Acquisition for those not born in country of migration

- In many countries, variety of acquisition methods for those not born in country:
 - *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.)
- In order to make comparison possible : analysis centred on 4 features

II. Acquisition of nationality and migration

3. Acquisition for those not born in country of migration

- **1st element** : Length of required residence
- 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

II. Acquisition of nationality and migration

3. Acquisition for those not born in country of migration

- 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 for those not born in country of migration

- Lack of consensus ... but general trend in the EU to *sharpen* minimum residence requirement

II. Acquisition of nationality and migration

3. Acquisition for those not born in country of migration

- No consensus on required length – but consensus to exclude 'illegal' residence (without residence permit)
- See *e.g.* art. 7bis CNB; art. 6(1) Dutch 'Rijkswet') → access to nationality barred for 'undocumented' aliens and foreigners with weak residence titles (rationale : access to nationality should not help to circumvent migration rules)

II. Acquisition of nationality and migration

3. Acquisition for those not born in country of migration

- When does residence become legal?
Need for 'rock-solid' residence permit?
Or *temporary* residence permit taken into account? Answer may vary from state to state
- Consequence : 2 years of residence in country A could be 1 year in country B...

II. Acquisition of nationality and migration

3. Acquisition for those not born in country of migration

- For acquisition through 'declaration', diversity is also key
- Most cases of 'declaration' : residence not enough, need for another element – *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)

II. Acquisition of nationality and migration

3. Acquisition for those not born in country of migration

- *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 for those not born in country of migration

- **2nd element** : assessment of 'integration' as part of the genuine link?
- General trend in the EU : insistence on integration assessments (usually : 'test' or 'exam') – but not in the same format
- What is tested : language skills, knowing the local 'rules of the game' and economic participation

II. Acquisition of nationality and migration

3. Acquisition for those not born in country of migration

- Assessment of 'integration' as part of the genuine link?
E.g. :
 - Belgium : acquisition by declaration:
 - Before 2013 : integration was *presumed* to exist by mere fact of application
 - CBN 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 for those not born in country of migration

- 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 for those not born in country of migration

- Assessment of 'integration' : also includes '*negative*' assessment, aimed to excluding applicants with bad behavior
- *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

II. Acquisition of nationality and migration

3. Acquisition for those not born in country of migration

- **3rd element** : impact of acquisition on other/former nationality?
 - Belgium : no requirement that applicant waives his / her other nationality (→ tolerance of multiple nationalities)
 - Netherlands : requirement that applicant waives his /her other nationality for naturalization (art. 9 (1) (b) Rijkswet) – but many exceptions (*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 for those not born in country of migration

- 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 for those not born in country of migration

- 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 term residence and ...

II. Acquisition of nationality and migration

3. Acquisition for those not born in country of migration

- Once nationality acquired, 'migrant' may transmit it to his/her children:
 - Parallel/consequential acquisition by migrant's children (*e.g.* Belgium : art. 12 CBN; Netherlands : art. 6 (1)(k) Rijkswet; art. 22-1 French Civil Code)
 - Follow up → acquisition *ius sanguinis* by future children of new national

- 1. General background
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- 3. Acquisition through long term residence
 - The process - a word on the methods
 - The requirements - diversity
- **4. Acquisition based on birth on territory**
 - Acquisition simple *ius soli*
 - Acquisition double *ius soli*
 - Acquisition at later stage

II. Acquisition of nationality and migration

4. Acquisition based on birth on territory

-
- Next question in relation to acquisition of nationality after migration : have States in EU opened up possibility to acquire nationality based on birth on territory? And if yes, under which circumstances?
 - Focus on acquisition *at birth* (or shortly thereafter)

II. Acquisition of nationality and migration

4. Acquisition based on birth on territory

- Recognition of pure & 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 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 only if one of the parents 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) : requirement 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 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

- *Recognition of ius soli* : in various forms and to various extents:
 - Recognition of acquisition double *ius soli*
 - Recognition of acquisition simple *ius soli*
 - Birth on territory only given effect for acquisition as an adult – delayed role (*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

- *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)
- Focus on evolution in '*ius sanguinis* countries' because directly related to migration

II. Acquisition of nationality and migration

4. Acquisition based on birth on territory



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 Europe (not included 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



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



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 NL to a parent who had main habitual residence ('*hoofdverblijf*') in Netherlands at the time of 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 child if birth on 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



B. Simple *ius soli*

- In most countries, simple and double *ius soli* mutually exclude each other – *e.g.*
 - France : double *ius soli* acquisition accepted; no 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 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 § 2 CNB : *possibility* to acquire Belgian nationality - not automatic : parents must make a *declaration* before the child turns 12 y. old
 - Greece : art. 1(a) par. 1: *possibility* to acquire Greek nationality if 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



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 § 2 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



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*

- Exclusion if child obtains 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 – exceptions introduced to '*Optionzwang*' in 2014 : no loss if children have lived in Germany for 8 years, have attended school there for six years : no obligation to choose between 2 nationalities)

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

4. Acquisition based on birth on territory



C. Delayed acquisition after birth

- **Third case** : acquisition by foreigner *born in* country (but did not receive nationality at birth) following long term residence in country of migration
- 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

4. Acquisition based on birth on territory

C. Delayed acquisition after birth



- 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 France - 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

4. Acquisition based on birth on territory

C. Delayed acquisition after birth



- *Quality* of residence (legal title) as a requirement for acquisition?
- Usually not much of concern – applicant born and has lived 18 years in country... must have been able to build up a solid residence status → acquisition of nationality not a tool to circumvent migration rules

II. Acquisition of nationality and migration

4. Acquisition based on birth on territory

C. Delayed acquisition after birth



- 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)
- *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 RWN)

II. Acquisition of nationality and migration

5. Assessment

- Important evolution of European laws (EU15) on nationality under influence of migration
- In many countries with a *ius sanguinis* tradition, change towards a mixed system with some measure of *ius soli*
- In countries with a *ius soli* tradition, limits brought to 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 issue 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

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* – 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
 - 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...

II. Acquisition of nationality

5. Assessment

- Convergence between traditional *ius sanguinis* countries and traditional *ius soli* countries:
 - Traditional *ius sanguinis* countries (e.g. 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

II. Acquisition of nationality

5. Assessment

- Is law of nationality 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*)
 - Practice (most nationality laws are more nuanced, with various elements and policy concerns – ever changing compromise...)

The law of nationality : comparative and international perspective

Patrick Wautelet

Outline

- Introduction
- Acquisition of nationality (within families + impact of migration)
- **Loss of nationality**
 - *Introduction*
 - *Main grounds of loss*
 - *Statelessness*
- Dual nationalities

III. Loss of nationality

1. Introduction - Illustrations

- Mr Spellenberg, a French national, settled in Belgium in 2008, in order to escape what he deems to be the 'horrendous' tax claims made by French State
- After obtaining Belgian citizenship, he would like to abandon his French nationality because he fears France will adopt a new rule extending the reach of its tax rules to nationals residing abroad
- May he *waive* his French nationality?

III. Loss of nationality

1. Introduction - Illustrations

- A German citizen has been residing for 10 years in Belgium and would like to acquire the Belgian nationality
- If she obtains the Belgian nationality by naturalization, will this have any impact on her German nationality?
- What effect will this have on the nationality of her only child, who is 8 y. old, was born in Germany and is also a German national ?

III. Loss of nationality

1. Introduction - Illustrations

- Abdel, born in Belgium out of Moroccan parents, became Belgian citizen at the age of 9 when his father obtained Belgian citizenship
- In Dec. 2014, he went to Syria to fight the Assad regime with a group which later pledged allegiance to '*Daesh*'
- His mother wonders : does Abdel run the risk of losing his Belgian citizenship, which would leave him only with his Moroccan citizenship?

III. Loss of nationality

1. Introduction

- Loss of nationality – '*negative*' side of nationality law
- 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)

III. Loss of nationality

1. Introduction

- Loss of nationality – various cases
 - Voluntary *renunciation*
 - *Punishment* for serious crimes linked to public life (*e.g.* cheating taxes, attempt to overthrow gov't, etc.)
 - When national *embraces* another nationality ('with us or against us')
 - As consequence of *loss of genuine link* with country of origin

III. Loss of nationality

1. Introduction

- Loss of nationality – *who is targeted?*
 - Loss of nationality applicable to *all citizens*
 - Loss of nationality only applicable to '*new citizens*' (those who have acquired nationality after birth?)

III. Loss of nationality

1. Introduction

- *Consequences of loss of nationality?*
 - Loss of *rights* linked to nationality
 - Political rights
 - Travel & residence rights
 - Consequences for *family members* (who may have acquired nationality through family ties)?
 - *Statelessness?* Should State refrain from applying ground of loss if leads to statelessness? 'Right to a nationality'?

III. Loss of nationality

1. Introduction

- Loss of nationality - reality?
- Lack of figures – deficient registration and reporting on loss
- See Eurostat : between 41 and 73 cases of loss for Belgium between 2009 and 2013 – not certain these figures reflect whole extent of loss
- What is known : numbers are *limited*

III. Loss of nationality

2. Main grounds of loss of nationality

A. Introduction

- Distinction between different categories:
 - 'Waiver' : a person gives up his/her nationality
 - *Involuntary* loss (various cases – *e.g.* loss *consequential* on loss by parents)
 - Based on behavior → *deprivation* ('*déchéance*' / '*vervallenverklaring*') - various cases (*e.g.* loss following fraud during acquisition process)

III. Loss of nationality

2. Main grounds of loss of nationality

A. Introduction

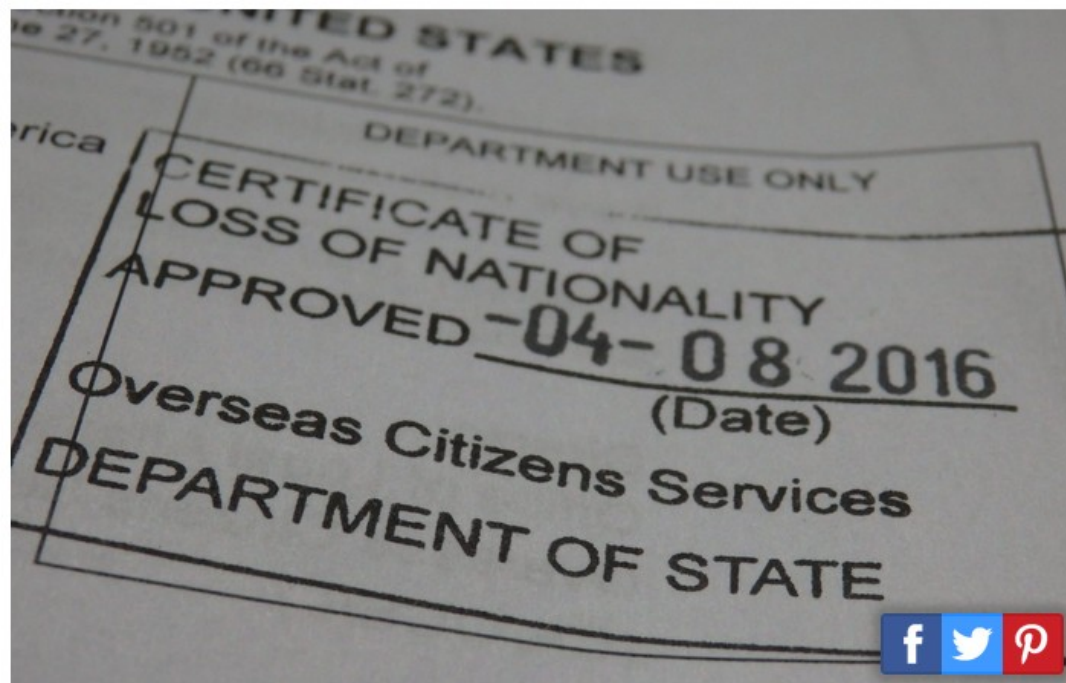
- *Diversity* when looking at national laws : list of grounds of loss may be longer or shorter...
- Analysis based on *most common grounds* of loss
- Reference to Article 7 ECN - State « may not provide in its internal law for the loss of nationality *ex lege* or at the initiative of the State Party except in the following cases...”

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
- Art 8(1) ECN : “Each State Party shall permit the renunciation of its nationality...”

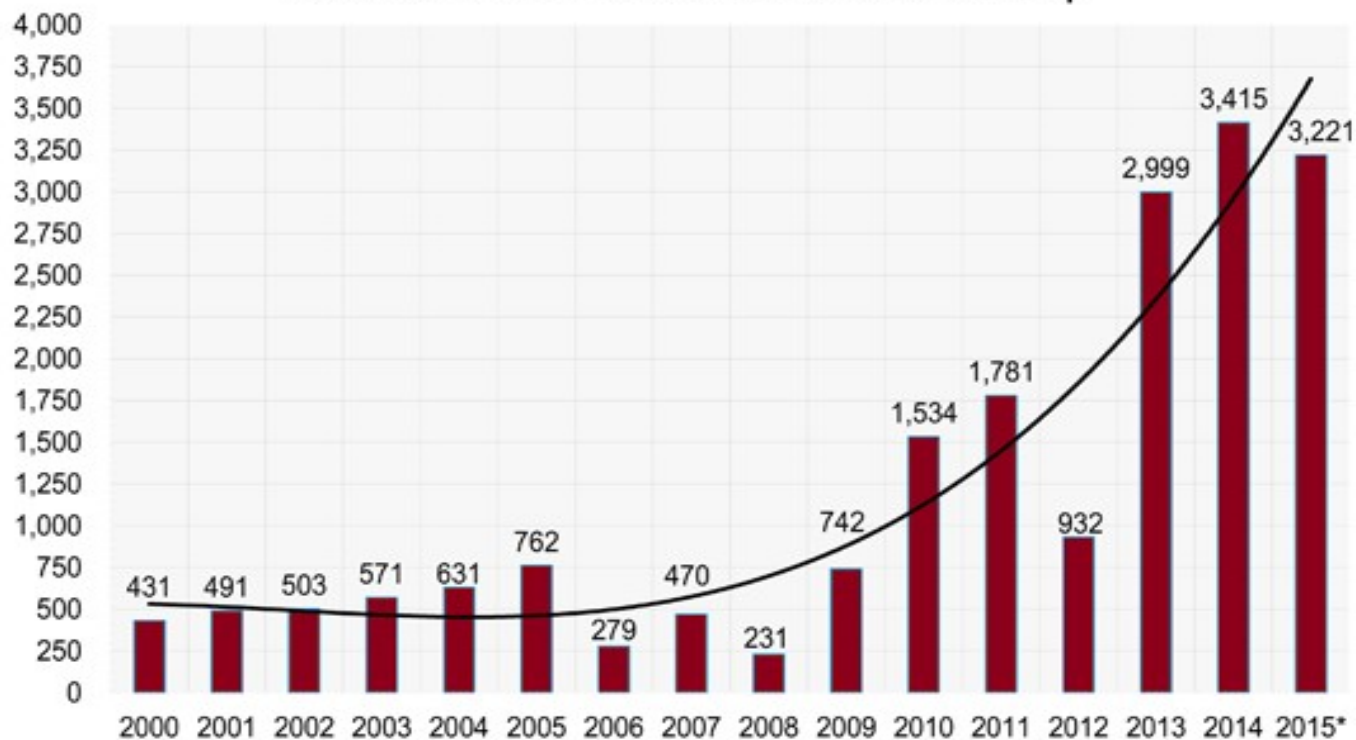


III. Loss of nationality

2. Various cases of loss

B. 1st case : waiver

Americans Who Renounce Their Citizenship



Source: Federal Register *2015 data is through 3Q

 **INTERNATIONALMAN**

III. Loss of nationality

2. Various cases of loss

B. 1st case : waiver

- Do people actually renounce their nationality?
- Limited number of cases
- Most frequent case : waiver to *comply with a waiver requirement* imposed by a foreign nationality law in case of acquisition of that nationality (e.g. § 10-(1)4° German Act – obligation to lose previous nationality when becoming German)

III. Loss of nationality

2. Various cases of loss

B. 1st case : waiver

- Other case : '*repudiation*' → relevant for those who obtained a nationality without asking it
- *E.g.* child obtaining nationality as a consequence of his parents becoming citizen - *e.g.* art. 18-1 French Civil Code

III. Loss of nationality

2. Various cases of loss

B. 1st case : waiver

- Sometimes waiver linked to non-nationality reasons - *e.g.*
 - To avoid tax obligations – *e.g.* Mr Eduardo Saverin, one of the founders of Facebook, abandoned his US nationality shortly before Facebook's IPO (he lived in Singapore) - but State may limit possibility to waive nationality (exclude it or impose 'exit' tax)
 - To avoid military service (must be done *before* military obligation arises)
 - To obtain another advantage (*e.g.* to obtain expatriation allowance)

III. Loss of nationality

2. Various cases of loss

B. 1st case : waiver

- Waiver caught between liberal ideal of *freedom* of individuals and State's concern to keep *control* over their nationals
- → in most countries, repudiation of nationality is subject to various *limitations*

III. Loss of nationality

2. Various cases of loss

B. 1st case : waiver

- 1°) Waiver may require **approval** of highest authority of country - *e.g.*
 - *Morocco* : Waiver 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 (art. 19-4 CNM)
 - *Nigeria*: waiver only effective if declaration is registered by President (section 29 (2) Constitution) - President may withhold registration if “in his opinion, it is otherwise contrary to public policy”

III. Loss of nationality

2. Various cases of loss

B. 1st case : waiver

- 2^o) In most countries, waiver limited to **adults** (Belgium : 18 y. - art. 22 § 1-2^o CNB; Ireland : 18 y. - sect. 21 1956 Act; Nigeria : sec. 29(1) Constitution)
- In some countries → possible for *minors* – *e.g.* 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

- 3^o) Waiver sometimes only available for 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

- 4°) Waiver **excluded** if leads to *statelessness*
- Sometimes waiver is *expressly excluded* if person does not possess any other nationality (*e.g.* Art. 22 § 1, 2 ° 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 → links waiver to acquisition of foreign nationality

III. Loss of nationality

2. Various cases of loss

B. 1st case : waiver

- 5°) Waiver may be ***excluded 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

C. 2nd category

- 2nd category : '*objective*' grounds of loss – loss intervenes without voluntary act of the person concerned aimed at losing nationality
- 2 cases selected :
 - *Disappearance of substantial link* with country of origin
 - *Consequential* loss following loss by the parents

C. 2nd category – objective grounds
1st case : loss of substantial link with
country of origin

- *1st case* : loss of the nationality through *disappearance of substantial link* with country of origin
- Typical case : children, grandchildren and great grandchildren of expatriate
 - Born in country of expatriation; will usually also possess nationality of that country
 - But they have also acquired nationality of father/grandfather/great grandfather (or mother, etc.) *ius sanguinis* while connection with 'home country' grows thinner with the generations

C. 2nd category – objective grounds
1st case : loss of substantial link with
country of origin

- *Rationale* : guarantee that nationals keep meaningful link with country of nationality
- Other solution: limitation in time of acquisition *ius sanguinis* of nationality of country of origin (e.g. Belgium - 3rd generation)

C. 2nd category – objective grounds
1st case : loss of substantial link with
country of origin

- Ground of loss recognized by ECN (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*”
- But does not exist in all States
- *E.g.* : ground of loss is *unknown* in Germany, Italy, Greece, Lxbug, 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”.

C. 2nd category – objective grounds

1st case : loss of substantial link with country of origin

- Features of ground of loss?
- 1^o) **When** does loss occur? When does a person lose 'genuine link'?
- Usually, loss linked to birth outside country of origin *and* not having any meaningful link with this country (2nd generation and following of expatriates) - *e.g.*
 - 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

C. 2nd category – objective grounds 1st case : loss of substantial link with country of origin

- Sometimes, *broader* scope of ground of loss
- *E.g.* Dutch law - art. 15(1)(c) RWN : loss if Dutch citizen
 - Adult
 - Possesses another nationality
 - Resides as an adult during uninterrupted period of 10 y. outside Netherlands/EU

C. 2nd category – objective grounds

1st case : loss of substantial link with country of origin

- 2°) '**Silent loss**' – loss operates *ex lege* without any notice to the person concerned → can go unnoticed for a long time (but see France : loss only if court so decides, art. 23-6 Civil Code)
- 3°) Only applicable for '**adults**' (Belgium : 28 y. old - art. 22 § 1 (5°) CBN : person born abroad *and* uninterrupted residence outside Belgium between 18 y. and 28 y.) Sweden : 22 y. old (Sect. 14 A Swedish Act); Spain : when attaining majority (art. 24(3) Civil Code), etc.

C. 2nd category – objective grounds 1st case : loss of substantial link with country of origin

- 4°) **Permission** to retain citizenship if
 - Application (*e.g.* Belgium : see art. 22 § 1, 5° 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 declarations in 2011...
 - Link with the home country (*e.g.* professional link – sect. 14A(3°) Swedish Act; Belgium : residence abroad 'in service of the State' (civil service, directly or indirectly for Belgian government; or employment by a 'Belgian' company or association))

C. 2nd category – objective grounds
1st case : loss of substantial link with
country of origin

- 5°) 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

C. 2nd category – objective grounds

1st case : loss of substantial link with country of 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 BE passports
- In Dec. 2006, Belgian embassy in Australia refuses to renew Belgian passports, arguing that two sons have lost their Belgian nationality (art. 22 § 1 – 5 ° CNB)

C. 2nd category – objective grounds

1st case : loss of substantial link with country of origin

- Application of art. 22 § 1 – 5 ° CNB is controversial → sons argue that they have no other nationality (hence no loss of Belgian nationality if because would lead to statelessness – art. 22 § 3 CNB)
- 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 → hence they may lose Belgian citizenship

C. 2nd category – objective grounds
1st case : loss of substantial link with
country of 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 (→ 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?

C. 2nd category – objective grounds

1st case : loss of substantial link with country of origin

- Application of *Rottmann* ruling?
 - Situation falls within the ambit of EU law (→ loss of nationality will lead to loss of European citizenship)
 - Freedom of each MS to lay down the conditions for the acquisition and loss of nationality but MS must have 'due regard to Community law' when exercising their powers in the sphere of nationality
 - Withdrawal of nationality if loss of 'genuine link'? Most probable that ECJ will recognize that withdrawal is *legitimate*
 - Principle of proportionality? Free movement?

C. 2nd category – objective grounds

2nd case : consequential loss for children

- Most children hold nationality from their parents (acquisition *ius sanguinis*)
- What happens if:
 - Person who served as 'source' for acquisition *ius sanguinis* of a nationality, lose his/her nationality → also loss for beneficiary of acquisition *ius sanguinis*?
 - Family relationship which was foundation of transmission of nationality, disappears? → loss of nationality acquired *ius sanguinis*?

C. 2nd category – objective grounds

2nd case : consequential loss for children

- 1st scenario : Martin, born in 1999 in Belgium, is the son of Marie (France) and Andriy (Ukraine)
- Andriy waives his Ukrainian nationality in 2015, after obtaining Belgian citizenship
- Does Martin also lose his Ukrainian nationality?

C. 2nd category – objective grounds

2nd case : consequential loss for children

- *Extension* as ground of loss exists in some countries (*e.g.* Belgium, Lxbug or Turkey) → mirror image of acquisition *ius sanguinis* : if persons acquire their nationality by virtue of a link with their parents, nationality can also be lost when the parents' nationality disappears
- 'Extension' of loss from parents to the children tolerated by ECN (Art. 7(2))

C. 2nd category – objective grounds

2nd case : consequential loss for children

- 'Extension' of loss from parents to the children *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*”)

C. 2nd category – objective grounds

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° CBN) or lost it by non exercise (art. 22 § 1-6° CBN)
 - 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

C. 2nd category – objective grounds

2nd case : consequential loss for children

- Usually only applicable until child reaches age of 18 y. – 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)

C. 2nd category – objective grounds

2nd case : consequential loss for children

- 2nd scenario : 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 (Belgian citizen) → if court upholds challenge, Martin is no longer the son of Jan, but Pierre's son – loss of German nationality?

C. 2nd category – objective grounds

2nd case : consequential loss for children

- In some countries, consequential loss possible (see *e.g.* art. 8 § 4 Belgian CNB and art. 20-1 French Civil Code – *a contrario*) → *hidden* ground of loss
- 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”
- If loss possible : only applicable to *underage* children

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

- **Behavior of person** can also be source of loss of nationality
- Distinction between:
 - Loss because of behavior *before* acquisition ('acquisition fraud')
 - Loss because of behavior *after* 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

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

- Loss linked to behavior often only applicable to '*new*' nationals - see *e.g.*
 - Art. 23, 23/1 and 23/2 CBN : 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...*”

D. 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))

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

- What type of fraud?
- 'Acquisition fraud' : 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'

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

- Different cases in practice :
 - *Identity fraud* (concealment of real identity – name, age, etc.)
 - 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*)

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

- Application 1 : *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 when applying for asylum
- Stripped out of her nationality by the Dutch Minister (art. 14 § 1 RWN) before Minister reversed its decision

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

- Application 2 : *Rottmann* case : Austrian citizen becomes German by naturalization but neglects to inform the German authorities during process of naturalization about criminal investigation opened against him in Austria (which explained why he left Austria and settled in Germany...) → Germany wants to strip him of his newly acquired German nationality

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

- How does loss work?
- 1°) 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”)
- 2°) 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)

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

- 3°) ***Statute of limitations*** ? Switzerland : 5 years after acquisition of nationality; Netherlands : 12 y. (art. 14 (1) RWN), Spain : 15 y.
- 4°) 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

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

- 5°) *Statelessness?*
- In case of fraud, loss also possible in most countries if leads to *statelessness* (ECN tolerates this) - but some States have not accepted loss in this case (France or Lxbg : statelessness prevention rule)

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

- [2nd case](#) : loss because of conduct *after* one became a national
- Two main grounds :
 - Loss if 'seriously prejudicial behavior'
 - Voluntary acquisition of other nationality

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

- 1st scenario : loss if 'seriously prejudicial behavior'
- Classically refers to serious acts directly linked to citizenship, such as treason, disloyalty, etc. - see *e.g.*
 - Art. 17(1)(b) Greek act : loss if 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...*”
 - Art. 7(1)(d) ECN : “conduct in a manner seriously prejudicial to the vital interests of the State Party” – *e.g.* active collaboration with the enemy at time of war
- This type of ground of loss has been around for long

D. 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, 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 15.000 French nationals of their nationality, 7.000 of them were Jews)

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

- Next to arbitrariness, also problem of *legal certainty*
- *e.g.* Application of loss on ground of “serious breach of obligations as a Belgian citizen” (art. 23 par. 1-2° CNB – old version) to withdraw Belgian citizenship of e.g. a person of Tunisian origin, who became Belgian citizen by virtue of his marriage to a Belgian citizen and has been convicted for activities linked to terrorism – but not terrorism in/against Belgium, terrorist activities in Afghanistan – or recruiting in Belgium persons to send them to Afghanistan → predictable given legal basis?

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

- Ground of loss often only applicable to 'new' nationals
- 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?

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

- Recent evolution of loss linked to 'seriously prejudicial behavior' : extension to other acts - e.g. extension 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 CBN 2013) / terrorism (art. 23/2 CBN)

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

- 2nd scenario : voluntary acquisition of foreign nationality → see discussion of 'double/multiple nationality'

III. Loss of nationality

3. 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

3. Statelessness

A. *A right* to have a nationality?

- A 'right' to have a nationality?:
 - In some contexts, *limited relevance* of question since one may enjoy rights without being a national (see above)
 - Even if 'human right' to nationality, much would still depend on *content* of the status, i.e. rights associated to nationality (nationality as a key to limited number of rights or large number of entitlements)

3. Statelessness

A. *A right to have a nationality?*

- Position of 'stateless', however, certainly not comfortable – *e.g.* no right to vote, no right to travel, access to education may be severely impaired, etc.
- In some situations, stateless could even be threatened
- Hence question : is right to have a nationality a *human right?*

3. Statelessness

A. A *right* to have a nationality?

- 1°) International law does **not** firmly support an absolute right to a nationality (and certainly not a right to have nationality of its *choice*)
- 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”

3. Statelessness

A. A *right* to have a nationality?

- 2°) Important caveat : right of *children* to acquire a nationality more firmly supported – *e.g.*
 - art. 24(3) ICCPR (1966)
 - art. 7(1) and 8(1) UN Convention Rights of Child (1989)
 - Art. 29 UN Convention on the Protection of the Rights of Migrant Workers (“Each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality”)

3. Statelessness

A. A *right* to have a nationality?

- 3°) Other caveat : *indirect* impact of other fundamental rights – e.g. ECHR: “A “*right to nationality*” *similar to that in Art. 15 of the Universal Declaration of HR 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” (ECtHR, *Slivenko* Dec 2002; ECtHR *Karanev*, Jan 1999)

3. Statelessness

A. A *right* to have a nationality?

- 4°) International law provides 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
- Practical consequences of this obligation?

3. 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 – mainly for *children*
- See art. 1 1961 Convention - “A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless” → two cases

3. Statelessness

A. A *right* to have a nationality?

- **1st situation** : acquisition if birth on territory when infant is *found in State* – close to acquisition *ius soli* (but no guarantee that the child was born on the territory - or that his parents were nationals...)
- Acquisition ground widely accepted : *e.g.* art. 10 CBN, sect. 4-2° German Act, art. 19 French Civil Code; art. 6 § 1 b Eur. Conv. Nationality
- Int'l law also supports such acquisition : *e.g.* 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”) and art. 2 1961 Convention

3. Statelessness

A. *A right to have a nationality?*

- 2nd situation : 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
- See art. 1(3) 1961 Convention : “... a child born in wedlock in the territory of a Contracting State, whose mother has the nationality of that State, shall acquire at birth that nationality if it otherwise would be stateless”

3. 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*”

3. Statelessness

A. *A right to have a nationality?*

- Caveat:
 - Could lead to *provisional* acquisition of nationality (see *e.g.* art. 10 CBN)
 - 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.) - see *e.g.* art. 10 CNB

3. Statelessness

A. *A right to have a nationality?*

- [2nd consequence](#) : obligation to avoid « *as much as possible* » cases of statelessness → linking loss of nationality to existence of another nationality to avoid statelessness
- See artt. 5, 6 and 7 of 1961 Convention:
 - Art. 5 : If the law of a Contracting State entails loss of nationality as a consequence of any change in personal status of a person (marriage, termination of marriage, legitimation, recognition or adoption), such loss shall be *conditional* upon possession or acquisition of another nationality
 - Art. 7 : If renunciation of nationality allowed, such renunciation shall not result in loss of nationality unless the person concerned possesses or acquires another nationality

3. Statelessness

A. *A right to have a nationality?*

- However, principle is *not absolute*:
 - Some states have 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

3. Statelessness

A. *A right to have a nationality?*

- One case where loss may occur even if this leads to statelessness : *fraud*
 - Art. 7(3) ECN : No loss of nationality if leads to statelessness except if acquisition of the nationality of the State Party by means of fraudulent conduct, false information or concealment of any relevant fact
 - Art. 8 1961 Convention : prohibition to deprive a person of its nationality if this would make him stateless but a person may nonetheless be deprived of its nationality even if become stateless “2. (b) where the nationality has been obtained by misrepresentation or fraud”

3. Statelessness

B. How does one become stateless?

- International law does not offer fully 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)
 - According to UNHCR, more than 10 millions persons stateless in the world
 - How does one become stateless? Various cases

3. Statelessness

B. How does one become stateless?

- **1st case** : Loss of nationality
 - Rare occurrence – in general, no loss of nationality if no other nationality
 - Different if loss decided for political motives, *e.g.* Kurds of Syria : massive loss of nationality in 1960's decided by Syrian gov't
 - Exceptional case : loss leading to statelessness – *e.g.* long time residence outside country in Ouzbekistan - every 5 years, Ouzbek resident outside Ouzbekistan must register with consulate to prevent loss of nationality – art. 21-2 law on citizenship → forfeiture of citizenship

3. Statelessness

B. How does one become stateless?

- *2nd case* : child *born* stateless - *e.g.*
 - Child born in a country where nationality is only acquired *ius sanguinis*, with foreign parents whose nationality can only be transmitted *ius sanguinis* provided the child born in country of origin (exceptional)
 - Child born to father not married to the mother, who cannot transmit her nationality to the child, etc.

3. Statelessness

B. How does one become stateless?

- **3rd case** : following *State succession* or other problems of boundaries (particularly in those successor states that adopt principle of *ius sanguinis* as exclusive or predominant principle in granting nationality) → most cases of statelessness today

3. 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)

Nationality Law

3. 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

3. 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 and new Russia created
- 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 (status of 'non-citizen') – but impact on right to participate in political life (though right to vote in local elections)

3. 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 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

Nationality Law

3. 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 two laws, so that many people could end up without any of the two nationalities
- Nationality Law

3. 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', 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* »)

3. 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 decides that applicant may request status of stateless

3. 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) signed, nor ratified by Belgium...

3. Statelessness

C. Legal regime of statelessness

- What is *status* of statelessness?
- **1st step** : person concerned must request to be recognized stateless. Decision sometimes by *courts*, sometimes by *executive* – *e.g.*
 - in Belgium : court procedure (before the *Court of First Instance*) – no intervention of the executive branch (but government can assist court by providing information on foreign nationality)
 - In France, decision by executive agency, *Office français de protection des réfugiés et apatrides* (appeal before administrative court)

3. Statelessness

C. Legal regime of statelessness

- ***Test*** : demonstration 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

3. 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”

Nationality Law

3. Statelessness

C. Legal regime of statelessness

- Status of residents of Kosovo has changed many times :
 - 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

3. 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

3. Statelessness

C. Legal regime of statelessness

- 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, nationality is ineffective because they are unprotected by State of their nationality

3. Statelessness

C. Legal regime of statelessness

- Status of statelessness implies '*negative evidence*' ('I have no nationality') - 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
- Two sons raised in Australia and have never lived in Belgium

3. Statelessness

C. Legal regime of statelessness

- 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)

3. Statelessness

C. Legal regime of statelessness

- 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?

3. Statelessness

C. Legal regime of statelessness

- Once recognized, what is *status*?
- 1954 UN Convention on Statelessness : objective is to “assure stateless persons the widest possible exercise of these fundamental rights and freedoms”
- Adopted after WWII – millions of refugees and persons whose status is unclear after turmoil of war
- Many provisions of Convention (*e.g.* obligation of Contracting States to apply provisions of Convention without discrimination as to race, religion, etc. (art. 3); obligation to respect freedom of religion of stateless persons (art. 4); right of access to court (art. 16)) → trumped by general human rights obligations of States

3. Statelessness

C. Legal regime of statelessness

- Other elements of the status :
 - 1°) Family matters may be solved more easily thanks to application of the law of *domicile* (UN Convention of 1954 - Art. 12-1)
 - 2°) Possibility to benefit from 'fast track' acquisition of local nationality – art. 32 of 1954 Convention :
Contracting States shall “*as far as possible facilitate the assimilation and naturalisation of stateless persons...*”
(*e.g.* Art. 19 CBN)
 - 3°) Possibility to obtain identity and travel documents – artt. 27 and 28 1954 Convention

3. Statelessness

C. Legal regime of statelessness

- Other elements of the status :
 - 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'. But protection against deportation and removal (see art. 26 1954 Convention)
 - 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)

Nationality Law

The Law of Nationality

IV. Multiple nationalities

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

1. Introduction

- Ms. Eva Joly, candidate for 2012 French presidential election, holds French *and* Norwegian nationalities : does her dual nationality constitute an obstacle to her election?
- 220.783 persons living in US & born in US out of Belgian parents (1990 US census) : great number probably possess dual Belgian – US nationality → practical consequences and difficulties for persons concerned?
- Dual nationality as a protection in case of crisis?
 - 2010 : large increase in number of Belgian nationals seeking to obtain Luxemburg nationality (see www.youtube.com/watch?v=HTtntyBHdjs)
 - 2016 : increase in number of British citizens living in Belgium seeking to obtain Belgian nationality

1. Introduction

- First step : why/when do people hold dual nationalities? Analysis of *reasons* behind situations of multiple nationalities
- Second step : Analysis of *policy* of States towards multiple nationalities
- Third step : *Evolution* of the attitude towards multiple nationalities

2. Multiple nationalities - the roots

- No figures available for Belgium (since May 2008, possibility to register multiple nationalities in the '*Registre national*')
- Between 2000 and 2012, 569.000 '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)

2. Multiple nationalities - the roots

- Common thinking : dual nationals are *foreigners* who acquired local nationality / *locals* who acquired foreign nationality → linked to idea that one single provision in nationality law deals with multiple nationality



2. Multiple nationalities - the roots

- Common thinking only true to a limited extent
- Reality : multiple realities behind multiple nationalities → various situations leading to acquisition of several nationalities / multiple nationality cannot be caught by a single provision of nationality law

2. Multiple nationalities - the roots

- (1) Most common scenario : dual national at birth following transmission by parents
- Transmission of nationality *ius sanguinis a patre & a matre* : confirmed principle in Europe – combined with the fact that marriage has no (longer) an automatic influence on nationality

2. Multiple nationalities - the roots

- (1) Transmission of nationality *ius sanguinis a patre* and *a matre* :
 - *e.g.* child born in Belgium, French mother & Belgian father – child acquires two nationalities *ius sanguinis* (cannot be lost even if residence abroad)
 - *e.g.* child born in Belgium, Dutch father & Moroccan mother born in Belgium, who acquired Belgian nationality when turning 18 y. (without loss of her Moroccan nationality) : child possesses Belgian, Dutch & Moroccan nationality

2. Multiple nationalities - the roots

- (2) Increased possibility to acquire nationality *ius soli* (simple and double *ius soli* recognized in increasing number of States) combined with acquisition *ius sanguinis*

2. Multiple nationalities - 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 : child obtains US, French & Belgian citizenship (caution : loss of Belgian nationality is possible at the age of 28)

2. Multiple nationalities - the roots

- *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*

2. Multiple nationalities - 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.)
 - Caveat: requirement of waiver in Germany, the Netherlands, etc.

2. Multiple nationalities - 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)

2. Multiple nationalities - the roots

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

2. Multiple nationalities - the roots

- State could have **mixed position** towards multiple nationalities – *e.g.*
 - *tolerate* that its nationals also possess another nationality if acquired *ius sanguinis* at birth (this is a general principle : Art. 14 ECN : “A State Party shall allow: a children having different nationalities acquired automatically at birth to retain these nationalities...”)
 - but *discourage* or even reject voluntary acquisition of foreign nationality by its citizens

2. Multiple nationalities - the roots

- *Eg* – Germany and dual nationality:
 - Principle : clear rejection of dual nationalities
 - § 10(1)(4) German law : acquisition of German nationality only if loss of previous nationality (but many exceptions in § 12)
 - § 25 German law : in principle, voluntary acquisition of a foreign nationality by German citizen leads to loss of German nationality (but many nuances – *e.g.* acquisition of nationality of EU MS)
 - However : Germany tolerates dual nationalities if acquired *ius sanguinis* by a child

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

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.

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.

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'

3. Multiple nationalities - how do States react?

- Attitude of States towards multiple nationalities?
- Dual analysis
 - *International law* – international community (focus on Europe)
 - *Selected States* (caveat : attitude of States may *evolve* over time)

3. Multiple nationalities - how do States react? – in Europe

- Until WWII : in general *negative* attitude
- *E.g.* 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*”

3. Multiple nationalities - how do States react? – in Europe

- Art. 6 Hague Convention of 12.04.1930 : *“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...)

3. Multiple nationalities - how do States react? – in Europe

- After WWII : at first sight *no change*
- *e.g.* 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* »

3. Multiple nationalities - how do 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”

3. Multiple nationalities - how do 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)

3. Multiple nationalities - how do States react? – in Europe

- First sign of change : 2nd Protocol 1993 : amendment of 1963 Convention
 - Loss of nationality still the rule in case of voluntary acquisition of another nationality
 - But possibility to keep original nationality in 3 cases

3. Multiple nationalities - how do 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

3. Multiple nationalities - how do States react? – in Europe

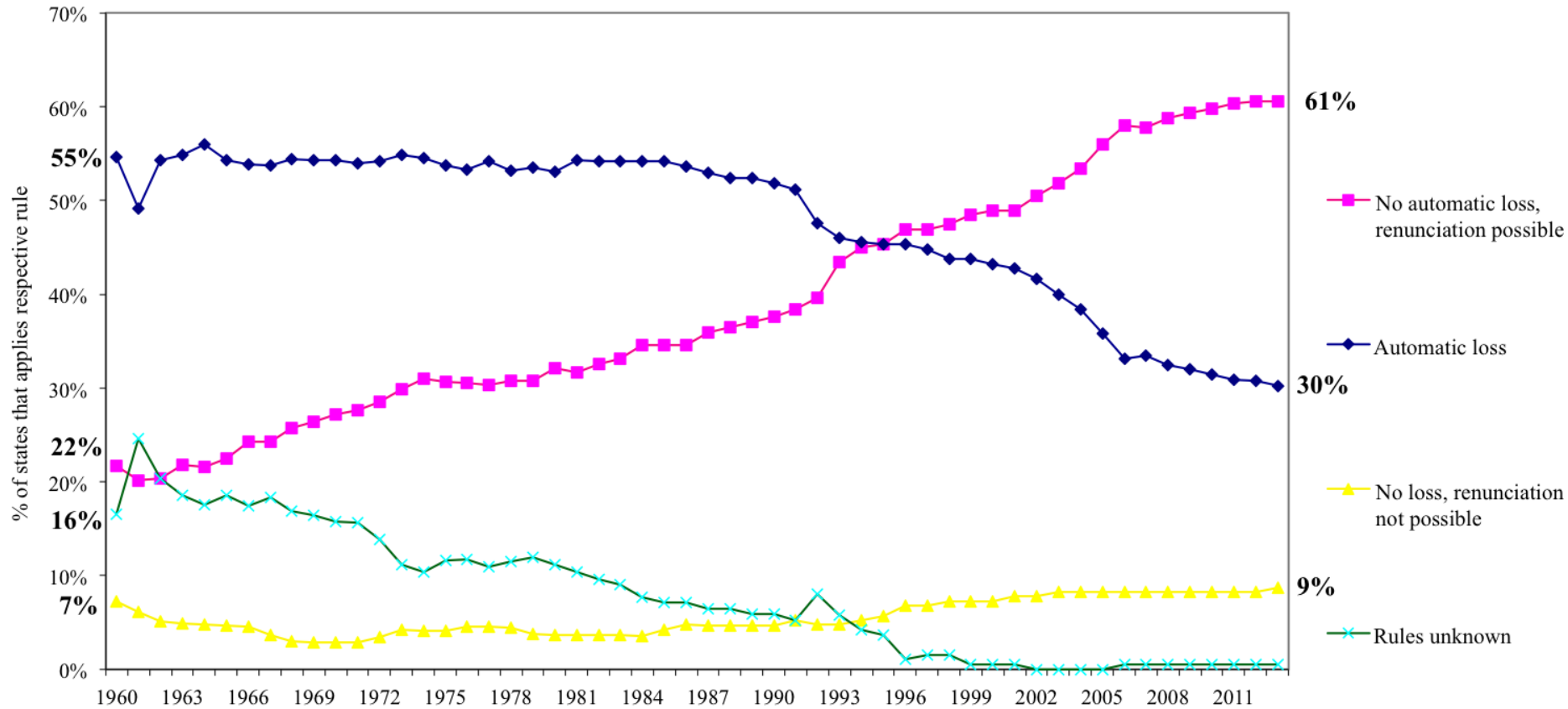
- Another step : 1997 European Convention on Nationality : mixed (or 'neutral') attitude on multiple nationalities, to accommodate diversity among Council of Europe Members
- On the one hand, ECN provides that States *must* allow multiple nationalities when acquired *ex lege* (e.g. children having different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

3. Multiple nationalities - how do 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 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

3. Multiple nationalities -

Worldwide rules on loss of citizenship after voluntary acquisition of other citizenship (1960-2013)



Source: Vink, De Groot and Luk (2013)

4. Multiple nationalities - Selected States analysed

- How do States react to 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

4. Multiple nationalities - Selected States analysed

- Crucial issue : analysis of dual nationalities only possible if looking at **2 States**
- Law of dual nationality : rules of States do not operate in isolation, they are *interdependent*

4. Multiple nationalities - Selected States analysed

- Interactions between nationality laws
 - 1°) Local law may make acquisition of local nationality dependent on loss of foreign nationality (*e.g.* is a French national required 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)

4. Multiple nationalities - Selected States analysed

- 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?

4. Multiple nationalities - Selected States analysed

- 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)

4. Multiple nationalities - Selected States analysed

- 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

4. Multiple nationalities - 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

4. Multiple nationalities - Selected States analysed

A. Belgium

- 1°) Relatively large possibility for foreigners to acquire Belgian nationality (simple and double *ius soli*, acquisition through declaration if residence and integration requirement – overall, Belgian law remains generous, at least for some categories of foreigners)

4. Multiple nationalities - 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 acquerrait une nouvelle*”)]

4. Multiple nationalities - 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]

4. Multiple nationalities - 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 if born abroad (residence abroad between 18 – 28 y. - art. 22 para. 1-5 CNB)

4. Multiple nationalities - 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

4. Multiple nationalities - Selected States analysed B. The Netherlands

- 2°) Waiver of original nationality is a *requirement* for acquisition of Dutch nationality (art. 9 § 1 (b) RWN)
- But many exceptions (art. 9 § 3); and no requirement of waiver for acquisition through '*option*'

4. Multiple nationalities - 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)

4. Multiple nationalities - 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

4. Multiple nationalities - Selected States analysed Belgium / The Netherlands

	Belgium	Results?	Netherlands	Results?
Acquisition				
- By foreigners → Waiver of other nationality?	Broad No	→ ground for MN	Moderate 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				

4. Multiple nationalities - Selected States analysed C. Italy

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

4. Multiple nationalities - 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

4. Multiple nationalities - 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.)

4. Multiple nationalities - Selected States analysed C. Italy

- In the 1990's : successive 'reacquisition programmes' : easy procedure for foreigners of Italian origin to recover Italian passport (art. 17 Act)
- 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)

4. Multiple nationalities - Selected States analysed C. Italy

- 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)

4. Multiple nationalities - 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)
- Italian passport → key to EU citizenship with free movement rights in the EU (see case *Micheletti*)

4. Multiple nationalities - 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?

4. Multiple nationalities - 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 infants without parents

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

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

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)

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'

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 door to additional entitlements (*e.g.* Moroccan-Belgian national : right to reside in two countries)

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)

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

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 country of ‘adoption’

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)

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 right to vote, or can only exercise this right under specific circumstances (which may serve as 'filter' —> only the motivated will vote)

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)

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

A. Issue of equality

- Only potential differential treatment for dual-nationals : family law – however :
 - Dual nationals are treated as nationals only if possess local nationality (*e.g.* French-Italian national living in Belgium or France)
 - In any case, public policy as mechanism to limit application of foreign law

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)

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

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?”

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 reasons for persistence of nationality of country of 'origin' (of the family) on top of local nationality

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

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 longer ground of loss - 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?

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

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 voluntary 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

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')

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

B. A barrier to integration?

- Reason for change in Uganda?
- Growing recognition that 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?

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/she is a national?

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).*

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.

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,...)

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 debate 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) – but '*Optionzwang*' weakened in 2014

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

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?

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?

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...