

Seminar on nationality law

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Outline

- Introduction + 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

1. Introduction : 5 questions

- 1st) What is nationality?
- 2nd) What is nationality law? Difference between nationality law proper and consequences of nationality
- 3rd) How to study nationality law?
- 4th) Terminology
- 5th) Sources of nationality law

1. Introduction : 1st question

- What is nationality?
- General definition : “Membership in a state” (Joppke - *Arch. Eur. Sociol.*, XLIV, (2003) 429)
- More sophisticated definition « Nationality is a legal bond having at its basis a social fact of attachment, a genuine connection of existence, sentiments and interests together with the existence of reciprocal rights and duties » (ICJ – *Nottenbohm* – 1955)

1. Introduction : 2nd question

- What is nationality law?
- Nationality law : legal discipline comprising rules on acquisition and loss of nationality – *e.g.* how does one become a French citizen, how may one lose German nationality?
- Nationality law does *not* in itself determine what are the consequences of nationality

1.2. What is nationality law?

- Consequences and effects of nationality are determined by other legal disciplines (e.g. public law : right to vote)
- In that sense, nationality is a '*framework legal relationship*' (de Groot : "*Kopplungsbegriff*") – it does not establish or grant rights / duties to individuals concerned, but merely represent a necessary condition for the entitlement to these rights / duties (as laid out in other legal disciplines)
- Difference between '*Staatsangehörigkeit*' (i.e. a status) and '*Staatsbürgerschaft*' (i.e. a set of rights and duties)

1.2. What is nationality law?

- Before studying the formal rules on acquisition and loss, it is important to have a minimal understanding of the consequences / effects of nationality (even though these consequences / effects are *not* as such the subject of nationality law)
- Study of nationality law becomes more relevant (and is probably more appealing) when one considers consequences / effects of nationality
- Consequences and effects of nationality are determined by other legal disciplines

1.2. Consequences of nationality

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

1.2. Consequences of nationality

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

1.2. Consequences of nationality

- Nationality is in principle *not* relevant for:
 - Possibility to obtain assistance from the State and public authorities (*e.g.* police; assistance from welfare agencies – but certain social security benefits / entitlements may be reserved to nationals)
 - Local voting rights (at least in the EU)
 - Payment of taxes... (in some countries, tax jurisdiction is nationality sensitive, see USA)
 - Fundamental rights (*e.g.* right to marry, right to life etc.)

1.2. Consequences of nationality

- On balance:
 - Limited direct impact of nationality (mainly in the public sphere)
 - However, indirect impact of nationality and nationality law in many fields

1.2. Consequences of nationality

- Since consequences of nationality are found in various other disciplines, nationality law cannot be considered on its own. It must be considered together with other fields (such as family law, international law, administrative law, etc.) - two examples
 - Nationality and *public law* : nationality as a key to exercise political rights
 - Nationality and (*int'l*) *family law* : Belgian citizen governed by Belgian law for family law issues?

1.2. Consequences of nationality

- In most cases, issue of nationality is a *preliminary* issue in much larger question

E.g. may X vote in general elections?

E.g. child born in 1962 in the US out of American mother, raised in the belief that Mr. Y, a Belgian national married to another woman, is the father. When Mr. Y dies, child claims part of Mr. Y's estate

1.2. Consequences of nationality

- Issue of nationality is often a 'preliminary' question:
In order to determine whether the child is entitled to part of the succession, one should first decide whether there is a legally recognized parentage link. In order to do so, application of the *national law* of alleged father. What if Mr. Y has become US citizen in 1970 – preliminary question of nationality : has Mr. Y lost Belgian nationality when becoming US citizen? If not, which nationality prevails?

1.2. Consequences of nationality

- When one considers consequences of nationality, cannot escape the fact that these consequences have in practice greatly *decreased* over the last 50 years (mainly as a consequence of EU integration, changes in political context and rise of human rights)
 - _ Nationality used to be the key for entitlement to a great number of rights (*e.g.* access to public offices and exercise of political rights or even the right to be a member of an association – see old Belgian statute on 'ASBL')
 - _ Nowadays nationality has lost a substantial part of its importance

1.2. Consequences of nationality

- Consequences of nationality have in practice greatly *decreased* over the last 50 years : this has led to rise of the 'postnational membership' model (Soysal) – which attempts to describe the fact that fundamental (social, civic and sometimes even political) rights are not tied to a person's formal citizen status, but instead to his/her residence status or to his/her person

1.2. Consequences of nationality

- Two main fields where nationality remains crucial :
 - Access to territory
 - Full exercise of political rights (in particular right to be elected)
- In practice, for these two issues, Belgian nationality is not the only one relevant. In fact any EU nationality will do to obtain access to Belgian territory or exercise (certain) political rights. This does not mean, however, that nationality is subject to European rules (see later)

1.2. Consequences of nationality

- In practice, nationality remains important for other, less straightforward reasons:
 - *Psychological* element (sense of belonging to a community – not being a 'foreigner' or a 'guest')
 - Reaction of the community and others (even with long term residents who may have been born in Belgium : “are you a Belgian or a foreigner?”)

1. Introduction : 3rd question

- How to study nationality law?
- Nationality is closely linked to various other legal disciplines... but perspective of this seminar : nationality law *as such* :
 - I. Not so much the *content* of the status (of citizen)
 - II. Rather the way this status is attributed, determined and lost (citizen or not)

1.3. How to study nationality law?

- Perspective used for this seminar : comparative and int'l / European law of nationality
- Some attention to the *interplay with migration law / practices* - which has gained importance over last 20 y. : many changes in nationality law have been directly inspired by migration policies

1.3. How to study nationality law?

- *e.g.* two recent reforms in France of access to citizenship by foreign spouses - following family reunification : restriction of this privileged access to citizenship (with special requirements *re* duration of marriage, joint household, legal residence conditions, etc.) following rise in number of applications → nationality law clearly under the influence of migration policy

1.3. How to study nationality law?

- Primary perspective for this seminar : *legal* one
- However, some attention to what other disciplines (social sciences) have brought to nationality:
 - I. 'Sociology' of (comparative) nationality law : explanation of changes in legal framework by looking at *social* factors (change in demography, new waves of migration, etc.)
 - II. Political sciences : rise of liberal-democratic values, which put emphasis on congruence between the subjects and objects of state authority, as explanation for liberalization of nationality

1. Introduction : 4th question

- Terminology : difference / confusion between various concepts:
 - I. *Nationality* : legal concept, expresses the link between a State and members of its community (as in 'membership in a state')
 - II. *Citizenship* : various meanings, from synonym to nationality, to a more comprehensive concept, covering all residents or at least all legal residents. Special relevance in EU : 'citizenship' of the Union (see Article 20 Treaty EU : « *Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.*»).

1.4. Terminology

- Joppke : Citizenship is “*less a distinct and clearly demarcated object of study than a conceptual metaphor for a bewildering variety of rights-based claims in contemporary societies, particularly if raised by marginal groups*” (Arch. Eur. Sociol., XLIV, (2003) 429) – e.g. 'cultural citizenship')

1. Introduction : 5th question

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

1.5. Sources of nationality law

- Various international conventions – important issues, but do not touch the 'core' of nationality law
e.g. Protocol relating to military obligations in certain cases of double nationality, signed in The Hague on 12 April 1930 (Law of 20 January 1939).
- One major international convention : 1997 European Convention on Nationality (Council of Europe). Unfortunately, not yet ratified by Belgium...

1.5. Sources of nationality law

- Besides international conventional law, 'national' nationality law is also influenced by:
 - I. European law (see later on this issue)
 - II. European Convention on Human Rights (see *e.g.* Eur. Commission HR, *Karassev v. Finland*, 12 January 1999, nr. 31414/16 – refusal to grant Finnish nationality can be a violation of Article 8 ECHR in specific circumstances)

1.5. Sources of nationality law

- In *Karassev*, the Eur. Commission on HR noted that

« Although the right to a citizenship is not as such guaranteed by the Convention or its Protocols . . . the Court does not exclude that an arbitrary denial of a citizenship might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such a denial on the private life of the individual »

Nationality law

II. General principles

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2. General principles

- Some general principles, common to all nationality laws
- 1st) Influence of time on nationality law
- 2nd) Equality in nationality law?
- 3rd) Is there a right to have a nationality?
- 4th) Which law applies?
- 5th) Acquisition of nationality : basic principles

1st Principle : Influence of time

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

1st Principle : Influence of time

- *E.g.:* Mr. John Sibelman was born in Belgium in 1932 out of Belgian parents. In 1937 his parents emigrated to the U.S. where they obtained US citizenship in 1947. John also acquired US citizenship as a consequence of naturalization of his parents. In 2005, Mr. Sibelman, who has retired and wishes to visit relatives in Belgium and spend time there, enquires to know if he has kept his Belgian nationality

1st Principle : Influence of time

- Question must be addressed based on the legislation applicable in 1947 – and in fact, at any point later in time Mr Sibelman at which may have lost his original Belgian nationality

1st Principle : Influence of time

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

1st Principle : Influence of time

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

1st Principle : Influence of time

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

2nd Principle : Equality?

- All nationals must be treated the same way – in principle no distinction on the basis of the way nationality was acquired?
 - I. Under Belgian law, previously distinction made between '*grande*' and '*petite*' naturalization (See Art. 11-12-13 Coordinated Laws of 14.12.1932)
 - II. Distinction made now for loss of nationality : Art. 23 CBN provides grounds of loss applicable only to some Belgian (i.e. not Belgians who have acquired Belgian nationality from Belgian parent(s))

3rd Principle : A Right to Nationality?

- Is there a 'right' to have a nationality?
 - I. Importance of question is *limited* since one may enjoy rights without being a national (see above). In that sense, even if one were to enjoy a 'human right' to nationality, much would still depend on the content of the status, the rights associated to nationality (could be empty shell)
 - II. No effective human right to nationality – See Art 15-1 Declaration of Human Rights 1948 (but limited legal impact)

3rd Principle : A Right to Nationality?

- International 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*”) —> practical applications? Investigation of national laws on nationality

3rd Principle : A Right to Nationality?

- How can one be / become stateless ?
 - I. Either *born* stateless (*e.g.* born in a country where nationality is only acquired *ius sanguinis*, out of parents whose nationality can only be transmitted *ius soli* - very rare)
 - II. Or *becomes* stateless (loss of nationality without acquiring another one - extremely rare occurrence). One could become stateless if one *gives up* his/her nationality - usually not possible if no other nationality, see art. 22 § 1-2° CBN. But see Romania and Cass., 6 June 2008 - Romanian lost his nationality when he gave it up; applied to be recognized stateless

3rd Principle : A Right to Nationality?

- How can one be / become stateless?
 - I. Other possibility : one can become stateless when residing for a long time outside country (*e.g.* Ouzbekistan : every 5 years, Ouzbek resident outside Ouzbekistan must file a declaration to prevent loss of nationality – law recently changed to prevent this)
 - II. Most cases of statelessness today : following State successions or other problems of boundaries / state development, particularly in those successor states that adopt the principle of *ius sanguinis* as the exclusive or predominant principle in granting nationality. Two prime examples :

3rd Principle : A Right to Nationality?

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

3rd Principle : A Right to Nationality?

- How can one be / become stateless?
 - I. *e.g.* : case of Palestinians – what if a Palestinian came to Belgium?
No longer under protection of UNRWA. Possibility to be recognized as stateless? See Liège 13 March 2007 (3 rulings) : no recognition of statelessness, since applicant had voluntarily left protection of UNRWA and status of stateless could only be available to those who could no longer benefit from protection of UNRWA without this being attributable to their behavior (can this ruling still stand in light of Cass., 6 June 2008 ?)

3rd Principle : A Right to Nationality?

- *e.g.* second case : Kosovo : resident of Kosovo has changed status many times without moving once...
 - _ Until 1992 : part of the Socialist Federal Republic of Yugoslavia
 - _ 1992 : creation of the Federal Republic of Yugoslavia (with Serbia, Montenegro and the autonomous provinces of Kosovo and Vojvodina)
 - _ 1996-1999 : Kosovo war – Kosovo administered by the UNMIK (United Nations Mission in Kosovo – UN Security Council Resolution 1244)
 - _ February 2003 : creation of the “State Union of Serbia and Montenegro”
 - _ June 2006 Serbia and Montenegro split, both become independent; Serbia considers that the autonomous province of Kosovo is part of Serbia
 - _ 17 February 2008 : self-declared independence of Kosovo

3rd Principle : A Right to Nationality?

- *e.g.* status of residents of Kosovo living abroad until Feb. 2008? They used to have the Yugoslavian nationality, then became citizens of a new State (Serbia-Montenegro, then Serbia). Since they could rely on their Serb nationality, not recognized as stateless (see *e.g.* Mons, 23.10.2006). In practice, difficulty to demonstrate existence of Serb nationality (no cooperation whatsoever from Serb authorities, *e.g.* Serb embassy in Belgium)

3rd Principle : A Right to Nationality?

- Procedure : one can ask to be recognized stateless.
Procedure before the Court of First Instance (competence derived from Art. 569-1^o Judicial Code : “*demandes relatives à l'état des personne* »)
- No need for Belgian State to be invited to the proceedings – Belgium lacks jurisdiction to decide on existence of foreign nationality (government can at best assist court by providing information on foreign nationality)

3rd Principle : A Right to Nationality?

- Test : one should demonstrate that one does not have a nationality (*negative* burden of proof). Status of statelessness can be granted even if applicant could obtain (or recover) another nationality (Cass., 6 June 2008)
- Negative evidence is not always easy to deliver. *E.g.* case *Leys – Ryckmans* : two sons of famous sinologist, born in Hong Kong in 1967, father is a Belgian citizen, mother a Chinese

3rd Principle : A Right to Nationality?

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

3rd Principle : A Right to Nationality?

- Case *Leys – Ryckmans* : Art 22 § 3 CNB : no loss of Belgian nationality if result would be 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?

3rd Principle : A Right to Nationality?

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

3rd Principle : A Right to Nationality?

- Legal status of stateless : No automatic right to obtain residence title (no specific provision in Act of 15.12.1980) – stateless must apply and is subject to same requirements as other 'foreigners' (Liège, 13 March 2007 – case *Mustafi*). At least protection against deportation and removal
- Case *Ryckaert – Leys* : two sons lost their Belgian passport and only had a provisional passport. Court : no 'urgency' to intervene...

4th Principle : which law?

- Which law applies ? Each State is the sole master of its nationality
 - It is up to each State to determine who are its nationals (and who lost the nationality)
 - Foreign law has no role to play in determining who are nationals of Belgium and Belgian law has nothing to say on who are nationals of other States

4th Principle : which law?

- Nuances – interactions between nationality laws
 - Local law may make acquisition of local nationality dependent on loss of foreign nationality (*e.g.* will a Belgian national have to waive his Belgian nationality when becoming Dutch by naturalization?)

4th Principle : which law?

- Nuances – interactions between nationality laws
 - 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)

5th Principle : Acquisition

- Four possible grounds to acquire a nationality:
 - Blood link with a national (*ius sanguinis*) – 'being' a national, state as a 'family' united by a common descent
 - Birth on territory (*ius soli*) – state as a 'community' united by notion of participation
 - Continued (long term?) residence on territory (*ius educationis / socialis?*) - 'becoming' a national
 - Marriage with a national (and other family law relationships which do not rest upon blood link, such as adoption)

5th Principle : Acquisition

- Four possible grounds to acquire a nationality:
 - Acquisition *ius sanguinis* seems to be less open and democratic than acquisition *ius soli* or through long term residence
 - Bear in mind, however : *ius soli* has long been a feudal mechanism of acquisition (becoming a national because birth on the estate of the Lord, allegiance through ownership of the land) whereas *ius sanguinis* is a personal right, could not be lost by contingent movements in space

5th Principle : Acquisition

- No legal system can be based solely on *one* of these grounds:
 - 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...
 - If nationality of State X is acquired *exclusively* through birth on the territory – exclusion of all children of nationals born abroad...

5th Principle : Acquisition

- No legal system can be based solely on *one* of these grounds:
 - 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 marriage or other family relationship – what about children of nationals?

5th Principle : Acquisition

- Today, nationality law of (most?) countries is based on a *mix* of various grounds of acquisition
- How much *ius soli*, how much *ius sanguinis*, etc. is the product of history and various elements – (im-)migration, politics, demography, peace etc.

5th Principle : Acquisition

- In that sense, nationality is not so much the reflection of a clear concept of what the nation should be (*e.g.* nation based on 'civic citizenship' if acquisition is predominantly premised on long term residence or birth on the territory or based on 'ethnic citizenship' if acquisition is premised mainly on *ius sanguinis*), than the addition of different concerns and policy aims

5th Principle : Acquisition

- In other words, nationality as state membership is not an 'identity' or “determined by inert cultural understandings of nationhood” (Jopke, 2003)

5th Principle : Acquisition

- Analysis of various grounds of acquisition : the most important categories of grounds of acquisition will be studied. Important to keep in mind that they should be considered together to discover the general balance of a system (*e.g.* if system is generous towards second or third generation foreigners, less need to open up naturalization)

Nationality law

III. Acquisition in family relations

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Introduction

- Family relationships and acquisition of nationality
- Mainly focused on acquisition *ius sanguinis* (also called : acquisition through descent)

1. *Ius sanguinis* in general

• Questions :

- *Does child automatically obtain nationality of parents?*
- *Or only if both parents have the same nationality?*
- *What if parents do not have the same nationality? Acquisition of both nationalities?*
- *What if parents are not married? Acquisition outside wedlock?*
- *What if child was not born in country of parents' nationality?*
- *What if child born outside country, in a country where local nationality is acquired at birth?*

1. *Ius sanguinis* in general

- It has been said that nationality law based on *ius sanguinis* leads to 'ethnic citizenship' because all citizens acquire their nationality through blood links (ex. of Germany → see Rogers Brubaker, *Citizenship and Nationhood in France and Germany*, 1992)

1. *Ius sanguinis* in general

- *Nuance* : *ius sanguinis* is a formal concept, which is indifferent to the « quality » of the blood (Chr. Joppke)
—> could lead to acquisition of nationality by persons from different 'ethnic' backgrounds - “the blood principle is formal and instrumental and not substantial”

1. *Ius sanguinis* in general

- In most cases, acquisition *ius sanguinis* is a case of *assignement* ('*attribution/toekenning*') of the nationality : automatic acquisition by operation of the law (*e.g.* art. 1 CNB - *comp.* with *acquisition*) – no need to file application or obtain a judgment

1. *Ius sanguinis* in general

- Problem of evidence because operation of the law is 'silent'. Two options:
 - either demonstrate that the legal requirements were fulfilled
 - or demonstrate '*possession d'état*' (if concept known under applicable law) by the author (legal presumption that the person had been considered a national and has acted as such throughout the years – *e.g.* art. 4 CBN, art. 30-2 French Civil Code)

2. Acquisition *ius sanguinis* in country of origin

- 1st situation : acquisition through family link if birth in country of origin of family
- *E.g.* : child born in France out of French parents

2. Acquisition *ius sanguinis* in country of origin

- Questions:

- Should *both* parents possess nationality or is *one* enough?
- What if parents are not married?
- Does it matter that parents born *outside* country of origin?
- What if parent acquires nationality *after* the child is born?
- Etc.

2. Acquisition *ius sanguinis* in country of origin

- *1st question* : should both parents possess nationality or is one enough?
- Traditional rule : acquisition of nationality only through the father (*ius sanguinis a patre*)
- *e.g.* : Belgium : Art. 1-1^o Coordinated Laws of 1932 : “*Sont belges . . . 1^o L'enfant légitime né, même en pays étranger, d'un père ayant la qualité de Belge au jour de la naissance*”

2. Acquisition *ius sanguinis* in country of origin

- Today : rule has been abandoned – equality men/woman in transmission of nationality - principle that child can obtain nationality of both his father and mother
- *E.g.* art. 9 § 2 of the Int'l Convention on the Elimination of All Forms of Discrimination of Women (NY, 18.12.1979) : “States Parties shall grant women equal rights with men with respect to the nationality of their children.”

2. Acquisition *ius sanguinis* in country of origin

- See art. 6 § 1 a Eur. Conv. Nationality
- Belgium : Art. 8 CBN; France : Art. 18 Civil Code; Italy : Art. 1-1(a)
- Consequence : more and more cases of multiple nationalities, child obtaining nationalities of both his parents (see *infra* : marriage has no automatic influence on nationality of spouses)

2. Acquisition *ius sanguinis* in country of origin

- Acquisition *ius sanguinis a patre* remains however the rule in some countries
- *e.g.* Kuwaiti Nationality Law 5 Dec. 1959:
 - Art. 2 :”A person is deemed to be a kuwaiti if he is born in Kuwait from a Kuwaiti father”
 - Art. 3 : “The following are deemed to be Kuwaiti citizens:
a) any person born in Kuwait or outside Kuwait from a Kuwaiti mother so long as his relationship to his father has not legally been established”

2. Acquisition *ius sanguinis* in country of origin

- Consequence:
 - Child born from Kuwaiti mother obtains Kuwaiti citizenship if the mother is unmarried
 - If the mother is married, mother cannot pass on its nationality to its children if married to a foreigner...

2. Acquisition *ius sanguinis* in country of origin

- See reservation made by Kuwait in respect of art. 9 § 2 of the Int'l Convention on the Elimination of All Forms of Discrimination of Women (NY, 18.12.1979) : “The Government of Kuwait reserves its right not to implement the provision contained in article 9, par. 2, of the Convention, inasmuch as it runs counter to the Kuwaiti Nationality Act, which stipulates that a child’s nationality shall be determined by that of his father”.

2. Acquisition *ius sanguinis* in country of origin

- In other countries : acquisition *ius sanguinis a matre* restricted to specific circumstances
- *E.g.* Rwanda :
 - “Est rwandais tout individu né d'un père rwandais...” (art. 1 Rwanda Act Nationality 1963)
 - “Sont rwandais:
 - L'enfant légitime né d'un père rwandais
 - L'enfant légitime né d'une mère rwandaise et d'un père sans nationalité ou de nationalité inconnue” (art. 3)

2. Acquisition *ius sanguinis* in country of origin

- 2nd question : what if parents are not married?
- Question is only relevant for acquisition of father's nationality
- Mother's nationality is always transmitted, since filiation link with mother will always be established, whether she's married or not (nature cannot be cheated... - in case of surrogate mother : birth certificate)

2. Acquisition *ius sanguinis* in country of origin

- For father : nationality can only be acquired if there is a legal bond between father and child → link with family law
- Two situations:
 - presumption if parents are married;
 - if not married, recognition by the father (*quaere* if no recognition possible outside marriage)

2. Acquisition *ius sanguinis* in country of origin

- Difficulty : which law applies to the establishment of a link of filiation? Two options:
 - Application of the family law of the nationality at stake (*e.g.* German law - section 4(1) : “Where at the time of the birth only the father is a German national, and where for proof of descent under German law recognition or determination of paternity is necessary, the claim for acquisition shall require a determination of paternity which is valid under German law”)
 - Application of normal rules of int'l family law (private international law). Difficulty : if applicable law is determined by child's nationality, circle reasoning

2. Acquisition *ius sanguinis* in country of origin

- 3rd question : what if parents acquire nationality *after* birth of the child ? Is there automatic acquisition for the child?
- In general, acquisition of the nationality only works if the father or mother possessed the nationality at the time of birth of the child (*e.g.* Art. 8 § 2 CBN; section 4(1) German Act).

2. Acquisition *ius sanguinis* in country of origin

- No automatic acquisition, but other possibility linked to method of acquisition by parent
- *E.g.* rule for '*shared acquisition*' of nationality - see *e.g.* Art. 12 CBN : acquisition of Belgian nationality by underage children of foreigner who becomes Belgian citizen by naturalization

2. Acquisition *ius sanguinis* in country of origin

- 4th question : what if parents possessed the nationality when the child was born, but the parentage is only established later?
- *e.g.* proceedings aimed at establishing that a child born in Greece, is the child of a Belgian national (not married to the mother of the child)

2. Acquisition *ius sanguinis* in country of origin

- In that case, automatic acquisition is justified because when parentage is established, it is deemed to have always existed
- Only limitation : can automatic acquisition also work if child is already 'older' (e.g. 25 y. old)

2. Acquisition *ius sanguinis* in country of origin

- *E.g.* Art. 3 CBN : automatic acquisition *ius sanguinis* only possible provided filiation established at the latest before the child turns 18 y. - when one turns 18 y., it is up to this person to decide whether he/she wishes to become a Belgian citizen, should not be the automatic consequence of the law

2. Acquisition *ius sanguinis* in country of origin

- 5th question : what if the family only 'recently' became a 'national' family?
- *e.g.* : Moroccan parents, born in Marocco became Belgian citizens by naturalization and child born afterwards

2. Acquisition *ius sanguinis* in country of origin

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

2. Acquisition *ius sanguinis* in country of origin

- 6th question : what if child also obtains another nationality?
- *E.g.* child born in France out of French father and Belgian mother
- In general : no objection to acquisition of dual citizenships

2. Acquisition *ius sanguinis* in country of origin

	Belgium	Germany	Italy	France
One or 2 parents?	One	One	One	One
Father or mother	Or	Or	Or	Or
How did parent become national	Not relevant	Not relevant	Not relevant	Not relevant
Does child have another nationality	Not relevant	Not relevant	Not relevant	Not relevant

2. Acquisition *ius sanguinis* in another country

- 2nd situation : acquisition through family if birth *outside* country of origin of family
- *E.g.* : child born in France out of Belgian parents born in Belgium
- *E.g.* child born in Belgium out of Moroccan parents born in Morocco
- *E.g.* child born in Argentina out of Belgian father born in Argentina

2. Acquisition *ius sanguinis* in another country

- Concerns second generation 'expatriates' (or following generations)
- Or situation where a mother choose to deliver her child abroad – *e.g.* for family or health reasons (marginal case)

2. Acquisition *ius sanguinis* in another country

- No reason to derogate from accepted principles (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.)

2. Acquisition *ius sanguinis* in another country

- Only additional questions:
 - Should one require that parents themselves born in the country of origin? Concern : transmission from generation to generation, without any end
 - Should one restrict acquisition of nationality if child already acquires local nationality? Concern : dual nationalities

2. Acquisition *ius sanguinis* in another country

- Should one require that parents themselves be born in the country of origin?
- Two options:
 - Require that the parent whose nationality is transmitted, is born in the country of origin
 - No such requirements – transmission in all cases

2. Acquisition *ius sanguinis* in another country

- 1st model : Belgium :
- Requirement that the Belgian parent is born in Belgium – involves going back in family history - compare with 1st hypothesis, birth in Belgium out of Belgian parent : no question about family history (Belgian parent could have been born outside Belgium in first hypothesis and could have acquired Belgian citizenship very recently)

2. Acquisition *ius sanguinis* in another country

- 1st model : Belgium :
- 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 eased up)

2. Acquisition *ius sanguinis* in another country

- 1st model : Belgium : some nuance : even if Belgian parent not born in Belgium, transmission is possible, but transmission is *not automatic*
- No automatic acquisition – acquisition upon 'declaration' (Art. 8 § 1, 2, b CNB)
- Declaration at the latest 5 years after birth (embassy)

2. Acquisition *ius sanguinis* in another country

- 1st model : Belgium : some nuance :
- no other requirements – in particular no 'test' of 'Belgianness' for parents or for child; no payment; no verification of criminal history of parents or voting records, etc..
- *Quaere* in practice if the parents making the declaration are 4th generation and do not speak any of the languages of Belgium?

2. Acquisition *ius sanguinis* in another country

- 2nd model : Morocco
- Nationality can be transmitted to all children, without any requirement related to place of birth of parent 'transmitter'
- See Art. 6 Moroccan law on nationality : “*Est marocain ... 1^o-l'enfant né d'un père marocain ;*”

2. Acquisition *ius sanguinis* in another country

- 2nd model : Morocco
- Consequence : Moroccan nationality can be transmitted from generation to generation, even if all other links with Morocco lost (see Minister in charge of '*Communauté Marocaine Résidant à l'Etranger*')

2. Acquisition *ius sanguinis* in another country

- Nuances to the 2 'models' : ground of loss
- Even if transmission is possible (automatic *or* following declaration) from a national born outside country of origin to his/her children, often additional ground of loss – nationality will be lost if not 'exercised'

2. Acquisition *ius sanguinis* in another country

- *e.g.* art. 22 § 1-5° CBN : loss of Belgian nationality if born abroad *and* if residence (construed broadly – 6 months residence should be sufficient) 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)

2. Acquisition *ius sanguinis* in another country

- 2nd question : Should one restrict acquisition of nationality if child already acquires local nationality?
- Possible acquisition by the child of local nationality if born in country where acquisition *ius soli*

2. Acquisition *ius sanguinis* in another country

- In most cases : acquisition *ius soli* does not exclude acquisition *ius sanguinis* (potential for dual nationalities)
- Eur. Convention Nationality leaves room for exception to acquisition : art. 6 § 1 a : Acquisition is the rule for “... children one of whose parents possesses, at the time of the birth of these children, the nationality of that State Party, *subject to any exceptions which may be provided for by its internal law as regards children born abroad*”.
- Other option : art. 3 (1) Latvian law: “If, on the day of the child's birth, one parent was a citizen of Latvia and the other parent was an alien and the permanent residence of both parents was outside Latvia, then the child's citizenship shall be decided upon the mutual agreement by the parents”

2. Acquisition *ius sanguinis* : assessment

- Looking at Western Europe, acquisition *ius sanguinis* is rather generous:
 - I. Principle of equality of sexes : one parent is enough (father *or* mother); also sign of tolerance for 'mixed' families (families where not all members have the same and only the same nationality)

2. Acquisition *ius sanguinis* : assessment

- Looking at Western Europe, acquisition *ius sanguinis* is rather generous:
 - I. Equality of father and mother plants the seeds of dual nationalities - reinforced by
 - acquisition for children born outside country of origin as the rule (even if not always automatic)
 - no exclusion of acquisition if foreign nationality also acquired at birth

2. Acquisition *ius sanguinis* : assessment

- Looking at Western Europe, acquisition *ius sanguinis* is rather generous:
 - I. Reverse perspective : possibility to keep nationality generation after generation? Balanced picture because *i)* not always automatic and *ii)* specific ground of loss
 - II. 'Ethnic' nationality ? No because acquisition *ius sanguinis* is blind for the origin of the nationality of the parent whose nationality is acquired by child

Nationality law

IV. Acquisition through birth on territory

Outline

Acquisition of nationality through birth on territory of a State (*ius soli*) :

- General considerations
- The law today
- Tentative conclusions

1. Acquisition *ius soli* – general considerations

- Reality today : large numbers of inhabitants of foreign origin, Belgium (and most European countries) have become 'immigration countries'
- It used to be different : substantial exit of population during 20th century (for Belgium, mostly Flemish – see *e.g.* Belgium roots project : <http://belgium.rootsweb.com/>; see also traditional immigration countries such as Ireland, Portugal or Spain)

1. Acquisition *ius soli* – general considerations

- Figures : from 1820 to 1900 over 140,000 people emigrated from Belgium to America (publication of two Belgian newspapers in the US : *De Gazette van Moline* and *De Gazette van Detroit*).
- Census of 1930 : 64,194 people living in the US who were born in Belgium.

1. Acquisition *ius soli* – general considerations

- Change :
 - no longer possible to characterize some states as exclusively 'receiving states' or 'sending states'
 - most countries in EU are simultaneously 'receiving' states

1. Acquisition *ius soli* – general considerations

Situation in the EU : the example of Belgium

- Since 1974, officially migration stop in Belgium (and other EU MS)
- This has not stopped 'foreigners' from coming to Belgium
- What type of migration today?

1. Acquisition *ius soli* – general considerations

What type of migration today?

- Refugees : 1951 UN Convention Relating to the Status of Refugees : well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion, ...
- Undocumented aliens : illegal entry in Belgium (or legal entry with short term visa and then...)
- Mixed relations : marriages (including 'import brides' out of Thailand Russia and Philipinnes...)
- Family reunification (probably accounts for about 40/50% of immigration today – probably explains that intake of foreign women today is larger than intake of foreign men, whereas for a long time more foreign men coming in than foreign women)

1. Acquisition *ius soli* – general considerations

What type of migration today?

- Students : visa for duration of studies and then attempt to remain in Belgium
- Workers : visa for duration of professional occupation (from outside EU)
- Children of foreigners living in Belgium (not a 'real' migration)

1. Acquisition *ius soli* – general considerations

- Figures : 1.003.437 foreigners in Belgium April '07
- Increase in relation to total population : 4,93% in 1962, 7,19% in 1970, 9,03% in 1980 and 9,2% in 1992. 2007 : +/- 9 %
- Largest represented countries : Italy (190.792); France (111.146); Netherlands (92.561), Morocco (90.657) and Turkey (47.044)

1. Acquisition *ius soli* – general considerations

- In fact, 64 % of the foreign population in Belgium originates from the 'old' Europe of 15 MS
- 14,1 % originates from Africa (including Morocco and Congo)
- 8,1 % out of Turkey

1. Acquisition *ius soli* – general considerations

- Belgium : traditionally (until 1980's) a '*ius sanguinis*' country, no room for acquisition of nationality on the ground that a person is born in Belgium (*but* : possibility to acquire nationality after long term residence in Belgium, naturalisation)
- Situation was similar in majority of European countries where *ius sanguinis* acquisition prevailed (e.g. France : *ius sanguinis* triumphed in Code Civil in 1804 until after first World War)

1. Acquisition *ius soli* – general considerations

- Situation started to change in the 1980's, upon realisation that people born and socialized in a country also possess a sufficiently '*genuine link*' to be considered citizens of that country
- Another concern was that excluding people born and socialized in a country from citizenship could lead to tensions ('second class' citizens)
- For Belgium, change started in 1984 with the introduction of provisions based in *ius soli*.

1. Acquisition *ius soli* – general considerations

- 1984 Code : acquisition of Belgian nationality through birth in Belgium limited to the following cases :
- Art. 10 CNB : if the child would otherwise be stateless (*provisional* acquisition of the nationality)
- Art. 11 CNB : child born in Belgium out of one parent born in Belgium; no automatic acquisition : acquisition upon declaration by parent before child = 12 y.

1. Acquisition *ius soli* – general considerations

- Today : is it legitimate, and if yes under which circumstances, to confer nationality upon birth in territory of a State?
- Two extreme cases :
 - I. Ireland : Section 6 Irish Nationality Act: “Every person born in Ireland is an Irish citizen from birth » (modified in 2005)
 - I. Morocco : Art. 7 Nationality Code : “ *Est Marocain : 1°- l'enfant né au Maroc d'une mère marocaine et d'un père apatride ; 2°- l'enfant né au Maroc de parents inconnus* »

1. Acquisition *ius soli* – general considerations

Policy considerations:

- Acquisition *ius soli* seems to be better adapted to accommodate consequences of massive cross-border mobility
- If no acquisition upon birth (or acquisition limited to persons born in country once they reach age of 18 y. - German/Dutch model) : creating second class citizens during minority?

1. Acquisition *ius soli* – general considerations

Policy considerations:

- “No state can lastingly tolerate that a numerically significant part of the population remains outside the political community for generation” (CDU/FDP program 1984...)

1. Acquisition *ius soli* – general considerations

Policy considerations:

- *Nuance a)* : acquisition purely based on *ius soli* could lead to unreasonable consequences (acquisition based on short-term stays, merely in transit)
- *Nuance b)* : need to take into account possibility for parents to acquire nationality during minority of children, on basis of long term residence (then : usually automatic acquisition for children)

1. Acquisition *ius soli* – general considerations

- If no acquisition upon birth on territory (and possibility to acquire later or together with parents) : what with 3rd generation? Birth on territory out of parents born in territory? Can this be accepted as creating sufficient bond with State to justify acquisition (automatic or upon declaration)?

1. Acquisition *ius soli* – general considerations

- If acquisition is possible upon birth :
 - I. Increase number of cases of dual/multiple nationalities (if foreign parents can transmit their nationality – mostly the case)
 - II. 'Birth shopping'? Not frequent – can be easily countered (by adding a residence requirement)

2. Acquisition *ius soli* – the law today

First case : parentless child or stateless child :

- Not controversial
- Two hypotheses :
 - I. acquisition if birth on territory when the infant is found in State (*e.g.* Art. 10 CNB, sect. 4-2° German Act on *Staatsangehörigkeit*, art. 6 § 1 b Euro. Conv. Nationality) or

2. Acquisition *ius soli* – the law today

First case : parentless child or stateless child :

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

2. Acquisition *ius soli* – the law today

First case : parentless child or stateless child :

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

2. Acquisition *ius soli* – the law today

Second case : 'double *ius soli*' rule

- Birth in country out of a parent born in the country (3rd generation 'immigrant')
- France introduced the rule in 1889... Netherlands in 1953, Spain in 1954 and Belgium in 1984 (art. 11 CNB – no automatic acquisition, child born in Belgium out of one parent born in Belgium : acquisition *upon declaration* by parent before child = 12 y)

2. Acquisition *ius soli* – the law today

Second case : 'double *ius soli*' rule

- Today tends to become part of the '*acquis*' in Western Europe (but not yet confirmed in Europ. Conv. Nationality)
- 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* - quid impact on foreign nationality ?)

2. Acquisition *ius soli* – the law today

Second case : 'double *ius soli*' rule

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

2. Acquisition *ius soli* – the law today

Second case : 'double *ius soli*' rule :

- Question : must parents have had a *legal* residence in the country?
 - In most cases, not relevant (assumption : if child born in country X of parents born in country X, parents will most of the time have acquired title to live in country X...)
 - Belgium : art. 11 CNB - parents must have had their 'main residence' in Belgium during 5 years of the 10 preceding birth (requirement of '*legal* residence' of art. 7bis does not apply). Could art. 11 CNB be used by parent to obtain right of residence in Belgium (based on Belgian nationality of child? Not excluded)

2. Acquisition *ius soli* – the law today

Second case : 'double *ius soli*' rule :

- Does not apply to children born outside territory (even if parents live in territory)
- *Quaere* if parents live in Belgium/France/Germany etc. and mother wishes to give birth in country of origin?

2. Acquisition *ius soli* – the law today

Third case : 'simple *ius soli*' rule:

- Acquisition if birth on the territory and parents reside in the country
- Becomes more and more accepted, even though not yet accepted everywhere

2. Acquisition *ius soli* – the law today

Third case : 'simple *ius soli*' rule:

- In some countries, *ius soli* acquisition is not possible, or limited to acquisition not at birth, but much later (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) Italian law)

2. Acquisition *ius soli* – the law today

Third case : 'simple *ius soli*' rule:

- 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

2. Acquisition *ius soli* – the law today

Third case : 'simple *ius soli*' rule: where accepted, acquisition could be:

- *Automatic* (e.g. sect. 4(3) German Act) or
- *Conditional* (e.g. Belgium, art. 11bis CNB : *possibility* to acquire Belgian nationality - not automatic : if child is born in Belgium *and* parents make a declaration before the child turns 12 y. old)

2. Acquisition *ius soli* – the law today

Third case : 'simple *ius soli*' rule:

- Requirement of residence for the parents : *how long*?
 - I. Belgium : requirement of main residence of parents in Belgium for the last 10 y. (art. 11*bis* CNB)
 - II. Germany : parent must have been « normally resident [in Germany] for eight years » (section 4(3)(1) German Act)

2. Acquisition *ius soli* – the law today

Third case : 'simple *ius soli*' rule:

- Requirement of residence for the parents : quality of residence? Yes – limits accessibility to acquisition
 - I. Belgium : *legal* residence during the 10 y period (probably) and authorization to reside indefinitely in Belgium *when making* the declaration (since Act of 2006, new Art. 7bis CNB)
 - II. 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) *Staatsangehörigkeitsgesetz*)

2. Acquisition *ius soli* – the law today

Third case : 'simple *ius soli*' rule:

- Requirement of residence for the parents : quality of residence? Yes
- 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

2. Acquisition *ius soli* – the law today

Third case : 'simple *ius soli*' rule:

- What about the fact that child will often obtain other nationality *ius sanguinis* (from his parents)? Distinction between 2 models:
 - I. Indifference : no consequence (*e.g.* Belgium : CNB is indifferent to other nationality of the child)
 - II. 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)

2. Acquisition *ius soli* – the law today

Third case : 'simple *ius soli*' rule:

- In general : no specific requirement of integration (impossible to test for the child...)
- However, in some countries, negative assessment (*e.g.* Belgium : possibility for the Public prosecutor to review declaration and to object within 4 months)

2. Acquisition *ius soli* – the law today

Third case : 'simple *ius soli*' rule:

- Objection only if the declaration pursues another aim than the interest of the child to obtain the Belgian nationality (declaration is instrument to advance interests of the parents). Given that parents must be legal residents in order to make a declaration, not clear when objection is justified
- If the Public prosecutor objects : challenge before the CFI

3. Acquisition *ius soli* – conclusion

- Important evolution of European laws on nationality from a pure *ius sanguinis* system to a mixed system with a large measure of *ius soli*
- Main driver : democratic imperative of integrating long-settled migrant population

3. Acquisition *ius soli* – conclusion

- Never an unconditional recognition of *ius soli* rule, but always in combination with certain residence requirements of the parents (*comp.* United States : unconditional *ius soli*)

3. Acquisition *ius soli* – conclusion

- Common feature : absence of any integration requirement (such as language test or test of 'integration') – because i) impossible to test integration of child and ii) *ius soli* is only taken into consideration with other factors already demonstrating or allowing to presume integration
- Sole exception : possibility under Belgian law of opposition by the Public Prosecutor (simple *ius soli* rule – should disappear...)

3. Acquisition *ius soli* – conclusion

- Many 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*

3. Acquisition *ius soli* – conclusion

- Opening to *ius soli* = certainly ground for dual nationalities

Nationality law

V. Acquisition through long term residence

Outline

- Acquisition of the nationality of State X for persons not born on the territory of State X and whose parents were not citizens of State X at birth
- Various basis for acquisition :
 - Long term residence (either after voluntary settling in country or since childhood – *ius educationis*)
 - Marriage to a national

Acquisition through residence in a country – policy considerations

- Aim : people not born in country (whose nationality is at stake), not part of a 'local' family (parents with local nationality when child born or parents acquiring local nationality later on)

Acquisition through residence in a country – policy considerations

- In theory, this concerns only a *small group* since no legal immigration in Western Europe (Belgium since 1974)
- In practice, fairly large group made of 'first generation foreigners'

Acquisition through residence in a country – policy considerations

- 'First generation foreigners' :
 - I. Foreigners married with a 'local' citizen;
 - II. Foreigners recognized as asylum seekers (Belgium 2008 : 12.252 – including multiple requests; status granted to 2.143 applicants);
 - III. Access to country following family reunification;
 - IV. Miscellaneous : students; foreign workers

Acquisition through residence in a country – policy considerations

- Policy issue : why and if yes, when and how, allow acquisition of a nationality by persons not born in the country and whose parents are not (and have not become) nationals , but who have lived for some time in the country or present another link with the country? No 'good' or 'bad' answers...

Acquisition through residence in a country – policy considerations

- First possible answer : deny any possibility to acquire nationality
- Is this reasonable in view of the fact that large number of foreigners established in Western Europe intend to stay there?
Argument of democracy ? (*Michael Walzer, 1983* : long terms resident must be admitted to citizenship in order to avoid tyranny; 'No taxation without representation')

Acquisition through residence in a country – policy considerations

- Second element : is it necessary to open up acquisition of nationality to 1st generation foreigners, since substantial number of rights are 'residence based' (not enjoyed based on nationality)? Idea of '*denizens*' (counter-argument : fear that 'denizenship' leads to devaluation of nationality)

Acquisition through residence in a country – policy considerations

- 3rd element : is it necessary to open up acquisition of nationality to 1st generation foreigners if 2nd and further generations already acquire nationality, sometimes automatically?

Acquisition through residence in a country – policy considerations

- 4th element : if possibility for 1st generation foreigners to acquire nationality
 1. What should be requirement in terms of residence : 5, 7, 10, 15 y.? Shorter period in case of marriage with a citizen?
 2. Should there be a requirement to demonstrate 'integration' (besides long term residence)? Can integration be measured?
 3. Waiver of original nationality?

Acquisition through residence in a country – policy considerations

- *Consensus* seems to be that acquisition by first generation foreigners should be possible
- Requirements for such acquisition have been generally liberalized in Europe over last decades – but in some countries, more liberal regime than in other

Acquisition through residence in a country – policy considerations

- *Consensus* also on influence of marriage on nationality:
 - No automatic effect
 - Acquisition possible (and made easier), provided additional requirements met (*e.g.* certain duration of marriage)

Acquisition through residence in a country – policy considerations

- One specific requirement which plays a key role :
demonstration of 'integration' of applicant (much less
relevant in acquisition *ius sanguinis* and other cases of
acquisition *ius soli*)

Acquisition through residence in a country – policy considerations

Various ways to test the 'integration' :

- Positive requirement of integration
 1. Integration *presumed* : long term residence
 2. Integration *demonstrated* : 'test' / certificate
- Negative measure of integration exclusion of persons who have been involved in activities not worthy of a 'good citizen'

Acquisition through residence – comparison Belgium / the Netherlands

- Focus on two neighbours : Belgium / The Netherlands
- Analysis of similarities and differences re acquisition of nationality through residence and marriage

Acquisition through residence – Belgium / the Netherlands

- Two separate methods for acquisition of Belgian / Dutch nationality
 - I. 'Declaration' – 'option' (mainly art. 12*bis* CNB / art. 6 *Rijkswet*)
 - II. Naturalization (art. 18 ff. CNB / art. 7 ff. *Rijkswet*)

Acquisition through residence – Belgium / the Netherlands

- Acquisition by declaration / option :
 - I. Administrative procedure : declaration/option is made before local authorities (city/municipality) (no courts involved)
 - II. Local procedure : application is examined at local level (in Belgium by Public Prosecutor; in the Netherlands : by city itself)

Acquisition through residence – Belgium / the Netherlands

- Acquisition by declaration / option :
 - I. If requirements are met, opens a (subjective) *right* to obtain the Belgian / Dutch nationality - nationality is granted (in the Netherlands, requirement that applicant be present at 'nationality ceremony')
 - II. If requirements are not met : refusal and possibility to challenge decision before the court (decision is 'justiciable')

Acquisition through residence – Belgium / the Netherlands

- Acquisition by declaration / option:
 - I. *Belgium* : several cases, but only open for foreigners older than 18 y.;
 - II. *The Netherlands* : several cases, some reserved for adults, but some open for minors

Acquisition through residence – Belgium / the Netherlands

- Acquisition by declaration / option: In both countries emphasis on *legal nature* of residence of applicant in Belgium / the Netherlands (Belgium : art. 7bis CNB; art. 6(1) Rijkswet)

Acquisition through residence – Belgium / the Netherlands

- Acquisition by declaration / option :
 - I. In both countries, integration is *presumed* to exist and must not be demonstrated. . .
 - II. However, *negative* impact of 'lack of integration' : application may be refused if applicant's criminal past is an indication of difficulties to come

Acquisition through residence – Belgium / the Netherlands

- Acquisition by declaration / option :
 - I. Belgium : Public prosecutor may object in case of 'serious personal facts'
 1. Facts, not opinions
 2. Personal facts (not family or relatives)
 3. Serious character : minor criminal offences cannot block acquisition of nationality

Acquisition through residence – Belgium / the Netherlands

- Acquisition by declaration / option :
 - I. 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 § 3 Rijkswet)

Acquisition through residence – Belgium / the Netherlands

- When is acquisition by declaration / option possible?
 - I. First case : 'former' citizens – Dutch or Belgian national who has lost nationality, may recover it by filing a declaration / making an option (art. 6(1)(f) Rijkswet – art. 24 CBN)
 - II. Relevant if *e.g.* loss of Dutch/Belgian nationality when marrying a foreigner or acquiring foreign nationality

Acquisition through residence – Belgium / the Netherlands

- 1st case : former citizens
 - I. Requirements : often linked to residence in Belgium / the Netherlands (1 year main residence in the Netherlands)
 - II. Recovery of nationality not possible in some cases (*e.g.* if loss of nationality consequence of attitude / behavior of individual)

Acquisition through residence – Belgium / the Netherlands

- 2nd case : foreigners *born in* Belgium/Netherlands and always lived there:
 - I. Art. 12 *bis* § 1-1° CBN / art. 6 § 1 sub a RWN)
 - II. Ground for acquisition is *birth* in Belgium / The Netherlands combined with *education* in Belgium / The Netherlands

Acquisition through residence – Belgium / the Netherlands

- 2nd case : foreigners born in Belgium/Netherlands and always lived there
 - comes in addition to possibility of acquisition *ius soli*, which may prove not to work (Belgium : Art. 12 *bis* § 1-1^o complements Art. 11 *bis* CNB, is also aimed at migrants of the second generation born in Belgium, in case the parents did not / could not make the declaration – *e.g.* if no residence of 10 y. or no legal residence)

Acquisition through residence – Belgium / the Netherlands

- 2nd case : foreigners born in Belgium/Netherlands and always lived there
 - I. No additional requirement of demonstrating integration (*'inburgeringsvereiste'*)
 - II. *Quality of residence?* Legal title when making the declaration / option? (lack of title should not make a difference since integration still works in case of undocumented stay...)

Acquisition through residence – Belgium / the Netherlands

- Third case : if applicant has resided *for a long time* in Belgium / the Netherlands
- Continued residence is also ground for *naturalization* (see later)
- Difference in requirement for this ground of acquisition to work in BE / NL

Acquisition through residence – Belgium / the Netherlands

- Belgium : right to obtain nationality after 7 y. of residence (art. 12 bis § 1 – 3° CBN)
- Long discussions on *quality* of residence in Belgium. Since Act 2006 : 7 years of *legal* residence (short term authorizations count) + authorization *not limited in time* when making the declaration

Acquisition through residence – Belgium / the Netherlands

- The Netherlands : (but see also possibility of naturalization after 5 y. residence - art. 7-8-9 RWN)
 - I. Residence since applicant was 4 y. old (art. 6 lid 1 (e) RWN) : '*ius educationis*'
 - II. 15 y. residence and 65 + y. old (art. 6 lid 1 (h) RWN)

Acquisition through residence – Belgium / the Netherlands

- Peculiarity of Belgium : foreigner born outside Belgium is also entitled to obtain nationality, if at least one of the parents is a Belgian citizen (art. 12 *bis* § 1-2° CNB)
 1. Potentially very broad (every adult whose parent(s) become(s) Belgian national(s))
 2. Restriction since 2006 : demonstration of “*liens effectifs*” with Belgian parent
 3. Not a case of acquisition through residence

Acquisition through marriage – Belgium / the Netherlands

- Acquisition by declaration following marriage with a Belgian / Dutch citizen:
 - I. 'Old' rule : foreign women acquired Belgian / Dutch nationality automatically upon marrying a Belgian / Dutchman
 - II. Nowadays : marriage opens a *possibility* to obtain the Belgian / Dutch nationality (no automatism)

Acquisition through marriage – Belgium / the Netherlands

- Marriage *as such* is not sufficient, must be combined with other elements
- First, residence in Belgium / the Netherlands :
 1. Belgium : foreign spouse must reside in Belgium for *3 years* (residence *before* marriage also taken into account)
 2. Netherlands : *15 years* of residence in the Netherlands (art. 6(1)(g) Rijkswet)

Acquisition through marriage – Belgium / the Netherlands

- Difference :
 - under Dutch law, marriage with a Dutch also 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...)
 - In Belgium : marriage with a Belgian national does not procure any advantage for naturalization (at least in theory...)

Acquisition through marriage – Belgium / the Netherlands

- Second, marriage should last for a certain period of time
 1. Belgium : for 3 years (except if foreigner already resided in Belgium – acquisition possible after only 6 months of marriage)
 2. Netherlands : acquisition possible after 3 years of marriage (art. 6 (1)(g) Rijkswet)

Acquisition through marriage – Belgium / the Netherlands

- No acquisition if separation / divorce of the spouses during the required period of residence (except in case of death of one of the spouses)
- Acquisition is possible whether marriage celebrated in Belgium / Netherlands or abroad
- Marriage or equivalent legal relationships (partnerships, same sex marriage). Dutch law : even unregistered unions qualify (art. 8 § 4 Rijkswet)

Acquisition through residence – Belgium / the Netherlands

- Naturalization :
 - I. No *right* to obtain Belgian/Dutch nationality, grant of nationality is a *discretionary favor* (but situation changed in the Netherlands)
 - II. Belgium : application filed with *Parliament* (no strict time frame); Parliament is sovereign, in case of negative decision, no recourse to court

Acquisition through residence – Belgium / the Netherlands

- Naturalization :
 - I. Netherlands : application filed with local authorities (city /municipality); application examined by executive branch (IND). Formal decision by the Queen. In case application is denied, this can be challenged before the courts.

Acquisition through residence – Belgium / the Netherlands

- Requirements for naturalization
 - I. Minimum age : Applicant must be 18 y. old (art. 19 CNB / art. 8 § 1 Rijkswet)
 - II. Length of residence in country ? Belgium : *3 years* of residence in Belgium (2 years for refugees and stateless) / Netherlands : *5 years* of residence (3 years for stateless)

Acquisition through residence – Belgium / the Netherlands

- Requirements for naturalization
 - I. Quality of residence? *Belgium* : principal place of residence (art. 19 CNB) and legal residence – residence permit for longer than 3 months (art. 7bis CNB); *Netherlands* : unlimited residence permit required (art. 8 – 1 (b) Rijkswet)

Acquisition through residence – Belgium / the Netherlands

- How is integration tested / measured for requests to be naturalized?
 - I. Belgium : integration is *presumed* to exist by mere fact of application; Parliament retains, however, a *discretionary* possibility to refuse application, based on criteria it defines (consistency?).
Exercise of discretionary possibility by Parliament : integration or lack thereof is taken into account (*e.g.* 'consistent refusal to learn one of the national languages' or 'showing too much interest in political situation of country of origin')

Acquisition through residence – Belgium / the Netherlands

- How is integration tested / measured for requests to be naturalized?
 - I. Netherlands : 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)

Acquisition through residence – Belgium / the Netherlands

- Impact on previous nationality?
 - I. Belgium : no requirement at all that applicant waives his / her other nationality
 - II. Netherlands : requirement that applicant waives his /her other nationality (art. 9 (1)(b) Rijkswet) – but many exceptions to this requirement (*e.g.* if applicant is a refugee, is married with a Dutch citizen, was born in the Netherlands, etc.)

Acquisition through residence – Belgium / the Netherlands

- Evaluation:
 - I. Belgian law offers *broad access* to Belgian nationality to foreigners – much broader than Dutch law

Acquisition through residence – Belgium / the Netherlands

- Striking differences :
 1. Demonstration of *positive* requirement of integration
 2. Requirement that 'old' nationality be waived (impact on number of dual nationals)
 3. Number and scope of cases where acquisition through residence or other link is possible

Nationality law

VI. Loss of nationality

Loss of nationality : in general

- 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; see also artt. 7-8 ECN)
- Coherence with grounds of acquisition (*mirror-effect*)?
e.g. if law of State A requires foreigners to waive their original nationality when acquiring nationality of A, State A will probably provide that nationals lose their nationality when voluntarily acquiring nationality of another State

Loss of nationality : in general

- Radical consequences of loss of nationality, hence:
 - I. No application if leads to statelessness (but exception exists, *e.g.* in case of *fraud*, see art. 7(3) ECN)
 - II. Restrictive interpretation of grounds of loss (*e.g.* 'voluntary' acquisition of foreign nationality)

Loss of nationality : in general

- Some grounds of loss only applicable to 'new' nationals and do not apply to 'old' nationals (see *e.g.* Art. 23 CNB : grounds of loss not applicable if person concerned acquired Belgian nationality *ius sanguinis* or following birth in Belgium)

Loss of nationality : in general

Distinction between different categories:

- I. 'Waiver' : a person gives up his/her nationality
- II. *Involuntary* loss
 1. Based on behavior of national ('déchéance' / 'vervalenverklaring')
 2. Not based on behavior of national

1st case of loss : waiver

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

1st case of loss : waiver

In some countries, waiver is excluded or strictly limited -

e.g. Marocco :

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

1st case of loss : waiver

- Limitations :
 - I. Sometimes reserved to adults (Belgium : 18 y. - art. 22 § 1-2° CNB; Ireland : 18 y. - section 21 1956 Act)
 - II. In some countries, possible for minors (Sweden : apparently no limitation; ECN : no limitation; France : art. 23-4 Civil Code : also available for minors)

1st case of loss : waiver

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

1st case of loss : waiver

- Limitations : what if waiver leads to *statelessness*?
 - I. 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)
 - II. Sometimes waiver is *indirectly* linked to possession of foreign nationality, *e.g.* Section 15 Swedish Act, which links waiver to acquisition of foreign nationality

1st case of loss : waiver

- No requirement to justify the waiver – but in some cases, waiver limited to situations of acquisition of foreign nationality (waiver to permit such acquisition, if foreign law requires waiver), see *e.g.* Section 15 Swedish Act; section 21(1) Irish Act : “If an Irish citizen . . . is or is about to become a citizen of another country and for that reason desires to renounce citizenship »

1st case of loss : waiver

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

1st case of loss : waiver

- When is a waiver to be considered?
 - I. To avoid military service or tax burdens? Or to escape from a 'bad' political system?
 - II. To comply with a waiver requirement imposed by a foreign nationality law (*e.g.* § 29-3 German Act)
 - III. To 'clean up' situation after a successful integration in a new country of residence

2nd case of loss : through long term residence abroad

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

2nd case of loss : through long term residence abroad

- Typical features of the loss through long term residence abroad
 - I. 'Silent loss' – loss operates *ex lege* without any notice to the person concerned, can therefore go unnoticed for a long time
 - II. Only applicable for 'adults' (Belgium : 28 y. old (art. 22 § 1 (5°) CNB; Sweden : 22 y. old (Section 14 A Swedish Act)

2nd case of loss : through long term residence abroad

- Typical features of the loss through long term residence abroad
 - I. Loss occurs only if birth abroad (not applicable for citizens born in the country) *and* long term residence abroad (*e.g.* Belgium : person born abroad and uninterrupted residence outside Belgium between 18 y. and 28 y.; Sweden : person born abroad and never been domiciled in Sweden before age of 22 y. – section 14A Swedish Act)

2nd case of loss : through long term residence abroad

- Typical features of the loss through long term residence abroad
 - I. Permission to retain citizenship if
 1. Application thereto (*e.g.* Belgium : see art. 22 § 1, 5^o CBN; Sweden : Section 14A Act) or
 2. Link with the home country (*e.g.* professional link – section 14A(3^o) Swedish Act; Belgium : residence abroad 'in service of the State' (civil service, directly or indirectly for Belgian government; or employment of a Belgian company or association)

2nd case of loss : through long term residence abroad

- Typical features of the loss through long term residence abroad:
 - I. Not applicable if leads to *statelessness* (art. 22 § 3 CBN; Section 14 final para. Swedish Act)
 - II. No requirement that person possesses nationality of country of residence

2nd case of loss : through long term residence abroad

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

2nd case of loss : through long term residence abroad

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

2nd case of loss : through long term residence abroad

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

3rd case of loss : consequential loss for children

Loss for underage children as a consequence of loss by the parent?

- I. Usually provided (but not always : see section 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* »)

3rd case of loss : consequential loss for children

- I. Distinction on the basis of the *reason* for the loss – does it also apply to the children (*e.g.* loss of nationality by the parent because of service in a foreign military at time of war : loss is akin to a *punishment*, should not apply to children, see art. 7 § 2 ECN)

3rd case of loss : consequential loss for children

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

3rd case of loss : consequential loss for children

- I. Look for situation of both parents – if one of the parents retain nationality, child does not lose nationality, see art. 7 § 2 ECN (*e.g.* Belgian children of Belgian parents in Australia, father acquires Australian nationality before 2007, mother keeps Belgian nationality)

3rd case of loss : consequential loss for children

Which circumstances?

- I. Loss of nationality by parents as a consequence of voluntary acquisition of another nationality (*e.g.* former art. 22 § 1(3^o) CNB)
- II. *Quaere* loss of nationality by parents as a result of fraud. Should children also lose nationality? Tolerated by ECN

3rd case of loss : consequential loss for children

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

4th case of loss : as a consequence of 'behaviour'

- Several cases (such as 'voluntary service in a foreign military force' or 'conduct seriously prejudicial to the vital interests of the State')
- Two cases stand out : fraud and voluntary acquisition of foreign nationality

4th case of loss : as a consequence of 'behaviour'

- Fraud : application of *Fraus omnia corrumpit*
- Fraud should directly concern acquisition of nationality : see art. 7 § 1 (b) ECN: 'acquisition of the nationality of the State Party by means of fraudulent conduct, false information or concealment of any relevant fact attributable to the applicant' (see Art. 23 § 1 (1) CBN)

4th case of loss : as a consequence of 'behaviour'

- Fraud : different cases in practice :
 - I. Identity fraud (concealment of real identity)
 - II. Use of false documents (*e.g.* to demonstrate residence in country, etc..)
 - III. Australia : migration-related fraud (section 21(1)(iii))

4th case of loss : as a consequence of 'behaviour'

- By essence, not applicable if nationality acquired out *ex lege* (*ius sanguinis*) (see art. 23 § 1 CNB)
- No automatic loss : 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”)

4th case of loss : as a consequence of 'behaviour'

- Application : case *Ayaan Hirsi Ali*, Somali citizen granted status of refugee in the Netherlands, then naturalized, elected MP. She concedes that she had not given her real name and real date of birth. Stripped out of her nationality by the Dutch Minister (art. 14 § 1 RWN) before Minister reversed her decision

4th case of loss : as a consequence of 'behaviour'

- This is a 'new' ground of loss (Netherlands : 2003; Belgium : 2006) – following highly publicized cases
- Loss : decision by court (Belgium : art. 23 § 2 CNB : Court of Appeal) or by Minister (Netherlands : art. 14 § 1 RWN; Australia : section 21 (1) Australian Citizenship Act)

4th case of loss : as a consequence of 'behaviour'

- Loss only works for the future? Yes under Belgian law (art. 23 § 8 *in fine* CNB), not always the case (the Netherlands, art. 14 (1) RWN : “*De intrekking werkt terug tot het tijdstip van verkrijging of verlening van het Nederlanderschap*”).
- Loss also possible if leads to *statelessness* – Belgium, Netherlands (ECN tolerates this)

4th case of loss : as a consequence of 'behaviour'

- Statute of limitations ? Belgium and Switzerland : 5 years after acquisition of nationality; Netherlands : 12 y. (art. 14 (1) RWN)
- Difficulty in theory : can nationality be lost when fraud concerns identity? Has nationality been acquired in that case? (discussion in the Netherlands)

4th case of loss : as a consequence of 'behaviour'

- What about conduct *after* one became a national? Loss only if very serious offence *e.g.* art. 23 § 1 (2°) CNB : serious breach of obligations as a Belgian citizen – rarely applied

4th case of loss : as a consequence of 'behaviour'

Voluntary acquisition of foreign nationality :

- Should be discussed in the framework of 'double nationality'

Nationality law

VII. Multiple nationalities

Multiple nationalities

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

Multiple nationalities : the roots

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

Multiple nationalities : the roots

- (1) Transmission of nationality *ius sanguinis a patre* and *a matre* :
e.g. child born in Belgium, mother is French, father is Belgian – two nationalities acquired *ius sanguinis* cannot be lost by residence abroad (Belgium : otherwise if birth outside Belgium)
e.g. child born in Belgium, father is Dutch and mother is French but also acquired Dutch nationality after marriage – no loss of French nationality

Multiple nationalities : the roots

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

Multiple nationalities : the roots

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

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.) (but consider requirement of waiver in Germany and the Netherlands)

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, 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)

Multiple nationalities : the roots

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

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 :
 - I. 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.
 - II. [...] 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*

- Fifa rules applicable for int'l tournaments : *e.g.* Art. 7 FIFA Rules for World Cup 2010 in South Africa :
 - I. “Each association shall ensure the following when selecting its representative team for the FIFA World Cup™: a) all players shall be citizens of its country and subject to its jurisdiction;
 - II. “b) all players shall be eligible for selection in accordance with the Regulations Governing the Application of the FIFA Statutes and other relevant FIFA regulations. »

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'

Multiple nationalities : the attitude of States

- How does the international community consider the phenomenon of multiple nationalities?
- Evolution of attitude of States
- First element : Hague Convention of 12.04.1930 – not directly concerned with multiple nationalities, but Preamble stated that « *Recognising ... that the ideal towards which the efforts of humanity should be directed in this domain is the abolition of all cases both of statelessness and of double nationality* »

Multiple nationalities : the attitude of States

- Hague Convention of 12.04.1930 – art. 6 provided that *“Without prejudice to the liberty of a State to accord wider rights to renounce its nationality, a person possessing two nationalities acquired without any voluntary act on his part may renounce one of them with the authorisation of the State whose nationality he desires to surrender”*

Multiple nationalities : the attitude of States

- Second element : New York Convention of 22.02.1954 (“*on the nationality of married women*”) – not directly concerned with multiple nationalities, but with position of women
- Effect of NY Convention : equal position of women in acquisition and transmission of nationality → increase number of cases of multiple nationalities

Multiple nationalities : the attitude of States

- Third element : NY Convention 30 August 1961 : not directly concerned with multiple nationalities, but with position of stateless and refugees
- Convention 30 August 1961 : indirect impact of multiple nationalities (through easier acquisition of local nationality)

Multiple nationalities : the attitude of States

- Fourth element : Straatsburg 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* »

Multiple nationalities : the attitude of States

- Two parts in Straatsburg 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*”
 - Art. 2 : possibility for person with 2 nationalities to renounce one “with the consent of the Contracting Party”

Multiple nationalities : the attitude of States

- Two parts in Straatsburg Convention of 1963 : *i)* technical rules aimed at reducing number of cases of of multiple nationalities and *ii)* second part with rules on military obligations in cases of multiple nationality

Multiple nationalities : the attitude of States

- 1963 Straatsburg Convention : ratified by 13 countries (among which Belgium) – some countries only ratified the second part (*e.g.* UK)
- Fifth element : Second Protocol 1993 : amendment of 1963 convention, possibility to keep original nationality in 3 cases (in which original Convention prescribed loss of nationality because of acquisition of another one)

Multiple nationalities : the attitude of States

- 1993 Protocol : 3 cases in which no automatic loss of nationality :
 - I. 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
 - II. In case of acquisition following marriage with a national
 - III. When a child acquires the nationality of one of his parents

Multiple nationalities : the attitude of States

- Second Protocol only ratified by France (denounced in 2008), Italy and the Netherlands
- Sixth element : 1997 European Convention on Nationality – Artt. 14-18 ECN : mixed attitude on multiple nationalities:
 - I. Art. 14 : State must allow multiple nationalities if acquired *ex lege*
 - II. Art. 15 : possibility for a State to consider that voluntary acquisition of foreign nationality is a ground of loss

Multiple nationalities : the attitude of States

- Art. 7 ECN allows States to provide that the acquisition of another nationality is a ground for loss of the nationality (*« A State Party may not provide in its internal law for the loss of its nationality ex lege or at the initiative of the State Party except in the following cases: a) voluntary acquisition of another nationality;. . . »*) - merely a possibility for State to adopt such a rule / under Art. 1 of the 1963 Convention : loss of the former nationality was automatic (*“. . . shall lose their former nationality.”*).

Multiple nationalities : the attitude of States

- Explanatory Report ECN : “The new Convention is *neutral* on the issue of the desirability of multiple nationality. Whereas Chapter I of the 1963 Convention was intended to avoid multiple nationality, Article 15 of this Convention reflects the fact that multiple nationality is accepted by a number of states in Europe, while other European states tend to exclude it. However, the possibility for a state to allow multiple nationality will be subject to any contrary binding international obligations. In particular, states which are bound by Chapter I of the 1963 Convention will not, as regards their respective nationals, be able to allow more than a limited number of cases of multiple nationality ...”

Multiple nationalities : some States considered individually

- How do States consider cases of multiple nationalities?
- *Evolution* of attitude of some selected States as example – various attitudes possible

Multiple nationalities : some States considered individually

- Belgium :
 - 1°) Large possibility for foreigners to acquire Belgian nationality (through *ius soli*, declaration and naturalization – see above)

Multiple nationalities : some States considered individually

- Belgium :
- 2°) Waiver of original nationality *never* a requirement for acquisition of Belgian nationality (loss of nationality occurs only if foreign nationality so decides)

Multiple nationalities : some States considered individually

- Belgium : 3^o) *Quaere* for Belgian citizens who acquire another nationality?
 1. Acquisition of Belgian nationality in case of birth abroad is limited (after 2nd generation : declaration required – art. 8 CNB)
 2. Loss of nationality through long term residence abroad (residence between 18 – 28 y.)

Multiple nationalities : some States considered individually

- Belgium : 4°) *Quaere* for Belgian citizens who acquire another nationality?
- Voluntary acquisition of foreign nationality : (automatic) ground of loss until 09.06.2007 (Royal Decree 25 April 2007) – except if acquisition of nationality of State party to 1963 Convention (denunciation 28.04.2008).

Multiple nationalities : some States considered individually

- The Netherlands :
 - 1°) Limited possibility for foreigners to acquire Dutch nationality (through *ius soli*, option and naturalization)

Multiple nationalities : some States considered individually

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

Multiple nationalities : some States considered individually

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

Multiple nationalities : some States considered individually

- 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)

Multiple nationalities : some States considered individually

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

Multiple nationalities : some States considered individually

- *Italy* as a special case
- Italian citizens who adopt another nationality : no loss of Italian nationality since 1992 (but Italy remains party to the 1963 Straatsburg treaty...)
- No loss of Italian citizenship through long term residence abroad → 'stickiness' of Italian citizenship, resistant to changes

Multiple nationalities : some States considered individually

- 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 (US, Argentina).
- Based on 1865 Italian Civil Code, these Italians lost Italian nationality

Multiple nationalities : some States considered individually

- At first, no particular reaction in Italian nationality law for this mass emigration
- Starting in 1912 (Act nr. 555 of 13 June 1912) : nationality law was used as a means to keep ties with émigrés
- Act of 1912 : possibility for expatriated Italians to recover Italian nationality (former nationals who had lost Italian nationality could recover it after 2 year of residence in Italy)

Multiple nationalities : some States considered individually

- 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)

Multiple nationalities : some States considered individually

- Starting in 1992 : successive 'reacquisition programmes' : easy procedure for foreigners of Italian origin to recover Italian passport (art. 17 Act : “A *person who has lost Italian citizenship under articles 8 and 12 of Act No. 555 of 13 June 1912, or for not having made the choice provided for in article 5 of Act No. 123 of 21 April 1983, shall reacquire it if he or she makes a declaration to that effect within two years of the date of entry into force of the present Act*”).

Multiple nationalities : some States considered individually

- Between 1992 and 2006, successive 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)

Multiple nationalities : some States considered individually

- 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)

Multiple nationalities : some States considered individually

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

Multiple nationalities : some States considered individually

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

Multiple nationalities : some States considered individually

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

What's wrong with multiple nationalities?

The policy debate : divided loyalty?

- The most important argument made against dual nationality is that a person who has two nationalities, cannot be loyal at the same time to the two States of which he is a national.
- Recent cases : *Ahmed Aboutaleb*, mayor of Rotterdam (Dutch and Moroccan nationality); Belgium : *Emir Kir* (Minister Brussels – Belgian and Turkish)

What's wrong with multiple nationalities?

The policy debate : 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*, Luttre, Office international d'éditions Alfred Balsacq, 1934, n° 72).*

What's wrong with multiple nationalities?

The policy debate : divided loyalty?

- Is argument really convincing? Analysis should be combined with analysis of external voting rights legislation —> in many countries, nationals residing abroad do not have the right to vote, or can only exercise this right under specific circumstances (which may serve as 'filter' —> only the motivated will vote)

What's wrong with multiple nationalities?

The policy debate : divided loyalty?

- Diminished relevance of the argument with rise of supranational institutions (such as EU – direct example of multiple affiliations) and with limitations of national sovereignty?

What's wrong with multiple nationalities?

The policy debate : divided loyalty?

- Heart of argument : 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?

What's wrong with multiple nationalities?

The policy debate : military service?

- Practical problem : military service in two countries
- Classic solution : agreement between States concerned to avoid dual obligation (*e.g.* obligation must be fulfilled in country where person concerned resides when turning 18 y. - see artt. 5 and 6 1930 Hague Convention)