

The law of nationality : comparative and international perspective

Patrick Wautelet

Outline

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

1. Introduction : 3 questions

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

1. Introduction : 1st question

What is nationality?

- Intuitive approach : link between an individual and a State (not applicable to legal persons)
- Narrow version : a legal link
- Legal dimension is not the only one relevant - nationality also expresses different forms of connection between an individual and a State (psychological, economic, etc.)

1. Introduction : 1st question

What is nationality?

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

1. Introduction : 1st question

What is nationality?

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

1. Introduction : 1st question

What is nationality?

- Whatever version of the concept of nationality is chosen, important to note that nationality does not say much about the position of nationals
- Nationality does not establish or grant rights / duties to individuals concerned. It merely represent a necessary condition for the entitlement to these rights / duties (as laid out in other legal disciplines)
- Nationality is a '*framework legal relationship*' (de Groot : "*Kopplungsbegriff*")
- Law of nationality : concerned with nationality as such, not with the consequences of nationality (even if these should be taken into consideration)

1. Introduction : 1st question

What is nationality?

- 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 but are determined by other legal disciplines)

1. Introduction : 1st question

What is nationality?

Consequences of nationality

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

1. Introduction : 1st question

What is nationality?

Consequences of nationality

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

1. Introduction : 1st question

What is nationality?

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)
 - Civil/family status (at least in jurisdictions where civil/family status connected with residence)
 - Fundamental rights (*e.g.* right to marry, right to life etc.)

1. Introduction : 1st question

What is nationality?

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. Introduction : 1st question

What is nationality?

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. Introduction : 1st question

What is nationality?

Consequences of nationality

- Consequences of nationality are not as important as they used to be : 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. Introduction : 1st question

What is nationality?

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. Introduction : 1st question

What is nationality?

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 : 2nd question

How to study 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?
- Ambitious perspective : since nationality law does *not* in itself determine what are the consequences of nationality, study nationality law but also look at other legal disciplines to determine the content of the status of citizen

1. Introduction : 2nd question

How to study nationality law ?

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

1. Introduction : 3rd question

Sources of Nationality Law

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

1. Introduction : 3rd question

Sources of Nationality Law

- Two important questions in relation to the national rules concerning nationality:
 - Which version in time?
 - Which legislation is relevant ?

1. Introduction : 3rd question

Sources of Nationality Law

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

1. Introduction : 3rd question

Sources of Nationality Law

Influence of time on Nationality Law

- *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

1. Introduction : 3rd question
Sources of Nationality Law
Influence of time on Nationality Law

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

1. Introduction : 3rd question

Sources of Nationality Law

Influence of time on Nationality Law

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

1. Introduction : 3rd question

Sources of Nationality Law

Influence of time on Nationality Law

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

1. Introduction : 3rd question

Sources of Nationality Law

Influence of time on Nationality Law

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

1. Introduction : 3rd question

Sources of Nationality Law

Which Nationality Law?

- 2nd question : which law applies?
- Each State is the sole master of its nationality:
 - It is up to each State to determine who are its nationals (and who 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

1. Introduction : 3rd question

Sources of Nationality Law

Which Nationality 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?)

1. Introduction : 3rd question

Sources of Nationality Law

Which Nationality 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)

1. Introduction : 3rd question

Sources of Nationality Law

- Various international conventions – important issues, even if they do not touch or remain vague on the 'core' of nationality law (acquisition and loss)
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. Introduction : 3rd question

Sources of Nationality Law

- Besides international conventional law, 'national' nationality law is also influenced by:
 - European law (see later on this issue)
 - 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)

The law of nationality : comparative and international perspective

Acquisition of nationality

Patrick Wautelet

Outline

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

I. Overview of the methods of acquisition



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

I. Overview of the methods of acquisition



- In fact this distinction is deceptive in several respects :
 - 1) There are other means of acquiring nationality which do not fit neatly in the *summa divisio* – e.g. acquisition through continued (long term?) residence on territory (*ius educationis / socialis?*)

I. Overview of the methods of acquisition



- 2) Some methods of acquisition require in fact elements of both methods
E.g. acquisition through marriage with a national : nowadays, acquisition is not automatic, acquisition is possible following marriage *and* provided foreign spouse resides for a certain period in country

I. Overview of the methods of acquisition



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

I. Overview of the methods of acquisition



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

I. Overview of the methods of 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...

I. Overview of the methods of 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?

I. Overview of the methods of 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.

I. Overview of the methods of acquisition



- Mixed situation of many States makes it difficult to see in the nationality (through the way it may acquired) 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*)
- Nationality is more the addition of different concerns and policy aims

I. Overview of the methods of acquisition



- Analysis suggested for this class :
 - focus on the main grounds of acquisition
 - Analysis in the light of recent trends and general principles
- Keep in mind that in order to obtain complete view of a system and identify the general balance of a system:
 - Grounds of acquisition should be considered together (*e.g.* if system is generous towards second or third generation foreigners, less need to open up naturalization)
 - Grounds of acquisition should be studied together with causes of loss of nationality

I. Overview of the methods of acquisition



- Technical note : distinction between various grounds of acquisition depending on time/manner of acquisition:
 - *Assignment* : nationality is acquired automatically, by the operation of the law
 - *Acquisition* : access to nationality requires initiative by the person concerned

Acquisition of nationality

General introduction : overview of the methods of acquisition

**1st theme : nationality within families
(acquisition *ius sanguinis*)**

2nd theme : nationality and migration (acquisition *ius soli*)

II. Acquisition of nationality in family relations



- Outline :
 - Introduction
 - Acquisition through blood link – parents and children
 - Acquisition of nationality through blood links and the evolution of family relationships
 - Acquisition *ius sanguinis* and expatriation
 - Acquisition through marriage

II. Acquisition of nationality in family relations

1. Introduction

- Family relationships (and most specifically link with parents) = most common way for person to acquire a nationality
- Because acquisition *ius sanguinis* is automatic (by operation of the law), difficulty to demonstrate that acquisition took place

II. Acquisition of nationality in family relations

1. Introduction

- Two methods to build up a convincing case:
 - Demonstrate that legal requirements were fulfilled (implies using the law at the time the family event took place)
 - Demonstrate the '*possession d'état*' (if allowed in matters of nationality – see e.g. Art. 30-2 French Civil Code).

II. Acquisition of nationality in family relations

2. Acquisition through blood links

- Most common way of acquiring a nationality
- Purposes of the analysis :
 - Examine whether the law of nationality has kept up with the evolution of family law
 - Examine impact of expatriation of a family – in other words, how strong does link with home country remain after expatriation?

II. Acquisition of nationality in family relations

2. Acquisition through blood links

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

- Start from assumption that birth in country of origin of family (*e.g.* : child born in France out of French parents)
- Two questions:
 - Will a child acquire the father's nationality or also the mother's nationality?
 - Equality of children born out of marriage and within wedlock?

II. Acquisition of nationality in family relations

2. Acquisition through blood links

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

- *1st question* : does child acquire nationality of his father, mother or both ?
- 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*”

II. Acquisition of nationality in family relations

2. Acquisition through blood links

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

- Today : rule has been abandoned – equality men/woman in transmission of nationality - principle that child can obtain nationality of both his father and mother
- Evolution started after WWII and reached apex in 1970's

II. Acquisition of nationality in family relations

2. Acquisition through blood links

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

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

II. Acquisition of nationality in family relations

2. Acquisition through blood links

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

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

II. Acquisition of nationality in family relations
2. Acquisition through blood links
A. Acquisition *ius sanguinis* and the evolution
of family relationships

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

II. Acquisition of nationality in family relations

2. Acquisition through blood links

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

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

II. Acquisition of nationality in family relations
2. Acquisition through blood links
A. Acquisition *ius sanguinis* and the evolution
of family relationships

- Consequence of this evolution : 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)

II. Acquisition of nationality in family relations

2. Acquisition through blood links

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

- 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”

II. Acquisition of nationality in family relations
2. Acquisition through blood links
A. Acquisition *ius sanguinis* and the evolution
of family relationships

- 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...

II. Acquisition of nationality in family relations

2. Acquisition through blood links

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

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

II. Acquisition of nationality in family relations

2. Acquisition through blood links

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

- 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)

II. Acquisition of nationality in family relations

2. Acquisition through blood links

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

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

II. Acquisition of nationality in family relations
2. Acquisition through blood links
A. Acquisition *ius sanguinis* and the evolution
of family relationships

- Question is only relevant for acquisition of father's nationality
- Mother's nationality is indeed always transmitted, since parentage link with mother will always be established, whether she's married or not (nature cannot be cheated... - in case of surrogate mother : birth certificate)

II. Acquisition of nationality in family relations

2. Acquisition through blood links

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

- For father : nationality can only be acquired if there is a legal bond between father and child → link with family law
- Various situations must be distinguished
- 1st situation : parents are married; in most legal systems, mother's husband will automatically be deemed to be the child's father (presumption of paternity, strength of which may vary); child will therefore obtain his father's nationality

II. Acquisition of nationality in family relations

2. Acquisition through blood links

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

- 2nd situation : parents are bound by a civil 'partnership': – whether or not the child is legally the child of the mother's partner, depends on the consequences of the civil partnership:
 - *Cohabitation légale* under Belgian law : no effect equivalent to paternity presumption; recognition of the child is necessary; without such recognition, child will not obtain his father's nationality
 - *Geregistreerd partnerschap* under Dutch law : there is a presumption of paternity (hence, child will automatically obtain father's nationality)

II. Acquisition of nationality in family relations
2. Acquisition through blood links
A. Acquisition *ius sanguinis* and the evolution
of family relationships

- 3rd situation : parents are not married; father will have to recognize the child. Only then will child be able to claim his father's nationality
- *Quaere* if recognition of a child outside marriage is not possible?

II. Acquisition of nationality in family relations
2. Acquisition through blood links
A. Acquisition *ius sanguinis* and the evolution
of family relationships

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

II. Acquisition of nationality in family relations
2. Acquisition through blood links
A. Acquisition *ius sanguinis* and the evolution
of family relationships

- Difficulty : which law applies to the establishment of a link between child and parents?
- Difficulty arises out of the fact that this question could be governed by the national law of the persons concerned – but the child's nationality is still to be determined...

II. Acquisition of nationality in family relations

2. Acquisition through blood links

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

- 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...

II. Acquisition of nationality in family relations

2. Acquisition through blood links

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

- Follow up question : what if the parents only recently obtained nationality or, more generally, if the parents themselves did not obtain nationality *ius sanguinis* : can you transmit *ius sanguinis* a nationality which was acquired on another ground?
- *e.g.* : Moroccan parents, born in Morocco became Belgian citizens by naturalization in 2009. in 2010, the mother gives birth to a child in Belgium. Is the child a Belgian citizen?

II. Acquisition of nationality in family relations

2. Acquisition through blood links

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

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

II. Acquisition of nationality in family relations

2. Acquisition through blood links

B. Acquisition *ius sanguinis* and expatriation



- 2nd situation : acquisition through family if birth *outside* country of origin of family
- Focus on families living outside the country of origin. Does this have an impact on acquisition of nationality *ius sanguinis*? The matter is important for second (or following) generation 'expatriates'
- *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

II. Acquisition of nationality in family relations

2. Acquisition through blood links

B. Acquisition *ius sanguinis* and expatriation



- 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.)

II. Acquisition of nationality in family relations

2. Acquisition through blood links

B. Acquisition *ius sanguinis* and expatriation

- 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

II. Acquisition of nationality in family relations

2. Acquisition through blood links

B. Acquisition *ius sanguinis* and expatriation



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

II. Acquisition of nationality in family relations

2. Acquisition through blood links

B. Acquisition *ius sanguinis* and expatriation

- Several options:
 - Require that the parent whose nationality is transmitted, is born in the country of origin
 - No such requirements – transmission in all cases no matter how long the family has left the country of origin

II. Acquisition of nationality in family relations

2. Acquisition through blood links

B. Acquisition *ius sanguinis* and expatriation

- 1st model : in some countries, there is a limit to the transmission of the nationality *ius sanguinis* when a family leaves the country
- e.g. : 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)

II. Acquisition of nationality in family relations

2. Acquisition through blood links

B. Acquisition *ius sanguinis* and expatriation



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

II. Acquisition of nationality in family relations

2. Acquisition through blood links

B. Acquisition *ius sanguinis* and expatriation

- 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)

II. Acquisition of nationality in family relations

2. Acquisition through blood links

B. Acquisition *ius sanguinis* and expatriation

- 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?

II. Acquisition of nationality in family relations

2. Acquisition through blood links

B. Acquisition *ius sanguinis* and expatriation

- 2nd model : in other countries, nationality can be transmitted to every next generation born abroad, without any requirement. In other words, the acquisition *ius sanguinis* is not limited by the expatriation
- *E.g.* 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 ;*”

II. Acquisition of nationality in family relations

2. Acquisition through blood links

B. Acquisition *ius sanguinis* and expatriation

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

II. Acquisition of nationality in family relations

2. Acquisition through blood links

B. Acquisition *ius sanguinis* and expatriation

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

II. Acquisition of nationality in family relations

2. Acquisition through blood links

B. Acquisition *ius sanguinis* and expatriation

- *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)

II. Acquisition of nationality in family relations

2. Acquisition through blood links

B. Acquisition *ius sanguinis* and expatriation

- 2nd question : in some cases, a child born in a country will obtain at birth the nationality of that country. This could be the result of a simple (and automatic) *ius soli* rule (e.g. USA) or of a double *ius soli* rule (e.g. Belgium; see hereunder)
- Does acquisition of local nationality have an impact on acquisition of (the family's) nationality through *ius sanguinis*?

II. Acquisition of nationality in family relations

2. Acquisition through blood links

B. Acquisition *ius sanguinis* and expatriation

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

II. Acquisition of nationality in family relations

2. Acquisition through blood links

B. Acquisition *ius sanguinis* and expatriation

- 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”

II. Acquisition of nationality in family relations

2. Acquisition through blood links

Assessment

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

II. Acquisition of nationality in family relations

2. Acquisition through blood links

Assessment

- 2) 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

II. Acquisition of nationality in family relations

2. Acquisition through blood links

Assessment

- 3) Reverse perspective : possibility to keep nationality generation after generation?
Balanced picture because *i)* not always automatic and *ii)* specific ground of loss
- 4) 'Ethnic' nationality ? No because acquisition *ius sanguinis* is blind for the origin of the nationality of the parent whose nationality is acquired by child

II. Acquisition of nationality in family relations

3. Acquisition through marriage

Introduction

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

II. Acquisition of nationality in family relations

3. Acquisition through marriage

A. Husbands and wives : the age of domination



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

II. Acquisition of nationality in family relations

3. Acquisition through marriage

A. Husbands and wives : the age of domination



- National laws provided two parallel measures:
 - Upon marriage with a citizen, a foreign woman automatically acquired the nationality of her husband. See *e.g.* Article 4 of the Belgian Coordinated Acts of 1932 : “*L'étrangère qui épouse un belge ou dont le mari devient belge par option suit la condition de son mari*” - justification : wish to strive for unity within the family
 - Upon acquisition by a woman married with a foreigner, of the nationality of the husband, the woman lost her original nationality. See *e.g.* Article 18 of the Belgian Coordinated Acts of 1932 : “*Perdent la qualité de belge : ... 2° la femme qui épouse un étranger d'une nationalité déterminée, si la nationalité de son mari lui est acquise en vertu de la loi étrangère*”

II. Acquisition of nationality in family relations

3. Acquisition through marriage

A. Husbands and wives : the age of domination



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

II. Acquisition of nationality in family relations

3. Acquisition through marriage

B. Husbands and wives : the age of equality

- 2nd stage in evolution : starting after WWII, the situation started to change. Idea of equality between men and women gained ground
- 1st (timid) measure : ensure that if a women lost her nationality when marrying a foreign husband, this would at least be conditional upon her acquiring the nationality of her husband. Concern : prevent the woman from becoming stateless
- See Art. 8 of the 1930 Hague Convention : *“If the national law of the wife causes her to lose her nationality on marriage with a foreigner, this consequence shall be conditional on her acquiring the nationality of the husband”*

II. Acquisition of nationality in family relations

3. Acquisition through marriage

B. Husbands and wives : the age of equality

- Next step : 1957 UN Convention on the Nationality of the Married Women
- Preamble : wish of Contracting States to promote “*universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to sex*”

II. Acquisition of nationality in family relations

3. Acquisition through marriage

B. Husbands and wives : the age of equality



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

II. Acquisition of nationality in family relations

3. Acquisition through marriage

B. Husbands and wives : the age of equality



- Idea of unity of nationality within family remained a concern for States
- In order to reach this goal, the States agreed to provide a *possibility* for foreign women to acquire the nationality of their spouses
- See Art. 3 of the Convention : “*Each Contracting State agrees that the alien wife of one of its nationals may, at her request, acquire the nationality of her husband through specially privileged naturalization procedures.*”

II. Acquisition of nationality in family relations

3. Acquisition through marriage

B. Husbands and wives : the age of equality

- In many States, impact of marriage on nationality was nuanced :
 - _ Foreign wife still acquired the nationality of her husband, but in several countries, acquisition could be
 - Belgium : foreign woman could resist acquisition (by filing a notice) - *e.g.* Art. 4 Act of 1932 : “*Toutefois elle [the foreign woman marrying a Belgian citizen] peut renoncer à la nationalité belge par une déclaration ... durant les six mois à partir du jour du mariage ou du jour où le mari est devenu belge, à condition d'établir qu'elle possède la nationalité étrangère ou qu'elle la recouvre du fait même de sa déclaration*”
 - France : Act of 10.08.1927 : foreign woman marrying a French national only acquired French nationality if she consented thereto (during marriage ceremony)
 - _ And she could also keep her original nationality (again, by filing a notice to that effect)

II. Acquisition of nationality in family relations

3. Acquisition through marriage

B. Husbands and wives : the age of equality

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

II. Acquisition of nationality in family relations

3. Acquisition through marriage

B. Husbands and wives : the age of equality



- Today, principle that marriage has no automatic effect on nationality of the spouses is well established
- See e.g. art. 4 Eur. Convention on Nationality : “The rules on nationality of each State Party shall be based on the following principles : ... d) *neither marriage nor the dissolution of a marriage between a national of a State Party and an alien, nor the change of nationality by one of the spouses during marriage, shall automatically affect the nationality of the other spouse.* »
- See e.g.
 - Belgium : art. 16 CNB (1984)
 - France : art. 21-1 French Civil Code (principle that marriage has no automatic effect on nationality of woman accepted with the Act of 9 January 1973)

II. Acquisition of nationality in family relations

3. Acquisition through marriage

B. Husbands and wives : the age of equality

- In most States, however, marriage opens the door for facilitated acquisition of nationality
- Marriage combined with a certain residence together : ground for acquisition
- *E.g.* art. 16 CNB : facilitated acquisition procedure (by declaration)
- *E.g.* : existence of marriage may also lead to a short naturalization period - under Dutch law, marriage with a Dutch opens the door to *naturalization* (see art. 8 § 2 Rijkswet : naturalization is possible after 3 years of marriage, no application of general requirement of 5 y. residence; but requirement that integration be demonstrated...)

II. Acquisition of nationality in family relations

3. Acquisition through marriage

C. Husbands and wives : the age of suspicion



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

II. Acquisition of nationality in family relations

3. Acquisition through marriage

C. Husbands and wives : the age of suspicion

- Suspicion led to additional requirements or additional severity in requirements for acquisition of nationality through marriage
- 1st) acquisition only after a certain period of marriage
- 2nd) spouses should live in the State, the nationality of which is at stake
- 3rd) possibility to take nationality back – France recently?

II. Acquisition of nationality in family relations

3. Acquisition through marriage

C. Husbands and wives : the age of suspicion



- 1st) acquisition is only possible after a certain period of marriage
- In order to become relevant for the acquisition of the nationality, the marriage should last for a certain period of time
- Duration required can vary:
 - *e.g.* Belgium : for 3 years (except if foreigner already resided in Belgium – acquisition possible after only 6 months of marriage)
 - *e.g.* Netherlands : acquisition possible after 3 years of marriage (art. 6 (1)(g) Rijkswet)
- No acquisition if separation / divorce of the spouses during the required period of residence (except in case of death of one of the spouses)
- Acquisition is possible whether marriage celebrated in country or abroad

II. Acquisition of nationality in family relations

3. Acquisition through marriage

C. Husbands and wives : the age of suspicion



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

II. Acquisition of nationality in family relations

3. Acquisition through marriage

C. Husbands and wives : the age of suspicion

- How long should foreign spouse reside in the country?
- Required length of residence can vary
- *E.g.* Belgium : 3 years
- Sometimes shorter residence requirement if the foreign spouse already lived in the country before the marriage (*e.g.* Belgium : if the foreign spouse already resided in Belgium before the marriage and possessed, since at least 3 years, a title to reside for at least 3 months in Belgium : it is sufficient that the two spouses have resided together for 6 months in Belgium for the declaration to be made)

II. Acquisition of nationality in family relations

3. Acquisition through marriage

C. Husbands and wives : the age of suspicion

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

II. Acquisition of nationality in family relations

3. Acquisition through marriage

C. Husbands and wives : the age of suspicion



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

II. Acquisition of nationality in family relations

3. Acquisition through marriage

C. Husbands and wives : the age of suspicion

- However, in some countries, possibility to 'monitor' nationality acquired through marriage, with possibility to take it back in case marriage is dissolved
- France – Act of 12 Oct. 2010 – new art. 26-3 French Civil Code : gouvernement may oppose acquisition, delay for opposition was one year; has been brought to 2 years

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

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- In addition possibility to lose one's nationality because of fraud now being considered applicable in case of marriage of convenience (*e.g.* new art. 23 § 1-1 CNB)

The law of nationality : comparative and international perspective

Acquisition of nationality and migration

Patrick Wautelet

Outline

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

Purpose

- Evolution of the law of nationality because of the impact of migration explored on the basis of 2 themes:
 - Acquisition through long term residence
 - Acquisition through birth on the territory
- Before looking at these 2 themes, some general background

II. Acquisition of nationality and migration

1. General background

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

II. Acquisition of nationality and migration

1. General background

- Today population of most Western European countries is much more diverse than 50 years ago, with large numbers of 'foreigners'
- Even though increase in number of 'foreigners' is unmistakable, very difficult to obtain comprehensive figures – who are the foreigners?
 - Persons who do not possess the local nationality?
 - Persons who did not possess local nationality at birth?
 - Persons who were born abroad (but then what with second generations and following?)
 - Persons who were born abroad and whose parents were born abroad?

II. Acquisition of nationality and migration

1. General background

- *E.g.* figures for Belgium:
 - Persons *born abroad* : 1.268.915 or 12 % of population (Jan. 2006); constant increase (1991 : 9,41%)
 - Persons *born with a foreign nationality* : 1.625.362 or 15,5 % of population (Jan. 2006) – but this includes 900.473 'foreigners' (persons who still possess only a foreign nationality – 8,6% of the population) and 724.889 born with only a foreign nationality but who became Belgian citizen. Constant increase of the numbers of persons born with only a foreign nationality but who became Belgian (1991 : 250.000; 2006 : 725.000)
 - Persons *born with a foreign nationality or with at least one parent born as a foreigner* : +/- 2.000.000 or 19 % of the population (Jan. 2005) – caution with the figures, very difficult to measure

II. Acquisition of nationality and migration

1. General background

- Diversity comes from both intra-EU migration and migration from outside EU. *E.g.* Belgium - data re people born with another nationality than Belgian nationality (01.01.2006):
 - Largest represented countries : Italy (277.128); Morocco (249.623); France (172.461); Turkey (141.570); Netherlands (139.177)
 - 50 % of the foreign population in Belgium originates from the 'old' Europe of 15 MS
 - Among other countries : Turkey : 8.7%; Morocco : 15.35 %; Congo : 2.47 %

II. Acquisition of nationality and migration

1. General background

- In Western Europe, diversity of migration history
- France : oldest destination of choice for migrants in Western Europe (migration country since 150 years)
 - 1891 : 1.000.000 foreigners in France (from Italy, Belgium, Germany, Spain, etc.) - various reasons for migration (art, economic situation, politics, etc.)
 - After WWI : Polish, Russian and Armenian wave
 - 1960's : Algerians, Moroccans, Tunisians and Portuguese wave
 - Today : 1 out of 4 French citizen has at least a foreign grandfather; 2nd and 3rd generation of foreigners are present since decades (in 1999 : 4,500.000 of second generations, i.e. 7.7% of total population)

II. Acquisition of nationality and migration

1. General background

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

II. Acquisition of nationality and migration

1. General background

- Situation in 2010 :
 - There remains some emigration from Western European countries, albeit on a limited scale (so EU countries remain 'sending states') – *e.g.* Belgium average of 40.000 to 60.000 departures each year
 - Most countries in EU have, however, become in large part 'receiving' states (more intake than departures)

II. Acquisition of nationality and migration

1. General background

Situation in the EU : the example of Belgium

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

II. Acquisition of nationality and migration

1. General background

What type of migration today?

- Refugees : 1951 UN Convention Relating to the Status of Refugees : well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion, ... (Belgium 2009 : 17.186 – including multiple requests; status granted to 1.889 applicants)
- Undocumented aliens : illegal entry in Belgium (or legal entry with short term visa and then...)
- Students : visa for duration of studies and then attempt to remain in Belgium
- Workers : visa for duration of professional occupation (from outside EU)

II. Acquisition of nationality and migration

1. General background

Largest part of new migrants in Belgium based on *family relationship* (through family reunification procedure) – 52 % of long term visa issued in 2005:

- Marriage

- Marriage BE - Foreigner (including 'import brides' out of Thailand Russia and Philippines)
- Marriage with person from country of origin (large number - 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)

- Children – parents

II. Acquisition of nationality and migration

1. General background

Impact of this change on nationality law?

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

II. Acquisition of nationality and migration

1. General background

Impact of this change on nationality law?

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

II. Acquisition of nationality and migration

1. General background

- Situation was similar in majority of European countries where *ius sanguinis* acquisition prevailed
- France : picture was slightly different; *ius sanguinis* triumphed in Code Civil in 1804 until after first World War; but *ius soli* recognized very early – see Act of 1851 introduces 'double *ius soli*' in the 'Code of French Nationality' : child born in France out of two foreigners acquires French nationality when turning 18 y., if residence in France the last 5 y. (rationale : fear of 'denatality' in France)

II. Acquisition of nationality and migration

1. General background

- Question being raised starting starting in 1970's : should the law of nationality be adapted to new population?
- More specifically : should 'newcomers' have a possibility to obtain the nationality and, if yes, how should this be done?
- Two main possibilities:
 - opening up possibility to acquire nationality after a certain residence – questions : how long? acquisition as a right or a favour? what requirements ('integration', etc.)
 - Opening up possibility to acquire local nationality at birth Acquisition *ius soli* (simple and double) – aims at children and grand-children of 'newcomers'

II. Acquisition of nationality and migration

1. General background

- Policy debate around these two questions – a few questions to feed debate
- 1st element : do people born and socialized in a country, or having lived in a country for a long time possess a sufficiently '*genuine link*' with the country, which should open way for acquisition of nationality?
- Point of comparison : how generous is acquisition *ius sanguinis* (e.g. acquisition *ius sanguinis* by descendants of nationals, even though born abroad and living abroad)

II. Acquisition of nationality and migration

1. General background

- 2nd element : is there a risk that excluding people born and socialized in a country from acquisition of nationality lead to tensions (creation of 'second class' citizens) or at least raise serious concern from liberal-democratic point of view? Argument could be taken from principle 'No taxation without representation' (Michael Walzer 1983)
- Concern is more pressing if large number of foreigners concerned, as a consequence of massive cross-border mobility

II. Acquisition of nationality and migration

1. General background

- 3rd element : is the question not moot and the concern for exclusion of foreigners (to whom access to nationality is denied) not theoretical since substantial number of rights are 'residence based' (not enjoyed based on nationality)?
- Idea of '*denizens*' – status halfway between citizens and people denied any rights (see *e.g.* 2003 Directive on Long Term Resident Third Country Nationals)

II. Acquisition of nationality and migration

1. General background

- 4th element : in debate about upgrading law of nationality, an important item to be taken into consideration is the discussion on dual nationalities
- Acquisition of local nationality through birth on territory or long term residence, may indeed lead to significant increase in number of dual nationals (if foreign parents can transmit their nationality – mostly the case)

II. Acquisition of nationality and migration

1. General background

- 5th element : in the debate about upgrading nationality law, nuances are important. It is not a 'all or nothing' approach
- 1st example : a State 'upgrading' its nationality law, may choose to adopt either acquisition *ius soli* or acquisition based on long term residence (and not the two together)
- Accepting either one of these acquisition methods may solve the problem after a couple of generations, since parents will have acquired nationality (either on basis of long term residence or through birth on territory) and will transmit it to their children

II. Acquisition of nationality and migration

1. General background

- 5th element : in the debate about upgrading nationality law, nuances are important. It is not a 'all or nothing' approach
- 2nd example : a State 'upgrading' its nationality law, is not required to adopt acquisition based purely on *ius soli* – which would lead to unreasonable consequences (acquisition based on short-term stays, merely in transit; 'birth shopping') – may qualify acquisition *ius soli* by adding requirements

II. Acquisition of nationality and migration

1. General background

- 5th element : in the debate about upgrading nationality law, nuances are important. It is not a 'all or nothing' approach
- 3rd example : a State 'upgrading' its nationality law, may adopt different views on possibility to acquire nationality through long term residence or *ius soli*, on various questions such as :
 - Length of residence in country
 - Generation concerned - 1st generation born in country may not have a sufficient link; but what with 3rd generation - birth on territory out of parents born in territory? Can this be accepted as creating sufficient bond with State and justify acquisition?
 - Automatic acquisition or upon declaration?
 - Need to demonstrate some 'integration'? May be much less relevant in acquisition *ius sanguinis* and other cases of acquisition *ius soli*

II. Acquisition of nationality and migration

1. General background

- 5th element : in the debate about upgrading nationality law, nuances are important. It is not a 'all or nothing' approach
- 4th example : a State 'upgrading' its nationality law, may adopt different views on possibility to acquire nationality through long term residence or *ius soli*, on question of integration requirement:
 - Negative measure of integration exclusion of persons who have been involved in activities not worthy of a 'good citizen'
 - Positive requirement of integration – test and certificate
 - No integration requirement – integration presumed

II. Acquisition of nationality and migration

2. Acquisition through long term residence

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A. Introduction

- 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 (or acquiring nationality of State X when children are still younger than 18 y.)
- Various basis for acquisition :
 - Long term residence (either after voluntary settling in country or since childhood – *ius educationis*)
 - Marriage to a national (see above)

II. Acquisition of nationality and migration

2. Acquisition through long term residence

A. Introduction

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

II. Acquisition of nationality and migration

2. Acquisition through long term residence

A. Introduction

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

II. Acquisition of nationality and migration

2. Acquisition through long term residence

B. Acquisition procedures

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

II. Acquisition of nationality and migration

2. Acquisition through long term residence

B. Acquisition procedures

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

II. Acquisition of nationality and migration

2. Acquisition through long term residence

B. Acquisition procedures

- 1) Method without any discretion
- Usually acquisition is done through *administrative* procedure
- See *e.g.* acquisition through 'declaration' in many countries - generally characterised by:
 - Voluntary act (no automatic character)
 - Need for an oral or written declaration (by the target person or by a legal agent) addressed to the relevant public authorities
 - Compliance with some requirements (may be strict or not)
 - A decision made by the authorities following the application (*e.g.* Belgium : art. 12*bis* CNB)
 - In some countries : provided that applicant be present at 'nationality ceremony' (*e.g.* The Netherlands)

II. Acquisition of nationality and migration

2. Acquisition through long term residence

B. Acquisition procedures

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

II. Acquisition of nationality and migration

2. Acquisition through long term residence

B. Acquisition procedures

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

II. Acquisition of nationality and migration

2. Acquisition through long term residence

B. Acquisition procedures

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

II. Acquisition of nationality and migration

2. Acquisition through long term residence

B. Acquisition procedures

- Naturalization: no *right* to obtain nationality, grant of nationality is usually a *discretionary favor* – discretion follows from use of broad criteria
- Extreme case : Belgium - application filed with *Parliament* (no strict time frame); Parliament is sovereign, in case of negative decision, no recourse to court; legal requirements are only 'minimum' requirements

II. Acquisition of nationality and migration

2. Acquisition through long term residence

B. Acquisition procedures

- Who decides on acquisition?
 - _ Courts – usually come at second stage, to review decision taken by executive branch - *e.g.* challenge to refusal by Public Prosecutor to grant nationality under art. 12*bis* CNB
 - _ Executive branch – *e.g.* naturalization in the Netherlands (application filed with local authorities (city /municipality); application examined by executive branch (IND). Formal decision by the Queen. In case application is denied, this can be challenged before the courts)
 - _ Legislative branch - exceptional – *e.g.* naturalization in Belgium

II. Acquisition of nationality and migration

2. Acquisition through long term residence

C. When is acquisition possible?

- Existence of various cases – comparison is difficult
- Review of two main cases, with emphasis on substantial requirements (procedure : see above)

II. Acquisition of nationality and migration

2. Acquisition through long term residence

C. When is acquisition possible?

- 1st case : foreigner *born in* country, with long term residence
- *E.g.* art. 12 *bis* § 1-1^o CBN ; art. 6 § 1 sub a RWN (Dutch law); art. 21-7 French Civil code: art. 4(2) Italian Law 1992
- Does not exist in other countries (*e.g.* : Germany; Denmark)
- Ground for acquisition is *birth* in local country combined with *education* there – sometimes called 'acquisition *ius soli* after birth'

II. Acquisition of nationality and migration

2. Acquisition through long term residence

C. When is acquisition possible?

- 1st case : foreigners *born in* country
- Delayed acquisition : usually only possible when foreigner turns 18 y.
- In most cases, acquisition only possible following application – exception French law for children born in France out of foreign parents:
 - _ Art. 21-11 Civil Code : starting at the age of 16 y., child may *claim* French nationality (if residence for at least 5 y. in France since the age of 11 y.)
 - _ art. 21-7 Civil Code : at the age of 18, *automatic* acquisition for all foreigners born in France and having lived there for at least 5 continuous years starting at the age of 11 y

II. Acquisition of nationality and migration

2. Acquisition through long term residence

C. When is acquisition possible?

- 1st case : foreigners *born in* country
- Issue of quality of residence or legal title when making application for acquisition usually not essential (since foreigner concerned will have lived all his life in country)
- From policy perspective, this should not be relevant since foreigner will have as substantial link if he does have legal title or in case of undocumented stay...

II. Acquisition of nationality and migration

2. Acquisition through long term residence

C. When is acquisition possible?

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

II. Acquisition of nationality and migration

2. Acquisition through long term residence

C. When is acquisition possible?

- *e.g.* Belgium : Public prosecutor may object in case of 'serious personal facts' (art. 12*bis* CNB)
 - Facts, not opinions
 - Personal facts (not family or relatives)
 - Serious character : minor criminal offences cannot block acquisition of nationality
- *E.g.* The Netherlands : application may be denied if “*serious presumption that the applicant represents a danger for the public order, the public moral or the safety of the Kingdom*” (art. 6 § 3 Rijkswet)

II. Acquisition of nationality and migration

2. Acquisition through long term residence

C. When is acquisition possible?

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

II. Acquisition of nationality and migration

2. Acquisition through long term residence

C. When is acquisition possible?

- 2nd case : foreigners born outside country, but with long term residence
- How long should residence be? No consensus – *e.g.*
 - *Belgium* : naturalization after 3 y. of residence (art. 18 CNB)
 - *Netherlands* : naturalization after 5 y. of residence (art. 7-8-9 RWN)
 - *France* : naturalization after 5 y. (art. 21-17 Civil Code)
 - *Germany* : naturalization after 8 y. (art. 10 German Law)
 - *Austria* : naturalization after 10 y. of residence (§ 10(1)(a) Austrian Law of 1985 as amended)
- Lack of consensus also apparent in Eur. Convention on Nationality : no indication of required length of residence; art. 6-3 provides only for a maximum of 10 years of residence as a condition for naturalization

II. Acquisition of nationality and migration

2. Acquisition through long term residence

C. When is acquisition possible?

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

II. Acquisition of nationality and migration

2. Acquisition through long term residence

C. When is acquisition possible?

- If one looks at acquisition through 'declaration', variety is also the rule
- In some countries, declaration aim at well defined situations (residence + xx), which do not overlap with the 'general acquisition ground' of naturalization (residence without more)
- E.g. *Denmark*: acquisition by declaration if person resident in DK since before the age of 15 and received an education in DK, or obtained a substantial part of normal or professional education in DK and resided 4 years in DK (art. 6 Danish law)
- E.g. *The Netherlands*: acquisition by declaration if
 - At the age of 18 if residence in the Netherlands since applicant was 4 y. old (art. 6 lid 1 (e) RWN) ('*ius educationis*')
 - At the age of 65 y. if residence in the Netherlands since at least 15 y. (art. 6 lid 1 (h) RWN)

II. Acquisition of nationality and migration

2. Acquisition through long term residence

C. When is acquisition possible?

- In other countries, overlap between situations of declaration and naturalization
- E.g. *Belgium* : acquisition as a right : 7 y. of residence (art. 12*bis* § 1-2° CNB) – peculiar since not much difference with hypothesis of naturalization, except for length of residence requirement

II. Acquisition of nationality and migration

2. Acquisition through long term residence

C. When is acquisition possible?

- Other element of the comparison : assessment of 'integration' as part of the genuine link?
- Assessment of 'integration' as part of the genuine link – general trend in the EU is towards introducing such assessments (which usually take the form of 'test' or 'exam') – but not yet everywhere
- What is tested : language skills and does one know how one lives and should live in a country

II. Acquisition of nationality and migration

2. Acquisition through long term residence

C. When is acquisition possible?

- Assessment of 'integration' as part of the genuine link? *E.g.*:
 - Belgium : integration is *presumed* to exist by mere fact of application. However, if request for naturalization, Parliament retains 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')
 - Netherlands :
 - Acquisition by option: no test of integration
 - Acquisition by naturalization : requirement of positive integration (art. 8-1(d) Rijkswet); integration must be demonstrated ('*naturalisatietoets*' / '*inburgeringstoets*') – objective test (knowledge of Dutch society and Dutch language – costs between 200 and 450 EUR)

II. Acquisition of nationality and migration

2. Acquisition through long term residence

C. When is acquisition possible?

- Other element of the comparison : impact of acquisition on former nationality:
 - _ Belgium : no requirement at all that applicant waives his / her other nationality (hence tolerance of multiple nationalities)
 - _ Netherlands : requirement that applicant waives his /her other nationality for naturalization (art. 9 (1)(b) Rijkswet) – but many exceptions to this requirement (*e.g.* if applicant is a refugee, is married with a Dutch citizen, was born in the Netherlands, etc.)
 - _ Denmark : renunciation requirement for naturalization (art. 6 Danish Act)

II. Acquisition of nationality and migration

2. Acquisition through long term residence

D. Appraisal

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

II. Acquisition of nationality and migration

2. Acquisition through long term residence

D. Appraisal

- Evaluation:
 - Belgian law offers *broad access* to Belgian nationality to foreigners – much broader than many other EU member states – and this on all accounts
 - No demonstration of *positive* requirement of integration
 - No requirement that 'old' nationality be waived (impact on number of dual nationals)
 - Number and scope of cases where acquisition through residence or other link is possible

II. Acquisition of nationality and migration

2. Acquisition through long term residence

D. Appraisal

- Evaluation should take into account possibility to acquire nationality *ius soli* – since may complement acquisition following long term residence (*e.g.* Belgium - art. 12 *bis* § 1-1° 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)

II. Acquisition of nationality and migration

3. Acquisition based on birth on territory

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

II. Acquisition of nationality and migration

3. Acquisition based on birth on territory

- Recognition of consequences to birth on territory is quite recent in most EU countries (except France and Ireland)
- *E.g.* Belgium – very limited role of acquisition *ius soli* in Code as adopted in 1984 :
 - 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.
- Distinction between 3 cases

II. Acquisition of nationality and migration

3. Acquisition based on birth on territory

A. Parentless/stateless child

First case : parentless child or stateless child :

- Not controversial – see art. 6 § 1 (b) Eur. Conv. Nat.
- Even accepted in countries where *ius soli* otherwise not accepted – see e.g. See Art. 7 Moroccan Nationality Law : “*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*”

II. Acquisition of nationality and migration

3. Acquisition based on birth on territory

A. Parentless/stateless child

First case : parentless child or stateless child :

- Two situations:
 - 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. 19 French Civil Code; art. 6 § 1 b Eur. Conv. Nationality)

II. Acquisition of nationality and migration

3. Acquisition based on birth on territory

A. Parentless/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. 19 -1 French Civil Code; art. 6 § 2 Eur. Conv. Nationality
- *Caveat* : this could be a case of *provisional* acquisition of nationality (see e.g. art. 10 CNB)



II. Acquisition of nationality and migration

3. Acquisition based on birth on territory

A. Parentless/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.



II. Acquisition of nationality and migration

3. Acquisition based on birth on territory

B. Double *ius soli*



Second case : 'double *ius soli*' rule

- Birth in country out of a parent born in the country (3rd generation 'immigrant')
- Principle of acquisition double *ius soli* slowly accepted (France introduced the rule in 1889... Netherlands in 1953, Spain in 1954, Belgium in 1984 (art. 11 CNB – at that time not automatic, acquisition *upon declaration* by parent before child = 12 y) and Luxemburg in 2008 (art. 1-5° Lxbg Act)



II. Acquisition of nationality and migration

3. Acquisition based on birth on territory

B. Double *ius soli*



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



II. Acquisition of nationality and migration

3. Acquisition based on birth on territory

B. Double *ius soli*



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



II. Acquisition of nationality and migration

3. Acquisition based on birth on territory

B. Double *ius soli*



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



II. Acquisition of nationality and migration

3. Acquisition based on birth on territory

B. Double *ius soli*



- Acquisition double *ius soli* could be linked to residence and status of parents
 - e.g. Netherlands : acquisition only if parent born in the Netherlands has 'hoofdverblijf' (main residence) in the Netherlands and grand-parent also had 'hoofdverblijf' in the Netherlands when parent born
 - e.g. Belgium art. 11 CNB – parent born in Belgium must have had its '*main residence*' in Belgium during 5 years of the 10 preceding birth (requirement of '*legal residence*' of art. 7*bis* does not apply)



II. Acquisition of nationality and migration

3. Acquisition based on birth on territory

C. Simple *ius soli*



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

- Acquisition if birth on the territory and parents reside in the country
- Acquisition simple *ius soli* could intervene after 1st generation – more generous than acquisition double *ius soli*
- Not (yet?) commonly accepted (and certainly not in its purest 'American' form)



II. Acquisition of nationality and migration

3. Acquisition based on birth on territory

C. Simple *ius soli*



- In most countries, no immediate effect on birth on territory
- Birth on territory will only play a (delayed) role later, after person has become an adult (*e.g.* Italy : only effect of birth in Italy is that foreigner born in Italy may apply to become Italian when turning 18 y. if has been legally resident in Italy since birth – art. 4(2) Italian law)



II. Acquisition of nationality and migration

3. Acquisition based on birth on territory

C. Simple *ius soli*



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



II. Acquisition of nationality and migration

3. Acquisition based on birth on territory

C. Simple *ius soli*



- Where acquisition simple *ius soli* accepted, acquisition could be:
 - *Automatic* - e.g. sect. 4(3) German Act
 - *Conditional* - e.g.
 - Belgium, art. 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
 - Greece : art. 1(a) para. 1 : possibility to acquire Greek nationality if child born in Greece and parents resident in Greece for 5 y, upon common declaration for registration



II. Acquisition of nationality and migration

3. Acquisition based on birth on territory

C. Simple *ius soli*



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



II. Acquisition of nationality and migration

3. Acquisition based on birth on territory

C. Simple *ius soli*



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



II. Acquisition of nationality and migration

3. Acquisition based on birth on territory

C. Simple *ius soli*



- Requirement of residence for the parents : quality of residence? Yes – limits accessibility to acquisition
 - 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)
 - 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*)



II. Acquisition of nationality and migration

3. Acquisition based on birth on territory

C. Simple *ius soli*



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



II. Acquisition of nationality and migration

3. Acquisition based on birth on territory

C. Simple *ius soli*



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



II. Acquisition of nationality and migration

3. Acquisition based on birth on territory

C. Simple *ius soli*



- 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)



II. Acquisition of nationality and migration

3. Acquisition based on birth on territory

C. Simple *ius soli*



- 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



II. Acquisition of nationality and migration

4. Assessment

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

II. Acquisition of nationality and migration

4. Assessment

- 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*)

II. Acquisition of nationality and migration

4. Assessment

- 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

II. Acquisition of nationality and migration

4. Assessment

- How much effect is granted to *ius soli* may vary:
 - Some countries : recognition of double *ius soli* rule (e.g. France, Belgium, etc.)
 - Germany : qualified simple *ius soli* rule
 - Italy : very limited recognition of *ius soli*

II. Acquisition of nationality and migration

4. Assessment

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

The law of nationality : comparative and international perspective

Loss of nationality

Patrick Wautelet

Outline

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

III. Loss of nationality

1. Introduction

A. General background

- 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; section 17 ff German Act, etc. see also artt. 7-8 ECN)
- 1st step : review of general features of the loss of nationality

III. Loss of nationality

1. Introduction

A. General background

- 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 (but not always) provide that nationals lose their nationality when voluntarily acquiring nationality of another State

III. Loss of nationality

1. Introduction

A. General background

- Radical consequences of loss of nationality
- This explains why often argued for *restrictive interpretation* of grounds of loss (e.g. 'voluntary' acquisition of foreign nationality : not acquisition by children as consequence of acquisition by their parents)

III. Loss of nationality

1. Introduction

A. General background

- Radical consequences of loss of nationality also explain that in many countries, possibility for former nationals to *recover* nationality
- *e.g.* 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)
- Relevant if *e.g.* loss of Dutch/Belgian nationality when marrying a foreigner or acquiring foreign nationality

III. Loss of nationality

1. Introduction

A. General background

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

III. Loss of nationality

1. Introduction

B. Loss and statelessness

- What if loss of nationality leads to *statelessness*? Application of ground of loss if leads to the person being stateless?
- Discussion linked to the issue of the 'right to a nationality'

III. Loss of nationality

1. Introduction

B. Loss and statelessness

- Is there a 'right' to have a nationality?
- 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...)

III. Loss of nationality

1. Introduction

B. Loss and statelessness

- International law does not firmly support a right to a nationality
- Only affirmation of a right to a nationality : art 15-1 Declaration of Human Rights 1948 (but limited legal impact)
- In other major international conventions (*e.g.* ECHR; ICCPR) : no such right

III. Loss of nationality

1. Introduction

B. Loss and statelessness

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

III. Loss of nationality

1. Introduction

B. Loss and statelessness

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

III. Loss of nationality

1. Introduction

B. Loss and statelessness

- This obligation has led many States to provide 'safety provisions', ensuring that a person who otherwise would be or remain stateless, is entitled to obtain a nationality
- *E.g.* possibility for an infant (child found on the territory of a State) to obtain the local nationality (even though there is no guarantee that the child was born on the territory or that his parents were nationals...) - *e.g.* section 4(2) German Act)

III. Loss of nationality

1. Introduction

B. Loss and statelessness

- Some states have a very strong policy to avoid statelessness – *e.g.* Germany (see art. 16 German Constitution : “... Citizenship may be lost only pursuant to a law, and against the will of the person affected only if he does not become stateless as a result”)
- Other States are less concerned about statelessness and accept more readily that statelessness may occur

III. Loss of nationality

1. Introduction

B. Loss and statelessness

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

III. Loss of nationality

1. Introduction

B. Loss and statelessness

- Loss of nationality : only *one* possibility to be stateless (rare occurrence – only in some cases will loss of nationality be possible if no other nationality)
- Other possibility : one may be *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; or born to father not married to the mother, who cannot transmit her nationality to the child

III. Loss of nationality

1. Introduction

B. Loss and statelessness

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

III. Loss of nationality

1. Introduction

B. Loss and statelessness

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

III. Loss of nationality

1. Introduction

B. Loss and statelessness

- Statelessness following State successions
 - *e.g.* : case of Palestinians – what if a Palestinian comes to Belgium? No longer under protection of UNRWA. Possibility to be recognized as stateless? Yes – see Supreme Court, 22 January 2009 – applicant had voluntarily left protection of UNRWA in Lebanon to study in Belgium; Court of Cassation nonetheless decides that the applicant may request status of stateless

III. Loss of nationality

1. Introduction

B. Loss and statelessness

- *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

III. Loss of nationality

1. Introduction

B. Loss and statelessness

- *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)

III. Loss of nationality

1. Introduction

B. Loss and statelessness

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

III. Loss of nationality

1. Introduction

B. Loss and statelessness

- Procedure : one can ask to be recognized stateless. Procedure before the Court of First Instance (competence derived from Art. 569-1° 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)

III. Loss of nationality

1. Introduction

B. Loss and statelessness

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

III. Loss of nationality

1. Introduction

B. Loss and statelessness

- 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 – see further)

III. Loss of nationality

1. Introduction

B. Loss and statelessness

- 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?

III. Loss of nationality

1. Introduction

B. Loss and statelessness

- 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 fast track 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)

III. Loss of nationality

1. Introduction

B. Loss and statelessness

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

III. Loss of nationality

2. Various cases of loss

A. Introduction

Distinction between different categories:

- 'Waiver' : a person gives up his/her nationality
- *Involuntary* loss
- Based on behavior of national ('*déchéance*' / '*vervallenverklaring*') - various grounds (such as loss because of fraud during the acquisition process)
- Not based on behavior of national – various grounds of loss (*e.g.* loss consequential on loss by parents)

III. Loss of nationality

2. Various cases of loss

A. Introduction

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

III. Loss of nationality

2. Various cases of loss

B. 1st case : waiver

- Generally accepted that a national may waive his / her nationality (*e.g.* art. 22 § 1, 2° CNB; 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

III. Loss of nationality

2. Various cases of loss

B. 1st case : 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)

III. Loss of nationality

2. Various cases of loss

B. 1st case : waiver

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

III. Loss of nationality

2. Various cases of loss

B. 1st case : waiver

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

III. Loss of nationality

2. Various cases of loss

B. 1st case : waiver

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

III. Loss of nationality

2. Various cases of loss

B. 1st case : waiver

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

III. Loss of nationality

2. Various cases of loss

B. 1st case : waiver

- When is a waiver to be considered?
- In principle waiver must not be justified
- Difference between discourse and reality
- On paper, sometimes outcry threatening a massive waiver if this or that happens – usually linked to political situation (*e.g.* if ever Mr X becomes President, I'll burn my US passport)
- Waiver of nationality sometimes also considered to avoid military service or tax burdens – but state may limit possibility to waive to make this impossible

III. Loss of nationality

2. Various cases of loss

B. 1st case : waiver

- In practice, only two situations where waiver makes sense:
 - To comply with a waiver requirement imposed by a foreign nationality law in case of acquisition of that law (*e.g.* § 29-3 German Act) – 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 »
 - To 'clean up' situation after a successful integration in a new country of residence

III. Loss of nationality

2. Various cases of loss

B. 2nd case : 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

III. Loss of nationality

2. Various cases of loss

B. 2nd case : loss through long term residence abroad

- Loss through long term residence abroad does not exist in all States
- *E.g.* : ground of loss is *unknown* in Germany, Italy, Greece, Lxbg, Portugal, Turkey, etc.

III. Loss of nationality

2. Various cases of loss

B. 2nd case : loss through long term residence abroad

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

III. Loss of nationality

2. Various cases of loss

B. 2nd case : loss through long term residence abroad

- Typical features of the loss through long term residence abroad
 - 3°) 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; Spain : if born and residing abroad and father or mother also born abroad – art. 24(3) Civil Code)

III. Loss of nationality

2. Various cases of loss

B. 2nd case : loss through long term residence abroad

- Typical features of the loss through long term residence abroad
 - 4°) Permission to retain citizenship if
 - Application thereto (*e.g.* Belgium : see art. 22 § 1, 5° CBN; Sweden : Section 14A Act; art. 24(3) Spanish Civil Code) or
 - Link with the home country (*e.g.* professional link – section 14A(3°) Swedish Act; Belgium : residence abroad 'in service of the State' (civil service, directly or indirectly for Belgian government; or employment of a Belgian company or association))

III. Loss of nationality

2. Various cases of loss

B. 2nd case : loss through long term residence abroad

- Typical features of the loss through long term residence abroad:
 - 5°) Not applicable if leads to *statelessness* (art. 22 § 3 CBN; Section 14 final para. Swedish Act; art. 24(3) Spanish Civil Code : only if nationality of country of residence)
 - No requirement that person possesses nationality of country of residence

III. Loss of nationality

2. Various cases of loss

B. 2nd case : 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 ° CNB)

III. Loss of nationality

2. Various cases of loss

B. 2nd case : 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?

III. Loss of nationality

2. Various cases of loss

B. 2nd case : 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?

III. Loss of nationality

2. Various cases of loss

B. 2nd case : loss through long term residence abroad

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

III. Loss of nationality

2. Various cases of loss

B. 2nd case : loss through long term residence abroad

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

III. Loss of nationality

2. Various cases of loss

B. 3rd case : consequential loss for children

- Reverse or mirror image of *ius sanguinis* : if people can acquire their nationality by virtue of the link with their parents, nationality can also be lost when the parents' nationality disappear
- 'Extension' of loss from parents to the children is recognized in ECN (see art. 7(2))

III. Loss of nationality

2. Various cases of loss

B. 3rd case : consequential loss for children

- It exists in some countries (such as Belgium, Luxembourg or Turkey) but is not accepted in other countries (e.g. France, Germany, Greece, Italy, Portugal, Spain, UK – 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* »)

III. Loss of nationality

2. Various cases of loss

B. 3rd case : consequential loss for children

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

III. Loss of nationality

2. Various cases of loss

B. 3rd case : consequential loss for children

- Usually only applies to underage children – no loss if children is 18 y. or older (art. 7§1(f) ECN : « *during the minority of a child* ») parents have waived their Belgian nationality (art. 22 § 1-3° CNB)
- Cannot lead to statelessness of the child (right to nationality + right of the child)

III. Loss of nationality

2. Various cases of loss

B. 3rd case : consequential loss for children

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

III. Loss of nationality

2. Various cases of loss

B. 3rd case : consequential loss for children

For underage children : another ground, specific to children and not a consequence of loss by (a/the) parent(s): disappearance of family relationship (art. 8 § 4 CBN)

E.g. filiation is challenged – only applies to underage children (see art. 7 § 1(f) ECN : “where it is established during the minority of a child that the preconditions laid down by internal law which led to the *ex lege* acquisition of the nationality of the State Party are no longer fulfilled »)

III. Loss of nationality

2. Various cases of loss

B. 4th case : loss linked to 'behavior'

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

III. Loss of nationality

2. Various cases of loss

B. 4th case : loss linked to 'behaviour'

- These grounds of loss mostly only applicable to 'new' nationals and not 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)

III. Loss of nationality

2. Various cases of loss

B. 4th case : loss linked to 'behaviour'

- These grounds of loss may be justified by the idea of a 'tacit waiver' by the person concerned – his/her behavior is such that it is deemed to be the expression of the intention to leave the nationality community

III. Loss of nationality

2. Various cases of loss

B. 4th case : loss linked to 'behavior'

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

III. Loss of nationality

2. Various cases of loss

B. 4th case : loss linked to 'behavior'

- When accepted, fraud is linked to 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'
- Fraud : different cases in practice :
 - Identity fraud (concealment of real identity)
 - Use of false documents (*e.g.* to demonstrate residence in country, etc..)
 - Broader : applicant neglected important element of his past (*e.g.* *Rottmann* case)

III. Loss of nationality

2. Various cases of loss

B. 4th case : loss linked to 'behavior'

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

III. Loss of nationality

2. Various cases of loss

B. 4th case : loss linked to 'behavior'

- No automatic loss : usually only a *possibility* to be stripped of nationality taking into account all circumstances (*e.g.* Section 21 Australian Act : the Minister “may, in the Minister's discretion”)
- Who decided on the 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)

III. Loss of nationality

2. Various cases of loss

B. 4th case : loss linked to 'behavior'

- 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
- Application : *Rottmann* case : Austrian citizen become German by naturalization and neglecting to inform the German authorities during the process of naturalization about the criminal investigation opened against him in Austria (which explained why he left Austria and settled in Germany)

III. Loss of nationality

2. Various cases of loss

B. 4th case : loss linked to 'behavior'

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

III. Loss of nationality

2. Various cases of loss

B. 4th case : loss linked to 'behavior'

- Statute of limitations ? Belgium and Switzerland : 5 years after acquisition of nationality; Netherlands : 12 y. (art. 14 (1) RWN), Spain : 15 y.
- Loss only works for the future? Relevant *e.g.* to determine whether loss may have impact on nationality of children. 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*”).

III. Loss of nationality

2. Various cases of loss

B. 4th case : loss linked to 'behavior'

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

III. Loss of nationality

2. Various cases of loss

B. 4th case : loss linked to 'behavior'

- Loss if 'seriously prejudicial behavior'
- Classically refers to serious acts directly linked to citizenship, such as treason, disloyalty, etc. (see *e.g.* art. 23 § 1 (2°) CNB : “serious breach of obligations as a Belgian citizen”; art. 17(1)(b) Greek act : loss if the citizen while residing in another country, committed acts incompatible with Greek citizenship and against the interest of Greece)
- ECN refers to “conduct in a manner seriously prejudicial to the vital interests of the State Party” (art. 7(1)(d) ECN) – *e.g.* active collaboration with the enemy at time of war

III. Loss of nationality

2. Various cases of loss

B. 4th case : loss linked to 'behavior'

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

III. Loss of nationality

2. Various cases of loss

B. 4th case : loss linked to 'behavior'

- Loss if 'seriously prejudicial behavior' : recently extension to very serious criminal activities
- Until now extension only in few countries
- Usually linked to very serious criminal activities - *e.g.*
 - Lithuania : 'international crimes' such as aggression, genocide, crimes against humanity, or war crime (art. 21(1))
 - France : misconduct in office (corruption, abuse of official authority) – art. 25(2) Civil Code
 - New provision in France since Oct. 2010 (new art. 25(5) Civil code) : withdrawal of the French nationality if convicted of murder of a policeman, judge, or other official

III. Loss of nationality

2. Various cases of loss

B. 4th case : loss linked to 'behavior'

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

III. Loss of nationality

2. Various cases of loss

B. 4th case : loss linked to 'behavior'

Voluntary acquisition of foreign nationality :

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

The Law of Nationality

Multiple nationalities

Multiple nationalities

1. An Introduction

- 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

2. 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

2. The roots

- (1) Transmission of nationality *ius sanguinis a patre* and *a matre* :
 - e.g.* child born in Belgium, mother is French, father is Belgian – 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

2. The roots

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

2. 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

2. The roots

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

Multiple nationalities

2. The roots

- (3) Increased possibility to acquire local nationality after period of residence
e.g. child born in Belgium out of two parents with Moroccan nationality, 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

2. The roots

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

Multiple nationalities

Ex cursus

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

Multiple nationalities

Ex cursus

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

Multiple nationalities

Ex cursus

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

Multiple nationalities

Ex cursus

- Fifa rules applicable for int'l tournaments : *e.g.* Art. 7 FIFA Rules for World Cup 2010 in South Africa :
 - “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;
 - “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

3. How States react

- 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

3. How States react

- 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

3. How States react

- Second 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

3. How States react

- 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

3. How States react

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

Multiple nationalities

3. How States react

- Third element : Second Protocol 1993 : amendment of 1963 convention, possibility to keep original nationality in 3 cases (in which original Convention prescribed loss of nationality because of acquisition of another one)

Multiple nationalities

3. How States react

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

Multiple nationalities

3. How States react

- Second Protocol only ratified by France (denounced in 2008), Italy and the Netherlands
- 1963 Convention in the meantime denounced by :
 - Germany (2001 – full convention denounced)
 - Belgium, France, Italy & Luxemburg (only part I denounced)

Multiple nationalities

3. How States react

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

Multiple nationalities

3. How States react

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

Multiple nationalities

4. Selected States analysed

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

Multiple nationalities

4. Selected States analysed - Belgium

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

Multiple nationalities

4. Selected States analysed - 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

4. Selected States analysed - Belgium

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

Multiple nationalities

4. Selected States analysed - 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

4. Selected States analysed – the Netherlands

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

Multiple nationalities

4. Selected States analysed – 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

4. Selected States analysed

– the Netherlands

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

Multiple nationalities

4. Selected States analysed

– 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

4. Selected States analysed

	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

4. Selected States analysed - Italy

- 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

4. Selected States analysed - Italy

- 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)

Multiple nationalities

4. Selected States analysed - Italy

- At first, no particular reaction in Italian nationality law for this mass emigration - based on 1865 Italian Civil Code, these Italians lost Italian nationality
- Starting in 1912 (Act 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

4. Selected States analysed - Italy

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

Multiple nationalities

4. Selected States analysed - Italy

- Starting in 1992 : successive 'reacquisition programmes' : easy procedure for foreigners of Italian origin to recover Italian passport (art. 17 Act)
- Between 1992 and 2006, 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

4. Selected States analysed - Italy

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

Multiple nationalities

4. Selected States analysed - Italy

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

Multiple nationalities

4. Selected States analysed - Italy

- 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

4. Selected States analysed - Italy

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

Multiple nationalities

5. What's Wrong with Multiple Nationalities ?

The policy debate : divided loyalty?

- The dmost important argument made against dual nationality is that a person

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)orocco)

Multiple nationalities

5. What's Wrong with Multiple Nationalities ?

- From a policy point of view, what are the arguments *pro* and *con* multiple nationalities?

Multiple nationalities

5. What's Wrong with Multiple Nationalities?

Practical inconvenience

- 1st issue : practical inconvenience resulting from a person having several nationalities – *e.g.* military service – many Turkish/Belgian citizens doing a 'light' military service over the summer (+ amount to be paid)

Multiple nationalities

5. What's Wrong with Multiple Nationalities?

Practical inconvenience

- Can this not be solved through bilateral agreements?
- See articles 5 and 6 of the 1963 Hague Convention : under art. 5, a person with two nationalities, shall only be required to do his military service in one country. Which country? See bilateral agreement between the 2 States. If no such agreement, art. 6 provides for a model solution - first rule is that a person shall do his military service in the State of his residence

Multiple nationalities

5. What's Wrong with Multiple Nationalities?

Exercise of political rights

- 2nd issue : exercise of political rights
- Voting rights are associated with citizenship. Dual nationals can thus vote in their country of origin and the country of ‘adoption’

Multiple nationalities

5. What's Wrong with Multiple Nationalities?

Exercise of political rights

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

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Multiple nationalities

5. What's Wrong with Multiple Nationalities?

Exercise of political rights

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- 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)

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Multiple nationalities

5. What's Wrong with Multiple Nationalities?

Divided loyalty?

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

Multiple nationalities

5. What's Wrong with Multiple Nationalities?

Divided loyalty?

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

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Multiple nationalities

5. What's Wrong with Multiple Nationalities?

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).*

Multiple nationalities

5. What's Wrong with Multiple Nationalities?

Divided loyalty?

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

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Multiple nationalities

5. What's Wrong with Multiple Nationalities?

Divided loyalty?

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

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Multiple nationalities

5. What's Wrong with Multiple Nationalities?

Divided loyalty?



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

Multiple nationalities

5. What's Wrong with Multiple Nationalities?

Divided loyalty?

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

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