

**Deprivation of nationality:
In defence of a principled approach**

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1. *Introduction*

The practice of depriving individuals of their nationality has been recently brought to the fore following the decision of some States to utilize such measures as a means to fight international terrorism.¹ Leaving aside the assessment of the legality of the various domestic statutes adopted in this context, the present contribution purports to demonstrate why, and under which conditions, a deprivation of nationality is not prohibited by international law. This will be done first by determining the meaning and scope of ‘the right to a nationality’ as an internationally recognized human right, and the particular features that such a right has. It will then analyse to what extent international law still admits a deprivation of nationality and why the latter can be wholly legitimate in defined circumstances.

2. *The limits of the right to a nationality as a human right*

Before going through the analysis of the right to a nationality, it is worth recalling, as a preliminary, the distinction between nationality and citizenship. The two expressions are often used interchangeably,

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¹ This is the case, for instance, in the United Kingdom, Canada and Austria, which all amended their nationality laws in order to provide new hypotheses of denationalization specifically addressing the phenomenon of so-called ‘foreign fighters’. A similar initiative was launched by the French Government after last November’s terrorist attacks in Paris, but was finally abandoned in March 2016.



nonetheless from the standpoint of international law the respective notions should not be confused. As was most clearly put by Weis:

‘Conceptually and linguistically, the terms “nationality” and “citizenship” emphasize two different aspects of the same notion: State membership. Nationality stresses the international, citizenship the national, municipal aspect.’²

In particular, citizenship refers to all the rights and obligations attributed to nationals by their own State at domestic level, and consequently has a variable scope from one State to another. Nationality instead concerns the international dimension, and from a human rights perspective consists of a number of rights (to enter and be readmitted in one’s own country, to consular assistance), which are recognized at the international law level.

Under traditional international law, it was undisputed that each State had the sovereign right to determine, in conformity with national statutes, who were its nationals.³ The almost absolute ‘reserved domain’ of each State in this field was restricted only by some international rules and principles, the *ratio* for which resided in the need to respect the sovereignty of other States.⁴ The nationality link between a State and individuals was conceived mainly as a privilege, which at the international law level guaranteed the individual the enjoyment of a certain degree of protection outside his or her own country.⁵

² P Weis, *Nationality and Statelessness in International Law* (2nd edn, Sijthoff & Noordhoff 1979) 4-5.

³ ‘Nationality of an individual is his quality of being a subject of a certain State, and therefore its citizen. It is not for international law but for municipal law to determine who is, and who is not, to be considered a subject’, L. Oppenheim, *International Law* (8th edn, David McKay Company Inc 1955) 642. Back in 1928, the Permanent Court of International Justice affirmed that ‘the national status of a person belonging to a State can only be based on the law of that state’. See *The Exchange of Greek and Turkish Populations*, PCIJ Rep Series B No 10 (1925) 19.

⁴ The 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws (adopted 12 April 1930, entered into force 1 July 1937) 179 LNTS 89, which constitutes the first attempt to limit the exclusive competence of States in nationality matters, provides in this respect that ‘It is for each State to determine under its own law who are its nationals. This law shall be recognized by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality’ (art 1).

⁵ As was most clearly put by the International Law Commission in 1953 during its



Against this background, the Universal Declaration of Human Rights (UDHR) marked a turning point.⁶ It was indeed in this document that a veritable human right to nationality was for the first time solemnly affirmed by the international community of States.⁷ Article 15 provides that ‘Everyone has the right to a nationality’⁸ and that ‘No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality’.⁹

The introduction of such a right in the UDHR was not without controversy, though. During the preparatory work, two opposing views emerged. According to some States, nationality was a fundamental right of each individual and, as such, it could not be omitted from the text of the UDHR. Other State representatives, by contrast, upheld the classical position that nationality matters were under the exclusive competence of States. Although the former view eventually prevailed,¹⁰ nonetheless, ‘the understanding of the right as well as its implications differed among

works on ‘Nationality, including statelessness’: ‘International law as at present constituted is based on the principle that nationality is the link between the individual and international law. That situation may undergo a change in proportion as international law recognizes, as a matter of a legal obligation binding upon governments, rights of the individual independent of the law to the State. So long as that change has not been accomplished, statelessness renders impossible in many cases the operation of a substantial portion of international law’. See ILC, ‘Report of the International Law Commission Covering the Work of its Fifth Session’ (1 June - 14 August 1953) UN Doc A/CN.4/76 para 130.

⁶ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A (III).

⁷ It should be noted that an earlier recognition of the right to a nationality can be found in a regional instrument, the American Declaration of the Rights and Duties of Man, which was adopted by the Ninth International Conference of American States eight months before the UDHR (cf American Declaration of the Rights and Duties of Man, adopted 2 May 1948, OAS Res XXX, art XIX).

⁸ Cf art 15(1).

⁹ Cf art 15(2).

¹⁰ ‘At the end of the debate in the Third Committee, each part was put to a vote, but not before every amendment to the original wording had also been put to a vote. The French amendment inserting the right to a nationality passed by 21 in favour 9 against and 6 abstentions; paragraph 1 as a whole was adopted by 31 in favour, 1 against and 11 abstentions; the prohibition against arbitrary detention was adopted unanimously; the right to change nationality was voted for by 36 in favour, 6 against and one abstention; and finally, the whole article passed with 38 in favour, 1 against and 7 abstentions’ (cf I Ziemele, GG Schram, ‘Article 15’ in G Alfredsson, A Eide (eds), *The Universal Declaration of Human Rights: A Common Standard of Achievement* (Martinus Nijhoff 1999) 301-302).



States',¹¹ and this is clearly reflected in the wording of the provision.

A fundamental issue which is not clarified by the UDHR concerns the determination of which State is required to guarantee the right to nationality, and more specifically, which State is supposed to *grant* nationality. By failing to indicate a duty bearer, the assertion of the right to a nationality at the time amounted to nothing more than an emphatic statement of principle without clear content.¹²

The gaps and overall vagueness of Article 15 UDHR have not been filled by the 1966 International Covenant on Civil and Political Rights (ICCPR).¹³ This is in stark contrast with the general approach of the Covenant, which restates in greater details most of the rights proclaimed in the UDHR. The ICCPR only refers to the nationality of children by providing, in Article 24(3), that 'Every child has the right to acquire a nationality'. Furthermore, no mention is made of the right to change and retain nationality.

Similarly to Article 15 UDHR, Article 24(3) ICCPR does not impose clear obligations on States parties. Nonetheless, under the Covenant the position of the State where a child is born is evidently different from that of the other States parties.¹⁴ This was also confirmed by the Human Rights Committee, which in General Comment No 17 noted that:

[w]hile the purpose of [Article 24(3) ICCPR] is to prevent a child from being afforded less protection by society and the State because he is stateless, it does not necessarily make it an obligation for States to give their nationality to every child born in their territory. However, States are required to adopt every appropriate measure, both internally

¹¹ *ibid.*

¹² As was put by Emmanuel Decaux: '*Le droit à la nationalité a un sujet et un objet, mais non un débiteur*' (E Decaux, 'Le droit à une nationalité, en tant que droit de l'homme' (2011) 86 *Revue trimestrielle des droits de l'homme* 242). For the same reason Chan considered the right to a nationality as 'largely meaningless' (JMM Chan, 'The Right to a Nationality as a Human Right' (1991) 12 *Human Rights L J* 1-14). Analogous ambiguities surround the wording of the right of asylum in the UDHR. In this case, though, States clearly rejected the proposal to recognize the right *to be granted* asylum, and art 14 as it stands only affirms the right to seek asylum from persecution and enjoy it *once granted* by a State.

¹³ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

¹⁴ S Forlati, 'Nationality as a human right' in S Forlati, A Annoni (eds), *The Changing Role of Nationality in International Law* (Routledge 2013) 22.



and in cooperation with other States, to ensure that every child has a nationality when he is born.¹⁵

Hence, States parties are not obliged to give their nationality to every child born in their territory but they ‘should consider’ attributing nationality *jus soli* to stateless children.¹⁶

At the universal level, the right to a nationality is also affirmed in other human rights instruments, such as the International Convention on the Elimination of All Forms of Racial Discrimination (CERD),¹⁷ the Convention on the Rights of the Child (CRC),¹⁸ the UN Declaration on the Rights of Indigenous Peoples¹⁹ and the Convention on the Rights of Persons with Disabilities (CRPD).²⁰ All these instruments, though, contain only a limited acknowledgement of such a right, in accordance with their specific protection focus. In particular, the CRC reproduces word for word the wording of Article 24(3) ICCPR, thus departing from the stronger formulation contained in the UN Declaration on the Rights of the Child, which provided that ‘the child shall be entitled *from his birth* ... to a nationality’.²¹ It however specifies that the implementation of the right to a nationality must be ensured by States parties ‘in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless’.²²

¹⁵ Human Rights Committee, ‘CCPR General Comment No 17: Article 24 (Rights of the Child)’ (7 April 1989) para 8.

¹⁶ Human Rights Committee, ‘Concluding Observations: Colombia’ (21 September 1997) UN Doc A/52/40 para 306.

¹⁷ International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195 art 5(iii).

¹⁸ United Nations Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 art 5.

¹⁹ United Nations Declaration on the Rights of Indigenous Peoples (adopted 13 December 2007) UN Doc A/61/295 art 6.

²⁰ Convention on the Rights of Persons with Disabilities (adopted 30 March 2007, entered into force 3 May 2008) 2515 UNTS 3 art 18.

²¹ Emphasis added. According to Doek, ‘The reason for this “amendment” was that the drafters of the ICCPR felt that a State could not accept an unqualified obligation to accord its nationality to every child born on its territory regardless of the circumstances’ (J Doek, ‘The CRC and the Right to Acquire and to Preserve a Nationality’ (2006) 25 Refugee Survey Q 26).

²² Art 7(2) CRC.



An indirect recognition of the importance of nationality can be found in the 1961 Convention on the Reduction of Statelessness, which notably sets forth the criteria for the identification of the State bound to grant nationality.²³ The relevance of this last treaty is however diminished by the narrow number of its parties.²⁴

Regionally, the picture is even more varied. While the European Convention on Human Rights²⁵ and the African Charter on Human and Peoples' Rights²⁶ are completely silent on the issue, the American Convention of Human Rights (ACHR) contains the fullest recognition of the right to a nationality in a treaty instrument, in particular by imposing a specific obligation to grant nationality *jus soli* to every person that otherwise would be stateless.²⁷ A general recognition of the right to a nationality is also made by the European Convention on Nationality (ECN) of 1997,²⁸ which further prescribes the adoption of the *jus soli* principle,²⁹ and by the Revised Arab Charter on Human Rights of 2004.³⁰ Finally, a limited acknowledgement of the right is contained in the African Charter on the Rights and Welfare of the Child of 1990, which imposes on the State of birth of a child the obligation to grant him or her nationality.³¹

On the basis of this overview, it can be argued that the right to a nationality is inherently limited in character with respect to 'classical' human rights and thus cannot be considered as a fully-fledged human

²³ United Nations Convention on the Reduction of Statelessness (adopted 30 August 1961, entered into force 13 December 1975) 989 UNTS 175 (1961 Convention) arts 1(1) and 4(1).

²⁴ As at 3 September 2016, 67 States have ratified the Convention <www.treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V4&chapter=5&clang=en>.

²⁵ Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953).

²⁶ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986).

²⁷ American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) art 20(2).

²⁸ European Convention on Nationality (adopted 6 November 1997, entered into force 1 March 2000). As of 3 September 2016, the Convention has been signed by 20 States.

²⁹ *Ibid* art 6.

³⁰ Arab Charter on Human Rights (adopted 22 May 2004, entered into force 15 March 2008) art 29.

³¹ Art 6(4) of the 1990 African Charter.



right.³² International law essentially protects and regulates some of its procedural aspects, related to acquisition, change and deprivation. In contrast, the substantive content of nationality continues to be determined in large part by national statutes.³³ In this respect, the distinction between citizenship and nationality still bears importance.

Ultimately, then, despite the undeniable developments which have occurred since 1948, the concrete exercise of the right to a nationality still depends upon each State's own assessment of how nationality is to be granted.³⁴

As we will see in the next paragraph, the inherent limits of the human right to a nationality inevitably also concern its negative side – deprivation.

3. *Deprivation of nationality*

Deprivation of nationality, in a broad sense, covers all forms of involuntary loss of nationality, thus excluding only renunciation, which is

³² In his notable work on nationality Weis concluded that: 'There is no basis in present *customary* international law for a right to a nationality; neither has the individual a right to acquire a nationality at birth, nor does international law prohibit loss of nationality after birth by deprivation or otherwise, with the possible exception of the prohibition of discriminatory denationalisation'. See Weis (n 2) 248 (emphasis in the original). More recently, Lambert cautioned that 'the acknowledgement of a right to nationality in the human rights law framework is strong on paper but the nature and scope of these provisions is limited' (H Lambert, 'Refugee Status, Arbitrary Deprivation of Nationality, and Statelessness within the Context of Article 1A(2) of the 1951 Convention and its 1967 Protocol relating to the Status of Refugees' (2014) UNHCR Legal and Protection Policy Research Series 6).

³³ Cf Edwards, who affirms that 'The right to nationality, as it is expressed as a human right, remains largely framed as a *procedural* right' (A Edwards, 'The Meaning of Nationality in International Law in an Era of Human Rights' in A Edwards, L van Waas (eds), *Nationality and Statelessness under International Law. Procedural and Substantive Aspects* (CUP 2014) 42, emphasis in the original).

³⁴ CA Batchelor, 'Developments in International Law: The Avoidance of Statelessness through Positive Application of the Right to a Nationality' in Proceedings of the First European Conference on Nationality 'Trends and Developments in National and International law on Nationality' (Strasbourg, 18 and 19 October 1999) 49 <[www.coe.int/t/dghl/standardsetting/nationality/Conference%201%20\(1999\)Proceedings.pdf](http://www.coe.int/t/dghl/standardsetting/nationality/Conference%201%20(1999)Proceedings.pdf)>, who adds that 'State practice would have to be harmonised and uniform in this area in order to ensure everyone's right to a nationality is implemented in practice and statelessness is avoided'.



triggered by the voluntary request of the individual concerned.³⁵ For the purposes of the present analysis, deprivation of nationality and denationalisation will be used interchangeably.

As such, deprivation of nationality is not prohibited by international law, which instead essentially prevents *arbitrary* acts of deprivation. The first example in this regard is provided by Article 15(2) of the Universal Declaration, which, as already noted, expressly proclaims that ‘No one shall be arbitrarily deprived of his nationality’. At the regional level, an analogous prohibition has been affirmed at first on the American continent, by the ACHR,³⁶ and then much later in time in other regional instruments, ie the 1995 Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms³⁷ and the European Convention on Nationality.³⁸ A similar rule is also contained in the 2004 Revised Arab Charter on Human Rights, which does not prohibit arbitrary deprivation but rather deprivation ‘without a legally valid reason’.³⁹

None of the stated documents clarify what is meant by ‘arbitrary’. Nonetheless, considering the historical context in which the Universal Declaration was adopted, it is evident that the drafters had in mind the denationalisation of Jews in Nazi Germany on the basis of discrimination.⁴⁰ General prohibitions of discrimination in the field of nationality were later affirmed in various UN conventions, such as the Convention on the Elimination of All Forms of Racial Discrimination,⁴¹ the 1961

³⁵ It must be noted that there are terminological differences in the main relevant instruments. For instance, while the UDHR utilises the term ‘deprivation’ in its broadest meaning, the 1961 Statelessness Convention adopts the term ‘loss’ as the general term and ‘deprivation’ with respect to withdrawal procedures, ie to cases where the status is withdrawn through a decision of the State authorities.

³⁶ Art 20(3) ACHR.

³⁷ Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms (adopted 26 May 1995, entered into force 11 August 1998) art 24(2).

³⁸ Art 4(c) ECN.

³⁹ Art 29(1) Arab Charter.

⁴⁰ During the preparatory works of the Declaration Eleanor Roosevelt affirmed that the text of the provision dealt with the main problem at hand, which was that ‘individuals should not be subjected to action such as was taken during the Nazi regime in Germany when thousands had been stripped of their nationality by arbitrary government action’ (UNGA Third Committee (3rd Session) UN Doc A/C.3/SR.123 (5 November 1948) 352).

⁴¹ Art 5(c)(iii) CERD.



Convention on the Reduction of Statelessness⁴² and the Convention on the Elimination of All Forms of Discrimination Against Women.⁴³ A different approach features the Convention on the Rights of Persons with Disabilities, which prohibits both arbitrary and discriminatory denationalisation on the basis of disability.⁴⁴ An open-ended list of proscribed discriminatory grounds (race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, etc ...) can then be found in successive resolutions on nationality of the UN Human Rights Council, which considers all cases of arbitrary deprivation of nationality based on discrimination ‘a violation of human rights and fundamental freedoms’.⁴⁵ In light of the crucial importance of the principle of non-discrimination, which informs the whole international human rights law framework, and of its customary status, it can thus be safely affirmed that any deprivation of nationality based on discriminatory practices is arbitrary.

The concept of arbitrary deprivation does not however coincide with discriminatory deprivation but is broader. Based on its ordinary meaning, arbitrariness encompasses something which is ‘against the law’,⁴⁶ as well as abusive manifestations of power which have a formal

⁴² Art 9 of the 1961 Convention.

⁴³ Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 art 9(1).

⁴⁴ ‘1. States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities: ... (a) Have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability’ (art 18(1)(a) CRPD).

⁴⁵ See *inter alia* Human Rights Council Res 7/10 (27 March 2008) UN Doc A/HRC/RES/7/10 paras 2-3; Res 10/13 (26 March 2009) UN Doc A/HRC/RES/10/13 paras 2-3; UN Doc A/HRC/20/L.9 (28 June 2012) para 2; Res 20/5 (16 July 2012) UN Doc A/HRC/RES/20/5 paras 2-4. It bears noting that also the ILC’s Draft Articles on Nationality of Natural Persons in Relation to the Succession of States (ILC, ‘Report of the International Law Commission on the Work of its Fifty-first Session’, 3 May-23 July 1999, UN Doc A/54/10) prohibits discrimination ‘on any ground’ (cf art 15).

⁴⁶ In this first meaning cf the case *Ivcher Bronstein v Peru*, where the Inter-American Court of Human Rights found that an act of deprivation of nationality adopted by the Peruvian General Directorate for migration and naturalisation was arbitrary because it did not comply with provisions of national law, notably art 110 of the *Ley de Normas Generales de Procedimientos Administrativos*. See *Case of Ivcher Bronstein v Peru* Inter-American Court of Human Rights (6 February 2001) Series C No 74 para 95.



legal basis. Particularly useful in this respect is the practice of the UN Human Rights Committee, which has delved into the concept of arbitrariness when interpreting some provisions of the ICCPR, notably Articles 9(1) and 17. In the Committee's view, arbitrariness has to be interpreted broadly, so as to include elements of inappropriateness, injustice, illegitimacy or lack of predictability.⁴⁷ The same interpretation has been later upheld by the UN Human Rights Council in the specific context of arbitrary deprivation of nationality.⁴⁸

The Human Rights Council has specified that, in order to avoid arbitrariness, acts of denationalisation must respect some specific procedural and substantive standards.⁴⁹ Minimum procedural guarantees imply that any decision on deprivation of nationality be issued in writing, open to administrative or judicial review and subject to an effective remedy.⁵⁰ The importance of these procedural standards cannot be overstated. The enjoyment of substantive rights in many cases depends indeed on their respect, and this is all the more true *vis-à-vis* the topic under discussion. This is also shown by the fact that these procedural guarantees are expressly mentioned in the International Law Commission (ILC) Draft Articles on Nationality of Natural Persons in relation to the Succession of States.⁵¹ Furthermore, as far as they can be deemed to be covered by the right to an effective remedy, such guarantees have attained customary status.

The substantive standards require that the decision to denationalise serves a legitimate aim and follows the principle of proportionality.

Concerning the first aspect, it has been affirmed that deprivation of nationality for the sole purpose of expulsion, or to deny re-entry to the

⁴⁷ See eg Human Rights Committee, *Van Alphen v the Netherlands* Communication No 305/1988 CCPR/C/39/D/305/1988 (23 July 1990) 5(8); *A v Australia* Communication No 560/1993 CCPR/C/59/D/560/1993 (30 April 1997) 9(2); 'CCPR General Comment No 27: Article 12 (Freedom of Movement)' (2 November 1999) UN Doc CCPR/C/21/Rev.1/Add.9.

⁴⁸ See eg UN Doc A/HRC/13/34 (14 December 2009) para 25.

⁴⁹ UN Doc A/HRC/25/28 (19 December 2013) para 40.

⁵⁰ UN Doc A/HRC/13/34 paras 43-46. A reference to the procedural standard can be found in the 1961 Convention, which requires that decisions on deprivation of nationality provide the person concerned with the right to a fair hearing by a court or other independent body (art 8(4)) and arts 11-12 ECN).

⁵¹ Cf draft art 17 of the International Law Commission's Draft Articles on Nationality of Natural Persons in relation to the Succession of States, with commentaries, YB ILC (1999) vol II (Part Two) 38.



former national, would be arbitrary. This is the view asserted, for instance, by the ILC in the 2014 Draft Articles on the Expulsion of Aliens.⁵² According to draft Article 8, ‘a State shall not make its national an alien, by deprivation of nationality, for the sole purpose of expelling him or her’. The situation concerns in particular dual (or multiple) nationals, who as a result of denationalisation could be expelled towards the remaining State(s) of nationality. Such an expulsion, as remarked upon in the ILC’s commentary to the provision in question, would ‘be abusive, indeed arbitrary within the meaning of Article 15(2) UDHR’.⁵³ The ILC fails however to make reference to any relevant practice confirming the prohibition of denationalisation measures whose purpose is expulsion. Despite the opinion expressed by the ILC and in the legal literature, it cannot thus be asserted with certainty that general international law poses a specific obligation in this regard.⁵⁴ This does not preclude that the expulsion per se could be prohibited or limited by some human rights obligations, notably the principle of *non-refoulement*.

The scenario differs if deprivation of nationality is undertaken when the individual concerned finds themselves outside their country of nationality. Quite apart from being in contrast with basic procedural guarantees, denationalisation *in absentia*, if followed by a refusal to readmit the former national, would have a direct impact on the sovereignty of the third State on which territory the individual finds themselves, and clearly infringes the principle of good faith.⁵⁵ Such a violation might

⁵² International Law Commission’s Draft Articles on the Expulsion of Aliens, with commentaries, YB ILC (2011) vol II (Part Two).

⁵³ ILC, ‘Report of the International Law Commission on the Work of its Sixty-six session’ (5 May-6 June and 7 July-8 August 2014) UN Doc A/69/10 ch IV 33.

⁵⁴ It is interesting to note in this regard that ‘the Explanatory Report of the Fourth Protocol to the ECHR [on the ...] indicates that although the drafting committee approved the principle that states “would be forbidden to deprive a national of his nationality for the purpose of expelling him”, they elected to leave such a provision out of the ECHR *due to the delicate nature of deprivation of nationality*’ (J Brandvoll, ‘Deprivation of Nationality’ in Edwards, van Waas (n 33) 213, emphasis added). Cf also P Weckel, ‘France, la réforme constitutionnelle sur la déchéance de la nationalité’, 31 December 2015 <www.sentinelledroitinternational.fr/?q=content/francelareformeconstitutionnelle-sur-la-decheance-de-lanationalite>

who deems expulsion as the primary objective of denationalisation and consequently considers that ‘*L’absence même de mesure d’expulsion indiquerait que la déchéance ne répondait pas à une impérieuse nécessité*’.

⁵⁵ ‘The good faith of a State which has admitted an alien on the assumption that the

be considered particularly serious if the former national had only one nationality, since as a result of denationalisation their expulsion from the third State would become virtually impossible.⁵⁶

A second substantive standard is then posed by the respect of the principle of proportionality, which requires that the denationalisation decision be proportional to the interest to be protected.⁵⁷ According to the Human Rights Council, 'The consequences of any withdrawal of nationality must be carefully weighed against the gravity of the behaviour or offence for which the withdrawal of nationality is prescribed'.⁵⁸ The gravest possible consequence, in this regard, is indisputably statelessness. Hence, the State in this context should guarantee a high standard of proof,⁵⁹ almost equivalent to the one applicable to criminal proceedings. At the same time, though, it is worth stating that the avoidance of statelessness does not constitute an intransgressible standard at the current stage of international law.

Statelessness is generally defined as the fact of having no nationality recognized by any State under the operation of its laws.⁶⁰ The 1961 Convention, which establishes a series of guarantees for the avoidance of statelessness, generally prohibits deprivation of nationality if this would result in statelessness.⁶¹ Notwithstanding the fact that at the time of the drafting of the Convention the domestic legislation of many States permitted denationalization on several grounds, it was agreed to

State of his nationality is under an obligation to receive him back would be deceived if by subsequent denationalisation this duty were to be extinguished'. See Weis (n 2) 55.

⁵⁶ 'This function of nationality becomes apparent with regard to individuals abroad, ... especially on account of one particular right and one particular duty of every state towards all other states. ... The duty is that of receiving on its territory such of its nationals as are not allowed to remain on the territory of other states'. See R Jennings, A Watts (eds), *Oppenheim's International Law* (9th edn, vol 1 'Peace', OUP 1992) 857, para 379. See also Weis (n 2) 57.

⁵⁷ UN Doc A/HRC/25/28 (n 49) para 4.

⁵⁸ *Ibid.* According to the Venice Commission of the Council of Europe, 'with regard to the principle of proportionality, it is clear that deprivation of nationality may be decided only for perpetrators of the most serious offences striking at the heart of the rule of law'. European Commission for Democracy through Law (Venice Commission), Opinion on the Draft Constitutional Law on 'Protection of the Nation', adopted at its 106th Plenary Session (Venice 11-12 March 2016) CDL-AD (2016)006 para 25.

⁵⁹ J Brandvoll (n 54) 209.

⁶⁰ Cf UN Convention relating to the Status of Stateless Persons (adopted 28 September 1954, entered into force 6 June 1960) 360 UNTS 117 art 1.

⁶¹ See arts 7-8 of the 1961 Convention.



envisage a list of circumstances authorizing deprivation even where that would render an individual stateless.⁶² Among the listed exceptions, Article 8(3)(a) makes reference, in particular, to acts of disloyalty and conduct seriously prejudicial to the vital interests of the State. Such an exception, covering acts like treason, espionage as well as terrorist acts,⁶³ can however be invoked only if it is an existing ground for deprivation in the internal law of the State concerned, which, at the time of signature, ratification or accession, the State specifies it will retain.⁶⁴ Apart from the 1961 Convention, there is only one regional treaty – the ECN – which regulates the issue. The approach of the ECN is more restrictive, since deprivation of nationality resulting in statelessness is admitted only if nationality has been obtained by means of fraudulent conduct, false information or concealment of any relevant fact attributable to the applicant.⁶⁵ Other grounds, which include ‘voluntary service in a foreign military force’ and ‘conduct seriously prejudicial to the vital interests of the State Party’, are allowed only *vis-à-vis* dual or multiple nationals.⁶⁶

Outside these two conventional frameworks, it is not possible to identify a general rule which prevents denationalisation of mononationals. This is a consequence, first of all, of the lack of a clear and absolute prohibition of statelessness in general international law.⁶⁷ As already noted, the number of States parties to the 1961 Convention, while progressively growing, is still quite limited. The absence of a binding rule in this respect is also evident in the cautious wording utilised by international institutions as well as in the legal literature, which generally refer to the *need* or to the importance of avoiding statelessness rather than a specific obligation in this respect. Secondly, and more importantly, a review of domestic legislation shows that the majority of States do not prohibit all cases of denationalisation resulting in statelessness.⁶⁸

⁶² Brandvoll (n 54) 200.

⁶³ UNHCR, Expert Meeting 2013, para 68.

⁶⁴ As reported by the UNHCR, 15% of the Contracting Parties have retained such power (ibid para 65).

⁶⁵ Art 7(1) ECN.

⁶⁶ Art 7(3) ECN.

⁶⁷ At most, an emerging norm concerning the duty to prevent statelessness of children could be detected. Cf in this respect Edwards, ‘The meaning of nationality’ (n 33) 29.

⁶⁸ G-R de Groot, MP Vink, ‘Loss of Citizenship. Trends and Regulations in Europe’, Comparative Report, EUDO Citizenship Observatory, Robert Schuman Centre



Such a conclusion seems to be supported by the Human Rights Council, which acknowledges that:

‘many domestic frameworks still provide incomplete safeguards against statelessness. In most cases, this is because the legislation itself does not differentiate the situation in which a person would be left stateless from any other situation of loss or deprivation of nationality.’⁶⁹

4. *The relative privilege of being a citizen*

As we have seen in the course of the present analysis, since its first proclamation in the Universal Declaration nationality has ceased to be construed as a mere legal privilege, becoming the object of an internationally recognized human right. Hannah Arendt most famously depicted the right to a nationality as ‘the right to have rights’, ie as the necessary premise for the exercise of other rights. Nowadays, though, the exponential growth of international human rights law has significantly reduced the relevance of nationality, which is not the only link between an individual and international law anymore.

While nationals of a State are still entitled to a set of rights and privileges unparalleled by those enjoyed by individuals belonging to different groups, most notably stateless persons and irregular migrants, the differences in protection standards among the various categories of individuals are gradually being evened out. This trend is particularly evident with respect to (long-term) residents. That human rights are due to *any* person who finds themselves under the jurisdiction of a State is indeed one of their very distinguishing features.

At the same time, though, the right to a nationality suffers from many limits in comparison with more traditional rights, as a result of the inextricable link of nationality with sovereignty and the very identity of

for Advanced Studies in collaboration with Edinburgh University Law School (2010) 16–18; B Manby, *Citizenship Law in Africa: A Comparative Study* (AfriMAP & Open Society Justice Initiative 2009) 84–5. Concerning the American continent, many States of Central and South America specifically admits denationalisation for national security reasons even if it results in statelessness (cf C Cipolletti, ‘La privazione della cittadinanza nel contrasto ai foreign terrorist fighters e il diritto internazionale’ (2016) *Rivista di Diritto Internazionale* 149, who refers to the database on the EUDO website).

⁶⁹ UN Doc A/HRC/25/28 (n 49) para 5.



the State. The added-value or the privilege – in a non-technical sense – of being a national is thus inevitably premised on a special relationship of allegiance with the State.⁷⁰ In other words, even though nationality is still the closest and most stable relationship between an individual and a State, its continuance is inherently premised on a duty of allegiance or loyalty on the part of the national. That such a duty is not outmoded is proven by the fact that a conspicuous number of nationality laws provides for denationalization of those individuals who enrol in a foreign army, render services to another State or commit acts which constitute a threat to national security. The foreign fighters phenomenon has further contributed to the enrichment of this list with the case of those nationals who decide to join an organized armed group.⁷¹

As a consequence, within the strict limits posed by international law, deprivation of nationality is not only admissible but also wholly legitimate from the State's perspective. With respect to those individuals that, by attacking the fundamental principles on which their national community is based, have given up their attachment to their own State, deprivation of nationality cannot be deemed a redundant tool. As was aptly said by Hailbronner:

‘It is true that citizenship establishes a special relationship based upon security and stability. Security and stability on the side of the individual citizen require that denationalisation remains a rare exception. Citizenship implies rights, whether it is designated as a privilege, as a right to have rights or as a contract. For that reason deprivation of citizenship requires an overriding public interest and is subject to proportionality’.⁷²

A less intrusive alternative for those individuals who would otherwise become stateless could consist in depriving them only of certain

⁷⁰ The ‘tie of allegiance’ as still being the distinguishing feature of the relationship between a State and its nationals is particularly emphasised by Tiburcio. Cf C Tiburcio, *The Human Rights of Aliens under International and Comparative Law* (Brill 2011) 3.

⁷¹ See eg s 10(1)(2) of the Strengthening Canada Citizenship Act (adopted on 19 June 2014). It should be emphasised that the 1961 Convention considers the mentioned hypothesis as a violation of the ‘duty of loyalty’ (art 8(3)(a)), which as such legitimizes the use of denationalisation.

⁷² K Hailbronner, ‘Revocation of Citizenship of Terrorists: A Matter of Political Expediency’ in A Macklin, R Bauböck (eds) *The Return of Banishment: Do the New Denationalisation Policies Weaken Citizenship?*, EUI Working Papers RSCAS 2015/14, 23.



rights attached to citizenship, notably political rights. This measure, which was utilized for instance by Colombia *vis-à-vis* its nationals who had entered the armed forces of another State, was proposed within the International Law Commission back in 1953 during the discussions on ‘Nationality, including statelessness’.⁷³ A similar but more encompassing provision was also inserted in the recent French Draft Constitutional Law on the ‘protection of the nation’, which envisaged the forfeiture of various civic, civil and family rights as a substitute to denationalisation.⁷⁴ This practice suggests that the said alternative has been considered capable of guaranteeing at the same time a symbolic and practical effect, while avoiding any contradiction with conventional obligations prohibiting statelessness.

By way of conclusion, it can therefore be argued that from the standpoint of international law, deprivation of nationality is both legal and legitimate. While its detractors generally affirm that it is neither useful nor effective, its symbolic importance should not be understated.⁷⁵ If utilised only as an exceptional instrument and in conformity with the substantial and procedural standards posed by international norms, denationalisation does not weaken nationality⁷⁶ but rather strengthens it by reaffirming the conditions on which it is based.⁷⁷

⁷³ UN Doc A/CN.4/SR.214, para 11, 193.

⁷⁴ *Projet de loi constitutionnelle de protection de la Nation* (PRMX1529429L) adopted by the National Assembly on the first reading, 10 February 2016, art 2.

⁷⁵ ‘The practical question of effectiveness is secondary to the *principled* question of whether citizenship for proven (naturally not just suspected or potential) terrorists who conduct war (in the literal sense) against Western States and their citizens should be unassailable. At its heart, the issue is one of “loyalty and allegiance”’ (C Joppke, ‘Terrorists Repudiate their Own Citizenship’ in A. Macklin, R. Bauböck (n 72) 12, emphasis added).

⁷⁶ As argued eg by Macklin. A Macklin, ‘Kick-Off Contribution’ in A Macklin, R Bauböck (n 72) 1.

⁷⁷ PH Shuck, ‘Should those who Attack the Nation Have an Absolute Right to Remain its Citizens?’ in A Macklin, R Bauböck (n 72) 9.

