Part 2 The objects of international law, Ch.8 Individuals, Acquisition and Loss of Nationality

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(p. 869) § 383 Five modes of acquisition of nationality

International law does not, with any great specificity, establish how nationality is to be acquired, or even that states must ensure that everyone has a nationality.[1] Article 15(1) of the Universal Declaration of Human Rights 1948 provides that: 'Everyone has the right to a nationality', but in the International Covenant on Civil and Political Rights, Art 24(3), this is reflected only by the more limited provision that 'Every child has the right to acquire a nationality'. The American Convention on Human Rights 1969 does, however, mark a return to the scope of the Universal Declaration, by providing in Art 20(1) that 'Every person has the right to a nationality'.

Although it is for the internal law of each state to determine who is, and who is not, a national of the state,[2] it is nevertheless of legal and practical interest to ascertain how nationality can be acquired under such laws. The five most common modes of acquiring nationality are birth, naturalisation, redintegration, annexation and cession.[3] No state is obliged to employ all five, but in practice they usually do so.

(p. 870) § 384 Acquisition of nationality by birth

Nationality is normally acquired by birth; the vast majority of people acquire nationality by birth, and do not change it afterwards. But the laws of different states are not uniform in this matter. Some states make parentage alone the decisive factor (*ius sanguinis*), so that a child born of their nationals becomes *ipso facto* by birth their national likewise, be the child born at home or abroad; under such a rule, illegitimate children usually acquire the nationality of their mother. Other states make the territory on which birth occurs the decisive factor (*ius soli*).[1] According to this rule, every child[2] born on the territory of such a state, whether the parents be citizens or aliens, becomes a national of such state, whereas a child born abroad is foreign although the parents may be nationals. Many states, including the United Kingdom,[3] adopt a (p. 871) mixed principle, whereby not only children of their nationals born at home or abroad become their nationals, but also such children of alien parents as are born on their territory.

§ 385 Citizenship within the Commonwealth

Within the Commonwealth the achievement of the full international independence of the states of the Commonwealth brought significant developments of some novelty.[1] Following the Canadian Citizenship Act 1946, the British Nationality Act 1948 provided, first for citizenship of the United Kingdom and Colonies acquired in the ways provided for by the Act, and secondly, for persons who were citizens either of the United Kingdom and Colonies or of any of the countries of the Commonwealth enumerated in the Act to have the status of 'British subject' or 'Commonwealth citizen'. That principle is continued in the British Nationality Act 1981 (with, however, the difference that only the term 'Commonwealth citizen' is now used in this context).[2] Consequently, a person can become a 'Commonwealth citizen' only as the result of being a citizen of a country of the Commonwealth in accordance with the legislation of that country. The international implications of the status of 'Commonwealth citizen' are not clear, and are probably minimal. Thus, for instance, in the absence of special arrangements recognised by other states, the United Kingdom is not normally entitled, having regard to the rule as (p. 872) to nationality of claims,[3] to afford diplomatic protection to citizens of any other independent country of the Commonwealth. On the other hand, Commonwealth citizenship has, by virtue of the legislation enacted by the countries concerned, effects in municipal law. Thus, according to the legislation of the United Kingdom, Commonwealth citizens are not aliens,[4] and they are entitled to vote in Parliamentary elections, but they no longer enjoy a general right to entry to the United Kingdom, as they once did.[5] Similar, though not always so far-reaching, privileges are granted to citizens of the Commonwealth in some other countries of the Commonwealth.[6] It is probable that the conception of common allegiance to the Crown is no longer the basis of Commonwealth citizenship — certainly not in relation to those countries which are republics. In so far as it exists, allegiance to the Crown is not so much the source of Commonwealth citizenship as a consequence thereof.[7]

§ 386 Acquisition of nationality through naturalisation

The most important mode of acquiring nationality besides birth is that of naturalisation, whereby someone who is not already a national of a state by birth has its nationality conferred upon him. States often provide for naturalisation, which may sometimes operate automatically, as a result of marriage to a national, legitimation[1] or adoption[2] of children by parents who are nationals, acquisition of its nationality by the parents of infant children,[3] exercise of an option to acquire nationality,[4] (p. 873) acquisition of domicile in the naturalising state, appointment as a government official, and grant on application. This last form of naturalisation is naturalisation in the narrower sense of the term, and is discussed at § 387.

Naturalisation through marriage has been the subject of considerable international regulation. The Hague Convention of 1930 on Certain Questions Relating to the Conflict of Nationality Laws[5] regulates, in Arts 8–11, some aspects of the nationality of married women. It provides in Art 8 that if by her law the wife loses her nationality on marriage with a foreigner, this result shall be conditional on her acquiring the nationality of the husband. A similar provision is made, in Art 9, in case of loss of nationality of the wife in consequence of a change of nationality by her husband. Article 10 lays down that naturalisation of the husband during marriage shall not involve a change of nationality of the wife except with her consent. The conference also recommended to states the study of the possibility of introducing into their law the principle of equality of the sexes, in particular from the point of view of leaving the nationality of the wife unaffected by marriage or change of nationality of her husband, except with her consent.

In 1957 the United Nations General Assembly adopted a Convention on the Nationality of Married Women.[6] This Convention is now in force. It provides in Art 1 that neither the celebration nor the dissolution of a marriage between a state's national and an alien, nor the change of nationality by the husband during marriage, shall automatically affect the nationality of the wife; Art 2 provides that neither the voluntary acquisition of the nationality of another state nor the renunciation of a state's nationality by one of its nationals shall prevent the retention of its nationality by the wife of such national; Art 3 provides that the alien wife of a state's national may, at her request, acquire the nationality of her husband through specially privileged naturalisation procedures, subject to limitations imposed in the interests of national security or public policy; and also that the Convention shall not be construed as affecting any legislation or judicial (p. 874) practice by which the alien wife of a national may, at her request, acquire her husband's nationality as a matter of right. Article 9 of the Convention on the Elimination of All Forms of Discrimination Against Women 1979,[7] requires states parties to grant women equal rights with men to acquire, change or retain their nationality, and to ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage automatically changes the nationality of the wife, renders her stateless or forces upon her the nationality of the husband.

Naturalisation is also sometimes imposed upon aliens by virtue of a particular connection with the state, such as long residence or ownership of land in the state.[8] Such involuntary or collective naturalisation[9] has sometimes given rise to controversy, but provided that it reflects a sufficient connection with the naturalising state it may not be contrary to international law — and certainly not if the person concerned has in some way consented.[10] The question whether the forced naturalisation is contrary to international law is distinct from the question whether the nationality thus purportedly accorded will be acknowledged in other states. Where the person concerned is resident outside the territory of the state purporting to naturalise him, courts of other states have regarded the naturalisation as contrary to international law and as thus not effective to confer nationality on the person concerned,[11] but this conclusion has not been invariable.[12] (p. 875) Where the person concerned has been a resident in the naturalising state, courts in third states have been more willing to treat as effective the nationality so conferred.[13] But as already noted,[14] courts in third states are generally reluctant to question the legality of a state's grant of its nationality to an individual.

§ 387 Naturalisation by grant on application

Naturalisation in the narrower sense of the term[1] can be defined as reception of an alien into the citizenship of a state through a formal act on the application of the individual concerned.[2] International law does not provide detailed rules for such reception, but it recognises the competence of every state to naturalise those who are not its nationals and who apply to become its nationals. Although there is probably a presumption in favour of the international effectiveness of naturalisation,[3] this may be displaced, as where it has been obtained by fraud.[4] Furthermore, as the (p. 876) International Court of Justice held in the *Nottebohm* case, the grant of naturalisation to a person by a state unaccompanied by any real and substantial connection between him and that state does not oblige other states (or, at least, another state with which that person has such links) to recognise the nationality so conferred for purposes of diplomatic protection.[5] Doubts have similarly been expressed regarding the international effectiveness of forced (often collective) naturalisation.[6]

Subject only to any applicable treaty obligations,[7] the details of naturalisation, both as regards the categories of persons who may be naturalised and the conditions, substantive as well as procedural, which they must satisfy and the consequences of being naturalised, are matters for each state to determine for itself.[8] Thus some states will naturalise only those who are stateless because they never have been nationals of another state or because

they no longer have that former nationality. But other states naturalise also such aliens as are, and remain, nationals of their home states. Most states naturalise only such persons as have been residing there for some length of time, or have in some other way (eg by service for the state) given evidence of their attachment to the state. Although every alien may be naturalised, no alien has, according to the law of most states, a right to be naturalised.

Although naturalisation makes an alien a national, it need not give him the same rights as are possessed by natural-born nationals. Thus, according to Art 2 of the Constitution of the United States of America, a naturalised alien can never be elected President. Similarly, a state may provide preferential treatment for the grant of naturalisation to certain categories of persons without thereby being in breach of relevant obligations of non-discrimination,[9] and may provide different rules for the loss of its nationality by a naturalised person compared with those applicable to others.

§ 388 Effect of naturalisation upon previous nationality

The effect of naturalisation upon previous nationality is primarily a matter for the internal law of the states concerned. According to the law of some states, such as the United (p. 877) Kingdom between 1870 and 1948, any one of their subjects who becomes naturalised abroad thereby loses his previous nationality;[1] other states have not followed that principle.

§ 389 Acquisition of nationality through redintegration

The third mode of acquiring nationality is by so-called redintegration or resumption. Individuals who have lost their original nationality through naturalisation abroad or for some other cause, may recover their original nationality on fulfilling certain conditions. This is called redintegration or resumption, in contradistinction to naturalisation, the favoured person being redintegrated and resumed into this original nationality.[1]

§ 390 Acquisition of nationality through annexation and cession

The fourth and fifth modes of acquiring nationality are by annexation and by cession of territory, the inhabitants of the annexed or the ceded territory acquiring *ipso facto* by the subjugation or cession the nationality of the state which acquires the territory. As to these modes of acquisition of nationality, which are modes settled by customary international law, see §§ 249 and 266.[1]

§ 391 Modes of losing nationality

Although it is at present left in the discretion[1] of states to determine the grounds on which individuals lose their nationality, the matter is of direct importance for international law. States commonly provide for loss of their nationality by some or all of the following methods,[2] namely release, deprivation, expiration, renunciation,[3] and substitution.

(p. 878) Release

Some states give their citizens the right to ask to be released from their nationality. Such release, if granted, denationalises the released individual.

Deprivation

Article 15.2 of the Universal Declaration of Human Rights provides that no one shall be arbitrarily deprived of his nationality.[4] According to the law of many states, certain conduct by a national results in him being deprived of his nationality. The laws of the various states recognise numerous grounds for depriving a person of his nationality,[5] such as entering into foreign civil[6] or military service without permission of his national state, voting in political elections in a foreign state,[7] committing acts of treason against the state or desertion from its armed forces,[8] making false statements in applying for naturalisation,[9] and prolonged residence abroad (particularly if in order to evade public service obligations),[10] and

becoming naturalised in a foreign state.[11] There would not seem to be anything contrary to international law[12] in a state depriving its nationals of their nationality on such grounds.

In certain circumstances, however, the deprivation of nationality may bring the state in question into conflict with its international obligations. Thus after the First World War the Soviet Union, Italy, Turkey, Germany, and some other countries[13] passed decrees which had the effect of denationalising considerable (p. 879) numbers of their nationals on the ground of uninterrupted residence abroad, or for other (sometimes racial or political) reasons.[14] Such large scale deprivations of nationality raise more difficult questions of their compatibility with international law and the extent to which they should be recognised by other states, but the tendency has been to regard such denationalisation as effectively causing loss of nationality.[15]

(p. 880) In so far as deprivation of nationality results in statelessness, it must be regarded as retrogressive, and the fact that some states[16] find no need (subject to certain exceptions) to provide for deprivation of nationality suggests that no vital national interest requires it. Article 15 of the Universal Declaration of Human Rights 1948, provides that no one shall be arbitrarily deprived of his nationality. The Convention on the Reduction of Statelessness 1961,[17] imposes certain restrictions on deprivation of nationality, but solely where it would result in statelessness. Article 8 provides that a contracting state 'shall not deprive a person of its nationality if such deprivation would render him stateless'. Article 7 also provides that a person shall not lose his nationality, so as to become stateless, on the grounds of departure, residence abroad, failure to register or on any similar ground. But loss of nationality on those grounds is permitted[18] on account of residence abroad for not less than seven consecutive years; and in the case of a person born outside its territory, failure, after attaining majority, to reside in the national territory or to register with the appropriate national authority. Deprivation is also permitted in such circumstances,[19] and also[20] if nationality has been obtained by misrepresentation or fraud; if, inconsistently with his duty of loyalty to the State and in disregard of an express prohibition by it, a national has rendered service to or received emoluments from another state, or has conducted himself in a manner seriously prejudicial to the vital interests of the state; or if he has made a formal declaration of allegiance to another state; or if he has given definite evidence of his determination to repudiate allegiance to his own state. Article 9 of the Convention also provides that a contracting state 'may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds'.

Expiration

Some states have provided by legislation that nationality expires in the case of such of their nationals as have left the country and stayed abroad for a certain length of time.[21]

(p. 881) Renunciation[22]

For example, some states — the United Kingdom for instance[23] — allow for the voluntary renunciation of their nationality. This is, in particular, often the case with states which declare a child born of foreign parents on their territory to be their national by birth *iure soli*, although the child becomes at the same time, according to the law of the home state of the parents, its nationals *iure sanguinis*; such a child is given the right to make, after coming of age, a declaration desiring to cease to be its national.[24] Article 7 of the Convention on the Reduction of Statelessness 1961 prohibits renunciation of nationality unless a person possesses or acquires another nationality. The laws of some states require the renunciation of a former nationality as a condition for the acquisition of their nationality through naturalisation.

Substitution

According to the law of many states, a person loses his nationality *ipso facto* by naturalisation abroad.[25] International law itself does not require this, and some states do not object to their citizens acquiring another nationality besides that which they already possess. Thus, according to the British Nationality Act 1981, naturalisation in a foreign state does not involve loss of nationality, though the person concerned may renounce his British citizenship.[26] On the other hand, the United States Nationality Act 1952 provides that voluntary naturalisation in a foreign country results in loss of nationality.[27]

Just as naturalisation abroad *ipso facto* extinguishes the nationality of their nationals according to the law of some states, so through subjugation or cession the inhabitants of the conquered or ceded territory may become nationals of the state which annexes the territory, their former nationality being extinguished by substitution of the new.[28]

Footnotes:

1 There appears to be no rule of international law which requires states to have their own nationality laws, and it may happen that, particularly in the early years of its existence, a state has no such law. Thus Israel had no nationality law until 1952; and see *AB v MB* (1950), ILR, 17, p 110. As to the right to a nationality as a human right see Chan, Human Rights LJ, 12 (1991), pp 1–14.

2 Subject to what is said in § 378 above. In the *Nottebohm* case, the ICJ observed that the 'character thus recognized on the international level as pertaining to nationality [ie that it should reflect a real and effective link with the state] is in no way inconsistent with the fact that international law leaves it to each State to lay down the rules governing the grant of its own nationality. The reason for this is that the diversity of demographic conditions has thus far made it impossible for any general agreement to be reached on the rules relating to nationality, although the latter by its very nature affects international relations. It has been considered that the best way of making such rules accord with the varying demographic conditions in different countries is to leave the fixing of such rules to the competence of each State' (ICJ Rep (1955), p 23).

3 Other special circumstances leading to acquisition of nationality include the acquisition of a new state's nationality when it becomes independent (see § 66, n 28); an infant on being adopted may acquire the nationality of the adopting parents, and may similarly do so on being legitimated by the subsequent marriage of its parents (see, eg British Nationality Act 1981, ss 1, 15 and 47). See also Levy, AJ 39 (1945), pp 13–19, on acquisition of nationality in the Emergency Refugee Shelter established by the United States at Fort Ontario during the Second World War.

Special political relationships may also involve the attribution of nationality in ways which must be treated as *sui generis*. Thus the situation of Germany after 1945, and the eventual establishment on separate parts of its territory of the Federal Republic of Germany and the German Democratic Republic (see § 40) led the former to develop a concept of German nationality with characteristics appropriate to that particular situation, whereby nationals of the latter, when in the Federal Republic, shared with nationals of the Federal Republic a single concept of German nationality in the sense of the nationality of the former German Reich under the 1913 German nationality law (which, with amendments, is still in force in the Federal Republic). See *Re Treaty on the Basis of Relations between the Federal Republic of Germany and the German Democratic Republic 1972* (1973), ILR, 78, pp 150 , 170–72; *Teso* case (decision of the Federal Constitutional Court, 21 October 1987). See Makarov, *Deutsches Staatsangehörigkeitsrecht* (2nd ed, 1971); Bleckman, CML Rev (1978), pp 435–46; Koenig, AFDI, 24 (1978), pp 237–63; Salmon, *Rev Belge*, 15 (1980), pp 187–201; Hofman, ZöV, 49 (1989), pp 257–96. Note also the Declaration on the definition of the term

‘German national’, made by the Federal Republic of Germany on signing the Treaty Establishing the European Economic Community.

1 For the purposes of such rules, special questions may arise as to the meaning of ‘territory’, eg in relation to birth in a state’s diplomatic premises abroad or in a foreign state’s diplomatic premises in its territory, birth on a foreign vessel in the state’s territorial sea (see *Re Delgado de Román*, ILR, 23 (1956), p 371), and birth on national vessels on the high seas or in foreign territorial seas (see, eg British Nationality Act 1981, s 50(7)). As to the presumed place of birth of a foundling, see Art 14 of the 1930 Hague Convention on Certain Questions relating to the Conflict of Nationality Laws, and Art 2 of the Convention on the Reduction of Statelessness 1961. Article 15 of the Hague Convention provides that where the nationality of a state is not acquired automatically by reason of birth on its territory, a child born there of parents having no nationality, or of unknown nationality, may obtain the nationality of that state, whose law determines the conditions governing the acquisition of nationality in such cases. Article 20(2) of the American Convention on Human Rights 1969 provides that every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality.

See generally on *ius soli*, Moosmayer, *Der Gebietsgrundsatz im Staatsangehörigkeitsrecht* (1963).

2 It is probable that international law requires an exception to be made in favour of a child born to a person enjoying diplomatic status. Article 12 of the 1930 Hague Convention on Certain Questions relating to the Conflict of Nationality Laws provides that the *ius soli* should not apply automatically to such persons. The International Law Commission referred to ‘the generally received view that a person enjoying diplomatic privileges and immunities should not acquire the nationality of the receiving State solely by the operation of the law of that State, and without his consent’: ILC Commentary (Diplomatic Relations), Art 35, YBILC, 1958, vol II, p 35. But an Article proposed by the ILC to give effect to that view was rejected by the Vienna Conference on Diplomatic Relations, and the matter was dealt with in an Optional Protocol to the Convention on Diplomatic Relations. Section 50(4) of the British Nationality Act 1981, recognises an exception in favour of a child born to a person possessing diplomatic immunity. International law would not seem to require that there should be any exception in favour of a child born to a person enjoying consular status. Although the ILC proposed an Article making such an exception, it did not express any view to the effect that the Article reflected the contemporary position: ILC Commentary (Consular Relations), Art 52, YBILC, 1961, vol II, p 122. The ILC’s draft Article was not adopted, and the matter was again dealt with in an Optional Protocol to the Convention on Consular Relations. See generally on the application of the receiving state’s nationality law to the children of diplomatic and consular officers, Whiteman, *Digest*, 8, pp 123–7; Denza, *Diplomatic Law* (1976), pp 293–9; Satow, pp 141–2.

3 The common law of England concerning nationality has several times been altered by statute. The current law is set out in the British Nationality Act 1981, as amended. The 1981 Act introduced an important change in that it ended the comprehensive nationality category of ‘citizens of the United Kingdom and Colonies’, embracing both those attached to the UK and those attached to the UK’s various colonial territories, and replaced it with separate categories for those attached to the UK (‘British citizens’: Pt I of the Act) and those attached to British territories (‘British Dependent Territories citizens’: Pt II) with two residual categories (‘British Overseas citizens’ and ‘British subjects’ (Pts III and IV). As to Commonwealth citizens see § 385.

See generally White and Hampson, ICLQ, 31 (1982), pp 849–55; Blake, MLR, 45 (1982), pp 179–97; Macdonald and Blake, *The New Nationality Law* (1982); Simmonds, CML Rev, 21 (1984), pp 675–86; Flansman, *British Nationality Law* (1989). On the former law on, and historical background of, British nationality law see Parry, *Nationality and Citizenship* and Mervyn Jones, *British Nationality Law* (1956). On *ius soli* in earlier British nationality law and practice, see Ross, in *Grotian Society Papers* (1972), pp 1–22.

1 See generally van Pittius, *Nationality within the British Commonwealth of Nations* (1931); Parry, BY, 30 (1953), pp 244–92, and *Nationality and Citizenship*, pp 92–123; M Jones, *British Nationality Law* (1956), pp 87–124; Wilson and Clute, AJ, 57 (1963), pp 566–87; Fawcett, *The British Commonwealth in International Law* (1963), pp 182–6, and in *The Round Table*, April 1973, pp 259–69; Clute in *The International Law Standard and Commonwealth Developments* (ed Wilson, 1966), pp 100–136, 268–92; Weis, *Nationality and Statelessness*, pp 15–18. As to the Commonwealth generally, see §§ 78–80.

As to questions of nationality arising in relation to inhabitants of mandated or trust territories administered by Commonwealth states, see §§ 87–95.

The Nordic states have also cooperated closely on questions of nationality and the consequences in one such state of possessing the nationality of another. See, eg the Agreement between Denmark, Finland, Norway and Sweden on the Implementation of certain Provisions relating to Nationality Laws 1969. The effect generally is to put a national of one of those states, when resident or present in another of them, in much the same position as a national thereof. Thus, for example, the state of residence has jurisdiction over him for offences committed abroad as if he were one of its nationals, (see § 138). For similar reasons that state may seek his extradition from a third state even though he is not strictly speaking one of its nationals: see the definition of ‘nationals’ of a Nordic state now often contained in extradition treaties with third states, at § 418, n 2.

2 Section 37 and Sched 3; and s 51(1) and (2). As to ‘British subjects’ under the 1981 Act, see Pt IV and ss 37(4), 51(1) and (2).

For a list of Commonwealth countries see § 80, n 1. Of the states there mentioned all were listed in Sched 3 of the Act on 1 January 1990 except Namibia (which was, however, added later that year) and the UK (which is covered directly in s 37); Fiji, although still included in the Schedule, has withdrawn from the Commonwealth: see § 79, n 7.

As regards the position under the Act of Citizens of Eire, see s 31. Citizens of the Republic of Ireland are excluded from the definition of ‘alien’ in s 50(1), along with Commonwealth citizens and British protected persons.

3 See § 150. However, there is nothing to prevent one Commonwealth state agreeing to make diplomatic representations on behalf of nationals of another Commonwealth state at the latter’s request, eg where the one state is not represented in the foreign state concerned but the other is. See also § 79, n 14 and § 411, n 1.

4 British Nationality Act 1981, s 50(1).

5 See Commonwealth Immigrants Acts 1962 and 1968, Immigration Act 1971, and British Nationality Act 1981, s 39. See also §§ 379, n 4 and 400, n 1. A citizen of the UK and Colonies (the term discontinued by the British Nationality Act 1981) was not a citizen of every individual British colony so as to have the right of entry thereto: see *Musson and Musson v Rodriguez*, ILR, 22 (1955), p 61; *Thornton v The Police* [1962] AC 339; *Franklyn v McFaul*(1960), ILR, 32, p 247. Nor does a British subject or a citizen of a Commonwealth country necessarily have the same rights of entry and residence in another Commonwealth country as do its own citizens: see *Sudali Andy Asary v van den Dreesen*, ILR, 19 (1952), No

17; *Naziranbai v The State*, ILR, 24 (1957), p 429. See also Fawcett, *The Round Table*, April 1973, pp 259–69.

6 The common status of British subjects formerly possessed by citizens of Commonwealth states has been held by the Privy Council sufficient to make a ship owned by an Australian citizen a British ship for purposes of jurisdiction over an offence on board the vessel: *Oteri and Oteri v R* (1976), ILR, 69, p 159. As to the exercise of jurisdiction on the basis of nationality in relation to British subjects, note that s 3(1) of the British Nationality Act 1948 (not repealed by the Act of 1981) disclaimed extraterritorial jurisdiction over British subjects who were not citizens of the UK and Colonies except where such jurisdiction would lie even in respect of aliens. As to military service obligations of British subjects see § 404, n 12.

7 See Mervyn Jones, BY, 25 (1948), p 179.

1 See, eg British Nationality Act 1981, s 47. As to the earlier law see Parry, *Nationality and Citizenship*, pp 330–33.

2 See, eg Adoption Act 1958, s 19(1); British Nationally Act 1981, s 1(5), 15(5).

3 Article 13 of the Hague Convention on Conflict of Nationality Laws 1930 provides that the naturalisation of parents shall normally result in the naturalisation also of their minor children.

4 See, eg *Debrowski v Ministre de la Santé Publique* (1968), ILR, 70, p 341.

5 See § 395. See also Hudson, AJ, 27 (1933), pp 117–22, for a survey of the history of this question before the League. In 1937 this Convention entered into force. See also the Convention on the Nationality of Married Women adopted by the Seventh Pan American Conference in December 1933, and consisting of a single substantive Article providing that as regards nationality there shall be no distinction based on sex in the legislation or practice of the contracting parties: AJ, 28 (1934), Suppl, pp 61–2.

As to the nationality of married women generally see vol I of 8th ed of this work, p 655, for literature preceding the 1930 Hague Convention, and also Sauser-Hall, *La Nationalité de la femme mariée* (1933); Waltz, *The Nationality of Married Women* (1936); Harrison, NYULQR, 9 (1931–32), pp 445–62; Scott and Lapradelle, *Annuaire*, 37 (1932), pp 1–25; Bicknell, *Grotius Society*, 20 (1934), pp 106–22; Makarov, Hag R, 60 (1937), ii, pp 113–234; Simson, *Archiv des öffentlichen Rechts*, 76 (1949), pp 55–84; *Nationality of Married Women*: Report by the Secretary-General of the United Nations 1950, and a further report in 1963; Dutoit, *La Nationalité de la femme mariée* (3 vols, 1973, 1976, 1980).

6 GA Res 1040 (XI) (1957). A state party to the Convention has been held to be under no obligation to apply it in respect of a marriage of one of its nationals to a national of a state which is not a party: see *Majia v Regierungsrat des Kantons Bern* (1963), ILR, 32, p 192.

The ILC was requested to study the question of the nationality of married women in 1950 (see ECOSOC Res 304 (XI), 17 July 1950); in 1954 the ILC deferred its consideration of this topic, along with certain other aspects of nationality law: see § 30, item (7).

7 GA Res 34/180 (1979); ILM, 19 (1980), p 33.

8 Thus Mexico had legislation automatically conferring Mexican nationality on persons owning real estate in Mexico. In *Re Rau*, AD, 1931–32, No 124, the German-Mexican Claims Commission regarded the acquisition of nationality in that manner as not permitted by international law; in other countries, however, Mexican nationality so acquired was treated as effective. As to die operation of certain Brazilian laws providing for the tacit naturalisation of aliens present in Brazil, or resident and holding real estate there and being married to a Brazilian woman or having Brazilian children, see *Re Succession of Rosa M F Poley*, AD, 5 (1929–30), No 141, and *De Pauli v Minata Maria Stella*, AD, 6 (1931–32), No 128. Article 103 of the Greek Constitution in force in 1954 provided for the automatic

acquisition of Greek nationality by virtue of becoming a monk or novice at the monastery of Mount Athos: see *Mount Athos (Nationality) Case*, ILR, 21 (1954), p 195.

9 As to collective naturalisation upon acquisition of territory, see § 390.

10 See generally M Jones, *British Nationality Law and Practice* (1947), pp 27–9; Fitzmaurice, Hag R, 92 (1957), ii, pp 195–201; F A Mann, BY, 48 (1976–77), pp 39–43; Weis, *Nationality and Statelessness*, pp 102–15; Donner, *The Regulation of Nationality in International Law* (1983), Ch III. In the *Flegenheimer Claim*, ILR, 25 (1958-I), at p 112, the Italian-US Conciliation Commission referred to 'the general principles of the Law of Nations on nationality which forbid, for instance, the compulsory naturalization of aliens'. In some arbitrations the naturalising state has been held unable to invoke the forced imposition of its nationality on an individual as a basis for depriving the state of his original nationality of its right to protect him by bringing an international claim: see the *Rau* claim, AD, 6 (1931–32), No 124; certain cases cited *ibid*, p 251, n; the *Georges Pinson* claim, AD, 4 (1927–28), No 4, RIAA, 5, pp 327, 381; the *Anderson and Thompson* claims, Moore, *International Arbitrations*, III, pp 2479–81.

11 *US ex rel Schwarzkopf v Uhl*, AD, 12 (1943–45), No 54; *Nationality (Secession of Austria) Case*, ILR, 21 (1954), p 175; *North-Transylvania Nationality Case* (1965), ILR, 43, p 191. As to the effects generally of foreign laws contrary to international law, see § 113. The second and third cases referred to in this note, and the cases referred to in the two following notes, concern the purported naturalisation of people who had previously been nationals of the naturalising state but who had lost that nationality on the transfer of territory to another state, which transfer had subsequently been reversed, whereupon the naturalising state purported to confer its nationality automatically on those of its former nationals who had lost its nationality on the original transfer of territory. The persons concerned were therefore not without some connection with the naturalising state, even if no longer resident in it. In those cases concerning Austrian nationality, the legal considerations were further complicated by the fact that the annexation of Austria by Germany in 1938 was subsequently annulled (and not just the subject of a re-transfer of territory): see § 55, nn 36–9.

12 *Austrian Nationality Case*, ILR, 22 (1955), p 430; *Loss of Nationality (Germany) Case* (1965), ILR, 45, p 353.

13 This follows *a fortiori* from the cases cited at n 12; see also *Austrian Nationality Case*, ILR, 20 (1953), p 250; *Austro-German Extradition Case*, ILR, 23 (1956), p 364; *Re Feiner*, *ibid*, p 367. But cf *Compulsory Acquisition of Nationality Case* (1960), ILR, 32, p 166, refusing effect to the naturalisation because it was contrary to generally recognised rules of international law. For the invalidity in German law of an order in 1943 purporting to confer German nationality on all persons of 'German origin' then serving in the German armed forces, see *Compulsory Grant of German Nationality Case*, ILR, 18 (1951), No 61.

14 See § 378, n 19. See also § 391, n 15, as to the general tendency to treat as effective a foreign state's actions in depriving people of its nationality.

1 See generally Borchard, §§ 228–52, 263–72; Keith, *Responsible Government in the Dominions* (2nd ed, 1928), ii, pp 1041–8; Butler and Maccoby, *The Development of International Law* (1928), ch x; Mervyn Jones, *British Nationality Law and Practice* (1947), pp 158–77; Flournoy, Yale Law Rev, 31 (1922), pp 702–19, 848–68; Randall, LQR 40 (1924), pp 18–30; Hackworth, AS Proceedings (1925), pp 56–69; Hazard, *ibid* (1926), pp 67–84; *Harvard Draft Convention* (and Comment), AJ, 23 (1929), Special Suppl, pp 41–76; Triepel, ZöV, 1 (1929), pp 191–6; Whiteman, *Digest*, 8, pp 127–49, 157–62; Parry, *Nationality and Citizenship*, pp 34ff, 78ff, and 263–74; Weis, *Nationality and Statelessness*, pp 96–102.

2 The formal act may be given a different name in the law of some states, at least for some purposes. Thus, in the UK, the act of naturalisation is, with regard to certain categories of persons, called registration. Not to be confused with naturalisation proper is naturalisation through *denization* by means of letters-patent under the Great Seal. It was expressly provided by s 25 of the British Nationality and Status of Aliens Act 1914, that nothing in this Act shall affect the grant of letters of denization by His Majesty. This way of making an alien a British subject is based on a very ancient practice (see Hall, *Foreign Powers and Jurisdiction*, § 22) which has not been used for many years and seems not likely to be resorted to. It is not referred to in the British Nationality Acts of 1948 or 1981. See Parry, *Nationality and Citizenship*, at references indexed as 'endenization'.

3 Thus in *Apostolidis v Turkish Government*, the Franco-Turkish Mixed Arbitral Tribunal held, in May 1928, that the effects of naturalisation granted by one state ought to be recognised by other states: AD (1927–28), No 207.

4 See Makarov, Hag R, 74 (1949), i, pp 331–4.

5 ICJ Rep (1955), p 4. See also §§ 150 and 378. The Court emphasised (at p 17) that what was in issue was the recognition of Nottebohm's acquisition of Liechtenstein nationality *for purposes of the admissibility of the application and as against Guatemala*. See also *Schulte-Malburn v Les Domaines de la Seine*, ILR, 26 (1958-II), p 401, in which the French Cour de Cassation treated a former German national who had been naturalised in Liechtenstein as still a German national for certain purposes of French law.

6 See § 386, nn 8, 9.

7 Thus, by treaty, states may agree not to naturalise each other's nationals without the consent of the state of nationality: see, eg *Iranian Naturalization Case* (1968), ILR, 60, p 204.

8 'It is for Liechtenstein, as it is for every sovereign state, to settle by its own legislation the rules relating to the acquisition of its nationality, and to confer that nationality by naturalisation granted by its own organs in accordance with that legislation': *Nottebohm* case, ICJ Rep (1955), p 20.

9 See *Proposed Amendments to the Naturalization Provisions of the Political Constitution of Costa Rica* (1984), ILR, 79, pp 283, 299–303, decided by the Inter-American Court of Human Rights. But granting preferential treatment in this context to foreign women marrying a state's male nationals, compared with the treatment granted foreign men marrying women having the state's nationality, would be discriminatory: *ibid*, pp 303–4. See also *Aumeeruddy-Cziffra v Mauritius* (1981), ILR, 62, p 285.

1 However, in English law, even during that period, there were restrictions upon the application of this principle in the case of naturalisation in a state at war with the UK: see *R v Lynch* [1903] 1 KB 444; *Ex parte Freyberger* [1917] 2 KB at p 139; *Vecht v Taylor* (1917) 116 LT 446; *Re Chamberlain's Settlement* [1921] 2 Ch 533; *Fasbender v Attorney-General* [1922] 2 Ch 850; *R v Commanding Officer* (1917) 33 TLR 252; McNair and Watts, *Legal Effects of War* (4th ed, 1966), pp 65–7. But the naturalisation in the enemy state may be effective under its law: *Gantlett v Japan*, ILR, 26 (1958-II), p 402.

1 See, eg, British Nationality Act 1981, s l3. As to the reacquisition of German nationality by those who had been deprived of it by Nazi racial laws see § 391, n 15; and as to the reacquisition of Austrian nationality by those former Austrian nationals who had ceased to be such on the annexation of Austria by Germany in 1938, see F A Mann, BY, 48 (1976–77), pp 42–3, and, generally, § 55, nn 36–9. The Annex to s V, pt III, of the Treaty of Versailles provided for the redintegration into French nationality of certain former French nationals

who had lost that nationality as a result of the Treaty of Frankfurt 1871, whereby Alsace-Lorraine was ceded to Germany: see *Re Wolf*, ILR, 18 (1951), No 125.

1 See also cases cited at § 391, n 28.

1 See, however, nn 13–15.

2 See also § 66, n 28, as to changes of nationality when a territory acquires independence.

3 This term is the equivalent, in the context of the loss of nationality, of option as a mode of acquiring nationality.

4 See also Art 20.3 of the American Convention on Human Rights 1969 (§ 443). There is no equivalent provision in the Covenant on Civil and Political Rights 1966 (§ 440), or in the European Convention on Human Rights 1950 (§ 442).

5 See the UN Secretary-General's memorandum on 'Nationality legislation concerning grounds for deprivation of nationality': UN Doc/A/CN 4/66. As to deprivation of nationality as a prelude to the expulsion of the persons concerned as aliens, see Ghai, *AS Proceedings*, 1973, p 124ff. Since deprivation of nationality is a most serious step, legislative changes are likely not to be lightly presumed to have that effect: see, eg *Shalabi v Attorney-General* (1971), ILR, 60, p 227.

6 See, eg the Austrian case, *R v Provincial Government of Upper Austria*, ILR, 19 (1952), No 61. And see, concerning deprivation of nationality because of departure from the state, the Norwegian case, *The State v Buhre* (1959), ILR, 30, p 352.

7 See, eg *Perez v Brownell*, ILR, 26 (1958-II), p 404; *Afroyin v Rusk*, AJ, 62 (1968), p 189.

8 See, eg *Trop v Dulles*, ILR, 26 (1958-II), p 426. As to swearing an oath of allegiance in a foreign country see *Baker v Rusk* (1969), ILR, 53, p 525; and see n 10 below.

9 See, eg *Federenko v United States*, AJ, 75 (1981), p 669; British Nationality Act 1981, s 40.

10 See, eg *Rusk v Cort* (1963), ILR, 34, p 108; *Kennedy v Mendoza-Martinez*, AJ, 57 (1963), p 666; *Rogers v Bellei*, AJ, 66 (1972), p 1063.

11 See, eg *King v Rogers* (1972), ILR, 60, p 238; *Ulin v R* (1973), *ibid*, p 241; *Ebrahim v Minister of the Interior* (1976), ILR, 68, v 144; *Richards v Secretary of State*, AJ, 79 (1985), p 1063. And see § 388. In some cases the deprivation of nationality follows from the oath of allegiance to the new state of nationality which sometimes has to be sworn on being naturalised, rather than from the act of naturalisation itself. However, an application by a dual national for the issue of a passport by the authorities of one of his national states does not necessarily lead to the renunciation of his other nationality: *Re Bulla*, AD, 7 (1933–34), No 111.

12 But there may be relevant treaty provisions; see, eg text at n 17 below, as to obligations connected with the avoidance of statelessness. As to the Austrian law of 1919 expatriating the members of the House of Habsburg, see *Habsburg-Lorraine v Austria* (1980), ILR, 77, p 475.

13 Such as Poland in 1938, Romania in 1938 and 1941, and France in 1940. See also the Czechoslovak Constitutional Decree No 33 of 2 August 1945 regarding persons of German or Hungarian Ethnic origin (a law of 24 April 1953 provided that such persons, if still resident in Czechoslovakia, reacquired their Czech nationality), and Art 16 of the Yugoslav Nationality Act 1946, regarding persons belonging ethnically to a people whose state has waged war against Yugoslavia. In 1962 the Constitution of Sierra Leone was amended so as to deprive certain citizens of Sierra Leone of their citizenship on racial grounds: this

amendment was declared unconstitutional by the Privy Council because of its discriminatory nature (*Akar v Attorney-General of Sierra Leone* [1970] AC 853).

14 Trachtenberg in *Répertoire*, v, pp 338–50; Fischer Williams in BY, 8 (1927), pp 45–61; Stauffenberg in ZöV, 4 (1934), pp 261–76; Scelle in *Revue critique de droit international*, 29 (1936), pp 63–76; Preuss, *Georgetown Law Review*, vol 22, 1934, pp 250–76; Abel, MLR, 6 (1942), pp 57–68; F A Mann, BY, 48 (1976–77), pp 43–5. On the question whether these decrees release the state in question from the international duty of receiving back its own subjects when expelled by other states see § 413, n 19. As to denationalisation for political reasons see Preuss, RIF, 4 (1937), pp 10–19, 240–54, and in *American Political Science Quarterly*, 36 (1942), pp 701–10. See also *Columbia Law Review*, 44 (1944), pp 736–51; Weis, *Nationality and Statelessness*, pp 119–27; Donner, *The Regulation of Nationality in International Law* (1983), Ch III. English courts will not recognise in time of war any change of nationality brought about by a decree of an enemy state which purports to turn any of its subjects into a stateless person or a subject of a neutral state: *R v Home Secretary, ex parte L* [1945] KB 7. For comment thereon, see Abel, MLR, 8 (1945), pp 77–89 and *Lowenthal v Attorney-General* [1948] 1 All ER 295; *Oppenheimer v Cattermole* [1976] AC 249. See also *Re Mangold's Patent* (1951) 68 RPC 1 and for comment thereon Abel, ILQ, 4 (1951), pp 373–7. See also Parry, *Nationality and Citizenship*, pp 132–3. For a different, though somewhat hesitating, attitude of US courts see *United States ex rel Schwarzkopf v Uhl*, AD, 12 (1943–45), No 54.

A tribunal set up under a treaty may, because of the general policy underlying the treaty, be unable to recognise a forced denationalisation: see *Fürth-Perl and Fürth-Strasser v German Federal Repubic*, ILR, 25 (1958-I), p 357.

15 See *Tcherniak v Tcherniak*, AD (1927–28), No 39, and *Lempert v Bonfol*, AD (1933–34), No 115 (two decisions of the Swiss Federal Court relating to the effect of Soviet denationalisation decrees), and *Rajdberg v Lewi*, AD (1927–28), No 209 (a Polish decision relating to the same matter). The question fell to be considered in a number of cases arising out of German laws of 1938 and 1941 which deprived of German nationality German Jews living outside Germany. In 1945 the Allied Control Council for Germany repealed the German laws, and provided that persons who had been deprived of German nationality under them could apply to have it restored. On the German law of 1941 and its repeal see H Lauterpacht, JYBIL (1948), p 164. Article 116 of the Basic Law of the Federal Republic of Germany provided for the renaturalisation of former German nationals whose German nationality was withdrawn between 30 January 1933 and 8 May 1945 for political, racial or religious reasons: the renaturalisation was not compulsory but applied only upon application, or, if residence in Germany was resumed after 8 May 1945 and no wish to the contrary was expressed. In 1968 the Federal German Constitutional Court held the 1941 law to be void *ab initio* but that, since the 1941 law was a historical fact which the Federal Republic could not undo, the procedures of Art 116 were the only means of resuming German nationality, except where at the relevant time the Basic Law was not in force, in which case the ineffectiveness of the 1941 law would result in the person concerned still having German nationality. In *United States ex rel Schwarzkopf v Uhl*, AD (1943–45), No 54; *US ex rel Steinvorth v Watkins*, AD (1947), No 41; and *Rosenthal v Eidgenössisches Justiz und Polizeidepartment*, AD, 1948, No 73, US and Swiss Courts treated the law as effective to deprive the de cujus of German nationality; but in *Levita-Mühlstein v Département Fédéral de Justice et Police*, AD (1946), p 133, a Swiss court declined to do so. In *Casperius v Casperius*, ILR, 21 (1954), p 197, the Israel Supreme Court treated the law as effective; as did the Court of Appeal in England in *Oppenheimer v Cattermole* [1972] 3 WLR 815 (on which see F A Mann, LQR, 89 (1973), pp 194–209, and Merrills, ICLQ, 23 (1974), pp 143–59): on appeal to the House of Lords [1976] AC 249 (on which see Merrills, ICLQ, 24 (1975), pp 617–34; Dhavan, *Anglo-American LR*, 7 (1978), pp 3–12; F A Mann, LQR, 97 (1981), pp 220–22) divided views were expressed on the matter, the House of Lords finding a different

basis for deciding the issue before it. In 1951 the Italian Court of Cassation in *Fabbrica Nazionale Cilindri v Bruckmann*, held that a former German national, who had been deprived of that nationality by Nazi racial laws, automatically reacquired it by the repeal of those laws in 1945: AJ, 49 (1955), p 269. See also the decision of the Federal Constitutional Court in 1958, reported in AJ, 54 (1960), p 419.

16 Eg the UK. However, s 40 of the British Nationality Act 1981 allows deprivation of nationality in certain exceptional circumstances in relation to British citizenship acquired by naturalisation or registration. See generally as to withdrawal of nationality, Bonneau, RG, 52 (1948), pp 50–81 (in addition to writers referred to above, at n 14). Deprivation of nationality is not actionable before the European Commission of Human Rights, under the European Convention on Human Rights: *Re Application No 288/57 (X v German Federal Republic)*, ILR, 24 (1957), p 346.

17 See § 398, n 14.

18 Articles 7.4 and 7.5.

19 Article 8.2(a).

20 Articles 8.2(b) and 8.3.

21 Thus in the USA it is provided in s 352 of the Nationality Law of 1952 that a naturalised person shall lose his nationality by continuous residence for three years in the territory of the state of which he was a national or in which the place of his birth is situated, or by continuous residence for five years in any foreign state or states. The Act provides for certain exceptions in case of stay connected with governmental service, or service in international organisations, or representation of an American business, scientific, or charitable organisation. See Gordon, Col Law Rev, 53 (1953), pp 451–75. Section 352(a)(i) of the 1952 Act was, however, declared unconstitutional by the Supreme Court because it was discriminatory against naturalised persons: *Schneider v Rusk* (1964), ILR, 35, p 197.

22 See also § 382.

23 British Nationality Act 1981, ss 12, 24, 29 and 34. Up to the Naturalisation Act 1870, the UK upheld the rule *nemo potest exuere patriam*. See § 382, n 2.

See also, eg *Vance v Terrazas*, AJ, 74 (1980), p 438 (as to the USA).

24 See, eg *Frühauf* (1975), ILR, 73, p 569.

25 See also §§ 386 and 388.

26 Section 12. The former rule that no person could abandon his British nationality (see § 382, n 2) was represented to be a fundamental principle of the common law. That rule was abandoned in 1870 so as to permit naturalisation in a foreign country — subject, however, to the automatic loss of British nationality. The Act of 1948 abandoned that latter condition.

27 Section 349(1). See also Art 7.2 of the Convention on the Reduction of Statelessness 1961.

28 See § 390. Concerning the option sometimes given to inhabitants of ceded territory to retain their former nationality, and as to changes of nationality due to the Treaties of Peace after the First World War, see § 249. See, as to the annexation of Danzig by Germany in 1939, and its effects on the nationality of Danzigers, *Re Kruger*, ILR, 18 (1951), No 68; *Re Nix*, *ibid*, No 69; *Re Wetzel* (1956), ILR, 24 (1957), p 434. As to the effects of German annexation of the Sudetenland, see *Weber and Weber v Nederlands Beheers-Instituut*, ILR, 24 (1957), p 431; *Collective Naturalization Case* (1969), ILR, 61, p 406. See also *Re Yae*

Sudo (1962), ILR, 53, p 514 (transfer of Formosa from Japan to China). And see § 55, n 6, as to the establishment of German 'protectorates' over Bohemia and Moravia.

Somewhat similar is the loss of nationality which occurs when part of the territory of a state becomes a separate independent state and inhabitants of that territory acquire the nationality of die new state. See generally § 66. See also, eg *Khalil Ahmad v State* (1961), ILR, 49, p 504; *Mitsuko Sakaue v The State* (1965), ILR, 53, p 518; *Russian Nobleman Nationality Case* (1971), ILR, 72, p 435. But loss of sovereignty over territory which does not pass into the sovereignty of any other state may not result in loss of the inhabitants' nationality: see *Re Shimabukuro* (1967), ILR, 54, p 214.