



Introduction to Nationality and Statelessness

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What will be covered in this broad introduction:

- A. Defining concepts- (i) nationality, and (ii) statelessness;**
- B. Core applicable norms/human rights;**
- C. 3 areas of domestic law in which nationality and statelessness are critical:**
 - (i) Asylum/international protection/international refugee law;**
 - (ii) Deprivation of UK nationality status;**
 - (iii) LTR as a stateless person under part 14 Immigration Rules HC 395**

A. Defining concepts- (i) nationality, and (ii) statelessness

Nationality- ordinary meaning as starting point

The Oxford English Reference Dictionary

'*nationality*' = 'the status of belonging to a particular nation' and/or 'an ethnic group forming a part of one or more political nations'.

'*Nation*' = 'community of people of mainly common descent, history, language, etc, forming a state or inhabiting a territory' ('nation-state' = 'a sovereign state, most of the citizens or subjects of which are also united by factors such as language, common descent, etc which define a nation.')

J Pearsall and B Trumble eds, *The Oxford English Reference Dictionary* (2nd edn, OUP, 1996) 963-4.

Nationality- the two meanings

‘The term ‘nationality’ in the sense in which it is used in this book is a politico-legal term denoting membership of a State. It must be distinguished from nationality as a historico-biological term denoting membership of a nation. In the latter sense it means the subjective corporate sentiment of unity of members of a specific group forming a “race” or “nation” which may, though not necessarily, be possessed of a territory and which, by seeking political unity on that territory, may lead to the formation of a State.

Nationality in that sense, which is essentially a conception of a non-legal nature belonging to the field of sociology and ethnography, is not the subject of this work...

The meaning of nationality in international law

‘In international law, ‘nationality’ means not simply membership of a State, but more precisely, ‘attachment to that State for purposes of international law’ following from affiliation or membership. Nationality in this sense is an extremely important element in the modern system of public international law. As Dörr puts it in the Max Planck Encyclopedia of Public International Law, ‘the legal bond of nationality becomes the essential element of the individual’s legal status under international law.’

E Fripp, *Nationality and Statelessness in the International Law of Refugee Status* (Hart, Oxford, 2017) §1.5, citing O Dörr, *Nationality*, *Max Planck Encyclopedia of Public International Law* (OUP, 2015)

Nationality and citizenship

‘Nationality’ is a term of art in public international law (PIL). It describes a status for purposes of PIL which arises from domestic law, generally from constitutional law, denoting the status of political membership or linkage to the state.

This domestic law status often denotes individuals as ‘citizens’, a term which has often replaced some older, feudally derived terminology such as that of ‘subject’. The terms nationality and citizenship are so often coextensive that they are sometimes used as synonyms.

Nationality in principle within reserved domain of state, but international obligations affect extent of autonomy

40. *...whether a certain matter is or is not solely within the jurisdiction of a State is an essentially relative question; it depends upon the development of international relations. Thus, in the present state of international law, questions of nationality are, in the opinion of the Court, in principle within this reserved domain.*

41. *[However] it may well happen that, in a matter which, like that of nationality, is not, in principle, regulated by international law, the right of a State to use its discretion is nevertheless restricted by obligations which it may have undertaken towards other States. In such a case, jurisdiction which, in principle, belongs solely to the State, is limited by rules of international law.*

Nationality Decrees Issued in Tunis and Morocco, Advisory Opinion, Permanent Court of International Justice (ser B) No 4 (7 February 1923)

Nationality determined by domestic law/ recognition may be relevant at international plane

1930 League of Nations Convention on Certain Questions Relating to the Conflict of Nationality Laws:

Article 1- It is for each State to determine under its own law who are its nationals. This law shall be recognised by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognised with regard to nationality.

Article 2- Any question as to whether a person possesses the nationality of a particular State shall be determined in accordance with the law of the State.

International law and recognition ('acceptance')

'...although nationality is essentially an institution of the internal laws of states, and the international application of the notion of nationality in any particular case must be based on the nationality law of the state in question, the determination by each state of the grant of its own nationality is not necessarily to be accepted internationally without question.'

R Jennings and A Watts (eds), *Oppenheim's International Law*, 9th edn, volume 1 ('Peace'), (Oxford, OUP, 1992), Part 2, §378, 853.

The (2009) Draft Articles definition

International Law Commission *Draft Articles on Diplomatic Protection* (2009)- as regards nationality for the purposes of ascertaining whether a State may exercise diplomatic protection limited by international law, article 4:

Article 4- For the purposes of the diplomatic protection of a natural person, a State of nationality means a State whose nationality that person has acquired, in accordance with the law of that State, by birth, descent, naturalization, succession of States or in any other manner, not inconsistent with international law.

Most frequent means for acquisition of nationality

'Original' nationality

-obtained by birth to/descent from a national-'*ius sanguinis*'; or

-obtained by birth on the territory etc- '*ius soli*'

'Derivative' nationality

-Naturalisation (UK terminology naturalisation/registration)

Limitations on freedom of state as regards nationality

- few specific limitations on state treatment of nationality in international law;
- *ius cogens* norms- for instance prohibition of race discrimination, apartheid
- international human rights law- IHRL (see following)

Statelessness

Statelessness is in essence the absence of nationality. The Convention relating to the Status of Stateless Persons 1954, article 1(1), defines statelessness *in limine* with ‘*stateless person*’:

1(1) For the purpose of this Convention, the term “stateless person” means a person who is not considered as a national by any State under the operation of its law.

Note: UNHCR Handbook on Protection of Stateless Persons (2014), on article 1(1) CSSPR54 definition, §§23, 24, 37

B. Core applicable norms/human rights

International Human Rights Law (IHRL) (1)

A significant body of international treaty law now bears significantly on nationality. By art 15 UDHR, *'Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.'* Amongst subsequent potentially binding instruments are CERD 1966, ICCPR 1966, ICESCR 1966, CEDAW 1979, CRC 1989, CRPD 2006. Typically, specialist instruments prohibit relevant discrimination. Regional instruments include ECHR50, ACHR69, African Charter on Human and Peoples' Rights 1981.

IHRL (2)

-treaty scope of application generally territory and/or 'jurisdiction'- so not dependent on nationality;

-despite the number of IHRL instruments and individual measures, binding IHRL protections re nationality are generally very limited outside the American regional system:

-ICCPR66 mentioning '*nationality*' only once- art 24(3) '*Every child has the right to acquire a nationality.*' But relevant entry/leaving rights as regards '*own country*'- art 12(2) '*Everyone shall be free to leave any country, including his own*', art 12(4) '*No one shall arbitrarily deprived of the right to enter his own country*'

IHRL (3) deprivation of nationality

-The principle exception to there being v limited IHRL purchase on state actions re nationality arises re deprivation of nationality. There are multiple narrow IHRL rights against deprivation of nationality. There is at least some basis to suggest that there is a nascent general prohibition on arbitrary deprivation of nationality -UN HRC, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General* , 14/12/2009 (UN Doc A/HRC/13/34), §25:

25. Thus, while international law allows for the deprivation of nationality in certain circumstances, it must be in conformity with domestic law and comply with specific procedural and substantive standards, in particular the principle of proportionality....

IHRL (4) deprivation of nationality

Arbitrariness

-may apply to any form of state action- legislative, administrative, judicial;

-has a procedural aspect- practical justice etc.

-has a substantive aspect- avoiding action against local laws, avoiding (even domestically lawful) prohibited discrimination against groups, seeking to minimise creation of statelessness, importing proportionality.

IHRL (5) deprivation of nationality- ECtHR and art 8 ECHR

*Usmanov v Russia appn 43936/18 (22 Dec 2020), §53- ‘In the case of Ramadan v. Malta, (no. [76136/12](#), § 84, 21 June 2016) the Court held that although the right to citizenship is not as such guaranteed by the Convention or its Protocols, it cannot be ruled out that an arbitrary denial of citizenship might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such a denial on the private life of the individual. To establish whether “an issue” arose under Article 8 of the Convention the Court assessed whether the revocation of the citizenship was “arbitrary” and the “consequences” of revocation for the applicant (see §§ 85, 90 and 91 *ibid*). In the case of *K2 v. the United Kingdom* ((dec.), no. [42387/13](#), §§ 52-64 7 February 2017), which followed, the Court accepted that the revocation of citizenship amounted to an interference and applied the two-steps test to determine whether there has been a breach of Article 8 of the Convention [nb finding application inadmissible’...’*

Usmanov v Russia (cont.)

53. *...In the case of Ghoumid and Others v. France (no. [52273/16](#) and 4 others, §§ 43-44, 25 June 2020) the Court held that nationality is an element of a person's identity. To establish whether there had been a violation of Article 8 of the Convention the Court examined as to whether the revocation of the applicant's nationality had been arbitrary. Then, it assessed the consequences of that measure for the applicant.*

54. *In determining arbitrariness, the Court should examine whether the impugned measure was in accordance with the law; whether it was accompanied by the necessary procedural safeguards, including whether the person deprived of citizenship was allowed the opportunity to challenge the decision before courts affording the relevant guarantees; and whether the authorities acted diligently and swiftly*

Usmanov v Russia (cont.)

The ECtHR held annulment of Russian citizenship for omission of information about siblings when applying for naturalisation 10 years before, breached art 8 ECHR.

-Measure arbitrary, given lack of clarity of domestic law, its excessively formalistic approach, and inadequate procedural safeguards - Absence of a balancing exercise carried out by authorities

-Expulsion by reason of deprivation of nationality also arbitrary- No explanation for why the applicant was considered a national security threat - Failure in domestic proceedings to balance the interests at stake, taking into account Court general principles

Johansen v Denmark appn 27801/19 (3 Mar 2022)– dual Danish/Tunisian national born in Denmark to parents of each nationality, closely connected to Denmark, ordered deprived of Danish nationality and expelled following conviction for going to Syria to fight for terrorist group- application declared inadmissible

70. ...in the Court's view, taking into account that the applicant was convicted of serious terrorist offences, which themselves constituted a serious threat to human rights, and which to a large extent showed his lack of attachment to Denmark and its values... the fact that the applicant in the present case had obtained Danish nationality by birth does not significantly alter or add to the consequences for the applicant.

71. ...the Supreme Court's assessment of the decision to revoke the applicant's nationality was adequate and sufficient, and does not disclose any appearance of arbitrariness or omission with regard to the applicant's arguments.

C. 3 areas of domestic law in which nationality and statelessness are critical:

- (i) Asylum/international protection/international refugee law;**
- (ii) Deprivation of UK nationality status;**
- (iii) LTR as a stateless person under part 14 Immigration Rules HC 395**

Asylum/ International Protection/ International Refugee Law (1)

Convention relating to the Status of Refugees 1951, Art 1A(2) definition (para 1) [my underlining]

[A refugee is a person who] owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

Asylum/ International Protection/ International Refugee Law (2)

Art 1A(2) CSR51 definition (para 2)

In the case of a person who has more than one nationality, the term “the country of his nationality” shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

International Refugee Law (IRL) (5)

- nationality is important- central to the art 1A(2) refugee definition;
- nationality appears in 2 different contexts, different meanings;
- nationality as foundation is nationality de jure- no additional requirement for/definition of '*genuine link*';
- IHL as *lex specialis*, for instance re interpretation of '*persecuted*'/persecution- and affecting nationality related cases such as deprivation of nationality;

Deprivation of nationality- UK law

NB 'conducive' deprivation in the UK. Section 40(2)+(4) British Nationality Act 1981 (as amended w.e.f. 16 June 2006):

40.(2) The Secretary of State may by order deprive a person of a citizenship status if the Secretary of State is satisfied that deprivation is conducive to the public good.

Deprivation of nationality- UK law

(4) *The Secretary of State may not make an order under subsection (2) if he is satisfied that the order would make a person stateless.*

(4A) [subsection (4) disappplied if (a) person gained British status by naturalisation (b) SSHD is] satisfied that the deprivation is conducive to the public good because the person, while having that citizenship status, has conducted him or herself in a manner which is seriously prejudicial to the vital interests of the United Kingdom, any of the Islands, or any British overseas territory, and (c)the Secretary of State has reasonable grounds for believing that the person is able, under the law of a country or territory outside the United Kingdom, to become a national of such a country or territory.

Grounds for deprivation- SSHD's policy

Deprivation of citizenship where it is conducive to the public good is reserved for those who pose a threat to the UK or whose conduct involves very high harm, for example in response to activities such as those involving:

- national security including espionage and acts of terrorism*
- unacceptable behaviour such as the 'glorification' of terrorism*
- war crimes*
- serious organised crime*

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**Registration or naturalisation obtained by fraud, false representation, or concealment of a material fact- s 40(3) and (6)
BNA**

[40](3) The Secretary of State may by order deprive a person of a citizenship status which results from his registration or naturalisation if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of—

- (a) fraud,*
- (b) false representation, or*
- (c) concealment of a material fact.*

S 40(6) extends the fraud withdrawal regime to pre-BNA 1981 acquisition of nationality

(Conducive) deprivation of nationality- some cases

-*SSHD v Al -Jedda* [2013] UKSC 62; [2014] AC 253- (i) s40 statelessness is same as 1954 Convention (*de jure*) statelessness, (ii) whether stateless so s 40(4) engaged is not dependent on whether nationality could have been acquired or preserved but was not;

-*Pham v SSHD* [2015] UKSC 19; [2015] 1 WLR 1591, extent of statelessness if state behaving inconsistently with own law doubted (contra some passages in UNHCR Handbook), actual acknowledgement of nationality by state of contemplated nationality irrelevant.

-In *R (Begum) v SIAC; R (Begum) v SSHD* [2021] UKSC 7; [2021] 2 WLR 556 *inter alia*, (i) detailed consideration of (limited, in Court's analysis) appeal jurisdiction; (ii) inability to take part in proceedings from abroad did not mean that the Court could require grant of entry clearance to take part in appeal.

Part 14 Immigration Rules HC 395- Part 14 HC 395 provides a limited route to LTR for stateless persons

403. The requirements for [LTR] in the United Kingdom as a stateless person are that the applicant:

- (a) has made a valid application to [SSHD] for [LTR under Part 14];;*
- (b) is recognised as a stateless person by [SSHD under para 401];*
- (c) has taken reasonable steps to facilitate admission to their country of former habitual residence or any other country but has been unable to secure the right of admission; and*
- (d) has obtained and submitted all reasonably available evidence to enable [SSHD] to determine whether they are stateless or whether they are admissible to another country under the meaning of paragraph 403(c);*
- (e) has sought and failed to obtain or re-establish their nationality with the appropriate authorities of the relevant country; and*
- (f) if... a child born in the UK, has provided evidence that they have attempted to register their birth with the relevant authorities but have been refused.*

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