EXPULSION OF ALIENS

[Agenda item 6]

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Fourth report on the expulsion of aliens,” by Mr. Maurice Kamto, Special Rapporteur

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Introduction

1. During the International Law Commission’s consideration, at its fifty-ninth session (7 May–5 June and 9 July–10 August 2007), of the third report on the expulsion of aliens, in particular draft article 4 (Non-expulsion by a State of its own nationals), it was observed that the issue of the expulsion of persons having two or more nationalities should be studied in more detail and resolved within draft article 4, or in a separate draft article. Another viewpoint, supported by several members, was that it was not appropriate to address the topic in that context, especially if the Commission’s intention was to help strengthen the rule prohibiting the expulsion of nationals. However, the Commission cannot dismiss the issue without first exploring it in more depth.

2. It was also observed that the issue of deprivation of nationality, which was sometimes used as a preliminary to expulsion, deserved thorough study.

3. With regard to his third report on the expulsion of aliens, the Special Rapporteur observed that it was not desirable to deal with the issue of dual nationals in connection with draft article 4, as protection from expulsion should be provided in respect of any State of which a person was a national. He believed that the issue could, in particular, have an impact in the context of diplomatic protection in cases of unlawful expulsion. However, in order to respond to the questions posed by several members, the Special Rapporteur planned to analyse further the issue of expulsion of dual nationals and the question of deprivation of nationality as a prelude to expulsion. Such is the purpose of the present report.

4. Nationality is essentially governed by internal law, albeit within the limits set by international law. This language from the preamble to the Commission’s articles on the nationality of natural persons in relation to the succession of States reflects an old idea expressed, inter alia, in the Convention on Certain Questions relating to the Conflict of Nationality Laws, which provides that:

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.

5. It is felt that in matters of nationality, the legitimate interests of both States and individuals must be duly taken into account. Concerning the interests of individuals, the Universal Declaration of Human Rights of 1948 stipulates that everyone has the right to a nationality. The International Covenant on Civil and Political Rights and the Convention on the Rights of the Child recognize that every child has the right to acquire a nationality; and on 30 August 1961 States adopted a Convention on the reduction of statelessness. Likewise, the European Convention on Nationality and the Commission’s articles on nationality of natural persons in relation to the succession of States, of which the General Assembly took note, are based on the principle of the right to a nationality. At the same time, the legitimate interests of States require acknowledgement of their freedom to confer their nationality on or withdraw it from an individual insofar as those measures are consistent with the relevant principles laid down in international law in this area. A State is thus free to establish by law the rules of sole and exclusive nationality or, conversely, to allow cases of dual or multiple nationality.

6. It should be noted that the recognition of dual or multiple nationality is a relatively recent trend. In the past, the acquisition of two or more nationalities by a single individual was discouraged in international law. In fact, until recently opposition to dual nationality was as strong as the movement to prevent statelessness. Cases of dual nationality have increased in the past few decades. Some authors have attributed this to the marital situation of women who acquire a second nationality through marriage. Another factor that could be added, in this era of globalization, is the intensity of international migration and migrants’ tendency to become long-term residents of their host countries, where acquisition of the nationality of those countries enables them to become better integrated into the social, political and economic system.

A. Are dual or multiple nationals aliens?

7. The issue of the expulsion of aliens poses particular legal problems when it relates to persons with dual or

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3 Ibid., p. 57, para. 228.
5 Ibid., p. 60, para. 261.
7 Art. 1 of the Convention, which entered into force on 1 July 1937.
8 See General Assembly resolution 217 (II) A, art. 15, para. 1.
9 Art. 24, para. 3.
10 Art. 7, para. 1.
11 See article 4.
12 Art. 1 (see footnote 6 above).
13 See Koslowski, “Challenges of international cooperation in a world of increasing dual nationality”.

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Chapter I

Expulsion in cases of dual or multiple nationality
multiple nationality. First of all, if the individual subject to expulsion has the nationality of the expelling State, is the principle of non-expulsion of nationals strictly applicable? In other words, can a person liable to expulsion be considered an alien if he or she has not lost any of his or her nationalities? Secondly, in the light of this question, is a State in violation of international law if it expels an individual with dual nationality without first withdrawing its own nationality from that individual?

8. On the first point, some States do, in fact, treat their nationals who also hold another nationality as aliens for purposes other than expulsion. For example, Australia and Hungary have effected an exchange of notes in relation to their consular treaty under which their citizens with dual nationality are treated as aliens in the other country if they enter that country for a temporary stay using the passport of the other State with the appropriate visa.\footnote{14} Australia had already held that it could limit certain rights of its nationals, \textit{inter alia}, by treating Australian nationals who simultaneously possessed another nationality as aliens.\footnote{15} Poland and the United States of America,\footnote{16} as well as Canada and Hungary,\footnote{17} have effected exchanges of notes relative to their respective consular treaties that contain similar provisions. It seems that these agreements were concluded to ensure that the citizens of the States concerned could return to their countries of origin after a stay abroad while retaining the nationality of the visited country.

9. In the 1928 Georges Pinson case before the French-Mexican Mixed Claims Commission, France submitted a claim lodged by an individual with dual French and Mexican nationality. The Commission held that “even if the case were recognised as one of double nationality from the strictly legal point of view, it would be very doubtful if the claimant could not have invoked the Convention notwithstanding, owing to the fact that the Mexican Government itself had always considered him, officially and exclusively, as a French subject”\footnote{18} It appears, in the light of this case, that States can in fact consider their nationals to be aliens if the said nationals have an additional nationality. Such an attitude tends to facilitate the expulsion of dual nationals by the State in question. It will be shown later in this report that this behaviour is not sufficient in itself to serve as a basis for expulsion insofar as the individual concerned remains a national of the expelling State until such time as the latter formally deprives him or her of its nationality, and such an individual may claim that nationality to contest the legality of the expulsion.

10. On the second point, specifically concerning the legality of expelling a person with more than one nationality if that person has not first been denationalized by the expelling State, the rule prohibiting the expulsion of a State's own nationals, proposed by the Special Rapporteur in his third report\footnote{19} and unanimously supported by the members of the Commission, tends to support the idea that such an expulsion would be contrary to international law. Yet cases of expulsion of dual nationals without prior denationalization by the expelling State are not unusual in practice. In many cases, the nationality of the individual subject to expulsion is not clear. In order to comply with the obligation of States not to expel their own nationals, some expelling States take the legal precaution of denationalizing the person concerned or refusing to recognize that the person has the nationality of that State on the ground that it has not been sufficiently established. At the same time, practices tending in the opposite direction can also be observed.

11. Requiring the expelling State to denationalize dual nationals prior to expulsion is not without risks, however: the imposition of such an obligation could undermine the expelled person’s right of return. Were the expelled person to return to the expelling State, for example as a result of a change of government, this action would be complicated by the denationalization, since such a person would be treated as an alien requesting admission to a foreign State, or else the expelling State would have to restore its nationality to the person in order to enable the latter to exercise the right of return. It therefore appears that the application of a requirement to change a person’s status from that of a dual national to that of an alien, by means of denationalization, prior to expulsion is not necessarily in the interest of the expelled person, whose rights the Commission seeks to offer the best possible protection through its work on the issue of the expulsion of aliens.

12. In the light of the foregoing, the Special Rapporteur is of the view that:

\begin{itemize}
  \item [(a)] The principle of the non-expulsion of nationals does not apply to persons with dual or multiple nationality unless the expulsion can lead to statelessness;
  \item [(b)] The practice of some States and the interests of expelled persons themselves do not support the enactment of a rule prescribing denationalization of a person with dual or multiple nationality prior to expulsion.
\end{itemize}

\footnotesize
\begin{itemize}
  \item See Kojance, “Multiple nationality”. The author adds (ibid., p. 43, para. 5.1): “The decision of the High Court of Australia in June 1999, according to which an Australian national possessing simultaneously another nationality may not, in application of Art. 44 of the Constitution, be elected to the Federal Parliament because of his ties to a ‘foreign power’, illustrates this concept.”
  \item Exchange of notes (Note No. 38) of 31 May 1972 (pursuant to the Consular Convention of 31 May 1972 between Poland and the United States, entry into force on 6 July 1973, United States Tefies and Other International Agreements, vol. 24, part 2, no. 7642, p. 1231 (Washington, D.C., U.S. Government Printing Office, 1974): “Persons entering the Polish People’s Republic for temporary visits on the basis of United States passports containing Polish entry visas will, in the period for which temporary visitor status has been accorded (in conformity with the visa’s validity), be considered United States citizens by the appropriate Polish authorities for the purpose of ensuring the consular protection provided for in Article 29 of the Convention and the right of departure without further documentation, regardless of whether they may possess the citizenship of the Polish People’s Republic”, and vice versa.
  \item “Exchange of letters between Canada and Hungary constituting an agreement concerning certain consular matters and passports (Ottawa, 11 June 1964)” (entry into force on 25 May 1965, United Nations, Treaty Series, vol. 862, No. 12356, p. 257), accompanying the Trade Agreement of the same day, ibid., p. 253.
  \item Case No. 195, vol. 4, Annual Digest of Public International Law Cases (1927–1928), p. 300; see also UNRIAA, vol. V (Sales of this case, that States can in fact consider their nationals to be aliens if the said nationals have an additional nationality. Such an attitude tends to facilitate the expulsion of dual nationals by the State in question. It will be shown later in this report that this behaviour is not sufficient in itself to serve as a basis for expulsion insofar as the individual concerned remains a national of the expelling State until such time as the latter formally deprives him or her of its nationality, and such an individual may claim that nationality to contest the legality of the expulsion.
\end{itemize}
13. The legal issues raised by expulsion can be still more complex, depending on whether or not the expelling State is the State of dominant or effective nationality of the person subject to expulsion.

B. Is the expelling State the State of dominant or effective nationality of the person being expelled?

14. As the Special Rapporteur had already stated in his second report,20 he will refrain from entering into a study of the conditions for acquiring nationality, the topic under examination being the expulsion of aliens and not the legal regime of nationality. The Special Rapporteur on diplomatic protection, Mr. John R. Dugard, had shown in his first report21 the difficulties of this exercise by indicating the limits to the scope of the Nottebohm case, from which, in his view, a general rule should not be inferred.22 Incidentally, the Commission’s articles on nationality of natural persons in relation to the succession of States retain “habitual residence in the territory”23 as a criterion for presumption of nationality.

15. The concept of dominant or effective nationality is established in international law and there is no need to discuss it at length here. It is sufficient to recall that it means the character the nationality possesses when it expresses the attachment of a person to a State by ties (social, cultural, linguistic, etc.) stronger than those which might link the person to another State.24 Although in the practice of States and in the literature a preference for the expression “effective nationality” can be observed, nevertheless the two expressions are used to refer to a rule of international law applicable in the event of multiple nationality. Thus, in the Nassar Espghanian v. Bank Tejarat case, the Iran–United States Claims Tribunal stated that the applicable rule of international law was that of dominant or effective nationality.25

16. The criterion of effective nationality is applied in cases of conflict of nationalities arising from multiple nationality. The principle is that the dominant nationality prevails over the other nationality or nationalities in a case of conflict of nationalities. Relating to expulsion, a distinction should be made between cases of dual nationality and multiple nationality.

17. In the case of dual nationality, it is a question of knowing which of the two States is the State of dominant nationality of the person facing expulsion. If the expelling State is the State of dominant nationality of the person in question, then in principle and logically, the State cannot expel its own national, by virtue of the rule of non-expulsion by a State of its own nationals. Contrary to the view expressed by a member of the Commission, however, this rule is not absolute, as the Special Rapporteur indicated in his third report.26 In his final report of 20 June 1988, “The right of everyone to leave any country, including his own, and to return to his country”, for the Economic and Social Council/Commission on Human Rights, Mr. C. L. C. Mubanga-Chipoya discusses a similar point of view, stating that a national of a State may be expelled from his own State with the consent of the receiving country. He writes:

The expulsion of a national may therefore be carried out with the explicit or implicit consent of the receiving state upon whose demand the state of the national has the duty to readmit its nationals to its territory.27

18. According to the Special Rapporteur, however, while the consent of the State receiving the expelled person is necessary when the person does not have the nationality of that State, this requirement does not appear to apply when the aforementioned receiving State is also one of the two States of which the expelled person has nationality. For even if the receiving State is not the State of dominant or effective nationality of the expelled person, nonetheless there exists between the latter and that State formal legal ties of nationality which the expelled person can invoke if necessary. This State is required to accept its national expelled by the State of dominant nationality by virtue of a rule of international law found, for example, in the Convention regarding the Status of Aliens in the respective Territories of the Contracting Parties, whose article 6 provides that “States are required to receive their nationals expelled from foreign soil who seek to enter their territory”.

19. The consent of a State to expulsion can be implicit or presumed. In the Jama v. Immigration and Customs Enforcement case,28 the Supreme Court of the United States interpreted United States law as not prescribing prior consent of the receiving country when the United States expelled an alien. While prior consent was considered preferable, the Court ruled that the law did not require it and that it could not presume otherwise. It must be said that in this case the Government of the United States had not sought prior consent because it could not request such consent, the receiving State, Somalia, being in total decay at the time and lacking a functioning government. This interpretation could have been motivated mainly by the fact that the Court felt that the Government could not detain indefinitely an alien awaiting expulsion when the receiving State had categorically refused to accept the expelled person.29 The Court says no more than that, for it refrained from specifically examining obligations under international law.

20. However well founded it may appear, this argument based on the general political situation in the receiving State loses sight of the rights of the individual, in particular the requirement to protect the rights of the expelled person. The chaotic situation of a country with a non-functioning government and general insecurity would not appear to be an appropriate context to receive a person

22 Ibid., vol. II (Part Two), pp. 82–85.
23 Art. 5 (see footnote 6 above).
24 See Salmon, Dictionnaire de droit international public, p. 725.
expulsion could take place in such cases only for exceptions, such consent required? It could take place without the consent of the receiving State or such expulsion possible? And on what legal grounds? Can then there be expulsion to the other State of nationality. Is it possible to expel the person to the other State of nationality, considering that the criterion is “habitual residence”, or even, in addition, economic interests. Indeed, it is not unusual for a person to spend half the year in another country where he or she also has nationality, and moreover, to hold economic interests in both countries. Expelling such a dual national to a third State does not raise any particular legal problems: if draft article 4, paragraph 2, contained in the third report\textsuperscript{20} were to be retained, expulsion could take place in such cases only for exceptional reasons and with the consent of the receiving State. Then there is expulsion to the other State of nationality. Is such expulsion possible? And on what legal grounds? Can it take place without the consent of this receiving State or is such consent required?

22. In the view of the Special Rapporteur, when the person concerned has two equally dominant nationalities and there is no risk of statelessness arising from his or her expulsion to the other State where he or she also has nationality, expulsion can be envisaged only in two hypothetical cases:

\begin{itemize}
  \item[(a)] The expelling State allows the person concerned to retain his or her nationality: in this case it should be able to expel the person to the other State of nationality only with its consent;
  \item[(b)] The expelling State deprives the person of his or her nationality, thereby transforming the person into an alien: in this case the ordinary law on the expulsion of aliens applies, since the expelled person becomes a person with a single nationality, now possessing only the nationality of the receiving State.
\end{itemize}

These reflections, which are based neither on State practice nor on any sort of jurisprudence, could at best lead to the progressive development of international law on that subject. It would still be necessary to establish the practical need for such development of the law, which the Special Rapporteur doubts.

23. The problem appears even more complex when the expulsion involves a person with several nationalities. In this case, the conflict of nationalities would concern not just two States as in the case of dual nationality, but at least three States, or even more. If only one or two of these States is the State of dominant nationality of the person facing expulsion, the preceding reasoning in the event of expulsion by one of the States of dominant nationality to the other State of dominant nationality should apply. On the other hand, different problems arise if the expulsion takes place from a State of dominant nationality to a State that is not the State of dominant nationality, or from the latter to a State of dominant nationality. In the first example, should the expelling State denationalize the person facing expulsion so that it is not in the position of expelling its own national or so that it need not obtain the prior consent of the receiving State which is not a State of dominant nationality? In the second example, can the expelling State, which is not the State of dominant nationality, expel the person to a receiving State that is the State of dominant nationality without requesting the latter’s consent or denationalizing the person in advance, since the receiving State is the State of effective nationality?

24. These are just some of the questions that can be raised by these considerations based on the nationality of the person facing expulsion, taking into account, in cases of multiple nationality entailing a positive conflict of nationalities, the criterion of dominant or non-dominant nationality. The Special Rapporteur continues to doubt the interest and practical utility of entering into such considerations at this stage. He believes that these various scenarios could more appropriately be addressed in the framework of a study on protection of the property rights of expelled persons, which he plans to undertake later, in a report devoted to that question among others.

\section*{Chapter II}

\textbf{Loss of nationality, denationalization and expulsion}

25. Loss of nationality and denationalization do not refer to exactly the same legal mechanism, even though their consequences are similar in the case of expulsion.

\section*{A. Loss of nationality and denationalization}

1. Loss of nationality

26. A large number of States prevent their nationals from holding another nationality. In these cases, the acquisition of another nationality automatically leads to a loss of the nationality of the State whose legislation proscribes such acquisition.\textsuperscript{31}

\textsuperscript{31} For example, after listing the various cases in which Cameroonian nationality is acquired “by virtue of filiation” and “by virtue of birth in Cameroon”, Law No. 68–LF–3 of 11 June 1968, establishing the Cameroon Nationality Code (\textit{Journal officiel de la République fédérative du Cameroun}, 15 July 1968), provides in section 12 that: “The acquisition of Cameroon nationality extends automatically to any person unable to claim any other nationality of origin if that person was born...
27. Loss of nationality is the consequence of an individual’s voluntary act, whereas denationalization is a State decision of a collective or individual nature. Legislation pertaining to the loss of nationality can be found in various countries on all continents: Algeria, Andorra, Angola, Argentina, Armenia, Austria, Azerbaijan, Bahamas, Bahrain, Bangladesh, Belgium, Bhutan, Bolivia, Botswana, Brazil, Brunei Darussalam, Burundi, Cambodia, Cameroon, China, Congo, Croatia, Cuba, Czech Republic, Democratic People’s Republic of Korea, Democratic Republic of the Congo, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, Equatorial Guinea, Eritrea, Estonia, Fiji, Finland, France, Georgia, Germany, Ghana, Greece, Guatemala, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Kenya, Kyrgyzstan, Latvia, Lebanon, Lithuania, Luxembourg, Malaysia, Mali, Mauritania, Mexico, Monaco, Mongolia, Montenegro, Morocco, Myanmar, Nepal, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russia, Rwanda, Saint Vincent and the Grenadines, Saudi Arabia, Senegal, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Swaziland, Switzerland, Syrian Arab Republic, Tanzania, Thailand, Togo, Trinidad and Tobago, Turkey, Turkmenistan, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Uzbekistan, Venezuela, Vietnam, Yemen, Zambia, Zimbabwe.

in Cameroon.” Section 31, contained in chapter IV, entitled “Loss and forfeiture”, is more specifically concerned with loss of nationality and provides that:

“Cameronian nationality is lost by:

(o) any Cameroonian adult national who wilfully acquires or keeps a foreign nationality;

(0) …;

(o) any person who, occupying a post in a public service of an international or foreign body, retains that post notwithstanding an injunction by the Cameroonian Government to resign it.”


33 Ibid., p. 16.

34 Ibid., p. 17 (citing Law No. 13/91 of 13 May 1991).

35 Ibid., p. 19 (citing Argentine Citizenship Law No. 346) (except for dual nationality with Spain); see, however, Boll, Multiple Nationality and International Law, pp. 311–313 (affirming that only citizenship or political rights are lost rather than nationality).


37 Boll, op. cit., p. 320 (indicating that a request to retain nationality must be submitted in advance, and that approval is given only if this is in the national interest); see also Citizenship Laws of the World (footnote 32 above), p. 24 (citing the Citizenship Law of 1965, as amended, although exceptions are provided for).

38 Citizenship Laws of the World (see footnote 32 above), p. 25 (although exceptions are provided for, particularly concerning treaties); see also Rudko, loc. cit. (citing the Law on Citizenship and the Constitution, sect. 32, art. 109).


40 Ibid., p. 27 (citing the Bahraini Citizenship Law of 16 September 1963).

41 Ibid., p. 28 (citing the Bangladesh Citizenship Order of 1972, although exceptions are provided for).

42 Ibid., p. 31 (citing the Code of Belgian Nationality of 28 June 1984, amended on 1 January 1992); see also Boll, op. cit., pp. 330–331 (noting the exception of nationality imposed on an individual without voluntary action and that in certain circumstances nationality may be retained by submitting a petition to that effect once every 10 years).


44 Ibid., p. 36 (although exceptions are provided for, particularly for Latin American States and Spain).


46 Ibid., p. 39 (citing Constitutional Amendment No. 3 of 6 June 1994 and Law No. 818 of 18 September 1949, amended by Decree Law No. 961 of 13 October 1969, although exceptions are provided for).

47 Ibid., p. 40 (citing information provided by the diplomatic mission to the United States).
Citizenship Laws of the World (see footnote 32 above), p. 77 (citing the Finnish Citizenship Act of 28 June 1968, amended in 1978) (although exceptions are provided for); see also Boll, op. cit., p. 377 (noting that Finland modified its legislation in 2003 in order to accept dual nationality when sufficient links are maintained with Finland).

Citizenship Laws of the World (see footnote 32 above), p. 79 (citing information provided by the diplomatic mission to the United States).

Ibid., p. 80 (citing the Constitution) (although an exception is provided for in the case of marriage to a foreign national); see also the report of the Secretary-General E/CN.4/1999/56 and Add.1–2 (footnote 58 above), para. 15 (citing Ghana’s reply of 9 November 1998: “While a lot is to be said for the right to a nationality as a human right one cannot overlook the other side of the coin, namely the effect of such a right on the principle of State sovereignty”).

Citizenship Laws of the World (see footnote 32 above), p. 86 (citing the Constitution of Guatemala) (although exceptions are provided for where treaties with some other Central and South American States are concerned).

Ibid., p. 87.


Ibid., p. 89 (citing the Constitution of Guyana of 1980) (although an exception is provided for in the case of marriage to a foreign national).

Ibid., p. 90 (citing the Constitution of Haiti).

Ibid., p. 91 (citing the Constitution of Honduras) (although many exceptions are provided for, including on the basis of treaties).

Ibid., p. 94 (citing the Citizenship Act of 1955); see also Boll, op. cit., p. 409.

Citizenship Laws of the World (see footnote 32 above), p. 95 (citing the nationality Laws of 1 January 1946, as amended on 1 August 1958) (although exceptions are provided for); see also Boll, op. cit., p. 412 (noting the existence of exceptions).

Citizenship Laws of the World (see footnote 32 above), p. 103 (citing the Nationality Act of 4 May 1950); see also Boll, op. cit., p. 436.


Ibid., p. 106 (citing the Kenyan Constitution); see also Boll, op. cit., p. 439.

Citizenship Laws of the World (see footnote 32 above), p. 108 (citing the Kiribati Independence Order of 12 July 1979) (although an exception is provided for in the case of marriage to a foreign national).

Ibid., p. 112 (citing the Constitution of Kuwait); see also E/CN.4/1999/56 and Add.1–2 (footnote 58 above), citing Amiral Decree No. 15 of 1959, as amended, art. 4, para. 5, and arts. 13, 14 and 21 bis (para. 20) and Kuwait’s reply of 30 October 1998: “Matters relating to nationality are of great importance to the State insofar as they affect the homeland, as well as considerations concerning the sovereign status of the State, its internal and external security and its social and economic situation and circumstances, in addition to the fact that nationality implies a bond of loyalty and a sense of patriotism in the absence of which it becomes necessary and even essential to withdraw citizenship status from a person who has acquired it” (para. 19).

Citizenship Laws of the World (see footnote 32 above), p. 113 (citing the draft Constitution of 5 May 1993) (although exceptions are possible under treaties concluded with former Soviet republics); see also Rudko, loc. cit., citing the Constitution, art. 13; the law of the Kyrgyz Republic, art. 5; the Agreement between Belarus, Kazakhstan, Kyrgyzstan and the Russian Federation; and the Russian Federation-Kyrgyzstan Agreement (simplified procedure for acquiring citizenship).

Lao People’s Democratic Republic, Latvia, Lesotho, Liberia, Libyan Arab Jamahiriya, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Malta, Marshall Islands, Mauritania, Micronesia (Federated States of), Moldova, Monaco, Mongolia.

105 Ibid., p. 140 (citing information provided by the diplomatic mission to the United States).
109 Ibid., p. 144 (citing the Nationality Act of 1984) (although exceptions are provided for); see also Boll, op. cit., p. 465 (noting exceptions to revocation if the nationality acquired is based on birth in another State or if the individual has only lived in the foreign State as a minor for not more than five years; these exceptions do not apply, however, to certain nationalities such as those of Austria, Belgium, Denmark, Luxembourg and Norway).
110 Citizenship Laws of the World (see footnote 32 above), p. 147 (citing the Constitution of Nicaragua) (although exceptions are provided for under treaties with Central American and other countries).
111 Ibid., p. 148 (citing information provided by the diplomatic mission to the United States).
112 Ibid., p. 150 (citing the Norwegian Nationality Act of 8 December 1950) (although exceptions are provided for); see also Boll, op. cit., p. 475 (noting that exceptions are provided for).
113 Citizenship Laws of the World (see footnote 32 above), p. 151 (citing information provided by the diplomatic mission to the United States) (although revocation of nationality is not automatic upon adoption of a subsequent nationality but dependent on the State’s releasing the individual from nationality).
114 Ibid., p. 152 (citing the Pakistan Citizenship Act of 13 April 1951).
115 Ibid., p. 153 (citing the 1994 Constitution).
116 Ibid., p. 155 (citing the Panamanian Constitution).
117 Ibid., p. 156 (citing the Constitution of 16 September 1975 and the Citizenship Act of 13 February 1976) (although exceptions are provided for in the case of marriage to a foreign national).
118 Ibid., p. 159 (citing the Constitution of the Philippines of 2 February 1987); see also Boll, op. cit., p. 484 (noting that revocation applies only if the person concerned must swear an oath of allegiance in another country and that persons who are Philippine nationals by birth may resume nationality later).
120 Ibid., p. 110 (citing the Citizenship Act of 13 December 1997, later amended); see also Boll, op. cit., p. 442.
121 Citizenship Laws of the World (see footnote 32 above), pp. 164–165 (citing the Law on Citizenship of 6 February 1992) (although exceptions are provided for under treaties with other States); see also Rudko, loc. cit. (citing the Constitution, arts. 6 and 62; the Law on Dual Citizenship, art. 3; the 1993 Agreement between the Russian Federation and Turkmenistan on the regulation of dual citizenship matters, Diplomatcheskii vestnik (1994), No. 1–2, pp. 24–25; and the 1995 Agreement between the Russian Federation and the Republic of Tajikistan on regulation of dual citizenship matters, Iibid. (October 1995), No. 10, pp. 23–26).
123 Ibid., p. 171 (citing the Law of Nationality of 13 September 1990).
124 Ibid., p. 172 (citing the Saudi Nationality Law).
125 Ibid., p. 173 (citing the 1960 Code of Nationality, as amended in 1989) (although revocation of nationality is not automatic upon adoption of a subsequent nationality but dependent on the State’s releasing the individual from nationality).
127 Ibid., p. 175 (citing the 1961 Law of Citizenship).
128 Ibid., p. 176 (citing the Constitution of Singapore of 9 August 1965); see also Boll, op. cit., p. 503.
130 Ibid., p. 182 (citing the South African Citizenship Act, 1995 (Act No. 88 of 1995), as amended) (although exceptions are provided for); see also Boll, op. cit., p. 512 (noting that nationality may be retained provided permission has been granted).
131 Citizenship Laws of the World (see footnote 32 above), p. 184 (citing articles 17–26 of the Civil Code, modified by Laws Nos. 18/1990 and 29/1995) (although exceptions are made under treaties with Argentina, Bolivia, Chile, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Paraguay and Peru); see also Boll op. cit., p. 515 (noting that revocation is possible only if the person concerned resides abroad for three years, unless Spain is at war or the person concerned has notified the authorities of his or her intention to preserve Spanish nationality).
133 Ibid., p. 186 (citing the Law of Sudanese Nationality No. 22 of 1957; Law No. 55 of 1970; and Law No. 47 of 1972).
134 Ibid., p. 188 (citing information provided by the diplomatic mission to the United States) (although an exception is provided for in the case of nationality acquired by birth, which cannot be revoked).
135 Ibid., p. 192 (citing information provided by the diplomatic mission to the United States); see also Boll, op. cit., p. 527 (noting that the person concerned may be permitted to retain nationality, but that foreign nationality is usually not recognized and nationality is retained regardless).
136 Citizenship Laws of the World (see footnote 32 above), p. 196 (citing the Nationality Act of 1965, with amendments Nos. 2 AD 1992 and 3 AD 1993); see also Boll, op. cit., p. 533.
138 Citizenship Laws of the World (see footnote 32 above), p. 202 (citing the Turkish Constitution, art. 66, and Law No. 403 of the 1964 Turkish Citizenship Law); see also Boll, op. cit., p. 542 (revocation is discretionary; authorization to retain nationality is possible).
140 Ibid., p. 206 (citing the 1991 Statute on Citizenship); see also Rudko, loc. cit. (citing the Law on Succession of Ukraine of 12 September 1991, arts. 6–7); the Convention between Ukraine and the Socialist Federal Republic of Yugoslavia of 22 May 1956 (succession to convention assumed); the Convention between Ukraine and Hungary of 24 August 1957; the Convention between Ukraine and Romania of 4 September 1957; the Convention between Ukraine and Albania of 18 September 1957; the Convention between Ukraine and Czechoslovakia of 5 October 1957; the Convention between Ukraine and Bulgaria of 12 December 1957; the Convention between Ukraine and the Democratic People’s Republic of Korea of 16 December 1957; the Convention between Ukraine and Poland of 21 January 1958; and the Convention between Ukraine and Mongolia of 25 August 1958).
142 Ibid., p. 195 (citing the Tanzanian Citizenship Act No. 6 of October 1955) (although exceptions are provided for in case of marriage to a foreign national).
143 Ibid., p. 211 (citing the Citizenship Law).
144 Ibid., p. 212 (citing the Constitution of 30 July 1983, sect. 10); see also Boll, op. cit., p. 559.
Venezuela (Bolivarian Republic of), 145 Yemen, 146 Zambia 46 and Zimbabwe; 146 in other words, the vast majority of States. 150 In principle, these legal provisions entail no risk of statelessness, insofar as the person concerned can retain the nationality which he or she


146 Ibid., p. 214 (citing the Law of Vietnamese Nationality, as revised on 15 July 1988).

147 Ibid., p. 216 (citing Citizenship Law No. 2 of 1975).

148 Ibid., p. 218 (citing the Constitution) (although an exception is provided in case of marriage to a foreign national).

149 Ibid., p. 219 (citing the Constitution); see also Boll, op. cit., p. 565.

150 The following States do not withdraw their nationality from individuals possessing another nationality; Antigua and Barbuda (Citizenship Laws of the World (see footnote 32 above), p. 18 (citing the Citizenship Law of 1 November 1981)); Australia (ibid., pp. 22-23 (citing the Australian Citizenship Act of 1948)); Barbados (ibid.); Belgium (ibid., p. 30 (citing the Law of the Republic of Belarus, Laws of Citizenship of 18 October 1991)); and see Rudko, loc. cit., cing the Law on Citizenship, art. 1, and the Agreement between Belarus and Kazakhstan; and Boll, op. cit., p. 327 (indicating that Belarus amended its legislation in 2002 to allow dual nationality); Colombia (Citizenship Laws of the World (see footnote 32 above), p. 28 (citing the Colombian Citizenship Law of 5 January 1995)); Chile (ibid., p. 50 (citing information provided by the diplomatic mission to the United States) (although exceptions are provided for by treaty with respect to Spanish nationality); see also the July 1993 ratification agreement between Chile, IOM and UNHCR, Diario oficial de la República de Chile (19 February 1992), art. II (allowing the return of Chilean refugees, including those who had lost Chilean nationality through naturalization abroad in the asylum State); see further Boll, op. cit., p. 340 (noting that Chile revised its constitutional provisions in 2005 to allow dual nationality); Cyprus (Citizenship Laws of the World (see footnote 32 above), p. 53 (citing the Constitution of July 1991 and Citizenship Law No. 43 of 1 February 1993)); Costa Rica (ibid., p. 57 (citing the Constitution)); Côte d'Ivoire (ibid., p. 58 (citing information provided by the diplomatic mission to the United States) (although an exception is provided in 2002 to allow automatic revocation of nationality); Croatia (ibid.)); El Salvador (Citizenship Laws of the World (see footnote 32 above), p. 61 (citing the Republic Law of 1967)); Timor-Leste (Boll, op. cit., p. 363 (citing the Constitution of 20 May 2002 and Law No. 9/2002 on citizenship of 5 November 2002)); El Salvador (ibid., p. 371 (citing the Salvadoran Constitution) (although only those who are Salvadorans by birth have the right to enjoy dual nationality)); France (ibid., p. 78 (citing the French Nationality Code); see also Boll op. cit., p. 382 (noting, however, that France is a party to the Convention on reduction of cases of multiple nationality and military obligations in cases of multiple nationality and its Second Protocol)); Greece (Citizenship Laws of the World (see footnote 32 above), p. 84 (citing the Code of Greek Citizenship, as amended in 1968 and 1984) (although revocation of nationality is not automatic upon adoption of a subsequent nationality but dependent on the State’s releasing the individual from nationality)); see also Boll, op. cit., p. 391 (noting that nationality is not automatically lost upon naturalization elsewhere, although some exceptions to this rule are provided for). Greece could alternatively be placed in the automatic revocation list because it apparently reserves the power to revoke; Grenada (Citizenship Laws of the World (see footnote 32 above), p. 85 (citing the Grenada Constitution Order of 19 December 1973)); Hungary (ibid., p. 92 (citing Law No. 55 of 1 June 1993)); Iceland (ibid., p. 93 (citing the Icelandic Nationality Act of 1925 and 1972, as amended on 11 May 1982 and 12 June 1998) (although some exceptions are provided for); see also Boll, op. cit., p. 406 (noting that the legislation was amended in 2003 to allow the retention of dual nationality provided that the individual had ties to Iceland)); Ireland (Citizenship Laws of the World (see footnote 32 above), p. 99 (citing the Irish Nationality and Citizenship Act of 1956)); Iran (Islamic Republic of) (ibid., p. 97 (citing the Iranian Civil Code) (although revocation of nationality is not automatic upon adoption of a subsequent nationality but dependent on the State’s releasing the individual from nationality))}; see also Boll, op. cit., p. 415 (noting that nationality revocation elsewhere may lead to revocation of nationality by voluntary act and the individual commits acts against the State or exercises rights contrary to State interests)); Italy (Citizenship Laws of the World (see footnote 32 above), p. 101 (citing the Italian Law on Nationality, as amended on 5 February 1992)); and see also Boll, op. cit., p. 427 (noting an exception with regard to a State at war with Italy, and pointing out that Italy is a party to the Convention on reduction of cases of multiple nationality and military obligations in cases of multiple nationality) (also noting that failure to notify the Italian authorities of the acquisition of another nationality is subject to a fine)); Jamaica (Citizenship Laws of the World (see footnote 32 above), p. 102 (citing the Jamaican Citizenship Law of 1962, as amended on 2 March 1993)); Jordan (ibid., p. 104 (citing the Jordanian Citizenship Act of 1954) (although acquisition of a second nationality is subject to prior authorization unless it is the nationality of an Arab State)); Lebanon (ibid., p. 117 (citing information provided by the diplomatic mission to the United States)); Maldives (ibid., p. 127 (citing the Constitution)); Mauritius (ibid., p. 132 (citing the Mauritius Independence Order of 4 March 1968)); Mexico (ibid., p. 133 (citing the Federal Constitution, as amended on 20 March 1998); see also Boll, op. cit., p. 457 (noting an exception for naturalized Mexican nationals, who do lose nationality if the foreign country with which they have acquired nationality is a party to the Convention on reduction of cases of multiple nationality)); Peru (Citizenship Laws of the World (see footnote 32 above), p. 138 (citing the Code of Moroccan Nationality of 6 September 1958)); New Zealand (ibid., p. 145 (citing the Constitution of 1 January 1949). However, see Boll, op. cit., p. 478 (noting that it only applies to nationalized nationals and that nationals by birth are deprived of rights of citizenship upon naturalization elsewhere, not revocation of nationality)); Paraguay (Citizenship Laws of the World (see footnote 32 above), p. 157 (citing the Constitution) (although the rule concerning the revocation of nationality applies only to naturalized citizens); see also Boll, op. cit., p. 478 (noting that it only applies to naturalized nationals and that nationals by birth are deprived of rights of citizenship); see also Boll, op. cit., p. 478 (noting that it only applies to naturalized nationals and that nationals by birth are deprived of rights of citizenship upon naturalization elsewhere, not revocation of nationality)); Peru (Citizenship Laws of the World (see footnote 32 above), p. 158 (citing the Constitution of 31 October 1993 and Nationality Law No. 26574 of 1996)); Poland (ibid., p. 160 (citing the Constitution and the Citizenship Act of 15 February 1962) (although revocation of nationality is not automatic upon adoption of a subsequent nationality but dependent on the State’s releasing the individual from nationality)); Portugal (ibid., p. 161 (citing Citizenship Law No. 37/81 of 1981 and Decree-Law No. 322/82); see also E/CN.4/1999/56 and Add.1–2 (footnote 57 above)); Romania (ibid., p. 170 (citing the Citizenship Act of 9 August 1972) (although exceptions are provided for in case of marriage to a foreign national); however, see also Boll, op. cit., p. 501 (indicating that the legislation was amended in 2004 to allow dual nationality)); Slovakia (ibid., p. 171 (citing the Slovak Citizenship Act of 7 May 1992 (see footnote 119 above) (noting that failure to notify the Slovak authorities of the acquisition of another nationality may lead to revocation)); Slovenia (ibid., p. 178 (citing the Citizenship Act of 25 June 1991) (although exceptions are provided for)); see also Boll, op. cit., p. 250 (noting that a legal act giving the person the right to renounce his or her nationality but which leads to revocation)); Switzerland (Citizenship Laws of the World (see footnote 32 above), p. 190 (citing the Swiss Citizenship Law of 29 September 1952, as amended in 1964 and Nationality Law No. 1 of 1975), ibid., p. 198 (citing information provided by the diplomatic mission to the United States)); Trinidad and Tobago (ibid., p. 200 (citing the Constitution, as revised in 1976, and the
would lose upon adopting another nationality by repudiating that other nationality.

2. **Denationalization**

28. Unlike loss of nationality, which, as seen above, is the consequence of a voluntary act on the part of the individual concerned, denationalization is a State decision that deprives a class of people, or one or more individuals, of the nationality of that State. In practice, some States, in special circumstances such as war, succession of States or the reprehensible conduct of a given individual, have in fact deprived the persons involved in these situations or engaged in such conduct of their nationality. Denationalization may take any of the following forms:

(a) Collective withdrawal of nationality through the enactment of a restrictive nationality law that takes away the nationality of a given State, for ethnic or other reasons, from a large number of citizens or permanent or long-term residents of the territory of that State. The cases generally cited are those of Czechoslovakia, Germany, Hungary, Italy, and Romania in the period preceding the Second World War. Situations of this type have arisen more recently in States such as Bhutan, Côte d’Ivoire, Citizenship Act of 30 August 1962); Tunisia (ibid., p. 201 (citing the Code of Nationality of 26 January 1956)); Tuvalu (ibid., p. 204 (citing the Constitution of Tuvalu Ordinance of 15 September 1986 and the Citizenship Ordinance of 1979)); see also Boll, op. cit., p. 545 (with the exception of naturalized citizens); United Kingdom of Great Britain and Northern Ireland (Citizenship Laws of the World (see footnote 32 above), pp. 208–209 (citing the British Nationality Act of 1984)); see also E/CN.4/1999/56 and Add.1–2 (footnote 58 above), para. 31 (b) (citing the United Kingdom’s reply of 26 October 1998: “A person who acquired [one of the various forms of British nationality] by or as a result of naturalization or registration otherwise than under the British Nationality Acts 1948 to 1964 may additionally be deprived of that citizenship or status if he or she: … (iii) Has, within five years of the date of registration or naturalization, been sentenced to imprisonment for at least 12 months and would not, on losing British nationality, become stateless”); British Nationality Act 1981, sect. 40 (c. 61), Hong Kong (British Nationality) Order 1986 (No. 948), art. 7; United States (E/ CN.4/1999/56 and Add.1–2 (footnote 58 above), para. 39 (citing the reply of the United States of 9 October 1998)); and Uruguay (Citizenship Laws of the World (see footnote 32 above), p. 210 (citing the Constitution) (although this rule applies only to those who are Uruguayan by birth); see also Boll, op. cit., p. 556 (noting an exception for naturalized citizens, but only if they do not remain residency or other ties to Uruguay) (also noting that nationals do lose citizenship rights, though not nationality, when they are naturalized elsewhere).


See Roth, The History of the Jews of Italy, pp. 524–527 (withdrawal of all naturalization certificates issued to Jews between 1 January 1919 and 17 December 1938).


(b) Denationalization, which is an option made available under some bilateral conventions between countries of emigration and countries of immigration, authorizing emigrants who had acquired the nationality of the host country through naturalization to revert to their nationality of origin if they subsequently establish residency in their country of origin. Such individuals then revert to the status of aliens with respect to the country to which they had emigrated and are subject to expulsion therefrom under ordinary law;

(c) Deprivation of nationality, which is the withdrawal by a State of its nationality from an alien who has acquired it, for security reasons or any other grounds generally provided for in its domestic criminal law. Such legislation may provide that an alien who has acquired the nationality of the State concerned may be deprived of that nationality: (i) if the person has been convicted of a crime or offence against the domestic or external security of that

Ethnicity in Côte d’Ivoire (requirement that both parents be natives of Côte d’Ivoire in order to transmit that nationality to their children).


See Dilcia Yeun and Violeta Bosica v. Dominican Republic, case No. 12.189 of 22 February 2001, report No. 28/01, OAS document OEA/Ser.L/V/II.111, doc. 20 rev., p. 252 (Inter-American Commission on Human Rights (alleging that two girls of Haitian ancestry who were born in the State were denied Dominican nationality notwithstanding the fact that the Dominican Republic’s Constitution grants nationality jus soli)).


The Meskhetian minority in the Krasnodar Krai region were considered nationals of the Union of Soviet Socialist Republics, but nationality under the 1991 Law No. 1948–I of the Russian Federation was refused, although the law appears to grant it under article 13, paragraph 1.

See Macan-Marker, “Thailand: fear of expulsion haunts hill tribes”; and Gearing, “The struggle for the Highlands: accused of endangering the environment, Thailand’s tribespeople face eviction and an uncertain future”.


See Ferrett, “Citizenship choice in Zimbabwe”.

See Salmon, op. cit., p. 320.
Neither loss of nationality nor denationalization should lead to statelessness. In the case of denationalization in particular, there is a general obligation not to denationalize a citizen who does not have any other nationality. Likewise, nationality cannot effectively be lost unless the person concerned has effectively adopted another nationality. In addition, denationalization should not be arbitrary or based on discriminatory grounds. In all cases, both loss of nationality and denationalization change a person’s status from that of a national to that of an alien and make him or her subject to expulsion from the State whose nationality he or she possessed until that time.

30. Although dual or multiple nationality is widely recognized today, it does not seem possible to establish the existence of a rule of customary law in this regard. In the Eritrea v. Ethiopia case, the Claims Commission considered that revocation of nationality in the case of dual nationals was a permissible practice if it was not arbitrary or discriminatory. The Commission rejected Eritrea’s argument that the denationalization and subsequent expulsion of persons with dual Eritrean and Ethiopian nationality were contrary to international law. It held that the persons concerned had in fact acquired dual Eritrean and Ethiopian nationality as a result of the proclamation issued by Eritrea’s Provisional Government on eligibility for citizenship for the purposes of the referendum and the establishment of the new State. Thus, Ethiopia did not violate international law by denationalizing those of its citizens who had become dual nationals by acquiring Eritrean nationality. On the other hand, the Commission held that the expulsion from Ethiopia of dual nationals—largely from small towns—by the local authorities for security reasons, and the expulsion of many others against their will, were arbitrary and thus contrary to international law. In other words, what the Commission objected to in this case was not expulsion on the ground of dual nationality, but the arbitrary nature of that expulsion.

31. A number of scenarios can be envisaged with respect to expulsion following loss of nationality or denationalization.

32. In cases of dual nationality, must the person concerned necessarily be expelled to the State of the remaining nationality if it is not the “denationalizing” State? Can the expelled person object to this? If so, what action is taken?

33. In principle, the expelling State in such cases has the right to expel the person to the State of the remaining nationality because denationalization ends the situation of dual nationality; the expelled person henceforth has only the nationality of the latter State, whether or not it was the dominant nationality prior to denationalization. Recent examples illustrating actual denationalization on the basis of dual nationality are those of Turkey and Turkmenistan, while examples of the threatened denationalization of dual nationals are found in France and the Netherlands and the United Kingdom, particularly when the persons in question are linked to radical Islamic movements. The United Kingdom has specified that its legislation allows the Government to denaturalize individuals who have been convicted of a serious crime unless such persons would thereby become stateless. However, if the person subject to expulsion does not want to be expelled to the State of which he or she now has sole nationality or if the person has reason to fear for his or her life or risks being subjected to torture or degrading treatment in that country, he or she may be expelled to a third State with the latter’s consent.

34. For cases of multiple nationality, one scenario to consider is that in which the “denationalizing” State is the State of dominant nationality. In such a case, the same reasoning outlined above in respect of dual nationality could apply, with the sole difference that there would be not one but two or more States of remaining nationality. Another scenario would be one in which the expelling State is not the State of dominant nationality. In this case, expulsion should preferably be to the State of dominant nationality.

35. The Special Rapporteur is not convinced of the necessity or even the practical utility of proposing one or more draft articles on the issues dealt with in the present report, primarily for the following reasons:

(a) As the power to confer nationality is within the sovereign jurisdiction of each State, the State may...
establish in its domestic legislation conditions for the loss of its nationality and for the denationalization of its nationals provided that this does not result in statelessness and the denationalization is not arbitrary or discriminatory. This is not, strictly speaking, connected to the issue of expulsion of aliens, since the rules referred to above would apply even if the loss of nationality or denationalization were not followed by expulsion. These rules therefore pertain more to the laws governing nationality than to the laws governing the expulsion of aliens;

(b) Specifically with respect to expulsion, it has been noted that in cases of dual nationality where there is no risk of statelessness, the loss of nationality or denationalization brings about a situation of sole nationality in which the person in question is subject to ordinary-law provisions concerning expulsion. There is thus no need to set out rules specific to this scenario;

(c) Only in cases of multiple nationality do special situations arise: the first is one in which it is necessary to decide to which other State of nationality a State can expel a person who has lost the nationality of the expelling State or has been denationalized, particularly when the expelling State is not the State of dominant nationality of the person in question; the second is one in which the expelled person, exercising his or her right to choose, particularly in the case of succession of States, decides to be a national of the State that intends to expel the person by reason of his or her adoption of a new nationality. In both cases, however, past practice is sorely lacking, although this issue, too, essentially concerns the rules on the nationality of natural persons.

Accordingly, the Special Rapporteur is not convinced that it would be worthwhile for the Commission to prepare draft rules for these situations, even in the interest of the progressive development of international law.