NATIONALITY AND THE UNRECOGNISED STATE

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I. INTRODUCTION

> Section 4 of the [Immigration Ordinance 1971] effectively exiles the Ilois from the territory where they are belongers and forbids their return. But the 'peace, order, and good government' of any territory means nothing, surely, save by reference to the territory's population. They are to be *governed*, not removed. . . . These people are subjects of the Crown, in right of their British nationality as belongers in the Chagos Archipelago. As Chitty said in 1820, the Queen has an interest in all her subjects, who rightly look to the Crown—today, to the rule of law which is given in the Queen's name—for the security of their homeland within the Queen's dominions. But in this case they have been excluded from it. It has been done for high political reasons: good reasons, certainly, dictated by pressing considerations of military security. But they are not reasons which may reasonably be said to touch the peace, order and good government of [the British Indian Ocean Territory].[1]

With those words, Laws, LJ, alluding to *Wednesbury*[2] principles, limited the British Government's ability to manipulate the nationality and belonger status of those it governs so as to dissociate them from their habitual territory of residence, even for high political, military or diplomatic reasons. With passage of time and assessed in context, the decision, which the Foreign Secretary has said he will not appeal, may acquire status as declaratory of certain principles of humanitarian and nationality law that transcend frontiers: notably including the notion that whether a territory is *recognised* by its own or any other government as a State or as a territory as to which traditional inhabitants have vested rights, such inhabitants *do* have such rights and governments are not free to change their status and to deny them rights for reasons of political expedience. This is implicit in the decision's finding that the United Kingdom government contrived to maintain the fiction that the inhabitants of Chagos (the Ilois) did not comprise a permanent or semi-permanent population while denying, notwithstanding acceptance elsewhere as a principle of international law,[3] that a State is precluded from refusing its own nationals the right of entry or residence.[4]

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1. *R v Secretary of State for the Foreign & Commonwealth Office, ex parte Bancoult*, Divisional Court, Case No. CO/3775/98, 3 Nov 2000; see also judgment granting leave to apply for judicial review, 3 Mar 1999 (LEXIS ENGGEN Lib.).

2. *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223.

3. Citing this (quoting Richard Plender, *International Migration Law* 133 (2nd edn 1988)) as a holding of *Van Duyn v Home Office* [1974] ECR 1337.

4. But see Prevention of Terrorism (Temporary Provisions) Act, 1989, c. 4, repealed by

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This article seeks to highlight some of the anomalies and inconsistences in nationality theory and law resulting in part from the lack of any consistent, logical practice in recognition of Statehood. Issues of diplomacy, politics, international law, immigration, national security and commercial expedience conflict with the social reality of human beings living in a particular geographic space over which sovereignty may be contested. For this reason, there is little uniformity in the recognition of nationalities as status and in the legal consequences that flow from such recognition. Indeed, different nationalities may be attributed to the same individual for different purposes, either as a matter of option or involuntarily, and this may or may not be related to the recognition issue. That is one manifestation of the modern shift in the nature and function of nationality from source of obligations towards source of rights, and of the quality of those rights from the political towards the economic. An attempt has been made here to cite actual cases and controversies to illustrate relevant points. Understandably such cases are infrequent, and particular opinions may be more illustrative than evidence of settled law even within the jurisdiction in question.

A. Defining nationality

Nationality is commonly defined as a 'politico-legal term denoting membership of a State',[5] a political entity 'vested with the character of a subject of international law'.[6] The proffered definition does not allow either for the margin of appreciation allowed other jurisdictions in giving effect to that nationality, or for the situation of those whose relationship is with a territory not recognised as a State. Indeed, modern (and postmodern[7]) trends in nationality law have left

Terrorism Act 2000, c. 11, s.2(1); and compare *East African Asians v UK*, ECHR Apps. 4403–19/70 *et al.*, 10 & 18 Oct 1970, YB, 13, 1970, p. 928, Report of 14 Dec 1973, DR, 78-A, 1994, p. 5; App 4626/70, 6 Mar 1978, DR, 78-A, p. 5.

5. Paul Weis, *Nationality and Statelessness in International Law* (2d edn, 1979), p. 3. Other major postwar texts on the international aspects of nationality include Haro F. van Panhuys, *The Rôle of Nationality in International Law* (1959); Nissim Bar-Yaacov, *Dual Nationality* (1961); Ruth Donner, *The Regulation of Nationality in International Law* (2d edn 1994); Michel J. Verwilghen, 'Conflits de nationalités, plurinationalité et apatridie', (1999) 277 *Rec. des cours* 9 (includes an extensive bibliography). Domestic aspects of nationality law, denaturalisation and decolonisation issues are treated in treatises including Laurie Fransman, *British Nationality Law* (1998); Pâquerette Thuilier, *Guide pratique de la nationalité française* (2d edn, 1997); Ann Dummett & Andrew Nicol, *Subjects, Citizens, Aliens and Others: Nationality and Immigration Law* (1990); Paul Lagarde, *La nationalité française* (3d edn, 1997); Charles Gordon *et al.*, *Immigration Law and Procedure*, (looseleaf, 2000). Fœlix, in 1834, was the first to write in terms of nation and nationality and participation in (belonging to) the nation as a collective: *Traité du droit international privé ou du conflit des lois de différents nations en matière de droit privé*, (3rd edn 1856), vol. 1, § 1. Weiss, Pillet and Niboyet replaced 'nation' by 'State'. United Kingdom practice of that era is discussed in Sir Francis Piggott, *Nationality: Including Naturalisation and English law on the High Seas and Beyond the Realm* (1906).

6. Id., p. 13; similarly José Francisco Rezek, 'Le droit international de la nationalité', (1986 III) 198 *Rec. des cours* 333, 341.

7. Erik Jayme, 'Identité culturelle et intégration: le droit international privé postmoderne', (1995) 251 *Rec. des cours* 9.

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nationality with a relativity largely unrecognised in the literature although that quality is implicit in the holding of the 1955 *Nottebohm*[8] judgment. Ironically *Nottebohm*'s endorsement of the principle of effective nationality occurred during an era that saw the beginnings of the current rights-centred approach to nationality and statelessness, and at the time that decolonisation and proliferation of independent statehood were just beginning.

The Universal Declaration of Human Rights[9] had declared in 1948 that '[e]veryone has the right to a nationality', a principle repeated in the 1966 International Covenant on Civil and Political Rights,[10] the 1975 Final Act of the Conference on Security and Cooperation in Europe,[11] the 1989 United Nations Convention on the Rights of the Child,[12] the 1997 European Convention on Nationality[13] and elsewhere. However, with few exceptions[14] such international instruments do not provide a specific remedy for the aggrieved individual by way of external right of action against the State. Where a remedy, international or national, does exist, it is by derogation;[15] and unrecognised States are not signatories to such conventions. As economic rights have become more clearly defined in human rights terms, this lacuna has increased in significance. Under some circumstances a patron State may be held responsible for economic injury caused by an unrecognised client State, but that would depend upon the hazard of international commitment and available forum.[16] For its holders, nationality has become as much a bearer of economic as of political rights, deriving for many its greatest importance from the right of abode and economic activity it affords. Diplomatic protection, object of many earlier cases and another economic attribute but one more closely associated with recognised Statehood, now may potentially be finessed as a matter of insurance contract[17] or treaty.[18]

8. *Liechtenstein v Guatemala (2nd phase)*, ICJ, p. 4. (1955).

9. GA Res. 217A (III), 10 Dec 1948.

10. New York, adopted by General Assembly 19 Dec 1966, entered into force 23 Mar 1976, 999 UNTS 171, No. 14668 (1976), Art 24 (right of every child to a nationality).

11. Helsinki, 1 Aug 1975.

12. Art 7(1).

13. Strasbourg, 6 Nov 1997, ETS No. 166, art 4(a).

14. *Amendments to the provisions on naturalisation of the Constitution of Costa Rica, advisory opinion, Inter-American Court of Human Rights*, 19 Jan 1984, No. OC-4/84, 5 Human Rights LJ 161 (1984), 79 ILR 282; Johannes M.M. Chan, 'The Right to a Nationality as a Human Right' (1991) 12 *Human Rights* LJ 1. Thus also, Optional Protocol, § 1 of the Covenant on Civil and Political Rights. A discussion of United States application of the ICCPR (in the context of a criminal prosecution) appears in *United States v Duarte-Acero* 208 F.3d 1282 (11th Cir. 2000).

15. ie, deference to a politically independent forum: *Akar v Attorney-General of Sierra Leone* [1970] AC 853 (PC, Sierra Leone). art 8(1) of the European Convention on Human Rights, while assuring integrity of the family does so in terms of residence and has nothing to say of nationality.

16. *Loizidou v Turkey*, ECHR , 1998-IV No. 81, p. 1807.

17. Such as Pub. L. 87–195, pt. 1, Sec. 231, as added and amended, 22 USC §§ 2191–2200 (1999); Export and Investment Guarantees Act, 1991 (c. 67); Swiss federal law of 20 Mar 1970 on investment guarantees, R.O. 1970 1130; Council Directive 98/29/EC of 7 May 1998 on harmonisation of the main provisions concerning export credit insurance, OJEC, 19 May 1998, L 148, p. 22 (EU legislation).

18. Algiers Accords, 19 Jan 1981 (1981) 20 ILM 224; *Dames & Moore v Regan* 453 US 654

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With respect to private law matters, a State's pretension to control the family- and succession-law affairs of its nationals or domiciliaries may be susceptible to frustration, the laws to evasion. In any case, there has been a convergence of some of the more important aspects of the law of personal status and the family. For example, divorces are today available almost everywhere in the West on terms not excessively onerous.[19] Few jurisdictions except for those which base choice of law on nationality[20] and also maintain regimes of perpetual allegiance[21] would view personal law as immutable. Even under systems of legal pluralism[22] personal law, otherwise fixed, might be changed within the limits of allowed religious conversion.[23] Western countries meanwhile have become more tolerant of alien practices that once might have been refused recognition as violative of public policy. Personal autonomy in matters of private contract is largely respected; wealth is increasingly held in the form of financial instruments rather than land. Perhaps at some risk of judicial attack,[24] corporate,

(1981); *Abrahim-Youri v United States* 139 F.3d 1462 (Fed. Cir. 1997); *Esphahanian v Bank Tejarat* (1983-I) 2 Iran-US Cl. Trib. Rep. 157, 72 ILR 478; *Golpira v Iran* (1983-I) 2 Iran-US Cl. Trib. Rep. 178, 72 ILR 493; *Iran v* US (1984) 5 Iran-US Cl. Trib. Rep. 251, 75 ILR 175; Pierre Klein, 'La protection diplomatique des doubles nationaux: réconsidération des fondements de la règle de non-responsabilité', (1988) 21 *Rev. b. de dr. int.* 184.

19. Notwithstanding abstention on the point by the European Convention on Human Rights and Fundamental Freedoms: explanatory memorandum to Protocol No. 7, Council of Europe Doc. H(84)5, 12; *Johnston v Ireland*, 18 Dec 1986 Series A, No. 112 (rejecting claim that absence of provision for divorce in Irish law constituted a violation of Article 8 or Article 12 of the Convention). The application of personal law to impede divorce, otherwise available under local law, of an UK/Irish dual-national prior to implementation of Family Law (Divorce) Act, 1996 (Irel.), *Roch v Glynn*, Cass. (1st Ch.), 29 Sept 1994, (1994) Pas. 778, (1994) Rev. trim. dr. fam. 517, obs. Fallon.

20. L. I. de Winter, 'Nationality or Domicile? The Present State of Affairs', (1969 III) 128 *Rec. des Cours* 347.

21. *Aeneas MacDonald* (1747) 18 St. Tr. 858 sets forth the perpetual allegiance rule as then part of the common law; compare Ottoman nationality code of 19 Jan 1869. Some States, even today, make no provision for relinquishment of nationality.

22. Rudolph Peters & Gert J.J. de Vries, 'Apostasy in Islam',(1968) 17 Die Welt des Islams 1; Abdullahi Ahmed An-Na'im, 'The Islamic Law of Apostasy and its Modern Applicability', (1986) 16 *Religion* 197 (conviction and execution in the Sudan of Mahmoud Muhammad Taha); David F. Forte, 'Apostasy and Blasphemy in Pakistan', (1994) 10 *Conn. J. Int'l. L.* 27; Donna E. Arzt, 'Religious Human Rights in Muslim States of the Middle East and North Africa', (1996) 10 *Emory Int'l L. Rev.* 139; but compare *Minister for Home Affairs v Jamaluddin bin Othman* [1990] L.R.C. (Const.) 380 (professing Christianity in Malaysia held not a violation of Internal Security Act, 1960). As to Western systems, see below n. 155.

23. Conversion to Christianity by a Muslim did not change civil status in *Proc. gén. v Denis & Turki*, Alger, Ch. correct., 5 Nov 1903, (1904) 20 Rev. algérienne 15, note Larcher; and see Emile Larcher, 'Des effets juridiques du changement de religion en Algérie', (1908) 35 Clunet 375; François Luchaire, 'Le champ d'application des statuts personnels en Algérie et dans les territoires d'outre-mer', (1955) 9 *Rev. jur. et pol. de l'Union française* 1; Henry Solus, *Traité de la condition des indigènes en droit privé* (1927). The rule is the same in Indian law: *Kartik v David*, A.I.R. 1964 Patna 201 (member of Orson tribe converted to Christianity); *Abraham v Abraham* (1863) 9 Moo. Ind. App. 199, 242–44, 19 Eng. Rep. 716, 732 (PC, India). *Min. pub. v Danési*, Alger (1st. Ch.), 4 Jan 1879, 1879 Bull. judic. d'Algérie 29 (marriage of French woman to Algerian Muslim, performed by Cadi, declared invalid). Compare *Tewfik v Elias*, Trib. mixte d'Egypte, CA (3d Ch.) 18 Dec 1923, Gaz. trib. mixtes, XIV, p. 171 (Islamic prohibition of abjuration of faith held of no legal validity in Egypt).

24. *Odell v Caron*, Cass. civ. (1st Ch.), 19 Mar 1991, No. 461; 23 Jan 1990, (1991 II) JCP ¶

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trust and partnership surrogates and intermediation are available to the sophisticated, the wealthy and the well-advised.[25] Thus possession of the nationality of an unrecognised entity may be less of a handicap than it once was. The exception is where rights of aliens as economic operators depend upon treaty or regional economic bloc relationships granting national or most-favoured-nation status, or waiving limitations on land ownership by aliens.[26] This is a manifestation of the new relativity in nationality law, law that has been transformed in the liberal state during the postwar period while ethnic criteria might still prevail elsewhere. Nationality as a concept has recently been transformed by two particular forces: liberalisation through human rights and gender equality, and proliferation out of decolonisation and State succession. State non-recognition adds anomaly, challenging ordinary rules. It gives rise to the irony of liberalised nationality rights under domestic law in many States coupled with denial of at least some of those rights to those based elsewhere: to the extent that recognition of nationality is dependent upon recognition of sovereignty. Still, there is nothing new about restriction of constitutional, civil rights by nationality and geography.[27]

B. The new nationality paradigm

A softening of hostility towards plural nationality, intolerance of statelessness,[28] a generalised introduction of gender equality in the transmission of nationality[29] and an increasing rejection of parental marital status as a relevant

21637; 20 Mar 1985, (1986 II) JCP ¶ 20630, (1986) 75 Rev. crit. 66; Case No. 282, 15 June 1982, Case No. 564; CAAix (1st Ch.) 9 Mar 1982, (1982) 72 Rev. crit. 282 (incorporation to avoid forced heirship); *Pearsh v Thayer*, Cass. civ. 1st Ch., 4 Dec 1990, Judgment No. 1539, Case No. 89–11.352 (Juridisque Lamy) (French real estate); *Courtois v de Ganay*, C.A. Paris, 1st Ch., 10 Jan 1970, (1971) 60 Rev. crit. 518, (1973) 100 Clunet 207 (American inter vivos trust); *Arpels v Arpels*, Cass. civ. (1st Ch.), 4 May 1994, Bull. civ., No. 161, p. 119 (avoiding disinheritance under American will); Cf. *Zieseniss v Zieseniss*, Cass. civ. (1st Ch.), 20 Feb 1996, 1996 Dalloz Sirey Jur. 390; Bull. Civ. No. 93, Pt. I, p. 63; *Federal Trade Commn. v Affordable Media LLC* 179 F.3d 1228 (9th Cir. 1999) (asset protection trust) and *In re Lawrence* 238 BR 498 (Bankr. S.D.Fla. 1999) (offshore trusts).

25. New York Estates, Powers and Trusts Law § 3–5.1(h). See Barbara C. Spudis, 'Avoiding Civil Law Forced Heirship by Stipulating That New York Law Governs', (1980) 20 *Va. J. Int'l L.* 887; Eugene F. Scoles, 'Conflict of Laws and Nonbarrable Interests in Administration of Decedents' Estates', (1955) 8 *U. Fla. L. Rev.* 151; John H. Langbein, 'The Nonprobate Revolution and the Future of the Law of Succession', (1984) 97 *Harv. L. Rev.* 1108.

26. For list of particular restrictions on acquisition of land in OECD member countries see *Reservations to OECD Code of Liberalisation of Capital Movements* (Jan 1997); see also James R. Mason, Jr, ' "Psst, Hey Buddy, Wanna Buy a Country?", An Economic and Political Policy Analysis of Federal and State Laws Governing Foreign Ownership of United States Real Estate', (1994) 27 *Vand. J. Transnat'l L.* 453; Protocol No. 1 Relative to the Treaty of Union on the Subject of the Acquisition of Land in Denmark; Swiss *Loi Friedrich* on the acquisition of immovables by certain foreigners and nonresidents, 16 Dec RO 1984, p. 1148.

27. See, eg, *Dorr v United States* 195 US 138 (1904) (Philippines) (Congress is not bound by any but 'fundamental' Constitutional rights in legislating for territories and possessions); but compare *Reid v Covert* 354 US 1 (1957).

28. European Convention on Nationality, above n. 13, art 4(b).

29. Excluding many Muslim States: Abdelouahed Belkeziz, *La nationalité dans les Etats arabes*, Paris, La porte étroite, 1963; Paul Ghali, *Les nationalités détachées de l'Empire Ottoman à la suite de la Guerre* (1934).

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factor in legal relations[30] have made of nationality, especially in Western countries, a right largely divorced from the ethnic identity that supported the concept in the late nineteenth and early twentieth centuries.[31] It is that 'ethnic identity' that has been the chief (although not the only) basis for contemporary fractioning of sovereignty and nationality and for some cases of non-recognition. Meanwhile, plural nationality has become more tolerated and more common, largely through the recharacterisation of nationality as a matter of rights more than obligations and growing judicial and legislative intolerance of gender inequality in its transmission. It has become increasingly difficult, consistent with human rights, for the State unilaterally to revoke the nationality of one of its citizens.[32]

Nationality has become more ambiguous: by this is meant that it no longer bears a single meaning[33] and indeed that certain individuals may be considered to have different nationalities for different purposes.[34] Such a phenomenon should be unsurprising to the Anglo-American lawyer, for the same person can be deemed under English law domiciled in one United States or United Kingdom jurisdiction while the other jurisdiction attributes to him or her a different domicile.[35] Yet universality of nationality however variable its definition is underlined by the fact that nationalities have existed even in States which had not, for the time being, enacted any law to define them, notably China before 1909 and Israel before 1952. If they can exist without legislative creation, it is plausible that they can exist without State recognition,

30. *Michael H. v Gerald D.* 491 US 110 (1989); *Gomez v Perez* 409 US 535 (1973); *Levy v Louisiana* 391 US 68 (1968); H.H. Clark, 'Children and the Constitution', 1992 U Ill L Rev 1; Robert E. Lee, 'The Changing American Law Relating to Illegitimate Children', (1975) 11 *Wake Forest L. Rev.* 415; Legitimacy Act, 1976 (Eng.); Law Commission, Working Paper No. 74, *Family Law: Illegitimacy* (1979); *Marckx v Belgium*, 13 June 1979, Ser. A, No. 31; *Vermeire v Belgium*, 29 Nov 1991, Ser. A, No. 214-C. Legitimacy under the law of the child's domicile determines transmissibility of British nationality, including children born in the United Kingdom, BNA 1981, s. 3(6)(c); US nationality may be acquired by the foreign-born offspring of an unmarried US-national father who has resided in the US for a qualifying period, 8 USC § 1401(g) (1996).

31. Pasquale Stanislao Mancini, *Della nazionalità come fondamento des diritto della genti* (Turin, 1853); Henri Batiffol & Paul Lagarde, *Traité de droit international privé* §§ 230–231 (8th edn 1993).

32. Abrogation by Greek Law No. 2623 of 24 June 1998, art 9(14) of art 19, Law No. 3370 of 1955 and a general trend in Europe and elsewhere towards a tolerance of plural nationality, most recently in Germany: BGBl. I S. 1062, 15 July 1999. On the history of expatriation in the US, see Alan G. James, 'Expatriation in the United States: Precept and Practice Today and Yesterday', (1990) 27 *San Diego L. Rev.* 853.

33. British nationality was always different: Francis T. Piggott, 'Ligeance of the King', 83 *Nineteenth Century and After* 729 (1915); Dummett. & Nicol, above n. 5.

34. For an example of expedient acquisition of Russian nationality for purposes of divorce and quick remarriage, see François Duchêne, *Jean Monnet: The First Statesman of Interdependence* (1995), pp. 54–56; but cf. *Princesse de Bauffremont v Prince de Bauffremont*, Cass. (Ch. civ.) 18 Mar 1878, (1878 I) Sirey 193, obs. Labbé (*fraude à la loi*); *Gunzburg v Schrey*, Trib. civ. Seine, 14 May 1962, (1963) 90 Clunet 110, aff'd, CA Paris, 18 June 1964, (1964) 91 Clunet 810, note Bredin; *Mountbatten v Mountbatten* [1959] P. 43.

35. *In re Estate of Jones* 192 Iowa 78, 182 N.W. 227 (1921) (English/Welsh and Iowa law).

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without being related to a unique sovereignty: this equates to the status of belonger whether or not superimposed upon a formal [British Dependent Territories] citizenship.

Anomalies in nationality law have arisen in the context of unrecognised States and governments (as elsewhere) as a result of the changing views on human rights and gender equality, of improved communications and transport, of the closure of frontiers to migration and the consequent quality of favoured nationalities as economic good (even, for some, a 'dowry'), and of the politico-diplomatic tests apparently applied in international and bilateral recognition of Statehood. Such tests date perhaps from the Stimson Doctrine; they may contain both a commercial-interest component and an element of expedience and pragmatism. Criteria for admitting of Statehood reflect conflict of policies and engender conflict of laws, something inherent in the distinction between *de facto* and *de jure* recognition. Lately, courts and legislatures have come to appreciate that the rejection of a governing (or governed) entity should not impinge upon certain inherent rights of individuals.[36] Furthermore, only by defining 'nationality' expansively and without regard to recognition for purposes of deportation could migrants' destination countries assure the integrity of their restrictive immigration regimes.

The foregoing is a rather condensed adumbration of the recent evolution in nationality law and practice. Exceptions and anomalies always existed, but these were less relevant when subject peoples had few or no enforceable rights. The nationality paradigm today encompasses several exceptional groups of variable significance. Their exceptional nature may serve as pretext for governments elsewhere to deny their groups' members some rights normally attributed to holders of a nationality. The distinction among the first four subgroups is one of degree, and hence subjective:

1a. *economically and territorially substantial territories*[37] *with apparently stable legal and political systems* that conduct at least some international relations on a *de facto* basis and are recognised by at least one country but which, for whatever reason, are denied recognition as sovereign entities by most countries: currently Taiwan,[38] the Turkish Republic of Northern Cyprus[39] and Palestine;[40]

36. R.D. Leslie, 'Unrecognised Governments in the Conflict of Laws: Lord Denning's Contribution', (1981) 14 *CILSA* 165.

37. Avoiding here the issue of the economic dependence (upon subsidies or revenues dependent upon tax haven status) of micro-States, and the political dependence by way of forbearance from larger and patron States. See Jorri Duursma, *Fragmentation and the International Relations of Micro-States: Self-determination and Statehood* (1996).

38. D. P. O'Connell, 'The Status of Formosa and the Chinese Recognition Problem', (1956) 50 *Am. J.Int'l L.* 405.

39. Zaim M. Necatigil, *The Cyprus Question and the Turkish Position in International Law*, (2d edn 1998).

40. Israel-PLO Interim Agreement on the West Bank and Gaza (Oslo II), Washington, 28 Sept 1995, especially Annex III (Protocol Concerning Civil Affairs) and Annex IV (Protocol Concerning Legal Affairs), (1997) 36 ILM 551.

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1b. *juridically autonomous, or partly autonomous, territories precluded by extraneous diplomatic facts from early recognition regardless of internal condition*, among them Kosovo,[41] the Republika Srpska[42] and Transdniestria;[43]

1c. *territories that, from time to time, have been seized by armed force* so as to deny self-determination and exercisable sovereignty: recently East Timor[44] and Kuwait, *or where sovereign power has been seized, imposed or maintained contrary to international law or international consensus* and without reference to popular aspirations: examples are South West Africa, Southern Rhodesia and the Japanese puppet State in Manchukuo;[45]

1d. *detached regions that have not or not yet achieved (or did not achieve) self-sufficiency* and international recognition although they may have administrative stability, such as the Republic of Somaliland,[46] Chechnya, Katanga, Biafra and the South African homelands,[47] Bophuthatswana,[48] Venda, Transkei[49] and Ciskei;[50]

2. *fictitious offshore entities without serious claim to Statehood*: Dominion of Melchizedek, Republic of Lomar, Republic of

41. It appears that, by default, to the degree that any enforceable private law exists in Kosovo it continues to be that of the Federal Republic of Yugoslavia. Kosovars remain nationals of Yugoslavia, although the Interim Agreement for Peace and Self-Government in Kosovo, 23 Feb 1999, is vague about both matters. UNMIK undertook provision of postal services and issuance of travel documents. UNMIK press briefing, 13 Mar 2000.

42. Jan Christoph Nemitz, 'The Legal Status of the Republika Srpska', (1997) 43 *WGO Osteuropa Recht* 89; Thomas D. Grant, 'Territorial Status, Recognition, and Statehood: Some Aspects of the Genocide Case (*Bosnia and Herzegovina v Yugoslavia*)', (1997) 33 *Stan. J. Int'l L.* 305; ICJ, *Case concerning application of the Convention on the prevention and punishment of the crime of genocide (Bosnia-Herzegovina v Yugoslavia)*, 11 July 1996, Dissenting op. of Judge ad hoc Kreca.

43. Claus Neukirch, *Der Status Transnistriens aus politischer und völkerrechtlicher Sicht*, Kiev, Friedrich Ebert Stiftung (1998).

44. *Horta v Commonwealth of Australia* (1994) 181 CLR 183, (1994) 68 ALJR 620, (1994) 123 ALR. 1 FC 94/031.

45. Unrecognised for customs purposes in *In re G.H, Lewis & Sons, Inc.* 6 Cust.Ct. 528 (3rd Div. 1941).

46. At an earlier stage of the breakup of Somalia: *Somalia v Woodhouse Drake & Carey (Suisse) S.A.* [1993] QB 54.

47. Persons attributed to ethnic groups native to the homelands were excluded from South African nationality by the Bantu Homelands Citizenship Act 1970 (later the National States Citizenship Act) .

48. *Nyamakazi v President of Bophuthatswana* (1994) (1) BCLR 92 (B) (Sup.Ct. Bophuthatswana Gen. Div. 1991); *S. v Banda* (1989) (4) SA 519 (B); *Achievers Investments, Inc. v Karalekas* 675 A.2d 946 (DC CA 1996); *DuToit v Strategic Minerals Corp.* 136 FRD 82 (D.Del. 1991); *DuToit v Strategic Minerals Corp.* 735 F.Supp. 169 (E.D.Pa. 1990).

49. Merrie Faye Witkin, 'Transkei: An Analysis of the Practice of Recognition—Political or Legal?', (1977) 18 *Harv. Int'l.* LJ 605.

50. *Gur Corporation v Trust Bank of Africa Ltd.* [1987] QB 599 (CA).

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Talottaskia, Duchy of Sealand and others;[51] and non-State 'world authorities'[52] and anti-sovereignty movements;

3. *governments in exile* as to which the case law relates mainly to the World War II era;[53]
4. *chaotic ungovernable territories*,[54] as to which no authority exercises effective sovereignty but which may nonetheless have at least some functioning diplomatic and consular posts overseas[55]: very recent examples are Sierra Leone and Somalia. Because governing authority is absent or unrecognised the inhabitants of such territories can be assimilated for certain purposes to those associated with unrecognised States.

Some of the disabilities of nationals of these States and territories are shared by acknowledged nationals of States which are the object of diplomatic sanctions or governmental non-recognition, among them Libya, the Democratic People's Republic of Korea,[56] Afghanistan, Iran and Cuba.

As refinements of 'nationality' there have been and continue to be classes of conditional, partial and quasi-nationalities, overlaid sub-nationalities as well as special nationality-like rights reciprocally granted by reason of economic or political compact or bloc,[57] or acquired by reason of

51. *In re Duchy of Sealand*, case 9K2565/77, Admin. Court of Cologne, 3 May 1978, DVBl. 1978, p. 510, Fontes Iuris Gentium, Ser. A, sect. II, Tom. 8, 1976–80, p. 312, 80 ILR 683 (German rule forbidding renunciation of German nationality that would lead to statelessness); and see, generally, Samuel Pyeatt Menefee, ' "Republics of the Reefs:" Nation-Building on the Continental Shelf and in the World's Oceans', (1994) 25 *Cal. W. Int.* LJ 81.

52. As to World Service Authority, see 9 FAM 41.104 N4 (not acceptable as passports for US visa issuing purposes); *Davis v District Director* 481 F. Supp. 1178 (D.D.C. 1979) (Garry Davis, WSA promoter, renounced his US nationality).

53. F. E. Oppenheimer, 'Governments and Authorities in Exile', (1942) 36 *Am. J. Int'l L.* 568.

54. Ruth E. Gordon, 'Some Legal Problems with Trusteeship', (1995) 28 *Corn. Int'l* LJ 301 (synthesising a theory of State disintegration in the context of a modern theory of trusteeship for such States).

55. This situation may create particular anomalies: a country that has expelled certain of its inhabitants may have consular posts abroad that continue to treat, and to document, the expellees as nationals. This goes to the effectiveness of the government's purported revocation of nationality (where that has occurred) and the apparent authority of the consular officer.

56. Most notably concerning Japanese residents affiliated with the *Chosen Soren*: Joe Verhoeven, 'Relations internationales de droit privé en l'absence de reconnaissance d'un Etat, d'un gouvernement ou d'une situation', (1985-III) 192 *Rec. des cours* 9, 145–48; *Her v Akama*, Tokyo Dist. Court, 11 Oct 1968, Hanrejiho No. 531, p. 3, (1972) 16 Japanese Ann. Int'l L. 136, holding a violation of fundamental rights Japanese refusal of re-entry visas to certain North Korean nationals seeking to travel to Pyongyang. The court also rejected a passport regulation inhibiting travel of nationals of unrecognised States. *Her v Takeji Kobayashi*, Sup. Ct., 16 Oct 1970, 24 Hanreijiho l512, No. 11, (1972) 16 Japanese Ann. Int'l L. 77; Tsutomu Nishioka, 'Chosen Soren Today and Its Future', *Gendai Koria* [Modern Korea] No. 363 (July–Aug 1996).

57. As the judgment in *Micheletti v Delegación del Gobierno en Catabria* [1992] ECR I-4239 demonstrated, commitment to a regional rights compact based on nationality may limit State autonomy in the matter of foreign nationality. Whether a Member State can revoke the nationality of one of its nationals exercising freedom of movement rights seems to have been narrowly avoided by administrative capitulation, followed by abrogation of the underlying nationality law provision, in the *Ramadanoglou* case (Greek National Committee of the International Helsinki Federation, press release, 12 June 1996).

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condominium, trusteeship,[58] mandate,[59] protectorate or indigenous people status[60] or by connection with a special geographic region.[61] These may offer useful precedent for considering the status of persons attached to unrecognised States. Nationality and equivalent rights may be granted unilaterally, by adverse claim to territory (the Falkland Islands,[62] Northern Ireland[63]), by religious affiliation,[64] or (in a form of extreme *jus sanguinis*) by descent or apparent descent from a racial or ethnic group.[65] Indigenous status or prior residence may yield the right to continued or future residence, and to economic and political activity in a particular geographic area: the Special Administrative Region of Hong Kong or Macau, a Native American reservation, a First Canadian reserve: a sub-nationality.

Solutions proffered for some current situations of conflicts of sovereignty and personal status echo certain qualities of past condominium arrangements. Under such arrangements sovereignty or administrative responsibility was shared, and inhabitants were assigned, elected to have, or were treated as having, a particular nationality and personal status.[66] The Belfast ('Good Friday') Agreement provides:

> 1. The participants endorse the commitment made by the British and Irish Governments that, in a new British-Irish Agreement replacing the Anglo-Irish Agreement, they will:
>
> . . .

58. *Antolok v United States* 873 F.2d 369 (DC Cir. 1989) (discussion of status in connection with tort claim arising from nuclear testing).

59. British jurists were not so certain of the status of inhabitants of British mandates, trust territories and condominiums: they were not aliens; J. Mervyn Jones, *British Nationality Law and Practice* (1947).

60. Notably by the Jay Treaty, TS 105, 8 Stat. 116 (1794) (freedom of circulation of native peoples).

61. Thus Hong Kong, Macau, Channel Islands.

62. Argentine territory for purposes of the Argentine nationality law, below n. 182.

63. Article 7, Irish Nationality and Citizenship Act, 1956, 1986, 1994; Nationality Bill 1999.

64. Israeli Law of Return 1950 and Israeli Nationality Law 1952.

65. Germany, with certain limitations, especially prior to the reforms brought into force on 1 Jan 2000 (BGBl. I S. 1062, 30.06.93): Basic Law, art 116(1)–(2); *see* Jean J.A. Salmon, 'L'impact de la détermination de la nationalité allemande en R.F.A. sur les conventions consulaires passées avec les Etats tiers', (1980) 15 *Rev. belge dr. int.* 187, 195; cf. Abrogation Law No. 1 of the American Military Government of 18 Sept 1944, Official Gazette of the Control Council for Germany, No. 1, 29 Oct 1945, p. 6, annulling the Reich Citizenship Law of 15 Sept 1935, RGBl. I/1146. The Civil Code of Iran, § 976(2) provides that a person is Iranian if his father is Iranian without, seemingly, any limit to the number of generations through which nationality may be transmitted. The Greek Nationality Code, Decree-law No. 3370 of 20/23 Sept 1955, modif. by Law 1438/1984, § 14, has a multi-generational ethnic bias, Dimitrios Soldatos, *Lexiarchikes Praxeis: Ithageneia, Demotologia* (1998).

66. e.g., Treaty of Andrusovo (Andrussow), 30 Jan 1667, 9 Consol. TS 399 establishing a Polish-Muscovite condominium over Zaporozhia (until 1686); Egyptian-British Condominium Agreement of 19 Jan 1899 over Sudan, 187 Consol. TS 155; Anglo-French convention of 16 Nov 1887, 170 Consol. TS 51, establishing Joint Naval Commission, and protocol of 27 Feb 1906, 200 Consol. TS 328, establishing condominium over New Hebrides (Vanuatu) (for subsequent arrangements, see (1979) 106 *Rev. crit.* 694. Such arrangements were admittedly colonial in nature.

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> (vi) recognise the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose, and accordingly confirm that their right to hold both British and Irish citizenship is accepted by both Governments and would not be affected by any future change in the status of Northern Ireland.[67]

The preceding provision is at least in part declaratory of existing United Kingdom practice[68]. The status of persons in Northern Ireland under the agreement is a particular legal curiosity. Nearly all[69] are assured the right to present themselves as Irish, as British or both.[70] This is one of few treaty provisions offering a dual national the right to be treated in one country of nationality solely as a national of the other.[71]

The 'American Plan' advanced at Camp David on 21 July 2000 for sharing sovereignty over Jerusalem could provide another modern precedent for co-existing nationalities. While non-Israeli residents of East Jerusalem (a territory both of disputed sovereignty and non-recognition as to annexation) did not *ipso facto* become Israeli citizens upon the incorporation of that part of the city into Greater Jerusalem and Israel in 1967, bona fide residents have the option of obtaining Israeli nationality on demand. Approximately 8,000 non-Israeli Jerusalem residents have availed themselves of this option since 1967.[72] Prior to 31 July 1988, Palestinian residents of the West Bank were considered by Jordan to be Jordanian nationals; US courts have subsequently treated them as

67. An annexed declaration defines the affected persons: 'The British and Irish Governments declare that it is their joint understanding that the term "the people of Northern Ireland"' in paragraph (vi) of Article 1 of this Agreement means, for the purposes of giving effect to this provision, all persons born in Northern Ireland and having, at the time of their birth, at least one parent who is a British citizen, an Irish citizen or is otherwise entitled to reside in Northern Ireland without any restriction on their period of residence.' For the Irish government interpretation of the impact of this clause upon the nationality of persons born in Northern Ireland and the rights accruing to individuals, see *Dáil Debates Official Report*, 13 April 2000, statement of Minister for Justice, Equality and Law Reform (Mr O'Donoghue).

68. See Sue Shutter, *JCWI Immigration, Nationality & Refugee Law Handbook*, London at 119 (1997 edn) (Home Office allowance of European Community rights to situations involving foreign spouses of Irish-British dual nationals).

69. ie, those born in the province with at least one parent possessing British nationality, or Irish nationality and ordinarily resident in the United Kingdom; or being an EU citizen, Commonwealth citizen or alien settled in the UK.

70. Belfast Agreement, 10 Apr 1998, Cmd. 3883, Annex 2. In fact, 'nationality' self-identification (via choice between Irish and British passports) has long correlated with religion. Northern Ireland is the only region in the United Kingdom where registers of births (and hence birth certificates) do not record the (self-declared) nationality of parents.

71. Consular agreements negotiated by the United States in 1972 with Poland, Romania and Hungary and in 1974 with Bulgaria assure the right of consular protection for persons of local origin on temporary visit even if they might be regarded by both States as their nationals. Unlike the Belfast Agreement, these concern only transient visitors. Digest US Prac., 1973 at 72; 925 UNTS 31 No. 13187 (1974); 890 UNTS 109, No. 12744 (1973); 902 UNTS 177, No. 12897 (1973); 998 UNTS 99 No. 14628 (1976). For US Dept. of State comment on US-Soviet nationality conflicts, see (1979) 73 *Am. J. Int'l L.* 678.

72. Communication from Information Division, Israeli Ministry of Foreign Affairs, 13 Jan 1997.

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'stateless' for alienage jurisdiction purposes[73] but at least in the case of those holding Jordanian passports not for purposes of deportation.[74] The recognition given to State-like acts of the Palestinian Authority under the Israeli-Palestinian Interim Agreement on the West Bank and Gaza (Oslo II), whether viewed as an irreversible delegation of authority or not, gives effect to the status it claims for persons under its control. Occupation alone does not transfer sovereignty to the occupying, protecting, mandate or trusteeship power, nor does it affect the underlying nationality of the inhabitants.[75] Statehood for Palestine is expected (and already recognised by some governments) and certain Palestinians possess an inchoate nationality with most of the qualities that implies.[76] Appendix III, Article 28 of Oslo II implies limitations to the power of the Palestinian Authority to confer rights of residence. It may record in its population registry all persons who were born abroad or in the Gaza Strip or the West Bank, but only if they are under the age of sixteen years and one of their parents is a resident of the Gaza Strip and West Bank. Thus *jus sanguinis* and residence, in tandem, have become the criteria for Palestinian 'nationality'. There is no provision for naturalisation. Ultimately, the relationship to a Palestinian State of four distinct categories of ethnic Palestinians will need to be resolved: (a) Palestinians, not refugees, resident of the West Bank and the Gaza Strip; (b) Palestinian refugees resident in the West Bank and Gaza; (c) Arab nationals of Israel; (d) ethnic Palestinians resident in other countries. Only the status of Palestinians in category (a) and of their children wherever born was addressed in the accords. The evident restrictions on determination by the Palestinian Authority of who shall be its nationals constitute divergence from the norm, but treaty-based limitations of freedom of action do not affect the essence of sovereignty. Neither does the fact that Israeli consular offices abroad provide administrative and communications assistance to Palestine passport holders on behalf of the Palestinian Authority. In both the Northern Irish and the West Bank-Jerusalem cases nationality has been divorced from sovereignty and recognition.

C. Constituting the 'State' as underwriter of a nationality

A substantial literature exists on the doctrine on recognition of State,[77]

73. *Abu-Zineh v Federal Laboratories, Inc.* 975 F. Supp. 774 (W.D. Pa. 1994).

74. *Mousa v INS* 223 F.3d 425 (7th Cir. 2000); *Shio v INS* 1997 US App. LEXIS 34859.

75. See review of the authorities in Eugene Cotran, ed., *The Arab-Israeli Accords: Legal Perspectives* (1996).

76. Lex Takkenberg, *The Status of Palestinian Refugees in International Law* (1998), at 178–83, 330–31, 343, 346.

77. Joe Verhoeven, *La reconnaissance internationale dans la pratique contemporaine* (1975); L. Thomas Galloway, *Recognising Foreign Governments: The Practice of the United States* (1978); James Crawford, *The Creation of States in International Law* (1979); John Dugard, *Recognition and the United Nations* (1987); M.J. Peterson, *Recognition of Governments: Legal Doctrine and State Practice, 1815–1995* (1997); G.H. Hackworth, *Digest of International Law* (1940), vol. 1, pp. 161–392; M.M. Whiteman, *Digest of International Law* (1963), vol. 1, pp. 221–598.

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expressing declaratory[78] and constitutive[79] views. Nonrecognition may be a policy of diplomatic expedience without regard to internal political or demographic facts. It may be on the part of a few, or many, foreign States. In either case, the effects that flow to private law relationships are incidental. Respect for colonial frontiers, integrity of States and limits to self-determination are considered to have their own justification. Unless coupled with severe economic sanctions, the impact of non-recognition upon the individual, particularly on the domestic plane but even with respect to international travel, may be trivial. Acceptance of passports and other official documentation is not necessarily dependent upon recognition of Statehood, although governments sometimes take a stand through that medium, and travel to or from some countries may be excluded.

In the matter of travel facilitation, both the United Kingdom and the United States 'recognise' Taiwanese passports to the extent of entering visas in them;[80] and both countries 'decline recognition' to Turkish Republic of Northern Cyprus passports[81] to the degree of affixing visas to a separate consular document instead. In either case, the individual is free to travel with the passport of choice[82] and the State of destination to uphold its own recognition principles. In other cases, pseudo-States have refrained from issuing travel documents that would not be acceptable to some or most foreign countries. Inhabitants of the Republic of Somaliland travel on Somali Democratic Republic passports. There is little security in their issuance and the US State Department requires passport waivers in each case and its consular officers affix visas to consulate-provided controlled and secure documents.[83] Indeed, according to the Department '[t]he United States does not consider any

78. Sir Hersch Lauterpacht, *Recognition in International Law* (1947), pp. 38–66; Chen, Ti-chiang, *The International Law of Recognition: With Special Reference to Practice in Great Britain and the United States* (1951), at 150–52.

79. Hans Kelsen, 'Recognition in International Law; Theoretical Observations', (1941) 35 *Am. J. Int'l L.* 605.

80. 9 FAM 41.113 N3.1.

81. See, e.g., 9 FAM 41.104, 41.113 (1993) (US); visas issued to holders of TRNC passports are affixed to consulate-provided Form OF 232. Notwithstanding the statement that 'The Turkish Republic of Northern Cyprus is not considered a "competent authority;" therefore any document issued by that entity cannot be deemed valid for passport purposes' its passports are in fact accepted as proof of identity for travel purposes. Information as to United States practice confirmed in telephone conversation with consular assistant, North Cyprus branch consular office, US Embassy Nicosia, 24 Mar 2000; United Kingdom practice is described in *Caglar v Billingham (Inspector of Taxes)* [1996] STC (SCD) 150, [1996] 1 LRC 526 and in written answers, *Hansard*, Lords, 15 Jan 1998, col. WA205, HL162; Commons, 15 Jan 1998, col. 277.

82. According to Republic of Cyprus consular authorities, residents of the North occasionally apply for passports from the Republic to facilitate travel, and they may do so provided that proof of eligibility (generally through registration of relevant births and marriages with the appropriate civil authorities or a Cypriot consular office or in the ordinary way with the Nicosia authorities prior to 1974) is provided.

83. Form OF-232. Communication from Consular Section, US Embassy Djibouti, 18 July 2000, confirming also that the Republic of Somaliland does not issue passports. The (Arab) destination countries of many travellers from Hargeisa reportedly would not honour Somaliland travel documents.

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government to exist in Somalia'.[84] Travellers from South African homelands were issued with South African passports; Palestinians have used travel documents issued by countries of residence, accommodating neighbouring States, most especially Jordan,[85] or (in the case of inhabitants of the West Bank and Gaza) Palestinian Authority passports.[86] Kosovars travel on existing Yugoslavian passports or on substitute United Nations documentation.[87] Acceptance of passports by foreign governments is purely a matter of political, diplomatic and administrative convenience rather than any status attributable to the travel document itself. During World War II governments in exile performed sovereign functions recognised as such by Allied governments, including the issuance of passports[88]: like the Kuwait government in exile, these were recognised governments without *de facto* control of their claimed territory.

Taiwan benefits in the United States from quasi-recognition (the facilitation of 'commercial, cultural, and other relations between the people of the United States and the people of Taiwan') afforded it under the Taiwan Relations Act.[89] The political limits of the Republika Srpska are fixed by the High Representative in Sarajevo; its domestic assertion of governmental power is tolerated pragmatically. The modern experience of unrecognised or diplomatically isolated States and territories is fairly consistent: domestically the entity may function juridically like any other. Internationally, surrogates, intermediaries or a patron may be found and transactions and communications

84. 9 FAM Part IV, Appendix C, Somalia, Somali Democratic Republic. 'The Department has determined that Somalian passports are no longer valid for visa-issuance purposes. Most immigrant visa beneficiaries will not require a passport. Somali nonimmigrant visa beneficiaries will require a passport waiver.' Amnesty International's Annual Report 2000 confirms: 'Somalia has no functioning government . . . The Somaliland Republic in the northwest, which proclaimed its independence in 1991, continued to seek international recognition. It enjoyed relative stability and a functioning administration.'

85. Lex Takkenberg, *The Status of Palestinian Refugees in International Law* (1998), pp. 128–30, 144–45, 157–58.

86. Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, Annex III, Protocol Concerning Civil Affairs, § 7: 'Israel recognises the validity of the Palestinian passports/travel documents issued by the Palestinian side to Palestinian residents of the West Bank and the Gaza Strip in accordance with the Gaza-Jericho Agreement and this Agreement.' On the special international status of Palestinians, see James C. Hathaway, *The Law of Refugee Status* (1991) at 205–08.

87. UNMIK Regulation on Travel Documents, 30 Mar 2000, Press Release UNMIK/PR/215 ('The travel document does not confer nationality upon its holder, nor does it affect in any way the holder's nationality').

88. *Bollack v Société Générale* 263 A.D. 601, 33 NYS2d 986 (1st Dept.1942) (revocation of nationality and confiscation of assets; contrary to public policy); Stefan Talmon, *Recognition of Governments in International Law: With Particular Reference to Governments in Exile* (1998) at 202–06; *In re Amand* [1942] 1 KB 445 (conscription of Netherlands subject resident in England); *Re De Bruijn* (1942) IDLR. 249, 10 Ann. Dig. 116 (similarly, in Canada).

89. Pub. L. 96–8, 10 Apr 1979, 93 Stat. 14, 22 US Sec. 3301–16, notably: 'Sec. 4. (a) The absence of diplomatic relations or recognition shall not affect the application of the laws of the United States with respect to Taiwan, and the laws of the United States shall apply with respect to Taiwan in the manner that the laws of the United States applied with respect to Taiwan prior to January 1, 1979.'

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completed at some incremental cost and at some suboptimal level. Thus definition and identification of a 'State' can vary according to context. US and other case law has allowed of differentiation for taxation,[90] commercial relations,[91] alienage jurisdiction,[92] deportation and exclusion,[93] diplomatic practice.[94] Other countries have had to address the question of whether the grant of nationality by a particular political entity shall lead to forfeiture of their own nationality or loss of certain political rights. Would naturalisation by one of its nationals in an unrecognised Taiwan or Turkish Republic of Northern Cyprus entail divestiture of the nationality of a State which forbids retention of its nationality upon naturalisation abroad? If that hypothetical seems arcane, courts have indeed had to address the question of whether activation of a latent nationality—one to which a person is entitled as of right, but which is not effective until an appropriate demarche has been made[95]—creates such a conflict.[96] There are no recent cases conditioning recognition of nationality

90. *Burnet v Chicago Portrait Co.* 285 US 1 (1932) (New South Wales as a 'foreign country').

91. *United States v The Recorder* 27 F.Cas. 718 (SDNY 1847) (British vessel carrying goods between the British East Indies and the Port of New York; dominions and colonies assimilated to parent State).

92. *Windert Watch Co., Inc. v Remex Electronics Ltd.* 468 F.Supp. 1242 (SDNY 1979; *Matimak Trading Co. Ltd. v Khalily* 936 F. Supp. 151 (SDNY 1996), aff'd, *Matimak Trading Co. Ltd. v Khalily* 118 F.3d 76 (2d Cir. 1997) (Hong Kong; sovereignty required for alienage jurisdiction); accord, *Koehler v Bank of Bermuda (New York) Ltd.* 209 F.3d 130 (2d Cir. 2000) Amended 229 F.3d 424, *en banc* reconsideration denied, with a dissent noting that '[b]oth the Executive Branch and the government of the United Kingdom of Great Britain and Northern Ireland have asked that we reconsider the reasoning we employed in Matimak' 229 F.3d 187 (2d Cir. 2000) (Bermuda corporation). Cf. *Murarka v Bachrack Bros.* 215 F.2d 547 (2d Cir. 1954) (India on the eve of independence); *Klauser v Levy* 83 F.Supp. 599 (ED Va. 1949) held that a national of the Palestine Mandate was not a 'citizen or subject of a foreign state'. These, and the cases refusing jurisdiction to stateless persons (viz. *Kantor v Wellesley Galleries, Ltd.* 704 F.2d 1088 (9th Cir. 1983)) would seem to turn on unfortunate legal drafting, although the availability of an alternative US state forum diminishes the prejudice.

93. *United States ex rel. Tom We Shung v Murff* 176 F.Supp. 253 (SDNY 1959) (deportation to China via Hong Kong); *Delany v Moraitis* 136 F.2d 129 (4th Cir. 1943) (Greek Government in Exile); *Ng Kam Fook v Esperdy* 320 F.2d 86 (2d Cir. 1963) (China or Taiwan as 'country' of deportation); *Rogers v Cheng Fu Sheng* 108 US App. DC 115, 280 F.2d 663 (DC Cir. 1960) (Formosa); *United States ex rel. Leong Choy Moon v Shaughnessy* 218 F.2nd 316 (2d Cir. 1954) (China); *United States ex rel. Mensevich v Tod* 264 US 134 (1924) (occupied Poland as a 'country' of deportation); *United States ex rel. Wiczynski v Shaughnessy* 185 F.2d 347 (2d Cir. 1950) (Danzig); *Caranica v Nagle* 28 F.2d 955 (9th Cir. 1928) (Macedonia: Turkey and Greece).

94. Robert A. Vitas, *The United States and Lithuania* (1990) discusses the recognition issue with respect to Lithuania.

95. Examples are certain descendants of Irish nationals, persons born in Northern Ireland of non-Irish parents, persons born in the United Kingdom of alien parents and thereafter physically present in the United Kingdom for the first ten years of life and Jewish persons who migrate to Israel. In other instances a nationality may be extant but not be administratively recognised until a demarche is made.

96. *In re Allan*, No. V85/505 AAT; No. 2970 (Immigr. App. Trib. Canberra 1986) (acquisition of Irish nationality by registration constitutes a voluntary act leading to the loss of Australian nationality under the law as then in force); *Sykes v Cleary* (1992) 176 CLR 77 and *Sue v Hill* (1999) 199 CLR 462 (right to run for public office).

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upon recognition of sovereignty, but cases at the time of the American Revolution[97] addressed the conflict between the terms of the Treaty of Paris[98] ending that war and the principle of perpetual allegiance.

In any event, the relationship between Statehood and nationality is tenuous. The matter is particularly problematic in the British case, as the United Kingdom since 1962 sought to divest itself of the 'detritus of empire'[99] at first by dissociating right of abode from nationality[100] and then by subdividing its 'nationality' by place of birth and parentage.[101] It arose also in many other circumstances of colonies, protectorates, trust territories, mandates, decolonisation, occupied territories,[102] governments in exile,[103] breakaway territories and ephemeral States.[104] The issue may not have been pressing at a time when borders were relatively open and impediments to travel largely financial; it is more important today. Early case law affected small numbers, leaving administrative and judicial authorities open to establish and to enforce with rigidity principles that, with closed borders, may permanently exclude or prejudice individuals. Latterly, the hardship vested upon individuals by the application of inappropriate law has sometimes been avoided by judicial discretion,[105] or by statute,[106] or by invoking a subordinate level of government theory.[107]

97. *Doe d. Thomas v Acklam* (1824) 2 B. & C. 779, 107 Eng. Rep. 572; St. Op. Atty. & Sol. Gen. on the Status of a Citizen of the United States born before the Peace of 1783, and residing in Canada, 13 Nov 1824, repr. in W. Forsyth (ed.), *Cases and Opinions on Constitutional Law*, 1869, p. 324. *Cf.* discussion, (1817) 6 *Hall's Am.* LJ 30.

98. 3 Sept 1783, 3 Jenkinson 410, 48 Consol. TS 487; 13 Geo. 3, c. 31 (ratification).

99. Ivor Stanbrook, *British Nationality: The New Law* (1982), p. 77.

100. Commonwealth Immigration Acts, 1962 (10 & 11 Eliz. 2 c. 21) and 1968 (c. 9); Immigration Acts 1971, c. 77 and 1988, c. 14.

101. British Nationality Act 1981, c. 61.

102. *Cobb v United States* 191 F.2d 604 (9th Cir. 1951) and *Burna v United States* 240 F.2d 720 (4th Cir. 1957) (occupied Okinawa as 'foreign country' for purposes of Federal Tort Claims Act); *Rose v McNamara* 375 F.2d 924 (DC Cir. 1967) (Okinawa, income taxes); *Brunell v United States* 77 F.Supp. 68 (SDNY 1948) (Saipan, Federal Tort Claims Act).

103. F.E. Oppenheimer, 'Governments and Authorities in Exile', (1942) 36 *Am. J. Int'l L.* 568; J.F. Engers, 'Passports Issued by Governments in Exile', (1971) 65 *Am. J. Int'l L.* 571.

104. Habib Gherari, 'Quelques observations sur les Etats éphémères', (1994) 40 *AFDI* 419.

105. Compare *Martini v Creyssac*, Cass. civ. (1st Ch.), 25 June 1974, (1975 II) Dalloz 189; *Martini v Martini*, CA Paris, 10 June 1972,(1973 II) Dalloz 296, conclusions Advocate General Cabannes (Jewish refugees from Syria); *Casperus v Casperus*, Israeli Sup. Ct. sitting as Ct. App., 28 Oct 1954, 21 ILR 181 (nationality of testator, German refugee in Palestine); *Panayotti v Paitchadze* (Russian refugee), Cass. civ. (1st Ch.), 1 Dec 1969, Bull. Civ., No. 371, p. 296 (marital regime); *In re James (an Insolvent)* [1977] 1 Ch. 41 (bankruptcy; misappropriation of funds; Rhodesian insolvency proceeding).

106. *Adams v Adams* [1971] P. 188, 52 ILR 45 (Rhodesian divorce; incompetence of judicial authority of renegade colony); effect attenuated by Orders in Council, SI 1970/1540 and SI 1972/1718, both repealed by the Zimbabwe Act 1979, s. 6(3), Sched. 3. Situations of doubtful or fraudulently claimed nationality can also have anomalous results for an innocent party: *Huang v Huang* (1956) 2 Japan. Ann. Int'l L. 149 (Kyoto Dist. Ct.) (Japanese nationality and personal law lost upon marriage notwithstanding misrepresentation of spouse); compare *Rogers v Patokoski*, 271 F.2d 858 (1959) (petitioner unaware of his US nationality); similarly, *Petition of Acchione* 213 F.2d 845 (3d Cir. 1954) (petitioner born in Italy to naturalised American father).

107. *Carl Zeiss Stiftung v Rayner & Keeler Ltd* (No. 2) [1967] 1 AC 853 (HL); *Gur Corporation v Trust Bank of Africa Ltd.* [1987] QB 599 (CA). *Cf.*, with respect to federal

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D. Variable nationality

Conflicts can arise over any of the discrete matters as to which nationality may be jurisdictinal criterion: right of abode and employment, ownership of land,[108] political right,[109] reciprocal treaty rights,[110] tax liability,[111] enemy alien status,[112] diplomatic and consular protection and representation,[113] refugee status,[114] deportation, extradition,[115] treason,[116] export controls,[117]

alienage jurisdiction, 28 USC § 1603(a) (1999) (a 'foreign state . . . includes a political subdivision of a foreign state, or an agency or an instrumentality of a foreign state as defined in subsection (b).')

108. *Wong v Tenneco, Inc.* 39 Cal.3d 126, 216 Cal. Rptr. 412, 702 P.2d 570 (Sup. Ct. Cal. 1985).

109. Representation of the People Act, 1983, c. 2 (Engl.); L.E. Aylsworth, 'The Passing of Alien Suffrage', 25 Am. Pol. Sci. Rev. 114 (1931); Paul Tiao, 'Non-Citizen Suffrage: An Argument Based on the Voting Rights Act and Related Law', (1993) 25 *Colum. Hum Rts. L. Rev.* 171.

110. *Micheletti v Delegación del Gobierno en Catabria* [1992] ECR I-4239, comment, Hans Ulrich Jessurun d'Oliveira, (1993) 30 *Com. Market L. Rev.* 623.

111. *Cook v Tait* 265 US 47 (1924).

112. *Luttermersk v Préfet de la Seine*, Paris (1st Ch.), 20 Mar 1925, 3 Ann. Dig. 277, (1926) 53 Clunet 94, note J.P.; *Kramer v Attorney-General* [1923] AC 528; *In re Chamberlain's Settlement* [1921] 2 Ch. 533; *Prince d'Arenberg v Ministère public*, Cass. civ. (1st Ch.), 25 Mar 1926, (1926 I) Pas. 317; *Salvesen v Adm'r of Austrian Property* [1927] AC 641.

113. *Alexander's Executors v* US, Am. & Br. Cl. Comm., Case No. 45, Hale's Rep. No. 16, 3 Moore Arbitrations 2529 (1898); *Nemeth v Etat Belge*, Cons. d'Etat (3rd Ch.), 26 June 1973, No. 15,941, R.A.ACE., 1973.539, 77 ILR 384; *Menon v Esperdy*, 413 F.2d 644 (2d Cir. 1969), 54 ILR 248; *R. v Goldfarb* (1936) 52 Times L. Rep. 254, 8 Ann. Dig. 304. As to doubtful cases: *Koszta* case, Note, Secretary of State of the United States Marcy to Mr. Hülsemann, Chargé d'affaires of Austria, 29 Aug 1853, II Ex. Doc. 1, 33 Cong. 1 sess. 25; *repr. at* 3 Moore, *Digest* 830, § 490; comment, John Westlake, *International Law* (1910), vol. 1, p. 200 and Sir Alex Cockburn, *Nationality* (1869), at pp. 117–24; *Perdicaris* case, 3 Moore, *Digest* 807 (1906), where it is supposed that Perdicaris was a citizen, but cf. Barbara W. Tuchman, 'Perdicaris Alive or Raisuli Dead' in Tuchman, *Practising History* (1983), pp. 104–17.

114. Geneva Convention Relating to the Status of Refugees (1951), 189 UNTS 137, No. 2545 (1954); Protocol, 31 Jan 1967, 606 UNTS 267, No. 8791 (1967), Art 1(A)(2); Conclusion 15(XXX) of the Executive Committee of the High Commissioner's Programme, para. (h)(iii)-(iv), UN Doc. HCR/IP/2/Eng./REV. 1986 (1979); Universal Declaration of Human Rights, G.A. Res. 217A (III), 10 Dec 1948, Art 14(1); *Jong Kim Koe v Minister for Immigration* [1997] 306 F.C.A.; *Lay Kon Tji v Minister for Immigration* [1998] 1380 FCA; Ryszard Piotrowicz, 'Refugee Status and Multiple Nationality in the Indonesian Archipelago: Is there a Timor Gap?', (1996) 8 *Int'l J. Refugee L.* 319; Ryszard Piotrowicz, 'Dual Nationality and Refugee Status', (1997) 71 *Australian* LJ 590; Peter Nygh, 'Multiple Nationality and the Refugee Convention: The Position of the East Timorese', Conference Paper, Northern Territory University, *Retreating From the Refugee Convention*, 7–10 Feb 1997.

115. Dan Izenberg, 'Court: Murder Suspect Can't Be Extradited', *Jerusalem Post*, 26 Feb 1999 (Sheinbein case; Israeli law has since been modified).

116. *Joyce v Director of Public Prosecutions* [1946] AC 347; *Kawakita v United States* 343 US 717 (1952); *In re Mittermaier*, Cass. ital., 2 May 1946, Foro italiano 69.1944–46.II.137, 13 Ann. Dig. 69.

117. 50 US App. § 2410a (1996) (COCOM); Trading With the Enemy Act, 1917, 40 Stat. 411, 50 App. US § 1 (1996); Arms Export Control Act, 82 Stat. 1320, 22 US § 2751 (1996); Nguen Quoc Dinh, *Droit international public*, (5th edn 1994), § 584.

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sport,[118] capacity,[119] choice of personal law,[120] criminal liability,[121] military conscription[122] testimony in court proceedings,[123] and civil jurisdiction, especially in the United States.[124] The manner in which sovereignty is held and exercised affects in different ways the rights and obligations of those to whom a particular nationality or equivalent identity is attributed. Some of this may be a legacy of past centuries. The status of colonial subjects, indigenous peoples and members of minority religions differed from and was less than that of citizens of the metropole. The *sujet français* did not enjoy the qualities of a *citoyen français*. The gap was similar as between German *Reichsbürger* and *Staatsangehöriger*, *Staatsbürger* and *Volkszugehöriger*, with *Eingeborenenbevölkerung* in the colonies and protectorates affording still lesser status and rights.[125] Congolese were *sujets belges* without being *Belges*;[126] and Native Americans, while American wards,[127] were not recognised as citizens until 1924.[128]

118. *Reel v Holder* [1981] 1 WLR 1226 (CA), aff'g [1979] 1 WLR 1252 (Taiwan).

119. Principally relevant to States and their instrumentalities: *Liberia v Bickford* 787 F.Supp. 397 (interim government); *National Petrochemical Co. of Iran v The MT Stolt Sheaf* 860 F2d 551 (2d Cir. 1988); *Somalia v Woodhouse Drake & Carey (Suisse) S.A.* [1993] QB 54 (interim government); *Federal Republic of Germany v Elicofon* 358 F.Supp. 747 (EDNY 1970) (standing to sue of East German entity); *Autocephalous Greek-Orthodox Church of Cyprus v Goldberg and Feldman Fine Arts, Inc.* 917 F.2d 278 (7th Cir. 1990) (standing of recognised sovereign to claim property purloined from church in North Cyprus); *Re Polly Peck International plc (in administration) (No 2)* [1998] 3 All E.R. 812 (C.A.) (addressing complaint of misappropriation of assets, involving companies incorporated under the laws of the Turkish Republic of Northern Cyprus).

120. *Trinh Dinh Cuong v Le Thi Hong Mai*, Trib. civ. Liège (3rd Ch.), 30 Oct 1981, unreported (applicability of South Vietnamese personal law after fall of Saigon); *Panayotti v Paitchadze* (Russian refugee), Cass. civ. (1st Ch.), 1 Dec 1969, 1969 Bull. Civ. 296, No. 371 (Russian law); *Szechter (orse. Karsov) v Szechter* [1971] P. 286 (law of former country, Poland, applied in determination of validity of political refugees' marriage under duress).

121. *X v Public Prosecutor*, Ct. App., The Hague, 1952, NJ, 1953, No. 344, 19 ILR 226.

122. *The King v Superintendent of Chiswick Police Station, ex parte Sacksteder* [1918] 1 KB 578 (deportation, under arrangement with French government, of French national liable for military conscription); *Pitsillides v Cyprus* [1973] 3 CLR 15, 83 ILR 197 (Cyprus Sup. Ct.); *Bicknell v Brosnan* [1953] 2 QB 77 (Div. Ct.) (National Service Act, 1948 (11 & 12 Geo. 6, c. 64)); *Murray v Parkes* [1942] 2 KB 123 (National Service (Armed Forces) Act, 1939 (2 & 3 Geo. 6, c. 81)).

123. *Blackmer v United States* 284 US 421, 437 (1932) (fines imposed on a US citizen resident in France for disobeying a subpoena to testify in a criminal case); Albert Gouffre de Lapradelle, *Affaire Henry M. Blackmer extradition* (1929).

124. *Abu-Zeineh v Federal Laboratories, Inc.* 975 F. Supp. 774 (WDPa 1994) and other cases cited in Christine Biancheria, 'Restoring the Right to Have Rights: Statelessness and Alienage Jurisdiction in Light of Abu-Zeineh *v* Federal Laboratories, Inc.' (1996) 11 *Am. U.J. Int'l L. & Pol'y* 195; Walter C. Hutchens, 'Alienage Jurisdiction and the Problem of Stateless Corporations: What is a Foreign State for Purposes of 28 US § 1332(A)(2)?', (1998) 76 *Wash. ULQ* 1067.

125. Paul Laband, C. Gandilhon & F. Larnaud, *Le droit public de l'Empire allemand* (1901), vol. 2, pp. 693–96.

126. Declaration of the Ministry of Justice and of the Rapporteur of the Commission; Ann. Ch., pp. 405, 407; *Pand. b.*, 'Belge' (1921–33); *Les Novelles Corpus Juris Belgici*, 'Droit colonial' vol. I, p. 181 (1936).

127. *McCandless v United States ex rel. Diabo* 25 F.2d 71 (3d Cir. 1928).

128. *Elk v Wilkins* 112 US 94 (1884); Citizenship Act of 1924, 43 Stat. 253, 8 US § 501 (repealed 27 June 1952).

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The sense of obligation without reciprocity which marked subject status recalls the pre-modern era of sovereignty and allegiance. The practice of the colonial powers, and of the United States in its relations with its outlying possessions, might be viewed as political pragmatism. There is no evidence of those powers having studied or taken into consideration the long-run implications for the culture and domestic economy of the metropole of the national status of natives of the colonies because it was inconceivable that these natives would migrate to Europe or the US in significant numbers. This was so although transfers of indigenous labour, as earlier of slaves, from one territory or possession to another were common. Indeed, taken literally, the legitimate offspring of a Belgian mother and a native Congolese father would have been stateless.[129] The United Kingdom, the exception, applied its common-law criterion of allegiance based upon birth within the Empire; nationality by descent was statutory; and naturalisation within a country of Empire or Commonwealth would not provide the same latitude of citizenship as that by birth.[130] Although language and culture were made criteria for nationality in treaties ending the First World War, as regards outlying possessions sovereignty alone governed attribution of some form of 'nationality', if not of civil rights.

Generalised access by colonial migrants to employment and professional activity in Europe had to await the end of the Second World War. Earlier, the migrant subject who did come to the imperial capital would not be repulsed, but except in the United Kingdom for full civil rights to be enjoyed by the migrant naturalisation might be required.[131] The native of a protectorate,[132] of a mandate or of a trust territory[133] might have a separate and inferior[134] status.

129. Law of 15 May 1922 on the acquisition and loss of Belgian nationality, § 1; Code civil congolais, Livre des personnes, tit. I, § 1 ('La nationalité congolaise s'acquiert: par la naissance sur le territoire de l'Etat de parents congolais . . .'); Léon Petillon, 'Des habitants et leurs droits', § 18, *Les Novelles*, Droit Colonial (1931), vol. I, pp. 185–86.

130. *Markwald v Attorney-General* [1920] 1 Ch. 348, 1 Ann. Dig. 203 (naturalisation in Australia); *Gelez*, Cass. crim. 14 Feb 1890, Clunet, 17.1890.116 (French emigrant naturalised in Australia).

131. *Barber v Gonzales* 347 US 637 (1954); provision for acquisition of French civil status by indigenous natives was variable, according to territory, Henry Solus, *Traité de la condition des indigènes en droit privé* (1927).

132. eg, Decree of 29 July 1887, *JORF*, 25 Aug 1887; decree of 3 Oct 1910, *JORF*, 8 Oct 1910 (Tunisia); decree of 29 Apr 1920, *JORF*, 2 May 1920 (Morocco). Natives of a protectorate could be considered nationals of the protecting State for some purposes, *National Bank of Egypt v Austro-Hungarian Bank*, Anglo-Austrian Mixed Trib., 13 July 1923, Rec., III (1924), p. 236, 2 Ann. Dig. 23.

133. Decree of 7 Nov 1930, *JORF*, 13 Nov 1930 (Togo and Cameroon).

134. There existed, in colonial law, an inherent preference for the 'better' status and, implicitly, better religion: *Larbi Fekar (époux) v Ondedieu*, Alger (2nd Ch.), 13 Feb 1903, (1904) Rev. alg. 141 (Marriage of Spanish woman, convert to Islam, to Algerian Muslim afforded French nationality and civil status to the woman and her offspring); *La nationalité française, textes et documents* (1985), at p. 201; this may be compared to the concept, in certain Islamic legal regimes, of the 'better religion': Abu-Sahlieh, *L'impact de la religion sur l'ordre juridique, cas de l'Egypte, non-musulmans en pays d'Islam* (1979), p. 256; similarly, Joseph Schacht, *An Introduction to Islamic Law* (1964), pp. 131–32; *Tewfik v Elias*, Trib. mixte d'Egypte, CA (3rd

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Quasi-national, or at least protégé, status for diplomatic protection purposes might be justified by employment relationship with the protecting power or a firm or organisation furthering that power's interests,[135] or by concession or right of subrogation granted under treaty.[136] In the era of extraterritoriality and consular courts such rights were more extensive and unilateral;[137] they exist still but in more restricted fashion save in the case of non-national members of a country's armed forces.[138]

Affiliation with a territory that lacks recognition as a 'friendly' State may have anomalous results because of repressive measures aimed at the State itself (sequestration, trade embargoes and other measures directed at enemy aliens or intended as diplomatic sanctions), accident of statutory drafting (US alienage jurisdiction[139]), or because of conditional- or non-recognition of status or authority of the interested party or the granting officer (incorporation, divorce,[140] insolvency,[141] civil judgments, probate[142]). The national of an

Ch.) 18 Dec 1923, Gaz. trib. mixtes, XIV, p. 171 (Succession of a Coptic Christian converted to Islam in order to marry a second wife; after having repudiated her he sought to reconvert to Christianity).

135. *International Textbook Co. v Pigg* 217 US 91, 106, 107 (1910); 8 US § 1428 (1999); 8 US § 1430(a) (1999). But see Mary Welsh, 1936, 3 Hackworth, *Digest* 326 (Salvation Army not a recognised American religious organisation; British-born staff member deemed denaturalised following extended residence in Britain); Order of Department of State, 13 May 1908, rule (d) (absence of presumption of expatriation): 'That he resides in China in the employ of the Chinese Government in a capacity not inconsistent with his American citizenship and calculated to advance legitimate American interests . . .', 3 Hackworth, *Digest* 336–37.

136. 22 US §§ 2191–2200 (1996) (Overseas Private Investment Corp.); Export and Investment Guarantees Act, 1991 (c. 67) (Export Credits Guarantee Dept.); Swiss federal law of 20 Mar 1970 on investment guarantees, R.O 1970 1130; Council Directive 98/29/EC of 7 May 1998 on harmonisation of the main provisions concerning export credit insurance, OJEC, 19 May 1998, L 148, p. 22 (EU legislation). eg, United States and Yugoslavia, Exchange of notes constituting an agreement relating to guaranties under Pub. L. 472, 80th Cong., Washington, 15 Aug 1952, (1954) 184 UNTS 97 No. 2441; US and Senegal, Agreement concerning guaranties of private American investments, Dakar, 12 June 1963, (1969) 696 UNTS 267, No. 9979. Compare Export & Investment Guarantees Act 1991 c.67; Agreement for promotion and protection of investments, United Kingdom and Philippines, London, 3 Dec 1980, (1981) 1218 UNTS 61, No. 19651; *Culford Metal Industries Ltd. v Export Credits Guarantee Department*, QB Div., Comm'l Ct., 1980 C No. 377, LEXIS ENGGEN Lib.; Convention on the protection of investments, France and Tunisia, Paris, 30 June 1972, (1972) 848 UNTS 141, No. 12147.

137. Above n. 113.

138. Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces of 19 June 1951, 199 UNTS 67, No. 2678 (1954) and supplementary agreement of 3 Aug 1959, 490 UNTS 28, No. 7153 (1964); *Mutasa v Attorney-General*, [1980] QB 114 (Rhodesia, imperfect obligation of protection); *Re Ho* (1975) 5 ALR 304, 55 ILR 487 (Australia, 1979) (British protected person born in Brunei); *Ibrahim v The King* [1914] AC 599 (PC, Hong Kong) (Afghan soldier in the British army). Third-country nationals accredited as diplomatic agents or dependents are entitled to administrative protection, a different issue.

139. *Stuart v City of Easton* 156 US 46 (1895) (description of party as 'a citizen of London, England' held inadequate to meet the statutory requirement).

140. *Adams v Adams* [1971] P. 188, 52 ILR 45, above n. 106.

141. *In re James (an Insolvent)* [1977] 1 Ch. 41, above n. 105.

142. *Pelzer v United Dredging Co.* 118 Misc. 210, 193 NYS. 676 (1st Dept. 1922); *Pelzer v Perry* 203 A.D. 58, 196 NYS 342 (1st Dept. 1922) (administratrix appointed by court in unrecognised Mexico; amendment of complaint to reflect ancillary probate disallowed).

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unrecognised State and the refugee or expellee whose nationality has been revoked may be assimilated as stateless for some[143] and not other[144] purposes. The status in this regard of married women is less discriminatory than it once was.[145] Although the issue of retroactive remedies for their offspring has not been consistently addressed[146] many have benefited from retroactive reintegration. Another question relates to latent, or pseudo-nationality: the unconditional right to claim a nationality due to facts of birth, marriage or parentage.[147] Unlike the situation in *Caglar*, where the representative in London of the Turkish Republic of Northern Cyprus found himself attributed unwanted Cypriot nationality as a matter of law, the holder of an inchoate right to nationality cannot involuntarily be attributed that nationality and cannot be denied asylum solely because of such a right, although right of admission to a third country might be a 'relevant circumstance' to be taken into consideration.[148]

143. *Kantor v Wellesley Galleries, Ltd.* 704 F.2d 1088 (9th Cir. 1983), above n. 92.

144. *Levita-Mühlstein v Dépt. féd. de justice et police*, Trib. féd., 14 June 1946, (1946) 72-I A.T.F. 407 and *Rosenthal v Eidg. Justiz- und Polizeidepartment*, Trib. féd., 8 Oct 1948, (1948) 74I ATF 346; and compare, on the revocation of Soviet nationality, *Tcherniak v Tcherniak*, Trib. Féd. (2nd Civ. Sect.), 15 June 1928, (1928) 54II A.T.F. 225, 4 Ann. Dig. 62, (1929) 56 Clunet 208, note Noël-Henry, reasoning rejected in *Lempert v Bonfol* (1934) 60 Déc de la Cour féd. suisse 67, 7 Ann. Dig. 290.

145. *McKenzie v Hare* 239 US 299, 311–12 (1915) ('a condition voluntarily entered into, with notice of the consequences'), abrogated by the law of 22 Sept 1922 (Cable Act, 42 Stat. 1021); Candice Dawn Bradbenner, *A Nationality of Her Own: Women, Marriage and the Law of Citizenship* (1998) (thesis, Univ. of Va., 1990 (*Toward Independent Citizenship: Married Women's Nationality Rights and the United States, 1855–1937*). More subtle discrimination continues, especially in family reunification cases: United Kingdom and United States practice requires proof of ability to support non-national family members without necessarily taking into consideration the economic capacity of the intended immigrant; such a requirement is discriminatory insofar as women's average earnings fall below those of men. US: Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, Sec. 423, 22 Aug 1996, 110 Stat. 2107, amended Pub. L. 104–208, Sec. 551(a), 30 Sept 1996, 110 Stat. 3009–675., 8 US § 1183(a) (1999); U.: Statement of Changes in Immigration Rules, HC 395, 23 May 1994, § 281(v).

146. *Miller v Albright* 523 US 420 (1998); *Wauchope v* US *Dept. of State* 985 F.2d 1407 (9th Cir 1993); *United States v Ahumada-Aguilar* 189 F.3d 1121 (9th Cir. 1999); *Lake v Reno* 226 F.3d 141 (2d Cir. 2000); *Benner v Canada (Secretary of State)* [1997] 1 SCR 358; *Dow v Attorney General* [1992] LRC (Const.) 623 (CA Botswana); Federal law on the acquisition and loss of Swiss nationality, art 58a, Facilitated naturalisation of children of Swiss women by birth, adoption or naturalisation, modif. of 20 June 1997, RO 1997, at 2369.

147. *R. v Immigration Appeal Tribunal, ex parte Miller* [1988] Imm. A.R. 358 (CA), aff'g [1988] Imm. A.R. 1 (QB) (Israeli Law of Return); *cf.* Australian decisions rejecting the proposition that the right to claim Croatian (N94/02520, 28 June 1994), Macedonian (V94/01555, 2 Dec 1994) or Portuguese (in the case of a native of East Timor), N93/02313, 12 July 1994 & N93/01612, 21 July 1994) nationality constitutes a 'nationality for purposes of refugee law'. Art 7 of the Irish Nationality and Citizenship Act 1956, 1986 (to be amended by the Irish Nationality Bill 1999, reflecting the terms of the Belfast Agreement of 10 Apr 1998, text published as Cmd. 3883) allows individuals born in Northern Ireland of parents without Irish status to register as Irish nationals without limit of time. Similarly, persons born in the United Kingdom, not otherwise attributed British nationality, who reside there for the first ten years of life are afforded the unconditional right of registration as British citizens, British Nationality Act 1981, c. 61, § 1(4).

148. The plural nationality issue in the refugee context is addressed in *Canada (Attorney General) v Ward* [1993] 2 SCR 689.

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The *Caglar* judgment held that inasmuch as the petitioner did not have (for want of recognition of his employing government) diplomatic status, his possession, involuntary or not, of the nationality of the Republic of Cyprus, and hence Commonwealth nationality, under the Republic of Cyprus Citizenship Law 1967[149] would be asserted against him for purposes of determining which regime of income tax assessment should be applied. The Australian Refugee Review Tribunal likewise treated an asylum seeker from Northern Cyprus as a citizen of Cyprus, albeit discounting the possibility of internal flight alternative:

> Australia, along with the rest of the world—with the single exception of Turkey—does not recognise the existence of the TRNC and I, in concurring with this international view, do not accept that the TRNC can be regarded as his 'country of nationality'. My view is that he is and remains a citizen of Cyprus.[150]

One problem with such treatment is that many inhabitants, born and permanently resident in Northern Cyprus, fall within the definition of national established under the Turkish Republic of Northern Cyprus Citizenship Law[151] but are excluded from Republic of Cyprus nationality either because a parent lacked qualifying status as 'a person of Cypriot origin' or because documentation of facts of birth and parentage satisfactory to the Cypriot authorities is unavailable. It is for each State to determine who are its nationals; however it is not unknown for other States to attribute to a person for its own purposes a nationality that the State in question itself would deny. In *Mahaboob Bibi*[152] the circumstance was that the Mauritian authorities would not accept the petitioner's proof of parentage and refused her recognition of Mauritian nationality, whereas the United Kingdom authorities, holding that she had a Mauritian father and thus Mauritian nationality at the time of that country's independence, refused her British citizenship under the 1981 Act. As in *Levita-Mühlstein*,[153] a party was attributed for purposes of municipal law a foreign nationality that she did not in fact enjoy. In some revocation of nationality cases, defendants, formerly nationals of countries that prohibit dual nationality, seem to have been recognised later as still (or again) possessing a prior nationality. This may relate to facts not clear in the case reports, such as inscription upon family registers,[154] or it may be a matter of administrative

149. As amended: Laws Nos. 43 of 1967, 1 of 1972, 74 of 1983, 19(1) of 1996, 58(1) of 1996, 70(1) of 1996, 50(1) of 1997, 102(1) of 1998, 105(1) of 1998, 65(1) of 1999, 128(1) of 1999.

150. Case N95/07552, 12 June 1996. Cf. *Kadiroglu v Minister for Immigration* [1998] 1656 F.C.A. (1998) (marriage between ethnic Turk and ethnic Greek; asylum refused).

151. Law of 21 May 1993, Resmî Gazete KKTC No. 52, 27 May 1993.

152. *Mahaboob Bibi v Home Secretary* [1987] Imm. A.R. 340; see also *Maury*, Trib. Seine, 20 Jan 1967, 41 ILR 379, (1967) 94 Clunet 893, note Aymond, 41 ILR 378 (refusal by French court to give effect to Vietnamese judgment on French nationality).

153. *Levita-Mühlstein v Dépt. féd. de justice et police*, Trib. féd., 14 June 1946, (1946) 72-I ATF 407 above, n. 144.

154. *Kawakita v United States* 343 US 717 (1952), and some of the Cases concerning Nazi concentration camp guards and members of the Waffen SS: *Fedorenko v United States*, 449 US

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and political convenience. Attribution by one country of the nationality of another will not, of course, assure the admission of such person to the territory to which he or she has thus been assigned, but it may preserve the integrity of the legal principles sought to be applied by the court. It stretches credulity to attribute as an 'effective' nationality that from which the individual in question claims to be a refugee; yet a State or government that is denied recognition may generate a disproportionate number of asylum seekers. As regards personal law, under a rule of immutability of marital regime[155] it has been successfully argued that the personal law of an unwanted country of flight should not be applied.[156] That may not be the case under a rule of partial mutability[157] where the status of pre-existing property as community or separate is deemed unaltered by a change in domicile.[158]

The case law suggests that lack of sovereignty in or recognition of a particular territory will impede some, but not all, rights and obligations of individuals belonging to it. Thus, Palestinian mandate nationality acquired in 1935 served to expatriate a claimant to US nationality.[159] Similarly, for purposes of deportation from the United States it was held that the 'word "country". . . is not limited to national sovereignties in the traditional diplomatic sense'.[160] Yet deportation to (or extradition from) an unrecognised State, or to a State that refuses to acknowledge the prospective deportee's national status, may be impossible. A series of recent cases in the United States has addressed the power of the government to incarcerate indefinitely persons subject to deportation orders under the Illegal Immigration Reform and Immigrant Responsibility Act[161] who cannot be returned either for political reasons or because the country of origin refuses to acknowledge the individual as its national. Some recent appellate cases hold that indefinite or prolonged detention, at least where it has not been shown that the detainee is a continuing

490 (1981); *United States v Breyer* 41 F.3d 884 (3rd Cir. 1994); *United States v Schiffer* 798 F. Supp. 1128 (E.D. Pa. 1992); *United States v Kowalchuk* 773 F.2d 488 (3d Cir. 1985); *United States v Koziy* 728 F.2d 1314, 77 ALR Fed. 363 (11th Cir. 1984).

155. H. Marsh, *Marital Property in Conflict of Laws* (1952), pp. 14, 103 et seq.; Jean-Gabriel Castel, *Canadian Conflicts of Laws*, (1977), vol. 2, pp. 414, 424; Ernst Rabel, *Conflict of Laws*, 1958, vol. I, pp. 380–91, 'The Problem of Mutability: Change of Personal Law During Coverture'; Scoles, 'Choice of Law in Family Property Transactions', (1929 II) 209 *Rec. des cours* 13–93, 28–35; J. K. Grodecki, ch. 8, 'Intertemporal Conflict of Laws', vol. III, *Private International Law, International Encyclopedia of Comparative Law* (1976), pp. 26–28.

156. *Martini v Creyssac*, Cass. civ. (1st Ch.), 25 June 1974, (1975 II) Dalloz.189 (holding that Nachat Martini, having the status of refugee in France, his succession would not be determined by article 238 of the Syrian Code of personal status but by French law).

157. *Home State Bank v Fuell* 654 F. Supp. 113 (DPR 1987).

158. *Real v Simon* 510 F.2d 557 (5th Cir. 1975); petition for rehearing denied 514 F.2d 738 (5th Cir. 1975); principle set out in *In re Bach* 145 Misc. 2d 945, 548 NYS 2d 871 (NY County 1989).

159. *Kletter v Dulles* 111 F.Supp. 593 (DDC 1953); the petitioner had previously been found not to possess British nationality, *R. v Ketter* [1940] 1 KB 787.

160. *Rogers v Cheng Fu Sheng* 280 F.2d 663 (DC Cir. 1960), citing *United States ex rel. Moon v Shaughnessy* 218 F.2d 316 (2d Cir. 1954).

161. Pub. L. 104–208, 110 Stat. 3009 (1996).

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danger to the public, violates due process guarantees;[162] until the Supreme Court addressed the issue in June 2001 others had held the contrary;[163] the US Supreme Court granted certiorari in the *Ma*[164] and *Zadvydas*[165] cases on 10 October 2000 to resolve the conflict.

As with ethnic Albanian Kosovars who continue to find themselves attributed Yugoslavian nationality, conflicts could occur with respect to persons falling within the scope of the nationality laws of other sub-States like Transdniestria[166] and the Republika Srpska[167] who would be subject also to nationality laws of greater scope enacted by internationally-recognised sovereign States. Like the inhabitants of the Republic of Somaliland (Hargeisa), those self-proclaimed breakaway entities while having internally-effective legal systems lack international and diplomatic pretence and do not issue passports. The problem for *ressortissants* of many such entities appears to be that so long as there are no pressing economic and commercial reasons to the contrary, the countries of intended travel are likely to decline travel documents issued by authorities they refuse to recognise.

E. Disabilities attributable to non-recognition

Certain disabilities which can arise from the mere fact of alienage, most notably the right to own land[168] and to engage in economic activity, might be attenuated by possession of a nationality which affords particular

162. *Zhislin v Reno* 195 F.3d 810 (6th Cir. 1999) (Ukrainian origin, stateless; deportation order to 'Israel or Ukraine' unenforceable; refused entry on arrival in Dominican Republic with tourist visa); *Ma v Reno* 208 F.3d 815 (9th Cir. 2000) (Cambodia); also *Sengchanh v Lanier* 89 F.Supp.2d 1356 (N.D.Ga. 2000) (Laos and Thailand); *Kuhai v INS* 199 F.3d 909 (7th Cir. 1999) (Uzbekistan and Ukraine).

163. *Ho v Greene* 204 F.3d 1045 (10th Cir. 2000) (Vietnamese) and *Carrera-Valdez v Perryman* 211 F.3d 1046 (7th Cir. 2000) (citing cases from other circuits) (Cuban nationals who arrived during the 1980 Mariel boatlift), both citing *Shaughnessy v Mezei* 345 US 206 (1953); Kalman Seigel, 'Stateless, He Faces Life on Ellis Island', *N.Y. Times*, 23 Apr 1953, pp. 1, 15 (Mezei was later administratively released).

164. *Ma v Reno*, 208 F.3d 815 (2000), vacated and remanded sub nom. *Ashcroft v Ma*, US Sup. Ct., Case No. 0038, decided 28 June 2001 (instructing the courts below to give due weight to the likelihood of successful future negotiations).

165. *Zadvydas v Underdown* 185 F.3d 279 (5th Cir., 1999), reversed sub. nom. *Zadvydas v Davis*, 121 S.Ct. 2491 (2001).

166. Law of 25 Aug 10992.

167. Law on Serb Citizenship (Sluzbeni Glasnik R.S., No.19, 18 Dec 1992), amendment, No. 02–874/96 (SGRS, No. 16, 22 July 1996), superseded by Law on Citizenship 1/97 of Bosnia and Herzegovina of 16 Dec 1997 (S.G. BiH, No. 4/97, Sluzbene Glasnik Federacije BiH, 23.12.97, vol. 1, No. 4), promulgated in conformity with the Dayton Accords, and see attachment to letter dated 14 Oct 1997 from Secretary-General of the United Nations to the President of the Security Council, Doc. S/1997/794, 14 Oct 1997, regarding attempt by Republika Srpska to exact visa fees of entrants from Bosnia-Herzegovina.

168. *Mager v Grima* 49 US (8 How.) 490 (1850) (allowing state tax upon the right of an alien to receive property as heir, legatee, or donee of a deceased person); *In re Apostolopoulos' Estate* 68 Utah 344 250 P. 469 (1926), vacated due to consular treaty by 68 Utah 344, 253 P. 1117 (1927); *Takeuchi v Schmuck* 206 Cal. 782, 276 P. 345, 1929 (S.Ct. 1929).

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treaty,[169] regional trading arrangements or World Trade Organization rights. Some restrictions may be facially nondiscriminatory[170] but may in fact be enforced selectively, in a manner that evidences racist or politically-biased motivation.[171] Escheat may, or may not, be avoided by corporate,[172] lease,[173] contract,[174] assignment[175] or trust[176] intermediation, or by transmission to an eligible titleholder prior to action in escheat by the State.[177] Still, the mere fact of uncertainty can render a title unmarketable[178]; and complicity in evasion of the disability[179] can lead to prosecution and escheat of the property.[180] Lack of recognition of status (because of non-recognition of the sovereign status of the nationality State) will usually but not always preclude access to treaty benefits. Thus United Kingdom income tax law grants certain personal exemptions to British, Irish and Commonwealth nonresidents but not to other nonresident taxpayers[181]; persons who claim the nationality of the Turkish Republic of Northern Cyprus and who also are deemed by the Republic of Cyprus to have its nationality would thereby qualify as Commonwealth citizens entitled to the exemption.[182] Persons born in the Falkland Islands of at least one parent a citizen

169. *Schultze v Schultze* 144 Ill. 290, 33 N.E. 201 (S.Ct. 1893) (Hanseatic Republic of Bremen).

170. *Webb v O'Brien* 263 US 313 (1923), (California Alien Land Law; ineligible aliens may not possess or enjoy land); *In re Estate of James* 192 Neb. 614, 223 N.W.2d 481 (S.Ct. 1974) (Syrian heirs entitled to full value of escheated land).

171. *Sei Fujii v California* 38 Cal.2d 718, 242 P.2d 617, (S.Ct. 1952) (holding unconstitutional state's alien land law, and citing the United Nations Charter); *Oyama v California* 332 US 633 (1948) (failure to file annual report required of alien guardians of minors owning agricultural land).

172. *State v Kurita* 136 Wash. 426, 240 P. 554 (S.Ct. 1925); but compare *California Delta Farms, Inc. v Chinese American Farms, Inc.* 207 Cal. 298, 278 P. 227 (S.Ct. 1929).

173. *State v Motomatsu* 139 Wash. 639, 247 P. 1032 (S.Ct. 1926) (leasehold interest for a period of ten years); *State v Kusumi* 136 Wash. 432, 240 P. 556 (S.Ct. 1925).

174. *Takiguchi v Arizona* 47 Ariz. 302, 55 P.2d 802 (S.Ct. 1936).

175. *Saiki v Hammock* 207 Cal. 90, 276 P. 1015 (S.Ct. 1929).

176. *Shiba v Chikuda* 214 Cal. 786, 7 P.2d 1011 (S.Ct. 1932); Jue *v* Jue, 163 Cal. App. 2d 231, 329 P.2d 560 (C.A. 2d Dist. 1958) (US-born daughters of Chinese immigrants as trustees for alien members of family); *Kaneda v Kaneda* 235 Cal. App. 2d 404, 45 Cal. Rptr. 437 (C.A. 1st Dist. 1965) (resulting trust); *People ex rel. Kunstman v Nagano* 389 Ill. 231, 59 N.E.2d 96 (S.Ct. 1945) (disallowing private prosecution against trust following state abstention); but compare *State v O'Connell* 121 Wash. 542, 209 P. 865 (S.Ct. 1922) (British subject; trust held violative of anti-alien statute).

177. *State ex rel. Atkinson v World Real Estate Commercial Company* 46 Wash. 104, 89 P. 471 (S.Ct. 1907); *Abrams v State of Washington* 45 Wash. 327, 88 P. 327 (S.Ct. 1907); *Branham v Minear* 199 S.W.2d 841 (Tex. Ct. Civ. App. 1947).

178. *Caparell v Goodbody* 132 NJ Eq. 559, 29 A.2d 563 (Chancery 1942) (resident enemy alien in time of war).

179. *Calzada v Sinclair* 6 Cal. App. 3d 903, 86 Cal. Rptr. 387, (CA 2nd Dist. 1970) (lawyers as intermediaries).

180. *Babu v Petersen* 4 Cal. 2d 276, 48 P.2d 689 (S.Ct. 1935); *Mitsuuchi v Security-First National Bank of Los Angeles* 103 Cal. App. 2d 214, 229 P.2d 376 (CA 2nd Dist. 1951) (criticising State prosecution of case 'without a scintilla of evidence').

181. Income and Corporation Taxes Act 1988 (c. 1), Sec. 278.

182. This follows from the judgment in *Caglar v Billingham (Inspector of Taxes)* [1996] STC (SCD) 150, [1996] 1 LRC 526.

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or settled there will possess both British Dependent Territories Citizenship with the right of abode in the United Kingdom,[183] and Argentine nationality.[184] Although both the Iranian and the United States governments have at various times averred that their 1955 Treaty of Amity, Economic Relations and Consular Rights[185] has been 'nullified',[186] the International Court of Justice, in its Order of 12 December 1966, found otherwise,[187] and the Department of State continues to include Iranian nationals among those eligible to receive treaty trader and treaty investor visas.[188] The status of nationals of nations which are or have been divided and where sovereignty is in dispute, notably Germany, Vietnam and Korea, who in almost all cases would also meet the criteria for the nationality of the other State, occasionally created anomalies with respect to personal law.[189]

More commonly nationals of unrecognised States are treated like stateless persons who for visa and refugee purposes (notably the 'internal flight alternative'[190]) happen to have a right of return to a particular place of origin.[191] Along with non-availability of reciprocal visa eligibility and visa waiver provisions,[192] this may deprive them of the benefit of double taxation and social security totalisation agreements for wages earned during business travel or residence. Whether admission to a particular country is granted at all may depend on diplomatic and political concerns: the traditional right of every sovereign to admit or deny access,[193] subject only to limited human rights family-reunification[194] and refugee law *non-refoulement*[195] conditions.

183. British Nationality Act 1981, c. 61, as amended by British Nationality (Falkland Islands) Act 1983, c. 5, s 4(3); SI 1986/948.

184. Law 21.795, Ley de nacionalidad y ciudadanía, derogación de la ley 346, 18.05.1978, BO 17 V 78.

185. 8 USYT 899, T.I.A.S. 3852, 284 UNTS 93 No. 4132.

186. eg, *I.C.J. Oil Platforms case (Iran v United States)*, US Counter-Memorial of the respondent Reply to Applicant's Statement of the Facts, ('the treaty was in effect nullified by the 1979–80 Iran hostage crisis and by Iranian pirating activities in the Gulf').

187. 'Parties do not contest that the Treaty of 1955 was in force at the date of the filing of the Application of Iran and is moreover still in force.'

188. 9 FAM 41.51 Exhibit I.

189. *Trinh Dinh Cuong v Le Thi Hong Mai*, Trib. civ. Liège (3rd Ch.), 30 Oct 1981, unreported, above n. 120; for sovereignty of divided states in general, see Verhoeven, *La reconnaissance internationale*, above n. 77, pp. 36–52.

190. Hugo Storey, 'The Internal Flight Alternative Test: The Jurisprudence Re-examined', (1998) 10 *Int'l J. Refugee L.* 499.

191. Cf. *Thabet v Minister of Citizenship and Immigration* (1998) 160 DLR (4th) 666.

192. Council Regulation (EC) No 574/1999 of 12 Mar 1999 determining the third countries whose nationals must be in possession of visas, OJEC L 072 , 18 Mar 1999, pp. 2–5; Proposal for a Council Regulation,4 Apr 2000, Document 500PC0027.

193. *Saavedra Bruno v Albright* 197 F.3d. 1153 (DC Cir. 1999), citing *The Chinese Exclusion Case* (*Chae Chan Ping v* US) 130 US 581, 609 (1889).

194. *Abdulaziz, Cabales and Balkandali v UK*, ECHR, 28 May 1985, Ser. A, No. 94d; also *R. v Home Secretary, ex parte Rofathullah* [1989] QB 219.

195. Convention relating to the status of refugees, Geneva, 28 July 1951, (1954) 189 UNTS 137, No. 2545, art 33(1); Protocol, 31 Jan 1967, (1967) 606 UNTS 267, No. 8791; UNHCR Executive Committee Conclusions No. 6 (XXVIII) (1977), *Non-refoulement.*

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Private-law effects of non-recognition of a State or government of nationality may depend, in fact, upon the circumstances of that State's succession. In terms of economic effects especially, United Nations,[196] enemy assets legislation,[197] trade embargoes[198] and diplomatic isolation will, as they are designed to do, cause specific hardships, impeding normal succession and donation relationships among members of transnational families.

It is indeed economic sanctions and trade embargoes that are most likely to impact upon personal lives of individuals, not withdrawal of consular services. During the two wars, sequestration was frequently imposed by reason of nationality alone, and that irrespective of residence or simultaneous nationality of a friendly or allied State.[199] By the time of World War II, United States courts were more inclined to look at voluntariness as a relevant factor[200]; a Netherlands tribunal looked at effective nationality.[201] As the Iran-US Claims Tribunal cases showed, in the modern era the sheer scale of population movements and transnational family relationships have made it difficult to assimilate individuals with nationality or national origin of an unrecognised political entity to the traditional 'enemy alien'. This may even be difficult where that individual is politically active in two adversarial

196. Security Council Resolutions 661, 6 Aug 1990 (Iraq); 883, 11 Nov 1993 (Libya), 1054, 26 Apr 1996 (Sudan); 1160, 31 Mar 1998 (Serbia); 1127, 28 Aug 1997 & 1173, 12 June 1998 (Angola); 1267, 15 Oct 1999 (Afghanistan).

197. 31 CFR 500 (1999) (Foreign assets control regulations): 31 C.F.R. 515 (Cuba); 31 CFR 535 (Iran); 31 CFR 537 (Burma); 31 CFR 538 (Sudan); 31 CFR 550 (Libya); 31 CFR 560 (Iranian transactions); 31 CFR 575 (Iraq); 31 CFR 585 (Federal Republic of Yugoslavia (Serbia and Montenegro) and Bosnian Serb controlled areas of the Republic of Bosnia and Herzegovina); 31 CFR 590 (UNITA (Angola)).

198. eg for USA.: 15 CFR 746 (2000) (Embargoes and other special controls), Cuba, Iraq, Libya, North Korea, Iran, Rwanda, Serbia, Kosovo, and Montenegro; for United Kingdom: Iraq and Kuwait (United Nations Sanctions) Order 1990, S.I. 1990/1651, No.2 Order S.I. 1990/1987, Amendment Order, 1990/1768, Second Amendment Order S.I. 1990/2144 & (Amendment) Order 1998, S.I. 1998/3163; Libya (United Nations Sanctions) Order 1992, S.I. 1992/975 & 1993, S.I. 1993/2807; Serbia & Montenegro (United Nations Sanctions) Order 1993, S.I. 1993/1188, Former Yugoslavia (United Nations Sanctions) Order 1994, S.I. 1994/2673, Federal Republic of Yugoslavia (United Nations Sanctions) Order 1998, S.I. 1998/1065 & (Amendment) Order 1999, S.I. 1999/280; Angola (United Nations Sanctions) Order 1993, S.I. 1993/2355; Angola (United Nations Sanctions) Order 1997, S.I. 1997/2572; *but see* Extraterritorial US Legislation (Sanctions against Cuba, Iran and Libya) (Protection of Trading Interests) Order 1996, S.I. 1996/3171. *United States v Fernandez-Pertierra*, 523 F.Supp. 1135 (S.D. Fla. 1981) (Cuba sanctions and Trading With the Enemy Act); *Crosby v National Foreign Trade Council*, 530 US 363 (2000) (Burma sanctions; federal pre-emption); *Shanning International Limited (in liquidation) v Lloyds TSB Bank plc*, Comm'l Ct., 17 Dec 1999, LEXIS ENGGEN Lib. (Iraq sanctions); *Queen, ex parte Centro-Com Srl v H.M. Treasury* [1997] ECR I-81; *R. v H.M. Treasury, ex parte Centro-Com srl*, Times L. Rep., 7 Oct 1993 (Q.B.D.) (Yugoslavia sanctions).

199. Above n. 112; *Techt v Hughes* 229 NY 222, 128 NE 185 (1920) (Cardozo, J. Eligibility to inherit was the only issue at bar).

200. *Guessefeldt v McGrath*, 342 US 308 (1952); *Nagano (Kaku) v McGrath*, 187 F.2d 759 (7th Cir. 1951), aff'd by Supreme Court, divided 4–4 sub nom. *McGrath v Nagano*, 342 US 916 (1952).

201. *Boske-Loze v Nederlands Beheers Institut*, Council for the Restoration of Legal Rights, 7 Nov 1947, N.O.R. 1947, 4th year, No. 1066, 14 Ann. Dig. 124.

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jurisdictions. Contemporary views of human rights make racial targeting and enemy characterisation based solely upon ancestry and national origin unsupportable: to this extent, the recognition status of the political entity underwriting a particular nationality is of diminished importance. Such advantages and privileges as depend upon recognition, essentially treaty-based rights, may be lost; those related to fundamental human rights cannot be. The relationship between sanctions and migration pressures, and the relevance of the mere fact of non-recognition of sovereignty to the law of asylum are further complicating elements.

F. Conclusions

The simple fact of a political entity's non-recognition as a State deprives the individual connected with it of some, but not all, the rights associated with its nationality. Where there are conflicting claims to sovereignty, there may be anomalous attribution of rights and obligations. New human rights norms, and the acceptance of demographic pluralism by the major States of inward migration, has avoided in the post-World War II era some of the hardship and injustice the Minorities Treaties[202] failed to remedy after World War I. Non-recognition of the sponsoring government may equate *de jure* if not *de facto* to denial of status at least for some purposes, with the further anomaly that certain affected persons are offered or imposed an unwanted identity. For some, mainly economic, functions the normal reference to nationality may be subject to circumvention. The multiple functions that nationality serves—and the multiple meanings it thereby attracts—only serve to highlight the fact that nationality as legal status is more often a matter of political pragmatism and expedience than of logic and consistency.

202. Including Minorities Treaty (Poland), Versailles, 28 June 1919, 112 *State Papers* 232, 13 *Martens* (Ser. 3) 504; list of treaties and historical summary appear in Felix Ermacora, 'The Protection of Minorities Before the United Nations', (1983-IV) 182 *Rec. des cours* 247, 257–63.

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