Chapter Five

Access to Nationality

Although access to nationality, especially for certain groups, is important from the point of view of international law it is still predominantly regulated by national laws. This section does not aim at reviewing all possible modes of acquisition of nationality according to municipal law. Instead, it will focus on the main principles of acquisition of nationality so far adopted by States as they are reflected in international law.

5.1. *Jus soli* and *jus sanguinis*

According to Hudson the links of attribution of nationality at birth are, according to municipal law, either descent (jus sanguinis) or birth on the territory (jus soli) or a combination of these links. However, he concludes that “[i]t may be a moot question whether this rule merely constitutes usage or whether it imposes a duty on States under customary international law.” *Jus soli* and *jus sanguinis* are referred to in a number of international conventions dealing with nationality.

Article 3 of the Harvard Draft declares that a State may not confer its nationality upon a person except upon the basis of *jus soli* or *jus sanguinis*. However, it does not impose a duty upon a State to grant nationality on the basis of either of these principles. Article 9 of the Draft only imposes the duty on a State to confer its nationality at birth upon a person born within its territory if that person does not acquire another nationality at birth.

Article 15 of the Hague Convention on Nationality of 1930 provides:

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[W]here the nationality of a State is not acquired automatically by reason of birth on its territory, a child born on the territory of that State of parents having no nationality, or unknown nationality, may obtain the nationality of the said State.

Thus, the Hague Convention following the approach of the Harvard Draft provides only for the right of a State to grant nationality *jus soli* for otherwise stateless children. Also regrettably, the Convention did not address problems of denationalization or deprivation of nationality upon transfer of territory, which were prevailing causes of statelessness at that time.4

Developments in nationality regulation, *inter alia*, acknowledgment of the rights of the child and eradication of statelessness, become evident when looking at the ECN. Article 6 ECN is devoted to application of the principles of *jus sanguinis* and *jus soli*. The Convention has been applauded for being the first international treaty indicating what grounds for acquisition of nationality are acceptable other than in cases of statelessness alone.5 Article 6 provides that nationality is acquired by children one of whose parents possesses the nationality of a State Party at the time of the birth of those children. Thus, the *jus sanguinis* principle has been proclaimed as the basic rule for acquisition of nationality. The nationality of a father and mother has equal importance in determining nationality. This provision of the Convention is in conformity with different international instruments on equal treatment of women in relation to nationality. In addition it also indirectly supports instances of multiple nationality arising but at the same time corresponds to a similar provision in Article 9(2) of CEDAW.

In cases when a child does not acquire nationality *jus sanguinis* then the *jus soli* principle is applicable according to Article 6 (2). This provision follows the principle proclaimed in Article 4 (b), i.e., that statelessness is to be avoided.

In general, the *jus soli* principle currently raises a number of problems in practice. Autem has noted that application of the principle of *jus soli* inevitably leads to a complex relationship between State prerogatives and individual rights, and falls within a sensitive area of national life.6 Therefore, an unconditional *jus soli* principle has very limited application. In turn States opt for a conditional *jus soli* principle, for instance, the parents have been domiciled in a State for a prescribed period or they are stateless, the parents are unknown or the child is

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