Chapter Seven

Human Right to Nationality

A tendency to place humankind at the centre of international ethics has made protection of fundamental rights a major concern of contemporary international law and no longer left to the discretion of States. Human rights have a different status depending on values, their rank in the context of natural law as well as the definition of their rank in various national legal orders via constitutions or disposition of constitutions in relation to natural rights above constitutions. This entails that not all human rights are protected to the same extent and in case of different circumstances. The human rights aspect thus becomes important in certain cases of entitlement to nationality which will be outlined in further sections.

7.1. Article 15 of the Universal Declaration

It has been argued that human rights do not form a conceptual basis for nationality. However, their component in limiting State discretion is increasing. This leads to the question whether and in which cases one can rely on human rights and claim the right to a specific nationality. To answer these questions this section is devoted to Article 15 of the Universal Declaration of Human Rights (Article 15 UDHR). Developments in the realm of human rights have led to a more general question, namely, whether a general right to nationality exists under international law and to whom it belongs. The basis for such discussion is Article 15 UDHR which states:

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

The drafting history of this Article suggests that it is a result of broad compromise. At the time of drafting Professor Lauterpacht suggested that “[e]very person

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2 Ibid., 13.
shall be entitled to the nationality of the State where he is born.”\(^3\) He aimed at finding a formulation which would provide the effective right to a nationality. It is regrettable that, during drafting, the significant clause on protection of persons irrespective of whether they are de facto or de jure stateless disappeared from the text.\(^4\) The present formulation does not enable far reaching interpretations. Nevertheless, in comparison to existing treaty law at that time (the 1930 Hague Convention) this Article seems to be ground-breaking in international law on nationality. As argued by Ziemele and Schram:

[B]y including Article 15 in the UDHR, its framers emphasized the human rights aspect of nationality. It suggests a totally different approach to nationality. By providing that every individual has the right to a nationality, it introduces the individual as an actor in relation to matters traditionally decided exclusively by States.\(^5\)

Article 15 UDHR is not intended to confirm entitlement to any particular nationality.\(^6\) This has led some writers to adopt a rather sceptical approach to the provisions of Article 15. For instance, Weis argued that:

[I]n view of the exclusive competence of States to regulate nationality, and in the absence of effective joint action of States for the elimination of statelessness, this pronouncement must be regarded as being of a promissory and rather platonic nature.\(^7\)

A similar view is held by Verzijl who argued that this is a right without substance as long as it is not transposed into concrete treaty provisions. Without transposition the principle has no real value.\(^8\) Strictly speaking Verzijl is right. However, at the time of writing he could not have envisaged general developments in the field of human rights. Many of these started in the form of a declaration and

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4 Van Panhuys Haro Frederik, *The Rôle of Nationality in International Law: An Outline* (Sijthoff: Leyden 1959) 221–222. This was a proposal by the Australian delegation in the Third Committee of the General Assembly. Australia suggested inserting the following clause “everyone has the right to nationality or to an equivalent status under the protection of the United Nations”. General information on the drafting process is available at <http://www.un.org/depts/dhl/udhr/meetings_1948_3rd_3c_ga.shtml> accessed 27 January 2012.


