CHAPTER 2

Deprivation of Citizenship, Statelessness, and International Standards

1 Introduction

The power of a state to set rules for the acquisition and loss of its nationality is regarded as an important aspect of its sovereignty and a manifestation of statehood that is necessary for the identification of a state as 'state' within the international community. Sovereignty, often defined as the supreme authority in a domestic political context, remains the organizing principle of the international community and a confirmation of the institutional arrangement of the world into separate independent units in the Westphalian tradition.¹ Max Weber’s definition of the state as a human community that claims successfully the monopoly of the legitimate use of physical force within a given territory emphasises the state’s claim of authority over the citizens inhabiting its jurisdiction.² This vision of the world rests not only on a neat partition of territory into separate jurisdictions but also on a neat attribution of individuals inhabiting this space to single jurisdictions, thus rendering space and its inhabitants manageable and governable.³ Because of the foundational role bestowed upon the principle of state sovereignty, the international community has been interested in deprivation of citizenship primarily because of its potential to disrupt existing international equilibriums by creating statelessness (individuals not belonging to any jurisdiction) or refugee crises (individuals fleeing their own jurisdiction). For a very long time, the efforts of the international community in the field of nationality have focused on trying to eradicate dual and multiple

² P. Lassman and R. Speirs (1994) Weber: Political Writings, Cambridge University Press; M. Weber’s essay ‘Politics as Vocation’ in which he gives this definition of the state was originally delivered as a speech at Munich University in 1918, an online version is available at http://www.sscnet.ucla.edu/polisci/ethos/Weber-vocation.pdf.
nationality, and proclaimed them to be ‘great evils’.\textsuperscript{4} As noted by Spiro ‘although international law regulated nationality practice as a matter of conflicts of law, it has largely demurred from dictating to states the terms of their membership rules.’\textsuperscript{5} This goes some way towards explaining why international law places the attribution of nationality within the domain of state sovereignty; this approach is also indicative of discrepancies between the reality of people moving and building attachments to more than one jurisdiction and the normative predicaments upon which states try to construct reality.

Throughout the 20th century, the creation of a human rights system of protection has been an important development in qualifying the relationship between state sovereignty, on one hand, and deprivation of citizenship and the creation of statelessness, on the other. The development of international human rights law has meant that the manner in which states treat their citizens within their state borders is no longer an issue excluded from the scrutiny of the international community.\textsuperscript{6} As this chapter will discuss, the extent to which the rules of citizenship attribution have been emancipated from state sovereignty remains a complex question. According to Spiro, it is possible to talk about an international law of citizenship that circumscribes the power of the state to decide unilaterally the rules of citizenship attribution in the fields of citizenship acquisition and dual nationality. Nevertheless, he cautions that the prospective norms of the ‘international law of citizenship’ are ‘provisional, fragile, and unstable’.\textsuperscript{7} To this, one may add the fact that the displacement of nationality as the main organizing principle of an individual’s protection in favour of one’s humanity holds some unfulfilled promises, as evidenced by the continuing relevance of statelessness as a legal category.

This chapter examines the interaction of international legal standards with the power of states to deprive persons of their citizenship and scrutinizes the capacity of international law to mediate between the interests of states and


\textsuperscript{7} Spiro (2011) p. 718.