Chapter 3

Nationality in Municipal and International Law

This chapter summarises the significance and consequences of nationality in municipal and international law in order to allow conclusions to be drawn about the consequences of current state practice related to multiple-nationality. Specific issues related to multiple nationality as a phenomenon are largely dealt with in the following chapter. As multiple nationality is not a thing in itself, but in fact the juxtaposition of two or more separate statuses or relationships which exist independently of the other, the underlying nationality must be understood on its own, in order for conclusions to be drawn about its consequences and the consequences of multiple nationality. One aspect of the questions raised here is whether state practice toward multiple nationality has implications for the meaning and consequences of the underlying nationality itself, both on the municipal and the international level. The following summary cannot be seen as providing an exhaustive précis of nationality in international law, but is submitted as a thorough overview of the issues raised by the topic relevant in the current context.

The chapter is divided into a separate examination of nationality in international law, and nationality in municipal law. It will be seen that there are important differences between nationality in municipal law and in international law. For municipal and international law, both the definition of, and rules in relation to, nationality, as well as the consequences of nationality, must be considered.
A. INTRODUCTION AND OVERVIEW

Differing views about the nature of nationality and its relationship to issues of rights and duties lead to different opinions as to the definition of nationality and its consequences in municipal law. While commentators agree that nationality is an important basis for aspects of both municipal and international law, they cannot agree whether it is a status or a relationship. In fact both ideas seem applicable.¹

Santulli remarks that a relationship with the state is not a component of nationality, but a condition of such nationality.

Weis states the general rule, with which all experts seem to agree: “nationality as a term of municipal law is defined by municipal law”.² Used in this way, each state can have its own definition of nationality, and dictate its consequences.³ Weis then proposes a general characterisation of nationality on the municipal level as a “specific relationship between individual and State conferring mutual rights and duties”.⁴ Here however, Randelzhofer disagrees, noting that nationality may be a condition for such rights and duties, but is not their source. He points to the fact that municipal legislation on nationality is confined to the attribution of nationality to human beings, and does not deal with consequential rights and duties.⁵ Weis thus sees the status/