1 Nationality Law and Immigration Law

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I. Introduction

Immigration law characteristically determines the circumstances and conditions in and on which those who are not citizens of a State are permitted to enter and remain within it. The right of a citizen, subject to very few exceptions, to enter and reside in his own State is widely regarded as axiomatic. Article 3(2) of the Fourth Protocol to the European Convention on Human Rights simply proclaims that ‘[n]o one shall be deprived of the right to enter the territory of the state of which he is a national’. An anomaly arises in the European Union since Article 18 of the Treaty on the Functioning of the European Union, headed ‘Non-discrimination and Citizenship of the Union’, provides that ‘[w]ithin the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited’. Since freedom to enter and reside in any Member State is a matter within the scope of application of the treaties, Member States have committed themselves to prohibit, subject to any special provisions contained in the founding treaties, discrimination between their own nationals and nationals of other Member States as regards admission to and residence in their territories. Moreover, the Council of Europe Convention on Nationality does not only establish principles and rules relating to the nationality of natural persons and rules regulating military obligations in cases of multiple nationality, to which the internal law of States Parties shall conform but records that ‘the aim of the Council of Europe is to achieve greater unity between its members’.

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II. Traditional International Law

It remains the case that outside Europe national rather than international rules determine who is, and who is not, to be considered as a national of a State. Nevertheless, international rules determine the extent to which one State must accept another’s determination that an individual is to be treated as a national of the second State.2

1. The Tunis-Morocco Nationality Decrees Case

The Permanent Court of International Justice itself, in the Case concerning the Nationality Decrees issued in Tunis and Morocco stated that the question whether a matter was solely within the reserved domain is essentially a relative one, which depends on the state of international relations. In circumstances in which Great Britain enjoyed capitulatory rights against the Bey of Tunis, so that the latter could not affect British subjects with nationality, it was not open to France to impose its nationality upon British subjects presumed to be subjects of the Bey.3

III. Modern Trends

In the period since 1972, some change has taken place in respect of the freedom of States with respect to the grant of nationality. There has been a reduction in the significance of the linkage between nationality and allegiance: a reduction lamented by those who oppose the increase in multiple nationality that has accompanied it.4 Moreover the substantial growth in world migration which taken place in the intervening years has tended to strengthen the nexus between nationality and the grant of passports and rights of residence.5

1 European Convention on Nationality (signed 6 November 1997) ETS 166.
3 Nationality Decrees Issued in Tunis and Morocco (French Zone) (Advisory Opinion) PCIJ Rep Series B No 4.
4 On 16 October 2010, the disclosure of the fact that the then Dutch Christian Democrat Deputy Minister for health and sport Marlies Veldhuijzen van Zanten-Hyllner is a dual national prompted Geert Wilders, leader of the PVV, to call for the resignation of the deputy minister.
5 Randall Hänsen and Patrick Weil, Towards a European Nationality: Citizenship, Immigration and Nationality Law in the EU (Palgrave MacMillan 2010), write in the opening sentence of