Multiple Nationality
Peter J Spiro

Content type: Encyclopedia entries
Product: Max Planck Encyclopedias of International Law [MPIL]
Module: Max Planck Encyclopedia of Public International Law [MPEPIL]
Article last updated: April 2008

Subject(s):
Act of state — Jurisdiction of states, nationality principle — State practice — Customary international law

Published under the auspices of the Max Planck Institute for Comparative Public Law and International Law under the direction of Professor Anne Peters (2021–) and Professor Rüdiger Wolfrum (2004–2020).
A. Sources and Basic Problems

1. Concept and Sources

1 Multiple → nationality is the condition in which individuals hold the nationality of more than one State (see also → Option of Nationality).

2 There are three significant sources of multiple nationality. First, multiple nationality may result from the interplay of different birthright nationality laws under which citizenship at birth can be ascribed both by location (the rule of ius soli) and by parentage (ius sanguinis), so that a child born in one State to a parent holding citizenship in another State will hold both nationalities at birth (see also → Emigration; → Immigration; → Refugees). Second, dual nationality may result where a child is born of parents of different nationalities, if the relevant States allow ius sanguinis transmission. Third, multiple citizenship may result where an individual undertakes naturalization in a State without relinquishing or forfeiting prior nationalities. This again may result in the acquisition of more than two nationalities, in cases of serial naturalization or where a person who is a dual citizen by birthright naturalizes in a third State.

2. Theoretical Challenges

3 Traditional conceptions of international law worked from the ideal-type of strict boundary delimitations among individuals analogous to boundary delimitations of territory. The breakdown of such segmentation among individuals in the form of dual nationality undermines the traditional order-management logic of international law (see also → General International Law [Principles, Rules and Standards]).

4 Under that logic, dual nationality was a natural source of conflict between States in two contexts: where two States asserted claims to individuals as a resource and where one State sought to protect an individual against another State of nationality. The first challenge most clearly emerges in the context of military service, where two States of nationality seek to conscript the same individual. The second poses a challenge to the institution of → diplomatic protection, at least in a pre-human rights context in which a State was not constrained in the treatment of its own nationals (see also → Human Rights; → Sovereignty). In the context of dual nationality, the premise of sovereign prerogative is not easily reconciled with the principles of → State responsibility constraining the treatment of another sovereign’s nationals. A State could not be free to do as it pleased with its own nationals (formerly the case under international law) at the same time that it was constrained by the rules of State responsibility; the two principles collide when confronted by the dual national: ‘[I]f one state were allowed to prevail over another in terms of the latter’s treatment of its own nationals ... this would arguably constitute a direct diminution of the latter’s sovereignty’ (Boll 119 ; see also → States, Sovereign Equality). These theoretical challenges have broken down as the foundations of international human rights law have come to impose limitations on sovereign prerogative. However, they inform the historical problematization of multiple nationality.

B. Historical Treatment

1. State Practice Resulting in Dual Nationality

5 Dual nationality was not a pressing issue in a world of low mobility (see also → Movement, Freedom of, International Protection). To the extent the vast majority of individuals were born, lived, and died in the same realm, early modern Europe did not supply the conditions to create any substantial incidence of dual nationality. American independence and → migration from Europe created such conditions. Dual nationality emerged as a serious threat to inter-State order, with States pressing competing claims on
individuals or attempting to protect nationals from the claims of another State of nationality. In the 19th and early 20th centuries, dual nationality arose most prominently as a result of the naturalization by the United States of America (‘US’) of individuals from States refusing to recognize the possibility of expatriation. Under the feudal doctrine of perpetual allegiance (‘once a subject, always a subject’), as of the beginning of the 19th century most European States refused to accept the naturalization of subjects before another sovereign and continued to claim them as their own. As noted by a 1954 → International Law Commission (ILC) study on multiple nationality, States did not want ‘to release a national from his allegiance and thereby lose a potential soldier’ (UN ILC Special Rapporteur Roberto Córdova ‘Report on multiple nationality’ 44). Conflicts resulted—the war of 1812 among them—when European States insisted on extracting military service obligations from emigrants who had acquired US citizenship. Dual nationality also proved a consistent irritant to US bilateral relationships with European States when emigrants returned to their homelands for temporary visits to find themselves subject to conscription. The US would seek to protect these naturalized citizens against the claims of their original homelands.

2. State Practice to Reduce the Incidence of Dual Nationality

By way of attempting to reduce the incidence of dual nationality and attendant controversies, the US and a number of European States entered into bilateral agreements and other arrangements allowing for the transfer of nationality in most cases (see also → Customary International Law; → State Practice). The Bancroft Treaties of the mid-19th century with German and Scandinavian States accomplished this by treaty, providing for the subsidence of original nationality for so long as an emigrant maintained residence in the US (original nationality would revive for those who returned permanently to their homelands). In the wake of an intense controversy involving the trial of Irish-Americans as British subjects, Great Britain recognized the capacity to expatriate by statute in 1870. Other States, including → Russia, Turkey, and (in certain cases) France, persisted in adhering to perpetual allegiance. That persistence was considered consistent with international norms. States could agree consensually to bind themselves otherwise by treaty, or unilaterally to recognize a capacity to expatriate. Consistent with exclusive sovereign discretion over nationality practices, international law did not require States to recognize the efficacy of naturalization and a right of expatriation. By the mid-20th century, however, most States had adopted expatriation regimes under which an individual would automatically forfeit nationality upon the commission of certain acts evidencing alternate nationality, including naturalization before another sovereign or service in a foreign army or foreign government.

Other sources of dual nationality were addressed through municipal rules (→ International Law and Domestic [Municipal] Law). The incidence of dual nationality at birth was limited by nationality rules reducing the incidence of mixed marriages. Under majority practice during the 19th and early 20th centuries, women who married foreign men would automatically lose their original nationality and acquire that of the husband (see also → Women, Rights of, International Protection). As a result, children were less frequently born to parents of different nationality. Many individuals were nonetheless born with dual nationality at the intersection of ius soli and ius sanguinis nationality rules. States addressed this birthright dual nationality phenomenon with rules of election, under which a child born with two nationalities was required to elect one at majority.
3. Multilateral Attempts to Reduce the Incidence and Effects of Dual Nationality

8 Dual nationality could in theory be eliminated through the harmonization of State nationality practices (→ Unification and Harmonization of Laws). That objective presented a primary motivation for the Hague Codification Conference of 1930 and the resulting Convention on Certain Questions Relating to the Conflict of Nationality Laws (‘1930 Hague Convention’). The → preamble to the Convention recognized that ‘the ideal towards which the efforts of humanity should be directed in this domain is the abolition of all cases of statelessness and of double nationality’. However, the Convention imposed minimal constraints on the nationality practices of the parties. The pact evinced a weak norm in favour of recognizing a right to expatriation where a person held two nationalities ‘acquired without any voluntary act on his part’ (Art. 6 1930 Hague Convention), most notably, by the intersection of ius soli and ius sanguinis models of birth citizenship rules, at the same time that it recognized the prerogative of States to impose conditions on such expatriation. While restricting the exercise of diplomatic protection against a State of alternate nationality, the Convention recognized that ‘a person having more than two or more nationalities may be regarded as its national by each of the States whose nationality he possesses’ (Art. 3 1930 Hague Convention). Indeed, as a background principle, the agreement provided that it was ‘for each State to determine under its own law who [were] its nationals’ (Art. 1 1930 Hague Convention). Few States acceded to the 1930 Hague Convention, most of them from among the → Commonwealth (see also → Commonwealth, Subjects and Nationality Rules), and it failed either to harmonize nationality practices or to reduce substantially the incidence of dual nationality and its consequences for inter-State relations. The accompanying Protocol Relating to Military Obligations in Certain Cases of Double Nationality (‘Military Obligations Protocol’), which limited military service obligations to the State of habitual residence which the subject was ‘in fact most closely connected with’ (Art. 1 Military Obligations Protocol), was also undersubscribed, although many States entered into bilateral arrangements to relieve dual nationals of duplicative military service obligations on similar terms. Both the 1930 Hague Convention and the Military Obligations Protocol remain in force, each with a dozen parties.

9 A later effort to jumpstart multilateral harmonization efforts in the wake of the major 1954 ILC ‘Survey of the Problem of Multiple Nationality Prepared by the Secretariat’ came to naught. In the meantime, regional efforts also took aim at the status. Both the 1934 Montevideo Convention on Nationality and the 1963 European Convention on Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality mandated loss of original nationality upon naturalization before a State Party (see also → Denaturalization and Forced Exile). Neither was widely adopted.

4. International Legal Rules to Reduce Conflicts of Nationality

10 In the face of the inability to eliminate the incidence of dual nationality, international law attempted to resolve resulting conflicts by establishing a prioritization of nationalities in such cases. For purposes of inter-State disputes arising as a result of dual nationality, an individual was recognized as having a single dominant and effective nationality. This approach was most famously applied in the 1955 → Nottebohm Case, in which the → International Court of Justice (ICJ) found that → Liechtenstein could not espouse a claim against Guatemala on behalf of an individual who had lived in Guatemala where the individual had no genuine or effective link to Liechtenstein (see also → Nationality Cases before International Courts and Tribunals). Although Nottebohm did not itself involve dual nationality (Nottebohm himself was not a national of Guatemala), the test translated to the cases involving dual nationals. Under resulting practice, a State of dominant and effective
nationality could assert claims and exercise diplomatic protection against third States and exercise diplomatic protection against the other State of nationality.

11 Prior majority practice (also reflected in the 1930 Hague Convention) had barred one State of nationality from making claims or exercising protection against another State of nationality, without regard to relative actual connections. That practice eroded during the 20th century, however, to expand the ‘dominant and effective’ test to apply as between States of nationality. Thus ruled the → Iran-United States Claims Tribunal, for instance in 1984 (Decision No 32-A18-FT 5 Iran-United States Claims Tribunal Rep 251 [1984 I]). The approach is also adopted in the 2006 ILC Draft Articles on Diplomatic Protection, Art. 7 of which allows a State of nationality to exercise diplomatic protection in respect of a person against a State of which that person is also a national if the nationality of the former State is predominant.

5. Moral and Psychological Framings of Dual Nationality

12 Although international law was ultimately incapable of resolving the problem at its roots, a strong discursive disfavour attached to dual nationality as a status. So strong was this disfavour that dual nationality was cast as immoral. This opprobrium was uncontested; the view of dual nationality ‘as a damaging evil … seems to have been undisputed’ (Kimminich 232). As late as 1974, the Bundesverfassungsgericht (German Federal Constitutional Court) noted in what has been tagged as the ‘Übel-Doktrin’ of multiple nationality, ‘it is accurate to say that dual or multiple nationality is regarded, both domestically and internationally, as an evil that should be avoided or eliminated in the interests of States as well as the interests of affected citizens’ (Staatsangehörigkeit von Abkömmlingen 254, translation by the author). Dual nationality rarely served individuals’ interests at the same time that it threatened inter-State order. In the 19th-century context of perpetual allegiance, dual nationality often translated into multiple and conflicting obligations, including mandatory military service. A major 1961 study of dual nationality highlighted psychological conflicts associated with the status as making it detrimental to the well-being of the individuals concerned (Bar-Yaacov 257–67). Until the late 20th century the status was considered anomalous at best.

C. Contemporary Developments

1. State Practice

13 Recent State practice with respect to multiple nationality points to increased acceptance of the status. Few States persist in requiring those born with dual nationality to elect one at majority, at the same time as global mobility has resulted in a large increase of the number of such birth dual nationals (see also → Globalization). Although the law of many States (heavily represented among major Asian States) provides for the termination of citizenship upon naturalization in another country, the numbers have declined to the point where it is the minority practice (where in the mid-20th century it was nearly universal). Pressure from immigrant diasporas appears inevitably to be diminishing the number of those States refusing to recognize multiple nationality. Such important ‘sending’ States as Mexico, the → Dominican Republic, and Turkey have undertaken recent nationality law reforms to allow for the retention of nationality upon naturalization elsewhere. India and the Philippines have innovated citizenship-like statuses for emigrants that functionally recognize multiple nationality. Other States such as → Korea appear poised to follow. Even Germany, where resistance to dual nationality has been fierce, has softened its position to accept the status in many cases through the exercise of administrative discretion. ‘In terms of both legislation and policy, multiple nationality is essentially accepted as a reality’ (Boll 274). States accepting the status have disadvantaged holders of multiple nationality only marginally. An increasing number of States allow external voting, including by dual
nationals (see also → Elections, Right to Participate in, International Protection). Only with respect to political office-holding does the status in many States remain a bar (Spiro [2003] 135–53).

2. 1997 European Convention on Nationality

The 1997 European Convention on Nationality reflects this new attitude to multiple nationality, evidencing significantly changed approaches to dual nationality. In contrast to its 1963 predecessor, which had worked from the premise that ‘cases of multiple nationality are liable to cause difficulties’ (Preamble 1963 European Convention on Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality), the preamble of the 1997 European Convention on Nationality recognizes that ‘in matters concerning nationality, account should be taken both of the legitimate interests of States and those of individuals’, highlighting ‘the desirability of finding appropriate solutions to consequences of multiple nationality and in particular as regards the rights and duties of multiple nationals’. In its operative provisions, the new convention requires States to permit multiple nationality in the case of children born with the status and in the case of persons acquiring nationality automatically by marriage.

3. The Maintenance of Multiple Nationality as an Individual Right

These trends toward greater acceptance of dual nationality coincide with changed State interests. Dual nationals are unlikely to provoke bilateral disputes in an age of human rights. States are constrained from mistreating individuals as such and not simply by virtue of alternate national ties. States may also have an interest in maintaining ties with large (and usually relatively prosperous) diaspora populations for economic reasons, which explains the move on the part of many immigrant-sending States not only to tolerate but to embrace dual citizenship among those who would in the past have been expatriated upon naturalization in a state of new residence.

Multiple nationality can now also be conceived as serving individual interests. As States have abandoned conscription or made it contingent on residence (also the case with taxation; see also → Taxation, International), the burdens of citizenship have grown lighter. Dual nationality has become a status that an individual might seek to maintain. Emigrant populations have otherwise been faced not only with the choice of sentimental loyalties but also with the prospect of losing certain rights in their homelands upon the forfeiture of their original nationality. Nationality has been central to individual identity. Insofar as an individual might want to identify with more than one nation, dual citizenship can be framed as a matter of individual autonomy, in other words, as a matter of rights.

Knop describes protection for the maintenance of multiple citizenship as perfecting gender equality as a matter of ‘relational nationality’ (at 89 ff; see also → Equality of Individuals; → Feminism, Approach to International Law). The 1997 European Convention on Nationality understands that mere neutrality will not accomplish gender equality. Insofar as family relationships may depend on shared nationality, recognition of dual nationality as a legitimate status is necessary to protect both those relationships and individual identity autonomy (see also → Family, Right to, International Protection); without it, the individual (more often the woman) is forced to choose between the two. In this explanation the 1997 European Convention on Nationality is continuous to earlier international norms on nationality incidental to gender equality. It is true that the 1997 European Convention on Nationality is not protective of all cases of dual nationality, permitting States to terminate the nationality of an individual who voluntarily acquires another nationality. Finally, the
1997 European Convention on Nationality is a regional and not a global undertaking, and as such cannot by itself be taken to represent an international norm.

18 The 1997 European Convention on Nationality nonetheless represents a discursive watershed. To the extent multiple nationality no longer represents a threat to inter-State order, the opportunities for asserting individual interests in the status will be enhanced. At the least, the international community is unlikely to persist in failed attempts to reduce incidence of this status through international legal mechanisms.

Select Bibliography


Select Documents

Convention on Certain Questions relating to the Conflict of Nationality Laws (signed 12 April 1930, entered into force 1 July 1937) 179 LNTS 90.
Convention on Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality (done 6 May 1963, entered into force 28 March 1968) 634 UNTS 221.
Staatsangehörigkeit von Abkömmlingen Bundesverfassungsgericht [German Constitutional Court 1st Senate] (21 May 1974) 37 BVerfGE 217.