The European Convention on Nationality: a step towards a *ius commune* in the field of nationality law

§ 1. Introductory remarks

On 6 November 1997 a remarkable convention was signed in Strasbourg: the European Convention on Nationality.¹ The Convention was initiated by the Council of Europe, which has been active in the field of nationality law for more than three decades. An important result of these activities is the Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality, signed in Strasbourg on 6 May 1963² (hereinafter referred to as 'the 1963 Convention'), and its three Protocols.³ Furthermore several resolutions in the field of nationality law were adopted by institutions of the Council of Europe.⁴ Of particular interest are the Resolutions of the Committee of Ministers of 1977 on the nationality of spouses of different nationalities and on the nationality of children born in wedlock and the Assembly Recommendation of 1988 on problems of nationality in mixed marriages. Resolution (77) 12 recommended that governments take steps to ensure that foreign spouses of nationals can acquire the nationality of the spouse on more favourable terms than those generally required of aliens and that governments eliminate distinctions between foreign husbands and foreign wives as regards the acquisition of nationality. Resolution (77) 13 recommended that governments facilitate the acquisition of nationality by children born in wedlock if one of the parents is a national. Recommendation 1081 (1988) noted that it was desirable for each of the spouses of a mixed marriage to have the right to acquire the nationality of the other without losing

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¹ European Treaties Series No. 166; Tractatenblad 1998, 10 (English and French version) and Tractatenblad 1998, 149 (Dutch translation).
² European Treaties Series No. 43; United Nations Treaty Series 634, 221.
³ See European Treaties Series No. 95; European Treaties Series No. 96 and European Treaties Series No. 149.
the nationality of origin. Furthermore, children born of mixed marriages should also be entitled to acquire and keep the nationality of both their parents.

The main goal of the 1963 Convention was the reduction of multiple nationality. Art. 1 of that Convention determined that a national of a Contracting State who voluntarily acquires the nationality of another Contracting State loses his previous nationality by operation of law. In spite of the 1963 Convention, cases of multiple nationality have increased enormously since the seventies. This was mainly the result of different European States trying to realize the principle of equal treatment of men and women in their nationality legislation. As a consequence the rules on acquisition of nationality were modified in order to give women the same possibilities as men to transmit their nationality to their children. The fact that, on the one hand, multiple nationality was placed on the blacklist as something to be avoided as often as possible, but that, on the other hand, multiple nationality was accepted (and even supported by the aforementioned Recommendation 1081 (1988) of the Assembly of the Council of Europe) as a consequence of mixed marriages, and was one reason for initiating new discussions on the desirability of avoiding cases of multiple nationality.

There were also additional incentives for a new discussion on the subject of multiple nationality, at least for some States. Since the end of the fifties many migrant workers have moved from the southern European States to northern Europe for work. Originally the northern European Countries expected that the migrants would return to their home countries after a couple of years. But after several decades it became obvious that most migrant workers and their families would not return to their countries of origin, but had settled permanently in northern Europe. Many of these migrants wanted to integrate completely in their countries of residence and acquire the nationality of the country involved, but were often reluctant to lose the nationality which linked them with their countries of origin, respectively the countries of origin of their parents or even grandparents. From the perspective of the countries of residence, the nationality integration of the increasing number of permanent residing aliens was also a very serious concern. After long negotiations in Strasbourg, on 2 February 1993 a Second Protocol to the 1963 Convention was finally opened for signature. This second Protocol amended the main principle of Art. 1 of the 1963 Convention. Voluntary acquisition of a foreign nationality would not necessarily cause the loss of the previous nationality, if

- a national acquires the nationality of another Contracting Party on whose territory he either was born and is resident, or has been ordinarily resident for a period of time beginning before the age of 18;

- a spouse acquires the nationality of the other spouse of his or her own free will;

5. European Treaties Series No. 149.
- a minor whose parents are nationals of different Contracting Parties acquires the nationality of one of his or her parents.

Three Contracting States of the 1963 Convention have ratified this Second Protocol in the past few years: France, Italy and the Netherlands. Art. 1 of the 1963 Convention is no longer operative between these countries for the categories mentioned in the Protocol. Because the French and Italian nationality statutes do not mention voluntary acquisition of a foreign nationality as a ground for loss of nationality, French and Italian nationals belonging to the categories mentioned in the second Protocol may acquire the nationality of another country which has ratified the Second Protocol without losing their original nationality. Dutch nationals still lose their previous nationality when acquiring the nationality of France or Italy, even if they belong to the privileged categories of the Second Protocol, because the Netherlands has not yet modified its domestic nationality legislation. The Dutch nationality statute in force still mentions in Art. 15 (a) voluntary acquisition of a foreign nationality as a ground for loss of Dutch nationality. Therefore, in cases covered by the second Protocol, a Dutch national who acquires French or Italian nationality no longer loses Netherlands nationality because of the operation of Art. 1 of the 1963 Convention, but because of the provision of Art. 15 (c) of the nationality statute. A bill amending, inter alia, Art. 15 is pending before parliament.  

During the meetings of the experts delegated by the Member States of the Council of Europe to negotiate on exceptions to the principles of the 1963 Convention, the proposal was made to attempt to draft a Convention on the general principles of nationality. The creation of such a new Convention was considered particularly desirable in order to provide some basic standards in the field of nationality for the new democracies born in Eastern Europe since 1989, and also to realize some harmonization of the grounds for acquisition and loss of nationality in the different European States.

Important issues addressed by the new Convention are the avoidance of statelessness and the legal position of aliens living habitually on the territory of a state. According to the preamble to the new Convention the right to respect for family life and the non-discriminative.

7. Bil 25 891 (R 1609).
8. The Committee involved was first called the Committee of Experts on Multiple Nationality (CJ-PL), but later renamed the Committee of Experts on Nationality (CJ-NA).
ination requirement contained respectively in Articles 8 and 14 of the European Convention on Human Rights are of relevance for nationality law. In respect of the controversial item of multiple nationality, the new Convention adopts quite a neutral position. Noting the varied approach of States to the question of multiple nationality and recognizing the right of each State to decide whether to allow its nationals to hold one or more additional nationalities, multiple nationality is neither expressly condemned nor expressly promoted. The Convention neither incorporates the approach of the 1963 Convention nor the exceptions made by the Second Protocol of 1993.

The main importance of the new Convention is the progressive consolidation in a single text of the obligations and ideas which have emerged as a result of developments in both international law and domestic law. Most of the provisions of the Convention are inspired by a considerable number of provisions of other international instruments. The nationality provisions of those instruments are repeated and sometimes slightly elaborated in the present Convention. Moreover some provisions are included in the Convention which aim to contribute to the progressive development of international law on nationality. This applies in particular to the provisions in Chapter VI on state succession and nationality.

The new Convention was signed on 6 November 1997 by Austria, Denmark, Finland, Greece, Hungary, Iceland, Italy, Macedonia, the Netherlands, Norway, Portugal, Rumania, Slovakia and Sweden. In the past two years several other countries have also signed the Convention: Bulgaria on 15 January 1998, Moldova on 3 November 1998, Albania and the Czech Republic both on 7 May 1999 and Poland on 29 April 1999. It is remarkable that of the Contracting States of the 1963 Convention, Belgium, France and Germany did not sign the new Convention, probably because in 1997 the governments of these States had (respectively, have) some difficulties with parts of the Convention. The same applies in principle to Ireland, Spain and the United Kingdom, but these States did not ratify the whole 1963 Convention. They only applied the second part of that Convention on military service. Probably their hesitations relating to the

nationality part of the 1963 Convention caused these states to defer signing the new Convention.

From the British Home Office (IND, Nationality Directorate) I received the information that the United Kingdom will probably sign and ratify the Convention in the near future, after having adapted the British Nationality Act in order to meet the requirements of the Nationality Convention. It is quite likely that Germany will also sign and ratify the Convention after the change of government in 1998 and the very recent modification of German nationality law, which came into force on 1 January 2000. 12 13

In the meantime three countries ratified the Convention: Slovakia on 27 May 1998, Austria on 17 September 1998 and Moldova on 30 November 1999. Slovakia did not make any reservations in respect of the provisions of the Convention, but made a very liberal declaration in respect of the application of Art. 22(b). Austria expressed a considerable number of reservations and interpretative declarations. This is very regrettable. One of the aims of the Convention is to establish rules which should also be observed by the emerging democracies in Eastern Europe. By making so many reservations concerning the rules of the Convention, Austria definitely does not give a good example. I tend to conclude that these reservations considered together almost conflict with the object and purpose of the Convention. One can only hope that Austria will consider withdrawing most of the reservations as soon as possible. 14 In particular, it is sad that Austria, as a Member State of the European Union, made all these reservations. According to Art. 17 of the EC Treaty every national of a Member State is - in principle 15 - also a European citizen. However, individual Member States and not the European Union determine who acquires the nationality of the Member State involved and thereby European citizenship. In quite exceptional cases European law could have consequences for the acquisition or loss of the nationality of a Member

13. Compare the very positive speech of Mrs. Cornelie Sonntag-Wolgast, State Secretary of the German Ministry of Interior, on the occasion of the first European conference on nationality (Strasbourg, 18 October 1999).
14. As we will see later on, Art. 29(3) of the Convention obliges a Contracting State to withdraw reservations as soon as circumstances permit.
15. The addition ‘in principle’ does not appear in the text of Art. 17 EC Treaty, but has to be added in view of the Declaration on Nationality of a Member State made in Maastricht in 1992: ‘The Conference declares that, wherever in the Treaty establishing the European Community reference is made to nationals of the Member States, the question whether an individual possesses the nationality of a Member State shall be settled solely by reference to the national law of the Member State concerned. Member States may declare, for information, who are to be considered their nationals for Community purposes by way of a declaration lodged with the Presidency and may amend any such declaration when necessary.’ For an elaboration on nationals of Member States who are (perhaps) not European citizens, see: Gerard-René de Groot, ‘The Relationship between the Nationality Legislation of the Member States and European citizenship’, in Massimo la Torre (ed.), European citizenship; An institutional challenge, (Kluwer Law International, 1998), 115-147.
State. Nevertheless one would expect that the grounds for acquisition and loss of the nationality of the various Member States, and therefore the access to European citizenship, do not differ too much. But that appears not to be the case: a considerable number of differences can be observed. A step towards at least a certain degree of harmonization of the grounds for acquisition and loss of the nationality of the Member States would be the ratification of the European Convention on Nationality by all Member States without reservations, at least in respect of Art. 6-8, which list the acceptable grounds for acquisition and loss of nationality.

On the occasion of the depositing of the instruments of ratification with the Secretary General of the Council of Europe, Moldova made a declaration concerning the application of Art. 6(4)(g) and reservations concerning Art. 7(1)(g), Art. 22(a) and Art. 22(b). The Moldovan parliament accepted the ratification of the Convention on 14 October 1999. A Working Group, created within the framework of the Commission for the Citizenship Issues and established by the President, prepared a draft of a new Law on Citizenship in the light of the European Convention on Nationality. It is expected that the new Moldovan Law on Citizenship will enter into force in the summer of 2000.

According to Art. 27(2) the Convention entered into force for the States which have already ratified the Convention on the first day of the month following the expiration of three months after the third ratification, i.e. on 1 March 2000.

Several countries have announced that they are preparing to ratify the Convention. Denmark has already modified the Danish nationality law by statute of 23 December 1998, which came into force on 1 February 1999, in order to enable that country to ratify the Convention with probably only one reservation. In the Netherlands a Bill proposing the ratification of the Convention was submitted to parliament on 27 January 2000. The Permanent State Committee for Private International Law has already given a very positive opinion on 27 March 1999 on the Convention and proposed the ratification of the Convention without reservations. The government, however, has suggested making a reservation or interpretative declaration with respect to Art. 8 of the Convention dealing with the loss of Dutch nationality by a child, whose

17. I have to thank Mr Alexander Ohotniecov, President’s Bills Service Vice Chief, Chisinau, Republic of Moldova for sending me detailed information on the adoption of the ratification of the European Convention on Nationality by the parliament of Moldova.
18. Lov Nr 1018; see also the consolidated version of the Danish Nationality Act published as LBK Nr. 28 of 15 January 1999.
19. According to the Danish Constitution naturalizations are realized by an Act of Parliament. Therefore Denmark will make a reservation in respect of Art. 12 of the Convention, which prescribes the possibility of administrative or judicial review of inter alia decisions relating to the acquisition of nationality.
20. Bill 26990 (R 1647).
parent loses the nationality in question by making a declaration of renunciation. In Sweden, a Nationality Commission was assigned in 1997 with the task of reviewing the Swedish Nationality Act. In 1999 this Commission published a report which proposed to modify the Nationality Act on many points.\textsuperscript{21} The Commission also proposed that Sweden should ratify the Convention without reservation and do this parallel with the entry into force of the new Nationality Act.

Germany and the United Kingdom have already been mentioned above. It is therefore very likely that the new Convention will prove popular and have a significant influence on future developments in nationality matters.

An important very recent development is Recommendation No.R (99) 18 of the Committee of Ministers of the Council of Europe on the avoidance and the reduction of statelessness adopted on 15 September 1999. The recommendation partly recalls principles already formulated in the European Convention on Nationality insofar as they have relevance for the avoidance and reduction of cases of statelessness, but some of these principles are further elaborated through specific and concrete guidelines. The Recommendation is directed to all Member States of the Council of Europe, but also to non-Member States that ratify the European Convention on Nationality. Hereinafter there will be reference to the provisions of the Recommendation and its explanatory memorandum on several points.

§ 2. The main lines of the Convention: the general principle

After a description of the Convention's object, Art. 2 provides some definitions of terms used in the Convention. It is remarkable that the term nationality is expressly defined: "nationality" means the legal bond between a person and a State and does not indicate the person's ethnic origin." This definition is inspired by the decision of the International Court of Justice in \textit{re Nottebohm}:\textsuperscript{22} '... a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties.'

It was argued by some members of the CJ-NA that instead of 'nationality' the term 'citizenship' should be used. A similar amendment was proposed in the Assembly. The background to this proposal is that in many Central and Eastern European States a distinction is made between the two concepts: one term indicates the legal bond between an individual and the State, the second term indicates the person's ethnic origin. Commonly the term for the second concept was translated into English as 'nationality' whereas the term used for the first concept was translated as 'citizenship'. In the past, for example, this was the case in Poland: the formal 'nationality' link with the Polish

\textsuperscript{21} Svenskt medborgarskap, SOU (1999) 34; a summary of the report translated by James Hurst is available.

\textsuperscript{22} ICJ Rep. 1955, 4,23.
State was indicated by the word ‘obywatelstwo’, whereas in all official identification documents information was also provided concerning an individual’s ‘narodowosc’ (nationality in the ethnic sense). It is however quite possible to change this translation practice by translating the first term as ‘nationality’ and the second as, for example, ‘ethnicity’. This has happened in Poland since 1996. In new passports issued in Poland since that year and in other official documents information on ‘narodowosc’ is no longer given; exclusively the ‘obywatelstwo’ is indicated. In Polish passports this word was in the past translated as ‘citizenship’, but since 1996 as ‘nationality’.  

In some other languages one can observe similar difficulties: in Germany the legal bond between a person and a State is described by ‘Staatsangehörigkeit’ and in Austria by ‘Staatsbürgerschaft’, which is in fact ‘citizenship’. The German term ‘Nationalität’ is often used to indicate the ethnicity of a person. In the Italian language ‘cittadinanza’ indicates the bond with the State, whereas ‘nationalità’ has again a more ethnic dimension. In several other languages a term etymologically related to ‘nationality’ is commonly used in order to indicate the official link between a person and the State: this is the case in France (‘nationalité’), Spain (‘nacionalidad’) and the Netherlands (‘nationaliteit’). In the English language both terms ‘nationality’ and ‘citizenship’ usually indicate the legal bond between a person and a State. In the United States the term ‘citizenship’ is preferred to the word ‘nationality’, although the so-called ‘United States nationals without citizenship’ have, from the perspective of international law, the ‘nationality’ of the United States. In the United Kingdom both terms are used interchangeably, but it should be underscored that the act of parliament which regulates the grounds for acquisition and loss of the legal bond with the United Kingdom is called the ‘British Nationality Act’.

After the definitions of terms used in the Convention, articles are devoted to general principles in the field of nationality law. Art. 3 underlines the principle of autonomy of States regarding the determination of their nationals. The nationality legislation of a country has to be accepted by other States in so far as it is consistent with international conventions, customary international law, and the principles of law generally recognized with regard to nationality (Art. 3(2)). The next article establishes that everyone has the right to a nationality; that statelessness shall be avoided; that no one shall be arbitrarily deprived of his or her nationality; and that neither marriage nor the dissolution of a marriage between a national of a State Party and an alien, nor the change of nationality by one of the spouses during marriage, shall automatically affect the nationality of the other spouse (Art. 4). A separate article is devoted to non-discrimination (Art. 5).

24. Barbara Lewandowska-Tomaszczyk, ibid, 12.
Nationality legislation shall not contain distinctions which amount to discrimination on the grounds of sex, religion, race, colour or ethnic origin. In a second paragraph Art. 5 establishes that each State Party shall be guided by the principle of non-discrimination between persons who are nationals of a State Party at birth and those who have acquired the nationality of this State Party subsequently.

Almost all these principles are not new. They can be found in other international instruments but, as already mentioned above, they are now consolidated in a single treaty. This is of particular importance because not all international treaties which contain the now repeated principles have been ratified by all European States.

The principle of national autonomy in nationality matters was codified in Art. 1 of the 1930 Hague Convention on certain questions relating to the conflict of nationality laws. 26 The principle was recognized even earlier in a decision of the Permanent Court of International Justice. 27 Furthermore it was emphasized in the Nottebohm decision of the International Court of Justice. 28 The European Court of Justice also recognized this autonomy in the Micheletti decision of 7 July 1992, 29 but added that Member States of the European Union also have to respect Community law when regulating their nationality. 30

The right of every person to have a nationality was first stated in Art. 15 of the Universal Declaration of Human Rights of 10 December 1948. This right was repeated in slightly different wording in Art. 24(3) International Covenant on Civil and Political Rights (New York, 17 December 1966) 31 and Art. 7(1) United Nations Convention on the Rights of the Child (New York, 20 November 1989). 32 However, it should be noted that none of these international instruments, including the new Convention, indicate the nationality to which a person is entitled. The guarantee contained in this right is therefore difficult to enforce. 33

The desirability of avoiding cases of statelessness was clearly stated in a number of articles of the 1930 Hague Convention on Nationality. Furthermore, this was the main

26. Staatsblad (1937), 17, 4-54.
27. PCU in re: Tunis and Marocco Nationality Decrees, PCU Reports (1923), Series B, No. 4.
30. See on the possible consequences of the Micheletti decision, Gerard-René de Groot in Massimo La Torre (ed.), European Citizenship; An Institutional Challenge, in particular 128,129.
goal of the Convention on the Reduction of Statelessness (New York, 17 December 1966) 34 and the Convention of the International Commission of Civil Status to reduce the number of cases of statelessness (Berne, 13 September 1973). 35 Art. 4(b) of the new Convention does not give a strong right, because it only declares that statelessness 'shall be avoided'. However, several other articles of the new Convention establish concrete measures to fight against statelessness. The explanatory report declares that the avoidance of statelessness has become a part of customary international law. However, one may question to what extent this is true. After the collapse of the USSR, Yugoslavia and Czechoslovakia, many successor States did not observe the principle of avoidance of statelessness. 36 One could at least classify the principle as regionally restricted customary international law, because in Western Europe the principle is generally accepted both in theory and in state practice. 37 But even then one has to admit that the obligation to avoid statelessness is currently not absolute. The European Convention even allows statelessness in the particular category provided for under Art. 7(3) in combination with paragraph (1)(b).

The rule that nobody shall be arbitrarily deprived of his or her nationality is derived from Art. 15(2) of the Universal Declaration of Human Rights. That provision also states that 'no one shall be ... denied the right to change his nationality'. Although that right is not included in the general principles on nationality in the new Convention, it is provided for in Art. 8 of the Convention, where it is stated that each State Party shall permit the renunciation of its nationality provided the persons involved do not thereby become stateless. The only exception which may be made to this right of renunciation is set out in Art. 8(2): the renunciation may be refused if the person involved wants to renounce the nationality of the state of his habitual residence.

It is extremely difficult to give an answer to the question, when is the deprivation of nationality arbitrary? In the explanatory report some indications are given in this respect:

They [the indications] relate both to the substantive grounds for deprivation and the procedural safeguards. As regards the substantive grounds, the deprivation must be in general foreseeable, proportional and prescribed by law. If it is based on any of the grounds contained in paragraph 1 of Article 5, it is contrary to this paragraph. Thus a withdrawal of nationality on political grounds would be considered arbitrary.

34. Tractatenblad 1967, 124.
35. Tractatenblad 1974, 32.
It is important that Art. 7 of the Convention provides an exhaustive list of grounds for loss of nationality *ex lege* or on the initiative of a State. All other grounds of deprivation are unacceptable. However, one has to realize that it is permitted for State Parties to make a reservation with respect to grounds for loss of nationality, whereas it is not possible to exclude Art. 4 of the Convention (see Art. 29 of the present Convention).

The fact that a deprivation must be foreseeable has consequences for the interpretation of the grounds for loss of a nationality: a surprising extensive interpretation of a ground for loss, for example an application of such a ground to a similar case by way of analogy, is not foreseeable. 38 It is completely unclear why the explanatory report added the words ‘in general’ to foreseeable. An unforeseeable loss of nationality is in my opinion unacceptable under all circumstances.

It should be noted that the absence of procedural safeguards is also classified as arbitrary deprivation. Consequently, Art. 11 and 12 of the Convention prescribe that *inter alia* decisions relating to loss of a nationality have to contain written reasons and have to be open to an administrative or judicial review. In this context attention should also be paid to the explanatory memorandum on Recommendation R 99 (18), Nr. 41:

As underlined by the Human Rights Committee set up under Article 28 of the International Covenant of Civil and Political Rights of 16 December 1966, ‘the introduction of the concept of arbitrariness is intended to guarantee that even interference provided for by the law, should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances’. 39 Thus, deprivation of nationality on a discriminatory basis, such as on grounds belonging to a specific national or ethnic group, should be considered ‘arbitrary’.

The rule that neither marriage, nor the dissolution of a marriage, nor the change of nationality by one spouse may have consequences *ex lege* for the nationality of the other spouse, corresponds on the most essential points with the formulation of Art. 9(1) second sentence of the Convention on the Elimination of All Forms of Discrimination against Women (New York, 18 December 1979). 40 The explanatory report does not mention this, but refers to Art. 1 of the 1957 Convention on the Nationality of Married Women. It is astonishing that the new Convention does not repeat the wording of Art. 9(1) *first* sentence of the Convention on the Elimination of All Forms of Discrimination against Women: ‘States Parties shall grant women equal rights with men to acquire, change or retain their nationality.’ It is unclear why this is the case. The rule is

40. Tractatenblad 1980, 146.
particularly useful in cases of indirect discrimination against women in nationality law; was the provision considered to be superfluous? It would have been preferable if this had been mentioned in the explanatory report. It is also remarkable that the provision of Art. 9(2) of the Women's Convention is missing in the new Convention. According to that second paragraph 'States Parties shall grant women equal rights with men with respect to the nationality of their children.' Is this principle not repeated because it violates Art. 6(1)(a) of the new Convention, which allows a State not to attribute its nationality to a child born out of wedlock, if exclusively the father is a national of the State involved?

The provision according to which legislators are not allowed to discriminate on the grounds of sex, religion, race, colour or ethnic origin is inspired by Art. 1 of the 1966 Convention on the Elimination of All Forms of Racial Discrimination. 41 Jessurun d'Oliveira 42 argues that 'sexual orientation' is missing from this list and that the criterion 'sex' should be interpreted in a way which includes sexual orientation. He underscores that a wide interpretation of 'sex' is also important for transsexual persons. 43 Art. 5(1) of the Convention is recalled in rule I(a) of Recommendation R 99 (18).

The principles discussed above were not new, but already formulated in other international instruments. The provision contained in Art. 5(2), stating that State Parties shall be guided by the principle of non-discrimination between its nationals, whether they are nationals by birth or have acquired its nationality subsequently is new in an international treaty. To date, this principle has not been observed in many nationality regulations. It would not be difficult to make a very long list of provisions of nationality laws of European States in which differences are made between 'original' nationals and those who acquired the nationality involved by naturalization or by declaration of option. 44 This type of discrimination is now condemned by the new provision, but only weakly because the words 'shall be guided' are used: it is an example of soft law. The nature of this provision is therefore more a declaration of intent than a mandatory rule to be followed in all cases. Furthermore, it should be realized that Art. 7(1)(b) provides an exception to this guiding principle in the case of persons having acquired a nationality by means of improper conduct.


44. See for example Spain where some provisions of the nationality regulation distinguish between 'españoles de origen' and other Spanish citizens.
§ 3. The grounds for acquisition of a nationality.

The core articles of the Convention are Art. 6-9, in which rules on the acquisition and loss of nationality are formulated. For the first time an international treaty attempts to indicate which grounds for acquisition and loss of nationality are acceptable. It is therefore fascinating to study these provisions in detail. In this contribution the provisions involved are mentioned briefly and it is indicated whether the legislation of the Netherlands falls within the parameters established by the Convention. The rules given by the Convention should stimulate every specialist in nationality law to study whether their own nationality legislation and practice is in conformity with the Convention, and furthermore, which national grounds of acquisition or grounds for facilitation of naturalization are not mentioned by the Convention. Furthermore, the content of the reservations and declarations made by Austria, Slovakia and Moldova will be described and discussed hereinafter. In addition references will be given to relevant parts of Recommendation R 99 (18) and its explanatory report.

Art. 6 sets out rules on the acquisition of the nationality. According to paragraph 1 each State Party shall provide in its internal law for its nationality to be acquired ex lege by children who have one parent who possesses the nationality of that State Party at the time of birth of the children. States are allowed to make an exception for children born abroad. Recommendation R 99 (18) underscores this in rule II A(a):

Each State should provide for its nationality to be acquired ex lege by children one of whose parents possesses, at the time of birth of these children, its nationality. Exceptions made with regard to children born abroad should not lead to situations of statelessness.

The second sentence of this rule is a useful addition to the Convention. Attention has to be paid as well to the explanatory report on this rule (Nr. 65 and 66, first sentence):

However, it should be noted that this provision does not require a State to grant its nationality to children born abroad generation after generation without limitation, when such children have no links with that State. Normally, such children will acquire the nationality of the State of birth (with which - presumably - they have a genuine and effective link). However, any provisions limiting the transmission of the nationality of a parent to a child born abroad should not apply if such a child would become stateless. It must be added that the acquisition of the nationality of one of the parents at birth on the basis of the ius sanguinis principle, by children born abroad should be automatic and not made conditional upon a registration or option, the absence of which would make them stateless.

The legislation of the Netherlands does not make an exception based on the ius sanguinis principle for children born outside the country: for the acquisition of Dutch
nationality *iure sanguinis*, it is irrelevant whether the child is born in the Netherlands or abroad (Art. 3 Dutch Nationality Act). The situation is different in for example Belgium, Portugal and the United Kingdom, where children of Belgian, Portuguese or British nationals born abroad do not acquire Belgian, Portuguese or British nationality respectively under all circumstances.\(^45\)

A second exception which can be made in respect of the acquisition *iure sanguinis* regards children born out of wedlock. If the family relationship between a child born out of wedlock and his father is established by recognition, legitimation or a judicial decision, this does not necessarily have as a legal consequence the acquisition of the nationality of the father. A State may provide that the child has to fulfil additional requirements before he can acquire the nationality of his father. As already mentioned above, I have some doubts whether this different treatment of children born in wedlock or out of wedlock is in conformity with Art. 9 of the Women’s Convention.

In the Netherlands recognized and legitimated alien children do acquire *ex lege* Dutch nationality by recognition or legitimation if their father has Dutch nationality (Art. 4 Dutch Nationality Act). A judicial establishment of paternity is not yet mentioned in the Nationality Act as a ground for acquisition of nationality, but this can be explained by the fact that the possibility of such a judicial establishment of paternity was only very recently introduced in Dutch family law (since 1 April 1998). In February 1998 the government of the Netherlands submitted a bill to parliament proposing nationality consequences of a judicially established paternity.\(^46\) The proposed Art. 4 states that Dutch nationality will be acquired *ex nunc* by a foreign minor whose descendence from a Dutch father is established judicially.\(^47\) However, the same bill proposes the abolition of nationality consequences for recognition and legitimation. A reason for abolishing recognition and legitimation as grounds for acquisition of nationality is that, according to the law of the Netherlands, it is not a condition that these acts be done by the biological father of the recognized or legitimized child. This makes it possible to abuse these grounds for acquisition of nationality. Some years ago it was discovered that some Dutch men recognized - after having received money - foreign illegitimate minors in order to give them Dutch nationality and therefore free access to the Netherlands. In response to this discovery the government of the Netherlands proposed to abolish recognition and legitimation as grounds for *ex lege* acquisition of nationality. This

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45. Art. 8 Belgian Nationality Act; Section 2 British Nationality Act; Art. 1(b) Portuguese Nationality Act.
46. BIL 25 891 (R 1609).
47. Nevertheless a judicial establishment of paternity has at the moment nationality consequences as well because of the fact that such a judicial decision has, according to Art. 207 paragraph 5 of the first book of the Civil Code, retroactivity until the moment of birth. The child is therefore deemed to have been born as a child of a Netherlands father and acquires Netherlands nationality because of the general provision of Art. 3 Nationality Act, which prescribes that a child acquires Netherlands nationality if his father or mother possesses this nationality at the moment of birth.
proposal was heavily criticized in the legal literature because in most cases of recognition and legitimation the man involved is the biological father of the child. Furthermore, the Public Prosecutors Office already has the possibility of requesting the annulment of a recognition, if the recognition violates public policy (ordre public). But although it is generally accepted that - under certain circumstances - recognition for nationality purposes may constitute such a violation of public policy, the possibility for requesting an annulment is not used very often, because of difficulties in respect of evidence.

The acquisition of a nationality based on recognition or legitimation perhaps has to be criticized for completely different reasons. An older foreign minor may acquire Netherlands nationality without his own consent because of the recognition, respectively legitimation, of a Netherlands national. This leads to problems if the acquisition of the nationality of the Netherlands causes the loss of the previous nationality (usually the nationality of the mother). In principle a recognition requires, according to the law of the Netherlands, the consent of the mother of the child (until the child reaches the age of 16) as well as the consent of the child, if he is older than 12 years. But one has to realize that the consent is focused on the establishment of a family relationship between the child and the man involved. The nationality dimension of a recognition is in many cases not taken into account. On the other hand, potential nationality consequences should not be the reason to give or to refuse the required consent. It has therefore been suggested that the acquisition of the Netherlands nationality by recognition be made dependent on the previous consent of a foreign minor, who has reached the age of twelve and on the previous consent of the mother, if the acquisition of the Netherlands nationality would cause the loss of her nationality. However, in case of the mother’s refusal a court decision on this point should be possible. These consents should be required as long as some nationality regulations in the world contain provisions leading to the loss of nationality in the case of recognition or legitimation of a child by a foreigner. This proposal corresponds in the main with the regulation of the nationality consequences of legitimation in Austria since 1 June 1985. A modification of Austrian nationality law was necessary after the Austrian Constitutional Court came to the conclusion that the acquisition of Austrian nationality by a foreign minor legitimated by an Austrian man constituted a violation of the Austrian constitution.

In this context an Austrian reservation to the European Convention on Nationality has to be mentioned. Austria declares "that the term "parents/parents" used in Articles 6 and 7 of this Convention does not according to the Austrian legislation on nationality, include the father of children born out of wedlock." Austrian nationality law does not mention recognition or judicial establishment of paternity as grounds for acquisition of Austrian nationality. Nevertheless the children involved are under certain conditions (Par. 12(d), in combination with Par. 17(1) point 3 Austrian Nationality Act) entitled to naturalization. Nevertheless, in order to maintain this situation a reservation was not necessary because Art. 6 of the Convention already allows for a different treatment of children whose parenthood is established by recognition or court order. Whether the reservation has consequences for other provisions within Art. 6 or 7, in particular for Art. 6(3)(c), Art. 7(1)(g) or Art. 7(2), will be mentioned briefly later on.

Art. 6(1)(b) prescribes that a foundling found in the territory of a State has to acquire the nationality of that State, if he would otherwise be stateless. The wording of this provision is drawn from Art. 1 of the 1961 Convention on the Reduction of Statelessness. One has to realize that this provision is not restricted - as for example in Section 1(2) British Nationality Act - to new-born infants, but applies to every child in the sense of the Convention, i.e. every person below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier (see Art. 1(c)). If subsequently during his minority, it is discovered who the parents of the child are, and the child derives a nationality from (one of) these parents or acquires a nationality because of his place of birth, the nationality acquired because of the foundling provision may be lost. This is provided for by Art. 7(1)(f) of the present Convention. The nationality legislation of the Netherlands is in conformity with Art. 6(1)(b) of the Convention. Art. 3(2) Dutch Nationality Act provides that a child shall be deemed to be the child of a Dutch national if he is found on the territory of the Netherlands, the Netherlands Antilles or Aruba or on a ship or aircraft registered in one of these countries. In this case he thus obtains the Netherlands nationality on the basis of Art. 3(1) of the Nationality Act. This presupposition (praesumptio iuris sanguinis) is not absolute. If it becomes apparent within five years from the day on which the child was found that he does not possess Dutch nationality, but exclusively a foreign nationality by birth, Dutch nationality will be lost. However, in the case of potential statelessness he keeps Dutch nationality.

With respect to Art. 6(1)(b) Austria made a declaration with the following formulation:

Austria declares to retain the right that foundlings found in the territory of the Republic are regarded, until proven to the contrary, as nationals by descent only if they are found under the age of six months.

It is obvious, that this is not a declaration with an interpretative character but a reservation. The aim of the Convention is also to cover cases where older children are 'found' and the circumstances do not allow for the discovery of their identification, in particular
the descendance of the children involved. An early draft version of the European Convention still included a provision on foundlings inspired by the above mentioned provision of the British Nationality Act and therefore restricted to new-born infants. Subsequently the provision on foundlings was revised. The final text is therefore definitely not restricted to very young children. The Austrian reservation is inspired by Art. 8(1) of the Austrian Nationality Act.

According to Art. 6(2) each State Party shall provide in its internal law for its nationality to be acquired by persons born on its territory who would otherwise be stateless. This rule is repeated in Recommendation R 99 (18) in Part II A(b). The nationality of the country of birth has to be attributed either ex lege at birth or subsequently to children who remained stateless upon application. In the latter case the grant of nationality may be made subject to one or both of the following conditions:

a) lawful and habitual residence on the territory of the State involved for a period not exceeding five years immediately preceding the lodging of the application, and b) absence of a conviction for a serious offence.

The wording of this paragraph is inspired by Art. 1 of the 1961 Convention on the Reduction of Statelessness. According to Dutch nationality law, Dutch nationality is not attributed ex lege to persons born stateless on Dutch territory. But stateless persons, persons who have no nationality or whose nationality cannot be established (Art. 1(f) Nationality Act), can opt for Dutch nationality provided they fulfill the conditions laid down in Art. 6(1)(b): the alien has to be born on Dutch territory, he has to be younger than 25 years of age, he must have since his birth his permanent or actual place of residence in the Netherlands, the Netherlands Antilles or Aruba for at least three years and he has to be stateless since his birth. According to Dutch law a declaration of option can be made orally without any formality. Of course the declaration has to be communicated to the competent authorities. Normally these authorities will draw up an official document, which will be signed in order to prove the declaration, but if such a document does not exist the declaration can be proved by any other means. If a declaration was made, but not all the conditions giving a right to opt were fulfilled, Dutch nationality is not acquired. If all conditions were fulfilled and the declaration can be proved, although no document exists, Dutch nationality is nevertheless acquired.

Bill 25 891 (R 1609) which was submitted to parliament in February 1998 proposes the modification of the legal construction of the exercise of an option right: according to the bill Dutch nationality will only be acquired if the competent authorities officially confirm that the conditions required for the option right were fulfilled. Moreover the authorities will obtain the right to refuse the confirmation, if the person involved constitutes a danger to public security. Such a wide scope for refusal violates Art. 6 of the present Convention at least in respect of stateless persons. Moreover it is not in conformity with the Convention that both the present text of Art. 6 of the Nationality
Act and the text of the bill require that the stateless person must have resided 'since his birth' on the territory of the Netherlands.

In respect of Art. 6(2)(b) a reservation has also been made by Austria:

Austria declares to retain the right to grant an alien nationality only if he:

1. was born in the territory of the Republic and has been stateless since birth;
2. has had his ordinary residence in the territory of the Republic for a period of not less than ten years, of which a continuous period of not less than five years must precede the granting of nationality.
3. has not been convicted with final effect by a domestic court for certain offenses, specified in section 14, paragraph 1, sub-paragraph 3, of the Law on Nationality 1985 as amended;
4. has not been sentenced with final effect by a domestic or a foreign court to imprisonment of five or more years, if the offenses underlying the sentence pronounced by the foreign court are also punishable under domestic law and the sentence was passed in proceedings complying with the principles of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950;
5. applies for naturalization after completing the age of eighteen and not later than two years after attaining majority.

This very elaborate reservation is essentially a translation of Par. 14 of the Austrian Nationality Act. Obviously Austria did not want to change the nationality position of foreigners born in Austria in any way. All of the conditions formulated in Par. 14 are incorporated in the reservation. This is - again - very regrettable, because the aim of the Convention is to realize a certain harmonization of the grounds for acquisition and loss of nationality.

Another point has to be mentioned. Austria also declared, that 'the term "lawful and habitual residence / résidence légale et habituelle" used in Articles 6 and 9 of this Convention will be interpreted according to the Austrian legislation on nationality as "Hauptwohnsitz" (main domicile) in the sense of the Austrian legislation concerning the main domicile.' This declaration does not provide foreigners with sufficient information. I was not able to find a definition of 'Hauptwohnsitz' in the text of the Austrian Civil Code (Allgemeines Bürgerliches Gesetzbuch). A declaration/reservation should be formulated more precisely.

The third paragraph of Art. 6 of the Convention obliges each state to provide for the possibility of naturalization of persons lawfully and habitually resident on its territory. A State Party shall provide in its internal law for a period of residence for naturalization not exceeding 10 years before the lodging of the application for naturalization. Of course it is already allowed to provide for naturalization after a considerably shorter
period of residence. In the Netherlands, Art. 8 of the Nationality Act fulfils this requirement. A foreigner can be granted Dutch nationality by naturalization if he has had his permanent or habitual residence in the Netherlands, the Netherlands Antilles or Aruba for at least five consecutive years prior to the application (Art. 8(1)(c) Nationality Act). An additional requirement is that his residence in the Netherlands, the Netherlands Antilles or Aruba for an unlimited period does not meet with any objection from the competent authorities (Art. 8(1)(b)). At the moment of application the applicant must be lawfully resident in the Netherlands. It is not expressly required that the whole period of residence needs to be lawful. Bill 25 891 (R 1609) proposes to modify this requirement so that the whole period of required residence has to be lawful before an application for naturalization can be lodged. It is not certain whether this new requirement is completely in conformity with the new Convention. Of course the required period of residence is evidently shorter than the maximum period allowed by the Convention. However, the Convention does not explicitly require that this residence has to be lawful during the whole period. From the first sentence of Art. 6(3) it can only be concluded that the residence should be lawful at the moment of application. In the second sentence, where the maximum period is mentioned, the condition of a lawful residence is not repeated.

Art. 6(4) of the Convention provides a long list of persons whose naturalization should be facilitated. The facilitation can, according to the explanatory report, include ‘a reduction of the length of required residence, less stringent language requirements, an easier procedure, lower procedural fees.’ It is quite disappointing that the report also states: ‘Where the generally required conditions are already very favourable (e.g. a short period of residence for all applicants for naturalization), such States are not required to take additional measures.’ One can guess that many States will use this argument in order to escape from the obligation to facilitate the acquisition of their nationality by persons belonging to the categories mentioned in this paragraph.

The following categories are mentioned:

a. spouses of the state’s nationals; in the Netherlands their naturalization is facilitated by Art. 8(2) of the Nationality Act. After three years of marriage they can apply for naturalization, even if they do not live in the Netherlands. It is remarkable that Art. 8(4) also facilitates the naturalization of unmarried persons who have lived with an unmarried Dutch national for at least three years and have a permanent relationship other than marriage. Paragraph 4 applies to all cohabitation relationships in which the partners are not married, regardless of whether they are heterosexual or homosexual. The partners must have lived together in the Netherlands; cohabitation with a Dutch national abroad does not entitle one to a facilitation of naturalization.

b. children of one of the state’s nationals, falling under the exceptions of Art. 6(1)(a) (i.e. children who did not acquire the nationality of a parent, because they were
born abroad or born out of wedlock); in the Netherlands children of nationals born abroad acquire Dutch nationality ex lege. Children of a Dutch mother always acquire her nationality iure sanguinis. Children born out of wedlock acquire Dutch nationality from their father in case of recognition or legitimation (Art. 4 Nationality Act). Only a provision granting Dutch nationality to children whose descendence from a Dutch father is established by judicial decision is still missing, but Bill 25 891 (R 1609) proposes nationality consequences for the judicial establishment of paternity. However, as has already been mentioned above, the same bill proposes to abolish the nationality consequences of recognition and legitimation. If that proposal is accepted by parliament, recognized or legitimized children of a Dutch father will receive the opportunity to acquire Dutch nationality by confirmation of a declaration of option, after the father has cared for them and educated them ("verzorging en opvoeding") for a period of three years. This is a facilitation in the sense of Art. 6(4) of the Convention.

c children, one of whose parents acquires or has acquired the state’s nationality; in the Netherlands the dependent acquisition of nationality by children of naturalized persons is regulated in Art. 11(1) of the Nationality Act, which provides that a minor non-Netherlands child of a father or mother who is granted Dutch nationality shall also receive Dutch nationality unless a proviso excluding this is made in the decree. Both the child - providing he has reached the age of twelve years - and his legal representative shall be given the opportunity to express their views on the naturalization of the child in such a case. Children of persons who acquire Dutch nationality by lodging a declaration of option do not acquire Dutch nationality. The legal literature considers the latter fact to be a legislative gap. It may therefore happen that the acquisition of nationality by children of persons who acquire Dutch nationality is not facilitated. The Netherlands legislator should therefore still create a general facilitation of naturalization for such children.

One has to question whether the Austrian reservation, which excludes the father of children born out of wedlock from the concept ‘parent(s)’, has consequences for sub c. In principle that is of course the case, but it has to be mentioned that Par. 17(1)(3) of the Austrian Nationality Act provides that the granting of nationality to an alien is to be extended under certain conditions mentioned in Par. 10 to, inter alia, the children born out of wedlock of a man, if his paternity has been judicially established or recognized and he has custody over the children, provided the children are still minors, unmarried and not aliens because of deprivation of nationality under Par. 33 (deprivation of nationality because of conduct seriously prejudicial to the interests or the reputation of Austria). Therefore, one can conclude that Austrian legislation obviously facilitates the naturalization of some children covered by sub c. The reservation has as a consequence, that not the whole category of children of Austrian parents will be privileged.
d adopted children of one of the state’s nationals; according to Art. 5 of the Dutch Nationality Act a child becomes a Dutch national if he is adopted pursuant to a judicial decision in the Netherlands, the Netherlands Antilles or Aruba provided that the adoptive father or the adoptive mother is a Dutch national on the day that the decision becomes final and that the child is a minor on the day of the decision in first instance. Recently an Act of Parliament modified Art. 5 in order to give, if certain requirements are fulfilled, nationality consequences to a foreign adoption decree which has to be recognized by the Netherlands as a consequence of the Hague Adoption Convention of 29 May 1993. 52

e persons who were born on the state’s territory and reside there lawfully and habitually; according to Art. 6(1)(a) of the Dutch Nationality Act, aliens over the age of majority (but under 25) who were born in the Netherlands and have lived in this country since their birth can opt for Dutch nationality. This article covers the so-called second generation of aliens (children of immigrants) living in the Netherlands. These people are deemed to be so closely connected with the Netherlands that they should be given a right of option. The third generation (grandchildren of immigrants) acquire Dutch nationality ex lege because of the provision of Art. 3(3) of the Nationality Act. According to that provision a child is a Dutch national if he is born to a father or mother who has residence in the Netherlands, the Netherlands Antilles or Aruba at the time of his birth and who was born to a mother residing in one of these countries. This provision is not totally in accordance with the equality of sexes because the child, born to a father or mother living in the Kingdom of the Netherlands at the time of the child’s birth, but himself/herself born as the child of a father living in the Kingdom, does not acquire Dutch nationality. Bill 25 891 (R 1609) proposes to correct that.

f persons who have been lawfully and habitually resident on the state’s territory for a period of time beginning before the age of 18 as determined by the internal law of the State Party concerned; according to the Dutch Nationality Act no special facilities are given to this category, with the exception that this category, along with many other groups of persons, does not have the obligation to (promise to) renounce their previous nationality in order to qualify for naturalization. Bill 25 891 (R 1609) gives in Art. 6(1)(e) an option right to persons who have been lawfully and habitually resident in the Netherlands since at least the age of four.

g stateless persons and recognized refugees lawfully and habitually resident on the state’s territory; Recommendation R 99 (18) underscores the obligation to facilitate the naturalization of stateless persons in rule I(d) and elaborates this obligation in part II(B) in the following rules:

Each State should facilitate the acquisition of its nationality by stateless persons lawfully and habitually resident on its territory, and in particular each State should:

a. reduce the required period of residence in relation to the normal period of residence required;

b. not require more than an adequate knowledge of one of its official languages, whenever this is provided for by the internal law of the state;

c. ensure that procedures be easily accessible, not subject to undue delay and available on payment of reduced fees;

d. ensure that offenses, when they are relevant for the decision concerning the acquisition of nationality, do not unreasonably prevent stateless persons seeking the nationality of a State.

The condition of adequate knowledge of the language is even more elaborated in Nr. 81 of the explanatory memorandum on the recommendation:

The concept of 'adequate knowledge' is a relative one and should be determined in accordance with the specific circumstances of the case. However, certain criteria could be identified. The adequate knowledge of an official language should be considered, for instance, in the light of the social and economic conditions of the stateless person concerned, as well as of his or her age and medical conditions. The oral knowledge of the language could be considered to be sufficient.

According to the Dutch Nationality Act, the categories mentioned in sub g are not especially privileged, although refugees are not required to renounce their previous nationality in order to qualify for naturalization. Bill 25 891 (R 1609) proposes shortening the required period of residence for these categories to three years.

In respect of Art. 6(4)(g) Moldova made a declaration on the occasion of the depositing of the instrument of ratification. Moldova declared that it will only be able to apply this provision after the adoption of the proper legal framework for the definition of the refugees statute in the Republic of Moldova, and no later than one year after the entry into force of the Convention for the Republic of Moldova (i.e. 1 March 2001). This declaration is in fact a reservation limited in time. This reservation is acceptable in view of Art. 29 of the Convention, which allows a reservation to be made in respect of this provision. However, paragraph 3 also prescribes that a State which has made reservations shall withdraw them as soon as circumstances permit. A withdrawal has to be made by means of a notification addressed to the Secretary General of the Council of Europe. A reservation limited in time has in my opinion to be interpreted as a reservation combined with a notification of withdrawal, and has therefore merely a provisional, temporary character.
Austria also made a reservation in respect to Art. 6 paragraph 4 sub g:

Austria declares to retain the right not to facilitate the acquisition of its nationality for stateless persons and recognized refugees lawfully and habitually resident on its territory (i.e. main domicile) for this reason alone.

According to Austrian legislation, stateless persons born on Austrian territory can be entitled to naturalization (Par. 14 Austrian Nationality Act), as mentioned above. As far as I can see, stateless persons born abroad do not have a privileged position under Austrian nationality law. The fact that an applicant for naturalization is a refugee is - in principle - relevant under Austrian law. Par. 11 of the Austrian Nationality Act provides that the competent authority, when exercising its free discretionary powers in naturalization matters, shall be guided by inter alia the public interest and the general conduct of the person involved. In granting nationality the fact that the alien is a refugee under the Convention of 1951 or the Protocol of 1974 has to be taken into account.

§ 4. The grounds for loss of a nationality.

Art. 7 of the new Convention provides, together with Art. 8, an exhaustive list of grounds for loss of nationality. Other grounds for loss are not permitted. These articles constitute an important step towards a certain harmonization of the grounds for loss of nationality. Whereas the grounds for acquisition of a nationality already vary considerably from country to country, the variation in the grounds for loss is enormous.

A State Party may not provide in its internal law for the loss of nationality ex lege or at the initiative of the State Party except in the following cases:

a voluntary acquisition of another nationality; in the Netherlands this ground for loss can be found in Art. 15(a) of the Nationality Act. Bill 25 891 (R 1609) proposes making several exceptions to this rule, inspired by the Second Protocol of the 1963 Strasbourg Convention. These exceptions are of course allowed. A State may provide for loss of its nationality in case of voluntary acquisition of another nationality, but there is no single obligation to do so.

b acquisition of the nationality of the State Party by means of fraud, false information or concealment of any material fact attributable to the applicant; the law in force in the Netherlands does not contain a ground for loss based on these factors. Some similarities with the aforementioned grounds can be found in Art. 15(d) of the Nationality Act. According to that provision the decree granting Dutch nationality can be revoked if the person concerned fails to make every effort to divest himself of his original nationality after he is naturalized, although he promised to do so during the naturalization procedure. In my opinion this ground for loss is not covered by the present provision nor by any other provision of the
Treaty. Not fulfilling a promise cannot be classified as fraud, false information or concealment of any relevant fact. Nevertheless the explanatory memorandum gives as an example of the present provision the case of a person who ‘acquires the nationality of the State Party on condition that the nationality of origin would subsequently be renounced and the person voluntarily did not do so’. According to the report, the State Party would be entitled to provide for the loss of its nationality. I do not agree with this example for the reasons already mentioned. If the drafters had wanted to allow such a ground for loss, they should have included it in the text of the Treaty itself.\textsuperscript{53} Mentioning the ground in the explanatory report, even where the wording of the text as such is obvious, is not enough. A ground for loss corresponding with the aforementioned grounds is proposed by Bill 25 891 (R 1609) in Art. 14. The proposal is compatible with the new Convention.\textsuperscript{54}

Austria also obviously considers that the revocation of a naturalization because of a failure to renounce the previous nationality is not covered by Art. 7(b) of the Convention, because Austria made a reservation in this respect, which would be superfluous if Austria were to accept the view manifested in the explanatory report:

Austria declares to retain the right to deprive a national of its nationality if:

1. he acquired the nationality more than two years ago either through naturalization or the extension of naturalization under the Law on Nationality of 1985 as amended;
2. neither Section 10, paragraph 4, nor Section 16, paragraph 2, nor Section 17, paragraph 4, of the Law on Nationality 1985 as amended were applied;
3. on the day of naturalization (extension of naturalization) he was not a refugee as defined in the Convention of 28 July 1951 of the Protocol relating to the legal Status of Refugees of 31 January 1967, and
4. despite the acquisition of its nationality he has retained a foreign nationality for reasons he is accountable for.

The reservation follows the wording of Par. 34 of the Austrian Nationality Act.

\textsuperscript{53} In a previous draft of the explanatory reports 'bigamy' was also mentioned as an example of the present provision. This example was later deleted. Compare Kreuzer, \textit{StAZ (Das Standesamt)} (1997), 128.

\textsuperscript{54} Nevertheless I am doubtful whether it is prudent to introduce this ground for loss. See G.R. de Groot, 'Een nieuwe poging tot wijziging van de Rijkswet op het Nederlandschap', in H.U. Jessurun d'Oliveira (ed.), \textit{Trends in het nationaliteitsrecht}, in particular 99-103.
voluntary service in a foreign military force; the explanatory memorandum explains that it does not matter whether the person involved served in the official army of another State or not. The provision covers every voluntary military service in any foreign military force irrespective of whether the military force is part of the armed forces of a foreign State or not. Until 1985, Dutch nationality law contained this ground for loss of nationality. The Netherlands had very bad experiences with this ground for loss during the thirties and the forties: several persons who served in the German military rejected the jurisdiction of the Netherlands in respect of crimes possibly committed by them during the Second World War, because - if they had committed the crimes involved - they would then have committed them as non-Netherlands citizens in a foreign country. These jurisdiction problems were reasons for abolishing this ground for loss of nationality. I regret that this ground is included in the list of the new Convention.

It has to be emphasized that sub c does not allow the deprivation of nationality in case of non-military service in another State. In this context again an Austrian reservation has to be mentioned:

Austria declares to retain the right to deprive a national of its nationality, if such person, being in the service of a foreign State, conducts himself in a manner seriously prejudicial to the interests or the reputation of the Republic of Austria.

Art. 32 of the Austrian Nationality Act provides the loss ex lege of Austrian nationality by an Austrian who voluntarily enters the military service of a foreign country. The reservation aforementioned follows the wording of Par. 33 of the Austrian Nationality Act in respect of the consequences of non-military foreign services.

A second Austrian reservation concerning Art. 7(1)(c) is quite surprising: 'Austria declares to retain the right to deprive a national of his nationality, if such person voluntarily enters the military service of a foreign State.' The reservation follows the wording of Par. 32 of the Austrian Nationality Act, but seems to me to be superfluous. The provision in sub c allows for loss of nationality through foreign military service, ex lege or on the initiative of a State in a particular case. The Austrian provision is covered by this provision. The reservation just cited was therefore unnecessary. Did Austria want to indicate that deprivation of nationality will not result from all cases of voluntary military service, because minors only lose their nationality if their legal representative has given his consent (see Par. 27(2) in combination with Par. 32 Austrian Nationality Act)? Or did Austria want to express that exclusively military service for a foreign State, and not service in a non-state military force, can have deprivation as a consequence? Because Art. 7 of the Convention exclusively allows the deprivation of nationality in the cases
mentioned and does not oblige a State Party to deprive a national of nationality in other cases, the Austrian reservation can be withdrawn again.

d. Conduct in a manner seriously prejudicial to the vital interests of the State Party; the wording of this sub-paragraph is drawn from Art. 8(3)(a)(ii) of the 1961 Convention on the Reduction of Statelessness. The explanatory report stresses that the conduct involved notably includes treason and other activities directed against the vital interests of the State concerned, for example work for a foreign secret service, but does not include criminal offenses of a general nature, however serious they may be. In the Netherlands this ground for loss does not exist. A criminal procedure against persons who commit treason (and so on) is preferred above deprivation of nationality.

The question has to be raised, whether the content of the aforementioned Par. 33 of the Austrian Nationality Act is perhaps covered by sub (d). Obviously it is the opinion of the Austrian government that this is not the case - otherwise the reservation inspired by Art. 33 would be superfluous. The Austrian provision speaks of behaviour which severely damages the interests or the reputation of Austria. This is, also in my opinion, wider than 'seriously prejudicial to the vital interests' of Austria.

e. Lack of a genuine link between the State Party and a national habitually living abroad; the Netherlands have a ground for loss of nationality as referred to in this sub-paragraph. The provision is considered to be necessary because the nationality of Dutch parents can be transmitted to all children born abroad. If the children involved do not develop a genuine link with the Netherlands, loss of Dutch nationality is deemed necessary in order to prevent persons habitually living abroad from retaining Dutch nationality generation after generation. According to Art. 15(c) a person will lose Dutch nationality if, after coming of age, he has his residence for a continuous period of ten years outside the Netherlands, the Netherlands Antilles or Aruba, in the country of his birth of which he is also a national. However an exception to this ground for loss is made for persons in the service of the Netherlands, the Netherlands Antilles or Aruba or an international organization in which the Kingdom is represented, and the spouses of persons in such service. This exception does not apply to persons in the service of Dutch multi-nationals. There is no possibility for preventing the loss by lodging a declaration with the competent authorities stating that one wishes to retain one's Dutch nationality. Moreover, there is no possibility of correcting the loss in cases where the person involved still has evident ties with the Netherlands. The loss happens ex lege. Reading the explanatory report on this sub-paragraph of the new Convention, it is doubtful whether the legal construction of Art. 15(c) is in complete conformity with the Convention. The report declares: 'It is presumed that the State concerned will have taken all reasonable measures to ensure that this information is communicated to the persons concerned.' In the Netherlands the communication of precise information on the content of Art. 15(c) does not make
much sense, because the only real possibility for maintaining Dutch nationality is to renounce the nationality of the State of residence (which is normally not allowed) or to move to another country. Even more uncertainties arise having read the following remarks in the report:

Possible evidence of the lack of a genuine link may in particular be the omission of one of the following steps taken with the competent authorities of the State Party concerned:

i. registration; ii. application for identity or travel documents; iii. declaration expressing the desire to conserve the nationality of the State Party.

If a Dutch national who fulfils the requirements of Art. 15(c) is registered at the Embassy, is in possession of a Dutch passport and expresses his desire to retain Dutch nationality, he nevertheless loses this nationality *ex lege*. I doubt whether this conforms with the present Convention.

The explanatory report continues with the remark that:

sub-paragraph e also has to be interpreted in the light of: - the definition of nationality as a legal bond between an individual and a State (Article 2, paragraph a), - the prohibition of the arbitrary deprivation of nationality (Article 4, paragraph c), - the possibility of excluding children born outside the territory from acquiring the nationality *ex lege* of one parent (Article 6, paragraph 1.a) and- the right to an administrative or judicial review (Article 12).

Obviously, administrative or judicial review of the decision that no genuine link exists must be possible. However, that should perhaps imply that a judge could come to the conclusion that there is still a genuine link, even though the formal criteria as specified in Art. 15(c) are fulfilled.

Bill 25 891 (R 1609) proposes the modification of Art. 15(c). If the bill is accepted by parliament, Dutch nationality will no longer be lost by a person who is in possession of a Dutch passport which is not older than ten years or a certificate of possession of Dutch nationality which is not more than ten years old. After that modification Art. 15(c) will be in conformity with the new Convention, where it is established during the minority of the child that the preconditions laid down by internal law which led to the *ex lege* acquisition of the nationality of the State Party are no longer fulfilled; in the Netherlands a corresponding ground for loss can be found in Art. 14(1) of the Nationality Act. If the family relationship from which the nationality was derived ceases, Dutch nationality is lost. This loss is not restricted to cases where the family relationship ceases during the minority
of the person involved. That is obviously not in conformity with the present sub-
paragraph of the new Convention. Bill 25 891 (R1609) therefore proposes
restricting Art. 14 to minors.55

Concerning Art. 7(1)(f), Austria made the following reservation:

Austria declares to retain the right to deprive a national of its nationality whenever
it has been ascertained that the conditions leading to the acquisition of nationality
ex lege, as defined by its internal law, are not fulfilled any more.

Obviously Austria wants to ensure that in a case where the conditions leading to the
acquisition of nationality are no longer fulfilled, following the attainment of the age of
majority of the person concerned, Austrian nationality will be lost as well.

the adoption of children if the nationality of the adopting parents is acquired; this
sub-paragraph corresponds with Art. 16(1)(a) of the Dutch Nationality Act.

Moldova made a ‘reservation’ in respect of this provision of the Convention with the
following content:

Concerning Article 7, paragraph 1, letter (g), the Republic of Moldova
declares its right to recognize and to conserve to the child who has the
nationality of the Republic of Moldova, adopted abroad and who acquired
the foreign nationality in consequence of his adoption, the right to keep the
nationality of the Republic of Moldova.

This reservation is in my opinion not necessary at all. Obviously, Moldova does not
want to use the possibility of providing for loss of nationality in the case of an adoption
of a Moldovan child by foreigners. However, one has to realize that no single ground
for loss mentioned in Art. 7 of the Convention is mandatory. Art. 7 merely indicates
which grounds for loss are allowed. The aim of Moldova to allow multiple nationality
for Moldovan children adopted abroad is also acceptable in view of Art. 15 of the
Convention which allows States Parties to determine in their internal law whether their
nationals who acquire the nationality of another State retain or lose their nationality.

The second paragraph of Art. 7 of the Convention States that a State Party may provide
for the loss of its nationality by children whose parents lose that nationality under Art.
7(1), except in cases where the nationality is lost by the parent because of voluntary
service in a foreign military force (sub c) or because of conduct seriously prejudicial
to the vital interests of the State Party (sub d). However children shall not lose that
nationality if one of the parents retains his/her nationality. Art. 16 of the Dutch

55. The proposed modification will have retroactivity to 1 January 1985.
Nationality Act corresponds in the most important points with the provision of the present paragraph.\textsuperscript{56}

In respect of Art. 7(2) the question has to be raised, whether the Austrian reservation concerning the exclusion of a father of a child born out of wedlock from the definition of 'parent' has consequences for this provision? In principle, this question has to be answered in the affirmative. Nevertheless one should realize that excluding a parent from this provision is an advantage for the child involved, because he will not be affected by the loss of nationality by the parent involved. Furthermore, as already stressed several times, no single ground for loss mentioned in Art. 7 is mandatory. Therefore a reservation is not necessary. Moreover, according to Austrian nationality law a child of an Austrian father may follow the loss of the nationality of the father, even in cases where he was born out of wedlock. This applies, according to Par. 29(2) of the Austrian Nationality Act, if the father involved has custody of the child.

The third and final paragraph of Art. 7 of the Convention provides that, in principle, loss of a nationality may not cause statelessness. The only exception allowed to this principle is deprivation of nationality because of fraudulent conduct, false information or concealment of any material fact during the naturalization or option procedure. In this respect Recommendation 99 (18) underscores in Part C(c):

In order to avoid, as far as possible, situations of statelessness, a State should not necessarily deprive of its nationality persons who have acquired its nationality by fraudulent conduct, false information or concealment of any relevant fact. To this effect, the gravity of the facts, as well as other relevant circumstances, such as the genuine and effective link of these persons with the state concerned, should be taken into account.

At the moment, loss of Dutch nationality can never occur if this causes statelessness (Art. 14(2) Nationality Act), but Bill 25 891 (R 1609) proposes introducing the possibility of depriving a person of his/her nationality if this nationality was acquired by means of fraud, even if statelessness is the result.\textsuperscript{57}

In a separate article the new Convention deals with loss of nationality at the initiative of the individual. Art. 8(1) states that each State Party shall permit its nationals to renounce their nationality provided they do not thereby become stateless. However, an exception is allowed in case of nationals who do not have their habitual residence abroad.


\textsuperscript{57} Against this proposal in general and on the proposed partial retroactivity in particular Gerard-René de Groot, \textit{Migrantenrecht} (1999), 19,20.
The right given by Art. 8 to renounce a nationality is wide. The explanatory report states the following:

It is not acceptable under Article 8 to deny the renunciation of nationality merely because persons habitually living in another State still have military obligations in the country of origin or because civil or penal proceedings may be pending against a person in that country of origin. Civil or penal proceedings are independent of nationality and can proceed normally even if the person renounces his/her nationality of origin.

In the Netherlands an even wider right to renounce Dutch nationality exists under Art. 15(b) of the Nationality Act. A Dutch national who also possesses another nationality may renounce his Dutch nationality, even if he has his habitual residence in the Netherlands.

With regard to Art. 8(1), a reservation made by Austria has to be mentioned:

Austria declares to retain the right of permitting renunciation of its nationality by a national only in the case that:

1. the national possesses a foreign nationality;
2. no criminal procedure or execution of a criminal sentence is pending in Austria for an offence punishable with more than six months of imprisonment;
3. in the case of the national, being a male person, he is not a member of the Federal Armed Forces and;
   a) has not yet passed the age of sixteen or has already passed the age of thirty-six;
   b) has fulfilled his regular military or civilian service obligations;
   c) has been found unfit for military service by the Recruiting Commission or has been declared permanently unfit for any kind of civilian service by the competent administrative physician;
   d) has been dispensed from recruitment to the Federal army for reasons of mental illness or mental disorder, or
   e) has fulfilled the military obligations, or in their place service obligations in another State of which he is a national and is therefore dispensed from regular military or civilian service on the basis of a bilateral agreement or an international convention.

The conditions listed under sub-paragraph 2 and 3 do not apply if the person renouncing his nationality has had his ordinary residence outside the territory of the Republic for a continuous period of not less than five years.

The reservation follows the wording of Par. 37 of the Austrian Nationality Act.
It has already been mentioned above that Art. 7(2) allows a State Party to provide for the loss of nationality by children of a parent who has lost the nationality because of a ground mentioned in Art. 7(1) (except in the cases of sub c and d). Art. 8 does not contain a corresponding paragraph. Therefore I conclude that the Convention does not allow for the renunciation of a nationality by a parent to have consequences for the nationality of his children. According to Art. 16(1)(c) of the Dutch Nationality Act a renunciation of Dutch nationality by a parent also causes the loss of nationality by his minor children, except in the case where the other parent retains Dutch nationality. This provision conflicts with the Convention. The Netherlands government therefore proposed to the parliament that a reservation concerning Art. 8 be made in order to allow the Netherlands to maintain this ground for loss. 58

A completely different point is whether a State can allow renunciation of nationality if this would result in statelessness of the person involved. Recommendation 99 (18) Part C(a) and (b) underscores that this would be unacceptable:

a. Each State should ensure that the renunciation of its nationality will not take place without the possession, actual acquisition or guarantee of acquisition of another nationality. Where another nationality is not acquired or possessed, States should provide that the renunciation is without effect.
b. When a State requires persons to lose their previous nationality in order to acquire its nationality, this State should grant its nationality, even if the previous one is not immediately lost. The States concerned, if necessary, should agree on the modalities of the application of this provision.

Art. 9 sets out a provision on recovery of nationality. The Article provides that each State Party shall facilitate, under the conditions fixed by its internal law, the recovery of its nationality by former nationals who are lawfully and habitually resident on its territory. At first sight this seems to be a very generous provision, but the Article allows for the setting of several ‘conditions’ for the recovery of a formerly held nationality. Moreover, the obligation to facilitate recovery only applies to former nationals living lawfully on the territory. The State involved can therefore influence the right of facilitation by not allowing former nationals to settle on its territory. Finally, the Article does not indicate who precisely is a former national. Does this include persons who formerly possessed a colonial nationality? In the Netherlands, the facilitation of recovery of nationality of former nationals, including former colonial nationals exists: they can be naturalized even without residence in the Netherlands. It has to be admitted however, that this generous facilitation provision can easily be controlled, because these former nationals have to meet the requirement that their residence for an unlimited period in the Netherlands, the Netherlands Antilles or Aruba,

58. See Bill 26990 (R1647). For opposing positions on the proposed reservation the Permanent State Committee for Private International Law in an opinion given on 27 March 1999; also against the reservation Gerard-René de Groot, Migrantenrecht (1999), 21.
does not meet with any objection (Art. 8(1)(b) of the Dutch Nationality Act). This requirement is in practice often applied using the criteria of immigration law.

§ 5. Some procedural rules

Art. 10-13 establishes some rules on procedures. Art. 10 states that each State Party shall ensure that applications related to the acquisition, retention, loss, recovery or certification of its nationality are processed within a reasonable time. The words 'within reasonable time' refer implicitly to the decisions of the European Court of Human Rights on the interpretation of Art. 6 European Convention on Human Rights. In the Netherlands an application on naturalization has to be decided within a maximum period of two years (Art. 9 of the Nationality Act). In practice, it often happens that an application is not decided within this period. Under certain circumstances this could be a violation of Art. 10 of the new Convention.

Art. 11 prescribes that decisions relating to acquisition, retention, loss, recovery or certification must be reasoned and in writing. This brief provision is clarified in the explanatory reports in a convincing manner:

At a minimum, the legal and factual reasons need to be given. For decisions involving national security, only a minimum amount of information has to be provided. For decisions which were in accordance with the wishes or interests of the individual, for example, the granting of the application, a simple notification or the issue of the relevant document will suffice.

This obligation is fulfilled in the Netherlands. Although no obligation to motivate decisions is given in the Nationality Act, this obligation of authorities to motivate their decisions already follows from general administrative law.

Art. 12 of the Convention guarantees that decisions relating to acquisition, retention, loss, recovery or certification shall be open to administrative or judicial review in conformity with a state's internal law. This general guarantee is remarkable, because in several countries decisions on naturalization are made by Act of Parliament without any possibility of judicial review. The explanatory reports mention in that respect:

It has been considered not to be appropriate in the present Convention to provide for an exception wherever decisions relating to naturalizations are taken by act of parliament and are not subject to appeal, as is the case in certain States. The general recognition of the right to appeal has indeed been estimated to be of prominent importance.

As already mentioned above, Denmark will probably make a reservation concerning Art. 14 precisely because the Danish constitution prescribes naturalization by Act of Parliament.
The drafters of the Convention realized that high fees can often impede access to a certain nationality or can make it highly unattractive to renounce a nationality. Art. 13 therefore prescribes that the fee for acquisition, retention, loss, recovery or certification shall not be unreasonable. Furthermore, each State Party has to ensure that the fees for administrative or judicial review do not form an obstacle. Of course it is questionable what is unreasonable. In the Netherlands the maximum fee for naturalization is fl. 500; the use of a right of option is free of charge; renunciation of Dutch nationality is also free of charge; the fee for a certification of Dutch nationality is fl.12.

An interesting question is whether, in respect of naturalization, Art. 13 exclusively concerns the fee which has to be paid for the naturalization or also other costs which have to be covered in order to meet the requirements for naturalization. This is a particularly important point if renunciation of a previous nationality is required and the country of origin asks a fee for the renunciation permit. The aim of Art. 13 is not to impede access to a new nationality by imposing exorbitant costs. Therefore, I tend to conclude that all costs which are incurred during the naturalization process have to be taken into account if one wants to evaluate whether the costs are unreasonable, and not exclusively the fee to be paid for the naturalization *sensu stricto*.

Art. 10, 11 and 12 mention the certification of a nationality and imply the obligation of every State to give such a certification. But not every European country yet offers the possibility of requesting a formal certificate of nationality. A so-called ‘bewijs van Nederlandschap’ (certificate of Dutch nationality) is for example a rather informal written declaration that somebody possesses Dutch nationality and does not have direct consequences for the burden of proof of Dutch nationality, if this nationality is contested by the Dutch authorities. The European Convention does not contain rules regarding the status of a certificate. It is therefore an important supplement to the Convention, that the International Commission on Civil Status (Commission International d’Etat Civil) recently concluded a special ‘Convention concerning the delivery of a certificate of nationality’ (Convention relative à la délivrance d’un certificat de nationalité), 59 which was opened for signature on 14 September 1999 at Lisbon. The preamble of the Lisbon Convention refers expressly to the European Convention on Nationality:

> Désireux de faciliter la preuve à l’étranger de la nationalité de leurs ressortissants,
> Ayant égard aux dispositions concernant la délivrance d’une attestation de nationalité prévue par la Convention européenne sur la nationalité faite à Strasbourg le 6 novembre 1997.

Art. 2 of the Lisbon Convention states that the purpose of a certificate is to provide proof of the nationality of a person for authorities of other States. The Convention

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introduces a standardized certificate. Art. 4(1) prescribes that the certificate gives evidence of the possession of the nationality involved until proof to the contrary is forthcoming.

§ 6. Multiple nationality

The new Convention devotes four articles (Art. 14-17) to cases of multiple nationality. These articles demonstrate the hesitant attitude which is also shown by the Second Protocol to the 1963 Strasbourg Convention: states may avoid cases of multiple nationality, but should not do so under all circumstances. The main goal of the articles on multiple nationality in the present Convention is obviously not to constitute an obstacle for any State to ratify the Convention. Neither the rules of the 1963 Convention nor the exception of the Second Protocol are included in the new Convention. Member States of the 1963 Convention (or the 1993 Protocol) are able to ratify the new Convention without problems, but the same is true for States which did not ratify those international instruments.

One has to realize that the issue of multiple nationality is a controversial item in several European countries. Some countries want to avoid multiple nationality as much as possible. They consider multiple nationality as an abnormal situation, which causes many technical legal problems and conflicts with the idea of solidarity between a nation and its nationals. A person should only have one nationality, like he only has one mother. The 1963 Convention is a manifestation of this attitude.

Other countries try to avoid multiple nationality, but accept exceptions, as happened in the 1993 Protocol. In those cases the Contracting States accept that, due to personal circumstances, a person has such close links with more than one State that the possession of more than one nationality is a manifestation of real, genuine ties with the countries in question. A special position is taken by countries like France and Italy, which accept multiple nationality in their domestic nationality law, but which are nevertheless Contracting States of the 1963 Convention and the 1993 Protocol. If Bill 25 891 (R 1609) is accepted, the Netherlands will also tolerate a considerable number of cases of multiple nationality, but probably will not denounce the 1963 Convention and the 1993 Protocol.

On the other hand, some countries do not care at all about cases of multiple nationality. Ireland and the United Kingdom are traditionally very liberal in this respect. Naturalization is possible without renunciation of another nationality; voluntary acquisition of a foreign nationality is not a ground for loss of Irish, respectively British nationality. 60

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60. Exclusively, the naturalization of a foreigner in Ireland may be revoked if this naturalized Irish national voluntarily acquires a foreign nationality (Section 19(1)(e) Irish Nationality Act).
However other countries are really struggling with the topic of multiple nationality. For example, Spain has ratified a considerable number of treaties allowing multiple nationality with Latin American countries. Nevertheless, Spain normally requires renunciation of a previous nationality for naturalization (Art. 23(b) Código civil). Voluntary acquisition of a foreign nationality was traditionally a ground for loss of Spanish nationality, although several exceptions were provided (see Art. 22 Código civil as modified in 1954), but this was revised completely in 1982. After that modification, voluntary acquisition of a foreign nationality did not cause the loss of Spanish nationality, if the foreign nationality was acquired for reasons of emigration ("por razón de emigración"). However, that rule was again modified in 1990. Since then, voluntary acquisition of a foreign nationality may cause the loss of nationality if the person involved, after having acquired the foreign nationality lives for a period of three years abroad. However, the nationality is not lost if one still uses for example Spanish travel documents. Moreover, Spanish nationality is never lost in case of acquisition of the nationality of a Latin-American country, or of the nationality of Andorra, The Philippines, Ecuatorial Guinea or Portugal. Nevertheless, in 1999 a new proposal was made by a member of the Senate to again allow the retention of Spanish nationality by emigrants of Spanish origin living abroad, even when they possess the nationality of their country of birth.61 The Spanish debate on multiple nationality seems to have become a never-ending story.

It is likely that the discussion on the pros and cons of multiple nationality will go on for the next few years. An important issue will be whether persons with multiple nationality should have the right to complete political participation in all the countries of which they are nationals. Furthermore, the question has to be answered, whether the transfer of nationality by nationals born abroad should be limited in order to recognize that nationality is still a manifestation of a real link between a person and a State? In Europe, an additional question should be raised: should the cumulation of the nationalities of the Member States of the European Union be allowed without any limitation, because all these nationalities give entitlement to European citizenship?

These different attitudes in respect of multiple nationality should be kept in mind while reading the carefully drafted provisions of the new European Convention on this issue. The Convention prescribes that children with different nationalities acquired automatically at birth should not be forced to make a choice between their nationalities (Art. 14). The same applies to persons who acquire a second nationality by marriage. Nevertheless, the grounds for loss permitted by Art. 7 may be applied to these persons. Therefore, a nationality acquired by those children or spouses may be lost due to a lack of a genuine link.

Art. 15 emphasizes that the provisions of the Convention do not limit the right of a State to provide that its nationals acquiring the nationality of another State retain or lose the nationality they possess. Moreover, a State is free to provide that the acquisition or retention of its nationality is subject to the renunciation or loss of another nationality.

Art. 16 states that a State Party shall not require persons to renounce their nationality of origin in order to acquire its nationality where such renunciation is not possible or cannot reasonably be required. This formulation has similarities to the wording of Art. 9(1)(b) of the Dutch Nationality Act: an applicant possessing a foreign nationality has to make every effort to renounce that nationality or has to promise to make such efforts after his naturalization, unless this cannot reasonably be expected of him. Of course everything depends on the interpretation in practice of what can still be reasonably expected. The Netherlands make many exceptions to the obligation to renounce a previous nationality, because frequently it is deemed to be unreasonable to force an applicant to renounce his nationality of origin. Some other countries, like Germany for example, seem to make fewer exceptions.

Art. 17(1) underlines the fact that nationals of a State Party in possession of another nationality have, in the territory of the State Party in which they reside, the same rights and duties as other nationals of that State Party. This provision is reminiscent of the wording of Art. 3 of the 1930 Hague Convention on Nationality. Art. 17(2) mentions that the rules of international law concerning diplomatic or consular protection by a State Party in favour of one of its nationals who simultaneously possesses another nationality are not affected. The explanatory report makes an interesting remark about this provision. It refers, in the first place, to Art. 4 of the 1930 Convention on Nationality which provides that 'A State may not afford diplomatic protection to one of its nationals against a State whose nationality such a person also possesses.' Then the report continues:

However, owing to the developments that have taken place in this area of public international law since 1930, in exceptional individual circumstances and while respecting the rules of international law, a State Party may offer diplomatic or consular assistance or protection in favour of one of its nationals who simultaneously possesses another nationality, for example in certain cases of child abduction.

Also, it is interesting to mention that in a previous draft of the present Convention the provision involved was formulated differently: 'a State Party may afford diplomatic protection to one of its nationals, for humanitarian or similar purposes, against a State whose nationality the person concerned also possesses.'

Finally, Art. 17 states that rules of private international law in case of multiple nationality are not affected.
§ 7. State succession

Art. 18-20 deal with the principles relating to nationality which have to be observed in case of State succession. Art. 18(1) emphasizes that the State Parties concerned shall respect the rule of law, human rights and the principles contained in Art. 4 and 5 of the present Convention and shall in particular avoid statelessness. The second paragraph of Art. 18 lists the circumstances which States involved shall take into account in deciding on the granting or retention of a nationality. Mentioned are: a) the genuine and effective link of a person with the State; b) the habitual residence of a person at the time of State succession; c) the will of the person concerned; d) the territorial origin of the person concerned. If the acquisition of the nationality of a successor State is subject to the requirement of renunciation of another nationality, this condition should not be required if this would be unreasonable.

The following article contains the obligation that State Parties should endeavour to regulate problems relating to nationality caused by State succession by agreement amongst themselves, naturally respecting the rules previously mentioned. This rule is repeated in Part I(e) of Recommendation 99 (18).

Finally, Art. 20 creates some obligations for State Parties in respect of persons who were nationals of the predecessor State, but who do not acquire the nationality of the succeeding State Party although they have their habitual residence on the territory of the successor State. They have the right to remain in that State and they shall enjoy equality of treatment with nationals of the successor State in relation to social and economic rights. The successor State is allowed to exclude these persons from 'employment in the public service involving the exercise of sovereign powers.' Therefore, not every public servant who does not acquire the nationality of the successor State may be dismissed. Of course, much depends on the interpretation of the words 'involving the exercise of sovereign powers.' The explanatory reports refers to the interpretation of these words by the European Court of Justice in re: Commission of the European Communities v. Kingdom of Belgium. Therefore, the exception is limited to employment in specific activities of the public service in so far as the employment involves the exercise of powers conferred by public law and contains responsibility for safeguarding the general interests of the State. The profession of a university professor, for example, is generally not considered to be such a position.

It is particularly regrettable that Art. 18 does not provide more detailed criteria for deciding which of the nationals of the predecessor State acquire the nationality of a certain successor State. Obviously, the drafters did not achieve a consensus on more

62. In French: 'prééminence du droit'.  
64. See Hildegard Schneider, *Die Anerkennung von Diplomen in der Europäischen Gemeinschaft*, (Maklu, 1995), 8-11.
precise rules. It should be mentioned that early drafts of the present Convention contained more detailed provisions in this respect. A working group of the Council of Europe is attempting to draft further recommendations based on the principles mentioned in Art. 18. A first result of the activities of this working group is obviously Recommendation R 99 (18). Of further importance in this respect are activities within the United Nations, where a working group is trying to formulate the text of a resolution or recommendation establishing principles in respect of the attribution of nationality in State succession cases.

§ 8. Military obligations in cases of multiple nationality

The Convention contains two articles (Art. 22 and 23) dealing with military obligations in cases of multiple nationality. These rules have been taken, without any substantive changes, from Chapter II of the 1963 Convention together with the provisions of the 1977 Protocol amending the 1963 Convention which relate to alternative civil service and exemption from military obligations. The only modification of some importance is the use of the words 'habitual residence' instead of the words 'ordinary residence'.

At first sight it is therefore surprising that Austria, which ratified the 1963 Convention on reduction of cases of multiple nationality and military obligations in cases of multiple nationality on 31 July 1975, made two reservations and a declaration relating to the Articles 21 and 22 of the Convention. One of the reservations appears to be a repetition of a reservation made at the occasion of the ratification of the 1963 Convention:

Austria declares that the terms 'military obligations/obligations militaires' used in Articles 21 and 22 of this Convention will be interpreted in a manner that they only comprise the obligation of an individual to fulfil his compulsory military service. Other military obligations are not affected by this Convention.

The other reservation and the declaration made by Austria are new. They both deal with matters regulated in the 1977 Protocol, which was not ratified by Austria. The 1977 Protocol and the Convention on nationality provide that the rules avoiding double

65. See on that point as well Kreuzer, StAZ (Das Standesamt) (1997), 126,127.
66. See the very informative report of Zdzisław Galicki, 'State succession and nationality', presented at the first European conference on nationality, Strasbourg, 18 and 19 October 1999.
67. This corresponds with: 'A l’occasion du dépôt de l’instrument de ratification de la présente Convention effectuée aujourd’hui, la République d’Autriche déclare que les expressions "obligations militaires/military obligations" employées aux articles 5 et 6 seront interprétées, de façon que l’on n’entend par là que l’obligation de l’individu d’accomplir son service militaire. D’autres obligations militaires ne sont en rien affectées par la présente Convention.'
military service also apply to a person who has been exempted from his military obligations or has fulfilled civil service as an alternative. In this respect Austria made the following reservation:

Austria declares to retain the right that a person who has been exempted from his military obligations in relation to one State Party is not deemed having fulfilled his military obligation in relation to the Republic of Austria.

Moldova made a reservation on the same point, but this reservation has a more restrictive character as it exclusively has consequences for persons with their habitual residence in Moldova:

Concerning the application of Article 22, letter (a), the Republic of Moldova reserves its right to recognize that a person, who has his habitual residence on the territory of the Republic of Moldova and has been exempted from his military obligations in relation to one of the States Parties at the Convention, is not deemed having fulfilled his military obligation in relation to the Republic of Moldova:

A difficulty in respect of the Moldovan reservation is the question at what moment must the person involved have his habitual residence in Moldova in order to make the reservation applicable. I assume that the reservation applies if the person involved habitually resides in Moldova at the time he is exempted from the military obligations by the other State. Otherwise the reservation should have mentioned an age up until which the habitual residence in Moldova activates the reservation.

Another matter regulated by the 1977 Protocol, and now by the Convention, is the position of plural nationals, who possess *inter alia* the nationality of a Contracting State which does not require obligatory military service. The person involved shall be considered to have satisfied his military obligations if he has his habitual residence in the territory of the State which does not require military service. Nevertheless this does not apply if the person involved gives up his habitual residence in the State in question before a certain age. Each Contracting State which requires military service has to notify this age-limit to the Council of Europe. In view of this provision Austria declared 'that in the Republic of Austria the age referred to in Article 22, lit(b) is considered to have been reached with completion of age 35.' This is rather old. Moldova made a declaration that the relevant age is the completion of the age of 27. Slovakia made a very generous declaration in this respect:

68. The 1977 Protocol used the words 'relieved of or exempted from'; the European Convention exclusively uses the words 'exempted from', but in my opinion does not aim to modify the content of the provision.
According to Article 22, paragraph b, the Slovak Republic declares that persons who are nationals of a State Party which does not require obligatory military service and who are equally nationals of the Slovak Republic shall be considered as having satisfied their military obligations when they have their habitual residence in the territory of the Slovak Republic.

§ 9. Co-operation between the States Parties / Application of the Convention / Final Clauses

The Convention provides for co-operation between the States Parties in nationality matters. Each State shall provide the Secretary General of the Council of Europe with information about their internal law relating to nationality and about developments concerning the application of the Convention. Upon request, the same information has to be provided to other State Parties. The aim of the co-operation is to deal with all relevant problems and to promote good practices and the progressive development of legal principles concerning nationality and related matters (Art. 23(2)).

Art. 24 deals with the exchange of information on the voluntary acquisition of nationality of one State Party by nationals of another State Party. This information is of particular importance for States who accept voluntary acquisition of another nationality as a ground for loss of their own nationality. The State Parties are not obliged to provide this information, but may declare that they wish to furnish it. It should be noticed that the European Convention includes the possibility of exchanging information on the voluntary acquisition of a nationality as embodied in the Paris Convention of 10 September 1964 of the International Commission on Civil Status (CIEC).

According to Art. 27, the Convention is open for signature by the Member States of the Council of Europe and the non-member States which have participated in its preparation. These non-member States are Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Canada, Croatia, Georgia, the Holy See, Kyrgyzstan and the United States of America. Already, this list of countries shows that the European Convention on Nationality is not exclusively a European matter. Art. 27(2) provides that the Convention will enter into force on the first day of the month following the expiration of a period of three months after the third ratification by a Member State of the Council of Europe, this was - as already mentioned - 1 March 2000. Now that the Convention has entered into force, the Committee of Ministers of the Council of Europe may invite any non-member State to accede to the Convention. Therefore, this European Convention on Nationality can certainly become a World Convention on Nationality. In this respect it has to be mentioned that Canada is seriously studying the desirability of ratification of the Convention.

In order to encourage ratifications, Art. 29 is quite liberal with respect to the possibility of making reservations. No reservations can be made to the provisions contained in chapter I, II and VI (i.e. the Art. 1-5 (definitions and general principles) and the Art. 18-20 (state succession)). All other reservations are allowed provided they are compatible with the object and purpose of the Convention. Jessurun d’Oliveira 70 therefore compares the Convention to a supermarket where self service is encouraged. However, if a State makes a reservation it has to notify the Secretary General of the Council of Europe of the relevant contents of its internal law and of any other relevant information. The State involved has the obligation to consider withdrawing the reservation as soon as circumstances permit.

§ 10. Some concluding remarks

The European Convention on Nationality is an important step towards the progressive development of legal principles and practice concerning nationality. Certainly, the Convention will have a harmonizing effect on the regulation of the grounds for acquisition and loss of the nationality of the different European and non-European States. The Convention encourages the nationality integration in the State of residence of families of foreign origin living permanently in another State. In this respect, Art. 6(3) and paragraph 4(e) and (f) are of particular importance. Art. 7 considerably restricts the possibilities of deprivation of a nationality. Especially important is that, save for one exception (deprivation because of fraudulent behaviour during the naturalization or option procedure), the acceptable grounds for loss do not discriminate between ‘original’ nationals and those nationals who acquired their nationality later.

Scholars specializing in nationality law should now co-operate in investigating how far the internal nationality legislation of different countries conforms with the new Convention. In addition, by doing comparative research, they should try to develop new common principles, desirable grounds for acquisition, grounds for facilitation of acquisition, and more detailed acceptable grounds for loss of nationality. They must develop further building stones for a ius commune in the field of nationality law, perhaps to be included in a world wide Convention on Nationality.

70. Jessurun d’Oliveira, Trends in het nationaliteitsrecht, 46.