

**CONSEQUENCES
OF STATE SUCCESSION
FOR NATIONALITY**

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**DECLARATION ON THE CONSEQUENCES OF STATE
SUCCESSION FOR THE NATIONALITY OF NATURAL PERSONS**

**adopted by the
European Commission for Democracy through Law
at its 28th Plenary Meeting
Venice, 13-14 September 1996
DECLARATION**

on the consequences of State succession for the nationality of natural persons

The European Commission for Democracy through Law (Venice Commission),

recognising that in cases of State succession, the interests not only of States but also of individuals must be taken into account;

being committed to the principles of democracy, the rule of law and the protection of human rights;

having particular regard to State practice in the matter;

has adopted the following declaration:

I.

1. The expression "State succession" refers to the replacement of one State by another in its responsibility for the international relations of territory. It comprises, in particular, annexation, union, dissolution and separation.

2. Questions relating to nationality fall to the jurisdiction of States within the limits laid down by international law.

3. In the event of State succession, the conditions for the acquisition and loss of nationality shall be provided for by law. Any deprivation, withdrawal or refusal to confer nationality shall be subject to an effective remedy.

4. In the event of State succession, the States involved may, by agreement, settle the question of nationality. They shall respect the human rights of the persons concerned, as guaranteed by international instruments.

II.

5. The States concerned shall respect the principle that everyone has the right to a nationality.

6. They shall avoid creating cases of statelessness.

7. In matters of nationality, they shall respect, as far as possible, the will of the person concerned.

III.

8.a In all cases of State succession, the successor State shall grant its nationality to all nationals of the predecessor State residing permanently on the transferred territory.

b. Such nationality shall be granted without any discrimination in particular on the basis of ethnic origin, colour, religion, language or political opinions.

c. Those persons to whom this nationality has been granted shall enjoy perfect equality of treatment with the other nationals of the successor State.

9. It is desirable that successor States grant their nationality, on an individual basis, to applicants belonging to the following two categories:

- a. persons originating from the transferred territory, who are nationals of the predecessor State but resident outside the territory at the time of succession;
- b. permanent residents of the transferred territory who, at the time of succession, hold the nationality of a third State.

IV.

10. The successor State shall grant its nationality:

- a. to permanent residents of the transferred territory who become stateless as a result of the succession;
- b. to persons originating from the transferred territory, resident outside that territory, who become stateless as a result of the succession.

11. It is desirable that the successor State grant its nationality:

- a. to permanent residents of the transferred territory who are stateless at the time of the succession;
- b. to persons originating from the transferred territory but resident outside that territory who are stateless at the time of the succession.

12. The predecessor State shall not withdraw its nationality from its own nationals who have been unable to acquire the nationality of a successor State.

V.

13.a In all cases of State succession, when the predecessor State continues to exist, the successor State(s) shall grant the right of option in favour of the nationality of the predecessor State.

b. When two or more States succeed to a predecessor State which ceases to exist, each of the successor States shall grant the right of option in favour of the nationality of the other successor States.

14. The successor States may make the exercise of the right of option conditional on the existence of effective links, in particular ethnic, linguistic or religious, with the predecessor State and, in the case envisaged under number 13.b, also on the condition that the persons previously had the citizenship of a subdivision of the predecessor State.

15. The right of option should be exercised by all adults within a reasonable time from the date of succession.

16. The exercise of the right to choose the nationality of the predecessor State, or of one of the successor States, shall have no prejudicial consequences for those making that choice, in particular with regard to their right to residence in the successor State and their moveable or immoveable

property located therein.

EXPLANATORY REPORT ON THE DECLARATION ON THE CONSEQUENCES OF STATE SUCCESSION FOR THE NATIONALITY OF NATURAL PERSONS

**adopted by the
European Commission for Democracy through Law
at its 28th Plenary Meeting
Venice, 13-14 September 1996**

I. INTRODUCTION

1. At its 20th meeting in Venice on 9 and 10 September 1994, acting on a proposal by Ms *Buure-Hägglund*, the Chair of the European Committee on Legal Affairs (CDCJ), the Commission asked Mr *Economides* and Mr *Malinverni* to draw up a draft questionnaire on the consequences of state succession for nationality. In 1995 the questionnaire was sent to all the members and associate members of the Committee as well as its observers.

2. The Commission received replies from the following European countries which have a practice in the field of State succession: *Albania, Austria, Belarus, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, the Netherlands, Norway, Poland, Portugal, Romania, Russia, Slovakia, Slovenia, "the former Yugoslav Republic of Macedonia", Turkey and Ukraine*, as well as the two non-European States represented in the Commission, *Japan and Kyrgyzstan*. The *United States of America* have provided some information on their domestic legislation in this field⁴.

3. At its 24th meeting in Venice on 8 and 9 September 1995, the Commission asked the rapporteurs, Mr *Economides*, Mr *Klu_ka* and Mr *Malinverni* to finalise the draft report on the consequences of state succession for nationality and draw up principles for national legislation.

4. Based on the replies to the questionnaire, a consolidated report was prepared (CDL-NAT (96) 5 rev.2). This report demonstrates the legal models of regulation which have been adopted, either independently or pursuant to obligations under international law, to deal with the effects of territorial transfers on the nationality of natural persons.

5. In the course of its work, the Commission took note of the draft European Convention on Nationality⁵ which had been prepared by the Committee of experts on nationality of the Council of Europe (CJ-NA). Two members of this Committee, Mr *Kojanec* (Italy) and Mr *Schärer*

⁴ Sections 301 et seq. of the US Immigration and Nationality Act.

⁵ A draft Convention has been declassified by the Committee of Ministers of the Council of Europe (Doc. DIR/JUR (96) 8 of 12 July 1996). When the European Committee on Legal Co-operation has finalised the text, it will be submitted to the Committee of Ministers for adoption.

(Switzerland), have participated in the work of the Commission.

6. The Commission also took note of the work of the International Law Commission of the United Nations on the topic of "State succession and its impact on the nationality of natural and legal persons"⁶.

7. At its 9th meeting held in Venice on 15 May, the Sub-Commission on International Law examined some draft guidelines for State practice (CDL-NAT (96) 1 rev.) and a draft declaration drawn up by Mr *Economides* (CDL-NAT (96) 3). After an extensive exchange of views, it was decided to retain the draft declaration proposed by Mr *Economides* as a basis for the Commission's future work. Following this, Mr *Steinberger* submitted an extremely useful working document to the rapporteurs.

8. It should be noted that for the nationality of *legal persons* the following provision was proposed in the draft declaration submitted by Mr *Economides* (CDL-NAT (96) 3): "Legal persons whose headquarters are located in the transferred territory shall acquire upon succession the nationality of the successor State". However, considering that the practice of States is very limited in this area, the Commission decided not to include it in the text of the present declaration, which therefore concentrates exclusively on the nationality of natural persons.

9. The final version of the declaration was drawn up by the Sub-Commission on International Law at its 10th meeting in Venice on 12 September 1996 and adopted by the plenary Commission at its 28th meeting in Venice on 13-14 September 1996.

II. COMMENTS ON THE PROVISIONS OF THE DECLARATION

I.

1. The definition of the expression "State succession" is taken from Article 2.1.b of the Vienna Convention of 1978 on Succession of States in respect of Treaties and Article 2.1.a of the 1983 Vienna Convention on Succession of States in respect of State Property, Archives and Debts. Temporary occupations or annexations of territory which occur during a state of war do not entitle the occupant to change the nationality of the inhabitants. The same applies *a fortiori* to occupations or annexations which result from resort to the use of force in violation of Article 2, paragraph 4, of the Charter of the United Nations. The two Vienna Conventions on State succession provide that they apply only to the effects of a State succession occurring in conformity with international law and, in particular, with the principles of international law embodied in the Charter of the United Nations.

2. Questions of nationality fall within the national jurisdiction of each State⁷. The *Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws* of 12 April

⁶ V. *Mikulka*, First report on State succession and its impact on the nationality of natural and legal persons, UN Doc. A/CN.4/467, 17 April 1995; Second report on State succession and its impact on the nationality of natural and legal persons, UN Doc. A/CN.4/474, 16 April 1996; Report of the Working Group of State succession and its impact on the nationality of natural and legal persons, UN Doc. A/CN.4/L.507, 23 June 1994.

⁷ International Court of Justice, *Nationality Decrees issued in Tunis and Morocco*, Advisory Opinion of 7 February 1923, Series B, No.4, p.24.

1930⁸ stipulates that it is "for each State to determine under its own law who are its nationals. This law shall be recognised by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognised with regard to nationality" (Article 1).

3. In a State governed by the rule of law it is essential for there to be a legal basis for the conditions of acquisition and loss of nationality as well as an effective right of appeal against decisions involving the deprivation, revocation or refusal of nationality. In periods of State succession it is even more important to tackle the uncertainty experienced by those involved in the succession, by guaranteeing that the legislation meets certain substantial standards: laws must be clear, coherent and non-retroactive; they must be published, exclude any unforeseeable surprises and comply with fundamental rights and freedoms.

4. Although questions of nationality can be settled between the States involved in the succession, the latter are required to comply with the limits imposed by international standards for the protection of human rights. In an Advisory Opinion of 1984, the Inter-American Court of Human Rights stated that the powers of States in respect of nationality were limited by their obligation to guarantee full protection of human rights⁹. States must also ensure that any agreements they reach comply with the provisions contained in Chapter II of the Declaration.

II.

5. The principle that everyone has the right to a nationality is already found in the Universal Declaration of Human Rights (Article 15, paragraph 1). It was reiterated in the American Convention on Human Rights (Article 20, paragraph 1), confirmed by the Inter-American Court of Human Rights¹⁰ and included in the draft European Convention on Nationality. The 1966 International Covenant on Civil and Political Rights (Article 24, paragraph 3) and the 1989 UN Convention on the Rights of the Child (Article 7, paragraph 1) stipulate that children have a right to acquire citizenship. Provision No.5 is linked to provision No.8 (on granting the nationality of the successor State).

6. The principle that statelessness must be avoided now forms part of international law. The *Convention on the Reduction of Statelessness* of 30 August 1961 lays down rules for giving effect to this principle. As regards the definition of statelessness, reference should be made to the first article of the *Convention on the Status of Stateless Persons* of 28 September 1954 which stipulates that "the term 'stateless person' means a person who is not considered as a national by any State under the operation of its law.". Provision No. 6 is linked to provisions No. 10 to 12 which are aimed at reducing the number of cases of statelessness.

7. The need to take account of the individual's wishes implies in particular that the persons concerned are given rights of option and that they are not forced to adopt a nationality against their will. This provision is directly linked to provisions No. 13-16 on the right of option. In a sense it represents an exception to the rule set out in provision No. 8.

⁸ LNTS, Vol. 179, p. 89.

⁹ Inter-American Court of Human Rights, Advisory Opinion OC-4/84 of 19 January 1984, Series A, No.4, p.94.

¹⁰ *Ibid.*

III.

8. This provision is in keeping with the practice of States in this area. It is also in harmony with the principles of general international law. All cases of State succession involve a transfer of territory which inevitably affects the nationality of those persons who, with the territory, pass from one sovereignty to another.

As a rule, successor States have adopted specific legislation conferring their nationality on former nationals of the predecessor State who continued to have their habitual residence in the transferred territory. Under this legislation, the conferment of nationality operates automatically and only exceptionally upon application.

In this way, all the nationals of the predecessor State, who are genuinely resident in the transferred territory - the condition of attachment to this territory is of paramount importance - lose the nationality of the predecessor State and acquire that of the successor State. It follows that the successor State may choose not to confer its nationality on nationals of the predecessor State who do not have effective links with the transferred territory, or on those who are resident in this territory for reasons of public service: such as civil servants of the predecessor State, members of the armed forces etc.

Finally the principle of non-discrimination on grounds such as ethnic origin, colour, religion, language or political opinion applies both to the granting of nationality by the successor State and to the enjoyment by those who acquire this nationality of all the rights and interests attaching to this nationality. This provision, which is aimed at ensuring equality before the law, lists the main forms of discrimination which are prohibited in the area of nationality. The words "in particular" clearly indicate that the list of prohibited grounds of discrimination is not exhaustive.

9. This provision constitutes a recommendation made in the interest of the persons mentioned and on the condition, of course, that they wish to acquire the nationality of the successor State on an individual and voluntary basis. In State practice it is comparatively rare for nationals of a third country, who are often known as foreign residents, to acquire the nationality of the successor State. However it may be worthwhile to make provision for the acquisition of this nationality upon application, particularly for a newly created State.

IV.

10. This provision gives effect to the obligation to avoid cases of statelessness. Article 10 of the *1961 Convention on the Reduction of Statelessness* provides that:

"Every treaty between Contracting States providing for the transfer of territory shall include provisions to secure that no person shall become stateless as a result of the transfer. A Contracting State shall use its best endeavours to secure that any such treaty made by it with a State which is not a Party to this Convention includes such provisions.

In the absence of such provisions a Contracting State to which territory is transferred or which otherwise acquires territory shall confer its nationality on such persons as would otherwise become stateless as a result of the transfer or acquisition".

11. Provision No. 11 is aimed at reducing the number of cases of statelessness already existing

prior to a State succession. It is simply a recommendation. It would be desirable for new legislation adopted following the transfer of sovereignty of a territory to enable stateless persons who permanently reside in or originate from this territory to apply for the nationality of the successor State.

12. This provision also aims at avoiding cases of statelessness. Inhabitants of a territory which has undergone a change of sovereignty generally lose the nationality of the predecessor State and gain that of the successor State. However, as explained in point 8, successor States may opt not to regard certain persons as permanent residents (particularly civil servants, members of the armed forces and other persons with the nationality of the predecessor State who reside in the transferred territory for professional reasons). In this case, predecessor States is required not to revoke the nationality of these persons, who would otherwise become stateless.

V.

13. The right of option is understood as the right of persons affected by territorial changes to choose, by making a declaration, between either the nationality of the successor State and that of the predecessor State or between the nationalities of several successor States (*option of nationality*). It is used in a broad sense, covering both the positive choice of a certain nationality and the refusal of a nationality acquired *ex lege*.

Regarding the right of option, it proved necessary to draw a distinction between cases where the predecessor State continues to exist (e.g. cession of part of the territory of a State, separation), and cases where one or several States succeed to a predecessor State which disappears (e.g. dissolution or uniting of States). In the first hypothesis arises not only the question of acquisition of the new nationality, but also that of the loss of the old one. In the second hypothesis, the nationality of the predecessor State ceases to exist, but the attachment of the persons concerned with one or the other of the successor States may give rise to problems.

14. The right of option must be granted not to all persons who pass from one sovereignty to another but only to those who have effective, and in particular ethnic, linguistic or religious, links with a predecessor or successor State. This solution is based largely on the practice of States in this area as well as on the principle that persons may not be deprived of their nationality against their will.

The notion of an "effective link" was used by the International Court of Justice in the *Nottebohm* case. The Court defined nationality as "a legal bond having as its basis a social fact of attachment, a effective connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties"¹¹. As far as the right of option is concerned, the term "genuine links" implies "substantial links" between the person concerned and the State, which may be based in particular on ethnic, linguistic or religious links. Generally these links are with the predecessor State but sometimes they are with other States.

In the circumstances envisaged in point 13.b (two or more States succeeding to a predecessor State which ceases to exist), links based on the citizenship of a subdivision of the predecessor State should also be taken into account. This criterion has been applied in particular in recent cases of State succession in central and eastern Europe in order to grant the right of option (during the dissolution of Czechoslovakia, the Soviet Union, and Yugoslavia).

¹¹ *Nottebohm case (Second Phase)*, Judgment of 6 April 1955, I.C.J. Reports 1955, p.23.

15. This provision is aimed at avoiding potentially damaging uncertainty as to the nationality of persons affected by State succession (for example in respect of enjoyment of diplomatic protection). The Commission did not consider it appropriate to establish a precise time limit. However the time limit should be reasonable in the light of the circumstances of each individual case.

The choice made by persons exercising parental authority will usually prevail over that made by unmarried minors provided that the choice so made is in the best interests of the minor and that, where appropriate, the minor has been granted the right to be heard.

16. In the past, exercising the right of option has often had adverse consequences for those who have availed themselves of it. In certain cases it entailed an obligation to leave the transferred territory. Today, such an obligation would be incompatible with international human rights standards. All persons who have the right of option must be allowed to choose their nationality freely.

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Preliminary Remarks

1. This consolidated report is essentially based upon replies to a questionnaire on consequences of State succession on nationality prepared by the European Commission for Democracy through Law.

2. The Commission has received replies from the following European countries which have a practice in the field of State succession: *Albania, Austria, Belarus, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, the Netherlands, Norway, Poland, Portugal, Romania, Russia, Slovakia, Slovenia, "the former Yugoslav Republic of Macedonia", Turkey and Ukraine and Japan, Kyrgyzstan*, non-European States represented in the Commission. The *United States of America* have provided some information on their domestic legislation in this field¹². The replies were given by members, associate members and observers to the Commission. Messrs Economides, Klu_ka and Malinverni have been appointed as rapporteurs. M. Steinberger has submitted a very useful working document to the rapporteurs.

¹² Sections 301 et seq. of the US Immigration and Nationality Act.

3. The Commission has taken note of the draft European Convention on Nationality¹³ which had been prepared by the Committee of experts on nationality of the Council of Europe (CJ-NA). Two members of this Committee, Mr Kojanec (Italy) and Mr Schärer (Switzerland), have participated in the work of the Commission.

4. The Commission has also taken note of the work of the International Law Commission of the United Nations on the topic of "State succession and its impact on the nationality of natural and legal persons"¹⁴.

5. The present report demonstrates the legal models of regulation which have been adopted, either independently or pursuant to obligations under international law, to deal with the effects of territorial transfers on the nationality of natural persons. Given the scarcity of practice in this field, the Commission decided to exclude the study of problems concerning the nationality of legal persons from the present report. It is the object and purpose of this report to go beyond a mere repertoire of legislative practice in several European and non-European States and to establish some general principles which emerge as common standards to be followed in future cases of State succession.

I. Introduction

1. The concept of nationality

a) Nationality in international law

6. For the purposes of the present study "nationality" is - in accordance with the draft European Convention on Nationality - understood to mean "the legal bond between an individual and a State" (Article 3.a). It does not indicate the ethnic origin of a person and therefore has in this report the same meaning as the term "citizenship". Nationality of an individual is his quality of being the subject of a certain State¹⁵, or, according to the much-quoted dictum of the International Court of Justice in the *Nottebohm case*:

"... 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"¹⁶.

7. Current international law leaves ample leeway for States to enumerate the conditions for the

¹³ A draft Convention has been declassified by the Committee of Ministers of the Council of Europe (Doc. DIR/JUR (96) 8 of 12 July 1996). When the European Committee on Legal Co-operation has finalised the text, it will be submitted to the Committee of Ministers for adoption.

¹⁴ V. Mikulka, First report on State succession and its impact on the nationality of natural and legal persons, UN Doc. A/CN.4/467, 17 April 1995; Second report on State succession and its impact on the nationality of natural and legal persons, UN Doc. A/CN.4/474, 17 April 1996; Report of the Working Group of State succession and its impact on the nationality of natural and legal persons, UN Doc. A/CN.4/L.507, 23 June 1994.

¹⁵ L.V. Oppenheim, International Law, vol. I, 1955, p. 644.

¹⁶ *Nottebohm Case (Second Phase)*, Judgment of 6 April 1955, I.C.J. Reports 1955, p. 23. See also Inter-American Court of Human Rights, Advisory Opinion OC-4/84 of 19 January 1984, Series A No. 4, p. 95: "Nationality can be deemed to be the political and legal bond that links a person to a given state and binds him to diplomatic protection from that state".

granting of citizenship. The *Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws* of 12 April 1930¹⁷ stipulates that it is "for each State to determine under its own law who are its nationals" (Article 1). It is essentially a matter falling within the domestic jurisdiction of each State¹⁸. However, the discretion is not absolute. Certain limits on the broad powers enjoyed by States in this area are imposed by international law and in particular by international human rights standards¹⁹.

8. In the *Nottebohm* case, the International Court of Justice stated that:

"... a State cannot claim that the rules [pertaining to the acquisition of nationality] it has thus laid down are entitled to recognition by another State unless it has acted in conformity with this general aim of making the legal bond of nationality accord with the individual's genuine connection with the State which assumes the defence of its citizens by means of protection as against other States"²⁰.

9. The limitations imposed by international law relate to the territorial and personal competence of States as well as to the international protection of human rights (see paras. 28 et seq.). One of the fundamental principles generally recognised is that nationality should not be granted arbitrarily. It is widely accepted that international law requires some sort of link between the State granting its nationality and the individual concerned, although the precise nature of this link remains in dispute²¹. Such a link is clearly established in cases of nationality legislation based on either *jus sanguinis* or *jus soli*. Birth, domicile and residence are indeed among the criteria which have generally been applied in this context.

10. Disregard for the limitations imposed by international law on the competence of States does not lead to the automatic nullity of a domestic enactment. It may however be invoked by third States as a grounds for not giving effect to a nationality granted in violation of these limitations. A State responsible for violations of international human rights standards incurs international responsibility.

b) Nationality in domestic law

11. The nationality concept straddles international and national law. Given that it binds a person politically and legally to a sovereign State, its consequences vary according to the individual case.

12. The domestic law of a certain number of States already draws a distinction between various categories of persons within the population, and accordingly grants them special rights²². The

¹⁷ LNTS, Vol. 179, p. 89.

¹⁸ International Court of Justice (*supra* note 5), pp. 20-21; *Nationality Decrees issued in Tunis and Morocco*, Advisory Opinion of 7 February 1923, PCIJ, Series B, No. 4, at p. 24.

¹⁹ Inter-American Court of Human Rights, Advisory Opinion OC-4/84 of 19 January 1984, Series A No. 4, p. 94; *Mikulka* (*supra* note 3), First report, paras. 57 et seq.

²⁰ I.C.J. Reports 1955, p. 23.

²¹ Cf. *Mikulka* (*supra* note 3), First Report, para. 76 et seq.

²² See *Oppenheim*, International Law (*supra* note 4), pp. 856-857. Oppenheim mentions the example of a number of Latin American countries in which the word "citizenship" has been used to designate all the political rights of which an individual can be deprived as a penalty or other measure, so that the said individual loses his

national and/or citizen of a State therefore has a range of rights and special protection differing from those granted, for example, to "second-class citizens".

13. In the Commonwealth the most important criterion for international law is citizenship vis-à-vis the various Commonwealth States, whereas the status of British subject or *Commonwealth* citizen is basically only of relevance to the domestic law of the countries in question.

14. The distinction between French citizens and French subjects, later citizens of the French Union and lastly citizens of the "Community" was only relevant under domestic law.

15. Under the terms of the German declaration appended to the EC Treaty, all Germans as defined in the Basic Law shall be considered nationals of the Federal Republic of Germany. A German within the meaning of the Basic Law is anybody who possesses German citizenship or who has been admitted to the territory of the German Reich within the frontiers of 31 December 1937 as a refugee or expellee of German ethnic origin or as their spouse or descendant (cf. Article 116, paragraph 1, of the Basic Law).

16. Federal States may have several categories of nationality. For instance, in *Czechoslovakia* Law No 165/1968 set out a formal distinction between (Federal) Czechoslovak citizenship based on *jus sanguinis* and the republican nationality of each of the two constituent republics, based on *jus soli*.

17. The ensuing comments are based on consideration of national legislation on nationality and the States' replies to the questionnaire they received on State succession:

18. The States grant nationality at birth on the basis of the principles of *jus sanguinis* and *jus soli*, and nationality is either open or closed and is conceived either in a uniform manner or in a manner facilitating the coexistence of multiple nationalities. The criteria for granting nationality at another time than birth depend on both objective (religion, language, race or ethnic origin, usual place of residence, marriage, domicile) and subjective considerations (adequate knowledge of a language, respect for the values, laws and Constitution of the State, national service, services rendered to the nation, degree of integration, lawful means of subsistence).

19. Nevertheless, it would seem that the criteria of descent, birth, marriage and usual place of residence are gradually becoming more important than the others. For instance, nationality now refers not so much to race, ethnic belonging or religion (which are often criteria for discrimination) as to the concept of citizenship.

20. Lastly, the impact of Community law should be noted. Indeed, Article 8 of the Maastricht Treaty provides that "every person holding the nationality of a Member State shall be a citizen of the Union". Citizens of the Union are thus afforded rights of a constitutional nature which are traditionally linked to nationality (including the right to travel and settle freely within the Union and the right to

citizenship without being deprived of his nationality from the angle of international law. Again, in the United States, even though the words citizenship and nationality are often used interchangeably, the word citizen is generally used to designate those persons who enjoy full political and individual rights in the United States of America, while some individuals - such as those from territories or possessions which are not one of the States making up the Union - are referred to as nationals. They owe allegiance to the United States of America and are nationals within the meaning of international law, but they do not possess all the rights of United States citizenship. The relevant aspect vis-à-vis international law is their nationality in the broad sense of the term, not their citizenship.

vote and be elected in municipal elections)²³.

21. At the current stage of development of Community law, however, citizenship of the Union is still purely derivative in nature. In a declaration on nationality appended to the Maastricht Treaty the Member States reaffirmed that "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".

22. In the case of *Micheletti v. Delegación de Gobierno en Cantabria*, the Court of Justice of the European Communities had to deal with a person who had dual Argentinean and Italian nationality. In the judgment which it delivered before the Maastricht Treaty had even come into force, the Court rejected the Spanish Government's argument that the applicant's Italian nationality was not effective. Recognizing the competence of Member States in the field of nationality law under international law, the Court has emphasized that this competence must be exercised in compliance with Community law. It is thus unacceptable that another Member State restricts the effects of such attribution "by imposing an additional condition on recognition of such nationality with a view to the exercise of a fundamental freedom laid down in the Treaty"²⁴.

2. State succession in international law

23. As far as the concept of "State succession" is concerned, guidance may be drawn from the 1978 Vienna Convention on Succession of States in respect of Treaties which gives the following definition (Article 2, paragraph 1.b)²⁵:

"the replacement of one State by another State in the responsibility for the international relations of territory".

24. Temporary occupations or annexations of territory which occur during a state of war do not entitle the occupant to change the nationality of the inhabitants and have therefore not been taken into account for the purpose of this study. The same applies *a fortiori* to occupations or annexations which result from resort to the use of force in violation of Article 2, paragraph 4, of the Charter of the United Nations. The two Vienna Conventions on State succession provide in fact that they apply only to the effects of a State succession occurring in conformity with international law and, in particular, with the principles of international law embodied in the Charter of the United Nations.

25. Although they clearly constitute cases of State succession, instances of *decolonisation* have not been considered by the Commission. The process of decolonisation was characterised by special features, consideration of which would go beyond the Commission's usual scope of activities. Exceptions have, however, been made for the cases of *Algeria* and *Surinam* since both territories were considered parts of the respective European State before their independence.

26. In the case of territorial transfers, the question of the nationality of the inhabitants of the territory

²³ See the Commission of the European Communities Report on Citizenship of the Union, 21 December 1993, Document, COM (93) 702 final, and the Act on European Citizenship, Contribution of the Venice Commission for the 1996 Intergovernmental Conference, 25 March 1996, CDL-INF (96) 5.

²⁴ Case C-369/90, judgment of 7 July 1992, Collection 1992 I, p. 4258 (§ 10).

²⁵ The same definition is included in Article 2, paragraph 1.a of the Vienna Convention on Succession of States in respect of State Property, Archives and Debts of 7 April 1983.

subject to the change of sovereignty ceases to be solely a matter of domestic law. Since at least two States are concerned, rules of international law affect the conferment and withdrawal of nationality. However, these rules do not in principle have a direct effect on the nationality of individuals which remains to be determined by the domestic law of the States directly concerned and, where applicable, by self-executing provisions of international treaties concluded among them²⁶.

27. A distinction should be drawn between cases where the predecessor State continues to exist (e.g. cession of part of the territory of a State, separation), and cases where one or several States succeed to a predecessor State which disappears (e.g. dissolution or uniting of States). In the first hypothesis arises not only the question of acquisition of the new nationality, but also that of the loss of the old one. In the second hypothesis, the nationality of the predecessor State ceases to exist, but the attachment of the persons concerned with one or the other of the successor States may give rise to problems.

3. The impact of international human rights standards

28. Another set of limitations in the area of nationality legislation is derived from the international protection of human rights²⁷. Both the Universal Declaration of Human Rights (Article 15, paragraph 1) and the American Convention on Human Rights (Article 20, paragraph 1) proclaim the basic principle that "everyone has the right to a nationality", a formula which is also taken up by the draft European Convention on Nationality. The 1966 UN Covenant on Civil and Political Rights (Article 24, paragraph 3) and the 1989 UN Convention on the Rights of the Child (Article 7, paragraph 1) stipulate that children have a right to acquire citizenship.

29. A great number of States have entered into international obligations to avoid statelessness. Article 8 of the UN Convention on the Reduction of Statelessness provides that Parties "shall not deprive a persons of its nationality if such deprivation would render him stateless". Article 9 of the same Convention prohibits States from depriving "any person or group of persons of their nationality on racial, ethnic, religious or political grounds".

30. Another principle, established by both the 1957 UN Convention on the Nationality of Married Women and the 1979 UN Convention on the Elimination of All Forms of Discrimination Against Women, is that neither marriage nor the dissolution of marriage, nor the change of nationality by one of the spouses during marriage shall automatically affect the nationality of the other spouse. These Conventions had a considerable impact on national legislation.

31. One should also mention Article 1, paragraph 3, of the UN Convention on the Elimination of all Forms of Racial Discrimination which states that nothing in the Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality or naturalisation, provided that such provisions do not discriminate against any particular nationality.

32. Unlike the Universal Declaration of Human Rights and the Inter-American Convention, the *European Convention on Human Rights* does not secure the right to nationality as such²⁸. The

²⁶ Cf. P. Weis, *Nationality and Statelessness in International Law*, 2nd edition 1979, p. 135.

²⁷ Inter-American Court of Human Rights, Advisory Opinion OC-4/84 of 19 January 1984, Series A No. 4, p. 94.

²⁸ See *X v. Austria*, Application No. 5212/71, decision of 5 October 1972, *Collection of Decisions of the European Commission of Human Rights*, Vol. 43, p. 69.

acquisition and loss of nationality are not regulated by the Convention. It has however happened that applicants have complained before the European Commission of Human Rights about violations of the Convention resulting from the withdrawal or refusal to grant nationality²⁹.

33. The European Commission of Human Rights has so far not accepted such applications. In one particular case, it held that the procedure for withdrawal of nationality did not concern the determination of the applicant's civil rights and obligations, or of any criminal charge against him within the meaning of Article 6 of the Convention³⁰. It should however be mentioned that withdrawals of nationality may give rise to a violation of the Convention, in particular because of their discriminatory character.

34. In the case of the Kalderas Gypsies the European Commission of Human Rights accepted the principle that discrimination on ethnic grounds may give rise to a problem "under Articles 3 and 14 of the Convention concerning the respect for their human dignity and concerning their treatment"³¹. This case concerned the refusal to deliver identity documents to members belonging to a nomad group. In another case, the Commission has recognised that "quite apart from any consideration of Article 14", discrimination based on race may be considered as degrading treatment: "publicly to single out a group of persons for differential treatment on the basis of race might, in certain circumstances, constitute a special form of affront to human dignity"³².

35. Lastly, it should be mentioned that Article 8 of the ECHR, which protects private and family life, may be invoked against measures of expulsion which are often linked to withdrawals of citizenship. According to the case-law of the European Court of Human Rights, the expulsion of a permanent resident from a given country in which he or she has all his or her family connections, and which is not necessary in a democratic society or proportionate to a legitimately pursued aim, may infringe due respect for family life and therefore violate Article 8³³.

4. Nationality, State succession and the concept of the rule of law

36. The subject of nationality, an essential prerogative of State sovereignty in the determination and identity of its population, requires a distinct reference to the notion of the rule of law, in particular in the case of State succession.

37. Both the Statute of the Council of Europe (Article 3) and the Preamble to the European Convention on Human Rights refer to the principle of the rule of law. Reference to the concept of the rule of law necessitates much more than mere compliance with minimum human rights standards. According to the common constitutional traditions of the States represented in the Venice

²⁹ See, in particular, *Kafkasli v. Turquie*, No. 21106/92, decision of 22 May 1995; *Salahaddin Galip v. Grèce*, No. 17309/90, decision of 30 August 1995.

³⁰ Case of *Salahaddin Galip v. Greece*, Application No. 17309/90, decision of 30 August 1995.

³¹ See case of *Kalderas Gypsies*, Application Nos. 7823 and 7824/77, decision of 6 July 1977, Decisions and Reports, Vol. 11, p. 221 (§ 57).

³² See case of the *East African Asians*, Application No. 4403/70 et al., decision of 10 October 1970, Yearbook of the European Convention of Human Rights, Vol. 13, p. 928 (994).

³³ Cases of *Abdulaziz, Cabales and Balkandali*, judgment of 28 May 1985, Series A, Vol. 94; *Berrehab v. the Netherlands*, judgment of 21 June 1988, Series A, Vol. 138; *Beldjoudi v. France*, judgment of 26 March 1992, Series A, Vol. 234-A; *Nasri v. France*, judgment of 13 July 1995, Series A, Vol. 320-B.

Commission, the components of the State governed by the rule of law include the separation of powers, the independence of the judiciary, the submission of administration under the principle of legality, judicial protection from acts by the public authorities and the right to compensation for unlawful acts by the same authorities. In addition to these formal principles, there is also the implementation of "justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression"³⁴. The law must crystallise this new conception of the political link by regulating the exercise of power and safeguarding the fundamental rights and individual freedoms.

38. In periods of State succession it is even more important to tackle the uncertainty experienced by those involved in the succession, by guaranteeing a number of substantial qualities of legislation: laws must be clear, coherent, future-oriented, they must be published, exclude any unforeseeable surprises and comply with the fundamental rights and freedoms.

39. The concept of the rule of law involves in particular:

- codifying the nationality issue with legislation accessible and comprehensible to the citizen;
- providing legislation applicable prior to any deprivation, revocation or refusal of nationality;
- removing any discriminatory elements in terms of human rights and the fundamental freedoms from the definition of nationals;
- observing the proportionality principle in the granting, refusal or change of nationality;
- providing an effective judicial remedy for acts involving deprivation of nationality;
- seeking the optimum solution for compliance with the principles of the Constitution and the fundamental rights in implementing and interpreting the law;
- ensuring that individual decisions comply with international law in the human rights field.

II. National and International Practice

1. Practice until 1914

40. Already prior to 1914 it was the usual practice that inhabitants of a territory which was acquired by another State or became the territory of a new State lost their original nationality and became nationals of the successor State.

41. However, when *Greece* became independent in 1830, the question of nationality depended on the right to emigrate. Moslems who did not choose to remain in Greece acquired the Hellenic nationality, whereas moslems who emigrated retained the ottoman nationality. Following the union with the Ionian Islands (1864) and the incorporation of Thessalia and parts of Epiros (1881), all inhabitants of these territories became Greek nationals. In all cases, the criterion of *jus soli* was applied. *Albanian* nationality was acquired by nationals of the Ottoman Empire who were born or domiciled in Albania immediately before its independence in 1912.

2. Practice following the First World War

42. The First World War brought about numerous territorial changes within Europe. It resulted in the *dismemberment of the Austrian and Turkish Empires*, the detachment of various territories from *Germany* as well as the creation of new States and other international entities (e.g. the

³⁴ Document of the Copenhagen meeting of the CSCE Conference on the Human Dimension (29 June 1990), point I.2.

Czecho-Slovak State, Poland, the Serb-Croat-Slovene State and the Free City of Danzig).

43. The Versailles and associated treaties contained a number of provisions, more or less uniform in content, relating to the nationality of inhabitants of transferred territory. The treaties provided for an automatic acquisition of the nationality of the successor State, usually coupled with a right of option which had to be exercised within a specified period of time (generally two years). It was usually the criterion of "*habitual residence*" which was retained for the purpose of determining the acquisition of nationality where a change of territorial sovereignty occurred. The Belgian Court of Cassation defined the meaning of habitually resident in Article 36 of the Versailles Treaty as meaning "fixed, enduring and permanent". According to this Court, a person's habitual residence is where "he has his family, his home and the centre of his interests and affections"³⁵. Polish internal legislation qualified the meaning of the term "habitual residence" with regard to German nationals. In accordance with the executive regulation of 13 July 1920 only German nationals who had been domiciled in the territories which became part of Poland at least from 2 January 1908 until 10 January 1920 were entitled to acquire Polish citizenship automatically. Those who did not fulfill this requirement had to ask for a special permission from the Polish authorities.

44. The Versailles Treaty restored French sovereignty over the territories of *Alsace-Lorraine* which had previously been ceded to Germany in accordance with the Preliminaries of Peace signed at Versailles on 26 February 1871 and the Treaty of Frankfurt of 10 May 1871. Only certain categories of persons were automatically reinstated in French nationality, in particular those who had lost French nationality by the application of the Franco-German Treaty of 10 May 1871 and their descendants and all persons born in Alsace-Lorraine of unknown parents, or whose nationality was unknown³⁶. Other categories could claim French nationality within the period of one year (persons, including husbands and wives, not restored to French nationality with French ascendants, non German foreigners who had acquired the status of a citizen of Alsace-Lorraine before 1914, Germans domiciled in the territories before 1870, Germans domiciled in Alsace-Lorraine who had served in one of the Allied or Associated armies, persons born in the territories of foreign parents, including their descendants). Other Germans born or domiciled in Alsace-Lorraine could acquire French nationality only by way of naturalisation. The difficulties, in the application of this rigid system, in particular for the descendants of persons affected by the Treaty who were unable to show the short-form certificate of reinstatement has led the authorities to grant, by virtue of the Law of 22 December 1961 modified by the Law of 29 June 1971 and under certain conditions, nationality in a "subsidiary manner" if those persons had benefited in a constant way from the factual possession of French status. Consequently, only persons born in the three departments of Haut-Rhin, Bas-Rhin and Moselle between 20 May 1817 and 11 November 1918 and having no factual possession of French status since that date, would be obliged to show a short-form certificate from the reinstatement register.

45. Special attention was given to the presence of *national minorities* in the territories which were subject of a change of sovereignty. The Polish Minorities Treaty of 28 June 1919, concluded between the Principal Allied and Associated Powers on the one hand and Poland on the other provided in Article 4, paragraph 1:

"Poland admits and declares to be Polish nationals *ipso facto* and without the

³⁵ Judgment of 9 March 1936, *Re Stoffels*, Annual Digest and Reports of Public International Law Cases 9 (1938-1940) No. 107, p. 339.

³⁶ Cf. the Appendix to Article 79 of the Versailles Treaty and the corresponding French regulation of 1920.

requirement of any formality persons of German, Austrian, Hungarian or Russian nationality who were born in the said territory of parents habitually resident there, even if at the date of the coming into force of the present treaty they are not themselves habitually resident there".

46. According to the Permanent Court of International Justice, these treaties aimed at preventing States "from refusing their nationality, on racial, religious or linguistic grounds, to certain categories of persons, in spite of the link which effectively attached them to the territory allocated to one or other of these States"³⁷. It therefore rejected a claim to impose additional conditions for the acquisition of nationality³⁸.

47. The post-1918 treaties which regulated the *dismemberment of the Austro-Hungarian Empire* (the Treaties of St. Germain-en-Laye and Trianon) based nationality on the possession of "rights of citizenship" (*Heimatrecht, pertinenza*) in the territory concerned. "Rights of citizenship" were conferred by municipalities of the former Austro-Hungarian Monarchy. As a rule, inhabitants became automatically nationals of the State which had acquired the territory in which they possessed "rights of citizenship". However, the acquisition of a new nationality by persons who had been given "rights of citizenship" relatively recently was sometimes made subject to a prior approval by the successor State³⁹.

48. The Treaties of St. Germain-en-Laye and Trianon also introduced various forms of options in favour of the nationality of a State other than that to which the person was linked by "rights of citizenship". In addition to options in favour of a previously held nationality, persons living in areas whose final attribution was decided upon by referendum could opt for the nationality of the State to which the area was not assigned. Finally, the Treaties envisaged a new form of option based on ethnic criteria. Article 80 of the Treaty of St. Germain provided as follows:

"Persons possessing rights of citizenship in the territory forming part of the former Austro-Hungarian Monarchy and differing in race and language from the majority of the population of such territory, shall, within six months of the coming into force of the present Treaty severally be entitled to opt for Austria, Poland, Romania, the Serb-Croat-Slovene State or the Czecho-Slovak State, if the majority of the population of the State selected is of the same race and language as the person exercising the right to opt".

49. A similar provision was introduced into the Treaty of Lausanne of 24 July 1923, the Peace Treaty between the Allied and Associated Powers on the one hand and *Turkey* on the other (Article 23).

50. Following the separation of *Ireland* from the United Kingdom, Irish citizenship was conferred on persons of whatever nationality who on 6 December 1922 were domiciled in the area of the jurisdiction of the Irish Free State (including Northern Ireland) and (1) were themselves born in Ireland or were born of a parent born in Ireland or (2) had been ordinarily resident in that area for at

³⁷ *Acquisition of Polish Nationality*, Advisory Opinion of 15 September 1923, PCIJ, Series B, No. 7, at p. 15.

³⁸ *Ibid.*, pp. 17 et seq.

³⁹ The Treaty of St. Germain contained such an exception with regard to the Serb-Croat-Slovene State and the Czecho-Slovak State for persons having acquired "rights of citizenship" after 1 January 1910.

least seven years. Persons born in Ireland who were not domiciled there on the relevant date did not acquire Irish citizenship.

51. The solution of an automatic extension of the nationality of the successor State to all inhabitants of a transferred territory was also chosen by *Turkey* when it annexed the province of Hatay in 1939.

3. Practice following the Second World War

52. Territorial changes in the aftermath of the Second World War affected mainly *Germany, Italy, Poland* and the *Soviet Union*.

53. *Germany* lost all territories east of the Oder and Neisse, including Danzig and the Memel territory, to *Poland* and the *Soviet Union*. Acquisition of nationality of the successor States remained largely a theoretical problem because the vast majority of the German population had either fled the territories during the last months of the war or were later forced to leave. Questions of citizenship were not regulated by the treaties which the Federal Republic of Germany concluded during the '70s with Poland and the Soviet Union⁴⁰, but exclusively by domestic legislation of the States concerned⁴¹. According to this legislation, Polish and Soviet citizenship were not granted automatically, but only by individualised procedures. Under Polish legislation, only persons of Polish origin who had been domiciled in the territories before 1 January 1945 could acquire Polish citizenship. They had to make a declaration of allegiance to the Polish nation and State.

54. In 1945, when *Austria* regained its independence, the Austrian authorities considered that their country had never ceased to exist. Consequently, only persons who had been Austrian nationals in 1938 and their descendants were considered to possess Austrian nationality in 1945. However, according to German practice, almost all Austrian citizens had validly acquired the German nationality following the *Anschluß* in 1938. A German law enacted in 1956⁴² clarified this situation by stating that none of those who were considered Austrian nationals by Austria could any longer claim the German nationality. Only persons who had acquired German nationality in 1938 and had permanent residence in Germany since 1945 were entitled to regain German nationality by declaration, with retroactive effect.

55. The Treaty of Peace between the Allied and Associated Powers with Italy (1947) provided, *inter alia*, for the cession of territory by *Italy* to France, Yugoslavia and Greece. As a general rule, it declared that Italian citizens who had their habitual residence in the territory transferred shall become citizens of the transferee in accordance with legislation to that effect to be introduced by each of the successor States respectively. In addition two types of options were given. Firstly, inhabitants of the transferred territories "whose customary language is Italian" should be entitled to opt for the Italian nationality. Secondly, Italian nationals residing in Italy but who used habitually the Serbian, Croatian or Slovene language could opt for the Yugoslavian nationality. Persons taking advantage of these options could be required to move to the State of their choice.

⁴⁰ See the decision by the Federal Constitutional Court on the treaty concluded with Poland in 1970, *Entscheidung des Bundesverfassungsgerichts - BVerfGE* 40, 141.

⁴¹ Cf. the Law of 28 April 1946 relating to the Polish citizenship of persons of Polish ethnicity, domiciled in the regained territories, and two supplementary orders of the Polish government.

⁴² Second German Law regulating certain Questions of Citizenship of 17 May 1956.

4. Recent instances of State succession

a) Succession in respect of part of territory

56. The exchanges of territories between *Germany* on the one hand and *Belgium* and the *Netherlands* on the other affected only a relatively small number of persons. They were regulated by Treaties on Border Corrections in 1956 and 1963 and corresponding internal legislation which left the choice of nationality to the discretion of the inhabitants. They could either apply for the nationality of the respective successor State (Belgian or Netherlands) or retain their original nationality without having to leave the territory in question.

b) Uniting and Separation of States

aa) Algeria

57. The independence of *Algeria* in 1962 was not followed by the drawing up of any Convention on questions of nationality between the States involved. The Evian Agreements have however provided for some transitional provisions, inspired more by the principle of option than by that of double nationality. Those persons who at the time of the self-determination had French ordinary civil status⁴³ and fulfilled certain conditions of residence in Algeria could benefit by right from Algerian civil rights, by remaining French nationals, for 3 years. After this period they had to choose between Algerian and French nationality.

58. Law No 63.96 of 27 March 1963 contains the Algerian Nationality Code, under which nationality can be of origin or by acquisition.

A person is of Algerian origin when born of an Algerian father or Algerian mother and Stateless father, or born in Algeria of unknown parents, or born in Algeria of an Algerian mother and father born in Algeria, unless Algerian nationality is renounced in the two years prior to his or her majority (21 years). A person is called "Algerian" when he or she has at least two ascendants on the father's side born in Algeria, and has Muslim status.

Algerian nationality can also be acquired

- on the basis of the participation in the fight for liberation;
- by exercising the option provided for citizens of French civil status under the Evian agreements; or
- by following the naturalisation procedure.

59. Furthermore, Ordinance No 62-825 of the 21 July 1962 regulated the question of French nationality as follows: People of French nationality having ordinary civil status and domiciled in Algeria at the date of the official announcement of the results of the ballot on self-determination (3 July 1962) could keep their French nationality, whatever their situation regarding Algerian nationality. Those persons having the civil status under local law as natives of Algeria and their children (also called "French Muslims" of the former departments of Algeria) could, by settling in

⁴³ Since 1 June 1946, all inhabitants of the overseas territories (including Algeria) were "French citizens", like French nationals of the mother country and of overseas territories, but kept their own personal status, i.e. the civil status under local law for Muslims and the ordinary civil status for French people living in Algeria ("Europeans").

France, have their French nationality recognised under the conditions provided for in the Nationality Code.

bb) Surinam

60. When *Surinam* became independent in 1975, questions of nationality were regulated by the Netherlands-Surinam Nationality Agreement of 25 November 1975. Broadly speaking, this Agreement distinguished between:

- Netherlands nationals born in Surinam and resident there at the relevant time (25 November 1975) who automatically acquired Surinamese nationality;
- Netherlands nationals not born in Surinam but resident there at the relevant time who acquired Surinamese nationality only if they had some (well defined) additional link with this country;
- Netherlands nationals born in Surinam but not resident there at the relevant time remained Netherlands nationals with a right to opt for Surinamese nationality before 1 January 1986, while they may also acquire Surinamese nationality as of right provided that they establish residence in Surinam for a period of two years

cc) Germany

61. Due to the fact that the Federal Republic of Germany maintained a common German nationality based on the Imperial Nationality Act of 1913, the German reunification on 3 October 1990 did not create particular problems. According to the Nationality Act of 1913, which was based on *jus sanguinis*, all descendants of German nationals had automatically to be regarded as Germans. According to a ruling by the Federal Constitutional Court, even the isolated acquisition of the nationality of the former German Democratic Republic (e.g. by naturalisation) was deemed, subject to limits of *ordre public*, to have the effect of acquiring the common German nationality under the Nationality Act simultaneously⁴⁴. Thus, citizens of the former GDR did not acquire a new nationality when Germany was reunited.

62. International treaties concluded by the former GDR in regard of matters of citizenship (e.g. treaties on the avoidance of double citizenship) were considered to have automatically lapsed on 3 October 1990, which was confirmed by exchanges of notes with the Parties to these treaties.

⁴⁴ Decision of 21.10.1987 - *Teso*, BVerfGE 77, 137.

c) Dissolution of States

aa) Yugoslavia

63. Yugoslavia gradually disintegrated over a certain period of time. On 25 June 1991, the former Yugoslav Republics of Slovenia and Croatia declared their independence. "*The former Yugoslav Republic of Macedonia*" and *Bosnia-Herzegovina* followed on 20 December 1991 and 6 March 1992 respectively.

64. The laws on citizenship of *Slovenia*, *Croatia* and "*the former Yugoslav Republic of Macedonia*" were adopted immediately after independence. They are based on the "republican citizenships" which had already existed in the former Yugoslavia. Only persons who had previously possessed the citizenship of the respective Republic according to Yugoslavian legislation became automatically citizens of the newly independent State. Croatia granted an additional right to apply for citizenship for persons belonging to the "Croatian people" who on the date of entry into force of the law on citizenship had a registered place of residence in Croatia for a period of not less than 10 years. Under Slovenian legislation, all former citizens of other Republics of the former SFRY having permanent residence in Slovenia could apply for Slovenian citizenship. The law on citizenship of "*the former Yugoslav Republic of Macedonia*" provides for the same possibility on condition that the persons in question are older than 18 years, have a permanent personal income and at least 15 years of residence in the country.

65. According to the legislation of the *Republic of Bosnia and Herzegovina*, all persons who on 6 April 1992 had the citizenship of the former SFRY and residence in the territory of the Republic became citizens of the new State⁴⁵. The Constitution of Bosnia and Herzegovina contained in Annex 4 of the Dayton Peace Agreements introduced separate citizenships of the two "Entities", the Federation of Bosnia and Herzegovina and the Republic Srpska. All citizens of either "Entity" are citizens of Bosnia and Herzegovina. According to the Constitution, all persons who were citizens of the Republic of Bosnia and Herzegovina immediately prior to the entry into force of the Constitution are now citizens of Bosnia and Herzegovina. The Parliamentary Assembly has been authorised to regulate the question of naturalisations made on the basis of prior legislation. So far, no relevant legislation has been adopted to implement the Constitution. However, the Republic Srpska had already in 1992, when it was not yet internationally recognised, adopted a "Law on the Serb Citizenship" which is based on ethnic criteria. Its compatibility with the Dayton Peace Agreements remains doubtful.

66. The Parliament of the *Federal Republic of Yugoslavia (Serbia and Montenegro)* adopted a new law on citizenship on 16 July 1996. Under the law, individuals who had the citizenship of the Yugoslav republics of Serbia and Montenegro on 27 April 1992, when the Constitution was promulgated, and their children born thereafter will automatically be considered Yugoslav citizens. Former citizens of other republics of the Socialist Federal Republic of Yugoslavia may be granted Yugoslav citizenship upon application which must be made within one year's time if they had permanent residence on the latter's territory on 27 April 1992 and have no other citizenship.

bb) USSR⁴⁶

⁴⁵ Decree having force of law on the citizenship of the Republic of Bosnia and Herzegovina of 6 October 1992, as amended by Article 5 of Decree having force of law of 23 April 1993.

⁴⁶ See the contributions to the *Workshop on International Law and Nationality Laws in the Former USSR*, 25-26 April 1995, published in *Austrian Journal of Public and International Law* 49 (1995) No. 1.

67. Even before the formal dissolution of the Soviet Union, the Baltic States of *Estonia*, *Latvia* and *Lithuania* achieved independence at the end of August 1991. These three States represent a special case since their claim to be identical with the three Baltic States annexed by the Soviet Union in 1940 was accepted by the international community. After having restored their statehood, the Baltic States based their nationality legislation to a large extent on legislation which had been in force in each of the countries before 1940. The Law on Citizenship of Estonia of 1938 and the Law on Citizenship of Latvia of 1919 have been re-enacted temporarily⁴⁷. These two States restricted automatic acquisition of the new nationality to persons who either had been Estonian or Latvian citizens prior to the annexation by the USSR (including their descendants) or who were linked to the territory of the respective State by their origin. Mere residents, including many former USSR nationals who had settled in the Baltic States after 1940, had to apply for the new nationality according to special procedures.

68. In December 1991, the rest of the Soviet Union fell apart. The solutions adopted by the different States established on the territory of the former USSR were not identical. The *Russian Federation* granted its nationality to all citizens of the former USSR who resided permanently in its territory or who had returned thereto as well as to those who served abroad in the military forces of the Russian Federation or the Unified Armed Forces of the CIS. *Belarus*, *Moldova* and *Ukraine* accorded their citizenship to all permanent residents. *Kyrgyzstan* and *Georgia* on the other hand linked their new citizenship to the citizenship of the respective former soviet republic. Under Soviet law, this citizenship was held by all Soviet citizens permanently residing in the territory of one of the constituent republics. All USSR nationals residing in one of the successor States thus acquired automatically its nationality.

cc) Czechoslovakia

69. The Czech and Slovak Federal Republic was officially dissolved with effect on 1 January 1993. The successor States, the Czech Republic and Slovakia, adopted their Laws on Citizenship only on 29 December 1992 and 19 January 1993 respectively. Both States based their legislation on laws on nationality which had previously existed in the _SFR. In 1968 the Federal Assembly had introduced, in addition to the "federal citizenship" of Czechoslovakia, separate nationalities for the Czech and Slovak Republics⁴⁸. Following the dissolution of the _SFR, each of the successor States conferred their citizenship primarily upon all persons possessing the respective nationality. Other permanent residents and in particular citizens of the former _SFR could under certain circumstances opt for the new nationality. The Czech legislation required certain periods of uninterrupted residence ranging from two years for former citizens of the _SFR to five years for other persons as well as a so-called "clean criminal record" during the last five years.

70. In 1996, the Czech Parliament adopted some amendments to the Law on Citizenship which provided *inter alia* that the clean criminal record requirement may be dispensed with as a condition for the acquisition of Czech citizenship by applicants who are citizens or former citizens of the Slovak Republic and who have been continuously living on the territory of the Czech Republic since 31 December 1992 at the latest. The amendments entered into force on 24 May 1996⁴⁹.

⁴⁷ See the resolution of the Supreme Council of the Republic of Latvia of 15 October 1991 and the resolution of the Supreme Council of the Republic of Estonia of 26 February 1992.

⁴⁸ Cf. Act No. 165/1968 of the Federal Assembly and Law No. 88/1990 of the former _SFR.

⁴⁹ Law no. 139/1996 of 26 April 1996.

III. General Principles emerging from the practice

1. Acquisition of the nationality of the successor State

71. International practice confirms the rule according to which population goes with the territory. While there may not yet be a binding rule of codified international law prescribing the automatic acquisition of the nationality of the successor State in situations of State succession, the successor State has certainly the right to grant its nationality to those persons who continue to be domiciled in the transferred territory. Already in 1892, Chief Justice Fuller declared in *Boyd v. The State of Nebraska*, a decision by the Supreme Court of the United States of America:

"The nationality of the inhabitants of territory acquired by conquest or cession becomes that of the government under whose dominion they pass, subject to the right of election on their part, to retain their former nationality by removal or otherwise, as may be provided"⁵⁰.

72. It should be emphasised, however, that the change of nationality is never automatic. It has to be provided for in either the domestic law of the successor State or in international treaties. Where the territorial transfer is based on treaty, the treaty frequently contains regulations concerning the nationality of the inhabitants of the territory. Such treaty stipulations may affect the nationality of the persons concerned only in so far as they become part of the domestic law of the State whose nationality is to be acquired or lost.

73. As a rule, successor States have adopted specific legislation conferring their nationality on former nationals of the predecessor State who continued to have their habitual residence in the transferred territory. Under this legislation, the conferment of nationality operates *automatically* and only exceptionally upon application. Nationals of third States, the so-called alien residents - are normally excluded from the automatic acquisition of the nationality of the successor State.

74. In many cases, the nationality of the successor State has been conferred on all *permanent residents*, subject to certain rights of optio⁵¹. This was the solution adopted not only in most cases of transfer of territory since 1918, but also by some of the countries which gained their independence since then: *Lithuania* (1918), *Ireland* (1921), *Belarus* (1990), *Moldova* (1991), *Ukraine* (1991).

75. There have, however, been cases in which the new nationality was not conferred to all residents of the transferred territory : when the *former German territories east of the Oder and Neisse* were incorporated into Poland and the USSR following World War II, Polish citizenship was granted only to persons of Polish ethnicity who were asked to make a declaration of allegiance to the Polish nation and State. It must be taken into account, however, that most of the population of German origin had either fled during the last stages of the war or was later evicted.

76. There are also many instances where the nationality of the successor State was granted only to *nationals* of the predecessor State who resided in the territory at the time of the transfer.

⁵⁰ 143 U.S. 135 at p. 162 (1892).

⁵¹ See below, para. 87 et seq.

- The *United States of America* usually conferred nationality on the nationals of the predecessor State who resided in the territory at the time of the transfer (e.g. annexation of Alaska and the Virgin Islands). However, in the cases of Hawaii and Texas, all citizens of the predecessor State acquired United States citizenship, regardless of their residence.
- Detailed regulations were adopted when *Cyprus* and *Malta* gained their independence. Under the Treaty concerning the Establishment of the Republic of Cyprus (1960), automatic acquisition of Cypriot citizenship was limited to certain categories of residents who were either British subjects or born in the island. Other persons had to apply individually for the new nationality. When Malta became independent in 1964, it granted its nationality only to citizens of the United Kingdom and Colonies who were either born in Malta prior to 21 September 1964 or whose father became a Maltese citizen on 21 September 1964. Certain other categories could apply for Maltese citizenship individually.

77. The new citizenship laws of the *States emerging from the dissolution of Czechoslovakia, Yugoslavia and the USSR* are largely influenced by pre-existing citizenship laws, either those of the constituent parts of Czechoslovakia and Yugoslavia or, in the case of the *Baltic States*, by laws adopted prior to their annexation by the USSR.

- In the successor States of *Czechoslovakia and Yugoslavia*, only persons possessing the citizenship of the respective federated entity which had become independent and their descendants acquired *ipso facto* the new citizenship. Other residents had to go through individualised procedures ranging from individual registration to naturalisation. There were usually simplified procedures for residents possessing the citizenship of other constituent parts or of the former central State itself (*Czech Republic, Croatia, Slovakia, Slovenia, "the former Yugoslav Republic of Macedonia"*). *Bosnia-Herzegovina* granted its citizenship to all persons who on 6 April 1992 had the citizenship of the former SFRY and residence in the territory of the Republic.
- In the case of the *Baltic States*, acquisition of the new citizenship by mere residents who were neither citizens of the States existing prior to their annexation by the USSR or their descendants nor otherwise linked to the territory (for example by birth) has been made subject to certain conditions which were sometimes difficult to fulfil for many of the former USSR citizens.

78. If the initial body of citizens is defined in a restrictive manner, it becomes very important which conditions are imposed on other habitual residents of the territory who would like to become citizens of the successor State. Even if they are nationals of third States and therefore do not risk becoming stateless, they may have an interest in acquiring the new nationality in order to avoid the status of alien with its attendant application of rather restrictive legislation. It should be emphasised that even where such permanent residents do not acquire the new citizenship, they should, except for some strictly limited exceptions, enjoy the same fundamental and social and economic rights as nationals (including the right to work, to purchase or sell property, to receive health, retirement and education benefits, etc).

79. The provisions of many Council of Europe treaties and other instruments give non-nationals many rights. In addition the right to respect for private and family life, protected by Article 8 of the ECHR, is of particular importance in the case of stateless persons as permanent residents, who can show that their family life is in the country of residence and that there would be obstacles to

establishing family life in another country. Interferences with this right must be strictly limited to cases which are in accordance with the law and necessary in a democratic society, in the interest of national security, public safety or the economic well-being of the country. The draft European Convention on Nationality requires that nationals of a predecessor State who were habitually resident in the transferred territory and who have not acquired the nationality of the successor State shall have the right to remain in that State and shall enjoy equality of treatment with nationals of the successor State in relation to social and economic rights (Article 21).

80. The solutions adopted by successor States which, departing from the general practice, have restricted the acquisition of their nationality to certain categories of habitual residents vary considerably. The procedures adopted range from mere registration to the application of ordinary naturalisation procedures (see in particular the legislation adopted by the former USSR with respect to the *Klaipeda/Memel* and *Kaliningrad/Königsberg* territories as well as the legislation adopted by *Estonia* and *Latvia* following the restoration of their sovereignty in 1990).

81. These successor States have imposed *inter alia* the following conditions:

- permanent residence during a certain time prior to the relevant date: *Czech Republic (independence 1993)* - 2 years, *Estonia (independence 1991)* - 3/5 years, *Italy (incorporation of Fiume/Rijeka 1919/1920)* - 5 years, *Croatia (independence 1991)* - 5 years, "*the former Yugoslav Republic of Macedonia*" (*independence 1991*) - 15 ans;
- knowledge of the national language: *Italy (incorporation of Fiume/Rijeka 1919/1920)*, *Latvia (independence 1991)*, *Estonia (independence 1991)*, *Croatia (independence 1991)*;
- lawful means of subsistence: *Estonia (independence 1991)*, *Lithuania (independence 1991)*, "*the former Yugoslav Republic of Macedonia*" (*independence 1991*);
- no conviction of an intentional crime against a person or other intentional offence: *Czech Republic (independence 1993)*; in the case of naturalisation procedures: *Estonia (independence 1991)*, *Latvia (independence 1991)*;
- expression of some sort of allegiance to the new sovereign: declaration of allegiance to the nation - *Poland (incorporation of German territories 1945)*, oath to the Republic - *Estonia (independence 1991)*, attachment to the legal system and culture - *Croatia (independence 1991)*;
- exclusion of persons who had been employed by the armed forces, security and intelligence services of the previous sovereign: *Estonia (independence 1991)*, *Latvia (independence 1991)*.

82. The position of nationals of the predecessor State who originate from the transferred territory but who, at the time of the transfer, are *resident outside the territory* has not been regulated uniformly. When the two *Germanies* united in 1990, citizens of the former German Democratic Republic residing abroad were automatically regarded as Germans since they qualified as such under the Nationality Act of 1913 which had always been in force in the Federal Republic of Germany. According to the 1991 Citizenship Law of *Ukraine*, all individuals working or studying abroad, who were born in the country, or can prove their permanent place of residence there provided that they are not citizens of another State and that they have expressed their will to become citizens of

Ukraine qualified as nationals. *Belarus* also allowed former residents to register as nationals.

83. A different situation arises in cases of partial succession. Here, the predecessor State continues to exist. The conferment of citizenship on persons residing outside the transferred territory constitutes an act purporting to have extraterritorial effects and may not be recognised by the State of residence. According to one author, such nationality may not be conferred against the will of the individual who must decide whether to become a national of the successor State or to retain his or her original nationality⁵². A possibility to acquire the new nationality for persons who had been born in a territory which later passed under a new sovereignty, but who did not reside there at the relevant date, was *inter alia* provided for in the following cases of partial State succession: incorporation of Macedonia, Ipiros, Crete and Northern islands of the Aegean Sea by *Greece* (1913), annexation of former Polish territories and the Baltic States by the *former USSR* (1939/1940).

2. Loss of the nationality of the predecessor State

84. Inhabitants of a territory which is subject to a change of sovereignty usually lose the nationality of the predecessor State. An obligation by the predecessor State to withdraw its nationality from inhabitants of the transferred territory may be seen as a corollary of the obligation to recognise the validity of the transfer under international law⁵³. Such a reasoning does not apply, of course, when no other nationality is conferred on them as a result of the transfer and they therefore run the risk of becoming stateless (cf. the situation of some of the former USSR citizens in the Baltic States).

85. States have also refused to withdraw their nationality where the new sovereign's title over the territory remained in dispute. This had been the situation as far as the former German territories east of the Oder and Neisse were concerned. Although Poland and the USSR had exercised since 1945 *de facto* control over these territories, they were for a long time not recognised by the West German authorities as the territorial sovereigns. Under German law, persons of German origin living in these territories could retain their status and were considered as Germans (cf. Article 116 of the German Constitution).

86. In some recent cases of transfer of territory it was agreed that the nationality of the predecessor State should not be withdrawn automatically. The treaties on border corrections concluded in 1956 and 1960 between Germany on the one hand and Belgium and the Netherlands on the other left the choice of nationality entirely to the discretion of the inhabitants. They could either apply for the nationality of the successor State or retain their original nationality without having to leave the territory.

⁵² *Weis* (supra note 15), p. 149.

⁵³ *Weis* (supra note 15), pp. 147-148.

3. Right of option

87. The right of option is understood as the right of persons affected by territorial changes to choose, by making a declaration, between either the nationality of the successor State and that of the predecessor State or between the nationalities of several successor States (*option of nationality*)⁵⁴. It is used in a broad sense, covering both the positive choice of a certain nationality and the refusal of a nationality acquired *ex lege*.

88. A right of option, mostly in favour of the nationality of the predecessor State, has been accorded in most cases of partial State succession, either by treaty or by domestic legislation. The practice following the First World War is particularly rich in this respect. One may refer, for example, to the relevant provisions of the Versailles Treaty (Articles 37, 85, 91, 113), the Treaty of Saint-Germain-en-Laye (Articles 78-80), the Treaty of Neuilly-sur-Seine (Articles 40 and 45), the Peace Treaty of Tartu (Article 9) and the Treaty of Lausanne (Articles 21 and 31-34). However, when the South Dobroudja territory was incorporated into *Bulgaria* during the Second World War, no right of option was granted.

89. In the above-mentioned cases, the right to opt in favour of the previously held nationality was usually coupled with an *obligation to leave the transferred territory*. In the case of the *Acquisition of Polish Nationality (1924)*⁵⁵, Arbitrator Kaeckenbeck expressly recognised the right of the successor State to require the emigration of such persons who had opted against the new nationality. He held that Poland was entitled to order those inhabitants of Upper Silesia who had opted for the German nationality to leave at the end of a specific period. Today, such an obligation appears to be incompatible with international human rights standards. Although a change of nationality in the case of State succession is not as such arbitrary, the power of States to attribute nationality against an individual's will has been put into question.

90. In some of the more recent cases of border corrections the inhabitants could choose between the nationality of the successor State and their original nationality without having to fear any negative consequences. Under the 1956 and 1963 treaties on exchange of certain territories between *Germany* on the one hand and *Belgium* and the *Netherlands* on the other, the decision to opt against the nationality of the new sovereign did not entail an obligation to leave the territory in question.

91. In State practice, the exercise of the right of option has been made conditional on the existence of *effective links, in particular ethnic, linguistic or religious* with the State the nationality of which the optants wanted to retain or to acquire. Such links exist normally with the predecessor State, but sometimes also with other States. The post-1918 Peace Treaties allowed persons differing in race and language from the majority of the population of the territory in which they lived to opt for the nationality of another State if the majority of this State's population was of the same race and language as the person exercising the right. The 1947 Peace Treaty with *Italy* based the option on "customary language" and granted a real choice between retaining the nationality of the ceding State or acquiring that of the successor. Italian nationals residing in Italy who used the Serbian, Croatian or Slovenian language could opt for Yugoslavian citizenship. On the other hand, when part of the "Free Territory of Trieste" became part of *Yugoslavia* (1954), members of the Italian minority were allowed to move to Italy, thereby losing their Yugoslavian citizenship.

⁵⁴ *Weis* (supra note 15), p. 156.

⁵⁵ Decision by the Upper Silesia Arbitral Tribunal of 10 July 1924, RIAA, Vol. I, 401 (427).

92. When *new States* were created, regulations concerning the right of option tended to be more restrictive. An important number of States which gained their independence did not allow for a right to opt, either for or against, the nationality of the new State. The affected persons could only implicitly repudiate the new nationality by choosing to emigrate: *Malta* (1964), *Croatia* (1991), *Slovenia* (1991), *Bosnia-Herzegovina* (1991/1992), *Kyrgyzstan* (1993), the *Czech Republic* (1993) and *Slovakia* (1993). As far as the dissolutions of *Czechoslovakia*, the *USSR* and *Yugoslavia* are concerned, the absence of a negative option can be explained by the disappearance of the predecessor State the nationality of which had consequently ceased to exist. Persons rejecting the nationality of the successor State would have become stateless.

93. In some of these cases, certain options were available to the individuals concerned. Permanent residents of one successor State who were linked by their previous republican nationality to the territory or people of another successor State could under certain circumstances become citizens of one or two of the successor States: *Croatia/Slovenia"/the former Yugoslav Republic of Macedonia"/Bosnia-Herzegovina* (1991/1992); *Czech Republic/Slovakia* (1993). It is, however, doubtful whether one can speak of a right of option in these cases. The possibility of options did not result from a deliberate decision by the legislatures, but rather from the combined application of legislative provisions which were adopted by the different successor States without any coordination. In addition, the practical exercise of any option was considerably hampered due to either the absence of a right of option with regard to the nationality which was acquired automatically in the State of residence or to the existence of domestic legislation prohibiting dual nationality.

94. Certain of the recently constituted States provided for an explicit right of option to repudiate their nationality. Such a negative option can be found in the laws of *Moldova*, *Russia* and *Ukraine*. Under the new *Lithuanian Law on Citizenship*, the fact of not applying for a passport within two years of the entry into force of the Law was considered an implicit rejection of Lithuanian citizenship.

4. Avoidance of Statelessness

95. The avoidance of cases of statelessness constitutes a legitimate concern of the international community. There have been frequent attempts to reduce or eliminate statelessness through the adoption of appropriate international treaty law.

96. As far as cases of State succession are concerned, Article 10 of the *1961 UN Convention on the Reduction of Statelessness* provides that:

"Every treaty between Contracting States providing for the transfer of territory shall include provisions to secure that no person shall become stateless as a result of the transfer. A Contracting State shall use its best endeavours to secure that any such treaty made by it with a State which is not a Party to this Convention includes such provisions.

In the absence of such provisions a Contracting State to which territory is transferred or which otherwise acquires territory shall confer its nationality on such persons as would otherwise become stateless as a result of the transfer or acquisition".

97. On the whole, an analysis of the legal regulations adopted during recent cases of State

succession shows that the creation of new cases of statelessness has in most cases been avoided. When *Cyprus* became independent and adopted its own citizenship law, persons who might have become stateless by reason of the adopted regulation were given an enforceable right to apply for citizenship.

98. However, the practice by which the initial body of citizens is limited to persons possessing the citizenship of a predecessor State or federated entity has not proved to be conducive to the avoidance of new cases of statelessness. Such a restrictive practice was in particular adopted by some of the States emerging from the dissolution of *Czechoslovakia*, *Yugoslavia* and the *USSR*.

99. Prior to their dissolution, the legal situation in *Czechoslovakia* and *Yugoslavia* was characterised by the coexistence of one "national citizenship" and several "republican citizenships" or "republican nationalities". Since the predecessor State was effectively extinguished, the "national citizenship" ceased to exist. In some of the successor States which developed out of preexisting "republics" only persons (including their descendants) who possessed the corresponding "republican citizenship", or in the case of the *Baltic States*, the citizenship which had been in force prior to their annexation by the *USSR* in 1940, became automatically citizens of the new State. Other habitual residents had to go through individualised procedures ranging from mere registration to ordinary naturalisation. In some cases, this process has had the paradoxical result that habitual residents became aliens in their own country. It should not be forgotten that, for example in *Yugoslavia*, not every citizen of the Federal *Yugoslavia* possessed simultaneously the citizenship of one of the republics (e.g. those born outside the national territory).

100. Most of the individuals concerned theoretically had the right to apply for the citizenship of one of the other successor States. The effective realisation of this right was, however, often made very difficult by the political situation prevailing in the countries concerned, especially as far as the successor States of the former *Yugoslavia* were concerned.

- In the case of the *Baltic States*, acquisition of the new citizenship by mere residents who were neither citizens of the States existing prior to their annexation by the *USSR* or their descendants nor otherwise linked to the territory (for example by birth) has been made subject to certain conditions (see above para. 77 et seq.).

In *Estonia* and *Latvia*, former *USSR* citizens resident in the country have to apply for naturalisation. Certain categories of former *USSR* citizens are excluded from naturalisation, *inter alia* those who have acted anti-constitutionally, who have been members of the security and armed forces of the *USSR*, or who have been convicted of serious crimes. Applicants for naturalisation have to prove their knowledge of the national language.

Under the rather restrictive legislation of *Estonia* and *Latvia* many former *USSR* citizens who did not originate from the *Baltic States* were prevented from acquiring the new nationality and became effectively stateless⁵⁶. The practice adopted by these two countries can be explained by the need to preserve their national identity following more than fifty years of foreign annexation and the resulting massive influx of *USSR* citizens. It must be born in mind that these States recovered a political and legal identity which had been suppressed during the time of annexation. In January 1996, *Estonia* started issuing aliens' passports to long-time residents which provides them with a viable identification and travel document.

⁵⁶ According to reports by the OSCE Missions to *Estonia* and *Latvia*, following the introduction of the new legislation, the number of non-citizens in the two countries totalled about 380,000 (*Estonia*) and 700,000 (*Latvia*).

The passport also contains the bearer's residency permit for which many non-citizens had applied.

- In *Croatia*, the continuity between the republican citizenship in the former Yugoslavia and the new citizenship of the Republic of Croatia had the effect of relegating to the status of aliens many inhabitants of Croatia who did not possess that republican citizenship. They had to apply for naturalisation in respect of which the law distinguished between persons of Croatian and other nationality. Whereas "Croatians" (even those living abroad) could obtain the new citizenship immediately, persons of other nationality had to fulfil additional criteria (registered place of residence for not less than five years, proficiency in the Croatian language and Latin script, attachment to the legal system of the Republic and acceptance of Croatian culture). Some of the problems which were initially caused by rather complex and slow administrative procedures have been solved⁵⁷. However a number of questions still remain to be examined in particular in the light of recent events.

- Under Law No. 40 of 29 December 1992 on acquiring and losing citizenship of the *Czech Republic*, only persons of Czech republican nationality automatically became citizens of the Czech Republic. Citizens of the former _SFR possessing Slovak nationality could obtain the new Czech citizenship only if they fulfilled certain conditions, in particular if they had a permanent residence for a period of at least two years and had not been convicted during the past five years of an intentional criminal offence ("clean criminal record"). In a certain number of cases, applications for Czech citizenship made by persons of Slovak nationality have been rejected, touching in particular the Roma community⁵⁸. Although these persons could in principle obtain permanent residence permits under a simplified procedure, it has been alleged that some expulsions took place⁵⁹. Following criticism of the Czech legislation by international human rights organisations, the Czech government accepted that experts of the Council of Europe carried out a legislative expertise concerning the respective citizenship laws of the Czech Republic and Slovakia and their implementation⁶⁰. Partly as a result of the report of the experts, some amendments to the Law on Citizenship were adopted which provided *inter alia* that the clean criminal record requirement may be dispensed with (see above para. 70).

⁵⁷ "Report on the legislation of the Republic of Croatia" prepared by Mr Matscher and Ms Thune for the Parliamentary Assembly (Doc. AS/Bur/Croatia (1994) 2 of 24 January 1995, pp. 32-33.

⁵⁸ There are conflicting estimates as far as numbers are concerned. According to the Czech Authorities, applications rejected between 1 January 1993 and 31 December 1995 total approximately 200, nongovernmental organisations estimated that there were as many as 24,000 or more "unresolved" cases, cf. Report of experts of the Council of Europe on the citizenship laws of the Czech Republic and Slovakia and their implementation and replies of the Governments of the Czech Republic and Slovakia, Strasbourg, 2 April 1996 (DIR/JUR (96) 4, p. 113; Country Reports on Human Rights Practices for 1995, Report submitted to the Committee on International Relations, US House of Representatives, and the Committee on Foreign Relations, US Senate, by the Department of State (April 1996), p. 845.

⁵⁹ Country Reports on Human Rights Practices for 1995, *ibid.*

⁶⁰ A written question has been put by Mrs Verspaget to the Committee of Ministers of the Council of Europe (No. 358). In its reply, the Committee of Ministers has charged a group of legal experts "to study the combined effects of the Czech and Slovak laws on citizenship and of their implementation, as well as other legal rules relating to the status of citizens of the former Czech and Slovak Federal Republic on the territory of the Czech Republic" (Parliamentary Assembly Doc. 7246). The findings are published in Report of experts of the Council of Europe on the citizenship laws of the Czech Republic and Slovakia and their implementation and replies of the Governments of the Czech Republic and Slovakia, Strasbourg, 2 April 1996 (DIR/JUR (96) 4.

101. It must be deplored that instances of State succession have only rarely been used to reduce existing cases of statelessness. It is rather exceptional that the adoption of new legislation following a transfer of sovereignty was used to give stateless persons an opportunity to apply for the nationality of the successor State. In this respect one should mention the 1991 Law on Nationality of the Russian Federation which gave stateless persons residing in Russia the possibility to acquire Russian citizenship.

102. There have also been efforts to mitigate the consequences of statelessness by *improving the status of stateless persons*. Following its independence, Latvia adopted in 1995 a Law on the Status of Former USSR Citizens who are not Citizens of Latvia or any other State which guarantees certain rights to stateless persons, including the right to select freely a place of residence and to leave and return to Latvia and protects them against arbitrary expulsion. Lithuania has adopted similar legislation⁶¹.

6. Multiple Nationality

103. In the past, considerable efforts have been undertaken, both in domestic and international law, to reduce cases of multiple nationality. Within the Council of Europe, the 1963 Convention on Reduction of Cases of Multiple Nationality and Military Obligations in cases of multiple nationality (ETS No. 43) deals with the cases of loss of nationality when nationals of a Party acquires the nationality of another Party. The countries of the former socialist bloc have been averse to multiple nationality which was reflected both in domestic legislation prohibiting dual nationality and the conclusion of an important number of treaties for the avoidance of dual or multiple nationality.

104. In cases of State succession, the creation of cases of dual or multiple nationality was usually avoided. As a rule, the inhabitants of transferred territory lost the nationality of the predecessor State automatically. Rather exceptional was the case of *Slovakia* where, following the dissolution of the Czech and Slovak Federal Republic, all citizens of the former _SFR, including those who were not citizens of the Slovak Republic, could apply for Slovak citizenship until 31 December 1993. Neither has "*the former Yugoslav Republic of Macedonia*" taken any measures to prohibit or limit cases of double nationality.

105. Persons exercising the right to opt for a certain nationality were normally excluded from the otherwise automatic acquisition of the nationality of the successor State or had to renounce it. This was the practice established by, *inter alia*, the peace treaties concluded after the First World War, the 1947 Peace Treaty with *Italy* and by the nationality laws of the successor States of *Czechoslovakia*, *Yugoslavia* and the *USSR*.

106. Although there is a growing tendency to accept multiple nationality in a greater number of cases (see the legislation of the following States: *Albania, Belgium, Croatia, Czech Republic, France, Greece, Hungary, Ireland, Italy, Malta, Netherlands, Portugal, San Marino, Slovakia, Switzerland, "the former Yugoslav Republic of Macedonia", United Kingdom*) many States are still reluctant to accept multiple nationality as a general principle (*Belarus, Estonia, Finland, Germany, Kyrgyzstan, Latvia, Lithuania, Luxembourg, Moldova, Norway, Poland, Romania, Russia, Slovenia, Sweden, Ukraine*)⁶². In these States, multiple nationality may only arise in a very

⁶¹ Cf. the Law on the Legal Status of Foreigners of 4 September 1991.

⁶² Comp. the *European Bulletin on Nationality*, Strasbourg, March 1996 (DIR/JUR (96)1).

limited number of cases for example where there is an automatic transmission of different nationalities of the parents to the children; under international agreements on the basis of reciprocity; or States may choose to tolerate certain cases of multiple nationality such as when refugees cannot take the necessary administrative steps in their own countries in order to lose their nationality.

107. The new draft European Convention on Nationality postulates in Article 14 that State Parties shall allow

"children having different nationalities acquired automatically at birth, to retain these nationalities;

its nationals to possess another nationality where the other nationality is automatically acquired by marriage".

APPENDIX I - QUESTIONNAIRE ON THE CONSEQUENCES OF STATE SUCCESSION FOR NATIONALITY

QUESTIONNAIRE

1. In your country's recent or relatively recent history (for example, since the first World War), has there been one or more cases of State succession and, if so, what type or types of succession occurred (annexation, union of States, separation so as to form a new State)?
2. In such case or cases, was the nationality of the inhabitants of the territory which passed under the sovereignty of the successor State governed:
 - a) by an international agreement, whether bilateral or multilateral?
 - b) by the internal law of the successor State?
 - c) jointly by both these procedures?
 - d) in another manner (pursuant to a decision of an international organisation, or to an international judgment, or to decisions of domestic courts, etc.)?⁶³
3. Which solutions were adopted in these cases:
 - a) was the acquisition of the nationality of the successor State automatically (*ipso facto*) conferred upon all inhabitants of the new territory or only upon certain categories of such inhabitants?

⁶³ The relevant provisions of a domestic or international character should be attached to replies.

- b) In the event that nationality was automatically or massively conferred by the successor State, were there nonetheless cases of exclusion of certain categories of groups or persons? If so, which categories?
 - c) Was the right to choose one's nationality recognised in respect of all inhabitants of the new territory or only in respect of certain categories among them? In the latter case, what were the categories, and by what legal procedure was the choice exercised (for example, individual choice, referendum)? Similarly, what were the consequences for persons who did not elect for nationality of the successor State?
4. Upon what criteria were the solutions adopted in the above cases:
- a) jus sanguinis (origin);
 - b) jus soli (domicile or residence);
 - c) both of these criteria;
 - d) resort to other criteria?
5. In regulating the question of nationality, were measures taken to prohibit or limit cases of double nationality or to avoid cases of statelessness? What were these measures?
6. How was the question of the nationality of legal persons regulated?
7. Do you consider that a person of untainted civic record who has resided for a significant period on a territory the subject of State succession should be accorded the same nationality as other inhabitants of that territory irrespective of his or her ethnic origin? If not, do you consider that such a person should at least be accorded the status of permanent resident?
8. Are the authorities in your country of the view that the choice of criteria for according nationality is within the exclusive competence and discretionary power of the State or do they recognise that that the matter is circumscribed by rules of international law? In the latter case, which rules?
9. To what extent is the criterion of an effective link between a person and a territory taken into consideration in your country for the purposes of granting nationality?
10. To what extent does the applicable legislation in your country take account of the fact that the grant or withdrawal of nationality can have consequences for the rights of persons acquired under the rules and regulations to which they were formerly subject?

APPENDIX II - SUMMARY TABLES OF REPLIES TO THE QUESTIONNAIRE ON THE CONSEQUENCES OF STATE

SUCCESSION FOR NATIONALITY

The summary tables are based on the replies to the questionnaire on the consequences of State succession for nationality (CDL(95)1 - Questions 1-6). Temporary occupations or annexations which occurred during a state of war are not taken into account. Cases of State succession resulting from the cession or transfer of territory from one State to another are classified only once, i.e. under the State which acquires the territory in question.

Case of State succession	Albania
	independence (1912)
Governed by	Organic Statute of Albania (1914)
Acquisition of nationality of the successor State	(a) <u>automatically</u> - for persons who were born or domiciled in Albania before 28 November 1912 and had been nationals of the Ottoman Empire; - for Albanians who returned from territories annexed by Balkan States and established their residence in Albania after 28 November 1912 unless they refused Albanian nationality within six months; (b) <u>upon application</u> for persons of Albanian origin residing outside Albania
Right of option	right to opt for another nationality, coupled with the obligation to leave Albania
Exclusion of certain categories of persons	no
Consequences for persons who did not obtain the nationality of the successor State	continuance of former nationality
Statelessness	no
Multiple nationality	possible
Criteria for nationality legislation	<i>jus sanguinis</i> and domicile
Nationality of legal persons	not regulated

Case of State succession	Algeria
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	independence (1962)
Governed by	Evian Agreements (18 March 1962), referendum on self-determination (1 July 1962), ballot on self-determination (3 July 1962), Algerian Law of 27 March 1963 (Algerian Nationality Code), French Ordinance of 21 July 1962 implementing the Law of 13 April 1962, complemented by the Decree of 27 November 1962 and modified by the Laws of 10 July 1965 and 20 December 1966
Acquisition of nationality of the successor State	<p>(a) <u>automatically</u> for children</p> <ul style="list-style-type: none"> - born of an Algerian father or Algerian mother and Stateless father - or born in Algeria of unknown parents, - or born in Algeria of an Algerian mother and father born in Algeria, unless Algerian nationality is renounced in the two years prior their majority (21 years); <p>[A person is considered "Algerian" who has at least two ascendants on the father's side born in Algeria, and has Muslim status]</p> <p>(b) <u>upon application</u> for persons</p> <ul style="list-style-type: none"> - who have participated in the fight for liberation - who have followed the naturalisation procedure - who have exercised their right of option
Right of option	right to opt in favour of Algerian nationality for French nationals having Algerian civil rights (to be exercised before 31 July 1965)
Exclusion of certain categories of persons	-
Consequences for persons who did not obtain the nationality of the successor State	-
Statelessness	-
Multiple nationality	possible ?
Criteria for nationality legislation	<i>jus sanguinis</i> and <i>jus soli</i>
Nationality of legal persons	-

Case of State succession	Austria	
	dissolution of the Austro-Hungarian Empire (1918/1919)	termination of German annexation/ occupation of Austria (1945)

Governed by	Peace Treaty of Saint-Germain-en-Laye (1919)	(Austrian) Law on the Transformation of Nationality (1945); Second German Law on Regulating Certain Questions of Nationality (1956)
Acquisition of nationality of the successor State	<u>automatically</u> for all persons possessing "rights of citizenship" (<i>Heimatrecht</i>) in one of the Austrian municipalities	<u>automatically</u> for all persons who would have been Austrians if the German occupation had not occurred
Right of option	persons differing in race and language from the majority of the population could opt for nationality of another State if the majority of this State's population was of the same race and language as the person exercising the right	under German law, persons who had acquired German nationality and lived in Germany could reapply for German nationality
Exclusion of certain categories of persons	persons who had acquired the right of citizenship at a recent date	- high-ranking members of the former Nazi Party; - persons convicted of war crimes and other specified crimes
Consequences for persons who did not obtain the nationality of the successor State	persons residing in Austria (as defined by the Peace Treaties) could apply for Austrian citizenship according to the general rules	continuance of German nationality
Statelessness	-	-
Multiple nationality	no special regulation; possible only in exceptional cases under Austrian law	possible only in exceptional cases under Austrian law; not possible under German law
Criteria for nationality legislation	"rights of citizenship" (<i>pertinenza</i>)	nationality of the Austrian State which was deemed to have never ceased to exist
Nationality of legal persons	determined in principle by seat	determined in principle by seat
Case of State succession	Belarus	
	independence (1991)	
Governed by	Law on nationality (1991) with amendments (1995)	
Acquisition of nationality of the successor State	(a) <u>automatically</u> for persons having permanent residence in the national territory when the Law on Nationality entered into force; (b) <u>upon registration</u> for former USSR citizens who had had permanent residence in the territory, but had left it before the Law on Nationality	

	<p>entered into force;</p> <p>(c) <u>upon naturalisation</u> for persons who</p> <ul style="list-style-type: none"> - pledge to observe the Constitution and laws of the Republic, - have a sufficient knowledge of the State language, - have been living continually in the territory for at least seven years, and - have legal means of subsistence
Right of option	no
Exclusion of certain categories of persons	foreign nationals and stateless persons
Consequences for persons who did not obtain the nationality of the successor State	continuance of their former status as foreign nationals or stateless persons
Statelessness	-
Multiple nationality	possible only on the basis of international agreements
Criteria for nationality legislation	permanent residence
Nationality of legal persons	determined by the location of its permanently operating body

Case of State succession	Belgium		Bulgaria
		cession of the Eupen/Malmedy territories by Germany (1919)	exchange of certain territories with Germany (1956)
Governed by	Treaty of Versailles (1919); German-Belgian Declaration on Exercising the Right to Opt; German-Belgian Agreement on Exercising the Right to Opt (1924)	German-Belgian Treaty on Border Corrections (1956); domestic Belgian legislation (1958)	Treaty of Kraïova (1940), confirmed by the Peace Treaty with the Allied Powers (1947)
Acquisition of nationality of the successor State	<u>automatically</u> for German nationals habitually resident in the territories; <u>upon permission</u> for German nationals who	<u>upon application</u> within two years	<u>automatically</u> only for persons of Bulgarian ethnic origin

	became resident after 1 August 1914		
Right of option	right to opt for German nationality	yes	no
Exclusion of certain categories of persons	no	no	persons of Romanian ethnic origin
Consequences for persons who did not obtain the nationality of the successor State	obligation to leave the area	continuance of German nationality; no obligation to leave the territory	forced repatriation to Romania; their real property became Bulgarian State property
Statelessness	-	no	-
Multiple nationality	-	no	excluded
Criteria for nationality legislation	nationality of the predecessor State combined with domicile	nationality of the predecessor State combined with domicile	ethnic origin, <i>jus sanguinis</i>
Nationality of legal persons	-	-	-

Case of State succession	Croatia
	independence (1991)
Governed by	Law on Croatian Citizenship (1991)
Acquisition of nationality of the successor State	<p>(a) <u>automatically</u> for persons possessing citizenship of the former Republic of Croatia;</p> <p>(b) <u>upon individual declaration</u> for persons belonging to the Croatian people who on the date of entry into force of the law on citizenship had a registered place of residence in Croatia for a period of not less than 10 years;</p> <p>(c) <u>upon naturalisation</u> for other residents under certain conditions (registered place of residence continuously for not less than five years, proficiency in the Croatian language and Latin script, attachment to the legal system of the Republic, acceptance of Croatian culture)</p>
Right of option	no; however, possibility to apply for nationality of another State without losing Croatian nationality
Exclusion of certain categories of persons	no
Consequences for persons who did not obtain the nationality of the successor	considered to be aliens

State	
Statelessness	-
Multiple nationality	possible
Criteria for nationality legislation	(republican) nationality of the predecessor State combined with ethnic origin
Nationality of legal persons	determined by the law under which they are established

Case of State succession	Cyprus
	independence (1960)
Governed by	Treaty concerning the Establishment of the Republic of Cyprus (Annex D) (1960) which was given constitutional force by virtue of Article 198 of the Constitution (1960)
Acquisition of nationality of the successor State	<p>(a) <u>automatically</u> for persons</p> <ul style="list-style-type: none"> - who were ordinarily resident in Cyprus at any time in a period of 5 years immediately before 16 August 1960 and who <i>i</i>) was a British subject under the Cyprus (Annexation) Orders (1914-1943); <i>ii</i>) was born in Cyprus on or after 5 November 1914; <i>iii</i>) descended in the male line from a person referred to under (<i>i</i>) and (<i>ii</i>); - was a citizen of the United Kingdom and Colonies born between 16 August 1960 and 16 February 1961 provided that his father became a citizen or would but for his death have done so <p>(b) <u>upon application</u> <i>inter alia</i> for</p> <ul style="list-style-type: none"> - citizens of the United Kingdom and Colonies possessing any of the qualifications mentioned above under (a) who did not automatically become a citizen and who resided in a protectorate, protected State, United Kingdom trust territory, Greece or Turkey; - persons who on 5 November 1914 were Ottoman subjects ordinarily resident in Cyprus and their descendants in the male line; - certain categories of women married to persons who become Cypriot citizens or who are entitled to make an application for citizenship; - persons who were granted certificates of naturalisation or were registered as a citizen of the UK and Colonies by the Governor of Cyprus, and their male descendants [the Treaty established yearly quotas for applications of persons who are to become members of the Greek and Turkish Communities]
Right of option	no; only citizens possessing also the citizenship of another State were entitled to renounce Cypriot citizenship
Exclusion of certain categories of persons	-
Consequences for persons who did not obtain the nationality of the successor State	continuance of their former nationality
Statelessness	persons who might have become stateless by reason of the adopted regulation had the right to apply for citizenship
Multiple nationality	no; persons acquiring Cypriot nationality ceased to be citizens of the UK and Colonies
Criteria for nationality legislation	nationality of the predecessor State; origin; residence
Nationality of legal persons	-

Case of State succession	Czechoslovakia
	dissolution of the Austro-Hungarian Empire (1918/19); cession of territories by Hungary (1920)
Governed by	Peace Treaties of Saint-Germain-en-Laye (1919) and Trianon (1920); Constitutional Act No. 236/1920 Coll. [Czechoslovakia]; Law No. XXXIII (1921) [Hungary]
Acquisition of nationality of the successor State	<u>automatically</u> for all persons who possessed rights of citizenship in a town or village which became part of the Czecho-Slovak State provided that they had exercised this right in an uninterrupted manner from 1910-1920; other residents could, under certain circumstances, opt for Czechoslovak citizenship until 1921
right of option	(a) persons over 18 years of age losing Austrian or Hungarian nationality could opt for the nationality of the State in which they possessed rights of citizenship; (b) persons differing in race and language from the majority of the population could opt for nationality of another State if the majority of that State's population was of the same race and language as the person exercising the right
Exclusion of certain categories of persons	-
Consequences for persons who did not obtain the nationality of the successor State	persons who exercised their right to opt had to transfer their residence to the State of their choice
Statelessness	-
Multiple nationality	excluded
Criteria for nationality legislation	rights of citizenship
Nationality of legal person	-

Case of State succession	Czech Republic
	dissolution of the Czech and Slovak Republic (1993)
Governed by	Act No. 40/1993 Coll., modified by Act No. 272/1993
Acquisition of	(a) <u>automatically</u> conferred upon persons who on 31 December 1992 were

nationality of the successor State	<p>citizens of the _SFR and at the same time registered as citizens of the former Czech Republic; special rules facilitating the acquisition of Czech nationality applied to children under the age of 15</p> <p>(b) <u>upon naturalisation</u> for persons having</p> <ul style="list-style-type: none"> - resided permanently and continually in the Czech Republic for a period of at least five years; - a clear criminal record for the past five years; - mastery of the Czech language
Right of option	<p>right to opt for the Czech nationality for</p> <ul style="list-style-type: none"> - citizens of the former Slovak Republic who, upon the date of application, had resided permanently and continually in the Czech Republic for a period of at least two years and had not been convicted during the past five years of an intentional criminal offence (until 30 June 1994); - citizens of the former Slovak Republic who were not permanent residents in either the former Czech or Slovak Republic provided that their last permanent residence before moving abroad had been in the territory of the Czech Republic or that one parent was a citizen of the _SFR and the applicant submitted a document of exemption from citizenship of the Slovak Republic; - citizens of the former _SFR who were not registered as either having Czech or Slovak nationality
Exclusion of certain categories of persons	no
Consequences for persons who did not obtain the nationality of the successor State	considered to be aliens
Statelessness	-
Multiple nationality	persons exercising a right to opt had to prove that they had been released from another citizenship
Criteria for nationality legislation	(republican) nationality of the predecessor State; <i>jus sanguinis</i>
Nationality of legal persons	determined according to their domicile

Case of State succession	Denmark
	cession of the Schleswig territory from Germany (1919)
Governed by	Treaty of Versailles (1919); German-Danish Supplementary Agreement of 1922; Danish and German domestic legislation

Acquisition of nationality of the successor State	(a) <u>automatically</u> for all inhabitants; (b) <u>upon special authorisation</u> for those who moved to the territory after 1 October 1918
Right of option	right to retain German nationality
Exclusion of certain categories of persons	no
Consequences for persons who did not obtain the nationality of the successor State	obligation to leave the territory
Statelessness	no; even persons who had previously lost German nationality were covered
Multiple nationality	no
Criteria for nationality legislation	domicile
Nationality of legal persons	-

Case of State succession	Estonia independence (1991)
Governed by	Law on Citizenship (1938 and 1940); Republic of Estonia Supreme Council Resolution on Privatisation of State Enterprises (1991); Republic of Estonia Supreme Council Resolution on the Application of the Law on Citizenship (1992); Law on Amendments of the Republic of Estonia Supreme Council Resolution on the Application of the Law on Citizenship (1993); Law on Amendments to the Law on Citizenship (1993); Law on Citizenship (1995)
Acquisition of nationality of the successor State	(a) <u>automatically</u> for persons who were Estonian citizens before 16 June 1940 and their direct descendants (b) <u>upon application</u> for persons who as minors lost Estonian citizenship and wish to restore it (c) <u>upon naturalisation</u> requiring <i>inter alia</i> permanent residence of not less than three years (five years under the 1995 Law on Citizenship), knowledge of the Estonian language and oath to the Republic
Right of option	yes
Exclusion of certain categories of persons	(a) under the re-enacted 1938 Law on Citizenship - foreign military personnel in active service; - persons having been convicted of serious crimes against persons or having a criminal record of repeated convictions for intentional crimes; - persons lacking a lawful steady income; (b) the 1995 Law on Citizenship excluded the following categories from naturalisation:

	<ul style="list-style-type: none"> - persons having intentionally given incorrect information when applying for Estonian citizenship; - persons not respecting the Constitution or the laws of Estonia; - persons having acted against Estonia and its security; - persons having been convicted of a crime and sentenced to a period of imprisonment of more than one year or having a criminal record of repeated convictions for intentional crimes; - persons having been employed by the security and intelligence services of the USSR; - persons having served in foreign military forces (including those who are discharged or retired and their spouses)
Consequences for persons who did not obtain the nationality of the successor State	continuance of former nationality; persons who were residents before 1 July 1990 and had a Soviet Estonian passport could apply for work and for resident permits irrespective of immigration quotas
Statelessness	following the independence of Estonia, "non-citizens" totalled about 380,000; the Constitution guarantees in principle the same fundamental rights to non-citizens and Estonian citizens; the same applies for entitlement to certain social benefits
Multiple nationality	no; acceptance of the citizenship of another State entails loss of Estonian citizenship
Criteria for nationality legislation	nationality of the predecessor State; <i>jus sanguinis</i>
Nationality of legal persons	public enterprises under Soviet control are to be privatised according to Estonian legislation; directors of these enterprises have been obliged to stop transactions which could result in a change of ownership

Case of State succession	Finland	
	independence (1917)	cession of Petsamo (Petchenga) territory from Russia (1920)
Governed by	Citizenship Law of the former Grand Duchy remained in force	Tartu Peace Treaty (1920)
Acquisition of nationality of the successor State	<u>automatically</u> for all Finnish citizens	<u>automatically</u> for Russian nationals living in the territory
Right of option	no	right to opt for Russian nationality within one year
Exclusion of certain categories of persons	former Russian citizens not possessing citizenship of Finland	no
Consequences for persons who did not obtain the nationality of the successor State	status of alien in Finland	-
Statelessness	under subsequent Soviet legislation for Russian citizens not returning to the USSR	-

Multiple nationality	no	no
Criteria for nationality legislation	existing citizenship of the Grand Duchy	nationality of the predecessor State in conjunction with domicile
Nationality of legal persons	automatic acquisition of nationality of the successor State	automatic acquisition of nationality of the successor State

Case of State succession	France	
	cession of Alsace-Lorraine by Germany (1919)	cession of territories by Italy (1947)
Governed by	Treaty of Versailles (1919); French legislation (1920); Law of 22 December 1961 modified by the Law of 29 June 1971	Peace Treaty with Italy (1947); French legislation (Law of 13 December 1947, Decree of 7 January 1948, Law of 2 August 1949)
Acquisition of nationality of the successor State	<p>(a) <u>automatically</u> only for certain categories:</p> <ul style="list-style-type: none"> - persons who had previously lost French nationality under the Franco-German Treaty of 1871 and their offspring; - persons born in the territories of unknown parents or whose nationality was unknown <p>(b) <u>upon application</u> to be made within one year</p> <ul style="list-style-type: none"> - persons with French ascendants; - foreigners who acquired citizen status in the region before 3 August 1914; - Germans domiciled in the region before 1870 or having served in the Allied forces; - persons born in the territories of foreign parents and their descendants <p>(French authorities reserved the right to reject such applications)</p> <p>[the difficulties, in the application of this rigid system, in particular for the descendants of persons affected by the Treaty who were unable to show the short-form certificate of reinstatement has led the authorities to grant, under certain conditions, nationality in a "subsidiary manner" if those persons had benefited in a constant way from the factual possession of French status]</p>	<p><u>automatically</u> for</p> <ul style="list-style-type: none"> (a) Italian nationals who resided on 10 June 1940 in the transferred territories; (b) their descendants born after 10 June 1940; (c) persons who were born in the territories and resided in France or Monaco
Right of option	-	right to retain Italian nationality, to be exercised within one year
Exclusion of certain categories of persons	yes; Germans born or domiciled in Alsace-Lorraine could acquire French nationality only by naturalisation	no
Consequences for persons who did not obtain the nationality of the successor State	obligation to return to Germany	obligation to leave the territories
Statelessness	-	-

Multiple nationality	no	no
Criteria for nationality legislation	<i>jus sanguinis</i> , domicile and military service	previous nationality; residence
Nationality of legal persons	-	-

Case of State succession	Georgia	
	independence (1991)	
Governed by	Multilateral International Treaty of Alma-Ata; law of the Republic of Georgia "on Citizenship of Georgia" (25 March 1993)	
Acquisition of nationality of the successor State	<u>Automatically</u> for all inhabitants.	
Right of option	yes	
Exclusion of certain categories of persons	no	
Consequences for persons who did not obtain the nationality of the successor State	considered stateless persons	
Statelessness	those persons who had not chosen the citizenship of the Republic of Georgia	
Multiple nationality	double citizenship is prohibited by law and Constitution; citizens of Abkhazia and Adjara autonomous Republics have their own citizenship and they automatically become citizens of Georgia.	
Criteria for nationality legislation	permanent residence	
Nationality of legal persons	regulated by domestic law	

Case of State succession	Germany	
	creation of the Free City of Danzig (1919)	creation of the Saar territory (1945)
Governed by	Treaty of Versailles (1919); Law on the Acquisition and Loss of the Nationality of Danzig (as amended 1935)	Law on Saar Citizenship (1948)
Acquisition of nationality of the	<u>automatically</u> for all German inhabitants of the city	<u>automatically</u> for all persons (including their spouses and children)

successor State		who were (a) born in the territory; (b) descendants of a person born in the territory; (c) residing in the territory for at least ten years and domiciled therein before 30 January 1933
Right of option	right to opt for German nationality	no
Exclusion of certain categories of persons	no	no
Consequences for persons who did not obtain the nationality of the successor State	obligation to leave the territory	-
Statelessness	-	Saar citizenship could be granted to certain categories of stateless persons living in the territory
Multiple nationality	no	no
Criteria for nationality legislation	nationality of the predecessor State and domicile	origin and domicile
Nationality of legal persons	-	-

Case of State succession	Germany	
	incorporation of the Saar territory into the Federal Republic of Germany (1955)	reunification (1990)
Governed by	French-German Treaty (1957); Law No. 549 adopted by the Saarland diet in 1956	Nationality Act of 1913 with subsequent amendments (the Treaty on the Establishment of German Unity (1990) did not contain any provisions on nationality)
Acquisition of nationality of the successor State	Saar citizenship was abolished by the abovementioned Law; according to German practice, German nationality legislation had always remained applicable; thus, the inhabitants had retained German nationality and their descendants	FRG had always affirmed existence of only one German nationality governed by the Nationality Act of 1913 (based on <i>jus sanguinis</i>); even the isolated acquisition of the nationality of the former GDR (e.g. by naturalisation) was deemed,

	had acquired it automatically	subject to limits of <i>ordre public</i> , to have the effect of acquiring such German nationality simultaneously (BVerfG, decision of 21.10.1987 - <i>Teso</i> , BVerfGE 77, 137); thus, citizens of the former GDR did not acquire a new nationality
Right of option	no	-
Exclusion of certain categories of persons	-	-
Consequences for persons who did not obtain the nationality of the successor State	-	-
Statelessness	no	-
Multiple nationality	no	-
Criteria for nationality legislation	existing German nationality under the Nationality Act of 1913	existing German nationality under the Nationality Act of 1913
Nationality of legal persons	-	-

Case of State succession	Greece		
	independence (1830)	union with Ionian Islands (1864)	incorporation of Thessalia and parts of Ipiros (1881)
Governed by	Protocol No. 1 of London, concluded between France, Russia and the United Kingdom (1830); Constitutional Acts of Epidhavros (1822), Astros (1823) and Trezene (1827)	Treaty of London, concluded between Greece, France, Russia and the United Kingdom (1864); Act of 20 January 1866	Greek-Turkish Convention on Border Corrections (1881); internal legislation
Acquisition of nationality of the successor State	<u>automatic</u> for all inhabitants	<u>automatic</u> for all inhabitants	<u>automatic</u> for all inhabitants
Right of option	no	no	right to retain Ottoman nationality
Exclusion of certain categories of persons	initially non-Christians were excluded	no	no

Consequences for persons who did not obtain the nationality of the successor State	right to emigrate for Muslims who did not want to acquire Greek nationality	-	obligation to leave the territory
Statelessness	-	-	-
Multiple nationality	no	no	no
Criteria for nationality legislation	<i>jus soli</i> and religion	<i>jus soli</i>	<i>jus soli</i>
Nationality of legal persons	-	-	-

Case of State succession	Greece	
		incorporation of parts of Ipiros, Macedonia, Crete and Northern islands of the Aegean Sea (1913)
Governed by	Greek-Turkish Peace Treaty (1913); internal legislation	Peace Treaty of Neuilly-sur-Seine with Bulgaria (1919); Treaty of Sèvres (1920); Protocol No. XVI of the Peace Treaty of Lausanne (1923); internal legislation
Acquisition of nationality of the successor State	(a) <u>automatically</u> for all inhabitants; (b) <u>upon application</u> for natives from the territories in question not residing in the Ottoman Empire	<u>automatically</u> for all inhabitants, except for Bulgarian nationals who settled in the territory after 1 January 1913 and who needed a special authorisation to acquire Greek nationality
Right of option	right to retain Ottoman nationality	right to retain Bulgarian nationality
Exclusion of certain categories of persons	no	no
Consequences for persons who did not obtain the nationality of the successor State	obligation to leave the territory	obligation to leave the territory
Statelessness	-	-
Multiple nationality	no	no
Criteria for nationality legislation	<i>jus soli</i>	<i>jus soli</i>

Nationality of legal persons		
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Case of State succession	Greece	
	incorporation of the Dodecanese (1947)	
Governed by	Peace Treaty with Italy (1947); Law No. 517 (1948) with amendments	
Acquisition of nationality of the successor State	<u>automatically</u> for (a) all inhabitants of Italian nationality residing in the territory on 10 June 1940 and their descendants; (b) natives from the territory or their descendants of Italian nationality and Orthodox belief who resided in Greece	
Right of option	right to retain Italian nationality for persons whose habitual language was Italian	
Exclusion of certain categories of persons	no	
Consequences for persons who did not obtain the nationality of the successor State	obligation to leave the territory	
Statelessness	-	
Multiple nationality	no	
Criteria for nationality legislation	nationality of the predecessor State and religion	
Nationality of legal persons	-	

Case of State succession	Ireland	
	independence (1921)	
Governed by	Article 3 of the Constitution (1922); Irish Nationality and Citizenship Act (1935)	
Acquisition of nationality of the successor State	<u>automatically</u> for all persons who on 6 December 1922 were domiciled in the area of the jurisdiction of the Irish Free State (including Northern Ireland) and	

	(a) were themselves born in Ireland or were born of a parent born in Ireland; or (b) had been ordinarily resident in that area for at least seven years
Right of option	yes; citizens of other States were permitted to elect not to accept the citizenship of the Irish State
Exclusion of certain categories of persons	persons born in Ireland who were not domiciled in Ireland on the relevant date
Consequences for persons who did not obtain the nationality of the successor State	continuance of former nationality
Statelessness	stateless persons who fulfilled the residency qualification could acquire citizenship
Multiple nationality	yes
Criteria for nationality legislation	origin as well as domicile and residence
Nationality of legal persons	determined by incorporation (excluding companies registered in Northern Ireland)

Case of State succession	Italy
	incorporation of the Provinces of Trento, Bolzano, Trieste, Gorizia and Pola (1919/20)
Governed by	Peace Treaty of St. Germain-en-Laye (1919); German-Italian Agreement (1939); Law No. 1322 (1920); Law No. 1241 (1939)
Acquisition of nationality of the successor State	(a) <u>automatically</u> for natives from the territories who possessed "rights of citizenship" (<i>pertinenza</i>); (b) <u>upon application</u> for persons - who possessed "rights of citizenship" (<i>pertinenza</i>) but were not born in the territories; - who had acquired "rights of citizenship" (<i>pertinenza</i>) since the beginning of the First World War or <i>ratione officii</i> ; - who or whose parents had possessed "rights of citizenship" (<i>pertinenza</i>) in the past;

	- who had served in the Italian Army during the war
Right of option	(a) persons older than 18 years could opt for the nationality of the State in which they possessed "rights of citizenship" (<i>pertinenza</i>); (b) persons differing in race and language from the majority of the population could opt for nationality of another State if the majority of this State's population was of the same race and language as the person exercising the right; (c) persons of German origin and language residing in the Province of Bolzano who had acquired Italian nationality could opt for German nationality
Exclusion of certain categories of persons	no
Consequences for persons who did not obtain the nationality of the successor State	persons who exercised their right to opt had to transfer their residence to the State of their choice
Statelessness	-
Multiple nationality	not possible
Criteria for nationality legislation	"right of citizenship" (<i>pertinenza</i>); origin
Nationality of legal persons	recognition as Italian legal persons on the basis of individual decision by Italian administrative or judicial authorities

Case of State succession	Italy
	incorporation of the town of Fiume (Rijeka) (1919/20)
Governed by	Treaty of Rappallo (1920); Conventions between Italy and Yugoslavia of Santa Margherita (1922) and Nettuno (1925); Royal Decree No. 2175 (1928); Royal Decree No. 2698 (1928)
Acquisition of nationality of the successor State	(a) <u>automatically</u> for residents or descendants of residents (including wives and children) who possessed "rights of citizenship" (<i>pertinenza</i>) in the territory; (b) <u>upon application</u> for persons who had resided in the territory for at least five years and spoke Italian
Right of option	right to retain previous nationality for persons older than 18 years who spoke the language of the preferred State and belonged to the race which constituted the majority of that State's population
Exclusion of certain categories of persons	persons who had acquired "rights of citizenship" (<i>pertinenza</i>) after 1 January 1910 or <i>ratione officii</i>
Consequences for persons who did not	continuance of former nationality; possibility to apply for Italian nationality under the conditions specified above under (b)

obtain the nationality of the successor State	
Statelessness	-
Multiple nationality	not possible
Criteria for nationality legislation	"rights of citizenship" (<i>pertinenza</i>)
Nationality of legal persons	legal persons registered in the territory were treated as Italian legal persons

Case of State succession	Kyrgyzstan
	independence (1993)
Governed by	Law on Citizenship (1993)
Acquisition of nationality of the successor State	<u>automatically</u> for all citizens of the former Kyrgyz SSR provided that they have no other nationality
Right of option	no
Exclusion of certain categories of persons	no
Consequences for persons who did not obtain the nationality of the successor State	-
Statelessness	no
Multiple nationality	not possible
Criteria for nationality legislation	existing citizenship of the former Kyrgyz SSR and residence
Nationality of legal persons	-

Case of State succession	Latvia
	independence (1991)
Governed by	Law on Citizenship (1919); Resolutions by the Supreme Council "on the renewal of Republic of Latvia citizens' rights and fundamental principles of naturalisation" (1991) and "on conditions for the recognition of Republic of Latvia citizens' rights to persons who resided within Latvia before 1 August 1914 and their descendants" (1992); Law on Citizenship (1994) with amendments (1995); Law on the Status of Former USSR Citizens who are not Citizens of Latvia or any other State (1995)

Acquisition of nationality of the successor State	<p>(a) <u>automatically</u> for residents who were citizens of Latvia prior to 1940 and their descendants;</p> <p>(b) <u>upon naturalisation</u> according to the Law on Citizenship (1994); a simplified procedure is in force for</p> <ul style="list-style-type: none"> - persons of Latvian or Liv origin repatriated to Latvia; - former USSR citizens and their descendants entitled to Latvian citizenship under the 1919 Law on Citizenship and their spouses; - permanent residents who legally entered Latvia and permanently resided there on 17 June 1940 and their descendants; - permanent residents who were forcibly transferred to Latvia during the German occupation of 1941-1945; - persons educated in Latvian schools; - persons who on 17 June 1940 were Lithuanian or Estonian nationals and their descendants if they have resided permanently in Latvia for no less than five years; - spouses of Latvian citizens
Right of option	no
Exclusion of certain categories of persons	<p>(a) persons having become nationals of another State after 4 May 1990 are excluded from the <u>automatic</u> acquisition of Latvian citizenship</p> <p>(b) the Law on citizenship (1994) does not allow the <u>naturalisation</u> of persons who</p> <ul style="list-style-type: none"> - have acted anti-constitutionally against the Republic (if such has been established by a court decree); - are officials of a foreign State; - are or have been members of foreign security services or armed forces of a foreign State; - are former members of the armed forces of the USSR or Russia who, when drafted, did not reside in Latvia; - have worked for the intelligence services of the former USSR; - have been convicted of an intentional crime and sentenced to a period of imprisonment of more than one year
Consequences for persons who did not obtain the nationality of the successor State	continuance of their former nationality and, in cases of former USSR citizens who did not acquire Latvian citizenship or the nationality of one of the successor States of the USSR, statelessness
Statelessness	following the entry into force of the new legislation, "non-citizens" totalled around 700.000, the 1995 Law on the Status of Former USSR Citizens who are not Citizens of Latvia or any other State guarantees certain rights to stateless persons, including the rights freely to select a place of residence and to leave and return to Latvia, and protects them against arbitrary expulsion
Multiple nationality	not possible except for certain refugees who had left the country and became naturalised in a foreign State
Criteria for nationality legislation	nationality of a predecessor State; residence
Nationality of legal persons	-

Case of State succession	Lithuania	
	dissolution of the Russian Empire and independence of Lithuania (1918)	cession of the Memel territory from Germany (1924)
Governed by	Temporary Law on Lithuanian citizenship (1919)	Memel Convention with Allied Powers (1924); Treaty on the Exercise of the

		Right to Opt with Germany (1925)
Acquisition of nationality of the successor State	<u>automatically</u> conferred upon all permanent residents and their descendants in the territory of Lithuania	(a) <u>automatically</u> for German citizens older than 18 years and having their permanent residence on the territory; (b) <u>upon application</u> for persons older than 18 in 1924 who were either born in the territory and had lived there for more than 10 years or had been granted permission to settle in the territory by Allied Powers and had lived there since at least 1922
Right of option	-	Germans could opt for German nationality within 18 months
Exclusion of certain categories of persons	persons who served as officials of the former Russian Empire	no
Consequences for persons who did not obtain the nationality of the successor State	continuance of their former nationality	obligation to leave the territory
Statelessness	-	-
Multiple nationality	no	no
Criteria for nationality legislation	permanent residence	nationality of the predecessor State and residence
Nationality of legal persons	-	-

Case of State succession	Lithuania
	independence (1991)
Governed by	Articles 12 and 13 of the Constitution; Law on Citizenship (1989), replaced in 1991; Law on the Legal Status of Foreigners (1991)
Acquisition of nationality of the successor State	<u>automatically</u> for persons who (a) were citizens of the former Republic of Lithuania, children and grandchildren of such persons and other persons who were permanent residents in the national territory prior to 15 July 1940, and their children or grandchildren who are or have been permanent residents in the national territory; (b) had a permanent place of residence in Lithuania provided that they were born in this territory or one of their parents or grandparents were born there, unless they are citizens of another State;

	(c) had been permanent residents in the national territory up to and including the date of entry into force of the Law on Citizenship and had a permanent place of employment or other legal means of subsistence there
Right of option	recognised for all inhabitants who were at least 18 years of age for two years following the entry into force of the Law on Citizenship; failure to apply for a passport was considered as a rejection of Lithuanian citizenship
Exclusion of certain categories of persons	no
Consequences for persons who did not obtain the nationality of the successor State	continuance of their former nationality; application of the Law on Legal Status of Foreigners (1991); aliens enjoy in principle all rights and freedoms established by law, including the right to apply to courts and other State bodies for the protection of their rights
Statelessness	-
Multiple nationality	Lithuanian law is based on the principle of a single nationality; double nationality may only be acquired on the basis of international treaties and, in exceptional cases, by naturalisation
Criteria for nationality legislation	nationality of a predecessor State; <i>jus sanguinis</i> ; permanent residence
Nationality of legal persons	regulated by the Civil Code of Lithuania

Case of State succession	Malta
	independence (1964)
Governed by	Independence Constitution (1964); Citizenship Act (Act XXX of 1965)
Acquisition of nationality of the successor State	<p>(a) <u>automatically</u> for citizens of the United Kingdom and Colonies</p> <ul style="list-style-type: none"> - who were born in Malta prior to 21 September 1964, provided that one of their parents was born in Malta; - who were born outside Malta and whose father became a Maltese citizen on 21 September 1964; - persons adopted by Maltese citizens (until 1977 and again after 1989); <p>(b) <u>upon application</u> for</p> <ul style="list-style-type: none"> - citizens of the United Kingdom and Colonies who were born in Malta prior to 21 September 1964, but who did not have one of their parents born in Malta; - persons who were naturalised as British subjects under the British Nationality Act (1948); - citizens of the Commonwealth or the Republic of Ireland residing in Malta for at least 5 years; - descendants in the male line from a person born in Malta who resided there for at least 5 years

Right of option	no
Exclusion of certain categories of persons	-
Consequences for persons who did not obtain the nationality of the successor State	-
Statelessness	stateless persons who were born in Malta or whose father was by virtue of descent a citizen of Malta acquired Maltese citizenship
Multiple nationality	originally not possible; since 1989 possible for Maltese emigrants on the basis of reciprocity
Criteria for nationality legislation	existing citizenship, origin, residence
Nationality of legal persons	-

Case of State succession	Moldova
	independence (1991)
Governed by	Constitution (1994); Law on Citizenship (1991) with amendments (1993 and 1994)
Acquisition of nationality of the successor State	<p>(a) <u>automatically</u> for</p> <ul style="list-style-type: none"> - permanent residents who lived before 28 June 1940 in the territories of Bessarabia, Northern Bukovina, Hertza and the Moldovan ASSR (Transnistria) including their descendants; - natives from the territory who are not nationals of another State; - persons married before 23 June 1990 to citizens of the Moldovan SSR and their descendants; - persons having returned to Moldova following appeals by the President and the Government; - non-residents who had resided permanently in the territory before 23 June 1990 and have permanent employment or other means of subsistence (they had to register within one year) <p>(b) <u>upon application</u>, persons who are older than 16 years and fulfil the following conditions can be naturalised:</p> <ul style="list-style-type: none"> - being domiciled in the territory for at least 10 years (3 years in the case of spouses of Moldovan citizens); - having legal means of subsistence; - having a sufficient knowledge of the national language; - knowing the basic principles of the Constitution; - showing attachment to the State and people of Moldova; - giving up the nationality of another State

Right of option	yes
Exclusion of certain categories of persons	no
Consequences for persons who did not obtain the nationality of the successor State	they are treated as foreigners or stateless persons; according to the Constitution, they have in principle the same rights and obligations as nationals
Statelessness	-
Multiple nationality	possible only on the basis of international agreements
Criteria for nationality legislation	domicile, origin, nationality of the former Moldovan SSR, permanent residence
Nationality of legal persons	-

Case of State succession	Netherlands
	cession of German territory placed under Dutch authority in 1949 (1960)
Governed by	German-Dutch Treaty on Border Corrections (1960); Netherlands Act of 22 May 1963
Acquisition of nationality of the successor State	all German inhabitants were given a right to opt for Netherlands nationality within two years
Right of option	yes
Exclusion of certain categories of persons	no
Consequences for persons who did not obtain the nationality of the successor State	continuance of German nationality; no obligation to leave the territory
Statelessness	no
Multiple nationality	no
Criteria for nationality legislation	former nationality combined with domicile
Nationality of legal persons	-

Case of State succession	Norway
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	dissolution of the personal union with Sweden (1905)
Governed by	domestic Norwegian legislation (1896), amended in 1906
Acquisition of nationality of the successor State	Norwegian citizenship legislation, based on a combination between <i>jus sanguinis</i> and <i>jus soli</i> , was not affected by the personal union with Sweden; the amendments carried out in 1906 did not affect the right to acquire Norwegian citizenship, but concerned only the rights which could be exercised by Swedes not possessing Norwegian citizenship (until 1905, Swedes enjoyed some kind of positive discrimination compared to other non-citizens)
Right of option	-
Exclusion of certain categories of persons	-
Consequences for persons who did not obtain the nationality of the successor State	-
Statelessness	-
Multiple nationality	no; applicants for Norwegian citizenship had to be released from their former citizenships
Criteria for nationality legislation	<i>jus sanguinis</i> and <i>jus soli</i>
Nationality of legal persons	-

Case of State succession	Poland
	restoration of Poland / incorporation of Upper Silesia, Poznań/Posen and Western Prussia (1919)
Governed by	(a) Treaty of Versailles (1919); Treaty on Protection of Minorities with the Allied Powers (1919); German-Polish Convention on Upper Silesia (1922); German-Polish Convention on Nationality and the Right of Option (1924); (b) Polish Nationality Act (1920); Act on Deprivation of Polish Nationality (1938)
Acquisition of nationality of the successor State	(a) <u>automatically</u> for German nationals which were permanently residing or born by parents habitually resident on the territories which became part of Poland; (b) <u>upon application</u> by German residents who were not domiciled in the territories from at least 2 January 1908 to 10 January 1920; (c) <u>automatically</u> for Germans domiciled in the plebiscite areas of Upper Silesia from at least 2 January 1908 to 15 June 1922

Right of option	German nationals of German ethnicity (<i>deutsche Reichsangehörige</i>) could - within two years - opt for German nationality
Exclusion of certain categories of persons	no
Consequences for persons who did not obtain the nationality of the successor State	obligation to leave the territories
Statelessness	-
Multiple nationality	no
Criteria for nationality legislation	former nationality, domicile and birth
Nationality of legal persons	-

Case of State succession	Poland	
	restoration of Poland / incorporation of territories which belonged to the former Austro-Hungarian Empire (1919)	restoration of Poland / incorporation of territories which formerly belonged to Russia (1919)
Governed by	(a) Peace Treaty of St. Germain-en-Laye (1919); Treaty on Protection of Minorities with the Allied Powers (1919); Convention on Nationality between Austria, Hungary, Italy, Poland, Romania, the Serb-Croat-Slovene State and Czechoslovakia (1922); Agreement between Poland and Czechoslovakia (1925); (b) Polish Nationality Act (1920); Act on Regulation of the Right of option of Nationals of the former Austrian Empire or the former Hungarian Kingdom (1922); Act on Deprivation of Polish Nationality (1938)	(a) Peace Treaty between Poland and the Soviet Republics of Russia (1921); (b) Polish Nationality Act (1920); Act on Deprivation of Polish Nationality (1938)
Acquisition of nationality of the successor State	<u>automatically</u> for persons possessing "rights of citizenship" (<i>pertinenza</i>) in the territories which had formed part of the Austro-Hungarian Empire	<u>automatically</u> for nationals of the former Russian Empire who had to be registered in Poland
Right of option	yes	yes
Exclusion of certain categories of persons	-	-
Consequences for	obligation to leave the territory	obligation to leave the territory

persons who did not obtain the nationality of the successor State		
Statelessness	-	-
Multiple nationality	no	no
Criteria for nationality legislation	"rights of citizenship" (<i>pertinenza</i>)	former nationality in conjunction with domicile
Nationality of legal persons	-	-

Case of State succession	Poland	
	incorporation of former German territories east of the Oder and Neisse including Danzig (1945)	
Governed by	Potsdam Agreement (1945); Act on Polish citizenship of persons of Polish origin residing in the regained territories (1946); Decree on exclusion from Polish society of persons of German nationality (1946); Polish Nationality Acts (1951 and 1962)	
Acquisition of nationality of the successor State	<u>upon individual application</u> for persons of Polish origin residing in the territories before 1 January 1945, following a declaration of allegiance to the Polish nation and State	
Right of option	-	
Exclusion of certain categories of persons	all persons not being of Polish origin	
Consequences for persons who did not obtain the nationality of the successor State	transfer to Germany and continuance of German nationality	
Statelessness	no	
Multiple nationality	no	
Criteria for nationality legislation	ethnic origin and domicile	
Nationality of legal persons		

Case of State succession	Romania	
	dissolution of the Austro-Hungarian Empire (1918); incorporation of Bessarabia (1918), Bucovina (1918), Southern Dobroudja (1919) and Transylvania (1920)	
Governed by	Peace Treaties of Saint-Germain-en-Laye (1919), Neuilly-sur-Seine (1919), Paris (1919) and Trianon (1920); Law on Acquisition and Loss of	

	Romanian Nationality (1924)
Acquisition of nationality of the successor State	<p>(a) <u>automatically</u></p> <ul style="list-style-type: none"> - for persons possessing "rights of citizenship" (<i>pertinenza</i>) in one of the territories which had formed part of the Austro-Hungarian Empire (Bucovina, Transylvania, Banat, Crisana, Satu Mare and Maramures); - for the inhabitants of Bessarabia who had their administrative domicile there; - for the inhabitants of Southern Dobroudja who have been granted Romanian nationality by special commissions <p>(b) <u>upon application</u> for Romanians living in territories attributed to the Serb-Croat-Slovene State, Czechoslovakia, Poland, Italy, Austria and Hungary</p>
Right of option	persons over 18 years of age losing Austrian or Hungarian nationality could renounce Romanian nationality and opt for the nationality of the State in which they possessed rights of citizenship
Exclusion of certain categories of persons	no
Consequences for persons who did not obtain the nationality of the successor State	persons who exercised their right to opt had to transfer their residence to the State of their choice
Statelessness	no
Multiple nationality	excluded
Criteria for nationality legislation	"right of citizenship" (<i>pertinenza</i>); domicile
Nationality of legal persons	-

Case of State succession	Romania
	restitution of Northern Transylvania (Ardeal) (1947)
Governed by	Peace Treaty between Allied Powers and Romania (1947); Law No. 261 and Decree No. 12 on the Regulation of the Citizenship of the Inhabitants of Ardeal (1945)
Acquisition of nationality of the successor State	<p><u>automatically</u> for</p> <p>(a) inhabitants who had possessed Romanian nationality prior to 30 August 1940 retained it</p> <p>(b) children born after this date in the territory were considered Romanian nationals</p> <ul style="list-style-type: none"> - if the father, or, if born out of wedlock, the mother, were Romanian nationals; - if the father and mother were unknown

Right of option	yes
Exclusion of certain categories of persons	persons who, before the restitution of the territory to Romania, - had opted for the nationality of a foreign State other than that of Hungary; - had acquired the nationality of a foreign State other than that of Hungary through marriage; - had joined the military or paramilitary forces of a foreign State; - had served another State; - had left the territory
Consequences for persons who did not obtain the nationality of the successor State	considered to be aliens
Statelessness	-
Multiple nationality	no
Criteria for nationality legislation	previous nationality
Nationality of legal persons	not regulated

Case of State succession	Russia/USSR
	annexation of former Polish territories (Western Ukraine and Western Belorussia) (1939)
Governed by	(a) Laws on the Incorporation of Western Ukraine and Western Belorussia (1939); Decrees of the Supreme Soviet on Acquisition of the USSR Citizenship by Inhabitants of the Western Regions of Ukraine and Belorussia (1939 and 1945); Citizenship Law of the USSR (1938); Polish Nationality Acts (1951 and 1962); (b) Repatriation Agreements with Poland (1945)
Acquisition of nationality of the successor State	(a) <u>automatically</u> for - Polish citizens residing in the territories on 1/2 November 1939; - persons arriving in the USSR under the Soviet-German Agreement of 16 November 1939; - persons arriving in the USSR following the cession of the town and region of Vilno to Lithuania under the Treaty of 10 October 1939 (b) <u>upon naturalisation</u> for Polish citizens not residing in the territories
Right of option	according to the 1945 Agreements with Poland, persons of Polish and Jewish origin could renounce their Soviet citizenship
Exclusion of certain	no

categories of persons	
Consequences for persons who did not obtain the nationality of the successor State	persons who renounced Soviet citizenship had to leave the USSR
Statelessness	-
Multiple nationality	-
Criteria for nationality legislation	nationality of the predecessor State; residence
Nationality of legal persons	-

Case of State succession	Russia/USSR	
	cession of Finnish territories (1940 and 1944)	annexation of the Baltic States (1940)
Governed by	neither the Moscow Peace Treaty (1940), nor the Armistice Treaty (1944) or the Paris Peace Treaty (1947) contained any provisions on nationality; Citizenship Law of the USSR (1938)	Decree of the Supreme Soviet on the Acquisition of USSR Citizenship by Citizens of the Lithuanian, Latvian and Estonian SSR (1940); Decree of the Supreme Soviet of the Lithuanian SSR on Acquisition of Citizenship (1940); Citizenship Law of the USSR (1938)
Acquisition of nationality of the successor State	the few remaining inhabitants of the territory acquired USSR citizenship according to the 1938 Citizenship Law of the USSR	(a) <u>automatically</u> - for persons domiciled in the Lithuanian SSR on 1 September 1939; - for Latvian and Estonian citizens residing in the respective territories on 7 September 1940; (b) <u>upon application</u> for Lithuanian, Latvian and Estonian citizens residing abroad who could register as Soviet citizens until 1 November 1940
Right of option	Finnish citizens moving to Finland retained their Finnish nationality	no
Exclusion of certain categories of persons	-	no
Consequences for persons who did not obtain the nationality of the successor State	-	-
Statelessness	-	stateless residents could acquire Soviet citizenship
Multiple nationality	no	-

Criteria for nationality legislation	no specific legislation was adopted	nationality of the predecessor State; residence
Nationality of legal persons	Finnish legal persons could choose, or failing that, were given a new domicile in Finland	-

Case of State succession	Russia/USSR	
	incorporation of the Klaipeda/Memel and Kaliningrad/ Königsberg territories (1945)	
Governed by	Decree of the Supreme Soviet on Acquisition of USSR Citizenship by inhabitants of Klaipeda and the districts of Klaipeda, Silute and Pagegiay (1947); Order of the Supreme Soviet (1954); Agreement between the USSR, United Kingdom, USA and France (1945)	
Acquisition of nationality of the successor State	<p>(a) <u>automatically</u> for Lithuanian citizens (including their children) from the Klaipeda, Silute and Pagegiay districts;</p> <p>(b) Lithuanian citizens from these areas living abroad could <u>register</u> as Soviet citizens until 1 January 1949;</p> <p>(c) <u>upon naturalisation</u> according to the 1938 Citizenship Law of the USSR for other persons from these areas residing in the USSR, including those of German origin</p>	
Right of option	-	
Exclusion of certain categories of persons	persons of German origin living in the Kaliningrad/Königsberg area were forced to return to Germany	
Consequences for persons who did not obtain the nationality of the successor State	continuance of German nationality	
Statelessness	-	
Multiple nationality	no	
Criteria for nationality legislation	nationality of the predecessor State	
Nationality of legal persons	-	

Case of State succession	Russia/USSR	
	dissolution of the USSR (1991)	
Governed by	Law on Citizenship of the Russian Federation (1991); Laws of 17 June	

	1993 and 18 January 1995
Acquisition of nationality of the successor State	<p>(a) <u>automatically</u> for all citizens of the former USSR</p> <ul style="list-style-type: none"> - residing permanently in the territory of the Russian Federation when the Law on Nationality came into force (6 February 1992); - having temporarily left the territory and having returned thereto after the entry into force of the said Law; - serving abroad in the military forces of the Russian Federation or the Unified Armed Forces of the CIS; <p>(b) <u>automatically</u> for former citizens of the Russian Federation having been deprived by the USSR of their nationality against their will;</p> <p>(c) <u>upon application</u> for</p> <ul style="list-style-type: none"> - all citizens of the former USSR residing in territories belonging to the former USSR (until 31 December 2000); - foreign nationals and stateless persons who are descendants of citizens of the former USSR (until 5 February 1993)
Right of option	right to refuse Russian nationality within one year
Exclusion of certain categories of persons	no
Consequences for persons who did not obtain the nationality of the successor State	-
Statelessness	until 5 February 1993 stateless persons residing on the territory of the Russian Federation or of other Republics of the former USSR <u>could</u> register as Russian citizens
Multiple nationality	possible only on the basis of international agreements (on the basis of reciprocity)
Criteria for nationality legislation	nationality of the predecessor State and individual choice
Nationality of legal persons	-

Case of State succession	Serbia/Croatia/Slovenia
	dissolution of the Austro-Hungarian empire (1918/19); creation of the Serb-Croat-Slovene State (1918); union of the Serb-Croat-Slovene State with the Kingdom of Serbia (1918)
Governed by	Peace Treaty of Saint-Germain-en-Laye (1919); Peace Treaty of Trianon (1920); Treaty between the Serb-Croat-Slovene Kingdom and Italy (1920); Law on Citizenship of the Serb-Croat-Slovene Kingdom (1928)
Acquisition of nationality of the successor State	(a) <u>automatically</u> for persons possessing "rights of citizenship" (<i>pertinenza</i>) in one of the territories which had formed part of the Austro-Hungarian Empire;

	(b) <u>upon application</u> for persons acquiring rights of citizenship after 1 January 1919; if the application was denied, they acquired the nationality of the State exercising sovereignty over the territory in which rights of citizenship had previously existed
Right of option	(a) persons over 18 years of age losing Austrian nationality could opt for the nationality of the State in which they possessed rights of citizenship; (b) persons differing in race and language from the majority of the population could opt for nationality of another State if the majority of this State's population was of the same race and language as the person exercising the right; (c) persons living in areas whose final attribution was decided upon by referendum could opt for the nationality of the State to which the area was not assigned; (d) Italians possessing rights of citizenship in the territories of the former Austro-Hungarian Monarchy could retain their nationality
Exclusion of certain categories of persons	no
Consequences for persons who did not obtain the nationality of the successor State	persons who exercised their right to opt had to transfer their residence to the State of their choice
Statelessness	-
Multiple nationality	excluded
Criteria for nationality legislation	"right of citizenship" (<i>pertinenza</i>)
Nationality of legal persons	-

Case of State succession	Slovakia
	dissolution of the Czech and Slovak Republic (1993)
Governed by	Law No. 40/1993 concerning State Citizenship of the Slovak Republic
Acquisition of nationality of the successor State	(a) <u>automatically</u> for - all persons who, on 31 December 1992, were registered as citizens of the former Slovak Republic according to Law No. 206/1968 of the Slovak National Council and Law No. 88/1990 of the former _SFR; - minors whose parents acquired Slovak nationality (b) <u>upon application</u> for citizens of the former _SFR not being citizens of the Slovak Republic (until 31 December 1993) (c) <u>upon naturalisation</u> for persons - having permanent residence in the territory - speaking the Slovak language; - not having been sentenced for an intentional crime

Right of option	yes
Exclusion of certain categories of persons	no
Consequences for persons who did not obtain the nationality of the successor State	considered to be aliens
Statelessness	no
Multiple nationality	tolerated
Criteria for nationality legislation	(republican) nationality of the predecessor State
Nationality of legal persons	to be determined by seat

Case of State succession	Slovenia
	independence (1991)
Governed by	Law on Citizenship (1991)
Acquisition of nationality of the successor State	<p>(a) <u>automatically</u></p> <ul style="list-style-type: none"> - for all persons holding citizenship both of the former Republic of Slovenia and the SFRY; - for persons who had permanent residence on 23 December 1990 and thereafter and who had acquired citizenship on the grounds of the regulations of the former Yugoslavia between 1945 and 1950 without making a declaration in favour of Slovenian citizenship <p>(b) <u>upon application</u> for citizens of other Republics of the SFRY having had permanent residence in Slovenia on 23 December 1990</p>
Right of option	-
Exclusion of certain categories of persons	no
Consequences for persons who did not obtain the nationality of the successor State	-
Statelessness	no
Multiple nationality	possible only in exceptional cases

Criteria for nationality legislation	former nationality and residence
Nationality of legal persons	-

Case of State succession	Surinam
	independence (1975)
Governed by	Netherlands-Surinam Nationality Agreement of 25 November 1975
Acquisition of nationality of the successor State	(a) <u>automatically</u> for - Netherlands nationals born in Surinam and resident there at the relevant time (25 November 1975); - Netherlands nationals not born in Surinam but resident there at the relevant time if they had some (well defined) additional link with Surinam (b) <u>upon application</u> for Netherlands nationals born in Surinam provided that they establish residence in Surinam for a period of two years
Right of option	Netherlands nationals born in Surinam but not resident there at the relevant time remained Netherlands nationals with a right to opt for Surinamese nationality before 1 January 1986
Exclusion of certain categories of persons	no
Consequences for persons who did not obtain the nationality of the successor State	continuance of former nationality
Statelessness	no
Multiple nationality	no
Criteria for nationality legislation	former nationality; residence
Nationality of legal persons	-

Case of State succession	"the former Yugoslav Republic of Macedonia"
	independence(1991)
Governed by	Law on Citizenship (1992)
Acquisition of nationality of the successor State	(a) <u>automatically</u> for all persons holding citizenship both of the former Republic of Macedonia and the SFRY; (b) <u>upon application</u> for citizens of other Republics of the SFRY who at the

	date of submission of the application for citizenship - having had permanent and legal residence for at least 15 years; - were at least 18 years old; - had a permanent personal income
Right of option	-
Exclusion of certain categories of persons	no
Consequences for persons who did not obtain the nationality of the successor State	-
Statelessness	-
Multiple nationality	no measures to prohibit or limit cases of double nationality resulting from the dissolution of Yugoslavia were taken
Criteria for nationality legislation	former nationality and residence
Nationality of legal persons	determined by place of incorporation and seat

Case of State succession	Turkey	Ukraine
	annexation of the province of Hatay (1939)	independence (1991)
Governed by	French-Turkish Treaty (1939), ratified by Law No. 3658	Declaration on State Sovereignty (1990); Law on Citizenship (1991)
Acquisition of nationality of the successor State	automatically for all inhabitants of the territory	(a) <u>automatically</u> for all persons who resided in Ukraine at the moment when the Law on Citizenship came into effect (b) <u>upon application</u> for persons who work or serve or study outside of Ukraine but were born or can prove to have a permanent residence in Ukraine
Right of option	persons above the age of 18 were entitled to opt, within six months, for Syrian or Lebanese nationality	yes
Exclusion of certain categories of persons	no	(a) citizens of another state; (b) individuals who objected to Ukrainian citizenship; (c) who committed crimes against humanity or violence against the national sovereignty; (d) who were jailed for the commission of grave criminal offences

Consequences for persons who did not obtain the nationality of the successor State	-	continuance of their former nationality
Statelessness	no	-
Multiple nationality	no	Ukrainian law is based on the principle of a single nationality; double nationality possible on the basis of international treaties and, in exceptional cases, by naturalisation
Criteria for nationality legislation	domicile in the territory in question	permanent residence; origin
Nationality of legal persons	-	-

Case of State succession	Yugoslavia	
	creation of the Democratic Federal Yugoslavia (1945)	cession of the territories of Istria, Gorizia and Rijeka by Italy (1947)
Governed by	Law on Citizenship of the Democratic Federal Yugoslavia (1945); Law on Citizenship of the Federal Peoples' Republic of Yugoslavia (1946); Treaty of Peace with Italy (1947)	Peace Treaty with Italy (1947); Legislative Decree No. 1430 (1947); Decree-Law No. 571 (1948) [Italy]
Acquisition of nationality of the successor State	<u>automatically</u> for (a) nationals of Yugoslavia in 1945; (b) persons possessing "rights of citizenship" or being registered in municipalities transferred to the FPRY; (c) persons residing in territory belonging to one of the nations forming the FPRY	(a) <u>automatically</u> for Italian nationals domiciled on 10 June 1940 in the transferred territory who acquired both federal and republican citizenship; (b) <u>right to opt</u> for Yugoslavian nationality for Italian nationals residing in Italy who used the Serbian, Croatian or Slovenian language
Right of option	persons belonging ethnically to the nation of another Republic could opt for the citizenship of that Republic	(a) Italian nationals who were older than 18 years and whose customary language was Italian could opt for Italian nationality; (b) persons belonging ethnically to the nation of another Republic could opt for the citizenship of that Republic
Exclusion of certain categories of persons	no	Italian nationals who had exercised their right to opt for Italian citizenship
Consequences for persons who did not obtain the nationality of	-	continuance of Italian nationality; risk of being ordered to leave the territory

the successor State		
Statelessness	-	-
Multiple nationality	excluded	excluded
Criteria for nationality legislation	nationality of the predecessor State; "right of citizenship" and residence	nationality of the predecessor State; domicile
Nationality of legal persons	determined by the law under which they are established	-

Case of State succession	Yugoslavia
	incorporation of part of the "Free Territory of Trieste" (1954)
Governed by	Peace Treaty with Italy (1947); Memorandum of Understanding on Trieste (1954); Agreement between FPRY and Italy (1950); Osimo Agreements (1975); Law on Citizenship of persons from the territory transferred to FPRY (1947); Regulations concerning the right to opt (1947) [Yugoslavia]
Acquisition of nationality of the successor State	<u>automatically</u> for Italian citizens with permanent residence in the territory
Right of option	members of the Italian minority could under certain conditions move to Italy, thereby losing Yugoslavian citizenship
Exclusion of certain categories of persons	no
Consequences for persons who did not obtain the nationality of the successor State	continuance of Italian nationality
Statelessness	-
Multiple nationality	excluded
Criteria for nationality legislation	nationality of the predecessor State in conjunction with permanent residence
Nationality of legal persons	-