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Summary

Recognition of Nationality and Effective Nationality of Natural Persons in Public and Private International Law
by Professor Dr. Hans v. Mangoldt, Tübingen

1. The term recognition in public international law is employed to connote the acknowledgement by the government of a State of the existence of lawfulness of any fact, title, or legal situation in international law. Recognition also implies acknowledgement of the legal consequences of the fact or situation which has been recognized.
2. The function of recognition in international law varies according to its object and the pertinent rules of international law; recognition may have constitutive effects, thus forming the basis for opposability of a fact or legal situation; it may also be declaratory, or it may serve to remove differences or doubts in a given legal situation. Recognition and non-recognition may be highly political in character.
3. In order to determine the function of recognition with regard to nationality, it is necessary to examine the relationship of nationality for domestic and for international law purposes as well as its legal nature, either as a pure legal status or as a legal relationship.

I. Nationality in municipal legal systems

1. In municipal law, nationality is a condition of numerous rights and obligations. Nationality, however, is not necessarily connected with legal consequences between State and national.
2. Municipal law contains several concepts of nationality: Nationality as defined for the purpose of certain laws (functional nationality); nationality without such a functional limitation (nationality in a general sense). The latter may be regulated by different, but equivalent systems of nationality legislation of the State concerned.
3. Functional nationality as a concept of municipal law also applies in numerous instances to foreign nationalities. At the domestic level of the forum State, this may result in radical deviation from the general way of estabilishing nationalities, usually taken as a connecting factor for domestic legal consequences. It may also result in deviations from international law as to nationality. Nevertheless, this is of no concern for international law, unless the result itself is contrary to international law. In

addition, constitutional concepts such as the act of state doctrine may come into play.

4. The concept of general nationality does not depend on the enactment of special statutes. Customary law or the laws of predecessor States suffice. Nationality is an indispensable State attribute.

5. Nationality is the legal status of belonging to the people of a particular State. It is a pure status of law.

II. Nationality in public international law

1. The definition of nationality in international law does not depend on whether the individual has legal rights and obligations in municipal law. To construe it differently would exclude its capacity as a connecting factor for general purposes of international law. The construction of nationality, first of all, depends on state practice. It is as diverse as are the manifestations of statehood in international law.

2. For the purposes of international law, nationality necessarily depends on the legal personality of an entity as a State in international law. Nationality is the only criterion for internationally delimiting one of the main elements of statehood in international law, namely the people. Nationality automatically comes into existence with the beginning of a State in international law and elapses with it. Even non-sovereign/dependent States have, according to state practice, nationality within the international law meaning. This is particulary relevant for the constituent States of a federation, for dominions, self-governing colonies, international protectorates and for other partly independent components of a State. Nationality for the purposes of international law is to be distinguished from nationality in municipal law. The latter depends solely on whether the State concerned is a State in municipal law.

3. The term nationality in international law has its own connotation; it may differ from that in municipal law. By reference to the latter, however, international law can establish practical harmony.

4. The variety of usages of the concept of nationality in international law leads to the conclusion that it is not necessarily connected to specific legal consequences. Many authors consider diplomatic protection, personal jurisdiction, or the obligation of States to admit their own nationals as essential parts of nationality. However, nationality in international law exists even without these consequences. Whether and to what extent they are connected to an individual nationality, depends on the status of the State concerned as well as on competing legal positions of other States. Nationality is therefore, also in international law, a pure

legal status, i. e. the legal bond of a person to a certain people. To that extent there is harmony between the concept of nationality in municipal law and in international law.

III. Conferment of nationality in municipal law and nationality for international law purposes

For the determination of nationality for international purposes, international law refers to municipal law and leaves it to each State to determine under its own law who are its nationals, provided that these laws be consistent with certain limitations established by international law. Nationality granted within these limits is in itself opposable.

The right to grant nationality in municipal law must not be construed as a delegated State competence. Granting of nationality is part of the domaine réservé.

IV. Recognition of nationality

1. Recognition of nationality as such means recognition of the existence of the pure status of law. Anything else would constitute falsa demonstratio.
2. Recognition of the nationality of a certain State by separate act is unusual. The nationality concerned already exists as a consequence of the international existence of the State. Any express recognition of nationality would therefore be declaratory only. To demand recognition of nationality therefore really means demanding recognition of the State as such or of a substantial change of its status.

   There is no nationality of non-recognized de facto-régimes in international law. Recognition of nationality in such cases would amount to an implied recognition of a State.
3. Separate recognition of nationality legislation or of an act conferring nationality is also unusual. If such legislation or act, however, is "defective" in international law, recognition may have validating effects and consequently may make conferment of nationality internationally opposable.
4. In special circumstances "recognition of nationality" may extend to such legal consequences as are normally attributed to nationality. General conclusions in this respect, however, are impossible. Everything depends upon the individual legal situation.

V. Effectivity

The principle of effectivity is of indirect importance for any emergence of nationality, since effective government is an attribute of statehood. The principle of effectivity is, however, irrelevant for the existence of a nationality in international law.

The international opposability of a grant of nationality for international law purposes presupposes a genuine link between the person and the conferring State, at least at the time of conferment. This does not mean, however, that generally the link to the conferring State has to be stronger than that to any other State. Such a generalization of the Nottebohm-criteria beyond a situation of cases of individual acts of conferment of nationality would exceed inter alia the long established international law criteria for the acquisition of nationality by birth opposable to other States.