
Deprivation of nationality

Limitations on rendering persons stateless under international law

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8.1. Introduction

On 2 May 2010, a car bomb was discovered in Times Square in New York. The next day, a suspect was arrested. The man turned out to be a naturalized United States citizen who had links with Pakistan's Taliban.¹ A domestic debate arose around Faisal Shahzad's citizenship: Did not the foiled bomb plot prove his disloyalty to the Constitution and that he no longer deserved to be a citizen?² A bill was introduced in the US Congress, proposing revocation of US citizenship for persons who join terrorist organizations or who engage in or support hostilities against the USA or its allies.³ The proposed measure had no regard for whether the person concerned, like Faisal Shahzad, also possessed a foreign citizenship and could therefore have opened a new route to statelessness. However, the bill did not receive sufficient backing.⁴ Faisal Shahzad was sentenced to life imprisonment but preserved his US citizenship.⁵

Had the bill been adopted, would it have been consistent with principles for the avoidance of statelessness under international law? Article 15 of the Universal Declaration of Human Rights (UDHR) establishes that everyone has the right to a nationality and that that 'no one shall be arbitrarily deprived of his nationality nor denied the right to change

¹ 'Suspect in Failed Times Sq Bomb Attempt is Indicted', *New York Times*, 17 June 2010.

² 'Bombing Suspect's Route to Citizenship Reveals Limitations', *New York Times*, 7 May 2010.

³ Terrorist Expatriation Act, available on the website of Senator Joseph Lieberman: http://lieberman.senate.gov/assets/pdf/TEA_full.pdf, last accessed on 19 June 2012.

⁴ 'Bill Targets Citizenship of Terrorists' Allies', *New York Times*, 7 May 2010. By 22 June, the Bill had only gathered the support of one congressman in addition to the three sponsoring it, see 'Brown Renews Call for Terrorist Expatriation Act', *Boston Globe*, 22 June 2010.

⁵ 'Profile: Faisal Shahzad', *BBC News US & Canada*, 5 October 2010.

his nationality'.⁶ An explicit prohibition against arbitrary deprivation of nationality has also been included in some subsequent human rights treaties,⁷ in particular at the regional level.⁸

But what does it mean that no one shall be 'arbitrarily deprived of citizenship'? And to what extent does it translate into a limitation on the opportunity states have to use deprivation of nationality as a punishment or administrative measure? Considering the human cost of being stateless, it is particularly worth asking whether deprivation of citizenship is ever justifiable if it results in statelessness. These questions will all be explored in this chapter.

8.2. When does deprivation of nationality become arbitrary?

International law prohibits any deprivation of nationality that is arbitrary, but what does this mean? The Oxford Dictionary defines the word 'arbitrary' as acts that are based on random choice or personal whims rather than on any reason or system.⁹ Such a 'system' may, for instance, be a country's laws, which means that deprivation of nationality is arbitrary whenever it is not undertaken in accordance with these laws.

Arbitrariness extends beyond this dictionary definition, however, to certain situations where an act is based on law. 'Arbitrariness' has, for example, been interpreted in relation to particular human rights, more specifically in relation to arbitrary detention¹⁰ and arbitrary interference with privacy.¹¹ According to the UN Human Rights Committee, arbitrary interference can extend to interference that is provided for by law, but

⁶ Universal Declaration of Human Rights, Paris, 10 December 1948, GA Res. 217A(III), UN Doc. A/810 at 71, Art. 15.

⁷ Convention on the Rights of Persons with Disabilities, 13 December 2006, in force 3 May 2008, 2515 UNTS 3, Art. 18(1)(a). According to this treaty, states parties shall ensure that disabled persons are not deprived of their nationality arbitrarily or on the basis of their disability.

⁸ American Convention on Human Rights (ACHR), 22 November 1969, in force 18 July 1978, OAS Treaty Series No. 36, Art. 20; Arab Charter on Human Rights, 22 May 2004, in force 15 March 2008, Art. 29; Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms, 26 May 1995, in force 11 August 1998, Art. 24. It is worth noting that neither the European Convention on Human Rights nor the African Charter on Human and Peoples' Rights includes the right to a nationality and not to be arbitrarily deprived of it.

⁹ 'Arbitrary', Oxford Dictionaries at: <http://oxforddictionaries.com/definition/arbitrary?q=arbitrary>, last accessed 2 June 2012.

¹⁰ International Covenant on Civil and Political Rights (ICCPR), 16 December 1966, in force 23 March 1976, 999 UNTS 171, Art. 9.

¹¹ *Ibid.*, Art.17.

which is incompatible with the provisions, aims and objectives of human rights law, and not reasonable in the particular circumstances.¹²

The principle of non-discrimination forms a central part of the aims and objectives of all universal human rights treaties. In numerous past situations, groups or individuals have been deprived of their citizenship on the basis of their race, ethnic belonging or religious or political beliefs.¹³ One of the most significant examples is the denationalization of Jews in Germany on the basis of discrimination before and during the Second World War.¹⁴ Following the war, these events motivated the inclusion of a prohibition against arbitrary deprivation of nationality in the UDHR. Later, a prohibition of deprivation of nationality on discriminatory grounds was also included as a separate provision of the 1961 Convention on the Reduction of Statelessness ('the 1961 Convention'). According to Article 9 of this convention, 'A Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.'¹⁵ Over time, the list of discriminatory grounds has grown and today it is considered that any case of deprivation of nationality on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status is arbitrary and thus prohibited under international law.¹⁶

¹² UN Human Rights Committee, 'General Comment No. 16: The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (Article 17)' 04/08/1988 (1988), para. 4.

¹³ Examples include the collective deprivation of nationality affecting persons of Eritrean origin in Ethiopia and the black population in Mauritania (see Bronwen Manby, *Struggles for Citizenship in Africa* (London: Zed Books, 2009), 98–108); the refugees from Bhutan in Nepal (see Human Rights Watch, 'Last Hope: The Need for Durable Solutions for Bhutanese Refugees in Nepal and India' (Report) (16 May 2007), Volume 19, No. 7(C)); and the Feili Kurds in Iraq (see UNHCR 'Feili Kurds in Iran Seek Way out of Identity Impasse' (28 May 2008), Geneva). A number of examples may also be cited of individuals who have been deprived of their citizenship on the basis of political opinion or religious belief, such as the Botswanan politician John K. Modise (see *John K. Modise v. Botswana* (1997) African Commission on Human and Peoples' Rights, Comm. No 97/93) or the Shiite cleric Ayatollah Hussein al-Najati in Bahrain (see 'Bahrain revokes citizenship of top cleric: report', *Al Arabiya News*, Dubai, 20 September 2010). None of the states mentioned here as examples are parties to the 1961 Convention on the Reduction of Statelessness.

¹⁴ Paul Weis, *Nationality and Statelessness in International Law* (Alphen aan den Rijn: Sijthoff & Noordhoff, 1979), 119–24.

¹⁵ Convention on the Reduction of Statelessness, 30 August 1961, in force 13 December 1975, 989 UNTS 175.

¹⁶ Successive UN Human Rights Council/UN Commission on Human Rights resolutions have expressed concern with arbitrary deprivation of nationality on discriminatory

Any decision to deprive a person of his or her nationality must also follow certain procedural and substantive standards¹⁷ to avoid being arbitrary. Among the procedural standards to be followed are the right to have the reasoned decision issued in writing, open to administrative or judicial review and subject to an effective remedy.¹⁸

The substantive standards imply that the decision must have a legitimate purpose and follow the principle of proportionality. What may serve as a legitimate purpose for deprivation of nationality will be discussed below when I look further into what international standards exist in relation to deprivation of nationality. In the context of these standards, it will also be discussed in further detail how the proportionality principle limits what actions states can take to deprive people of their citizenship, in particular when the result is statelessness.

8.3. Is deprivation of nationality arbitrary if it results in statelessness?

It has been argued by some in academic circles and civil society that deprivation of nationality is also arbitrary if it results in statelessness. The academic Johannes Chan has, for instance, maintained that any deprivation of nationality which destroys the right to a nationality itself and renders the person stateless would be contrary to the aims and objectives of the Universal Declaration and thus arbitrary.¹⁹ The NGO Open Society Justice Initiative has similarly claimed that deprivation of nationality that results in statelessness must be considered arbitrary,

grounds. The latest of these recognized that ‘arbitrary deprivation of nationality, especially on discriminatory grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, is a violation of human rights and fundamental freedoms’, see United Nations General Assembly (UNGA), A/HRC/20/L.9 (28 June 2012). For previous resolutions, see UNGA, ‘Oral Revisions’, A/HRC/13.L4 (19 March 2010); UN Human Rights Council (UNHRC), Res 10/13, A/HRC/RES/10/13 (26 March 2009); UNHRC, Res 7/10, A/HRC/RES/7/10 (27 March 2008); UN Commission on Human Rights, Res 2005/45, E/CN.4/RES/2005/45 (19 April 2005).

¹⁷ UNGA, ‘Human Rights and Arbitrary Deprivation of Nationality. Report of the Secretary-General’, A/HRC/13/34 (14 December 2009), para. 25.

¹⁸ *Ibid.*, paras. 43–6. These principles are for instance set out in Articles 11 and 12 of the European Convention on Nationality 1997 (ECN) 6 November 1997, in force 1 March 2000, ETS, 166. Article 8(4) of the 1961 Convention provides that decisions on deprivation of nationality should provide the person concerned the right to a fair hearing by a court or other independent body.

¹⁹ Johannes M. M. Chan, ‘The Right to a Nationality as a Human Right: The Current Trend towards Recognition’, *Human Rights Law Journal* 12(1–2) (1991), at 1, 3.

because the right to a nationality is a fundamental human right.²⁰ The academic Ruth Donner was also of the opinion that the prohibition against arbitrary deprivation in international law would include deprivation as a discriminatory measure or deprivation resulting in statelessness, or both.²¹

Donner recognized that while it is not certain that laws depriving citizens of their nationality are invalid under international law, there appears to be 'some support in the arguments of learned writers for the view that *de lege ferenda* a withdrawal of nationality is invalid unless accompanied by the acquisition of a new nationality'.²² More recently, the academic Laura van Waas has questioned whether there is sufficient evidence that deprivation of nationality resulting in statelessness per se qualifies as arbitrary deprivation of nationality and has called for a clarification of the matter at the global level.²³

In the following sections, this chapter will move on to canvassing international and regional treaties, jurisprudence and UN human rights mechanisms to see to what extent there is a basis for claiming that any deprivation of nationality that renders persons stateless is prohibited under international law. It will also look into the degree to which such a prohibition is reflected in the practice of states. The analysis will show that, even though there is not yet sufficient evidence to support the claims cited above that any case of deprivation of nationality that results in statelessness is arbitrary, it is clear that such deprivation will be arbitrary if it fails to comply with specific procedural and substantive standards.²⁴ Most importantly, where deprivation of nationality leads to statelessness, it needs to serve a legitimate purpose and observe the proportionality principle.

²⁰ Open Society Justice Initiative, 'Citizenship and Equality in Practice: Guaranteeing Non-Discriminatory Access to Nationality, Protecting the Right to be Free from Arbitrary Deprivation of Nationality, and Combating Statelessness' (submission to the UN Commission on Human Rights for consideration at its 62nd session) (November 2005), p. 9; James A. Goldston, 'Holes in the Rights Framework: Racial Discrimination, Citizenship, and the Rights of Noncitizens', *Ethics and International Affairs* 20(3) (2006), at 321, 333.

²¹ Ruth Donner, *The Regulation of Nationality in International Law, Second Edition* (Irvington-on-Hudson, NY: Transnational Publishers, Inc., 1994), 245.

²² *Ibid.*, 181.

²³ Laura van Waas, *Nationality Matters – Statelessness under International Law* (Antwerp/Oxford/Portland, OR: Intersentia, 2008), 86, 88, 95.

²⁴ UNGA, A/HRC/13/34, paras. 25, 27.

8.4. When is deprivation of nationality legitimate?

The prohibition against arbitrary deprivation of nationality has been set out in the UDHR, the UN Convention on the Rights of Persons with Disabilities and in regional human rights treaties in the Americas and the Arab world.²⁵ None of these prohibit deprivation of nationality other than in situations when it is 'arbitrary'.

However, treaties have also been developed to deal specifically with questions of nationality and the prevention of statelessness, in particular where it results from conflicts of laws. The most important of these is the 1961 Convention, which establishes common principles states should apply to prevent statelessness from occurring as a result of how nationality is conferred and withdrawn.

The principles governing withdrawal of nationality are set out in Articles 5 to 9 of the 1961 Convention. The convention distinguishes between two types of such withdrawal: loss of nationality, which is when nationality is withdrawn automatically by the operation of law, and deprivation of nationality, which happens by a discretionary act at the initiative of a state authority.²⁶ The 1961 Convention lists a range of situations where loss and deprivation of nationality typically occur and serve a legitimate purpose. For each type of withdrawal, it also specifies how states should seek to avoid statelessness. Article 5 for instance aims to prevent statelessness resulting from loss of nationality linked to a change in personal status,²⁷ while Article 6 concerns situations where withdrawal of nationality causes the individual's wife and/or children also to lose their citizenship. Renunciation of nationality at the initiative of the individual is dealt with in Article 7(1) and (2). In all these situations the 1961 Convention prescribes that citizenship shall only be lost when the individual concerned possesses or acquires another nationality.

Articles 7 and 8 of the 1961 Convention contain a general prohibition against loss and deprivation of nationality if it renders a person stateless (Articles 7(6) and 8(1)). However, at the time the convention was drafted,

²⁵ These are the American Convention on Human Rights and the Arab Charter on Human Rights.

²⁶ This follows the distinction made between the two concepts in the *travaux préparatoires* of the 1961 Convention, see United Nations Conference on the Elimination or Reduction of Future Statelessness (UN Conference), 'Summary Record of the Fifteenth Meeting' A/CONF.9/C.1/SR.15/24 (April 1961), p. 12; UN Conference, 'Summary Record of the Sixteenth Meeting,' A/CONF.9/C.1/SR.16/24 (April 1961), p. 2.

²⁷ This includes marriage or the termination of marriage, recognition, legitimation and adoption.

states were not yet prepared to completely prohibit loss or deprivation of nationality that would result in statelessness.²⁸ Most nationality laws at the time permitted withdrawal of nationality on multiple grounds, and did not limit them to situations where the person concerned avoided becoming stateless. A compromise was thus sought between the general principles in Articles 7(6) and 8(1), and state practice, by listing distinct grounds in Articles 7(4), (5), 8(2) and (3) where loss and deprivation of nationality serve a legitimate purpose even when it renders individuals stateless.²⁹

As such, Article 7(3) generally prohibits withdrawal of nationality as a result of departure, residence abroad, failure to register or similar. However, the 1961 Convention makes an exception in two cases: when a naturalized citizen resides abroad for seven years or more and fails to declare an intention to retain his/her nationality (Articles 7(4) and 8(2)(a)), and for citizens who are born abroad and fail to comply with a requirement to return to reside in their country of nationality or to register with an appropriate authority within one year of reaching the age of majority (Articles 7(5) and 8(2)(a)).

The 1961 Convention also permits deprivation of nationality to result in statelessness when:

- nationality is acquired on the basis of misrepresentation or fraud (Article 8(2)(b));
- nationals carry out acts contrary to the duty of loyalty to the state. This includes rendering services to or receiving emoluments from another state in disregard of an express prohibition by the country of nationality (Article 8(3)(a)(i)) and conduct which is seriously prejudicial to the vital interests of the state (Article 8(3)(a)(ii)); and
- an oath or formal declaration of allegiance or definitive evidence of determination to repudiate the allegiance to the state of nationality is given to another state (Article 8(3)(b)).

²⁸ The International Law Commission prepared two draft conventions: one on the elimination and the other on the reduction of future statelessness, in case some states would not be ready to commit to completely avoid future statelessness. The UN Conference on the Elimination or Reduction of Future Statelessness, which was convened by the General Assembly to conclude a convention on the topic, subsequently decided to use the draft Convention on the Reduction of Future Statelessness as the basis for its discussions, UN Conference, 'Organization and Work of the Conference During the Period from 24 March to 17 April 1959' A/CONF.9/12/9 (August 1961), pp. 3–4.

²⁹ UN Conference, 'Summary Record of the Nineteenth Plenary Meeting' A/CONF.9/SR.19/11 (October 1961), p. 2; UN Conference, 'Summary Record of the Twenty-First Plenary Meeting' A/CONF.9/SR.21/11 (October 1961), p. 3.

It is worth noting that the convention distinguishes between the grounds set out in Article 8(2), which may be applied unconditionally, and those listed in Article 8(3), which can only be used to deprive citizens of their nationality if the contracting states have specified their retention of this right at the time of signature, ratification or accession and on the basis of grounds existing in national legislation at that time. The list of grounds set out in the 1961 Convention is exhaustive, which means that any other ground states may use as a basis for loss or deprivation of nationality cannot be considered to serve a legitimate purpose and can for this reason be viewed as arbitrary.

The grounds for loss and deprivation listed in the 1961 Convention are motivated by two different ideas. Articles 7(4), (5), 8(2)(a) and (3)(b) represent the idea that when citizens are born abroad or reside for a long period of time in another country and fail to take measures to retain their nationality, or they take oaths or make declarations of allegiance to foreign states, they tacitly demonstrate a will to sever their ties with the country of nationality.³⁰ Historically, this was thought to justify the withdrawal of nationality, even when the individual concerned had not yet acquired the nationality of another state and ended up stateless. The grounds set out in Article 8(2)(b), (3)(i) and (ii), on the other hand, represent situations where deprivation of nationality serves as a punishment, for instance for acts contrary to the duty of loyalty to the state, or as an administrative measure, such as when nationality is fraudulently acquired.

Since 1961, one regional treaty has sought to set out general principles for acquisition, loss and deprivation of nationality: the European Convention on Nationality (ECN), which was adopted by the Council of Europe in 1997.³¹ This regional treaty reaffirms many of the principles found in the 1961 Convention, whereas in other respects it refines these principles further.

Compared to the 1961 Convention, the ECN restricts the situations where 'loss of nationality *ex lege* or at the initiative of the State Party' may render a person stateless to just one: 'acquisition of the nationality of the State Party by means of fraudulent conduct, false information or concealment of any relevant fact attributable to the applicant'.³² The ECN also allows loss of nationality on several other grounds that are similar to

³⁰ Weis, *Nationality and Statelessness in International Law*, 117.

³¹ European Convention on Nationality, 6 November 1997, in force 1 March 2000, ETS No. 166.

³² *Ibid.*, Article 7(1)(b).

those stipulated in the 1961 Convention – including lack of a genuine link between the state and a national residing abroad, voluntary service with a foreign military force or conduct seriously prejudicial to the vital interests of the state party. However, it explicitly prohibits such loss resulting in statelessness.³³

The Explanatory Report to the ECN outlines in rather vague terms that activities directed against the vital interests of the state include ‘treason and other activities directed against the vital interests of the State concerned (for example work for a foreign secret service)’. It moreover explicitly mentions that ‘conduct seriously prejudicial to the vital interests of the State Party’ would not include ‘criminal offences of a general nature, however serious they might be’.³⁴ Another category of acts which is neither referred to in the Report, nor listed as a ground in the 1961 Convention, but which has been increasingly considered as a basis for deprivation of nationality in the past decade, is terrorism.³⁵ To the extent that terrorist acts are found to be seriously prejudicial to vital state interests, it would seem that they could fall within the application of Article 8(3)(a)(ii) of the 1961 Convention, as well as Article 7 of the ECN, while criminal offences of a general nature would not.

The analysis in this section has shown that while there is a general guarantee against statelessness resulting from loss or deprivation of nationality in the 1961 Convention, the same convention subsequently allows a series of exceptions to this principle. The only more recent treaty which enunciates principles in this area is a regional treaty: the ECN. We have seen that it limits the situations which may result in statelessness to one, which is where nationality was acquired on the basis of fraudulent conduct, false information or concealment of any relevant fact attributable to the applicant.

Below, the chapter will discuss whether it can be said that the ECN is a reflection of state practice and whether such practice extends beyond Europe to the global level. If this is the case, it may suggest that rendering persons stateless through deprivation of nationality is less tolerable now than in 1961 and that some of the grounds for deprivation of nationality listed in the 1961 Convention are no longer acceptable.

³³ *Ibid.*, Art. 7.

³⁴ Council of Europe, ‘European Convention on Nationality, Explanatory Report’ ETS No. 166 (1997), p. 67.

³⁵ Harald Waldrauch, ‘Loss of Nationality’ in Rainer Bauböck, Eva Ersbøll, Kees Groenendijk and Harald Waldrauch (eds.), *Acquisition and Loss of Nationality. Volume 1: Comparative Analysis. Policies and Trends in 15 European Countries* (Amsterdam University Press, 2006), 23, 29.

8.5. The view of regional courts and UN human rights mechanisms

UN and regional organizations and institutions contribute to the development of new standards of international law through judgments and decisions issued by courts; resolutions from the UN Human Rights Council and General Assembly; and general comments, concluding observations to reports by states parties and decisions on individual communications prepared by UN human rights treaty bodies.

Regional courts have a mixed track record in dealing with cases of deprivation of nationality. The American Convention on Human Rights contains an explicit prohibition on arbitrary deprivation of nationality and the Inter-American Court of Human Rights (I-ACtHR) has found a violation of this prohibition in two judgments.³⁶ In the case of *Baruch Ivcher Bronstein v. Peru*, the owner of a Peruvian TV station was accused by the Fujimori regime of having endangered national security by publishing materials that discredited the army.³⁷ In this case the court found that the state had violated both the right to a nationality and the right not to be arbitrarily deprived of it in the American Convention on Human Rights.³⁸ Among the recommendations made by the Inter-American Commission of Human Rights was the proposal that the state should reinstate the victim with his Peruvian nationality, which Peru subsequently did.³⁹

The second case of *Yean and Bosico v. Dominican Republic* concerned two stateless children of Haitian origin born in the Dominican Republic. The girls were denied birth certificates by the Dominican authorities, which also prevented one of them from attending school for one year. The court held that the children were arbitrarily deprived of nationality contrary to domestic law and on the basis of discrimination. Interestingly, in this judgment the court found that the children had been deprived of a citizenship they never had; in other words, it interpreted arbitrary deprivation to also include arbitrary denial of nationality.⁴⁰

³⁶ In a third judgment, the court found that the fact that four Chilean citizens had been convicted of treason in Peru did not constitute a violation of their right to a nationality because their nationality was not in question, see *Castillo Petruzzi et al. v. Peru* (judgment), 30 May 1999, para. 102.

³⁷ *Ivcher Bronstein Case (Baruch Ivcher Bronstein v. Peru)* (judgment), Inter-American Court of Human Rights, 6 February 2001, para. 18.

³⁸ *Ibid.*, paras. 64–5. ³⁹ *Ibid.*, paras. 4, 179–80.

⁴⁰ *Case of the Yean and Bosico Children v. The Dominican Republic* (judgment), Inter-American Court of Human Rights, 6 September 2005, paras. 173–4.

The European Court of Human Rights (ECtHR) and the former European Commission on Human Rights (ECmHR) have been far less progressive. For example, in *Sevket Kafkasli contre Turquie*, the commission found that the state acted within its margin of appreciation and did not violate the right to family life when it imposed limitations on the freedom of movement for a stateless person who had been deprived of his Turkish citizenship based on allegations of espionage.⁴¹ The commission did not pronounce on whether the act of depriving Sevket Kafkasli of his citizenship and thereby rendering him stateless had been wrongful.

The difference between the judgments and decisions in the Inter-American and European human rights bodies to date is striking and can probably be attributed to the fact that the American Convention includes the right to a nationality and not to be arbitrarily deprived of it, whereas the European Convention on Human Rights (ECHR) does not. Consequently, the ECtHR and the former Commission have generally been hesitant to address issues relating to nationality, usually citing in its judgments and decisions that the convention does not guarantee the right to acquire a particular nationality.⁴²

The issue of statelessness arising as a result of deprivation of nationality has, however, come up in an important recent judgment in the Court of Justice of the European Union (CJEU): *Janko Rottmann v. Freistaat Bayern*.⁴³ The case established that decisions to withdraw naturalization on the basis of deception may be implemented even if they render individuals stateless, since this is permitted under the ECN and the 1961 Convention. Importantly, however, the court established that such decisions need to take into account the principle of proportionality. What this means will be explored in greater detail in [section 8.7](#) of this chapter.

Deprivation of nationality resulting in statelessness has not often been raised as an issue by any of the UN human rights mechanisms. The exception is a series of UN Commission on Human Rights and UN Human Rights Council Resolutions on arbitrary deprivation of nationality,

⁴¹ *Sevket Kafkasli contre Turquie* (App no 21106/92), European Commission on Human Rights, 1 July 1997.

⁴² See, for example, *Slepčik v. the Netherlands and the Czech Republic* (App no 30913/96), European Commission on Human Rights, 2 September 1996. However, the judgment in *Genovese v. Malta* (App no 53124/09), ECtHR, 11 October 2011, may indicate that the court has become more open to considering issues relating to nationality. Here the court found a violation of Article 8 read together with Article 14 because the child, who was born out of wedlock, according to Maltese law was denied the right to acquire the father's Maltese nationality.

⁴³ Case C-135/08 *Janko Rottmann v. Freistaat Bayern* [2 March 2010] CJEU.

UN General Assembly Resolution 50/152 from 1995, as well as General Comment No. 27 of the UN Human Rights Committee on freedom of movement.⁴⁴

The UN Commission on Human Rights and Human Rights Council Resolutions are – as their title indicates – concerned with arbitrary deprivation of nationality and urge states to adopt and implement nationality legislation with a view to avoiding statelessness.⁴⁵ They do not, however, go as far as to say that any deprivation of nationality that results in statelessness is arbitrary and should be avoided. UN General Assembly Resolution 50/152 sets out the most comprehensive road map to date for work on statelessness. It also called upon states ‘to adopt nationality legislation with a view to reducing statelessness, ... in particular by preventing arbitrary deprivation of nationality’, while recognizing the right of states to establish laws governing the acquisition, renunciation or loss of nationality.⁴⁶

General Comment No. 27 interprets the right to enter ‘one’s own country’ in Article 12, paragraph 4 of the International Covenant on Civil and Political Rights as including persons who have special ties to or claims in relation to a given country without being nationals of the state. The Human Rights Committee offers by way of example persons ‘who have been stripped of their nationality in violation of international law’.⁴⁷ It does not, though, define what would constitute deprivation of nationality contrary to international law and it is also beyond the scope of the General Comment to define any deprivation of citizenship that results in statelessness as arbitrary.

In other words, compared for instance to the issue of discrimination between men and women in the right to transmit nationality – which is expressly prohibited in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) – the issue of loss or deprivation of nationality resulting in statelessness only appears to have received

⁴⁴ This analysis does not include a comprehensive examination of recommendations from the Universal Periodical Review process, or of concluding observations resulting from the examination of state reports by UN human rights treaty bodies.

⁴⁵ The most recent resolution calls upon all states ‘to refrain from taking discriminatory measures and from enacting or maintaining legislation that would arbitrarily deprive persons of their nationality on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, especially if such measures and legislation render a person stateless’. See A/HRC/26/L.25 (23 June 2014), para. 4.

⁴⁶ A/RES/50/152 (21 December 1995).

⁴⁷ UN Human Rights Committee, ‘General Comment No. 27: Freedom of Movement (Article 12)’ 02/11/99, CCPR/C/21/Rev.1/Add.9 (1999), para. 20.

limited attention from UN human rights mechanisms and regional courts. Where it is addressed, this is mostly in the context of arbitrary deprivation of nationality.

The discussion above indicates that among the UN and regional human rights mechanisms, the I-ACtHR is the regional court that has gone furthest in establishing standards on deprivation of nationality in its case law. This has been possible through application of the arbitrary deprivation provision of the ACHR, which is the only effective provision of this kind in a regional treaty. More cases would need to be brought to the court, however, to be able to argue that any deprivation of nationality that results in statelessness is arbitrary.

8.6. Is there a global trend towards limiting the use of deprivation of nationality?

Through an examination of nationality legislation, summarized in this section, it will become evident to what extent states implement the international principles relating to loss and deprivation of nationality that are set out in the 1961 Convention. It will also show whether states have in fact gone further than this convention in prohibiting any withdrawal of nationality that results in statelessness.

It is particularly important to look at the domestic laws setting out rules for acquisition, retention, loss and deprivation of nationality for this purpose. These rules are usually stipulated in the state's constitution and nationality law. No global study exists yet of nationality laws that could establish a comprehensive understanding of state practice in the area of deprivation of nationality. Comparative studies have, however, been undertaken of nationality legislation in the European Union (EU), as well as in Africa. These shed some light on whether there is a global trend towards prohibiting any deprivation of nationality that renders the individual stateless.

In his 1991 article, Chan analyzed state practice in Western Europe and thought that it indicated acceptance of the principle that 'no one shall be deprived of his nationality if this would lead to statelessness'.⁴⁸ However, if his statement is compared with a comprehensive study undertaken by Gerard-René de Groot and Maarten P. Vink in 2010 of the laws in thirty-three European states, it is unclear how Chan arrived at his conclusion. In their study, de Groot and Vink found that in twenty-three of

⁴⁸ Chan, 'The Right to a Nationality as a Human Right', at 8.

twenty-six countries which allow deprivation of nationality for fraud or misrepresentation, this may render an individual stateless.⁴⁹ Among fourteen states that allow deprivation of nationality on the basis of conduct seriously prejudicial to the state's vital interests or acts such as disloyalty, treason, terrorism or crimes against the state, only five clearly limit such deprivation to situations where the individual holds dual citizenship. Finally, four of the fifteen states that allow nationals to have their nationality withdrawn due to entry into the service of a foreign state expressly limit such deprivations to situations where the individual does not become stateless.⁵⁰

In a similar study undertaken by Harald Waldrauch four years earlier of laws in fifteen EU member states, he identified a trend towards making it easier for nationals to be deprived of their nationality rather than the contrary. This was particularly the case with deprivation grounds related to fraud and misrepresentation, crimes against the state and military service for a foreign state.⁵¹ This development partly reflects growing uneasiness in Western Europe about immigration, as well as measures some of the states have taken in the 'war on terrorism'.

In Africa, a comparative study carried out in 2010 by the Open Society Institute of nationality laws in fifty-four countries found that only eight laws had safeguards against statelessness resulting from loss or deprivation of nationality. In addition to these, the laws in four states do not make any provision for the deprivation of nationality.⁵² In Africa, it is more difficult to tell whether there is a trend towards growing recognition of avoidance of statelessness as a result of loss and deprivation of nationality, due to a lack of past comparative studies of nationality laws in the region.⁵³ Moreover, none of the regional treaties in Africa contains a guarantee against arbitrary deprivation of nationality, though the

⁴⁹ Gerard-René de Groot and Maarten P. Vink, *Loss of Citizenship. Trends and Regulations in Europe* (EUDO Citizenship Observatory, Robert Schuman Centre for Advanced Studies in collaboration with Edinburgh University Law School, June 2010, revised October 2010), 16–18.

⁵⁰ *Ibid.*, 22–3. ⁵¹ Waldrauch, 'Loss of Nationality', 29.

⁵² Bronwen Manby, *Citizenship Law in Africa: A Comparative Study* (New York: AfriMAP & Open Society Justice Initiative, 2009), 84–5.

⁵³ In five African countries where nationality legislation has been amended since 2009, two countries – Kenya and Zimbabwe – introduced additional safeguards against statelessness in cases of loss and deprivation of citizenship. According to the 2010 Kenyan Constitution and the 2013 Zimbabwean Constitution, residence abroad no longer serves as a ground for depriving naturalized citizens of their citizenship. On the other hand,

African Charter on the Rights and Welfare of the Child includes the right to a nationality.⁵⁴

Although no comparative study has yet been undertaken of nationality laws on the Asian continent, there is reason to believe that the situation in these countries is similar to the one in Africa. On both continents, most nationality laws were influenced by the laws of a former colonial power, predecessor states or another state with strong historical influence in the country.⁵⁵ At the time the countries became independent, the laws that were adopted generally permitted deprivation of nationality on multiple grounds, even when it resulted in statelessness. Only in some cases have these laws been significantly reformed since independence⁵⁶ to limit the grounds through which persons can become stateless through deprivation of citizenship. However, no trend can be discerned in Asia towards prohibiting all cases of deprivation of nationality resulting in statelessness. A comparative study has also yet to be undertaken of laws on the American continent.

The examination of trends in nationality legislation shows that the great majority of states do not consider that all cases of deprivation of nationality that result in statelessness should be prohibited. However, there does appear to be a global trend towards eliminating certain grounds for deprivation of nationality that are 'out of tune' with other developments in

in Guinea-Bissau and South Africa, the amendments either maintained the existing grounds for deprivation of citizenship or introduced new ones. The latter was the case in South Africa, where the 2010 amendment to the Citizenship Act permits naturalized citizens to be deprived of their South African citizenship if they 'engage, under the flag of another country, in a war that the Republic does not support' (Section 6 of the South African Citizenship Amendment Act 2010, adopted on 3 December 2010).

⁵⁴ African Charter on the Rights and Welfare of the Child, July 1990, in force 29 November 1999, OAU Doc. CAB/LEG/24.9/49 (1990), Art. 6(3).

⁵⁵ The latter is the case with Afghanistan, Lao PDR, Mongolia and Vietnam, which were under strong Soviet influence during the cold war and have nationality laws with many similarities to the USSR Citizenship Law.

⁵⁶ Five notable examples from the past decade are Indonesia, Iraq, Kyrgyzstan, Kazakhstan and Nepal. In Nepal the new Citizenship Act adopted in 2006 removed most of the grounds that had existed for deprivation of citizenship in the 1964 Citizenship Act, leaving fraudulent acquisition of nationality as the only remaining one. In Indonesia, Kyrgyzstan and Kazakhstan, the new or amended Citizenship Laws adopted in 2006, 2007 and 2011, respectively, introduced a safeguard against statelessness in situations where citizens reside abroad and fail to declare their intention to retain their citizenship, but did not otherwise limit the grounds for deprivation of nationality. In Iraq, a new Citizenship Law was also adopted in 2006. It removed foreign service as a reason for withdrawal of nationality but introduced fraud and misrepresentation as new grounds.

international law. Desertion and evasion of military service, for instance, have all but disappeared as grounds for deprivation, perhaps partly as a result of the growing acceptance of conscientious objection.⁵⁷ Prolonged residence abroad is similarly becoming less and less considered a legitimate purpose for deprivation of nationality, as exemplified by the recent legal reforms in Indonesia, Kenya, Kazakhstan, Kyrgyzstan, Nepal and Zimbabwe referred to in this section. In Europe, only three of the thirteen states that maintain this ground for deprivation in their laws allow it to result in statelessness.⁵⁸ This development may reflect the positive impact of 1961 Convention standards on nationality legislation, even beyond the state parties to the convention.⁵⁹

8.7. Limitations on deprivation of nationality: the question of proportionality

Decisions to deprive a person of his or her nationality must follow certain procedural and substantive standards, which include the principle of proportionality. Proportionality means that the decision should assess the aim of the measure against its impact on the persons affected; there must be ‘a reasonable relationship of proportionality between the means deployed and the aim sought to be realised’.⁶⁰

8.7.1 *Selecting the ‘least intrusive means’*

The main significance of the *Rottmann* case, referred to in [section 8.5](#), is that it established that decisions to deprive persons of their citizenship for deception must observe the principle of proportionality. As such, they must take into account, among other things, the gravity of the offence committed compared to the consequences withdrawal of

⁵⁷ See, for instance, UN Human Rights Committee, ‘General Comment No. 22: The Right to Freedom of Thought, Conscience and Religion (Article 18)’ 10/11/89 (1993), para. 11; UN Human Rights Council, ‘Conscientious objection to military service’ A/HRC/24/L.23, 23 September 2013.

⁵⁸ de Groot and Vink, *Loss of Citizenship*, 32–3.

⁵⁹ Article 7(3) of the 1961 Convention prohibits loss of nationality resulting in statelessness on the basis of departure or residence abroad.

⁶⁰ The principle is, for instance, frequently referred to in judgments from the European Court of Human Rights, see D. J. Harris, M. O’Boyle, Colin Warbrick and Ed Bates, *Harris, O’Boyle and Warbrick: Law of the European Convention on Human Rights*, 2nd edn (Oxford University Press, 2009), 10–11.

nationality entails for the person concerned.⁶¹ The link of the persons affected with the state would be one of the factors to consider in these cases,⁶² with relevant links being, for example, residence in the territory of the state or marriage to a national. Time is also of relevance to proportionality, both for establishing the profoundness of an individual's link with the state based on residence and to limit the scope for depriving persons of their nationality several years after committing the act on which the deprivation decision is based. It thus becomes important that the means selected be the least intrusive amongst those that might achieve the desired result.⁶³

Some of the acts which may lead to deprivation of nationality have traditionally been met with the most serious punishment available to the state: death penalty or life imprisonment. This has typically been the case for persons convicted of treason or espionage. In terms of the consequences for the person concerned, it is clearly preferable to be rendered stateless, as spending life as a stateless person does not compare to spending the rest of one's life in prison, or of course, being deprived of one's life altogether.⁶⁴

For crimes which are typically punished with shorter sentences, it is more questionable what punishment carries worse consequences for the individual: statelessness or imprisonment. While a prison sentence has an exact time limit, statelessness does not and may not even be resolved during a person's lifetime.⁶⁵ Most individuals rendered stateless, moreover, face serious problems regularizing their stay and enjoying basic rights in the country where they reside. In many states, the fact that an individual is rendered stateless through deprivation of nationality may also cause nationality to be withdrawn from his or her children⁶⁶ and in a few states

⁶¹ *Rottmann*, paras. 55–6.

⁶² Council of Europe Committee of Ministers, 'Recommendation R (1999) 18 of the Committee of Ministers to Member States on the Avoidance and Reduction of Statelessness' (15 September 1999), para c).

⁶³ UNHRC, 'General Comment No. 27', para. 14.

⁶⁴ This was, for instance, the argument of International Law Commission (ILC) member Scelle during the discussions about the draft Convention on the Elimination of Future Statelessness, which led to the adoption of the 1961 Convention, see United Nations, '214th Meeting' (1953) *I Y.B. Int'l L. Comm'n, Summary records of the fifth session* (1 June–14 August 1953), at 194.

⁶⁵ This difference between deprivation of nationality, which is 'final and irrevocable', and other types of penalties was stressed by Hsu in the same ILC meeting, *ibid.*, at 194.

⁶⁶ For instance, in six of the twenty-two European states that allow persons to be rendered stateless as a result of fraud or misrepresentation, deprivation of nationality may also be extended to the persons' children, see 'Modes of Loss Database', European Union

even from the spouse.⁶⁷ Because of these consequences for the individuals affected, it has been argued that states should maintain a high standard of proof when decisions are made to deprive individuals of their nationality.⁶⁸ They may also resort to other measures to reach their aims.⁶⁹ It has, for instance, been suggested that if a primary goal is to prevent individuals from exercising political influence, withholding their voting rights and opportunity to run for office may be equally efficient as withdrawing their nationality.⁷⁰

From the perspective of selecting the less intrusive means to achieve an aim, it would thus seem that deprivation of nationality may be proportional as a punishment in the case of very serious offences, such as treason or espionage. However, deprivation is not proportional in the case of less serious offences when other measures can be taken that have a less detrimental effect on the individual. It was already mentioned above that common crimes do not fall within the scope of Article 8 of the 1961 Convention, which reflects the fact that most states use other types of punishment to address such cases. Proportionality considerations may be part of the explanation for this.

Democracy Observatory on Citizenship, available at: <http://eudo-citizenship.eu/databases/modes-of-loss?p=&application=modesLoss&search=1&modeby=idmode&idmode=L11>, last accessed 23 May 2014.

- ⁶⁷ In Europe, deprivation of nationality on the basis of fraud affects also the spouse in only one state: Bulgaria, see *ibid.*, <http://eudo-citizenship.eu/databases/modes-of-loss?p=&application=modesLoss&search=1&modeby=idmode&idmode=L11>. The practice of extending the deprivation to a person's spouse or children is contrary to Article 6 of the 1961 Convention.
- ⁶⁸ Charles H. Hooker, 'Comment: The Past as Prologue: *Schneiderman v. United States* and Contemporary Questions of Citizenship and Denationalization', *Emory International Law Review* 19 (Spring, 2005), 325. Hooker shows how denationalization decisions in the USA rely on the Supreme Court decision in *Schneiderman v. United States*, which introduced a new and higher standard of proof for such proceedings. The justification for this was that the stakes are so high in such cases and the loss so severe for the individual that the government would need to prove non-allegiance by 'clear, unequivocal, and convincing evidence which does not leave the issue in doubt', Hooker, 325.
- ⁶⁹ This was, for instance, argued by Chief Justice Warren in the US Supreme Court case of *Trop v. Dulles* in 1958. See *Trop v. Dulles, Secretary of State, et al.*, 356 US 86 (1958).
- ⁷⁰ Emmanuel Gross, 'Defensive Democracy: Is it Possible to Revoke the Citizenship, Deport, or Negate the Civil Rights of a Person Instigating Terrorist Action against his own State?' *UMKC Law Review*, 72(51) (Fall 2003), 92–4; Shai Lavi, 'Citizenship Revocation as Punishment: On the Modern Duties of Citizens and their Criminal Breach' *University of Toronto Law Journal* 61 (2011), 806.

8.7.2 *Selecting the means that best serve the aim sought to be achieved*

Another element of the proportionality principle is to what extent deprivation of nationality serves the aim sought to be achieved. T. Alexander Aleinikoff found that denationalization grounds can be grouped into three categories depending on their purpose: those addressing issues of allegiance, those acting as punishment and those aimed at ensuring public order.⁷¹ It should be noted, however, that many situations appear to fall into more than one of these categories. For instance, when service with a foreign army leads to deprivation of nationality, it seems to both act as a punishment and address issues of allegiance or loyalty, whereas in discussions about terrorism and deprivation of nationality, issues of allegiance/loyalty are linked with concerns for public order.

A distinction may also be drawn between deprivation of nationality serving as punishment and deprivation used as an administrative measure. Where deprivation of nationality is used as punishment, it enters among the range of punitive measures available to the state to fulfil the traditional aims of punishment, central among which are retribution, prevention and deterrence.⁷² On the issue of prevention, for instance, if the choice is between imprisoning an individual or taking away his or her citizenship, the likelihood that the individual will continue committing offences after release from a prison sentence needs to be compared with the prospect that the individual continues committing crimes after the citizenship has been withdrawn, which may speak in favour of imprisonment.

It needs to be stressed here that deprivation of nationality is only one among several types of punishment available to the state and that they must therefore be wary of using it in addition to another type of punishment, such as a prison sentence, already imposed against an individual at a different time for the same crime. Such 'double punishment' would violate the principle of *ne bis in idem* or double jeopardy. This issue was raised in the 2006 appeal case against the Muslim preacher Abu Hamza in the United Kingdom, where the appellant contended that the fact that the Home Secretary had elected to remove his citizenship in 2003 by way of punishment for the conduct he was subsequently prosecuted for constituted an

⁷¹ T. Alexander Aleinikoff, 'Symposium on Law and Community: Theories of Loss of Citizenship' *Michigan Law Review* 84 (June 1986), 1473–6.

⁷² Lavi, 'Citizenship Revocation as Punishment', 788–9.

abuse of process. The judge, however, rejected the claim, as the evidence relied on by the Secretary of State was different from the evidence the criminal indictment was based on, plus the decisions were the competence of different officers of state and fell to be made on different principles.⁷³

Where deprivation of citizenship is carried out both as a punishment and as an administrative measure, preserving national security and/or public safety and order is often an overriding concern. In such cases, deprivation of nationality may be used to *facilitate subsequent deportation* or to *prevent persons from entering the territory of the state* if they are abroad.⁷⁴ In the UK, the scope for depriving citizens of their nationality appears to have been broadened specifically to make it easier to expel individuals from the country for national security reasons.⁷⁵

General Comment No. 27 of the Human Rights Committee interprets the right to enter one's own country as including the principle whereby a state 'must not, by stripping a person of nationality or by expelling an individual to a third country, arbitrarily prevent this person from returning to his/her country'.⁷⁶ In line with the explanation of the concept of 'arbitrariness' above, this could, for instance, be the case where the prevention of return is not based on law or where it is discriminatory. At the same time, the Explanatory Report of the Fourth Protocol to the ECHR indicates that although the drafting committee approved the principle that states 'would be forbidden to deprive a national of his nationality for the purpose of expelling him', they elected to leave such a provision out of the ECHR due to the delicate nature of deprivation of nationality.⁷⁷ The admissibility decision in *Naumov v. Albania*, however, hints to the fact

⁷³ *Regina v. Abu Hamza* [2006] ECWA Crim 2918, [2007] Q.B. 659, pp. 14–15. Similarly, the ECtHR has found in *R.T. v. Switzerland* that sanctions that were issued at the same time by two different authorities, for instance a criminal and an administrative authority, do not violate the principle of *ne bis in idem*, see *R.T. v. Switzerland* (App. no. 31982/96), ECHR, 30 May 2000.

⁷⁴ Council of Europe Bureau of the European Committee on Legal Co-operation, 'Nationality Issues and the Denial of Residence in the Context of the Fight against Terrorism – Feasibility Study' (Strasbourg 5 December 2006), CDCJ-BU 22 (2006), 10; Gross, 'Defensive Democracy', 87–9.

⁷⁵ Hina Majid, 'Protecting the Right to Have Rights: The Case of Section 56 of the Immigration, Asylum and Nationality Act 2006', *Journal of Immigration Asylum and Nationality Law* 22(1) (2008), 27. See Chapter 11 by Rubenstein and Lenagh-Maguire in this book.

⁷⁶ HRC, 'General Comment No. 27', para. 21.

⁷⁷ Council of Europe, 'Protocol No. 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Explanatory Report' (1965) (ETS No. 46), para. 23.

that revocation of citizenship followed by expulsion may, in some cases, raise problems under Article 3 of this Protocol.⁷⁸

If an individual is rendered stateless through deprivation of nationality, it is, moreover, generally considered as a violation of the territorial sovereignty of the other state to deny these individuals residence and expel them to that state or to refuse to readmit them, as it pushes the responsibility of the person considered a security threat onto other states.⁷⁹ States are likely to refuse to accept these individuals on their territory.⁸⁰ It can thus be concluded that deprivation of citizenship which renders a person stateless is not legitimate where the aim is expulsion.

Is the measure proportional to the aim sought to be achieved when the state deprives persons of their nationality for the purpose of increasing internal security but *without subsequently expelling them to another country*? Although statelessness normally makes individuals unable to vote or to be elected, leaving individuals stateless in their former country of nationality would not otherwise remove the threat to national security and public safety and order⁸¹ unless additional measures are taken. On the contrary, the severe impact statelessness has on individuals may make them more inclined to continue acting against the state.

In some situations, preventing travel abroad is part of the purpose of withdrawing the nationality of an individual and indeed statelessness usually creates major obstacles for international travel. In human rights law, states are permitted to restrict the right to enter and leave one's own country on the basis of concerns for, among others, national security and public order. Such restrictions must, however, be provided by law, necessary in a democratic society and consistent with all other rights recognized in human rights treaties.⁸² Considering the human cost of deprivation of nationality, states should consider other, less intrusive measures available for restricting travel abroad for particular individuals.

The discussion above has demonstrated that deprivation of nationality is rarely the means that best serves the aim sought to be achieved, in particular if there is a great risk that the persons concerned will

⁷⁸ *Naumov v. Albania* (App no 10513/03), ECHR, 4 January 2005.

⁷⁹ Weis, *Nationality and Statelessness in International Law*, 125–6; Gross, 'Defensive Democracy', 90–2; Lavi, 'Citizenship Revocation as Punishment', 808. See Chapter 1 by Edwards in this book.

⁸⁰ Council of Europe, 'Nationality Issues and the Denial of Residence', 11.

⁸¹ *Ibid.*, 11.

⁸² HRC, 'General Comment No. 27', para. 11.

continue to pose a threat to national security and public safety and order if they are deprived of their nationality but not deprived of their liberty. In cases where states use deprivation of nationality as a measure to enable them to expel persons posing a security threat or to prevent them from re-entering the country, this may violate principles of international law.

8.8. Conclusion

Arbitrary deprivation of nationality includes situations where deprivation takes place contrary to a state's laws, or in line with these laws, but on the basis of discrimination or without following certain procedural and substantive standards. While there is no doubt that deprivation on the basis of race or ethnicity – such as the denationalization of the Jews by the Nazi regime in Germany during the Second World War – is arbitrary, distinguishing in some other situations when such decisions are arbitrary may be more difficult. As an example, the 1961 Convention permits deprivation of nationality resulting in statelessness on the basis of conduct that is prejudicial to the vital interests of the state but what kind of conduct does this refer to? Desertion was, for instance, considered a legitimate ground for deprivation of nationality at the time the 1961 Convention was drafted. Today, such deprivation may be considered arbitrary on the basis of international human rights law. On the other hand, the drafters of the 1961 Convention did not discuss terrorism as a ground for deprivation of nationality, yet in the post 9/11 world it seems plausible that terrorist acts would be considered seriously prejudicial to vital state interests. However, this in turn raises questions as to what acts can be categorized as 'terrorism' – a concept which remains ill-defined in international law. This discussion indicates that the legitimate purposes of deprivation of nationality are evolving as international law also develops.

Moreover, the chapter found that deprivation of nationality rendering persons stateless is considered arbitrary, and thus prohibited, except when it serves a legitimate purpose and follows the principle of proportionality. The legitimate purposes are set out in international and regional treaties, such as the 1961 Convention and the ECN. As for the principle of proportionality, this chapter discussed how the *Rottmann* judgment of the CJEU has helped concretize its relevance for decisions on deprivation of nationality. Further jurisprudence both at the regional and domestic level may over time help to define this further.

As demonstrated in the case of the Times Square bomber, serious acts that threaten national security and public safety tend to provoke discussions about deprivation of nationality. In what situations would such deprivation be proportionate to the aim sought, such as the desire to protect national security, considering the array of other measures available to states? In the concrete case, Faisal Shahzad was sentenced to life imprisonment and was not deprived of his US citizenship. The discussion above sought to bring out some of the considerations that would speak in favour of applying one or the other measure. Considering the great human cost of statelessness, however, there is reason to argue that deprivation of nationality should only be exceptionally applied when the result is statelessness.

Questions to guide discussion

1. When will the deprivation of nationality be arbitrary? Is the deprivation of nationality resulting in statelessness arbitrary per se?
2. According to the 1961 Convention, when can nationals be legitimately deprived of their nationality?
3. In what situations, according to the ECN, can a state legitimately render a person stateless?
4. What arguments can be made for (and against) concluding that there is a global trend towards prohibiting any deprivation of nationality which renders the individual stateless? Are there any current issues that could influence this trend?
5. Describe the proportionality principle as established in *Rottmann*. Should other factors be included or omitted in the test? If so, what factors, and why is this the case?